

By SA Under

B. No. 749

A BILL TO BE ENTITLED

AN ACT

1
2 relating to conforming the Health and Safety Code to certain Acts
3 of the 71st Legislature, to nonsubstantively codifying in that code
4 certain related health and safety laws, to making corrective
5 changes in that code, and to making conforming changes to other
6 laws involving health and safety matters.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. (a) This Act is enacted as part of the state's
9 continuing statutory revision program under Chapter 323, Government
10 Code. This Act is a revision of statutes, without substantive
11 change, for purposes of Article III, Section 43, of the Texas
12 Constitution and has the purposes of:

13 (1) conforming the Health and Safety Code to laws
14 passed by the 71st Legislature that amended the laws codified by
15 the Health and Safety Code or that enacted new provisions
16 appropriate for codification in the Health and Safety Code;

17 (2) codifying in the Health and Safety Code certain
18 laws that were not included in that code when it was enacted;

19 (3) making necessary corrective changes in the Health
20 and Safety Code; and

21 (4) making necessary conforming amendments to other
22 laws.

23 (b) Chapter 311, Government Code, applies to this Act as if
24 this Act were a code governed by that chapter.

1 (c) The repeal of a law by this Act does not remove, void,
2 or otherwise affect in any manner a validation under the repealed
3 law. The validation is preserved and continues to have the same
4 effect that it would have if the law were not repealed. This
5 subsection does not diminish the saving provisions prescribed by
6 Section 311.031, Government Code.

7 (d) A transition or saving provision of a law codified by
8 this Act applies to the codified law to the same extent as it
9 applies to the original law. The repeal of a transition or saving
10 provision by this Act does not affect the application of the
11 provision to the codified law. In this subsection, "transition
12 provision" includes any temporary provision providing for a special
13 situation during the transition period between the time of the
14 existing law and the establishment or implementation of a new law.

15 SECTION 2. Section 11.016(d), Health and Safety Code, is
16 amended to conform to Section 1, Chapter 631 (S.B. 1362), Acts of
17 the 71st Legislature, Regular Session, 1989, to read as follows:

18 (d) Except as otherwise provided by law and contingent on
19 the availability of department funds for this purpose, a member of
20 an advisory committee appointed by the board is entitled to
21 receive, with regard to travel expenses, [:-

22 [~~1~~]-\$50-for-each-advisory-committee-meeting--attended
23 by-the-member,-and

24 [~~2~~] the per diem and travel allowance authorized by
25 the General Appropriations Act for state employees.

26 SECTION 3. Chapter 11, Health and Safety Code, is amended to
27 conform to Section 1, Chapter 631 (S.B. 1362), Acts of the 71st

1 Legislature, Regular Session, 1989, by adding Section 11.0161 to
2 read as follows:

3 Sec. 11.0161. COMPENSATORY PER DIEM FOR ADVISORY COMMITTEE
4 MEMBER. (a) Within the limit of available funds, a member of an
5 advisory committee appointed to assist the board and the department
6 is entitled to receive, if authorized by board rule, a compensatory
7 per diem, not to exceed the rate set in the General Appropriations
8 Act, for each meeting the member attends.

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

13 SECTION 4. Section 11.017(b), Health and Safety Code, is
14 amended to conform to Section 52, Chapter 584 (H.B. 2519), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 (b) The state auditor shall audit the financial transactions
17 of the board in accordance with Chapter 321, Government Code [at
18 least-once-each-biennium].

19 SECTION 5. Chapter 12, Health and Safety Code, is amended to
20 conform to Section 5, Chapter 1240 (H.B. 2473), Acts of the 71st
21 Legislature, Regular Session, 1989, by adding Section 12.014 to
22 read as follows:

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

27 (b) The board by rule may adopt reasonable registration fees

1 to cover the costs of establishing and maintaining a registry and
2 may adopt other rules as necessary to administer this section.

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

6 SECTION 6. Chapter 12, Health and Safety Code, is amended to
7 conform to Section 7, Chapter 1085 (S.B. 487), Acts of the 71st
8 Legislature, Regular Session, 1989, by adding Section 12.015 to
9 read as follows:

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

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

19 SECTION 7. Chapter 12, Health and Safety Code, is amended to
20 conform to Section 1, Chapter 1049 (H.B. 2972), Acts of the 71st
21 Legislature, Regular Session, 1989, by adding Subchapter F to read
22 as follows:

23 SUBCHAPTER F. OFFICE OF TEXAS-MEXICO HEALTH AND
24 ENVIRONMENTAL ISSUES

25 Sec. 12.071. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL
26 ISSUES. The department shall establish and maintain an office in
27 the department to coordinate and promote health and environmental

1 issues between this state and Mexico.

2 Sec. 12.072. INTERAGENCY COUNCIL. An interagency council is
3 created to assist the office in its coordinating role, to prevent
4 duplication of effort, and to promote maximum attention to health
5 and environmental issues between this state and Mexico. The
6 council serves as the advisory board to the office in the
7 performance of its duties.

8 Sec. 12.073. COUNCIL MEMBERSHIP. (a) The council must
9 include representatives of local, state, federal, and international
10 agencies having responsibility for health and environmental issues,
11 and representatives of academic institutions, councils, and
12 commissions that address those issues.

13 (b) The council also must include:

14 (1) a representative of the Governor's Commission on
15 Texas-Mexico Affairs;

16 (2) a representative of the Texas-Mexico Exchange;

17 (3) a representative of the department, appointed by
18 the commissioner;

19 (4) a representative of the Texas Department of Human
20 Services, appointed by the commissioner of human services;

21 (5) a representative of the Department of Agriculture,
22 appointed by the commissioner of agriculture;

23 (6) a representative of the General Land Office,
24 appointed by the land commissioner;

25 (7) a representative of the Texas Water Commission,
26 appointed by the water commissioners;

27 (8) a representative of the Texas/Mexico Authority,

1 appointed by the authority;

2 (9) a representative of the United States
3 Environmental Protection Agency;

4 (10) a representative of the International Boundary
5 and Water Commission;

6 (11) a representative of the Pan-American Health
7 Organization; and

8 (12) a representative from each institution of higher
9 education located in or near border areas, appointed by the
10 commissioner of the Texas Higher Education Coordinating Board.

11 Sec. 12.074. COUNCIL DUTIES. The council shall:

12 (1) identify critical environmental and health issues
13 and needs arising between this state and Mexico;

14 (2) determine existing agency responsibilities,
15 expertise, and programs; and

16 (3) identify areas that require further research,
17 program development, and implementation.

18 SECTION 8. Chapter 33, Health and Safety Code, is amended to
19 conform to Section 1, Chapter 925 (S.B. 1052), Acts of the 71st
20 Legislature, Regular Session, 1989, to read as follows:

21 CHAPTER 33. PHENYLKETONURIA, [AND] OTHER

22 HERITABLE DISEASES, AND HYPOTHYROIDISM

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 33.001. DEFINITIONS. In this chapter:

25 (1) "Heritable disease" means an inherited disease
26 that may result in mental or physical retardation or death.

27 (2) "Hypothyroidism" means a condition that may cause

1 severe mental retardation if not treated.

2 (3) "Other benefit" means a benefit, other than a
3 benefit under this chapter, to which an individual is entitled for
4 the payment of the costs of services. The term includes:

5 (A) benefits available under:

6 (i) an insurance policy, group health
7 plan, or prepaid medical care plan;

8 (ii) Title XVIII of the Social Security
9 Act (42 U.S.C. Section 1395);

10 (iii) Title XIX of the Social Security Act
11 (42 U.S.C. Section 1396);

12 (iv) the Veterans' Administration;

13 (v) the Civilian Health and Medical
14 Program of the Uniformed Services; or

15 (vi) workers' compensation or any other
16 compulsory employers insurance program;

17 (B) a public program created by federal or state
18 law, or by ordinance or rule of a municipality or political
19 subdivision of the state, except those benefits created by the
20 establishment of a municipal or county hospital, a joint
21 municipal-county hospital, a county hospital authority, a hospital
22 district, or by the facilities of a publicly supported medical
23 school; and

24 (C) benefits resulting from a cause of action
25 for health care expenses, or a settlement or judgment based on the
26 cause of action, if the expenses are related to the need for
27 services provided under this chapter.

1 (4) "Phenylketonuria" means an inherited condition
2 that may cause severe mental retardation if not treated.

3 (5) "Screening test" means a rapid analytical
4 procedure to determine the need for further diagnostic evaluation.

5 Sec. 33.002. DETECTION AND TREATMENT PROGRAM ESTABLISHED.

6 (a) The department shall carry out a program to combat morbidity,
7 including mental retardation, and mortality in persons who have
8 phenylketonuria, other heritable diseases, or hypothyroidism.

9 (b) The board shall adopt rules necessary to carry out the
10 program, including a rule specifying other heritable diseases
11 covered by this chapter.

12 (c) The department shall establish and maintain a laboratory
13 to:

14 (1) conduct experiments, projects, and other
15 activities necessary to develop screening or diagnostic tests for
16 the early detection of phenylketonuria, other heritable diseases,
17 and hypothyroidism;

18 (2) develop ways and means or discover methods to be
19 used to prevent or treat phenylketonuria, other heritable diseases,
20 and hypothyroidism; and

21 (3) serve other purposes considered necessary by the
22 department to carry out the program.

23 Sec. 33.003. COOPERATION OF HEALTH CARE PROVIDERS AND
24 GOVERNMENTAL ENTITIES. (a) The department may invite all
25 physicians, hospitals, and other health care providers in the state
26 that provide maternity and newborn infant care to cooperate and
27 participate in any program established by the department under this

1 chapter.

2 (b) Other boards, agencies, departments, and political
3 subdivisions of the state capable of assisting the department in
4 carrying out the program may cooperate with the department and are
5 encouraged to furnish their services and facilities to the program.

6 [Sections 33.004-33.010 reserved for expansion]

7 SUBCHAPTER B. NEWBORN SCREENING

8 Sec. 33.011. TEST REQUIREMENT. (a) The physician attending
9 a newborn child or the person attending the delivery of a newborn
10 child that is not attended by a physician shall subject the child
11 to screening tests approved by the department for phenylketonuria,
12 other heritable diseases, and hypothyroidism.

13 (b) The department may prescribe the screening test
14 procedures to be used and the standards of accuracy and precision
15 required for each test.

16 (c) The screening tests required by this section must be
17 performed by the laboratory established by the department or by a
18 laboratory approved by the department under Section 33.016.

19 Sec. 33.012. EXEMPTION. (a) Screening tests may not be
20 administered to a newborn child whose parents, managing
21 conservator, or guardian objects on the ground that the tests
22 conflict with the religious tenets or practices of an organized
23 church of which they are adherents.

24 (b) If a parent, managing conservator, or guardian objects
25 to the screening tests, the physician or the person attending the
26 newborn child that is not attended by a physician shall ensure that
27 the objection of the parent, managing conservator, or guardian is

1 entered into the medical record of the child. The parent, managing
2 conservator, or guardian shall sign the entry.

3 Sec. 33.013. LIMITATION ON LIABILITY. A physician,
4 technician, or other person administering the screening tests
5 required by this chapter is not liable or responsible because of
6 the failure or refusal of a parent, managing conservator, or
7 guardian to consent to the tests for which this chapter provides.

8 Sec. 33.014. DIAGNOSIS; FOLLOW-UP. (a) If, because of an
9 analysis of a specimen submitted under Section 33.011, the
10 department reasonably suspects that a newborn child may have
11 phenylketonuria, another heritable disease, or hypothyroidism, the
12 department shall notify the person who submits the specimen that
13 the results are abnormal and provide the test results to that
14 person. The department may notify one or more of the following
15 that the results of the analysis are abnormal and recommend that
16 further testing is necessary:

17 (1) the physician attending the newborn child or the
18 physician's designee;

19 (2) the person attending the delivery of the newborn
20 child that was not attended by a physician;

21 (3) the parents of the newborn child;

22 (4) the health authority of the jurisdiction in which
23 the newborn child was born or in which the child resides, if known;
24 or

25 (5) physicians who are cooperating pediatric
26 specialists for the program.

27 (b) If a screening test indicates that a newborn child is at

1 high risk, the department shall recommend that the child be placed
2 under the medical care of a licensed physician for diagnosis and
3 provide the name of a consultant pediatric specialist in the
4 child's geographic area.

5 (c) The department, the health authority, and the consulting
6 pedsiatric specialist may follow up a positive test with the
7 attending physician or with a parent of the newborn child if the
8 child was not attended by a physician at birth.

9 Sec. 33.015. REPORTS; RECORDKEEPING. (a) Each physician,
10 health authority, or other individual who has the information of a
11 confirmed case of a disorder for which a screening test is required
12 that has been detected by a mechanism other than identification
13 through a screening of a specimen by the department's diagnostic
14 laboratory shall report the confirmed case to the department.

15 (b) The department may collect data to derive incidence and
16 prevalence rates of disorders covered by this chapter from the
17 information on the specimen form submitted to the department for
18 screening determinations.

19 (c) The department shall maintain a roster of children born
20 in this state who have been diagnosed as having one of the
21 disorders for which the screening tests are required.

22 (d) The department may cooperate with other states in the
23 development of a national roster of individuals who have been
24 diagnosed as having one of the disorders for which the screening
25 tests are required if:

26 (1) participation in the national roster encourages
27 systematic follow-up in the participating states;

1 (2) incidence and prevalence information is made
2 available to participating newborn screening programs in other
3 states; and

4 (3) each participating newborn screening program
5 subscribes to an agreement to protect the identity and diagnosis of
6 the individuals whose names are included in the national roster.

7 Sec. 33.016. APPROVAL OF LABORATORIES. (a) The department
8 may develop a program to approve any laboratory that wishes to
9 perform the tests required to be administered under this chapter.
10 To the extent that they are not otherwise provided in this chapter,
11 the board may adopt rules prescribing procedures and standards for
12 the conduct of the program.

13 (b) The department may prescribe the form and reasonable
14 requirements for the application and the procedures for processing
15 the application.

16 (c) The department may prescribe the test procedure to be
17 employed and the standards of accuracy and precision required for
18 each test.

19 (d) The department may extend or renew any approval in
20 accordance with reasonable procedures prescribed by the board.

21 (e) The department may for good cause, after notice to the
22 affected laboratory and a hearing if requested, restrict, suspend,
23 or revoke any approval granted under this section.

24 (f) Hearings under this section shall be conducted in
25 accordance with the hearing rules adopted by the board and the
26 applicable provisions of the Administrative Procedure and Texas
27 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

1 [Sections 33.017-33.030 reserved for expansion]

2 SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES

3 Sec. 33.031. COORDINATION WITH CHRONICALLY ILL AND DISABLED

4 CHILDREN'S SERVICES. (a) All newborn children and other
5 individuals under 21 years of age who have been screened, have been
6 found to be presumptively positive through the newborn screening
7 program, and may be financially eligible, may be referred to the
8 department's chronically ill and disabled children's services
9 program.

10 (b) An individual who is determined to be eligible for
11 services under the chronically ill and disabled children's services
12 program shall be given approved services through that program. An
13 individual who does not meet that eligibility criteria shall be
14 referred to the newborn screening program for a determination of
15 eligibility for newborn screening program services.

16 Sec. 33.032. PROGRAM SERVICES. (a) Within the limits of
17 funds available for this purpose and in cooperation with the
18 individual's physician, the department may provide services
19 directly or through approved providers to individuals of any age
20 who meet the eligibility criteria specified by board rules on the
21 confirmation of a positive test for phenylketonuria, other
22 heritable diseases, or hypothyroidism.

23 (b) The board may adopt:

24 (1) rules specifying the type, amount, and duration of
25 program services to be offered;

26 (2) rules establishing the criteria for eligibility
27 for services, including the medical and financial criteria;

1 (3) rules establishing the procedures necessary to
2 determine the medical, financial, and other eligibility of the
3 individual;

4 (4) substantive and procedural rules for applying for
5 program services and processing those applications;

6 (5) rules for providing services according to a
7 sliding scale of financial eligibility;

8 (6) substantive and procedural rules for the denial,
9 modification, suspension, and revocation of an individual's
10 approval to receive services; and

11 (7) substantive and procedural rules for the approval
12 of providers to furnish program services.

13 (c) The department may select providers according to the
14 criteria in the board's rules.

15 (d) The board may charge fees for the provision of services,
16 except that services may not be denied to an individual because of
17 the individual's inability to pay the fees.

18 Sec. 33.033. CONSENT. The department may not provide
19 services without the consent of the individual or, if the
20 individual is a minor, the minor's parent, managing conservator, or
21 guardian.

22 Sec. 33.034. DENIAL, MODIFICATION, SUSPENSION, AND
23 REVOCAION OF APPROVAL TO PROVIDE SERVICES. (a) After notice and
24 an opportunity for a fair hearing, the department may deny the
25 approval or modify, suspend, or revoke the approval of a person to
26 provide services under this chapter.

27 (b) Notice shall be given and the hearing shall be conducted

1 in accordance with the department's informal hearing procedures.

2 (c) Sections 13-20, Administrative Procedure and Texas
3 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do
4 not apply to the notice and hearing required by this section.

5 Sec. 33.035. INDIVIDUALS ELIGIBLE FOR SERVICES. (a) An
6 individual is not eligible to receive the services authorized by
7 this chapter at no cost or reduced cost to the extent that the
8 individual or the parent, managing conservator, guardian, or other
9 person with a legal obligation to support the individual is
10 eligible for some other benefit that would pay for all or part of
11 the services.

12 (b) The department may waive ineligibility under Subsection
13 (a) if the department finds that:

14 (1) good cause for the waiver is shown; and
15 (2) enforcement of the requirement would tend to
16 defeat the purpose of this chapter or disrupt the administration or
17 prevent the provision of services to an otherwise eligible
18 recipient.

19 (c) When an application for services is filed or at any time
20 that an individual is eligible for or receiving services, the
21 applicant or recipient shall inform the department of any other
22 benefit to which the applicant, recipient, or person with a legal
23 obligation to support the applicant or recipient may be entitled.

24 (d) The board by rule shall provide criteria for actions
25 taken under this section.

26 Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND
27 REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice

1 to the individual or, if the individual is a minor, the
2 individual's parent, managing conservator, or guardian and an
3 opportunity for a fair hearing, the department may deny, modify,
4 suspend, or revoke the determination of a person's eligibility to
5 receive services at no cost or at reduced cost under this chapter.

6 (b) Notice shall be given and the hearing shall be conducted
7 in accordance with the department's informal hearing procedures.

8 (c) Sections 13-20, Administrative Procedure and Texas
9 Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do
10 not apply to the notice and hearing required by this section.

11 Sec. 33.037. REIMBURSEMENT. (a) The board may require an
12 individual or, if the individual is a minor, the minor's parent,
13 managing conservator, or guardian, or other person with a legal
14 obligation to support the individual to pay or reimburse the
15 department for all or part of the cost of the services provided.

16 (b) The recipient or the parent, managing conservator,
17 guardian, or other person with a legal obligation to support an
18 individual who has received services from the department that are
19 covered by some other benefit shall, when the other benefit is
20 received, reimburse the department for the cost of services
21 provided.

22 Sec. 33.038. RECOVERY OF COSTS. (a) The department is
23 entitled to recover an expenditure for services provided under this
24 chapter from:

25 (1) a person who does not reimburse the department as
26 required by this chapter; or

27 (2) a third party with a legal obligation to pay other

1 benefits and who has received prior written notice of the
2 department's interests in the other benefits.

3 (b) This section creates a separate and distinct cause of
4 action, and the commissioner may request the attorney general to
5 bring suit in the appropriate court of Travis County on behalf of
6 the department.

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

11 (d) The board by rule shall provide criteria for actions
12 taken under this section.

13 ~~[Sec.-33.001.--DETECTION--AND--TREATMENT-PROGRAM-ESTABLISHED-~~
14 ~~{a}--The-department-shall-carry-out--a--program--to--combat--mental~~
15 ~~retardation--in--children--with--phenylketonuria-or-other-heritable~~
16 ~~diseases.~~

17 ~~[{b}--The-board-may-adopt-rules-necessary-to--carry--out--the~~
18 ~~program,--including-a-rule-specifying-the-heritable-diseases-covered~~
19 ~~by-this-chapter.~~

20 ~~[{c}--The---department---shall---establish---and---maintain--a~~
21 ~~diagnostic-laboratory-to:~~

22 ~~[{1}--conduct---experiments,---projects,---and---other~~
23 ~~undertakings--necessary-to-develop-tests-for-the-early-detection-of~~
24 ~~phenylketonuria-and-other-heritable-diseases;~~

25 ~~[{2}--develop-ways-and-means-or-discover-methods-to--be~~
26 ~~used--to--prevent--and--treat--phenylketonuria--and-other-heritable~~
27 ~~diseases-in-children;-and~~

1 [(3) --serve other purposes considered necessary by--the
2 department-to-carry-out-the-program-

3 [(d) --Other---board,--agencies,--departments,--and--political
4 subdivisions-of-the-state-capable-of-assisting--the--department--in
5 carrying--out-the-program-may-cooperate-with-the-department-and-are
6 encouraged-to-furnish-their-services--and--facilities--to--aid--the
7 program-

8 [Sec.-33.002---TEST---REQUIREMENT:----- (a) ---The--physician
9 attending-a-newborn-child-or-the-person-attending-the-delivery-of-a
10 newborn-child-that-is-not-attended-by-a-physician-shall-subject-the
11 child-to-tests-approved-by-the-department-for--phenylketonuria--and
12 other-heritable-diseases-

13 [(b) --The--department-may-prescribe-the-test-procedures-to-be
14 employed-and-the-standards-of-accuracy-and-precision--required--for
15 each-test-

16 [(c) --The--tests--required--by-this-section-must-be-performed
17 by-

18 [(1) --the--diagnostic--laboratory--established--by--the
19 department-under-Section-33.001;-or

20 [(2) --a-laboratory-approved--by--the--department--under
21 Section-33.003-

22 [(d) --Tests-may-not-be-administered-to-a-child-whose-guardian
23 or--parents-object-on-the-ground-that-the-tests-conflict-with-their
24 religious-tenets-or-practices-

25 [(e) --A-physician,--technician,--or-other-person--administering
26 the--tests--required--by--this-chapter-is-not-liable-or-responsible
27 because-of-the-failure-or--refusal--of--a--guardian--or--parent--to

1 consent-to-the-tests-provided-for-by-this-chapter.

2 [Sec.-33.003.--APPROVAL-OF-LABORATORIES.--(a)--The-department
3 may--develop-a-program-to-approve-each-laboratory-that-performs-the
4 tests-required-by-this-chapter.

5 [(b)--The-department-may--prescribe--reasonable--requirements
6 for--a--laboratory's--application--for--approval--and--the-form-and
7 processing-procedures-to-be-used.

8 [(c)--The-department--may--extend--or--renew--a--laboratory's
9 approval-in-accordance-with-reasonable-procedures-prescribed-by-the
10 board.

11 [(d)--The-department-may, for-good-cause, after-notice-and-an
12 opportunity--for--a--hearing, restrict, suspend, or--revoke--any
13 approval-granted-under-the-program.

14 [(e)--The--board--may--adopt-rules-prescribing-procedures-and
15 standards-for-the-conduct-of-the-laboratory-approval-program.

16 [Sec.-33.004.--DIAGNOSIS-AND-PROCEDURE.--(a)--If, because--of
17 an--analysis--of--a--dried--blood--specimen-submitted-under-Section
18 33.002, the-department-reasonably-suspects-that-a-newborn-child-may
19 have-phenylketonuria-or-other--heritable--disease, the--department
20 shall--notify--the--following--that-the-results-of-the-analysis-are
21 abnormal-and-further-testing-is-necessary:

22 [(1)--the-physician-attending-the-newborn-child-or--the
23 physician's-designee, or

24 [(2)--the--person-attending-the-delivery-of-the-newborn
25 child-that-was-not-attended-by-a-physician, or-the-parents--of--the
26 newborn-child.

27 [(b)--If--a--test--indicates--high-risk, the-department-shall

1 recommend-that-the-newborn-child-be-placed-under-the--medical--care
2 of--a--licensed--physician--for-diagnosis-and-provide-the-name-of-a
3 consultant-physician-in-the-newborn-child's-geographic-area.

4 [(c)--The-municipal-or-county-health-authority-may-follow--up
5 a--positive--test--with--the--attending--physician-who-notified-the
6 authority-or-with-a-parent-of-the-newborn-child-if-the-notification
7 was-made-by-a-person-other-than-a-physician.

8 [(d)--On-confirmation-of--a--positive--test,--and--if--funds,
9 services,--and--facilities--are-available,--the-department-and-other
10 boards,--departments,--agencies,--and-political--subdivisions--in--the
11 state-cooperating-in-the-program-may:

12 [(1)--offer,--to--the-extent-needed,--their-services-and
13 facilities-to-the-family-and-attending-physician,--and

14 [(2)--provide-for,--in--cooperation--with--an--attending
15 physician,--the--dietary--and--other--related-needs-of-the-affected
16 children-if-necessary-or-desirable.

17 [Sec.-33.005.--COOPERATION-OF-PHYSICIANS-AND-HOSPITALS.---The
18 department--may--invite--all--physicians-and-hospitals-in-the-state
19 that-provide-maternity-and-newborn-infant--care--to--cooperate--and
20 participate-in-any-program-established-by-the-department-under-this
21 chapter.]

22 SECTION 9. Chapter 34, Health and Safety Code, is repealed
23 to conform to Section 3, Chapter 925 (S.B. 1052), Acts of the 71st
24 Legislature, Regular Session, 1989.

25 SECTION 10. Section 35.002, Health and Safety Code, is
26 amended to conform to Sections 31 and 32, Chapter 1195 (S.B. 959),
27 Acts of the 71st Legislature, Regular Session, 1989, to read as

1 follows:

2 Sec. 35.002. DEFINITIONS. In this chapter:

3 (1) "AIDS" has the meaning assigned by Section 81.101.

4 (2) [††] "Cancer" means a malignant disease
5 characterized by unrestricted growth of abnormal cells, the natural
6 course of which is fatal, and includes leukemia, lymphoma, and
7 histiocytosis.

8 (3) [†2] "Case management services" includes:

9 (A) coordinating medical services, marshaling
10 available assistance, serving as a liaison between the child and
11 the child's family and caregivers, institutional services,
12 insurance services, and other services needed to improve the
13 well-being of the child and the child's family; and

14 (B) counseling for the child and the child's
15 family about measures to prevent the transmission of AIDS or HIV
16 and the availability in the geographic area of any appropriate
17 health care services, such as mental health care, psychological
18 health care, and social and support services.

19 (4) [†3] "Chronically ill and disabled child" means a
20 person whose physical function, condition, movement, or sense of
21 hearing is impaired to the extent that the person is or may be
22 expected to be partially or totally incapacitated for educational
23 purposes or for acquiring a remunerative occupation and who:

24 (A) is younger than 21 years of age and has a
25 joint, bone, ossicular chain, muscle, or neurological defect or
26 deformity, including a craniofacial anomaly, neurofibromatosis, or
27 spina bifida;

1 (B) is younger than 21 years of age and has
2 cancer;

3 (C) is younger than 21 years of age and has a
4 disease or condition specified by a rule adopted by the board under
5 Section 35.003(b); [or]

6 (D) is younger than 21 years of age and has AIDS
7 or HIV infection; or

8 (E) has cystic fibrosis, regardless of the
9 person's age.

10 (5) [†4] "Craniofacial anomaly" means a deformity of
11 the cranial and facial bones that may result from a congenital or
12 hereditary defect or an injury, including a defect of the upper
13 face or midface, a defect of the midface or lower face, or both.

14 (6) [†5] "Dentist" means a person licensed by the
15 State Board of Dental Examiners to practice dentistry in this
16 state.

17 (7) [†6] "Facility" includes a hospital, an
18 ambulatory surgical center, and an outpatient clinic.

19 (8) "HIV" has the meaning assigned by Section 81.101.

20 (9) [†7] "Other benefit" means a benefit, other than
21 a benefit provided under this chapter, to which a person is
22 entitled for payment of the costs of services provided under the
23 program, including benefits available from:

24 (A) an insurance policy, group health plan,
25 health maintenance organization, or prepaid medical or dental care
26 plan;

27 (B) Title XVIII or Title XIX of the Social

1 Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.);
2 (C) the Veterans Administration;
3 (D) the Civilian Health and Medical Program of
4 the Uniformed Services;
5 (E) workers' compensation or any other
6 compulsory employers' insurance program;
7 (F) a public program created by federal or state
8 law or the ordinances or rules of a municipality or other political
9 subdivision of the state, excluding benefits created by the
10 establishment of a municipal or county hospital, a joint
11 municipal-county hospital, a county hospital authority, a hospital
12 district, or the facilities of a publicly supported medical school;
13 or
14 (G) a cause of action for the cost of care,
15 including medical care, dental care, facility care, and medical
16 supplies, required for a person applying for or receiving services
17 from the department, or a settlement or judgment based on the cause
18 of action, if the expenses are related to the need for services
19 provided under this chapter.
20 (10) [~~†8~~] "Physician" means a person licensed by the
21 Texas State Board of Medical Examiners to practice medicine in this
22 state.
23 (11) [~~†9~~] "Program" means the chronically ill and
24 disabled children's services program.
25 (12) [~~†10~~] "Provider" means a person who delivers
26 services purchased by the department for the purposes of this
27 chapter.

1 (13) [~~111~~] "Rehabilitation services" means the
2 process of the physical restoration of a body function destroyed or
3 impaired by congenital defect, disease, or injury, and includes:

4 (A) facility care, medical and dental care,
5 optometric care, and occupational and physical therapy;

6 (B) the provision of braces, artificial
7 appliances, durable medical equipment, and other medical supplies;
8 and

9 (C) other types of care specified by the board
10 in the program rules.

11 (14) [~~112~~] "Services" means the care, activities, and
12 supplies provided under this chapter or program rules, including
13 medical care, dental care, facility care, medical supplies,
14 occupational and physical therapy, and other care specified by
15 program rules.

16 (15) [~~113~~] "Specialty center" means a facility and
17 staff that meets minimum standards established under the program
18 and is designated by the board for program use in the comprehensive
19 diagnostic and treatment services for a specific medical condition.

20 (16) [~~114~~] "Support" means to contribute money or
21 services necessary for a person's maintenance, including food,
22 clothing, shelter, transportation, and health care.

23 SECTION 11. Section 35.012(c), Health and Safety Code, is
24 amended to conform to Section 48, Chapter 584 (H.B. 2519), Acts of
25 the 71st Legislature, Regular Session, 1989, to read as follows:

26 (c) The [~~state-auditor-shall-verify-in-the--records--of--the~~
27 ~~department--the~~] purchase of the items described by Subsection (b)

1 is subject to audit by the state auditor in accordance with Chapter
2 321, Government Code.

3 SECTION 12. Chapter 42, Health and Safety Code, is amended
4 to conform to Section 1, Chapter 55 (S.B. 671), Acts of the 71st
5 Legislature, Regular Session, 1989, by adding Section 42.0045 to
6 read as follows:

7 Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a)
8 Sections 483.041(a) and 483.042 of this code, the Texas Pharmacy
9 Act (Article 4542a-1, Vernon's Texas Civil Statutes), and other
10 applicable laws establishing prohibitions do not apply to a
11 dialysate, device, or drug exclusively used or necessary to perform
12 dialysis that a physician prescribes or orders for administration
13 or delivery to a person with chronic kidney failure if:

14 (1) the dialysate, device, or drug is lawfully held by
15 a manufacturer or wholesaler registered with the board;

16 (2) the manufacturer or wholesaler delivers the
17 dialysate, device, or drug to:

18 (A) a person with chronic kidney failure for
19 self-administration at the person's home or a specified address, as
20 ordered by a physician; or

21 (B) a physician for administration or delivery
22 to a person with chronic kidney failure; and

23 (3) the manufacturer or wholesaler has sufficient and
24 qualified supervision to adequately protect the public health.

25 (b) The board shall adopt rules necessary to ensure the safe
26 distribution, without the interruption of supply, of a dialysate,
27 device, or drug covered by Subsection (a). The rules must include

1 provisions regarding manufacturer and wholesaler licensing, record
2 keeping, evidence of a delivery to a patient or a patient's
3 designee, patient training, specific product and quantity
4 limitation, physician prescriptions or order forms, adequate
5 facilities, and appropriate labeling to ensure that necessary
6 information is affixed to or accompanies the dialysate, device, or
7 drug.

8 (c) If the board determines that a dialysate, device, or
9 drug distributed under this chapter is ineffective or unsafe for
10 its intended use, the board may immediately recall the dialysate,
11 device, or drug distributed to an individual patient.

12 (d) A dialysate, device, or drug covered by Subsection (a)
13 may be delivered only by:

14 (1) the manufacturer or wholesaler to which the
15 physician has issued an order; or

16 (2) a carrier authorized to possess the dialysate,
17 device, or drug under Section 483.041(c).

18 SECTION 13. Title 2, Health and Safety Code, is amended to
19 conform to Section 1, Chapter 666 (S.B. 1711), Acts of the 71st
20 Legislature, Regular Session, 1989, by adding Chapter 44 to read as
21 follows:

22 CHAPTER 44. SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES

23 Sec. 44.001. SHORT TITLE. This chapter may be cited as the
24 Sexual Assault Prevention and Crisis Services Act.

25 Sec. 44.002. PURPOSE. The purpose of this chapter is to
26 promote the development throughout the state of locally based and
27 supported nonprofit programs for the survivors of sexual assault

1 and to standardize the quality of services provided.

2 Sec. 44.003. DEFINITIONS. In this chapter:

3 (1) "Program" means a sexual assault program.

4 (2) "Service" means the Sexual Assault Prevention and
5 Crisis Service.

6 (3) "Sexual assault" means any act or attempted act as
7 described by Section 21.11, 22.011, 22.021, or 25.02, Penal Code,
8 or a sexual assault in which the spouse of the victim is the actor.

9 (4) "Sexual assault program" means any local public or
10 private nonprofit corporation, independent of a law enforcement
11 agency or prosecutor's office, that is operated as an independent
12 program or as part of a municipal, county, or state agency and that
13 provides the minimum services established by this chapter.

14 (5) "Survivor" means an individual who is a victim of
15 a sexual assault, regardless of whether a report or conviction is
16 made in the incident.

17 Sec. 44.004. SERVICE. (a) The Sexual Assault Prevention
18 and Crisis Service is in the department.

19 (b) The board may adopt rules relating to assigning service
20 areas, monitoring services, distributing funds, and collecting
21 information from programs in accordance with this chapter.

22 Sec. 44.005. GRANTS. (a) The department may award grants
23 to programs for maintaining or expanding existing services. A
24 grant may not result in the reduction of the financial support a
25 program receives from another source.

26 (b) To be eligible for a grant, a program must provide at a
27 minimum:

1 (1) a 24-hour crisis hotline;
2 (2) crisis counseling;
3 (3) public education;
4 (4) advocacy and accompaniment to hospitals, law
5 enforcement offices, prosecutors' offices, and courts for survivors
6 and their family members;
7 (5) professional training on sexual assault for law
8 enforcement, medical and mental health personnel, prosecutors, and
9 educators;
10 (6) crisis intervention volunteer training; and
11 (7) liaison with law enforcement and medical personnel
12 and prosecutors on behalf of survivors.
13 (c) The board by rule shall require a program receiving a
14 grant to:
15 (1) submit quarterly and annual financial reports to
16 the department;
17 (2) submit to an annual independent financial audit;
18 (3) cooperate with the department during
19 site-monitoring visits; and
20 (4) offer the minimum services described by Subsection
21 (b) for at least nine months before receiving a grant.
22 (d) This section does not prohibit a program from offering
23 any additional service, including a service for sexual assault
24 offenders.
25 (e) A grant is governed by the Uniform Grant and Contract
26 Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil
27 Statutes) and rules adopted under that Act.

1 (f) The receipt of grant money by a program may be suspended
2 in case of a dispute about the eligibility of the program to
3 receive the money under this chapter. A hearing on the dispute
4 must be held within a reasonable time, as established by department
5 rule.

6 Sec. 44.006. FUNDING. (a) The department may receive
7 grants, gifts, or appropriations of money from the federal
8 government, the state legislature, or private sources to finance
9 the grant program created by this chapter.

10 (b) The department may not use more than 15 percent of the
11 annual legislative appropriation to the service for the
12 administration of this chapter.

13 Sec. 44.007. REPORT. The department shall publish a report
14 on the service before October 31 of each even-numbered year. The
15 report must summarize reports from programs receiving grants from
16 the department, analyze the effectiveness of the grants, and
17 include information on the expenditure of funds authorized by this
18 chapter, the services provided, the number of persons receiving
19 services, and any other information relating to the provision of
20 sexual assault services. A copy of the report shall be submitted
21 to the governor, lieutenant governor, speaker of the house of
22 representatives, Legislative Budget Board, Senate Committee on
23 Health and Human Services or its successor committee, and House
24 Committee on Human Services or its successor committee.

25 Sec. 44.008. CONFIDENTIALITY. The department may not
26 disclose any information received from reports, collected case
27 information, or site-monitoring visits that would identify a person

1 working at or receiving services from a program.

2 Sec. 44.009. RULES. The board may adopt rules necessary to
3 implement this chapter. A proposed rule must be provided to
4 programs receiving grants at least 60 days before the date of
5 adoption.

6 Sec. 44.010. CONSULTATIONS. In implementing this chapter,
7 the department shall consult persons and organizations having
8 knowledge and experience relating to sexual assault.

9 SECTION 14. Section 61.002(11), Health and Safety Code, is
10 amended to conform to Section 1, Chapter 500 (H.B. 1106), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 (11) "Public hospital" means a hospital owned,
13 operated, or leased by a governmental entity, except as provided by
14 Section 61.051.

15 SECTION 15. Section 61.006, Health and Safety Code, is
16 amended to conform to Section 1, Chapter 732 (H.B. 1211), Acts of
17 the 71st Legislature, Regular Session, 1989, by adding Subsection
18 (f) to read as follows:

19 (f) Notwithstanding Subsection (a), the department shall
20 permit payment to a licensed podiatrist for services provided under
21 Sections 61.028(a)(3) and (a)(5) to the extent that the services
22 are required by Section 61.028(a)(5), if the podiatrist can provide
23 the services within the scope of the podiatrist's license.

24 SECTION 16. Section 61.051, Health and Safety Code, is
25 amended to conform to Section 2, Chapter 500 (H.B. 1106), Acts of
26 the 71st Legislature, Regular Session, 1989, to read as follows:

27 Sec. 61.051. APPLICATION OF SUBCHAPTER. (a) This

1 subchapter applies to health care services and assistance provided
2 to a person who resides in the service area of a public hospital or
3 hospital district.

4 (b) For the purposes of this subchapter, a hospital is not
5 considered to be a public hospital and is not responsible for
6 providing care under this subchapter if the hospital:

7 (1) is owned, operated, or leased by a municipality
8 with a population of less than 5,500;

9 (2) was leased before January 1, 1981, by a
10 municipality that at the time of the lease did not have a legal
11 obligation to provide indigent health care; or

12 (3) was established under Section 265.031.

13 SECTION 17. Subchapter C, Chapter 81, Health and Safety
14 Code, is amended to conform to Section 22, Chapter 1195 (S.B. 959),
15 Acts of the 71st Legislature, Regular Session, 1989, by adding
16 Section 81.050 to read as follows:

17 Sec. 81.050. MANDATORY TESTING OF PERSONS SUSPECTED OF
18 EXPOSING CERTAIN OTHER PERSONS TO REPORTABLE DISEASES, INCLUDING
19 HIV INFECTION. (a) The board by rule shall prescribe the criteria
20 that constitute exposure to reportable diseases, including HIV
21 infection. The criteria must be based on activities that the
22 United States Public Health Service determines pose a risk of
23 infection.

24 (b) A person whose occupation or whose volunteer service is
25 included in one or more of the following categories may request the
26 department or a health authority to order testing of another person
27 who may have exposed the person to a reportable disease, including

1 HIV infection:

2 (1) a law enforcement officer;

3 (2) a fire fighter;

4 (3) an emergency medical service employee or
5 paramedic; or

6 (4) a correctional officer.

7 (c) A request under this section may be made only if the
8 person:

9 (1) has experienced the exposure in the course of the
10 person's employment or volunteer service;

11 (2) believes that the exposure places the person at
12 risk of a reportable disease, including HIV infection; and

13 (3) presents to the department or health authority a
14 sworn affidavit that delineates the reasons for the request.

15 (d) The department or the department's designee who meets
16 the minimum training requirements prescribed by board rule shall
17 review the person's request and inform the person whether the
18 request meets the criteria establishing risk of infection with a
19 reportable disease, including HIV infection.

20 (e) The department or the department's designee shall give
21 the person who is subject to the order prompt and confidential
22 written notice of the order. The order must:

23 (1) state the grounds and provisions of the order,
24 including the factual basis for its issuance;

25 (2) refer the person to appropriate health care
26 facilities where the person can be tested for reportable diseases,
27 including HIV infection; and

1 (3) inform the person who is subject to the order of
2 that person's right to refuse to be tested and the authority of the
3 department or health authority to ask for a court order requiring
4 the test.

5 (f) If the person who is subject to the order refuses to
6 comply, the prosecuting attorney who represents the state in
7 district court, on request of the department or the department's
8 designee, shall petition the district court for a hearing on the
9 order. The person who is subject to the order has the right to an
10 attorney at the hearing, and the court shall appoint an attorney
11 for a person who cannot afford legal representation. The person
12 may not waive the right to an attorney unless the person has
13 consulted with an attorney.

14 (g) In reviewing the order, the court shall determine
15 whether exposure occurred and whether that exposure presents a
16 possible risk of infection as defined by board rule. The attorney
17 for the state and the attorney for the person subject to the order
18 may introduce evidence at the hearing in support of or opposition
19 to the testing of the person. On conclusion of the hearing, the
20 court shall either issue an appropriate order requiring counseling
21 and testing of the person for reportable diseases, including HIV
22 infection, or refuse to issue the order if the court has determined
23 that the counseling and testing of the person is unnecessary. The
24 court may assess court costs against the person who requested the
25 test if the court finds that there was not reasonable cause for the
26 request.

27 (h) The department or the department's designee shall inform

1 the person who requested the order of the results of the test. If
2 the person subject to the order is found to have a reportable
3 disease, the department or the department's designee shall inform
4 that person and the person who requested the order of the need for
5 medical follow-up and counseling services. The department or the
6 department's designee shall develop protocols for coding test
7 specimens to ensure that any identifying information concerning the
8 person tested will be destroyed as soon as the testing is complete.

9 (i) HIV counseling and testing conducted under this section
10 must conform to the model protocol on HIV counseling and testing
11 prescribed by the department.

12 (j) For the purpose of qualifying for workers' compensation
13 or any other similar benefits for compensation, an employee who
14 claims a possible work-related exposure to a reportable disease,
15 including HIV infection, must provide the employer with a sworn
16 affidavit of the date and circumstances of the exposure and
17 document that, not later than the 10th day after the date of the
18 exposure, the employee had a test result that indicated an absence
19 of the reportable disease, including HIV infection.

20 (k) A person listed in Subsection (b) who may have been
21 exposed to a reportable disease, including HIV infection, may not
22 be required to be tested.

23 (l) In this section "HIV" and "test result" have the
24 meanings assigned by Section 81.101.

25 SECTION 18. Subchapter C, Chapter 81, Health and Safety
26 Code, is amended to conform to Section 20, Chapter 1195 (S.B. 959),
27 Acts of the 71st Legislature, Regular Session, 1989, by adding

1 Section 81.051 to read as follows:

2 Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION.

3 (a) The department shall establish programs for partner
4 notification and referral services.

5 (b) The partner notification services offered by health care
6 providers participating in a program shall be made available and
7 easily accessible to all persons with clinically validated HIV
8 seropositive status.

9 (c) If a person with HIV infection voluntarily discloses the
10 name of a partner, that information is confidential. Partner names
11 may be used only for field investigation and notification.

12 (d) An employee of a partner notification program shall make
13 the notification. The employee shall inform the person who is
14 named as a partner of the:

15 (1) methods of transmission and prevention of HIV
16 infection;

17 (2) telephone numbers and addresses of HIV antibody
18 testing sites; and

19 (3) existence of local HIV support groups, mental
20 health services, and medical facilities.

21 (e) The employee may not disclose:

22 (1) the name of or other identifying information
23 concerning the identity of the person who gave the partner's name;
24 or

25 (2) the date or period of the partner's exposure.

26 (f) If the person with HIV infection also makes the
27 notification, the person should provide the information listed in

1 Subsection (d).

2 (g) A partner notification program shall provide counseling,
3 testing, or referral services to a person with HIV infection
4 regardless of whether the person discloses the names of any
5 partners.

6 (h) A partner notification program shall routinely evaluate
7 the performance of counselors and other program personnel to ensure
8 that high quality services are being delivered. A program shall
9 adopt quality assurance and training guidelines according to
10 recommendations of the Centers for Disease Control of the United
11 States Public Health Service for professionals participating in the
12 program.

13 (i) In this section, "HIV" has the meaning assigned by
14 Section 81.101.

15 SECTION 19. Subchapter C, Chapter 81, Health and Safety
16 Code, is amended to conform to Section 19, Chapter 1195 (S.B. 959),
17 Acts of the 71st Legislature, Regular Session, 1989, by adding
18 Section 81.052 to read as follows:

19 Sec. 81.052. REPORTS AND ANALYSES CONCERNING AIDS AND HIV
20 INFECTION. (a) The department shall ensure timely and accurate
21 reporting under this chapter of information relating to acquired
22 immune deficiency syndrome and human immunodeficiency virus
23 infection.

24 (b) The department shall routinely analyze and determine
25 trends in incidence and prevalence of AIDS and HIV infection by
26 region, age, gender, race, ethnicity, transmission category, and
27 other factors as appropriate.

1 (c) The department shall annually project the number of AIDS
2 cases expected in this state based on the reports.

3 (d) The department shall make available epidemiologic
4 projections and other analyses, including comparisons of Texas and
5 national trends, to state and local agencies for use in planning,
6 developing, and evaluating AIDS and HIV-related programs and
7 services.

8 SECTION 20. Section 81.082(d), Health and Safety Code, is
9 amended to conform to Section 23, Chapter 1195 (S.B. 959), Acts of
10 the 71st Legislature, Regular Session, 1989, to read as follows:

11 (d) In this section, "control measures" includes:

- 12 (1) immunization;
- 13 (2) detention;
- 14 (3) restriction;
- 15 (4) disinfection;
- 16 (5) decontamination;
- 17 (6) isolation;
- 18 (7) quarantine;
- 19 (8) disinfestation;
- 20 (9) chemoprophylaxis; [and]
- 21 (10) preventive therapy;
- 22 (11) prevention; and
- 23 (12) education.

24 SECTION 21. Subchapter E, Chapter 81, Health and Safety
25 Code, is amended to conform to Section 24, Chapter 1195 (S.B. 959),
26 Acts of the 71st Legislature, Regular Session, 1989, by adding
27 Section 81.093 to read as follows:

1 Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A
2 court may direct a person convicted of an offense under Section
3 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances
4 Act), or under Sections 485.031-485.035 to be subject to the
5 control measures of Section 81.083 and to the court-ordered
6 management provisions of Subchapter G.

7 (b) The court shall order that a presentencing report be
8 prepared under Section 9, Article 42.12, Code of Criminal
9 Procedure, to determine if a person convicted of an offense under
10 Chapter 481 (Texas Controlled Substances Act) or under Sections
11 485.031-485.035 should be subject to Section 81.083 and Subchapter
12 G.

13 (c) On the request of a prosecutor who is prosecuting a
14 person under Section 22.012, Penal Code, the court shall release to
15 the prosecutor the presentencing report and a statement as to
16 whether the court directed the person to be subject to control
17 measures and court-ordered management for human immunodeficiency
18 virus infection or acquired immune deficiency syndrome.

19 SECTION 22. Subchapter E, Chapter 81, Health and Safety
20 Code, is amended to conform to Section 21, Chapter 1195 (S.B. 959),
21 Acts of the 71st Legislature, Regular Session, 1989, by adding
22 Section 81.094 to read as follows:

23 Sec. 81.094. TESTING BY HOSPITALS OF PERSONS INDICTED FOR
24 CERTAIN CRIMES. A hospital shall perform a medical procedure or
25 test on a person if a court orders the hospital to perform the
26 procedure or test on a person whom the court orders to undergo the
27 procedure or test under Article 21.31, Code of Criminal Procedure.

1 The procedure or test is a cost of court.

2 SECTION 23. Sections 81.102(a) and (c), Health and Safety
3 Code, are amended to conform to Section 27 of Chapter 1195
4 (S.B. 959) and Section 2 of Chapter 1041 (H.B. 2608), Acts of the
5 71st Legislature, Regular Session, 1989, to read as follows:

6 (a) A person may not require another person to undergo a
7 medical procedure or test designed to determine or help determine
8 if a person has AIDS or HIV infection, antibodies to HIV, or
9 infection with any other probable causative agent of AIDS unless:

10 (1) the medical procedure or test is required under
11 Subsection (d), under Section 81.050, [~~(e)~~-~~or~~-~~(g)~~] or under Article
12 21.31, Code of Criminal Procedure;

13 (2) the medical procedure or test is authorized under
14 Article 21.21-4, Insurance Code;

15 (3) a medical procedure is to be performed on the
16 person that could expose health care personnel to AIDS or HIV
17 infection, according to board guidelines defining the conditions
18 that constitute possible exposure to AIDS or HIV infection, and
19 there is sufficient time to receive the test result before the
20 procedure is conducted; or

21 (4) [~~(3)~~] the medical procedure or test is necessary:

22 (A) as a bona fide occupational qualification
23 and there is not a less discriminatory means of satisfying the
24 occupational qualification;

25 (B) to screen blood, blood products, body
26 fluids, organs, or tissues to determine suitability for donation;

27 (C) in relation to a particular person under

1 this chapter;

2 (D) to manage accidental exposure to blood or
3 other body fluids, but only if the test is conducted under written
4 infectious disease control protocols adopted by the health care
5 agency or facility; ~~[or]~~

6 (E) to test residents and clients of residential
7 facilities of the Texas Department of Mental Health and Mental
8 Retardation, but only if:

9 (i) the test result would change the
10 medical or social management of the person tested or others who
11 associated with that person; and

12 (ii) the test is conducted in accordance
13 with guidelines ~~[that--have--been]~~ adopted by the residential
14 facility or the Texas Department of Mental Health and Mental
15 Retardation and approved by the department; or

16 (F) to test residents and clients of residential
17 facilities of the Texas Youth Commission, but only if:

18 (i) the test result would change the
19 medical or social management of the person tested or others who
20 associate with that person; and

21 (ii) the test is conducted in accordance
22 with guidelines adopted by the Texas Youth Commission.

23 (c) Protocols adopted under Subsection (a)(4)(D) ~~[(a)(3)(D)]~~
24 must clearly establish procedural guidelines with criteria for
25 testing that respect the rights of the person with the infection
26 and the person who may be exposed to that infection. The protocols
27 may not require the person who may have been exposed to be tested

1 and must ensure the confidentiality of the person with the
2 infection in accordance with this chapter.

3 SECTION 24. Sections 81.102(e), (f), and (g), Health and
4 Safety Code, are amended to conform to Section 5, Chapter 1195
5 (S.B. 959), Acts of the 71st Legislature, Regular Session, 1989, to
6 read as follows:

7 (e) ~~[The--board--shall--adopt--emergency-rules-for-mandatory~~
8 ~~testing-for-HIV-infection-as-a-condition-for-obtaining--a--marriage~~
9 ~~license--if--the--prevalence--rate--reported--under-this-chapter-of~~
10 ~~confirmed-positive-HIV-infection-is-at-least--83-percent-~~

11 [†f] This section does not create a duty to test for AIDS
12 and related disorders or a cause of action for failure to test for
13 AIDS and related disorders.

14 (f) [†g] A person who requires a medical procedure or test
15 in violation of this section commits an offense. An offense under
16 this subsection is a Class A misdemeanor.

17 SECTION 25. Sections 81.103(b) and (c), Health and Safety
18 Code, are amended to conform to Section 28, Chapter 1195 (S.B.
19 959), Acts of the 71st Legislature, Regular Session, 1989, to read
20 as follows:

21 (b) A test result may be released to:

22 (1) the department under this chapter;

23 (2) a local health authority if reporting is required
24 under this chapter;

25 (3) the Centers for Disease Control of the United
26 States Public Health Service if reporting is required by federal
27 law or regulation;

1 (4) the physician or other person authorized by law
2 who ordered the test;

3 (5) a physician, nurse, or other health care personnel
4 who have a legitimate need to know the test result in order to
5 provide for their protection and to provide for the patient's
6 health and welfare;

7 (6) the person tested or a person legally authorized
8 to consent to the test on the person's behalf;

9 (7) the spouse of the person tested if the person
10 tests positive for AIDS or HIV infection, antibodies to HIV, or
11 infection with any other probable causative agent of AIDS [~~and--if~~
12 ~~the-physician-who-ordered-the-test-makes-the-notification~~]; [and]

13 (8) a person authorized to receive test results under
14 [~~the-victim-of--an--offense--listed--in~~] Article 21.31, Code of
15 Criminal Procedure, concerning a [if-the] person who is tested as
16 required or authorized [tested-allegedly-committed-the-offense--and
17 the-test-was-required] under that article; and

18 (9) a person exposed to HIV infection as provided by
19 Section 81.050.

20 (c) The court shall notify persons receiving test results
21 [~~an--alleged--victim--to--whom--test--results--are--released~~] under
22 Subsection (b)(8) of the requirements of this section.

23 SECTION 26. Subchapter F, Chapter 81, Health and Safety
24 Code, is amended to conform to Section 29, Chapter 1195 (S.B. 959),
25 Acts of the 71st Legislature, Regular Session, 1989, by adding
26 Section 81.105 to read as follows:

27 Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise

1 provided by law, a person may not perform a test designed to
2 identify HIV or its antigen or antibody without first obtaining the
3 informed consent of the person to be tested.

4 (b) Consent need not be written if there is documentation in
5 the medical record that the test has been explained and the consent
6 has been obtained.

7 SECTION 27. Subchapter F, Chapter 81, Health and Safety
8 Code, is amended to conform to Section 30, Chapter 1195 (S.B. 959),
9 Acts of the 71st Legislature, Regular Session, 1989, by adding
10 Section 81.106 to read as follows:

11 Sec. 81.106. GENERAL CONSENT. (a) A person who has signed
12 a general consent form for the performance of medical tests or
13 procedures is not required to also sign or be presented with a
14 specific consent form relating to medical tests or procedures to
15 determine HIV infection, antibodies to HIV, or infection with any
16 other probable causative agent of AIDS that will be performed on
17 the person during the time in which the general consent form is in
18 effect.

19 (b) Except as otherwise provided by this chapter, the result
20 of a test or procedure to determine HIV infection, antibodies to
21 HIV, or infection with any probable causative agent of AIDS
22 performed under the authorization of a general consent form in
23 accordance with this section may be used only for diagnostic or
24 other purposes directly related to medical treatment.

25 SECTION 28. Subchapter F, Chapter 81, Health and Safety
26 Code, is amended to conform to Section 12, Chapter 1195 (S.B. 959),
27 Acts of the 71st Legislature, Regular Session, 1989, by adding

1 Section 81.107 to read as follows:

2 Sec. 81.107. CONSENT TO TEST FOR CERTAIN ACCIDENTAL
3 EXPOSURES. (a) In a case of accidental exposure to blood or other
4 body fluids under Section 81.102(a)(4)(D), the health care agency
5 or facility may test a person who may have exposed the health care
6 worker to HIV without the person's specific consent to the test.

7 (b) A test under this section may be done only if:

8 (1) the test is done according to protocols
9 established as provided by Section 81.102(c); and

10 (2) those protocols ensure that any identifying
11 information concerning the person tested will be destroyed as soon
12 as the testing is complete and the person who may have been exposed
13 is notified of the result.

14 (c) A test result under this section is subject to the
15 confidentiality provisions of this chapter.

16 SECTION 29. Subchapter F, Chapter 81, Health and Safety
17 Code, is amended to conform to Section 3, Chapter 1041 (H.B. 2608),
18 Acts of the 71st Legislature, Regular Session, 1989, by adding
19 Section 81.108 to read as follows:

20 Sec. 81.108. TESTING BY INSURERS. The Insurance Code and
21 any rules adopted by the State Board of Insurance exclusively
22 govern all practices of insurers in testing applicants to show or
23 help show whether a person has AIDS or HIV infection, antibodies to
24 HIV, or infection with any other probable causative agent of AIDS.

25 SECTION 30. Subchapter F, Chapter 81, Health and Safety
26 Code, is amended to conform to Sections 1 and 29, Chapter 1195
27 (S.B. 959), Acts of the 71st Legislature, Regular Session, 1989, by

1 adding Section 81.109 to read as follows:

2 Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS.

3 (a) A positive test result may not be revealed to the person
4 tested without giving that person the immediate opportunity for
5 individual, face-to-face post-test counseling about:

6 (1) the meaning of the test result;

7 (2) the possible need for additional testing;

8 (3) measures to prevent the transmission of HIV;

9 (4) the availability of appropriate health care
10 services, including mental health care, and appropriate social and
11 support services in the geographic area of the person's residence;

12 (5) the benefits of partner notification; and

13 (6) the availability of partner notification programs.

14 (b) Post-test counseling should:

15 (1) increase a person's understanding of HIV
16 infection;

17 (2) explain the potential need for confirmatory
18 testing;

19 (3) explain ways to change behavior conducive to HIV
20 transmission;

21 (4) encourage the person to seek appropriate medical
22 care; and

23 (5) encourage the person to notify persons with whom
24 there has been contact capable of transmitting HIV.

25 (c) Subsection (a) does not apply if:

26 (1) a report of a test result is used for statistical
27 or research purposes only and any information that could identify

1 the person is removed from the report; or

2 (2) the test is conducted for the sole purpose of
3 screening blood, blood products, bodily fluids, organs, or tissues
4 to determine suitability for donation.

5 (d) A person who is injured by an intentional violation of
6 this section may bring a civil action for damages and may recover
7 for each violation from a person who violates this section:

8 (1) \$1,000 or actual damages, whichever is greater;
9 and

10 (2) reasonable attorney's fees.

11 (e) This section does not prohibit disciplinary proceedings
12 from being conducted by the appropriate licensing authorities for a
13 health care provider's violation of this section.

14 (f) A person performing a test to show HIV infection,
15 antibodies to HIV, or infection with any other probable causative
16 agent of AIDS is not liable under Subsection (d) for failing to
17 provide post-test counseling if the person tested does not appear
18 for the counseling.

19 SECTION 31. Section 81.207(a), Health and Safety Code, is
20 amended to conform to Section 26, Chapter 1195 (S.B. 959), Acts of
21 the 71st Legislature, Regular Session, 1989, to read as follows:

22 (a) The head of an inpatient health care facility shall
23 provide adequate medical care and treatment to every patient in
24 accordance with [~~the-highest-standards~~] accepted standards of [~~in~~]
25 medical practice.

26 SECTION 32. The heading to Chapter 82, Health and Safety
27 Code, is amended to read as follows:

1 CHAPTER 82. CANCER REGISTRY

2 SECTION 33. Section 82.001, Health and Safety Code, is
3 amended to conform to Section 1, Chapter 434 (H.B. 1711), Acts of
4 the 71st Legislature, Regular Session, 1989, to read as follows:

5 Sec. 82.001. SHORT TITLE. This chapter may be cited as the
6 Texas Cancer Incidence Reporting [~~Control~~] Act.

7 SECTION 34. Section 82.007, Health and Safety Code, is
8 amended to conform to Section 2, Chapter 434 (H.B. 1711), Acts of
9 the 71st Legislature, Regular Session, 1989, to read as follows:

10 Sec. 82.007. REPORTS [~~ANNUAL-REPORT~~]. (a) The department[
11 ~~in--cooperation--with--The-University-of-Texas-System-Cancer-Center~~
12 ~~and-other-cancer-research-institutions,~~] shall publish an annual
13 report to the legislature of the information obtained under this
14 chapter.

15 (b) The department, in cooperation with other cancer
16 reporting organizations and research institutions, may publish
17 reports the department determines are necessary or desirable to
18 carry out the purpose of this chapter.

19 SECTION 35. Sections 82.008(b)-(f), Health and Safety Code,
20 are amended to conform to Section 3, Chapter 434 (H.B. 1711), Acts
21 of the 71st Legislature, Regular Session, 1989, to read as follows:

22 (b) A hospital [~~with--fewer--than--100--beds~~], clinical
23 laboratory, or cancer treatment center shall furnish the data
24 requested under Subsection (a) in [by:

25 [~~1~~]~~--recording--the--data--on-a-form-prescribed-by-the~~
26 ~~department;~~-or

27 [~~2~~]~~--making-the-records-available-to-the-board-or--its~~

1 representative,--on--the--presentation-of-proper-identification,--at
2 the-hospital,--laboratory,--or-treatment-center-during-normal-working
3 hours-so-that-the-board-or-its-authorized-representative-may-record
4 the-data-on] a format [form] prescribed by the department.

5 (c) [A-hospital-with-100-beds-or-more-shall-furnish-the-data
6 requested--under--Subsection--(a)--on--a--form--prescribed--by--the
7 department.

8 [(d)] The data required to be furnished under this section
9 must include[+] patient identification and

10 [(1)] diagnosis[;

11 [(2)--stage-of-disease;

12 [(3)--medical----history,----including----occupational
13 information-if-available;

14 [(4)--laboratory-data;

15 [(5)--tissue-diagnosis;

16 [(6)--method-of-treatment;-and

17 [(7)--family-history-of-cancer].

18 (d) [(e)] The board by rule may [The--department--shall]
19 determine a reasonable amount for compensation to [fee--to
20 compensate] the hospital, clinical laboratory, or cancer treatment
21 center for the cost of collecting or furnishing the data and shall
22 pay that amount, within the limits of funds appropriated expressly
23 for that purpose.

24 [(f)--The--department--is-responsible-for-an-annual-follow-up
25 of-each-patient-for-five-years.]

26 SECTION 36. Subtitle D, Title 2, Health and Safety Code, is
27 amended to conform to Sections 1 and 11 of Chapter 1195 (S.B. 959)

1 and Section 6 of Chapter 1240 (H.B. 2473), Acts of the 71st
2 Legislature, Regular Session, 1989, and to Section 2.11(a), Chapter
3 24 (S.B. 59), Acts of the 71st Legislature, 1st Called Session,
4 1989, by adding Chapter 85 to read as follows:

5 CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN

6 IMMUNODEFICIENCY VIRUS INFECTION

7 SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATION PROGRAMS

8 Sec. 85.001. SHORT TITLE. This chapter may be cited as the
9 Human Immunodeficiency Virus Services Act.

10 Sec. 85.002. DEFINITIONS. In this chapter:

11 (1) "AIDS" means acquired immune deficiency syndrome
12 as defined by the Centers for Disease Control of the United States
13 Public Health Service.

14 (2) "Communicable disease" has the meaning assigned by
15 Section 81.003 (Communicable Disease Prevention and Control Act).

16 (3) "Contact tracing" means identifying all persons
17 who may have been exposed to an infected person and notifying them
18 that they have been exposed, should be tested, and should seek
19 treatment.

20 (4) "HIV" means human immunodeficiency virus.

21 (5) "State agency" means:

22 (A) a board, commission, department, office, or
23 other agency that is in the executive branch of state government
24 and that was created by the Texas Constitution or a state statute
25 and includes an institution of higher education as defined by
26 Section 61.003, Education Code;

27 (B) the legislature or a legislative agency; and

1 (C) the supreme court, the court of criminal
2 appeals, a court of appeals, the State Bar of Texas, or another
3 state judicial agency.

4 (6) "Testing program" means a medical program to test
5 for AIDS, HIV infection, antibodies to HIV, or infection with any
6 other probable causative agent of AIDS.

7 Sec. 85.003. DEPARTMENT AS PRIMARY RESOURCE. The department
8 is the primary resource for HIV education, prevention, risk
9 reduction materials, policies, and information in this state.

10 Sec. 85.004. EDUCATION PROGRAMS. (a) The department shall
11 develop model education programs to be available to educate the
12 public about AIDS and HIV infection.

13 (b) As part of the programs, the department shall develop a
14 model educational pamphlet about methods of transmission and
15 prevention of HIV infection, about state laws relating to the
16 transmission, and to conduct that may result in the transmission of
17 HIV.

18 (c) The programs must be scientifically accurate and
19 factually correct and designed to:

20 (1) communicate to the public knowledge about methods
21 of transmission and prevention of HIV infection;

22 (2) educate the public about transmission risks in
23 social, employment, and educational situations;

24 (3) educate health care workers and health facility
25 employees about methods of transmission and prevention in their
26 particular workplace environments; and

27 (4) educate the public about state laws relating to

1 the transmission and conduct that may result in the transmission of
2 HIV.

3 Sec. 85.005. SPECIAL COMPONENTS OF EDUCATION PROGRAMS. (a)

4 The department shall include in the education programs special
5 components designed to reach:

6 (1) persons with behavior conducive to HIV
7 transmission;

8 (2) persons younger than 18 years of age; and

9 (3) minority groups.

10 (b) In designing education programs for ethnic minorities
11 and in assisting local community organizations in developing
12 education programs for minority groups, the department shall ensure
13 that the programs reflect the nature and spread of HIV infection in
14 minorities in this state.

15 Sec. 85.006. EDUCATION PROGRAMS FOR DISABLED PERSONS. (a)

16 The department shall develop and promote HIV education and
17 prevention programs specifically designed to address the concerns
18 of persons with physical or mental disabilities.

19 (b) In designing those programs, the department shall
20 consult persons with disabilities or consult experts in the
21 appropriate professional disciplines.

22 (c) To the maximum extent possible, state-funded HIV
23 education and prevention programs shall be accessible to persons
24 with physical disabilities.

25 Sec. 85.007. EDUCATION PROGRAMS FOR MINORS. (a) The

26 department shall give priority to developing model education
27 programs for persons younger than 18 years of age.

1 (b) The materials in the education programs intended for
2 persons younger than 18 years of age must:

3 (1) emphasize sexual abstinence before marriage and
4 fidelity in marriage as the expected standard in terms of public
5 health and the most effective ways to prevent HIV infection,
6 sexually transmitted diseases, and unwanted pregnancies; and

7 (2) state that homosexual conduct is not an acceptable
8 lifestyle and is a criminal offense under Section 21.06, Penal
9 Code.

10 Sec. 85.008. DISTRIBUTION OF EDUCATION PROGRAMS. (a) The
11 department shall determine where HIV education efforts are needed
12 in this state and shall initiate programs in those areas by
13 identifying local resources.

14 (b) The department shall assist communities, especially
15 those in rural areas, in establishing self-sustaining education
16 programs, using public and private resources.

17 Sec. 85.009. EDUCATION PROGRAMS AVAILABLE ON REQUEST. The
18 department shall make the education programs available to local
19 governments and private businesses on request.

20 Sec. 85.010. EDUCATIONAL COURSE FOR EMPLOYEES AND CLIENTS OF
21 HEALTH CARE FACILITIES. A health care facility licensed by the
22 department, the Texas Department of Mental Health and Mental
23 Retardation, or the Texas Department of Human Services shall
24 require its employees to complete an educational course about HIV
25 infection based on the model education programs developed by the
26 department.

27 Sec. 85.011. CONTRACTS FOR EDUCATION PROGRAMS. (a) The

1 department may contract with any person, other than a person who
2 advocates or promotes conduct that violates state law, for the
3 design, development, and distribution of education programs.

4 (b) This section does not restrict an education program from
5 providing accurate information about different ways to reduce the
6 risk of exposure to or the transmission of HIV.

7 Sec. 85.012. MODEL WORKPLACE GUIDELINES. (a) To ensure
8 consistent public policy, the department, in consultation with
9 appropriate state and local agencies and private entities, shall
10 develop model workplace guidelines concerning persons with HIV
11 infection and related conditions.

12 (b) The model workplace guidelines must include provisions
13 stating that:

14 (1) all employees will receive some education about
15 methods of transmission and prevention of HIV infection and related
16 conditions;

17 (2) accommodations will be made to keep persons with
18 HIV infection employed and productive for as long as possible;

19 (3) the confidentiality of employee medical records
20 will be protected;

21 (4) HIV-related policies will be consistent with
22 current information from public health authorities, such as the
23 Centers for Disease Control of the United States Public Health
24 Service, and with state and federal law and regulations;

25 (5) persons with HIV infection are entitled to the
26 same rights and opportunities as persons with other communicable
27 diseases; and

1 (6) employers and employees should not engage in
2 discrimination against persons with HIV infection unless based on
3 accurate scientific information.

4 (c) The department shall develop more specific model
5 workplace guidelines for employers in businesses with educational,
6 correctional, health, or social service responsibilities.

7 (d) The department shall make the model workplace guidelines
8 available on request.

9 (e) Employers should be encouraged to adopt HIV-related
10 workplace guidelines that incorporate, at a minimum, the guidelines
11 established by the board under this section.

12 (f) This chapter does not create a new cause of action for a
13 violation of workplace guidelines.

14 Sec. 85.013. FUNDING INFORMATION. (a) The department
15 shall:

16 (1) maintain current information on public and private
17 sources of funding for HIV-related prevention, education,
18 treatment, and social support services; and

19 (2) maintain information on the type, amount, and
20 sources of funding for HIV-related prevention, education,
21 treatment, and social support services being provided throughout
22 the state.

23 (b) To encourage and maximize the use of federal and private
24 funds, the department shall forward the information as soon as
25 possible after receipt to public and nonprofit agencies that may be
26 eligible for funding and shall make the information available to
27 public and private entities on request.

1 (c) The department may seek, accept, and spend funds from
2 state, federal, local, and private entities to carry out this
3 section.

4 Sec. 85.014. TECHNICAL ASSISTANCE TO COMMUNITY
5 ORGANIZATIONS. (a) The department shall provide technical
6 assistance to nonprofit community organizations to maximize the use
7 of limited resources and volunteer efforts and to expand the
8 availability of health care, education, prevention, and social
9 support services needed to address the HIV epidemic.

10 (b) The department shall provide technical assistance in:
11 (1) recruiting, training, and effectively using
12 volunteers in the delivery of HIV-related services;
13 (2) identifying funding opportunities and sources,
14 including information on developing sound grant proposals; and
15 (3) developing and implementing effective service
16 delivery approaches for community-based health care, education,
17 prevention, and social support services pertaining to HIV.

18 Sec. 85.015. CONTRACT FOR SERVICES; DURATION. (a) The
19 department may contract with an entity to provide the services
20 required by Subchapters A-F if:

21 (1) the contract would minimize duplication of effort
22 and would deliver services cost-effectively; and
23 (2) the contracting entity does not advocate or
24 promote conduct that violates state law.

25 (b) Subsection (a)(2) does not restrict an education program
26 from providing accurate information about ways to reduce the risk
27 of exposure to or transmission of HIV.

1 (c) The department may audit an entity contracting with the
2 department under Subsection (a).

3 (d) The department may seek, accept, and spend funds from
4 state, federal, local, and private entities to carry out
5 Subsections (a)-(c).

6 (e) A contract entered into by the department under this
7 subchapter may not be for a term of more than one year, except that
8 a contract may be renewed without a public hearing.

9 Sec. 85.016. RULES. The board may adopt rules necessary to
10 implement Subchapters A-F.

11 [Sections 85.017-85.030 reserved for expansion]

12 SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

13 Sec. 85.031. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS.
14 The department shall establish and administer a state grant program
15 to nonprofit community organizations for:

16 (1) HIV education, prevention, and risk reduction
17 programs; and

18 (2) treatment, health, and social service programs for
19 persons with HIV infection.

20 Sec. 85.032. RULES; PROGRAM STRUCTURE. (a) The board may
21 adopt rules relating to:

22 (1) the services that may be furnished under the
23 program;

24 (2) a system of priorities regarding the types of
25 services provided, geographic areas covered, or classes of
26 individuals or communities targeted for services under the program;
27 and

1 (3) a process for resolving conflicts between the
2 department and a program receiving money under this subchapter.

3 (b) Board or department actions relating to service,
4 geographic, and other priorities shall be based on the set of
5 priorities and guidelines established under this section.

6 (c) In structuring the program and adopting rules, the
7 department and the board shall attempt to:

8 (1) coordinate the use of federal, local, and private
9 funds;

10 (2) encourage the provision of community-based
11 services;

12 (3) address needs that are not met by other sources of
13 funding;

14 (4) provide funding as extensively as possible across
15 the regions of the state in amounts that reflect regional needs;
16 and

17 (5) encourage cooperation among local service
18 providers.

19 Sec. 85.033. COORDINATION OF SERVICES. (a) To prevent
20 unnecessary duplication of services, the board and the department
21 shall seek to coordinate the services provided by eligible programs
22 under Subchapters A through G with existing federal, state, and
23 local programs.

24 (b) The department shall consult with the Texas Department
25 of Human Services to ensure that programs funded under this
26 subchapter complement and do not unnecessarily duplicate services
27 provided through the Texas Department of Human Services.

1 Sec. 85.034. APPLICATION PROCEDURES AND ELIGIBILITY
2 GUIDELINES. (a) The department shall establish application
3 procedures and eligibility guidelines for the state grants under
4 this subchapter.

5 (b) Application procedures must include regional public
6 hearings after reasonable notice in the region in which the
7 community organization is based before awarding an initial grant or
8 grants totalling more than \$25,000 annually.

9 (c) Before the 10th day before the date of the public
10 hearing, notice shall be given to each state representative and
11 state senator who represents any part of the region in which any
12 part of the grant will be expended.

13 Sec. 85.035. APPLICANT INFORMATION. An applicant for a
14 state grant under this subchapter shall submit to the department
15 for approval:

16 (1) a description of the objectives established by the
17 applicant for the conduct of the program;

18 (2) documentation that the applicant has consulted
19 with appropriate local officials, community groups, and individuals
20 with expertise in HIV education and treatment and knowledge of the
21 needs of the population to be served;

22 (3) a description of the methods the applicant will
23 use to evaluate the activities conducted under the program to
24 determine if the objectives are met; and

25 (4) any other information requested by the department.

26 Sec. 85.036. AWARDING OF GRANTS. (a) In awarding grants
27 for education programs under this subchapter, the department shall

1 give special consideration to nonprofit community organizations
2 whose primary purpose is serving persons younger than 18 years of
3 age.

4 (b) In awarding grants for treatment, health, and social
5 services, the department shall endeavor to distribute grants in a
6 manner that prevents unnecessary duplication of services within a
7 community.

8 (c) In awarding grants for education programs, the
9 department shall endeavor to complement existing education programs
10 in a community, to prevent unnecessary duplication of services
11 within a community, to provide HIV education programs for
12 populations engaging in behaviors conducive to HIV transmission, to
13 initiate needed HIV education programs where none exist, and to
14 promote early intervention and treatment of persons with HIV
15 infection.

16 Sec. 85.037. RESTRICTIONS ON GRANTS. (a) The department
17 may not award a grant to an entity or community organization that
18 advocates or promotes conduct that violates state law.

19 (b) This section does not prohibit the award of a grant to
20 an entity or community organization that provides accurate
21 information about ways to reduce the risk of exposure to or
22 transmission of HIV.

23 Sec. 85.038. RESTRICTIONS ON FUNDS. (a) The department may
24 not use more than five percent of the funds appropriated for the
25 grant program to employ sufficient staff to review and process
26 grant applications, monitor and evaluate the effectiveness of
27 funded programs, and provide technical assistance to grantees.

1 (b) Not more than one-third of the funds available under
2 this subchapter may be used for HIV education, prevention, and risk
3 reduction.

4 Sec. 85.039. INFORMATION PROVIDED BY FUNDED PROGRAM. (a) A
5 program funded with a grant under this subchapter shall provide
6 information and educational materials that are accurate,
7 comprehensive, and consistent with current findings of the United
8 States Public Health Service.

9 (b) Information and educational materials developed with a
10 grant awarded under this subchapter must contain materials and be
11 presented in a manner that is specifically directed to the group
12 for which the materials are intended.

13 Sec. 85.040. EVALUATION OF FUNDED PROGRAMS. (a) The
14 department shall develop evaluation criteria to document
15 effectiveness, unit-of-service costs, and number of volunteers used
16 in programs funded with grants under this subchapter.

17 (b) An organization that receives funding under the program
18 shall:

19 (1) collect and maintain relevant data as required by
20 the department; and

21 (2) submit to the department copies of all material
22 the organization has printed or distributed relating to HIV
23 infection.

24 (c) The department shall provide prompt assistance to
25 grantees in obtaining materials and skills necessary to collect and
26 report the data required under this section.

27 Sec. 85.041. RECORDS AND REPORTS. (a) The department

1 shall require each program receiving a grant under this subchapter
2 to maintain records and information specified by the department.

3 (b) The board may adopt rules relating to the information a
4 program is required to report to the department and shall adopt
5 procedures and forms for reporting the information to prevent
6 unnecessary and duplicative reporting of data.

7 (c) The department shall review records, information, and
8 reports prepared by programs funded under this subchapter. Before
9 December 1 of each year, the department shall prepare a report that
10 is available to the public and that summarizes data regarding the
11 type, level, quality, and cost-effectiveness of services provided
12 under this subchapter.

13 Sec. 85.042. FINANCIAL RECORDS. (a) The department shall
14 review periodically the financial records of a program funded with
15 a grant under this subchapter.

16 (b) As a condition of accepting a grant under this
17 subchapter, a community organization must allow the department to
18 periodically review the financial records of that organization.

19 Sec. 85.043. DUE PROCESS. The department may provide a due
20 process hearing procedure for the resolution of conflicts between
21 the department and a program funded with a state grant under this
22 subchapter.

23 Sec. 85.044. ADVISORY COMMITTEE. The board may appoint an
24 advisory committee to assist in the development of procedures and
25 guidelines required by this subchapter.

26 [Sections 85.045-85.060 reserved for expansion]

1 SUBCHAPTER C. HIV MEDICATION PROGRAM

2 Sec. 85.061. HIV MEDICATION PROGRAM. (a) The Texas HIV
3 medication program is established in the department.

4 (b) The program shall assist hospital districts, local
5 health departments, public or nonprofit hospitals and clinics,
6 nonprofit community organizations, and HIV-infected individuals in
7 the purchase of medications approved by the board that have been
8 shown to be effective in reducing hospitalizations due to
9 HIV-related conditions.

10 Sec. 85.062. ELIGIBILITY. (a) To be eligible for the
11 program, an individual:

- 12 (1) must not be eligible for Medicaid benefits;
13 (2) must meet financial eligibility criteria set by
14 board rule;
15 (3) must not qualify for any other state or federal
16 program available for financing the purchase of the prescribed
17 medication; and
18 (4) must be diagnosed by a licensed physician as
19 having AIDS or an HIV-related condition or illness of at least the
20 minimal severity set by the board.

21 (b) The department shall give priority to participation in
22 the program to eligible individuals younger than 18 years of age.

23 Sec. 85.063. PROCEDURES AND ELIGIBILITY GUIDELINES. The
24 board by rule shall establish:

- 25 (1) application and distribution procedures;
26 (2) eligibility guidelines to ensure the most
27 appropriate distribution of funds available each year; and

1 (3) appellate procedures to resolve any eligibility or
2 funding conflicts.

3 Sec. 85.064. FUNDING. (a) The department may accept and
4 use local, state, and federal funds and private donations to fund
5 the program.

6 (b) State, local, and private funds may be used to qualify
7 for federal matching funds if federal funding becomes available.

8 (c) A hospital district, local health department, public or
9 nonprofit hospital or clinic, or nonprofit community organization
10 may participate in the program by sending funds to the department
11 for the purpose of providing assistance to clients for the purchase
12 of HIV medication. A hospital district may send funds obtained
13 from any source, including taxes levied by the district.

14 (d) The department shall deposit money received under this
15 section in the state treasury to the credit of the HIV medication
16 fund and to the credit of a special account in that fund that shall
17 be established for each entity sending funds under this section.

18 (e) Funds received from a hospital district, local health
19 department, public or nonprofit hospital or clinic, or nonprofit
20 community organization under this section may be used only to
21 provide assistance to clients of that entity. The funds may be
22 supplemented with other funds available for the purpose of the
23 program.

24 (f) Funds appropriated in the General Appropriations Act may
25 not be transferred from other line items for the program.

26 Sec. 85.065. SLIDING FEE SCALE TO PURCHASE MEDICATION. The
27 department may institute a sliding fee scale to help eligible

1 HIV-infected individuals purchase medications under the program.

2 Sec. 85.066. ADVISORY COMMITTEE. The board may appoint an
3 advisory committee to assist in the development of procedures and
4 guidelines required by this subchapter.

5 [Sections 85.067-85.080 reserved for expansion]

6 SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

7 Sec. 85.081. MODEL PROTOCOLS FOR COUNSELING AND TESTING.

8 (a) The department shall develop model protocols for counseling
9 and testing related to HIV infection. The protocols shall be made
10 available to health care providers on request.

11 (b) A testing program shall adopt and comply with the model
12 protocols developed by the department under Subsection (a).

13 Sec. 85.082. DEPARTMENT VOLUNTARY TESTING PROGRAMS. (a)
14 The department shall establish voluntary HIV testing programs in
15 each public health region to make confidential counseling and
16 testing available. The department shall complete contact tracing
17 after a confirmed positive test.

18 (b) The department may contract with public and private
19 entities to perform the testing as necessary according to local
20 circumstances.

21 (c) The results of a test conducted by a testing program or
22 department program under this section may not be used for insurance
23 purposes, to screen or determine suitability for employment, or to
24 discharge a person from employment.

25 (d) A person who is injured by an intentional violation of
26 Subsection (c) may bring a civil action for damages and may recover
27 for each violation from a person who violates Subsection (c):

1 (1) \$1,000 or actual damages, whichever is greater;
2 and

3 (2) reasonable attorney's fees.

4 (e) In addition to the remedies provided by Subsection (d),
5 the person may bring an action to restrain a violation or
6 threatened violation of Subsection (c).

7 Sec. 85.083. REGISTRATION OF TESTING PROGRAM. (a) A person
8 may not advertise or represent to the public that the person
9 conducts a testing program for AIDS, HIV infection, or related
10 conditions without registering with the department.

11 (b) A hospital licensed under Chapter 241 (Texas Hospital
12 Licensing Law) or a physician licensed under the Medical Practice
13 Act (Article 4495b, Vernon's Texas Civil Statutes) is not required
14 to be registered under this section unless the hospital or
15 physician advertises or represents to the public that the hospital
16 or physician conducts or specializes in testing programs for AIDS,
17 HIV infection, or related conditions.

18 (c) The department may assess and collect a registration fee
19 in an amount that does not exceed the estimated costs of
20 administering this section.

21 (d) A person who violates Subsection (a) is liable for a
22 civil penalty of \$1,000 for each day of a continuing violation.

23 Sec. 85.084. FOR-PROFIT TESTING PROGRAM. A testing program
24 that operates for profit, that advertises or represents to the
25 public that it conducts or specializes in testing programs, and
26 that is required to register under Section 85.083 shall:

27 (1) obtain the informed consent of the person to be

1 tested before conducting the test; and

2 (2) provide an itemized statement of charges to the
3 person tested or counseled.

4 Sec. 85.085. PHYSICIAN SUPERVISION OF MEDICAL CARE. A
5 licensed physician shall supervise any medical care or procedure
6 provided under a testing program.

7 Sec. 85.086. REPORTS. A testing program shall report test
8 results for HIV infection in the manner provided by Chapter 81
9 (Communicable Disease Prevention and Control Act).

10 Sec. 85.087. TRAINING OF COUNSELORS. (a) The department
11 shall develop and offer a training course for persons providing HIV
12 counseling. The training course shall include information relating
13 to the special needs of persons with positive HIV test results,
14 including the importance of early intervention and treatment and
15 recognition of psychosocial needs.

16 (b) The department shall maintain a registry of persons who
17 successfully complete the training course.

18 (c) The department may charge a fee for the course to
19 persons other than employees of entities receiving state or federal
20 funds for HIV counseling and testing programs through a contract
21 with the department.

22 (d) The board shall set the fee in an amount that is
23 reasonable and necessary to cover the costs of providing the
24 course.

25 (e) The department may contract for the training of
26 counselors.

27 Sec. 85.088. STATE-FUNDED HEALTH CLINICS. (a) State-funded

1 primary health, women's reproductive health, and sexually
2 transmitted disease clinics shall:

3 (1) make available to patients and clients information
4 and educational materials concerning the prevention of HIV
5 infection; and

6 (2) provide voluntary, anonymous, and affordable
7 counseling and testing programs concerning HIV infection or provide
8 referrals to those programs.

9 (b) Information provided under Subsection (a)(1) shall be
10 routinely incorporated into patient education and counseling in
11 clinics specializing in sexually transmitted diseases and women's
12 reproductive health.

13 Sec. 85.089. DISCIPLINARY ACTION. This subchapter does not
14 prohibit disciplinary proceedings from being conducted by the
15 appropriate licensing authorities for a health care provider's
16 violation of this subchapter.

17 [Sections 85.090-85.110 reserved for expansion]

18 SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

19 Sec. 85.111. EDUCATION OF STATE EMPLOYEES. (a) Each state
20 agency annually shall provide to each state employee an educational
21 pamphlet about:

22 (1) methods of transmission and prevention of HIV
23 infection;

24 (2) state laws relating to the transmission of HIV
25 infection; and

26 (3) conduct that may result in the transmission of HIV
27 infection.

1 (b) The educational pamphlet shall be provided to a newly
2 hired state employee on the first day of employment.

3 (c) The educational pamphlet shall be based on the model
4 developed by the department and shall include the workplace
5 guidelines adopted by the state agency.

6 (d) The department shall prepare and distribute to each
7 state agency a model informational pamphlet that can be reproduced
8 by each state agency to meet the requirements of this section.

9 Sec. 85.112. WORKPLACE GUIDELINES. (a) Each state agency
10 shall adopt and implement workplace guidelines concerning persons
11 with AIDS and HIV infection.

12 (b) The workplace guidelines shall incorporate at a minimum
13 the model workplace guidelines developed by the department.

14 Sec. 85.113. WORKPLACE GUIDELINES FOR STATE CONTRACTORS. An
15 entity that contracts with or is funded by any of the following
16 state agencies to operate a program involving direct client contact
17 shall adopt and implement workplace guidelines similar to the
18 guidelines adopted by the agency that funds or contracts with the
19 entity:

20 (1) the Texas Commission on Alcohol and Drug Abuse;

21 (2) the Texas Commission for the Blind;

22 (3) the Texas Commission for the Deaf;

23 (4) the Texas Juvenile Probation Commission;

24 (5) the Texas Department of Criminal Justice;

25 (6) the Texas Youth Commission;

26 (7) the department;

27 (8) the Texas Department of Human Services;

1 (9) the Texas Department of Mental Health and Mental
2 Retardation; and

3 (10) the Texas Rehabilitation Commission.

4 Sec. 85.114. EDUCATION OF CERTAIN CLIENTS, INMATES,
5 PATIENTS, AND RESIDENTS. (a) Each state agency listed in Section
6 85.113 shall routinely make available HIV education for clients,
7 inmates, patients, and residents of treatment, educational,
8 correctional, or residential facilities under the agency's
9 jurisdiction.

10 (b) Education available under this section shall be based on
11 the model education program developed by the department and
12 tailored to the cultural, educational, language, and developmental
13 needs of the clients, inmates, patients, or residents, including
14 the use of Braille or telecommunication devices for the deaf.

15 Sec. 85.115. CONFIDENTIALITY GUIDELINES. (a) Each state
16 agency shall develop and implement guidelines regarding
17 confidentiality of AIDS and HIV-related medical information for
18 employees of the agency and for clients, inmates, patients, and
19 residents served by the agency.

20 (b) Each entity that receives funds from a state agency for
21 residential or direct client services or programs shall develop and
22 implement guidelines regarding confidentiality of AIDS and
23 HIV-related medical information for employees of the entity and for
24 clients, inmates, patients, and residents served by the entity.

25 (c) The confidentiality guidelines shall be consistent with
26 guidelines published by the department and with state and federal
27 law and regulations.

1 (d) An entity that does not adopt confidentiality guidelines
2 as required by Subsection (b) is not eligible to receive state
3 funds until the guidelines are developed and implemented.

4 Sec. 85.116. TESTING AND COUNSELING FOR STATE EMPLOYEES
5 EXPOSED TO HIV INFECTION ON THE JOB. (a) On an employee's
6 request, a state agency shall pay the costs of testing and
7 counseling an employee of that agency concerning HIV infection if:

8 (1) the employee documents to the agency's
9 satisfaction that the employee may have been exposed to HIV while
10 performing duties of employment with that agency; and

11 (2) the employee was exposed to HIV in a manner that
12 the United States Public Health Service has determined is capable
13 of transmitting HIV.

14 (b) The board by rule shall prescribe the criteria that
15 constitute possible exposure to HIV under this section. The
16 criteria must be based on activities the United States Public
17 Health Service determines pose a risk of HIV infection.

18 (c) For the purpose of qualifying for workers' compensation
19 or any other similar benefits or compensation, an employee who
20 claims a possible work-related exposure to HIV infection must
21 provide the employer with a written statement of the date and
22 circumstances of the exposure and document that, within 10 days
23 after the date of the exposure, the employee had a test result that
24 indicated an absence of HIV infection.

25 (d) The cost of a state employee's testing and counseling
26 shall be paid from funds appropriated for payment of workers'
27 compensation benefits to state employees. The director of the

1 workers' compensation division of the attorney general's office
2 shall adopt rules necessary to administer this subsection.

3 (e) Counseling or a test conducted under this section must
4 conform to the model protocol on HIV counseling and testing
5 prescribed by the department.

6 (f) A state employee who may have been exposed to HIV while
7 performing duties of state employment may not be required to be
8 tested.

9 [Sections 85.117-85.130 reserved for expansion]

10 SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE

11 Sec. 85.131. RESEARCH ON NURSING CARE. To ensure a
12 continuum of nursing care for persons with AIDS or HIV infection
13 and related conditions who require long-term nursing care but do
14 not require hospitalization except for acute exacerbations of their
15 condition, the Texas Department of Human Services shall develop one
16 or more demonstration projects to research the cost and need for
17 services that are appropriate to provide the special care necessary
18 for those persons and for the specific medical complications
19 resulting from AIDS or HIV infection.

20 Sec. 85.132. DEMONSTRATION PROJECTS IN NURSING FACILITIES.

21 (a) The Texas Department of Human Services shall establish one or
22 more demonstration projects in nursing facilities to:

23 (1) assist the Texas Department of Human Services in
24 analyzing the cost of providing care for persons with AIDS or HIV
25 infection and related conditions authorized by this subchapter;

26 (2) provide test sites in designated nursing
27 facilities to study the costs and requirements of the operation of

1 those facilities and the provision of appropriate nursing care and
2 other related programs and services;

3 (3) demonstrate the extent of the need for facilities
4 that can provide the long-term nursing care that is required by a
5 person with AIDS or HIV infection and related conditions when those
6 persons are not in need of hospitalization for an acute exacerbated
7 condition;

8 (4) determine the extent of the individualized nursing
9 care required to adequately meet the specific needs of persons with
10 AIDS or HIV infection and related conditions without imposing the
11 costs of providing those programs and services on all facilities
12 that currently provide nursing care to persons whose needs are
13 different than the needs of persons with AIDS or HIV infection and
14 related conditions; and

15 (5) provide one or more teaching and demonstration
16 models for caring for persons with AIDS or HIV infection and
17 related conditions.

18 (b) Participants in the demonstration project are entitled
19 to reimbursement at a special rate that covers all the cost of the
20 care provided.

21 [Sections 85.133-85.140 reserved for expansion]

22 SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW
23 ENFORCEMENT AGENCIES, FIRE DEPARTMENTS, AND EMERGENCY

24 MEDICAL SERVICES PROVIDERS

25 Sec. 85.141. MODEL POLICIES CONCERNING PERSONS IN CUSTODY.

26 The department, in consultation with appropriate correctional and
27 law enforcement agencies, fire departments, and emergency medical

1 services providers, shall develop model policies regarding the
2 handling, care, and treatment of persons with AIDS or HIV infection
3 who are in the custody of the Texas Department of Criminal Justice,
4 local law enforcement agencies, municipal and county correctional
5 facilities, and district probation departments.

6 Sec. 85.142. ADOPTION OF POLICY. (a) Each state and local
7 law enforcement agency, fire department, emergency medical services
8 provider, municipal and county correctional facility, and district
9 probation department shall adopt a policy for handling persons with
10 AIDS or HIV infection who are in their custody or under their
11 supervision.

12 (b) The policy must be substantially similar to a model
13 policy developed by the department under Section 85.141.

14 (c) A policy adopted under this section applies to persons
15 who contract or subcontract with an entity required to adopt the
16 policy under Subsection (a).

17 Sec. 85.143. CONTENT OF POLICY. A policy adopted under this
18 subchapter must:

19 (1) provide for periodic education of employees,
20 inmates, and probationers concerning HIV;

21 (2) ensure that education programs for employees
22 include information and training relating to infection control
23 procedures and that employees have infection control supplies and
24 equipment readily available; and

25 (3) ensure access to appropriate services and protect
26 the confidentiality of medical records relating to HIV infection.

27 [Sections 85.144-85.160 reserved for expansion]

1 SUBCHAPTER H. HIV MEDICATION PROGRAM

2 Sec. 85.161. HIV MEDICATION PROGRAM. (a) The Texas Human
3 Immunodeficiency Virus Medication Program is under the Texas Health
4 and Human Services Coordinating Council. The council may delegate
5 administration of the program to the department.

6 (b) The program shall assist hospital districts, local
7 health departments, public or nonprofit hospitals and clinics,
8 nonprofit community organizations, and HIV-infected individuals in
9 the purchase of medications approved by the board that have been
10 shown to be effective in reducing hospitalizations due to
11 HIV-related conditions and in improving the quality and longevity
12 of the life of a person with HIV infection.

13 Sec. 85.162. ELIGIBILITY. To be eligible for the program,
14 an individual:

- 15 (1) must not be eligible for Medicaid benefits;
16 (2) must meet financial eligibility criteria set by
17 board rule;
18 (3) must not qualify for any other state or federal
19 program available for financing the purchase of the prescribed
20 medication; and
21 (4) must be diagnosed by a licensed physician as
22 having AIDS or an HIV-related condition or illness of at least the
23 minimal severity as determined by the board.

24 Sec. 85.163. FUNDING. (a) The Texas Health and Human
25 Services Coordinating Council may accept and use local, state, and
26 federal funds and private donations to fund the program.

27 (b) State, local, and private funds may be used to qualify

1 for federal matching funds if federal funding is available.

2 (c) A hospital district, local health department, public or
3 nonprofit hospital or clinic, or nonprofit community organization
4 may participate in the program by sending funds to the council for
5 the purpose of assisting their clients in the purchase of HIV
6 medications. A hospital district may send funds from any source,
7 including taxes levied by the district.

8 (d) The council shall deposit money received under this
9 section in the state treasury to the credit of the HIV medication
10 fund and to the credit of a special account in that fund that shall
11 be established for each entity sending funds under this section.

12 (e) Funds received from a hospital district, local health
13 department, public or nonprofit hospital or clinic, or nonprofit
14 community organization may be used only to provide assistance to
15 their clients or patients. The funds may be supplemented with
16 other funds available for the purpose of the program.

17 Sec. 85.164. SLIDING FEE SCALE TO PURCHASE MEDICATION. The
18 Texas Health and Human Services Coordinating Council or, if the
19 administration of the program is delegated to the department, the
20 department may institute a sliding fee scale to help eligible
21 HIV-infected individuals purchase medications under the program.

22 SECTION 37. Subtitle D, Title 2, Health and Safety Code, is
23 amended to conform to Sections 1-5, Chapter 694 (S.B. 1345), and
24 Section 5, Chapter 1027 (H.B. 18), Acts of the 71st Legislature,
25 Regular Session, 1989, by adding Chapter 86 to read as follows:

1 CHAPTER 86. BREAST CANCER

2 SUBCHAPTER A. INFORMATION ON ALTERNATIVE

3 TREATMENTS FOR BREAST CANCER

4 Sec. 86.001. PURPOSE. It is the intent of the legislature
5 that breast cancer patients have access to a standardized written
6 summary, as provided under this subchapter, of medically
7 efficacious and viable alternative treatments for breast cancer,
8 which may include surgical, radiological, or chemotherapeutic
9 treatment or combinations of those treatments.

10 Sec. 86.002. STANDARDIZED WRITTEN SUMMARY. (a) The
11 department shall publish a standardized written summary, in
12 language a patient can understand, of the advantages,
13 disadvantages, risks, and descriptions of all medically efficacious
14 and viable alternatives for the treatment of breast cancer.

15 (b) The department shall update the summary annually, if
16 necessary, to reflect changes in the treatment of breast cancer.

17 (c) The advisory council shall develop the summary.

18 Sec. 86.003. ADVISORY COUNCIL. (a) The advisory council is
19 appointed by the commissioner.

20 (b) The advisory council shall include at least one of each
21 of the following:

22 (1) a representative of a statewide nonprofit
23 organization that is an advocate for breast cancer patients;

24 (2) a representative of a statewide professional
25 organization representing the full spectrum of physicians;

26 (3) a physician associated with an institution of
27 higher education who specializes in the treatment of breast cancer;

1 and

2 (4) a representative of the Texas Cancer Council.

3 Sec. 86.004. DISTRIBUTION OF SUMMARY. (a) Not later than
4 the 90th day after the date the department receives the
5 standardized written summary from the advisory council, the
6 department shall print and make available to all physicians in the
7 state sufficient copies of the summary.

8 (b) A physician may distribute the summary to a patient when
9 the physician determines in the physician's professional judgment
10 that it is in the best interest of the patient to receive a copy of
11 the summary.

12 Sec. 86.005. FUNDING. (a) The department may not expend
13 general revenue funds for the publication or distribution of the
14 standardized written summary.

15 (b) The department may provide technical assistance to the
16 advisory council to aid in the development of the summary.

17 (c) The department may accept grants, donations of money or
18 materials, and other forms of assistance from private and public
19 sources to be used solely for the development and distribution of
20 the summary.

21 [Sections 86.006-86.010 reserved for expansion]

22 SUBCHAPTER B. BREAST CANCER SCREENING

23 Sec. 86.011. BREAST CANCER SCREENING. (a) The Center for
24 Rural Health Initiatives may provide for breast cancer screening in
25 counties with a population of 50,000 or less.

26 (b) The Center for Rural Health Initiatives may provide the
27 breast cancer screening through contracts with public or private

1 entities to provide mobile units and on-site screening services.

2 (c) The Center for Rural Health Initiatives shall coordinate
3 the breast cancer screening with programs administered by the Texas
4 Cancer Council.

5 Sec. 86.012. ADVISORY COMMITTEE. (a) The board may appoint
6 an advisory committee to advise the Office of Rural Health Care on
7 the breast cancer screening, including targeting those areas of the
8 state in which the screening is most needed.

9 (b) The advisory committee may be composed of:

10 (1) physicians who practice in rural areas;

11 (2) administrators of hospitals in rural areas; and

12 (3) representatives of organizations formed to promote
13 breast cancer awareness.

14 SECTION 38. The heading to Subtitle E, Title 2, Health and
15 Safety Code, is amended to read as follows:

16 SUBTITLE E. HEALTH CARE COUNCILS AND RESOURCE CENTERS

17 SECTION 39. Section 103.019, Health and Safety Code, is
18 amended to conform to Section 51, Chapter 584 (H.B. 2519), Acts of
19 the 71st Legislature, Regular Session, 1989, to read as follows:

20 Sec. 103.019. AUDIT. The [~~state--auditor,--as-part-of-the~~
21 ~~audit-of-the-department,--shall-audit--the~~] financial transactions
22 pertaining to the council are subject to audit by the state auditor
23 in accordance with Chapter 321, Government Code [~~at-least-once~~
24 ~~during-each-biennium~~].

25 SECTION 40. Subtitle E, Title 2, Health and Safety Code, is
26 amended to conform to Section 3, Chapter 1027 (H.B. 18), Acts of
27 the 71st Legislature, Regular Session, 1989, by adding Chapter 105

1 to read as follows:

2 CHAPTER 105. HEALTH PROFESSIONS RESOURCE CENTER

3 Sec. 105.001. DEFINITION. In this chapter, "health
4 profession" means any health or allied health profession that is
5 licensed, certified, or registered by a state board, agency, or
6 association.

7 Sec. 105.002. ESTABLISHMENT OF CENTER. In conjunction with
8 the Texas Higher Education Coordinating Board and in such a way as
9 to avoid duplication of effort, the department shall establish a
10 comprehensive health professions resource center for the collection
11 and analysis of educational and employment trends for health
12 professions in this state.

13 Sec. 105.003. COLLECTION OF DATA. (a) The department shall
14 place a high priority on collecting and disseminating data on
15 health professions demonstrating an acute shortage in this state,
16 including:

17 (1) data concerning nursing personnel; and

18 (2) the health professions in which shortages occur in
19 rural areas.

20 (b) To the extent possible, the department may collect the
21 data from existing sources that the department determines are
22 credible. The department may enter agreements with those sources
23 that establish guidelines concerning the identification,
24 acquisition, transfer, and confidentiality of the data.

25 (c) At a minimum, the data collected by the department must
26 include the following in regard to health professionals:

27 (1) the number and geographic distribution;

1 (2) licensure or certification status;
2 (3) specialty areas, if applicable; and
3 (4) trends or changes in license holders according to
4 number or geographic distribution.

5 Sec. 105.004. REPORTS. The department may use the data
6 collected and analyzed under this chapter to publish reports
7 regarding:

8 (1) the educational and employment trends for health
9 professions;

10 (2) the supply and demand of health professions; and

11 (3) other issues, as necessary, concerning health
12 professions in this state.

13 Sec. 105.005. RULES. The board may adopt rules to govern
14 the reporting and collection of data.

15 Sec. 105.006. ASSISTANCE OF OTHER STATE AGENCIES. The Texas
16 Higher Education Coordinating Board may require the assistance of
17 other state agencies or institutions of higher education for the
18 development of any report.

19 SECTION 41. Subtitle E, Title 2, Health and Safety Code, is
20 amended to conform to Section 2, Chapter 1027 (H.B. 18), Acts of
21 the 71st Legislature, Regular Session, 1989, by adding Chapter 106
22 to read as follows:

23 CHAPTER 106. CENTER FOR RURAL HEALTH INITIATIVES

24 Sec. 106.001. DEFINITIONS. (a) "Center" means the Center
25 for Rural Health Initiatives.

26 (b) "Executive committee" means the executive committee of
27 the Center for Rural Health Initiatives.

1 Sec. 106.002. PURPOSE. (a) The Center for Rural Health
2 Initiatives shall assume a leadership role in working or
3 contracting with state and federal agencies, universities, private
4 interest groups, communities, foundations, and offices of rural
5 health to develop rural health initiatives and maximize use of
6 existing resources without duplicating existing effort.

7 (b) The center shall provide a central information and
8 referral source and serve as the primary state resource in
9 coordinating, planning, and advocating for the continued access to
10 rural health care services in this state.

11 Sec. 106.003. EXECUTIVE COMMITTEE. (a) The executive
12 committee is the governing body of the Center for Rural Health
13 Initiatives.

14 (b) The executive committee is composed of:

15 (1) three members appointed by the governor, one of
16 whom is a physician licensed to practice in this state, one of whom
17 is a pharmacist licensed to practice in this state, and one of whom
18 is a business or community leader;

19 (2) three members appointed by the lieutenant
20 governor, one of whom is a registered nurse licensed to practice in
21 this state, one of whom is an allied health professional who is
22 licensed, registered, or certified to practice in this state, and
23 one of whom is a rural health policy expert; and

24 (3) three members appointed by the speaker of the
25 house of representatives, one of whom is a physician licensed to
26 practice in this state, one of whom is a hospital administrator,
27 and one of whom is a health economist.

1 (c) The appointments to the executive committee must be
2 individuals who reside, work, or practice in rural areas of the
3 state or who have demonstrated knowledge and expertise in rural
4 issues.

5 (d) The appointments to the executive committee shall
6 provide for a balanced representation of the geographical regions
7 of the state.

8 (e) The members of the executive committee serve staggered
9 six-year terms, with the terms of three members expiring August 31
10 of each odd-numbered year.

11 (f) The members of the executive committee annually shall
12 elect one member to serve as the presiding officer.

13 (g) The executive committee shall meet at least quarterly or
14 at the call of the presiding officer and shall adopt rules for the
15 conduct of the meetings.

16 (h) Any actions taken by the executive committee must be
17 approved by a majority vote.

18 (i) Members of the executive committee receive no
19 compensation but are entitled to reimbursement for the actual and
20 necessary expenses incurred in the performance of their duties.

21 (j) The executive committee shall establish policies and
22 adopt rules to implement this chapter.

23 Sec. 106.004. EXECUTIVE DIRECTOR. (a) The executive
24 committee may hire an executive director to serve as the chief
25 executive officer of the center and to perform the administrative
26 duties of the office.

27 (b) The executive director serves at the will of the

1 executive committee.

2 (c) The executive director may hire staff within the
3 guidelines established by the executive committee.

4 Sec. 106.005. ADVISORY COMMITTEE. (a) The advisory
5 committee is composed of:

6 (1) the commissioner of health or a representative of
7 the department designated by the commissioner;

8 (2) the commissioner of human services or a
9 representative of the Texas Department of Human Services designated
10 by the commissioner;

11 (3) the commissioner of agriculture or a
12 representative of the Department of Agriculture designated by the
13 commissioner;

14 (4) the executive director of the Texas Department of
15 Commerce or a representative of that department designated by the
16 executive director; and

17 (5) the commissioner of higher education or a
18 representative of the Texas Higher Education Coordinating Board
19 designated by the commissioner.

20 (b) The executive committee may appoint additional agencies
21 as necessary to serve on the advisory committee in a temporary
22 capacity. The executive committee also may request that a state
23 agency designate an employee to serve as a liaison with the center.

24 (c) The advisory committee may participate fully in
25 executive committee meetings. However, advisory committee members
26 do not have voting privileges.

27 Sec. 106.006. ADMINISTRATIVE AND STAFF SUPPORT. The Texas

1 Department of Health shall provide administrative support to the
2 center as necessary to carry out the duties of this chapter. The
3 department and the other agencies represented on the advisory
4 committee shall provide staff support to the center and may provide
5 staff and other support services to the executive committee.

6 Sec. 106.007. DUTIES AND POWERS. (a) The center shall:

7 (1) educate the public and recommend appropriate
8 public policies regarding the continued viability of rural health
9 care delivery in this state;

10 (2) monitor and work with state and federal agencies
11 to assess the impact of proposed rules on rural areas;

12 (3) provide impact statements of proposed rules as
13 considered appropriate by the center;

14 (4) streamline regulations to assist in the
15 development of service diversification of health care facilities;

16 (5) target state and federal programs to rural areas;

17 (6) promote and develop community involvement and
18 community support in maintaining, rebuilding, or diversifying local
19 health services;

20 (7) promote and develop diverse and innovative health
21 care service models in rural areas;

22 (8) encourage the use of advanced communications
23 technology to provide access to specialty expertise, clinical
24 consultation, and continuing education;

25 (9) assist rural health care providers, communities,
26 and individuals in applying for public and private grants and
27 programs;

1 (10) encourage the development of regional emergency
2 transportation networks;

3 (11) work with state agencies, universities, and
4 private interest groups to conduct and promote research on rural
5 health issues, maintain and collect a timely data base, and develop
6 and maintain a rural health resource library;

7 (12) solicit the assistance of other offices or
8 programs of rural health in this state that are university-based to
9 carry out the duties of this chapter;

10 (13) disseminate information and provide technical
11 assistance to communities, health care providers, and individual
12 consumers of health care services; and

13 (14) develop plans to implement a fee-for-service
14 health care professional recruitment service and a medical supplies
15 group purchasing program within the center.

16 (b) The center may:

17 (1) solicit, receive, and spend grants, gifts, and
18 donations from public and private sources; and

19 (2) contract with public and private entities in the
20 performance of its responsibilities.

21 Sec. 106.008. REPORT TO LEGISLATURE. No later than January
22 1 of each odd-numbered year, the center shall submit a biennial
23 report to the legislature regarding the activities of the center
24 and any findings and recommendations relating to rural issues.

25 Sec. 106.009. APPLICATION OF SUNSET ACT. The Center for
26 Rural Health Initiatives is subject to Chapter 325, Government Code
27 (Texas Sunset Act). Unless continued in existence as provided by

1 that chapter, the center is abolished and this chapter expires
2 September 1, 2001.

3 SECTION 42. Section 142.001(1), Health and Safety Code, is
4 amended to conform to Section 1, Chapter 493 (H.B. 2117), Acts of
5 the 71st Legislature, Regular Session, 1989, to read as follows:

6 (1) "Certified agency" means a person who:

7 (A) provides a home health service; and

8 (B) is certified [~~holds--a--current--letter-of~~
9 ~~approval-signed~~] by an official of the Department of Health and
10 Human Services as in [~~that-indicates~~] compliance with conditions of
11 participation in Title XVIII, Social Security Act (42 U.S.C.
12 Section 1395 et seq.).

13 SECTION 43. Section 142.001(5), Health and Safety Code, is
14 amended to conform to Section 14, Chapter 1085 (S.B. 487), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 (5) "Home health service" means the provision, for pay
17 or other consideration, of a health service in a patient's
18 residence. The term does not include the provision of care under
19 an attendant care program administered by the Texas Department of
20 Human Services.

21 SECTION 44. Section 142, Health and Safety Code, is amended
22 to conform to Section 3, Chapter 493 (H.B. 2117), Acts of the 71st
23 Legislature, Regular Session, 1989, by adding Section 142.0025 to
24 read as follows:

25 Sec. 142.0025. TEMPORARY LICENSE. If a person is in the
26 process of becoming certified by the Department of Health and Human
27 Services to qualify as a certified agency, the Texas Department of

1 Health may issue a temporary Class A home health service license to
2 the person. A temporary license is effective as provided by board
3 rules.

4 SECTION 45. Section 142.004(b), Health and Safety Code, is
5 amended to conform to Section 4, Chapter 493 (H.B. 2117), Acts of
6 the 71st Legislature, Regular Session, 1989, to read as follows:

7 (b) In addition to the requirements of Subsection (a), if
8 the applicant is a certified agency when the application for a
9 Class A license is filed, the applicant must maintain its Medicare
10 certification [~~include-with-the-application-a-copy-of-its-letter-of~~
11 ~~approval--from--the--Department--of--Health-and-Human-Services-that~~
12 ~~shows--the--applicant's--compliance--with--federal--conditions--of~~
13 ~~participation~~]. If the applicant is not a certified agency when
14 the application for a Class A license is filed, the applicant must
15 establish that it [~~has--been--surveyed-and~~] is in the process of
16 receiving its certification [~~certificate~~] from the Department of
17 Health and Human Services.

18 SECTION 46. Section 142.009(a), Health and Safety Code, is
19 amended to conform to Section 6, Chapter 493 (H.B. 2117), Acts of
20 the 71st Legislature, Regular Session, 1989, to read as follows:

21 (a) The [~~After--reasonable-prior-notice, the~~] department or
22 its representative may enter the premises of a license applicant or
23 license holder at reasonable times to conduct an inspection
24 incidental to the issuance of a license and at other times as the
25 department considers necessary to ensure compliance with this
26 chapter and the rules adopted under this chapter.

27 SECTION 47. Section 142.011, Health and Safety Code, is

1 amended to conform to Section 7, Chapter 493 (H.B. 2117), Acts of
2 the 71st Legislature, Regular Session, 1989, by adding Subsections
3 (c) and (d) to read as follows:

4 (c) The department may suspend or revoke the license of a
5 Class A home health agency that fails to maintain its certification
6 qualifying the agency as a certified agency. A Class A home health
7 agency that submits a request for a hearing as provided by
8 Subsection (d) is subject to the requirements of this chapter
9 relating to a Class B home health agency until the suspension or
10 revocation is finally determined by the department or, if the
11 license is suspended or revoked, until the last day for seeking
12 review of the department order or a later date fixed by order of
13 the reviewing court.

14 (d) A person whose application is denied or whose license is
15 suspended or revoked is entitled to a hearing before the department
16 if the person submits a written request to the department. The
17 Administrative Procedure and Texas Register Act (Article 6252-13a,
18 Vernon's Texas Civil Statutes) and the department's rules for
19 contested case hearings apply to hearings conducted under this
20 section and to appeals from department decisions.

21 SECTION 48. Subsections (a) and (d), Section 142.015, Health
22 and Safety Code, are amended to conform to Section 2, Chapter 493
23 (H.B. 2117), Acts of the 71st Legislature, Regular Session, 1989,
24 to read as follows:

25 (a) The Home Health Services Advisory Council is composed of
26 the following 11 [~~nine~~] members, appointed by the governor:

27 (1) one representative of the department;

1 (2) two representatives of consumers of home health
2 agency and hospice services;

3 (3) one representative of the Texas Department of
4 Human Services;

5 (4) one representative of the Texas Association of
6 Home Health Agencies, Incorporated;

7 (5) one representative of private nonprofit home
8 health agencies;

9 (6) one representative of voluntary nonprofit home
10 health agencies;

11 (7) one representative of proprietary home health
12 agencies; [and]

13 (8) one representative of an official department home
14 health agency;

15 (9) one member to represent Medicare-certified Class A
16 hospice providers affiliated with a home health agency, hospital,
17 or other health service provider; and

18 (10) one member to represent Medicare-certified Class
19 A hospice providers not affiliated with a home health agency,
20 hospital, or other health service provider.

21 (d) Members of the council serve staggered two-year terms,
22 with the terms of six [~~five~~] members expiring on January 31 of each
23 even-numbered year and the terms of five [~~four~~] members expiring on
24 January 31 of each odd-numbered year.

25 SECTION 49. Title 2, Subtitle G, Health and Safety Code, is
26 amended to conform to Chapter 312 (H.B. 2352), Acts of the 71st
27 Legislature, Regular Session, 1989, by adding Chapter 145 to read

1 as follows:

2 CHAPTER 145. TANNING FACILITIES

3 Sec. 145.001. SHORT TITLE. This chapter may be cited as the
4 Tanning Facility Regulation Act.

5 Sec. 145.002. DEFINITIONS. In this chapter:

6 (1) "Authorized agent" means an employee of the
7 department designated by the commissioner to enforce this chapter.

8 (2) "Health authority" means a physician designated to
9 administer state and local laws relating to public health.

10 (3) "Person" means an individual, partnership,
11 corporation, or association.

12 (4) "Phototherapy device" means a piece of equipment
13 that emits ultraviolet radiation and is used by a health care
14 professional in the treatment of disease.

15 (5) "Tanning device" means any equipment, including a
16 sunlamp, tanning booth, and tanning bed, that emits electromagnetic
17 radiation with wavelengths in the air between 200 and 400
18 nanometers and is used for the tanning of human skin. The term
19 includes any accompanying equipment, including protective eyewear,
20 timers, and handrails.

21 (6) "Tanning facility" means a business that provides
22 persons access to tanning devices.

23 Sec. 145.003. EXEMPTION. This chapter does not apply to a
24 phototherapy device used by or under the supervision of a licensed
25 physician trained in the use of phototherapy devices.

26 Sec. 145.004. COMPLIANCE WITH FEDERAL LAW. A tanning device
27 used by a tanning facility must comply with all applicable federal

1 laws and regulations.

2 Sec. 145.005. CUSTOMER NOTICE; LIABILITY. (a) A tanning
3 facility shall give each customer a written statement warning that:

4 (1) failure to use the eye protection provided to the
5 customer by the tanning facility may result in damage to the eyes;

6 (2) overexposure to ultraviolet light causes burns;

7 (3) repeated exposure may result in premature aging of
8 the skin and skin cancer;

9 (4) abnormal skin sensitivity or burning may be caused
10 by reactions of ultraviolet light to certain:

11 (A) foods;

12 (B) cosmetics; or

13 (C) medications, including:

14 (i) tranquilizers;

15 (ii) diuretics;

16 (iii) antibiotics;

17 (iv) high blood pressure medicines; or

18 (v) birth control pills; and

19 (5) any person taking a prescription or
20 over-the-counter drug should consult a physician before using a
21 tanning device.

22 (b) Compliance with the notice requirement does not affect
23 the liability of a tanning facility operator or a manufacturer of a
24 tanning device.

25 Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall
26 post a warning sign in a conspicuous location where it is readily
27 visible by persons entering the establishment. The sign must have

1 dimensions of at least 36 inches on each side and must contain the
2 following wording:

3 DANGER: ULTRAVIOLET RADIATION

4 Repeated exposure to ultraviolet radiation may cause chronic
5 sun damage characterized by wrinkling, dryness, fragility, and
6 bruising of the skin, and skin cancer.

7 Failure to use protective eyewear may result in severe burns
8 or permanent injury to the eyes.

9 Medications or cosmetics may increase your sensitivity to
10 ultraviolet radiation. Consult a physician before using a sunlamp
11 if you are using medications, have a history of skin problems, or
12 believe you are especially sensitive to sunlight. Pregnant women
13 or women taking oral contraceptives who use this product may
14 develop discolored skin.

15 IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN

16 FROM USE OF AN ULTRAVIOLET OR SUNLAMP.

17 (b) A tanning facility shall post a warning sign at each
18 tanning device in a conspicuous location that is readily visible to
19 a person about to use the device. The sign must have dimensions
20 of at least 24 inches on each side and must contain the following
21 language:

22 DANGER: ULTRAVIOLET RADIATION

23 1. Follow the manufacturer's instructions for use of this
24 device.

25 2. Avoid too frequent or lengthy exposure. As with natural
26 sunlight, exposure can cause serious eye and skin injuries and
27 allergic reactions. Repeated exposure may cause skin cancer.

1 3. Wear protective eyewear. Failure to use protective
2 eyewear may result in severe burns or permanent damage to the eyes.

3 4. Do not sunbathe before or after exposure to ultraviolet
4 radiation from sunlamps.

5 5. Medications or cosmetics may increase your sensitivity to
6 ultraviolet radiation. Consult a physician before using a sunlamp
7 if you are using medication, have a history of skin problems, or
8 believe you are especially sensitive to sunlight. Pregnant women
9 or women using oral contraceptives who use this product may develop
10 discolored skin.

11 IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT

12 TAN FROM USE OF THIS DEVICE.

13 Sec. 145.007. PROHIBITED CLAIMS ABOUT SAFETY. A tanning
14 facility may not claim, or distribute promotional materials that
15 claim, that using a tanning device is safe or free from risk.

16 Sec. 145.008. OPERATIONAL REQUIREMENTS. (a) A tanning
17 facility shall have an operator present during operating hours.
18 The operator must be sufficiently knowledgeable in the correct
19 operation of the tanning devices used at the facility that the
20 operator may inform and assist each customer in the proper use of
21 the tanning devices.

22 (b) Before each use of a tanning device, the operator shall
23 provide the customer with properly sanitized protective eyewear
24 that protects the eyes from ultraviolet radiation and allows
25 adequate vision to maintain balance. The operator may not allow a
26 person to use a tanning device if that person does not use the
27 protective eyewear. The operator also shall show each customer how

1 to use suitable physical aids, such as handrails and markings on
2 the floor, to maintain proper exposure distance as recommended by
3 the manufacturer of the tanning device.

4 (c) The tanning facility shall use a timer with an accuracy
5 of at least plus or minus 10 percent of any selected time interval.
6 The facility shall limit the exposure time of a customer on a
7 tanning device to the maximum exposure time recommended by the
8 manufacturer. The facility shall control the interior temperature
9 of a tanning device so that it may not exceed 100 degrees
10 Fahrenheit.

11 (d) Either each time a customer uses a tanning facility or
12 each time a person executes or renews a contract to use a tanning
13 facility, the person must sign a written statement acknowledging
14 that the person has read and understood the required warnings
15 before using the device and agrees to use the protective eyewear
16 that the tanning facility provides.

17 (e) Before any person who is at least 14 years of age but
18 younger than 18 years of age uses a tanning device, the person must
19 give the tanning facility a statement signed by the person's parent
20 or legal guardian stating that the parent or legal guardian has
21 read and understood the warnings given by the tanning facility,
22 consents to the minor's use of a tanning device, and agrees that
23 the minor will use the protective eyewear that the tanning facility
24 provides. A person younger than 14 years of age must be
25 accompanied by a parent or legal guardian when using a tanning
26 device.

27 Sec. 145.009. PERMITS. (a) A person may not operate a

1 tanning facility unless the person holds a permit issued by the
2 department to operate the facility.

3 (b) The permit shall be displayed in an open public area of
4 the tanning facility.

5 (c) The board annually shall renew permits after application
6 for renewal is made on forms provided by the department for this
7 purpose and after receipt of renewal fees.

8 (d) The department by rule may adopt a system under which
9 permits expire on various dates during the year. As part of this
10 system the annual renewal fees may be prorated on a monthly basis
11 to reflect the actual number of months the permit is valid.

12 (e) The department may revoke, cancel, suspend, or probate a
13 permit to operate a tanning facility for:

14 (1) a failure to pay a permit fee or an annual renewal
15 fee for a permit;

16 (2) an applicant's acquisition or attempted
17 acquisition of a permit by fraud or deception;

18 (3) a violation of this chapter; or

19 (4) a violation of a rule of the department adopted
20 under this chapter.

21 Sec. 145.010. FEES. The department shall set and collect a
22 permit fee of \$50 and an annual permit renewal fee of \$35.

23 Sec. 145.011. RULES; INSPECTION. (a) The board may adopt
24 rules as necessary to implement this chapter.

25 (b) The commissioner or an authorized agent may inspect a
26 tanning facility at any reasonable time to determine compliance
27 with this chapter.

1 Sec. 145.012. INJUNCTION. (a) If the commissioner, an
2 authorized agent, or a health authority finds that a person has
3 violated, or is violating or threatening to violate, this chapter
4 and that the violation or threat of violation creates an immediate
5 threat to the health and safety of the public, the commissioner,
6 authorized agent, or health authority may petition the district
7 court for a temporary restraining order to restrain the violation
8 or threat of violation.

9 (b) If a person has violated, or is violating or threatening
10 to violate this chapter, the commissioner, an authorized agent, or
11 a health authority may petition the district court for an
12 injunction to prohibit the person from continuing the violation or
13 threat of violation.

14 (c) On application for injunctive relief and a finding that
15 a person is violating or threatening to violate this chapter, the
16 district court shall grant any injunctive relief warranted by the
17 facts.

18 (d) Venue for a suit brought under this section is in the
19 county in which the violation or the threat of violation is alleged
20 to have occurred or in Travis County.

21 Sec. 145.013. CRIMINAL PENALTY. (a) A person, other than a
22 customer, commits an offense if the person knowingly or recklessly
23 violates this chapter or a rule adopted under this chapter.

24 (b) An offense under this chapter is a Class C misdemeanor.

25 SECTION 50. Subchapter H, Chapter 161, Health and Safety
26 Code, is amended to conform to Section 1, Chapter 607 (S.B. 115),
27 Acts of the 71st Legislature, Regular Session, 1989, by amending

1 Section 161.081 and adding Section 161.082 to read as follows:

2 Sec. 161.081. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO
3 MINORS PROHIBITED. (a) A person commits an offense if~~[7-without~~
4 ~~the-written-consent-of-the-minor's-parent-or-guardian7]~~ the person,
5 as a commercial enterprise:

6 (1) sells, [or] gives, or causes to be sold or given a
7 cigarette or other [a] tobacco product to someone the person knows
8 [a-minor-who] is younger than 18 [+6] years of age; or

9 (2) [knowingly] sells, gives, or causes to be sold or
10 given a cigarette or other [a] tobacco product to another person,
11 knowing that the person receiving the cigarette or other tobacco
12 product intends to deliver it to someone [for-delivery-to-a--minor]
13 who is younger than 18 [+6] years of age.

14 (b) An offense under this section is a Class C misdemeanor
15 [punishable-by-a-fine-of-not-less-than-\$10-or-more-than-\$100].

16 (c) It is a defense to prosecution under this section that
17 the person to whom the cigarette or other tobacco product was sold
18 or given presented to the defendant an apparently valid Texas
19 driver's license or an identification card, issued by the
20 Department of Public Safety and containing a physical description
21 consistent with the person's appearance, that purported to
22 establish that the person was 18 years of age or older.

23 Sec. 161.082. WARNING NOTICE. (a) Each person who sells
24 tobacco products at retail or by vending machine shall post a sign
25 in a location that is conspicuous to all employees and customers
26 and that is close to the place at which the tobacco products may be
27 purchased.

1 (b) The sign must include the statement:

2 SALE OR PROVISION OF TOBACCO PRODUCTS TO A
3 MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY
4 LAW. UPON CONVICTION, A MAXIMUM FINE OF UP TO
5 \$200 MAY BE IMPOSED.

6 (c) The board by rule shall determine the design and size of
7 the sign.

8 (d) The department on request shall provide the sign without
9 charge to any person who sells cigarette products. The department
10 may provide the sign without charge to cigarette distributors or
11 wholesale dealers of cigarette products in this state for
12 distribution to persons who sell cigarette products. A distributor
13 or wholesale dealer may not charge for distributing a sign under
14 this subsection.

15 (e) A person commits an offense if the person intentionally
16 fails to display a sign as prescribed by this section. An offense
17 under this subsection is a Class C misdemeanor.

18 SECTION 51. Subtitle H, Title 2, Health and Safety Code, is
19 amended to conform to Section 25, Chapter 1195 (S.B. 959), Acts of
20 the 71st Legislature, Regular Session, 1989, by adding Chapter 163
21 to read as follows:

22 CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND
23 SUBSTANCE ABUSE

24 Sec. 163.001. PROGRAM. (a) The department shall develop a
25 model public health education program suitable for school-age
26 children and shall make the program available to any person on
27 request. The program should emphasize:

1 (1) that abstinence from sexual intercourse is the
2 most effective protection against unwanted teenage pregnancy,
3 sexually transmitted diseases, and acquired immune deficiency
4 syndrome (AIDS) when transmitted sexually;

5 (2) that abstinence from sexual intercourse outside of
6 lawful marriage is the expected societal standard for school-age
7 unmarried persons; and

8 (3) the physical, emotional, and psychological dangers
9 of substance abuse, including the risk of acquired immune
10 deficiency syndrome (AIDS) through the sharing of needles during
11 intravenous drug usage.

12 (b) Course materials and instruction relating to sexual
13 education or sexually transmitted diseases should be age
14 appropriate.

15 Sec. 163.002. INSTRUCTIONAL ELEMENTS. Course materials and
16 instruction relating to sexual education or sexually transmitted
17 diseases should include:

18 (1) an emphasis on sexual abstinence as the only
19 completely reliable method of avoiding unwanted teenage pregnancy
20 and sexually transmitted diseases;

21 (2) an emphasis on the importance of self-control,
22 responsibility, and ethical conduct in making decisions relating to
23 sexual behavior;

24 (3) statistics, based on the latest medical
25 information, that indicate the efficacy of the various forms of
26 contraception;

27 (4) information concerning the laws relating to the

1 financial responsibilities associated with pregnancy, childbirth,
2 and child rearing;

3 (5) information concerning the laws prohibiting sexual
4 abuse and the legal and counseling options available to victims of
5 sexual abuse;

6 (6) information on how to cope with and rebuff
7 unwanted physical and verbal sexual advances, as well as the
8 importance of avoiding the sexual exploitation of other persons;

9 (7) psychologically sound methods of resisting
10 unwanted peer pressure; and

11 (8) emphasis, provided in a factual manner and from a
12 public health perspective, that homosexuality is not a lifestyle
13 acceptable to the general public and that homosexual conduct is a
14 criminal offense under Section 21.06, Penal Code.

15 SECTION 52. To conform to Section 3, Chapter 920 (S.B. 973),
16 Acts of the 71st Legislature, Regular Session, 1989, Subchapter A,
17 Chapter 191, Health and Safety Code, is amended by adding Section
18 191.0045, and Section 191.054, Health and Safety Code, is
19 transferred to Subchapter A, Chapter 191, Health and Safety Code,
20 and redesignated as Section 191.0046 to read as follows:

21 Sec. 191.0045. FEES. (a) The bureau of vital statistics
22 may charge fees for providing services to the public and performing
23 other activities in connection with maintenance of the vital
24 statistics system, including:

25 (1) performing searches of birth, death, fetal death,
26 marriage, divorce, annulment, and other records;

27 (2) preparing and issuing copies and certified copies

1 of birth, death, fetal death, marriage, divorce, annulment, and
2 other records; and

3 (3) filing a record, amendment, or affidavit under
4 this title.

5 (b) The board by rule may prescribe a schedule of fees for
6 vital statistics services. The aggregate of the amounts of the
7 fees may not exceed the cost of administering the vital statistics
8 system.

9 (c) The bureau of vital statistics shall refund to an
10 applicant any fee received for services that the bureau cannot
11 perform. If the money has been deposited to the credit of the
12 vital statistics fund, the comptroller shall issue a warrant
13 against the fund for refund of the payment on presentation of a
14 claim signed by the state registrar.

15 (d) A local registrar who issues a certified copy of a death
16 certificate shall charge the same fee as charged by the bureau of
17 vital statistics.

18 Sec. 191.0046 [~~191-054~~]. FEE EXEMPTIONS. (a) On the
19 request of a child's parent or guardian, the state registrar shall
20 issue without fee a certificate necessary for admission to school
21 or to secure employment. The certificate shall be limited to a
22 statement of the child's date of birth.

23 (b) The state registrar shall issue without fee a certified
24 copy of a record not otherwise prohibited by law to a veteran or to
25 the veteran's widow, orphan, or other dependent if the copy is for
26 use in settling a claim against the government.

27 (c) On court order, the state registrar may issue without

1 fee a certified copy of a birth record in cases related to child
2 labor or the public schools.

3 SECTION 53. Section 191.005, Health and Safety Code, is
4 amended to conform to Sections 3 and 8, Chapter 920 (S.B. 973),
5 Acts of the 71st Legislature, Regular Session, 1989, to read as
6 follows:

7 Sec. 191.005. VITAL STATISTICS FUND. (a) The vital
8 statistics fund is in the state treasury.

9 (b) The legislature shall make appropriations to the
10 department from the [The] fund to [shall] be used to defray
11 expenses incurred in the administration and enforcement [and
12 operation] of the system of vital statistics [this-title].

13 (c) All [~~The-state-registrar-shall-keep-an-account--of--fees~~
14 ~~the-state-registrar-collects-under-this-title-and-shall-deposit-the~~
15 ~~fees-with-the-state-treasurer-at-the-end-of-each-month-and-at-other~~
16 ~~times-the-state-registrar-considers-advisable-~~

17 [~~{d}--The--state--treasurer-shall-deposit-the~~] fees collected
18 by the bureau of vital statistics shall be deposited to the credit
19 of the vital statistics fund.

20 SECTION 54. Section 191.028(c), Health and Safety Code, is
21 repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of
22 the 71st Legislature, Regular Session, 1989.

23 SECTION 55. Sections 191.053 and 191.055, Health and Safety
24 Code, are repealed to conform to Section 8, Chapter 920 (S.B. 973),
25 Acts of the 71st Legislature, Regular Session, 1989.

26 SECTION 56. Section 192.002(b), Health and Safety Code, is
27 amended to conform to Section 1, Chapter 681 (S.B. 1248), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 (b) The section of the birth certificate entitled "For
3 Medical and Health Use Only" is not part of the legal birth
4 certificate. Information held by the department under that section
5 of the certificate is confidential. That information may not be
6 released or made public on subpoena or otherwise, except that
7 release may be made for statistical purposes only so that no
8 person, patient, or facility is identified, or to medical personnel
9 of a health care entity, as that term is defined in the Medical
10 Practice Act (Article 4495b, Vernon's Texas Civil Statutes), or
11 appropriate state or federal agencies for statistical research.
12 The board may adopt rules to implement this subsection.

13 SECTION 57. Section 192.006(a), Health and Safety Code, is
14 amended to conform to Section 36, Chapter 375 (S.B. 401), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 (a) A supplementary birth certificate may be filed if the
17 person who is the subject of the certificate:

18 (1) becomes the [~~legitimate~~] child of the person's
19 father by the subsequent marriage of the person's parents;

20 (2) has the person's parentage determined by a court
21 of competent jurisdiction; or

22 (3) is adopted under the laws of any state.

23 SECTION 58. Section 192.006(e), Health and Safety Code, is
24 repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of
25 the 71st Legislature, Regular Session, 1989.

26 SECTION 59. Section 192.010(c), Health and Safety Code, is
27 repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of

1 the 71st Legislature, Regular Session, 1989.

2 SECTION 60. Section 192.028, Health and Safety Code, is
3 repealed to conform to Section 7, Chapter 920 (S.B. 973), Acts of
4 the 71st Legislature, Regular Session, 1989.

5 SECTION 61. Sections 194.004(c) and (d), Health and Safety
6 Code, are repealed to conform to Sections 5 and 6, Chapter 920
7 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

8 SECTION 62. Chapter 195, Health and Safety Code, is amended
9 by adding Section 195.005 to conform to Section 2, Chapter 681
10 (S.B. 1248), Acts of the 71st Legislature, Regular Session, 1989,
11 to read as follows:

12 Sec. 195.005. DISCLOSURE OF CONFIDENTIAL INFORMATION.

13 (a) A person commits an offense if the person knowingly violates
14 Section 192.002(b), knowingly induces or causes another to violate
15 that section, or knowingly fails to comply with a rule adopted
16 under that section.

17 (b) An offense under this section is a Class A misdemeanor.

18 SECTION 63. Subchapter B, Chapter 222, Health and Safety
19 Code, is amended to conform to Section 4, Chapter 1027 (H.B. 18),
20 Acts of the 71st Legislature, Regular Session, 1989, by adding
21 Section 222.027 to read as follows:

22 Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The Texas
23 Department of Health shall ensure that a licensed physician
24 involved in direct patient care as defined by the Texas State Board
25 of Medical Examiners is included on a survey team sent under Title
26 XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.)
27 when surveying the quality of services provided by physicians in

1 hospitals.

2 SECTION 64. Chapter 222, Health and Safety Code, is amended
3 to conform to Section 8, Chapter 1085 (S.B. 487), Acts of the 71st
4 Legislature, Regular Session, 1989, by adding Section 222.0255 and
5 amending Section 222.026 to read as follows:

6 Sec. 222.0255. NURSING HOMES. (a) The Texas Department of
7 Health and the Texas Department of Human Services jointly shall
8 develop one set of standards for nursing homes that apply to
9 licensing and to certification for participation in the medical
10 assistance program under Chapter 32, Human Resources Code.

11 (b) The standards must comply with federal regulations. If
12 the federal regulations at the time of adoption are less stringent
13 than the state standards, the departments shall keep and comply
14 with the state standards.

15 (c) The departments by rule shall adopt the standards and
16 any amendments to the standards.

17 (d) The Texas Department of Health shall maintain a set of
18 standards for nursing homes that are licensed only.

19 Sec. 222.026. PATIENT TRANSFER AUTHORITY NOT AFFECTED.
20 Sections 222.024, [and] 222.025, and 222.0255 do not affect the
21 authority of the Texas Department of Health to implement and
22 enforce the provisions of Chapter 241 (Texas Hospital Licensing
23 Law) relating to the transfer of hospital patients or the
24 department's means of implementing and enforcing those provisions.

25 SECTION 65. Chapter 222, Health and Safety Code, is amended
26 to conform to Sections 8-10, Chapter 1141 (S.B. 1426), Acts of the
27 71st Legislature, Regular Session, 1989, by adding Subchapter C to

1 read as follows:

2 SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES
3 FOR MENTALLY RETARDED

4 Sec. 222.041. DEFINITIONS. In this subchapter:

5 (1) "Board" means the Texas Board of Health.

6 (2) "Department" means the Texas Department of Health.

7 (3) "ICF-MR" means the medical assistance program
8 serving persons receiving care in intermediate care facilities for
9 mentally retarded persons.

10 Sec. 222.042. LICENSING OF ICF-MR BEDS AND FACILITIES. The
11 department may not approve as meeting licensing standards new
12 ICF-MR beds or the expansion of an existing ICF-MR facility unless:

13 (1) the new beds or the expansion was included in the
14 plan approved by the Interagency Council on ICF-MR Facilities in
15 accordance with Section 2.43, Texas Mental Health and Mental
16 Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes);
17 and

18 (2) the Texas Department of Mental Health and Mental
19 Retardation has approved the beds or the expansion for
20 certification in accordance with Section 2.44, Texas Mental Health
21 and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil
22 Statutes).

23 Sec. 222.043. REVIEW OF ICF-MR SURVEYS. (a) The board by
24 rule shall establish policies and procedures as prescribed by this
25 section to conduct an informal review of ICF-MR surveys when the
26 survey findings are disputed by the provider. The board shall
27 provide that the procedure may be used only if the deficiencies

1 cited in the survey report do not pose an imminent threat of danger
2 to the health or safety of a resident.

3 (b) The department shall designate at least one employee in
4 the bureau for special health services to conduct on a full-time
5 basis the review provided by this section. The person must be
6 impartial and may not be directly involved in or supervise any
7 initial or recertification surveys. The person may participate in
8 or direct follow-up surveys for quality assurance purposes only at
9 the discretion of the associate commissioner for special health
10 services or under Chapter 242, Health and Safety Code.

11 (c) The employee designated under Subsection (b) should have
12 current knowledge of applicable federal laws and survey processes.
13 The employee reports directly to the associate commissioner of
14 special health services.

15 (d) If a provider disputes the findings of a survey team or
16 files a complaint relating to the conduct of the survey, the
17 employee designated under Subsection (b) shall conduct an informal
18 review as soon as possible, but before the 45th day after the date
19 of receiving the request for a review or the expiration of the
20 period during which the provider is required to correct the alleged
21 deficiency, whichever is sooner.

22 (e) The employee conducting the review shall sustain, alter,
23 or reverse the original findings of the survey team after
24 consulting with the associate commissioner for special health
25 services.

26 Sec. 222.044. FOLLOW-UP SURVEYS. (a) The bureau of
27 long-term care quality assurance team shall conduct follow-up

1 surveys of ICF-MR facilities to:

2 (1) evaluate and monitor the findings of the
3 certification or licensing survey teams; and

4 (2) ensure consistency in deficiencies cited and in
5 punitive actions recommended throughout the state.

6 (b) A provider shall correct any additional deficiency cited
7 by the quality assurance team. The department may not impose an
8 additional punitive action for the deficiency unless the provider
9 fails to correct the deficiency within the period during which the
10 provider is required to correct the deficiency.

11 Sec. 222.045. NOTIFICATION OF CHANGE IN ICF-MR PROGRAM. The
12 department shall notify in writing the Texas Department of Human
13 Services of any change in the rules or in the interpretation of the
14 rules relating to the ICF-MR program that might affect the cost of
15 providing services so that the Texas Department of Human Services
16 may amend the payment rates to reflect the change.

17 Sec. 222.046. SURVEYS OF ICF-MR FACILITIES. (a) The
18 department shall ensure that each survey team sent to survey an
19 ICF-MR facility includes a qualified mental retardation
20 professional, as that term is defined by federal law.

21 (b) The department shall require that each survey team sent
22 to survey an ICF-MR facility conduct a final interview with the
23 provider to ensure that the survey team informs the provider of the
24 survey findings and that the survey team has requested the
25 necessary information from the provider. The survey team shall
26 allow the provider to record the interview. The provider shall
27 immediately give the survey team a copy of any recording.

1 SECTION 66. Section 224.004, Health and Safety Code, is
2 amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of
3 the 71st Legislature, Regular Session, 1989, to read as follows:

4 Sec. 224.004. TAXATION OF FINANCING COUNCIL BONDS. [AND
5 HEALTH-RELATED-EQUIPMENT.---(a)---The-financing--council--may,--as--a
6 matter--of--public--policy,--engage--only--in--the--performance--of
7 charitable--functions--and--is--exempt--from--all--taxation--by--this--state
8 and--by--each--political--subdivision--of--the--state.]

9 [(b)---Health-related---equipment,---including---a---leasehold
10 interest---in--health-related--equipment,--owned--by--the--financing
11 council--that--would--otherwise--be--taxable--to--the--financing--council
12 under--Title-17--Tax-Code,--but--for--the--purposes--and--nonprofit--nature
13 of--the--financing--council,--shall--be--assessed--to--the--participating
14 health--care--provider--using--the--health-related--equipment.---If--there
15 is--more--than--one--participating--health--care--provider--using--the
16 equipment,--the--assessment--is--to--be--made--to--each--provider--in
17 proportion--to--the--provider's--share--of--the--value--of--the--rights--in
18 the--equipment--of--all--the--providers.---A--participating--health-care
19 provider--is--entitled--to--the--exemptions--from--taxation,--if--any,--as--if
20 the--health-related--equipment--were--owned--by--the--participating--health
21 care--provider.---Each--participating--health--care---provider---is
22 considered--to--be--the--owner--of--health-related--equipment--used--by--the
23 participating--health-care--provider--for--the--purposes--of--taxes--levied
24 or--imposed--by--this--state--or--any--political--subdivision--of--this
25 state.]

26 [(c)] Bonds issued by the financing council, the interest on
27 those bonds, the transfer of bonds, and profits from the sale or

1 exchange of the bonds are exempt from taxation by this state or a
2 political subdivision of this state.

3 SECTION 67. Section 224.012, Health and Safety Code, is
4 amended to conform to Section 1, Chapter 696 (S.B. 1387), Acts of
5 the 71st Legislature, Regular Session, 1989, to read as follows:

6 Sec. 224.012. APPLICATION OF SUNSET ACT. The financing
7 council is subject to Chapter 325, Government Code (Texas Sunset
8 Act). Unless continued in existence as provided by that chapter,
9 the financing council is abolished September 1, 1997, except that
10 if on that date all bonds of the council that are outstanding on
11 September 1, 1989, have not been paid and discharged or adequate
12 provisions for those bonds have not been made, the council is not
13 abolished.

14 SECTION 68. Sections 224.013(a) and (b), Health and Safety
15 Code, are amended to conform to Section 3, Chapter 696 (S.B. 1387),
16 Acts of the 71st Legislature, Regular Session, 1989, to read as
17 follows:

18 (a) The council is composed of three [42] trustees appointed
19 by the governor with the advice and consent of the senate.

20 (b) Trustees serve six-year terms, with the term [terms] of
21 one trustee [four--trustees] expiring on September 1 of each
22 odd-numbered year.

23 SECTION 69. Section 224.017, Health and Safety Code, is
24 amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of
25 the 71st Legislature, Regular Session, 1989, to read as follows:

26 Sec. 224.017. FINANCING COUNCIL OFFICERS. (a) The
27 financing council shall elect one trustee as the chairman. The

1 chairman is ~~[shall-~~

2 ~~[(1)--preside-at-meetings-of-the-financing-council;~~

3 ~~[(2)--be]~~ the chief executive and administrative
4 officer of the financing council~~[-and~~

5 ~~[(3)--administer---the--duties--and--functions--of--the~~
6 ~~financing-council].~~

7 (b) The financing council may elect other officers as
8 necessary to perform its functions ~~[shall--elect--one--trustee--as~~
9 ~~vice-chairman.---The--vice-chairman-shall-perform-the-duties-of-the~~
10 ~~chairman-when-the-chairman-is-absent-or-incapable-of-performing-the~~
11 ~~chairman's-duties].~~

12 (c) ~~[The-financing-council-shall-elect-a-secretary,--who--is~~
13 ~~the--official-custodian-of-the-minutes,--books,--records,--and-seal-of~~
14 ~~the-council.---The-financing-council-may-elect-assistant-secretaries~~
15 ~~who-may-perform-any-duty-of-the-secretary.~~

16 ~~[(d)--The-financing-council-may-elect-a-treasurer.~~

17 ~~[(e)--The-secretary-and-treasurer-may-be-the-same-individual.~~

18 ~~[(f)--The-secretary,--treasurer,--and--assistant--secretaries~~
19 ~~need-not-be-trustees.~~

20 ~~[(g)--The--financing--council-may-require-other-duties-of-the~~
21 ~~officers.~~

22 ~~[(h)]~~ The officers serve one-year terms or until a successor
23 is elected ~~[shall-be-elected-at-the-first-financing-council-meeting~~
24 ~~occurring-on-or-after-September-1-of--each--odd-numbered--year--and~~
25 ~~when-necessary-to-fill-a-vacancy].~~

26 SECTION 70. Section 224.018, Health and Safety Code, is
27 amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 Sec. 224.018. FINANCING COUNCIL MEETINGS. (a) The
3 financing council may [~~shall~~] meet [~~regularly~~] at any time and
4 place in the state [~~the--times--and--places~~] specified by the
5 [~~financing-council--The~~] chairman or any two other trustees [~~may~~
6 ~~call--a--special--meeting--to--be-held-at-any-time-and-place-in-the~~
7 ~~state~~].

8 (b) Written [~~The-secretary--of--state--shall--post--written~~]
9 notice of the date, hour, place, and subject of each financing
10 council meeting must be posted in accordance with the open meetings
11 law, Chapter 271, Acts of the 60th Legislature, Regular Session,
12 1967 (Article 6252-17, Vernon's Texas Civil Statutes) [~~at-least-72~~
13 ~~hours-before-the-scheduled-time-of-the-meeting--The--secretary--of~~
14 ~~state--may-publish-the-notice-in-the-Texas-Register--The-notice-is~~
15 ~~sufficient-if-posted-two-hours-before-the-convening-of-a-meeting-on~~
16 ~~an-emergency-or-an-urgent-public-necessity,--which-must-be-expressed~~
17 ~~in-the-notice--An-action-taken--by--the--financing--council--on--a~~
18 ~~subject--for-which-notice-was-not-given-as-required-by-this-section~~
19 ~~is-voidable~~].

20 SECTION 71. Section 224.019(a), Health and Safety Code, is
21 amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of
22 the 71st Legislature, Regular Session, 1989, to read as follows:

23 (a) The financing council may act [~~acts~~] by written
24 resolution adopted by a majority of the trustees present at a
25 meeting at which a quorum is present.

26 SECTION 72. Section 224.020, Health and Safety Code, is
27 amended to conform to Sections 4 and 5, Chapter 696 (S.B. 1387),

1 Acts of the 71st Legislature, Regular Session, 1989, to read as
2 follows:

3 Sec. 224.020. RULES. The council may adopt rules only to
4 the extent necessary in relation to bonds of the council that are
5 outstanding on September 1, 1989~~[7-which-may-include-provisions-for~~
6 ~~the-management-of-the-affairs-of-the-financing-council]~~.

7 SECTION 73. Subchapter B, Chapter 224, Health and Safety
8 Code, is amended to conform to Section 2, Chapter 696 (S.B. 1387),
9 Acts of the 71st Legislature, Regular Session, 1989, by adding
10 Section 224.0245 to read as follows:

11 Sec. 224.0245. OFFICIAL CUSTODIAN. The state treasurer is
12 the official custodian of the minutes, books, records, and seal of
13 the financing council.

14 SECTION 74. Subchapter B, Chapter 224, Health and Safety
15 Code, is amended to conform to Section 2, Chapter 696 (S.B. 1387),
16 Acts of the 71st Legislature, Regular Session, 1989, by adding
17 Section 224.027 to read as follows:

18 Sec. 224.027. SUPPORT STAFF. The office of the state
19 treasurer shall provide staff and other support necessary to carry
20 out the duties and powers of the financing council.

21 SECTION 75. Section 224.051, Health and Safety Code, is
22 amended to conform to Sections 1 and 5, Chapter 696 (S.B. 1387),
23 Acts of the 71st Legislature, Regular Session, 1989, to read as
24 follows:

25 Sec. 224.051. ~~[GENERAL]~~ POWERS AND DUTIES. (a) The
26 financing council exists to preserve the validity and
27 enforceability of the bonds of the financing council that are

1 outstanding on September 1, 1989, according to the terms of the
2 bonds and subject to all applicable terms and conditions of the law
3 and proceedings authorizing the bonds.

4 (b) The financing council has only the powers necessary in
5 connection with the bonds of the council that are outstanding on
6 September 1, 1989.

7 (c) The financing council shall carry out all covenants
8 contained in the bonds and the proceedings and amendments
9 authorizing the bonds.

10 (d) The financing council shall provide for the bond
11 payments from the authorized sources of payment in accordance with
12 the terms of the bonds until the bonds and any interest are paid
13 and the bonds are discharged or adequate provisions for the bonds
14 have been made [~~The-financing-council--may--provide--at--reasonable~~
15 ~~cost-health-related-equipment-that-will-improve-the-adequacy,-cost,~~
16 ~~and-accessibility-of-health-care-in-this-state~~].

17 SECTION 76. Sections 224.052-224.054, 224.056-224.059, and
18 224.061, Health and Safety Code, are repealed to conform to Section
19 5, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular
20 Session, 1989.

21 SECTION 77. Section 224.101, Health and Safety Code, is
22 amended to conform to Sections 1 and 5, Chapter 696 (S.B. 1387),
23 Acts of the 71st Legislature, Regular Session, 1989, to read as
24 follows:

25 Sec. 224.101. ENFORCEABLE BONDS [~~AUTHORITY-TO-ISSUE--BONDS~~].
26 The bonds of the financing council that are outstanding on
27 September 1, 1989, are valid and enforceable according to their

1 terms and subject to all applicable terms and conditions of the law
2 and proceedings authorizing the bonds [~~(a)---The---financing---council~~
3 ~~may-issue-its-bonds-~~

4 [~~(b)---The-financing-council-shall-sell-the-bonds-at-public-or~~
5 ~~private-sale-for-the-price-it-determines]~~.

6 SECTION 78. Sections 224.102 through 224.109, Health and
7 Safety Code, are repealed to conform to Section 5, Chapter 696
8 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989.

9 SECTION 79. Section 224.110, Health and Safety Code, is
10 amended to conform to Section 5, Chapter 696 (S.B. 1387), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 Sec. 224.110. BONDS AND OTHER AGREEMENTS AS EXEMPT
13 SECURITIES. [~~(a)---Financing---council---bonds,-including-interest~~
14 ~~coupons,-are-securities-within-the-meaning-of-Chapter-8,-Business-&~~
15 ~~Commerce---Code,-notwithstanding-a-provision-of-Section--8:-102,~~
16 ~~Business-&-Commerce-Code,-to-the-contrary-~~

17 [~~(b)~~] Financing council bonds, including interest coupons,
18 are exempt securities under The Securities Act (Article 581-1 et
19 seq., Vernon's Texas Civil Statutes). A lease agreement, sales
20 agreement, or other contract under this chapter is not a security
21 within the meaning of that Act.

22 SECTION 80. Sections 224.111 and 224.115, Health and Safety
23 Code, are repealed to conform to Section 5, Chapter 696
24 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989.

25 SECTION 81. Section 9, Chapter 678 (H.B. 2136), Acts of the
26 71st Legislature, Regular Session, 1989, is repealed to conform to
27 Section 3, Chapter 696 (S.B. 1387), Acts of the 71st Legislature,

1 Regular Session, 1989.

2 SECTION 82. Section 241.022(c), Health and Safety Code, is
3 amended to conform to Section 7, Chapter 1027 (H.B. 18), Acts of
4 the 71st Legislature, Regular Session, 1989, to read as follows:

5 (c) The department shall require that each hospital show
6 evidence that:

7 (1) at least one physician is on the medical staff of
8 the hospital, including evidence that the physician is currently
9 licensed; and

10 (2) the governing body of the hospital:

11 (A) has adopted and implemented a patient
12 transfer policy in accordance with Section [Sections] 241.027; and

13 (B) has implemented patient transfer agreements
14 in accordance with Section 241.028 or has complied with rules
15 adopted under Section 241.029.

16 SECTION 83. Section 241.027, Health and Safety Code, is
17 amended to conform to Section 6, Chapter 1027 (H.B. 18), Acts of
18 the 71st Legislature, Regular Session, 1989, by amending
19 Subsections (a) and (b) and adding Subsection (d) to read as
20 follows:

21 (a) The board shall adopt rules to implement the minimum
22 standards governing the transfer of patients between hospitals that
23 do not have a transfer agreement and governing services not
24 included in transfer agreements [as-provided-by-this-section]. The
25 board shall base the rules on the recommendations made by the
26 advisory committee established by Section 241.029.

27 (b) The rules must provide that patient transfers between

1 hospitals [~~should~~] be accomplished through hospital policies that
2 result in [a] medically appropriate transfers [~~manner~~] from
3 physician to physician and from hospital to hospital by providing
4 [~~for~~]:

5 (1) for notification to the receiving hospital before
6 the patient is transferred and confirmation by the receiving
7 hospital that the patient meets the receiving hospital's admissions
8 criteria relating to appropriate bed, physician, and other services
9 necessary to treat the patient;

10 (2) for the use of medically appropriate life support
11 measures that a reasonable and prudent physician exercising
12 ordinary care in the same or a similar locality would use to
13 stabilize the patient before the transfer and to sustain the
14 patient during the transfer;

15 (3) for the provision of appropriate personnel and
16 equipment that a reasonable and prudent physician exercising
17 ordinary care in the same or a similar locality would use for the
18 transfer; [~~and~~]

19 (4) for the transfer of all necessary records for
20 continuing the care for the patient; and

21 (5) that the transfer of a patient not be predicated
22 on arbitrary, capricious, or unreasonable discrimination because of
23 race, religion, national origin, age, sex, physical condition, or
24 economic status.

25 (d) The rules also shall provide that a public hospital or
26 hospital district shall accept the transfer of its eligible
27 residents if the public hospital or hospital district has

1 appropriate facilities, services, and staff available for providing
2 care to the patient.

3 SECTION 84. Section 241.028, Health and Safety Code, is
4 amended to conform to Section 6, Chapter 1027 (H.B. 18), Acts of
5 the 71st Legislature, Regular Session, 1989, to read as follows:

6 Sec. 241.028. [~~ADOPTION---OF--PATIENT~~] TRANSFER AGREEMENTS
7 [~~POLICIES~~]. (a) If hospitals execute a transfer agreement that is
8 consistent with the requirements of this section, all patient
9 transfers between the hospitals are governed by the agreement.

10 (b) The hospitals shall submit the agreement to the
11 department for review for compliance with the requirements of this
12 section. The department shall complete the review of the agreement
13 within 30 days after the date the agreement is submitted by the
14 hospitals.

15 (c) At a minimum, a transfer agreement must provide that:

16 (1) transfers be accomplished in a medically
17 appropriate manner and comply with Sections 241.027(b)(2)-(5);

18 (2) the transfer or receipt of patients in need of
19 emergency care not be based on the individual's inability to pay
20 for the services rendered by the transferring or receiving
21 hospital;

22 (3) multiple transfer agreements be entered into by a
23 hospital based on the type or level of medical services available
24 at other hospitals;

25 (4) the hospitals recognize the right of an individual
26 to request transfer to the care of a physician and hospital of the
27 individual's choice;

1 (5) the hospitals recognize and comply with the
2 requirements of Chapter 61 (Indigent Health Care and Treatment Act)
3 relating to the transfer of patients to mandated providers; and

4 (6) consideration be given to availability of
5 appropriate facilities, services, and staff for providing care to
6 the patient [~~A-hospital-shall-adopt-binding-policies-relating-to~~
7 ~~patient-transfers-that-are-consistent-with-the-rules-adopted-by-the~~
8 ~~board.~~

9 ~~[(b)--The-board-by--rule--shall--set--the--date--by--which--a~~
10 ~~hospital-must-adopt-the-patient-transfer-policies.~~

11 ~~[(c)--A--hospital--shall, if possible, implement its transfer~~
12 ~~policies-by-adopting-transfer-agreements-with-other-hospitals].~~

13 SECTION 85. Subchapter B, Chapter 241, Health and Safety
14 Code, is amended to conform to Section 6, Chapter 1027 (H.B. 18),
15 Acts of the 71st Legislature, Regular Session, 1989, by adding
16 Section 241.029 to read as follows:

17 Sec. 241.029. DEPARTMENT TRANSFER RULES; ADVISORY COMMITTEE
18 ON PATIENT TRANSFERS. (a) The department may adopt rules to
19 facilitate the transfer of patients between hospitals that do not
20 have a transfer agreement. The rules must be based on
21 recommendations of the advisory committee on patient transfers.

22 (b) The advisory committee on patient transfers is composed
23 of the following members appointed by the board:

24 (1) two physicians who have been in active practice in
25 a rural area;

26 (2) two physicians who have been in active practice in
27 an urban area;

1 (3) two hospital administrators who have been in
2 active hospital administration in a rural area, one representing a
3 public hospital and one representing a private hospital;

4 (4) two hospital administrators who have been in
5 active hospital administration in an urban area, one representing a
6 public hospital and one representing a private hospital;

7 (5) an emergency medical technician;

8 (6) a person serving as a volunteer to an emergency
9 medical services provider; and

10 (7) two consumer members.

11 SECTION 86. Section 241.055, Health and Safety Code, is
12 amended to conform to Section 8, Chapter 1027 (H.B. 18), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 Sec. 241.055. CIVIL PENALTY. (a) A hospital is liable for
15 a civil penalty if the hospital:

16 (1) [that] does not timely adopt, implement, and
17 enforce a patient transfer policy in accordance with Section
18 [Sections] 241.027;

19 (2) executes patient transfer agreements but does not
20 implement the agreements in accordance with Section [and] 241.028;
21 or

22 (3) engages in an activity governed by the rules
23 adopted under Section 241.029 but does not comply with the rules.

24 (b) The [is--liable--for--a] civil penalty may be set in an
25 amount of not more than \$1,000 for each day of violation and for
26 each act of violation.

27 (c) [t b] In determining the amount of the penalty, the

1 district court shall consider:

- 2 (1) the hospital's previous violations;
- 3 (2) the seriousness of the violation;
- 4 (3) whether the health and safety of the public was
- 5 threatened by the violation; and
- 6 (4) the demonstrated good faith of the hospital.

7 SECTION 87. Section 241.056, Health and Safety Code, is

8 amended to conform to Section 9, Chapter 1027 (H.B. 18), Acts of

9 the 71st Legislature, Regular Session, 1989, by amending the

10 section heading and Subsection (a) to read as follows:

11 Sec. 241.056. SUIT BY PERSON HARMED [~~BY--FAILURE--TO--ADOPT,~~

12 ~~IMPLEMENT,~~--OR--ENFORCE--PATIENT--TRANSFER--POLICY]. (a) A person who

13 is harmed by a violation under Section 241.055 [~~the--failure--of--a~~

14 ~~hospital--to--timely--adopt,--implement,--or--enforce--a--patient--transfer~~

15 ~~policy--in--accordance--with--Sections--241.027--and--241.028]~~ may

16 petition a district court for appropriate injunctive relief.

17 SECTION 88. Section 242.003(a), Health and Safety Code, is

18 amended to conform to Section 9, Chapter 1085 (S.B. 487), Acts of

19 the 71st Legislature, Regular Session, 1989, to read as follows:

20 (a) Except as otherwise provided, this [~~This~~] chapter does

21 not apply to:

- 22 (1) a hotel or other similar place that furnishes only
- 23 food, lodging, or both, to its guests;
- 24 (2) a hospital;
- 25 (3) an establishment conducted by or for the adherents
- 26 of a well-recognized church or religious denomination for the
- 27 purpose of providing facilities for the care or treatment of the

1 sick who depend exclusively on prayer or spiritual means for
2 healing, without the use of any drug or material remedy, if the
3 establishment complies with safety, sanitary, and quarantine laws
4 and rules;

5 (4) an establishment that furnishes, in addition to
6 food, shelter, and laundry, only baths and massages;

7 (5) an institution operated by a person licensed by
8 the Texas Board of Chiropractic Examiners;

9 (6) a facility that:

10 (A) primarily engages in training, habilitation,
11 rehabilitation, or education of clients or residents;

12 (B) is operated under the jurisdiction of a
13 state or federal agency, including the Texas Rehabilitation
14 Commission, Texas Department of Mental Health and Mental
15 Retardation, Texas Department of Human Services, Texas Commission
16 for the Blind, Texas Commission on Alcohol and Drug Abuse,
17 institutional division of the Texas Department of Criminal Justice
18 [Corrections], and the Veteran's Administration; and

19 (C) is certified through inspection or
20 evaluation as meeting the standards established by the state or
21 federal agency; and

22 (7) a foster care type residential facility that
23 serves fewer than five persons and operates under rules adopted by
24 the Texas Department of Human Services.

25 SECTION 89. Section 242.046(a), Health and Safety Code, is
26 amended to conform to Section 12, Chapter 1085 (S.B. 487), Acts of
27 the 71st Legislature, Regular Session, 1989, to read as follows:

1 (a) The department shall hold an [at-least-one] open hearing
2 [each-year] in a [each] licensed institution, other than an
3 institution that provides maternity care, if the department has
4 taken a punitive action against the institution in the preceding 12
5 months or if the department receives a complaint from an ombudsman,
6 advocate, resident, or relative of a resident relating to a serious
7 or potentially serious problem in the institution and the
8 department has reasonable cause to believe the complaint is valid.
9 The department is not required to hold more than one open meeting
10 in a particular institution in each year [to-hear-any-complaints-of
11 substandard-care-or-licensing-violations].

12 SECTION 90. Subchapter B, Chapter 242, Health and Safety
13 Code, is amended to conform to Section 12, Chapter 1085 (S.B. 487),
14 Acts of the 71st Legislature, Regular Session, 1989, by adding
15 Section 242.048 to read as follows:

16 Sec. 242.048. LICENSING SURVEYS. The department shall
17 provide a team to conduct surveys to validate findings of licensing
18 surveys. The purpose of validation surveys is to assure that
19 survey teams throughout the state survey in a fair and consistent
20 manner. A facility subjected to a validation survey must correct
21 deficiencies cited by the validation team but is not subject to
22 punitive action for those deficiencies.

23 SECTION 91. Section 242.133, Health and Safety Code, is
24 amended to conform to Sections 1 and 2, Chapter 538 (H.B. 3042),
25 Acts of the 71st Legislature, Regular Session, 1989, by amending
26 Subsection (d) and adding Subsection (g) to read as follows:

27 (d) The petitioner, [must--file--a--signed--and--written

1 complaint] not later than the 90th day after the date on which the
2 person's employment is suspended or terminated, must bring suit or
3 notify the Texas Employment Commission of the petitioner's intent
4 to sue under this section. A petitioner who notifies the Texas
5 Employment Commission under this subsection must bring suit not
6 later than the 90th day after the date of the delivery of the
7 notice to the commission. On receipt of the notice, the commission
8 shall notify the institution of the petitioner's intent to bring
9 suit under this section.

10 (g) Each institution shall require each employee of the
11 institution, as a condition of employment with the institution, to
12 sign a statement that the employee understands the employee's
13 rights under this section. The statement must be part of the
14 statement required under Section 242.122. If an institution does
15 not require an employee to read and sign the statement, the periods
16 under Subsection (d) do not apply, and the petitioner must bring
17 suit not later than the second anniversary of the date on which the
18 person's employment is suspended or terminated.

19 SECTION 92. Subchapter E, Chapter 242, Health and Safety
20 Code, is amended to conform to Section 13, Chapter 1085 (S.B. 487),
21 Acts of the 71st Legislature, Regular Session, 1989, by adding
22 Section 242.134 to read as follows:

23 Sec. 242.134. REPORTS RELATING TO RESIDENT DEATHS. (a) An
24 institution licensed under this chapter shall submit a report to
25 the department within 10 working days after the date a resident of
26 the institution dies.

27 (b) The institution must make the report on a form

1 prescribed by the department. The report must contain the:

2 (1) name and age of the deceased;

3 (2) official cause of death listed on the death
4 certificate;

5 (3) date, time, and place of death; and

6 (4) name and address of the institution in which the
7 deceased resided.

8 (c) A record under this section is confidential and not
9 subject to the provisions of the open records law, Chapter 424,
10 Acts of the 63rd Legislature, Regular Session, 1973 (Article
11 6252-17a, Vernon's Texas Civil Statutes). However, a licensed
12 institution shall make available historical statistics on all
13 required information on request of an applicant or applicant's
14 representative.

15 SECTION 93. Section 242.154, Health and Safety Code, is
16 amended to conform to Section 11, Chapter 1085 (S.B. 487), Acts of
17 the 71st Legislature, Regular Session, 1989, by adding Subsection
18 (f) to read as follows:

19 (f) The department may issue a permit to an employee of a
20 state or federal agency listed in Section 242.003(a)(6)(B).

21 SECTION 94. Subchapter H, Chapter 242, Health and Safety
22 Code, is repealed to conform to Section 2 of Chapter 1181
23 (S.B. 332), and Section 4 of Chapter 1225 (H.B. 1466), Acts of the
24 71st Legislature, Regular Session, 1989.

25 SECTION 95. Section 246.002(3), Health and Safety Code, is
26 amended to conform to Section 1, Chapter 770 (H.B. 1475), Acts of
27 the 71st Legislature, Regular Session, 1989, to read as follows:

1 (3) "Continuing care" means the furnishing of a living
2 unit [~~board--and--lodging~~], together with personal care services,
3 [~~and~~] nursing services, medical services, or other health-related
4 services, regardless of whether the services and the living unit
5 [~~lodging~~] are provided at the same location:

6 (A) to an individual who is not related by
7 consanguinity or affinity to the person furnishing the care; and

8 (B) under a contract [~~an--agreement~~] that
9 requires the payment of an entrance fee and that is effective
10 either for the life of the individual or for more than one year.

11 SECTION 96. Section 246.024, Health and Safety Code, is
12 amended to conform to Section 2, Chapter 770 (H.B. 1475), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A
15 certificate of authority may not be transferred without the prior
16 approval of [~~unless~~] the commissioner [~~approves-the-transfer~~].

17 SECTION 97. Section 246.025, Health and Safety Code, is
18 amended to conform to Section 2, Chapter 770 (H.B. 1475), Acts of
19 the 71st Legislature, Regular Session, 1989, to read as follows:

20 Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF
21 AUTHORITY. The commissioner may suspend or revoke a provider's
22 certificate of authority if the provider:

23 (1) draws on its entrance fee escrow in an amount
24 greater than provided for by Section 246.073;

25 (2) draws on its loan reserve fund escrow in an amount
26 greater than provided for by Section 246.078; or

27 (3) intentionally violates this chapter.

1 SECTION 98. Section 246.043, Health and Safety Code, is
2 amended to conform to Section 8, Chapter 622 (S.B. 224), Acts of
3 the 71st Legislature, Regular Session, 1989, to read as follows:

4 Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover
5 page of a disclosure statement must:

6 (1) state, in a prominent location and in [boldfaced]
7 type that is boldfaced, capitalized, underlined, or otherwise set
8 out from the surrounding written material so as to be conspicuous,
9 the date of the statement; and

10 (2) include a statement that this chapter requires the
11 delivery of the disclosure statement to a contracting party before
12 the execution of a continuing care contract, but that the
13 disclosure statement has not been approved by a governmental agency
14 or representative to ensure the accuracy of its information.

15 SECTION 99. Section 246.050, Health and Safety Code, is
16 amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of
17 the 71st Legislature, Regular Session, 1989, to read as follows:

18 Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL
19 INFORMATION. (a) The disclosure statement must:

20 (1) describe any provisions made or to be made to
21 provide reserve funding or security to enable the provider to fully
22 perform its obligations under a continuing care contract at a
23 facility, including:

24 (A) the establishment of escrow accounts,
25 trusts, or reserve funds and the manner in which those funds will
26 be invested; and

27 (B) the name and experience of any individual in

1 the direct employment of the provider who will make the investment
2 decisions; and

3 (2) provide financial statements of the provider,
4 including:

5 (A) a balance sheet as of the end of the most
6 recent fiscal year; and

7 (B) [~~the--provider's~~] income statements and a
8 statement of cash flow for each of the three most recent fiscal
9 years that the provider has been in existence.

10 (b) Financial statements required by Subsection (a)(2) must
11 be prepared in accordance with generally accepted accounting
12 principles and must be audited by an independent certified public
13 accountant, who shall state in the audit report whether the
14 financial statements were prepared in accordance with those
15 principles.

16 SECTION 100. Section 246.051, Health and Safety Code, is
17 amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of
18 the 71st Legislature, Regular Session, 1989, to read as follows:

19 Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL
20 INCOME STATEMENTS. The disclosure statement must contain estimated
21 annual income statements for the facility for at least five fiscal
22 years, including:

23 (1) [~~a--beginning--cash--balance--consistent--with--the~~
24 ~~income-statement-required-under-Section-246.050-or-7-if-operation-of~~
25 ~~the-facility-has--not--begun-7--consistent--with--the--statement--of~~
26 ~~anticipated-source-and-application--of-funds-required-under-Section~~
27 ~~246.052,~~

1 [+2+] anticipated earning on any cash reserves;

2 (2) [+3+] estimates of net receipts from entrance
3 fees, other than entrance fees included in the statement of
4 anticipated source and application of funds required under Section
5 246.052, minus estimated entrance fee refunds, including a
6 description of the actuarial basis and method of calculation for
7 the projection of entrance fee receipts;

8 (3) [+4+] an estimate of gifts or bequests to be
9 relied on to meet operating expenses;

10 (4) [+5+] a projection of estimated income from fees
11 and charges, excluding entrance fees, that:

12 (A) states individual rates anticipated to be
13 charged; and

14 (B) includes a description of the assumptions
15 used for computing the estimated occupancy rate of the facility and
16 the effect on the income of the facility of any government
17 subsidies for health care services to be provided under the
18 continuing care contract;

19 (5) [+6+] a projection of the facility's operating
20 expenses, including:

21 (A) a description of the assumptions used in
22 computing the expenses; and

23 (B) a separate allowance for the replacement of
24 equipment and furnishings and anticipated major structural repairs
25 or additions; and

26 (6) [+7+] an estimate of annual payments of principal
27 and interest required by a mortgage loan or other long-term

1 financing arrangement relating to the facility.

2 SECTION 101. Section 246.053, Health and Safety Code, is
3 amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of
4 the 71st Legislature, Regular Session, 1989, to read as follows:

5 Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the
6 standard contract form used by a provider must be attached as an
7 exhibit to each disclosure statement.

8 (b) The standard contract form must specify the refund
9 provisions of Sections 246.056 and 246.057.

10 SECTION 102. Section 246.056, Health and Safety Code, is
11 amended to conform to Section 8 of Chapter 622 (S.B. 224) and
12 Section 3 of Chapter 770 (H.B. 1475), Acts of the 71st Legislature,
13 Regular Session, 1989, to read as follows:

14 Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE.

15 (a) A person who executes a continuing care contract with a
16 provider may rescind the contract at any time before the later of
17 midnight of the seventh day, or a later day if specified in the
18 contract:

19 (1) after the date on which the contract is executed;

20 or

21 (2) after the date on which the person receives a
22 disclosure statement that meets the requirements of this
23 subchapter.

24 (b) A resident who executes a continuing care contract may
25 not be required to move into the facility before the expiration of
26 the [~~seven-day~~] period during which the contract may be rescinded.

27 (c) If a contract is rescinded under this section, any money

1 or property transferred to the provider, other than periodic
2 charges specified in the contract and applicable only to the period
3 a living unit was actually occupied by the resident, shall be
4 refunded not later than the 30th day after the date of rescission.

5 (d) Each continuing care contract must include the following
6 statement or a substantially equivalent statement [state] in
7 [boldfaced] type that is boldfaced, capitalized, underlined, or
8 otherwise set out from the surrounding written material so as to be
9 conspicuous:

10 [††] "You may cancel this contract at any time prior
11 to midnight of the seventh day, or a later day if specified in the
12 contract, after the date on which you sign this contract or you
13 receive the facility's disclosure statement, whichever occurs
14 later. If you elect to cancel the contract, you must do so by
15 written notice and you will be entitled to receive a refund of all
16 assets transferred other than periodic charges applicable to your
17 occupancy of a living unit."

18 (e) Each continuing contract also must include the following
19 statement in type that is boldfaced, capitalized, underlined, or
20 otherwise set out from the surrounding written material so as to be
21 conspicuous: [†-and

22 [†2] "This document, if executed, constitutes a legal
23 and binding contract between you and _____. You may wish
24 to consult a legal or financial advisor before signing, although it
25 is not required that you do so to make this contract binding."

26 SECTION 103. Section 246.058, Health and Safety Code, is
27 amended to conform to Section 10, Chapter 770 (H.B. 1475), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that
3 files a ~~[an-annual]~~ disclosure statement under Section 246.041 or
4 246.054 shall pay to the commissioner:

5 (1) a filing fee of \$500; and

6 (2) a fee of not more than \$2 for each living unit in
7 the facility, excluding a unit devoted to that portion of the
8 facility that is a licensed nursing home.

9 SECTION 104. Section 246.072, Health and Safety Code, is
10 amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 Sec. 246.072. RELEASE OR RETURN OF ENTRANCE FEE. Unless the
13 escrow agent receives a written request from or on behalf of a
14 provider ~~[payee]~~, a resident, or the personal representative of a
15 resident for the return of an entrance fee under Section 246.056,
16 the agent shall release the fee to the provider or~~[7]~~ place the fee
17 in a loan reserve fund escrow~~[7-or-return-the-fee-to-the-payee-as~~
18 ~~provided-by-this-subchapter]~~.

19 SECTION 105. Section 246.073, Health and Safety Code, is
20 amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of
21 the 71st Legislature, Regular Session, 1989, to read as follows:

22 Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as
23 provided by Subsection (b), an escrow agent shall release an
24 entrance fee to the provider if:

25 (1) a minimum of 50 percent of the number of living
26 units in the facility have been reserved for residents, as
27 evidenced by:

1 (A) uncanceled executed continuing care
2 contracts with those residents; and

3 (B) the receipt by the agent of entrance fee
4 deposits of at least 10 percent of the entrance fee designated in
5 each contract;

6 (2) the total amount of aggregate entrance fees
7 received or receivable by the provider under binding continuing
8 care contracts, the anticipated proceeds of any first mortgage loan
9 or other long-term financing commitment described under Subdivision
10 (3), and funds from other sources in the actual possession of the
11 provider are equal to or more than the total amount of:

12 (A) 90 percent of the aggregate cost of
13 constructing or purchasing, equipping, and furnishing the facility;

14 (B) 90 percent of the funds estimated, in the
15 statement of anticipated source and application of funds included
16 in the disclosure statement, to be necessary to cover initial
17 losses of the facility; and

18 (C) 90 percent of the amount of any loan reserve
19 fund escrow required to be maintained by the provider under Section
20 246.077; and

21 (3) a commitment has been received by the provider for
22 any permanent mortgage loan or other long-term financing described
23 in the statement of anticipated source and application of funds
24 included in the current disclosure statement and any conditions of
25 the commitment before disbursement of funds have been substantially
26 satisfied, other than completion of the construction or closing on
27 the purchase of the facility; and:

1 (A) if construction of the facility has not been
2 substantially completed:

3 (i) all necessary government permits or
4 approvals have been obtained;

5 (ii) the provider and the general
6 contractor responsible for construction of the facility have
7 entered into a maximum price contract;

8 (iii) a recognized surety authorized to do
9 business in this state has executed in favor of the provider a bond
10 covering faithful performance of the construction contract by the
11 general contractor and the payment of all obligations under the
12 contract;

13 (iv) the provider has entered a loan
14 agreement for an interim construction loan in an amount that, when
15 combined with the amount of entrance fees in escrow plus the amount
16 of funds from other sources in the actual possession of the
17 provider, equals or exceeds the estimated cost of constructing,
18 equipping, and furnishing the facility;

19 (v) the lender has disbursed not less than
20 10 percent of the amount of the construction loan for physical
21 construction or completed site preparation work; and

22 (vi) the provider has placed orders at
23 firm prices for not less than 50 percent of the value of items
24 necessary for equipping and furnishing the facility in accordance
25 with the description in the disclosure statement, including any
26 installation charges; or

27 (B) if construction or purchase of the facility

1 has been substantially completed:

2 (i) an occupancy permit covering the
3 living unit has been issued by the local government that has
4 authority to issue the permit; and

5 (ii) if the entrance fee applies to a
6 living unit that has been previously occupied, the living unit is
7 available for occupancy by the new resident.

8 (b) Before the date on which the loan reserve fund escrow
9 required under Section 246.077 is first established, the aggregate
10 amount of entrance fees that may be released to the provider under
11 this section may not exceed an amount equal to the aggregate amount
12 of entrance fees received or receivable by the provider under
13 binding continuing care contracts minus the amount of entrance fees
14 received or receivable that are required to be maintained initially
15 in the loan reserve fund escrow.

16 SECTION 106. Section 246.074, Health and Safety Code, is
17 amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of
18 the 71st Legislature, Regular Session, 1989, to read as follows:

19 Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent
20 shall return an entrance fee to the person who paid it if the fee
21 is not released to the provider or placed in the loan reserve fund
22 escrow required under Section 246.077 within:

23 (1) 36 months after the date on which any portion of
24 the entrance fee is received by the provider; or

25 (2) a longer time specified by the provider in the
26 disclosure statement delivered with the continuing care contract of
27 the person who paid the fee.

1 SECTION 107. Section 246.077, Health and Safety Code, is
2 amended to conform to Section 5, Chapter 770 (H.B. 1475), Acts of
3 the 71st Legislature, Regular Session, 1989, to read as follows:

4 Sec. 246.077. LOAN RESERVE FUND ESCROW. (a) When a
5 facility is first occupied by a resident, the provider shall
6 establish and maintain in an escrow account with a bank or trust
7 company, as escrow agent, that is located in this state a reserve
8 fund [~~portion--of-all-entrance-fees-received-by-the-provider-in-an~~
9 ~~amount~~] equal to the total of all principal and interest payments
10 due during the next 12 months on any first mortgage loan or other
11 long-term financing arrangement for the facility. The requirements
12 of this section may be met in whole or in part by other reserve
13 funds held for the purpose of meeting loan obligations if the total
14 amount equals or exceeds the amount required by this subsection.

15 (b) At the option of the facility, the loan reserve fund
16 escrow amount may exclude the portion of principal and interest
17 payments applicable to that portion of the facility that is a
18 licensed nursing home.

19 (c) The provider shall maintain the loan reserve fund escrow
20 in an account that is fully covered by federal deposit insurance
21 and is separate from the provider's business account or in other
22 accounts or investments approved by the commissioner. The funds in
23 the reserve fund escrow account may be invested, with earnings
24 payable to the provider.

25 SECTION 108. Section 246.078, Health and Safety Code, is
26 amended to conform to Section 5, Chapter 770 (H.B. 1475), Acts of
27 the 71st Legislature, Regular Session, 1989, to read as follows:

1 Sec. 246.078. RELEASE OF LOAN RESERVE FUND ESCROW. (a) The
2 escrow agent may release an amount equal to not more than
3 one-twelfth of the loan reserve fund required by Section 246.077
4 ~~[original-principal-balance-of-the-escrow-account]~~ if the provider
5 requests the release in writing.

6 (b) The escrow agent must give written notice to the board
7 not later than the 11th day before the date of the release.

8 (c) The escrow agent may not release funds from the loan
9 reserve fund escrow under this section more than once during a
10 calendar year. A provider at any time may apply to the
11 commissioner for the withdrawal of all or part of the loan reserve
12 escrow funds. The provider may withdraw the funds on the approval
13 of the withdrawal by the commissioner. The application must be
14 made and the approval given as provided by rule.

15 (d) The provider must repay to the loan reserve fund escrow
16 account the amount released to the provider under Subsection (a) or
17 (c) not later than 18 months after the date the amount is released.
18 The commissioner may place the provider or facility under
19 supervision under Section 246.091 or take any other appropriate
20 action as provided by law if the provider does not repay the loan
21 reserve fund escrow account within the required period.

22 SECTION 109. Section 246.079(a), Health and Safety Code, is
23 amended to conform to Section 9, Chapter 770 (H.B. 1475), Acts of
24 the 71st Legislature, Regular Session, 1989, to read as follows:

25 (a) A provider who operates a facility that existed on
26 September 1, 1987, must comply with the filing requirements imposed
27 under Section 246.041 and the escrow requirements imposed under

1 Sections 246.077 and 246.078 [~~this--subchapter~~] not later than
2 September 1, 1990.

3 SECTION 110. Chapter 246, Health and Safety Code, is amended
4 to conform to Section 4, Chapter 770 (H.B. 1475), Acts of the 71st
5 Legislature, Regular Session, 1989, by adding Section 246.080 to
6 read as follows:

7 Sec. 246.080. APPLICABILITY. Sections 246.071-246.076 do
8 not apply to a facility that on September 1, 1987, was completed
9 and occupied by at least one person.

10 SECTION 111. Sections 246.091(a) and (c), Health and Safety
11 Code, are amended to conform to Section 6, Chapter 770 (H.B. 1475),
12 Acts of the 71st Legislature, Regular Session, 1989, to read as
13 follows:

14 (a) The commissioner may place a provider or facility under
15 [~~into~~] supervision if:

16 (1) the provider draws on the provider's entrance fee
17 escrow in an amount greater than permitted by Section 246.073
18 [~~requests-release-of-more-than--one-twelfth--of--the--reserve--fund~~
19 ~~escrow-required-under-Section-246-077~~];

20 (2) the provider draws on the provider's loan reserve
21 fund escrow in an amount greater than permitted or more frequently
22 than permitted by Section 246.078 [~~requests-release-of-the-reserve~~
23 ~~fund-escrow-more-than-once-in-a-12-month-period~~];

24 (3) the commissioner determines, after a complaint and
25 investigation, that the provider is financially unsound or is
26 unable to meet the income or available cash projections previously
27 filed by the provider and that the ability of the provider to fully

1 perform its obligations under continuing care contracts is
2 endangered; or

3 (4) the provider is bankrupt, insolvent, or has filed
4 for protection from creditors under a federal or state
5 reorganization, bankruptcy, or insolvency law.

6 (c) The commissioner may provide that the provider
7 [~~facility~~] may not, during the supervision period and without the
8 prior approval of the commissioner or the supervisor:

9 (1) dispose of, convey, or encumber its assets;

10 (2) withdraw its bank accounts;

11 (3) lend its funds;

12 (4) invest its funds;

13 (5) transfer its property;

14 (6) incur a debt, obligation, or liability; or

15 (7) merge or consolidate with another facility.

16 SECTION 112. Section 246.092(a), Health and Safety Code, is
17 amended to conform to Section 7, Chapter 770 (H.B. 1475), Acts of
18 the 71st Legislature, Regular Session, 1989, to read as follows:

19 (a) The commissioner shall request the attorney general to
20 apply to a district court of this state, or to the federal
21 bankruptcy court that has exercised jurisdiction over a provider or
22 facility, for an order directing the appointment of a trustee to
23 rehabilitate or liquidate the facility if the commissioner elects
24 not to place the facility under [~~into~~] supervision and:

25 (1) the provider draws from the provider's loan
26 reserve fund escrow an amount greater than permitted by [~~requests~~
27 ~~release--of--more--than--one-twelfth--of--the--reserve--fund--escrow~~

1 ~~required-under~~] Section 246.078 [~~246-077~~];

2 (2) the provider does not repay the loan reserve fund
3 escrow as required by Section 246.078 [~~requests-release-of-the~~
4 ~~reserve-fund-escrow-more-than-once-in-a-12-month-period~~];

5 (3) the board determines, after a complaint and
6 investigation, that the provider is financially unsound or is
7 unable to meet the income or available cash projections previously
8 filed by the provider and that the ability of the provider to fully
9 perform its obligations under continuing care contracts is
10 endangered; or

11 (4) the provider is bankrupt, insolvent, or has filed
12 for protection from creditors under a federal or state
13 reorganization, bankruptcy, or insolvency law.

14 SECTION 113. Section 246.114, Health and Safety Code, is
15 amended to conform to Section 8, Chapter 770 (H.B. 1475), Acts of
16 the 71st Legislature, Regular Session, 1989, by adding Subsection
17 (d) to read as follows:

18 (d) The commissioner may require an actuarial review of a
19 facility before the end of the five-year interval in which the
20 facility would otherwise be required to file an actuarial review
21 if, in the opinion of the commissioner, the facility exhibits
22 conditions of financial instability warranting an earlier review.

23 SECTION 114. Subtitle B, Title 4, Health and Safety Code, is
24 amended to conform to Section 15, Chapter 1085 (S.B. 487), Acts of
25 the 71st Legislature, Regular Session, 1989, by adding Chapter 247
26 to read as follows:

1 CHAPTER 247. PERSONAL CARE FACILITIES

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 247.001. SHORT TITLE. This chapter may be cited as the
4 Personal Care Facility Licensing Act.

5 Sec. 247.002. DEFINITIONS. In this chapter:

6 (1) "Board" means the Texas Board of Health.

7 (2) "Department" means the Texas Department of Health.

8 (3) "Personal care facility" means a place in which a
9 person provides or attempts to provide a resident with personal
10 care services.

11 (4) "Personal care services" means:

12 (A) assistance with meals, dressing, movement,
13 bathing, or other personal needs or maintenance;

14 (B) the administration of medication by a person
15 licensed to administer medication or the assistance with or
16 supervision of medication; or

17 (C) general supervision or oversight of the
18 physical and mental well-being of a person who needs assistance to
19 maintain a private and independent residence in a personal care
20 facility or who needs assistance to manage the person's personal
21 life, regardless of whether a guardian has been appointed for the
22 person.

23 Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as
24 provided by Subsection (b), Chapter 242 does not apply to a
25 personal care facility licensed under this chapter.

26 (b) Subchapter D, Chapter 242, applies to a personal care
27 facility, and the department shall administer and enforce that

1 subchapter for a personal care facility in the same manner it is
2 administered and enforced for a nursing home.

3 [Sections 247.004-247.020 reserved for expansion]

4 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

5 Sec. 247.021. LICENSE REQUIRED. A person may not establish
6 or operate a personal care facility without a license issued under
7 this chapter.

8 Sec. 247.022. LICENSE APPLICATION. (a) An applicant for a
9 personal care facility license must submit an application to the
10 department on a form prescribed by the department.

11 (b) Each application must be accompanied by a nonrefundable
12 license fee in an amount set by the board.

13 Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
14 department shall issue a license if, after inspection and
15 investigation, it finds that the applicant and the personal care
16 facility meet the requirements of this chapter and the standards
17 adopted under this chapter.

18 (b) To renew a license, the licensee must submit to the
19 department the annual license renewal fee.

20 Sec. 247.024. LICENSE FEES. (a) The board shall set fees
21 imposed by this chapter in amounts reasonable and necessary to
22 defray the cost of administering this chapter.

23 (b) All fees collected under this chapter shall be deposited
24 in the state treasury to the credit of the personal care facility
25 licensing fund and may be appropriated to the department only to
26 administer and enforce this chapter.

27 Sec. 247.025. ADOPTION OF RULES. The board shall adopt

1 rules necessary to implement this chapter, including requirements
2 for the issuance, renewal, denial, suspension, and revocation of a
3 license to operate a personal care facility.

4 Sec. 247.026. MINIMUM STANDARDS. (a) The board by rule
5 shall prescribe minimum standards to protect the health and safety
6 of a personal care facility resident.

7 (b) The standards must:

8 (1) clearly differentiate a personal care facility
9 from an institution required to be licensed under Chapter 242; and

10 (2) ensure quality care and protection of the
11 residents' health and safety without excessive cost.

12 Sec. 247.027. INSPECTIONS. The department may inspect a
13 personal care facility at reasonable times as necessary to assure
14 compliance with this chapter.

15 [Sections 247.028-247.040 reserved for expansion]

16 SUBCHAPTER C. GENERAL ENFORCEMENT

17 Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.

18 (a) The department may deny, suspend, or revoke a license for a
19 violation of this chapter or a rule adopted under this chapter.

20 (b) The denial, suspension, or revocation of a license by
21 the department and the appeal from that action are governed by the
22 procedures for a contested case hearing under the Administrative
23 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
24 Civil Statutes).

25 Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a)
26 If the department finds a personal care facility operating in
27 violation of the standards prescribed under this chapter and the

1 violations create an immediate threat to the health and safety of a
2 resident in the facility, the department shall suspend the license
3 or order immediate closing of all or part of the facility.

4 (b) The order suspending a license under Subsection (a) is
5 effective immediately on written notice to the license holder or on
6 the date specified in the order.

7 (c) The order suspending the license and ordering closure of
8 all or part of a personal care facility is valid for 10 days after
9 its effective date.

10 Sec. 247.043. INJUNCTION. (a) The department may petition
11 a district court for a temporary restraining order to restrain a
12 continuing violation of the standards or licensing requirements
13 provided under this chapter if the department finds that the
14 violation creates an immediate threat to the health and safety of
15 the personal care facility residents.

16 (b) A district court, on petition of the department and on a
17 finding by the court that a person is violating the standards or
18 licensing requirements provided under this chapter, may by
19 injunction:

20 (1) prohibit a person from continuing a violation of
21 the standards or licensing requirements provided under this
22 chapter;

23 (2) restrain the establishment or operation of a
24 personal care facility without a license issued under this chapter;
25 or

26 (3) grant any other injunctive relief warranted by the
27 facts.

1 (c) The attorney general may institute and conduct a suit
2 authorized by this section at the request of the department.

3 (d) Venue for a suit brought under this section is in the
4 county in which the personal care facility is located or in Travis
5 County.

6 Sec. 247.044. CIVIL PENALTIES. A person who violates this
7 chapter or who fails to comply with a rule authorized by this
8 chapter determined by the department to threaten the health and
9 safety of a resident is subject to a civil penalty of not less than
10 \$100 or more than \$10,000 for each act of violation. Each day of a
11 continuing violation constitutes a separate ground of recovery.

12 Sec. 247.045. TRANSITION. The department shall grant to a
13 personal care facility licensed on or before December 31, 1990,
14 under Chapter 242 a temporary permit to continue operation until
15 the department performs any inspection or investigation required by
16 this chapter.

17 [Sections 247.046-247.050 reserved for expansion]

18 SUBCHAPTER D. ADVISORY COMMITTEE ON PERSONAL
19 CARE FACILITIES

20 Sec. 247.051. ADVISORY COMMITTEE. (a) The Advisory
21 Committee on Personal Care Facilities consists of nine members
22 appointed by the board. The commissioner of health shall appoint
23 one staff member from the department to serve as a nonvoting
24 advisory member.

25 (b) The board shall appoint the advisory committee to
26 provide for a balanced representation of personal care providers
27 and consumers and shall appoint one member who has expertise in

1 life safety code regulations. At least one of the provider members
2 must be representative of a nonprofit facility.

3 (c) The committee shall elect the presiding officer from
4 among its members.

5 (d) The committee shall advise the department on standards
6 for licensing personal care facilities and on the implementation of
7 this chapter.

8 SECTION 115. Subtitle B, Title 4, Health and Safety Code, is
9 amended to conform to Section 16, Chapter 1085 (S.B. 487), Acts of
10 the 71st Legislature, Regular Session, 1989, by adding Chapter 248
11 to read as follows:

12 CHAPTER 248. SPECIAL CARE FACILITIES

13 SUBCHAPTER A. GENERAL PROVISIONS

14 Sec. 248.001. SHORT TITLE. This chapter may be cited as the
15 Texas Special Care Facility Licensing Act.

16 Sec. 248.002. DEFINITIONS. In this chapter:

17 (1) "Board" means the Texas Board of Health.

18 (2) "Department" means the Texas Department of Health.

19 (3) "Medical care" means care that is:

20 (A) required for improving life span and quality
21 of life, for comfort, for prevention and treatment of illness, and
22 for maintenance of bodily and mental function;

23 (B) under the continued supervision of a
24 physician; and

25 (C) provided by a registered nurse or licensed
26 vocational nurse available to carry out a physician's plan of care
27 for a resident.

1 (4) "Nursing care" means services provided by nursing
2 personnel as prescribed by a physician, including services to:

3 (A) promote and maintain health;

4 (B) prevent illness and disability;

5 (C) manage health care during acute and chronic
6 phases of illness;

7 (D) provide guidance and counseling of
8 individuals and families; and

9 (E) provide referrals to physicians, other
10 health care providers, and community resources when appropriate.

11 (5) "Person" means an individual, organization,
12 establishment, or association of any kind.

13 (6) "Resident" means an individual accepted for care
14 in a special care facility.

15 (7) "Services" means the provision of medical or
16 nursing care, assistance, or treatment by special care facility
17 personnel, volunteers, or other qualified individuals, agencies, or
18 staff of an organization or other entity to meet a resident's
19 medical, nursing, social, spiritual, and emotional needs.

20 (8) "Special care facility" means an institution or
21 establishment that provides a continuum of nursing or medical care
22 or services primarily to persons with acquired immune deficiency
23 syndrome or other terminal illnesses. The term includes a special
24 residential care facility.

25 Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

26 (1) a home health agency required to be licensed under
27 Chapter 142;

1 (2) a person required to be licensed under Chapter 241
2 (Texas Hospital Licensing Law);

3 (3) an institution required to be licensed under
4 Chapter 242;

5 (4) an ambulatory surgical center required to be
6 licensed under Chapter 243 (Texas Ambulatory Surgical Center
7 Licensing Act);

8 (5) a birthing center required to be licensed under
9 Chapter 244 (Texas Birthing Center Licensing Act);

10 (6) a facility required to be licensed under Chapter
11 245 (Texas Abortion Facility Reporting and Licensing Act); or

12 (7) a person providing medical or nursing care or
13 services under a license or permit issued under other state law.

14 [Sections 248.004-248.020 reserved for expansion]

15 SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

16 Sec. 248.021. LICENSE REQUIRED. A person may not establish
17 or operate a special care facility unless the person holds a
18 license issued under this chapter.

19 Sec. 248.022. APPLICATION. (a) An applicant for a license
20 must submit an application to the department on a form prescribed
21 by the department and in accordance with board rules.

22 (b) Each application must be accompanied by a nonrefundable
23 license fee in an amount set by the board.

24 (c) The department may require that an application be
25 approved by the local health authority or other local official for
26 compliance with municipal ordinances on building construction, fire
27 prevention, and sanitation.

1 Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
2 department shall issue a license to an applicant if on inspection
3 and investigation it finds that the applicant meets the
4 requirements of this chapter and the rules adopted by the board.

5 (b) A license shall be renewed at the times and in
6 accordance with the rules established by the board.

7 Sec. 248.024. FEES. (a) The board shall establish a
8 license application fee in the amount of \$25 for each facility bed
9 or \$200, whichever is greater, but the fees may not exceed \$1,000.

10 (b) The board may establish other reasonable and necessary
11 fees in amounts that are adequate, with the license application and
12 license renewal fees, to collect sufficient revenue to meet the
13 expenses necessary to administer this chapter. The fees may
14 include construction plan review and inspection fees.

15 (c) All fees collected under this chapter are nonrefundable.

16 (d) All fees received by the department shall be deposited
17 to the credit of the general revenue fund and may be appropriated
18 only to the department to administer this chapter.

19 Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license
20 issued under this chapter is not transferable or assignable.

21 (b) A special care facility shall post in plain sight the
22 license issued under this chapter.

23 Sec. 248.026. DUTIES OF BOARD. (a) The board shall adopt
24 rules necessary to implement this chapter. The rules must
25 establish minimum standards for special care facilities relating
26 to:

27 (1) the issuance, renewal, denial, suspension, and

1 revocation of the license required by this chapter;

2 (2) the qualifications, duties, and supervision of
3 professional and nonprofessional personnel and volunteers;

4 (3) residents' rights;

5 (4) medical and nursing care and services provided by
6 a license holder;

7 (5) the organizational structure, lines of authority,
8 delegation of responsibility, and operation of a special care
9 facility;

10 (6) records of care and services kept by the license
11 holder, including the disposal or destruction of those records;

12 (7) safety, fire prevention, and sanitary provisions;

13 (8) transfer of residents in a medically appropriate
14 manner from or to a special care facility;

15 (9) construction plan approval and inspection; and

16 (10) any aspects of a special care facility as
17 necessary to protect the public or residents of the facility.

18 (b) Subsection (a) does not authorize the board to establish
19 the qualifications of licensed health care providers or permit the
20 board to authorize persons to provide health care services who are
21 not authorized to provide those services under other state law.

22 Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no
23 local regulations in effect or enforced in the area in which a
24 special care facility is located, the facility's construction must
25 conform to the minimum standards established by the board.

26 (b) Construction of a facility is subject to construction
27 plan approval by the department.

1 Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The
2 department may inspect a special care facility and its records at
3 reasonable times as necessary to ensure compliance with this
4 chapter.

5 (b) The department shall investigate each complaint received
6 regarding a special care facility.

7 [Sections 248.029-248.050 reserved for expansion]

8 SUBCHAPTER C. GENERAL ENFORCEMENT

9 Sec. 248.051. LICENSE DENIAL, SUSPENSION, OR REVOCATION.

10 (a) The department may deny, revoke, or suspend a license issued
11 under this chapter for a violation of this chapter or the rules
12 adopted under this chapter.

13 (b) Except as provided by Section 248.052, the procedures by
14 which the department denies, revokes, or suspends a license and by
15 which those actions are appealed are governed by the department's
16 rules for a contested case hearing and by the Administrative
17 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
18 Civil Statutes).

19 Sec. 248.052. EMERGENCY SUSPENSION. The department may
20 issue an emergency order to suspend any license issued under this
21 chapter if the department has reasonable cause to believe that the
22 conduct of a license holder creates an immediate danger to the
23 public health and safety. An emergency suspension is effective
24 immediately without a hearing on notice to the license holder. On
25 written request of the license holder, the department shall conduct
26 a hearing not earlier than the 10th day or later than the 30th day
27 after the date the hearing request is received to determine if the

1 emergency suspension is to be continued, modified, or rescinded.
2 The hearing and any appeal are governed by the department's rules
3 for a contested case hearing and the Administrative Procedure and
4 Texas Register Act (Article 6252-13a, Vernon's Texas Civil
5 Statutes).

6 Sec. 248.053. INJUNCTION. (a) The department may request
7 that the attorney general petition a district court to restrain a
8 license holder or other person from continuing to violate this
9 chapter or any rule adopted by the board under this chapter. Venue
10 for a suit for injunctive relief is in Travis County.

11 (b) On application for injunctive relief and a finding that
12 a license holder or other person has violated this chapter or board
13 rules, the district court shall grant the injunctive relief that
14 the facts warrant.

15 Sec. 248.054. CIVIL PENALTY. A license holder or person who
16 violates this chapter or a rule adopted by the board under this
17 chapter is liable for a civil penalty, to be imposed by a district
18 court, of not more than \$1,000 for each day of violation. All
19 penalties collected under this section shall be deposited to the
20 credit of the general revenue fund.

21 Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly
22 establishes or operates a special care facility without a license
23 issued under this chapter commits an offense.

24 (b) An offense under this section is a Class B misdemeanor.

25 (c) Each day of a continuing violation constitutes a
26 separate offense.

27 SECTION 116. Section 262.030, Health and Safety Code, is

1 amended to conform to Section 5, Chapter 1248 (H.B. 1285), Acts of
2 the 71st Legislature, Regular Session, 1989, to read as follows:

3 Sec. 262.030. MEDICAL RECORDS. (a) The preservation,
4 microfilming, destruction, or other disposition of the records of
5 the authority is subject to Subtitle C, Title 6, Local Government
6 Code [~~The governing body may authorize the board to dispose of~~
7 ~~medical records of a patient on or after the 10th anniversary of~~
8 ~~the date on which the patient was last treated in the hospital.~~
9 ~~However, if the patient is under the age of 10 at the time of the~~
10 ~~last treatment, the disposal of the medical records may not be made~~
11 ~~until on or after the patient's 20th birthday].~~

12 (b) The period that medical records are retained shall be in
13 accordance with rules relating to the retention of medical records
14 adopted by the Texas Department of Health and with other applicable
15 federal and state laws and rules [~~The governing body may authorize~~
16 ~~the board to transfer, destroy, or otherwise dispose of any other~~
17 ~~authority records that are more than five years old and that the~~
18 ~~board determines not to be of use to the authority as official~~
19 ~~records].~~

20 [~~c) The hospital may not destroy medical records that~~
21 ~~relate to a matter involved in litigation if the hospital knows the~~
22 ~~litigation has not been finally resolved.~~

23 [~~d) A district may microfilm and retain medical records and~~
24 ~~any other records that the board considers necessary to preserve in~~
25 ~~the manner provided by Sections 181.002-181.005, Local Government~~
26 ~~Code.]~~

27 SECTION 117. Subchapter C, Chapter 262, Health and Safety

1 Code, is amended to conform to Section 1, Chapter 701 (S.B. 1479),
2 Acts of the 71st Legislature, Regular Session, 1989, by adding
3 Section 262.034 to read as follows:

4 Sec. 262.034. NURSING HOMES. (a) This section applies to
5 an authority created by a municipality with a population of more
6 than 24,000 that is located in a county with a population of 1.5
7 million or more.

8 (b) The authority may construct, acquire, own, operate,
9 enlarge, improve, furnish, or equip one or more nursing homes or
10 similar facilities for the care of the elderly. The nursing home
11 or similar facility may be located outside the municipal limits.

12 (c) The authority may lease or enter into an operations or
13 management agreement relating to all or part of a nursing home or
14 similar facility for the care of the elderly that is owned by the
15 authority. The authority may sell or close all or part of the
16 nursing home or similar facility.

17 (d) The authority may issue revenue bonds and other notes in
18 accordance with this chapter to acquire, construct, or improve a
19 nursing home or similar facility for the care of the elderly.

20 (e) For the purposes of this section, a nursing home or
21 similar facility for the care of the elderly is considered to be a
22 hospital project under Chapter 223 (Hospital Project Financing
23 Act).

24 SECTION 118. Section 281.073, Health and Safety Code, is
25 amended to conform to Section 6, Chapter 1248 (H.B. 1285), Acts of
26 the 71st Legislature, Regular Session, 1989, to read as follows:

27 Sec. 281.073. DISPOSITION OF DISTRICT RECORDS. (a) The

1 preservation, microfilming, destruction, or other disposition of
2 the records of a district is subject to Subtitle C, Title 6, Local
3 Government Code. [~~The commissioners court may authorize the board~~
4 ~~to transfer, destroy, or otherwise dispose of district records,~~
5 ~~other than medical records, that are:~~

6 [~~(1) more than five years old; and~~
7 [~~(2) determined by the board to be of no further use~~
8 ~~to the district as official records.~~]

9 (b) The period that medical records are retained shall be in
10 accordance with rules relating to the retention of medical records
11 adopted by the Texas Department of Health and with other applicable
12 federal and state laws and rules [~~The commissioners court may~~
13 ~~authorize the disposal of the medical records of a patient on or~~
14 ~~after the 10th anniversary of the date on which the patient was~~
15 ~~last treated in the hospital].~~

16 [~~(c) If a patient was younger than 18 years of age when the~~
17 ~~patient was last treated, the hospital may authorize the disposal~~
18 ~~of medical records relating to the patient only on or after the~~
19 ~~date of the patient's 20th birthday or on or after the 10th~~
20 ~~anniversary of the date on which the patient was last treated,~~
21 ~~whichever date is later.~~

22 [~~(d) The hospital may not destroy medical records that~~
23 ~~relate to any matter that is involved in litigation if the hospital~~
24 ~~knows the litigation has not been finally resolved.~~

25 [~~(e) A district may microfilm and retain medical records and~~
26 ~~any other records the board considers necessary to preserve in the~~
27 ~~manner provided by Sections 181.002-181.005, Local Government~~

1 ~~Code.]~~

2 SECTION 119. Sections 282.062 and 282.063, Health and Safety
3 Code, are amended to conform to Section 2, Chapter 166 (H.B. 1051),
4 Acts of the 71st Legislature, Regular Session, 1989, to read as
5 follows:

6 Sec. 282.062. TREASURER. (a) The county treasurer of the
7 county in which the district is located serves as treasurer of the
8 construction and maintenance fund and the interest and sinking fund
9 of the district.

10 (b) All money to be credited to the construction and
11 maintenance fund or the interest and sinking fund [~~Funds--received~~
12 ~~by-the-district~~] shall be paid to the treasurer.

13 (c) [~~District---funds--shall--be--deposited--in--the--county~~
14 ~~depositories-in-the-manner-required-by-law-for-county-depositories-~~
15 ~~Interest-collected-on-those-funds-belongs-to-the-district-~~

16 [~~{d}~~] The treasurer may not pay money from the construction
17 and maintenance fund or the interest and sinking fund [~~district~~
18 ~~funds~~] unless the treasurer receives a warrant ordering the payment
19 signed by the district board chairman or another district officer
20 designated by the board.

21 [~~{e}~~--The-treasurer-shall-maintain-in-the-district's-name-the
22 ~~funds--created-by-the-board-and-shall-place-money-in-those-funds-as~~
23 ~~the-board-by-resolution-directs-~~]

24 (d) [~~{f}~~] The treasurer shall open a construction and
25 maintenance fund account and an interest and sinking fund [~~an~~
26 account with the district and shall keep a record of all of the
27 district's money received for the accounts [~~account~~] and paid from

1 the accounts [~~account~~]. The treasurer may not pay money from the
2 accounts [~~account~~] except on a voucher signed by the chairman or
3 two board members.

4 (e) [~~g~~] The treasurer shall maintain a file of the payment
5 orders from the accounts.

6 (f) [~~h~~] As required by the board or the commissioners
7 court, the treasurer shall give a correct accounting to the board
8 or the commissioners court of all matters relating to the accounts
9 [~~district-finances~~].

10 (g) [~~i~~] For services on behalf of the district, the
11 treasurer is entitled to receive an amount equal to:

12 (1) one-fourth of one percent of all money received by
13 the treasurer for the construction and maintenance fund or the
14 interest and sinking fund [~~on-behalf-of-the-district~~]; and

15 (2) one-eighth of one percent of all money received by
16 the treasurer and paid out of the construction and maintenance fund
17 or the interest and sinking fund [~~paid-out-by-the-treasurer-on--the~~
18 ~~order~~] of the district.

19 (h) [~~j~~] The treasurer is not entitled to receive a
20 commission under Subsection (g) [~~i~~] on district money the
21 treasurer receives from the preceding treasurer.

22 Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS. (a) The
23 treasurer shall maintain a construction and maintenance fund and an
24 interest and sinking fund for the district and shall place money in
25 those funds as required by this chapter or as the board by
26 resolution directs. All other money received by the district shall
27 be placed in a fund or funds as provided by the board.

1 (b) The amount of taxes collected that is necessary to pay
2 the principal of and interest on the bonds as they mature shall be
3 credited to the interest and sinking fund. All money [~~other-funds~~
4 ~~and-property~~] received by the district from the sale of bonds shall
5 be credited to the construction and maintenance fund.

6 (c) The treasurer shall pay from the construction and
7 maintenance fund or from a fund or funds designated by the board
8 the expenses, debts, and obligations of the district created after
9 the filing of the original petition and incurred in the creation,
10 operation, and maintenance of the district, other than the
11 principal of and interest on bonds.

12 (d) The interest and sinking fund may be invested for the
13 benefit of the district in bonds and securities approved by the
14 attorney general.

15 (e) The construction and maintenance fund and interest and
16 sinking fund shall be held for the purposes for which they were
17 created. If money is improperly paid from either fund, the
18 commissioners court may require the county treasurer to transfer to
19 the fund from the district account the amount necessary to restore
20 that amount.

21 (f) District funds shall be deposited in the county
22 depositories in the manner required by law for county depositories.
23 Interest collected on those funds belongs to the district.

24 SECTION 120. Subchapter D, Chapter 282, Health and Safety
25 Code, is amended to conform to Section 1, Chapter 166 (H.B. 1051),
26 Acts of the 71st Legislature, Regular Session, 1989, by adding
27 Sections 282.064 and 282.065 to read as follows:

1 Sec. 282.064. FISCAL YEAR. (a) The district operates on
2 the fiscal year established by the board.

3 (b) The fiscal year may not be changed if revenue bonds of
4 the district are outstanding.

5 (c) The fiscal year may not be changed more than once in any
6 24-month period.

7 Sec. 282.065. ANNUAL AUDIT; OPEN RECORDS. (a) The board
8 annually shall have an audit made of the financial condition of the
9 district.

10 (b) The audit and other district records are open to
11 inspection during regular business hours at the district's
12 principal office.

13 SECTION 121. Subtitle D, Title 4, Health and Safety Code, is
14 amended to conform to Sections 1.01 through 9.01, Chapter 206
15 (S.B. 907), Acts of the 71st Legislature, Regular Session, 1989, by
16 adding Chapter 286 to read as follows:

17 CHAPTER 286. HOSPITAL DISTRICTS CREATED

18 BY VOTER APPROVAL

19 SUBCHAPTER A. GENERAL PROVISIONS

20 Sec. 286.001. DEFINITIONS. In this chapter:

21 (1) "Board" means the board of directors of the
22 district.

23 (2) "District" means a hospital district created under
24 this chapter.

25 (3) "Director" means a member of the board.

26 Sec. 286.002. DISTRICT AUTHORIZATION. A hospital district
27 may be created and established and, if created, must be maintained,

1 operated, and financed in the manner provided by Article IX,
2 Section 9, of the Texas Constitution and by this chapter.

3 [Sections 286.003-286.020 reserved for expansion]

4 SUBCHAPTER B. CREATION OF DISTRICT

5 Sec. 286.021. PETITION FOR CREATION OF DISTRICT. (a)

6 Before a district located wholly in one county may be created, the
7 county judge of that county must receive a petition signed by at
8 least 100 registered voters of the territory of the proposed
9 district.

10 (b) Before a district that contains territory located in
11 more than one county may be created, the county judge of each
12 county in which the proposed district will be located must receive
13 a petition signed by at least 100 registered voters of the
14 territory of the county in which the judge presides and of the
15 proposed district.

16 (c) If there are fewer than 100 registered voters in any
17 area for which a separate petition must be filed, the petition must
18 be signed by a majority of the registered voters in the area.

19 Sec. 286.022. CONTENTS OF PETITION. (a) The petition
20 prescribed by Section 286.021 must show:

21 (1) that the district is to be created and is to
22 operate under Article IX, Section 9, of the Texas Constitution;

23 (2) the name of the proposed district;

24 (3) the district's boundaries as designated by metes
25 and bounds or other sufficient legal description;

26 (4) that none of the territory in the district is
27 included in another hospital district;

1 (5) the names of the temporary directors the
2 commissioners court must appoint under Section 286.030 or a request
3 that the commissioners court appoint temporary directors;

4 (6) the maximum tax rate to be voted on at the
5 creation election, which may not exceed 75 cents on the \$100
6 valuation of all taxable property in the district;

7 (7) the method by which the permanent directors will
8 be elected, as provided by Subsection (c); and

9 (8) the mailing address of each petitioner.

10 (b) The petition must provide for the appointment of the
11 same number of temporary directors as there will be permanent
12 directors.

13 (c) The petition may provide:

14 (1) the number of directors for the district, which
15 number must be an odd number; and

16 (2) the method by which directors are to be elected,
17 whether at large, by place, or both, so that a specific number of
18 directors are elected from each commissioner precinct and a
19 specific number are elected at large.

20 Sec. 286.023. FILING OF PETITION; HEARING; ORDERING
21 ELECTION. (a) If the petition is in proper form, the county judge
22 shall receive the petition and shall file the petition with the
23 county clerk.

24 (b) At the next regular or special session of the
25 commissioners court held after the petition is filed with the
26 county clerk, the commissioners court shall set a place, date, and
27 time for the hearing to consider the petition.

1 (c) The county clerk shall issue a notice of the hearing in
2 accordance with the open meetings law, Chapter 271, Acts of the
3 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's
4 Texas Civil Statutes).

5 (d) At the time and place set for the hearing, the
6 commissioners court shall consider the petition. The commissioners
7 court shall grant the petition if the court finds that the petition
8 is in proper form and contains the information required by Section
9 286.022.

10 (e) If a petition is granted, the commissioners court shall
11 order an election to confirm the district's creation and to
12 authorize the levy of a tax not to exceed the amount prescribed by
13 the petition on each \$100 of the taxable value of all taxable
14 property in the district.

15 (f) If the petition indicates that the proposed district
16 will contain territory in more than one county, the commissioners
17 court may not order an election until the commissioners court of
18 each county in which the district will be located has granted the
19 petition.

20 (g) The election shall be held after the 45th day and on or
21 before the 60th day after the date the election is ordered.

22 (h) Section 41.001(a), Election Code, does not apply to an
23 election ordered under this section.

24 Sec. 286.024. ELECTION ORDER. The order calling the
25 election must state:

26 (1) the nature of the election, including the
27 proposition that is to appear on the ballot;

1 (2) the date of the election;

2 (3) the hours during which the polls will be open; and

3 (4) the location of the polling places.

4 Sec. 286.025. NOTICE. (a) The commissioners court shall
5 give notice of the election by publishing a substantial copy of the
6 election order in a newspaper with general circulation in the
7 proposed district once a week for two consecutive weeks.

8 (b) The first publication must appear before the 35th day
9 before the date set for the election.

10 Sec. 286.026. BALLOT PROPOSITION. The ballot for the
11 election shall be printed to permit voting for or against the
12 proposition: "The creation of the _____ (name of district)
13 Hospital District and the levy of annual taxes for hospital
14 purposes at a rate not to exceed _____ (insert the amount
15 prescribed by the petition, not to exceed 75 cents) cents on each
16 \$100 valuation of all taxable property in the district."

17 Sec. 286.027. ELECTION RESULT. (a) Except as provided in
18 Subsections (b) and (c), a district is created and organized under
19 this chapter if a majority of the votes cast in the election favor
20 creation of the district.

21 (b) If the proposed district contains territory in more than
22 one county, a majority of the votes cast in each county must also
23 favor creation of the district.

24 (c) If a majority of the votes cast in a county within the
25 proposed district are against the creation of the district and a
26 majority of the votes cast in the remaining county or counties
27 favor creation of the district, the district may be created only in

1 the counties voting in favor of the proposed district.

2 (d) If a majority of those voting at the election vote
3 against creation of the district, another election on the question
4 of creating the district may not be held before the first
5 anniversary of the most recent election concerning the creation of
6 the district.

7 Sec. 286.028. COMMISSIONERS COURT ORDER. When a district is
8 created, the commissioners court of each county in which the
9 district is located shall enter an order in its minutes that reads
10 substantially as follows:

11 "Whereas, at an election held on the _____ day of
12 _____, 19__, in that part of _____ County, State of
13 Texas, described as (insert description unless the district is
14 countywide), there was submitted to the qualified voters the
15 question of whether that territory should be formed into a hospital
16 district under state law; and

17 "Whereas, at the election _____ votes were cast in favor of
18 formation of the district and _____ votes were cast against
19 formation; and

20 "Whereas, the formation of the hospital district received the
21 affirmative vote of the majority of the votes cast at the election
22 as provided by law;

23 "Now, therefore, the Commissioners Court of _____
24 County, State of Texas, finds and orders that the tract described
25 in this order has been duly and legally formed into a hospital
26 district (or a portion thereof) under the name of _____, under
27 Article IX, Section 9, of the Texas Constitution, and has the

1 powers vested by law in the district."

2 Sec. 286.029. OVERLAPPING DISTRICTS. (a) If the territory
3 in one or more districts overlaps, the commissioners court of the
4 county in which the most recently created district is located by
5 order shall exclude the overlapping territory from that district.

6 (b) For purposes of this section, a district is created on
7 the date the election approving its creation was held. If the
8 elections approving the creation of two or more districts are held
9 on the same date, the most recently created district is the
10 district for which the hearing required by Section 286.023 was most
11 recently held.

12 (c) The fact that a district is created with boundaries that
13 overlap the boundaries of another district does not affect the
14 validity of either district.

15 Sec. 286.030. TEMPORARY DIRECTORS. (a) On the date a
16 commissioners court enters the order required by Section 286.028,
17 the commissioners court shall also appoint the temporary directors
18 of the district.

19 (b) If the petition prescribed by Section 286.021
20 specifically names temporary directors, the commissioners court
21 shall name those persons to serve as temporary directors of the
22 district. If the petition requests that the commissioners court
23 appoint the temporary directors, the court shall appoint the
24 appropriate number of persons to serve as temporary directors of
25 the district. If the petition fails to name or state the number of
26 directors, there are five directors.

27 (c) If the district is located in more than one county, the

1 commissioners courts shall each appoint a percentage of temporary
2 directors equal to the ratio that the number of district residents
3 in the county bears to the total number of district residents.

4 (d) From the time the district is created under Section
5 286.027 until the elected directors take office, the temporary
6 directors serve as directors of the district.

7 (e) The commissioners court shall fill a vacancy in the
8 office of temporary director by appointment.

9 [Sections 286.031-286.040 reserved for expansion]

10 SUBCHAPTER C. DISTRICT ADMINISTRATION

11 Sec. 286.041. BOARD OF DIRECTORS. The directors shall be
12 elected in accordance with the petition prescribed by Section
13 286.021.

14 Sec. 286.042. DIRECTOR'S ELECTION. (a) The initial
15 directors shall be elected at an election to be held on the first
16 Saturday in May following the creation of the district.

17 (b) If the directors are elected at large:

18 (1) the appropriate number of candidates receiving the
19 highest number of votes at the initial election of directors are
20 directors for the district;

21 (2) the number of directors equal to a majority of the
22 directors who receive the highest number of votes at the initial
23 election serve for a term of two years; and

24 (3) the remaining directors serve for a term of one
25 year.

26 (c) If the directors are elected by place:

27 (1) the candidate for a place receiving the highest

1 number of votes for election to that place is a director for the
2 district;

3 (2) a director elected to fill an even-numbered place
4 at the initial election serves for a term of one year; and

5 (3) a director elected to fill an odd-numbered place
6 at the initial election serves for a term of two years.

7 (d) If the directors are elected from commissioners
8 precincts and at large:

9 (1) the number of candidates equal to the number of
10 directors to be elected from each precinct who receive the highest
11 number of votes from a commissioner precinct are directors for that
12 precinct;

13 (2) the number of candidates equal to the number of
14 directors to be elected at large who receive the highest number of
15 votes from the district at large are directors for the district at
16 large;

17 (3) a candidate elected from an odd-numbered precinct
18 at the initial election serves for a term of two years;

19 (4) a candidate elected from an even-numbered precinct
20 at the initial election serves for a term of one year;

21 (5) a candidate elected as the director from the
22 district at large at the initial election serves for a term of two
23 years; and

24 (6) if more than one director is elected at large,
25 half of the directors elected serve two-year terms, and the other
26 half serve one-year terms.

27 (e) After the initial election of directors, an election

1 shall be held on the first Saturday in May each year to elect the
2 appropriate number of successor directors for two-year terms.

3 Sec. 286.043. NOTICE OF ELECTION. Before the 35th day
4 before the date of an election of directors, notice of the election
5 shall be published one time in a newspaper with general circulation
6 in the district.

7 Sec. 286.044. PETITION. (a) A person who wishes to have
8 the person's name printed on the ballot as a candidate for director
9 must file an application with the secretary of the board.

10 (b) The application must be filed with the secretary not
11 later than the 31st day before the date of the election.

12 (c) If directors are elected by place, the application must
13 specify the place for which the applicant is to be a candidate.

14 (d) If the directors are elected from commissioners
15 precincts and at large, the application must specify:

16 (1) the commissioner precinct the candidate wishes to
17 represent; or

18 (2) that the candidate wishes to represent the
19 district at large.

20 Sec. 286.045. QUALIFICATIONS FOR OFFICE. (a) To be
21 eligible to be a candidate for or to serve as a director, a person
22 must be:

23 (1) a resident of the district; and

24 (2) a qualified voter.

25 (b) In addition to the qualifications required by Subsection
26 (a), if directors are elected from commissioners precincts, a
27 person who is elected from a commissioner precinct or who is

1 appointed to fill a vacancy for a commissioner precinct must be a
2 resident of that commissioner precinct.

3 (c) An employee of the district may not serve as a director.

4 Sec. 286.046. BOND. (a) Before assuming the duties of the
5 office, each director must execute a bond for \$5,000 payable to the
6 district, conditioned on the faithful performance of the person's
7 duties as director.

8 (b) The bond shall be kept in the permanent records of the
9 district.

10 (c) The board may pay for directors' bonds with district
11 funds.

12 Sec. 286.047. BOARD VACANCY. A vacancy in the office of
13 director shall be filled for the unexpired term by appointment by
14 the remaining directors.

15 Sec. 286.048. OFFICERS. (a) The board shall elect from
16 among its members a president and a vice-president.

17 (b) The board shall appoint a secretary who need not be a
18 director.

19 Sec. 286.049. OFFICERS' TERMS; VACANCY. (a) Each officer
20 of the board serves for a term of one year.

21 (b) The board shall fill a vacancy in a board office for the
22 unexpired term.

23 Sec. 286.050. COMPENSATION. (a) Directors and officers
24 serve without compensation but may be reimbursed for actual
25 expenses incurred in the performance of official duties.

26 (b) Expenses reimbursed under this section must be:

27 (1) reported in the district's minute book or other

1 district records; and

2 (2) approved by the board.

3 Sec. 286.051. VOTING REQUIREMENT. A majority of the members
4 of the board voting must concur in a matter relating to the
5 business of the district.

6 Sec. 286.052. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND
7 ATTORNEY. (a) The board may appoint qualified persons as
8 administrator of the district, assistant administrator, and
9 attorney for the district.

10 (b) The administrator, assistant administrator, and attorney
11 serve at the will of the board.

12 (c) The administrator, assistant administrator, and attorney
13 are entitled to compensation as determined by the board.

14 (d) Before assuming the administrator's duties, the
15 administrator shall execute a bond payable to the hospital district
16 in an amount not less than \$5,000 as determined by the board,
17 conditioned on the faithful performance of the administrator's
18 duties under this chapter. The board may pay for the bond with
19 district funds.

20 Sec. 286.053. APPOINTMENTS TO STAFF. The board may:

21 (1) appoint to the staff any doctors the board
22 considers necessary for the efficient operation of the district;
23 and

24 (2) make temporary appointments the board considers
25 necessary.

26 Sec. 286.054. TECHNICIANS, NURSES, AND OTHER DISTRICT
27 EMPLOYEES. (a) The district may employ technicians, nurses,

1 fiscal agents, accountants, architects, additional attorneys, and
2 other necessary employees.

3 (b) The board may delegate to the administrator the
4 authority to employ persons for the district.

5 Sec. 286.055. GENERAL DUTIES OF ADMINISTRATOR. The
6 administrator shall:

7 (1) supervise the work and activities of the district;
8 and

9 (2) direct the general affairs of the district,
10 subject to the limitations prescribed by the board.

11 Sec. 286.056. RETIREMENT BENEFITS. The board may provide
12 retirement benefits for employees of the district by:

13 (1) establishing or administering a retirement
14 program; or

15 (2) electing to participate in the Texas County and
16 District Retirement System or in any other statewide retirement
17 system in which the district is eligible to participate.

18 [Sections 286.057-286.070 reserved for expansion]

19 SUBCHAPTER D. POWERS AND DUTIES

20 Sec. 286.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On
21 creation of a district, a county, municipality, or other
22 governmental entity in which the district is located shall convey
23 or transfer to the district:

24 (1) title to land, buildings, improvements, and
25 equipment related to the hospital system located wholly in the
26 district that are owned by the county, municipality, or other
27 governmental entity in which the district is located;

1 (2) operating funds and reserves for operating
2 expenses and funds that have been budgeted by the county,
3 municipality, or other governmental entity in which the district is
4 located to provide medical care for residents of the district for
5 the remainder of the fiscal year in which the district is
6 established;

7 (3) taxes levied by the county, municipality, or other
8 governmental entity in which the district is located for hospital
9 purposes for residents of the district for the year in which the
10 district is created; and

11 (4) funds established for payment of indebtedness
12 assumed by the district.

13 Sec. 286.072. LIMITATION ON GOVERNMENTAL ENTITY. On or
14 after creation of the district, a county, municipality, or other
15 governmental entity in which the district is located may not levy
16 taxes or issue bonds or other obligations for hospital purposes or
17 for providing medical care for the residents of the district.

18 Sec. 286.073. DISTRICT RESPONSIBILITIES. (a) On creation
19 of a district, the district:

20 (1) assumes full responsibility for operating hospital
21 facilities and for furnishing medical and hospital care for the
22 district's needy inhabitants;

23 (2) assumes any outstanding indebtedness incurred by a
24 county, municipality, or other governmental entity in which all or
25 part of the district is located in providing hospital care for
26 residents of the territory of the district before the district's
27 creation; and

1 (3) may operate or provide for the operation of a
2 mobile emergency medical service.

3 (b) If part of a county, municipality, or other governmental
4 entity is included in a district and part is not included in the
5 district, the amount of indebtedness the district assumes under
6 Subsection (a)(2) is that portion of the total outstanding
7 indebtedness of the county, municipality, or other entity for
8 hospital care for all residents of the county, municipality, or
9 other entity that the value of taxable property in the district
10 bears to the total value of taxable property in the county,
11 municipality, or other entity according to the last preceding
12 approved assessment rolls of the county, municipality, or other
13 entity before the district is confirmed.

14 Sec. 286.074. MANAGEMENT, CONTROL, AND ADMINISTRATION. The
15 board shall manage, control, and administer the hospital system and
16 the funds and resources of the district.

17 Sec. 286.075. DISTRICT RULES. The board may adopt rules
18 governing the operation of the hospital and hospital system and the
19 duties, functions, and responsibilities of district staff and
20 employees.

21 Sec. 286.076. METHODS AND PROCEDURES. The board may
22 prescribe:

23 (1) the method of making purchases and expenditures by
24 and for the district; and

25 (2) accounting and control procedures for the
26 district.

27 Sec. 286.077. HOSPITAL PROPERTY, FACILITIES, AND EQUIPMENT.

1 (a) The board shall determine:

2 (1) the type, number, and location of buildings
3 required to establish and maintain an adequate hospital system; and

4 (2) the type of equipment necessary for hospital care.

5 (b) The board may:

6 (1) acquire property, facilities, and equipment for
7 the district for use in the hospital system;

8 (2) mortgage or pledge the property, facilities, or
9 equipment acquired as security for the payment of the purchase
10 price;

11 (3) transfer by lease to physicians, individuals,
12 companies, corporations, or other legal entities, or acquire by
13 lease district hospital facilities; and

14 (4) sell or otherwise dispose of district property,
15 facilities, or equipment.

16 Sec. 286.078. CONSTRUCTION CONTRACTS. (a) The board may
17 enter into construction contracts for the district.

18 (b) The board may enter into construction contracts that
19 involve spending more than \$10,000 only after competitive bidding
20 as provided by Subchapter B, Chapter 271, Local Government Code.

21 (c) Article 5160, Revised Statutes, as it relates to
22 performance and payment bonds, applies to construction contracts
23 let by the district.

24 Sec. 286.079. DISTRICT OPERATING AND MANAGEMENT CONTRACTS.
25 The board may enter into operating or management contracts relating
26 to hospital facilities.

27 Sec. 286.080. EMINENT DOMAIN. (a) A district may exercise

1 the power of eminent domain to acquire a fee simple or other
2 interest in property located in the territory of the district if
3 the property interest is necessary to the exercise of the rights or
4 authority conferred by this chapter.

5 (b) A district must exercise the power of eminent domain in
6 the manner provided by Chapter 21, Property Code, but the district
7 is not required to deposit in the trial court money or a bond as
8 provided by Section 21.021(a), Property Code.

9 (c) In a condemnation proceeding brought by a district, the
10 district is not required to:

11 (1) pay in advance or give bond or other security for
12 costs in the trial court;

13 (2) give bond for the issuance of a temporary
14 restraining order or a temporary injunction; or

15 (3) give bond for costs or supersedeas on an appeal or
16 writ of error.

17 Sec. 286.081. EXPENSES FOR MOVING FACILITIES OF RAILROADS OR
18 UTILITIES. If, in exercising the power of eminent domain, the
19 board requires relocating, raising, lowering, rerouting, changing
20 the grade, or altering the construction of any railroad, highway,
21 pipeline, or electric transmission and electric distribution,
22 telegraph, or telephone lines, conduits, poles, or facilities, the
23 district must bear the actual cost of relocating, raising,
24 lowering, rerouting, changing the grade, or altering the
25 construction to provide comparable replacement without enhancement
26 of a facility, after deducting the net salvage value derived from
27 the old facility.

1 Sec. 286.082. INDIGENT CARE. (a) The district without
2 charge shall supply to a patient residing in the district the care
3 and treatment that the patient or a relative of the patient who is
4 legally responsible for the patient's support cannot pay.

5 (b) Not later than the first day of each operating year, the
6 district shall adopt an application procedure to determine
7 eligibility for assistance, as provided by Section 61.053.

8 (c) The administrator of the district may have an inquiry
9 made into the financial circumstances of:

10 (1) a patient residing in the district and admitted to
11 a district facility; and

12 (2) a relative of the patient who is legally
13 responsible for the patient's support.

14 (d) On finding that a patient or a relative of the patient
15 legally responsible for the patient's support can pay for all or
16 any part of the care and treatment provided by the district, the
17 administrator shall report that finding to the board, and the board
18 shall issue an order directing the patient or the relative to pay
19 the district each week a specified amount that the individual is
20 able to pay.

21 (e) The administrator may collect money owed to the district
22 from the estate of a patient or from that of a relative who was
23 legally responsible for the patient's support in the manner
24 provided by law for collection of expenses in the last illness of a
25 deceased person.

26 (f) If there is a dispute relating to an individual's
27 ability to pay or if the administrator has any doubt concerning an

1 individual's ability to pay, the board shall call witnesses, hear
2 and resolve the question, and issue a final order. An appeal from
3 a final order of the board must be made to a district court in the
4 county in which the district is located, and the substantial
5 evidence rule applies.

6 Sec. 286.083. REIMBURSEMENT FOR SERVICES. (a) The board
7 shall require reimbursement from a county, municipality, or public
8 hospital located outside the boundaries of the district for the
9 district's care and treatment of a sick, diseased, or injured
10 person of that county, municipality, or public hospital as provided
11 by Chapter 61 (Indigent Health Care and Treatment Act).

12 (b) The board shall require reimbursement from the sheriff
13 or police chief of a county or municipality for the district's care
14 and treatment of a person confined in a jail facility of the county
15 or municipality who is not a resident of the district.

16 (c) The board may contract with the state or federal
17 government for the state or federal government to reimburse the
18 district for treatment of a sick, diseased, or injured person.

19 Sec. 286.084. SERVICE CONTRACTS. The board may contract
20 with a municipality, county, special district, or other political
21 subdivision of the state or with a state or federal agency for the
22 district to:

23 (1) furnish a mobile emergency medical service; or
24 (2) provide for the investigatory or welfare needs of
25 inhabitants of the district.

26 Sec. 286.085. GIFTS AND ENDOWMENTS. On behalf of the
27 district, the board may accept gifts and endowments to be held in

1 trust for any purpose and under any direction, limitation, or
2 provision prescribed in writing by the donor that is consistent
3 with the proper management of the district.

4 Sec. 286.086. AUTHORITY TO SUE AND BE SUED. The board may
5 sue and be sued on behalf of the district.

6 [Sections 286.087-286.100 reserved for expansion]

7 SUBCHAPTER E. CHANGE IN BOUNDARIES OR

8 DISSOLUTION OF DISTRICT

9 Sec. 286.101. EXPANSION OF DISTRICT TERRITORY. (a)
10 Registered voters of a defined territory that is not included in a
11 district may file a petition with the secretary of the board
12 requesting the inclusion of the territory in the district. The
13 petition must be signed by at least 50 registered voters of the
14 territory or a majority of those voters, whichever is less.

15 (b) The board by order shall set a time and place to hold a
16 hearing on the petition to include the territory in the district.
17 The board shall set a date for the hearing that is after the 30th
18 day after the date the board issues the order.

19 (c) If after the hearing the board finds that annexation of
20 the territory into the district would be feasible and would benefit
21 the district, the board may approve the annexation by a resolution
22 entered in its minutes. The board is not required to include all
23 of the territory described in the petition if the board finds that
24 a modification or change is necessary or desirable.

25 (d) Annexation of territory is final when approved by a
26 majority of the voters at an election held in the district and by a
27 majority of the voters at a separate election held in the territory

1 to be annexed. If the district has outstanding debts or taxes, the
2 voters in the election to approve the annexation must also
3 determine if the annexed territory will assume its proportion of
4 the debts or taxes if added to the district.

5 (e) The election ballots shall be printed to provide for
6 voting for or against the following, as applicable:

7 (1) "Adding (description of territory to be added) to
8 the _____ Hospital District."

9 (2) "(Description of territory to be added) assuming
10 its proportionate share of the outstanding debts and taxes of the
11 _____ Hospital District, if it is added to the district."

12 (f) The election shall be held after the 45th day and on or
13 before the 60th day after the date the election is ordered. The
14 election shall be ordered and notice of the election shall be given
15 in the same manner as provided by Sections 286.024 and 286.025 for
16 ordering and giving notice of an election authorizing creation of
17 the district. Section 41.001(a), Election Code, does not apply to
18 an election held under this section.

19 Sec. 286.102. DISSOLUTION. (a) A district may be dissolved
20 as provided by this section.

21 (b) The board may order an election on the question of
22 dissolving the district and disposing of the district's assets and
23 obligations. The board shall order an election if the board
24 receives a petition requesting an election that is signed by a
25 number of residents of the district equal to at least 15 percent of
26 the registered voters in the district.

27 (c) The election shall be held not later than the 60th day

1 after the date the election is ordered. Section 41.001(a),
2 Election Code, does not apply to an election ordered under this
3 section.

4 (d) The ballot for the election shall be printed to permit
5 voting for or against the proposition: "The dissolution of the
6 _____ Hospital District." The election shall be held in
7 accordance with the applicable provisions of the Election Code.

8 (e) If a majority of the votes in the election favor
9 dissolution, the board shall find that the district is dissolved.
10 If a majority of the votes in the election do not favor
11 dissolution, the board shall continue to administer the district,
12 and another election on the question of dissolution may not be held
13 before the first anniversary of the most recent election to
14 dissolve the district.

15 Sec. 286.103. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If
16 a majority of the votes in the election favor dissolution, the
17 board shall:

18 (1) transfer the land, buildings, improvements,
19 equipment, and other assets that belong to the district to a county
20 or another governmental entity in the district; or

21 (2) administer the property, assets, and debts in
22 accordance with Section 286.104.

23 (b) If the district transfers the land, buildings,
24 improvements, equipment, and other assets to a county or other
25 governmental entity, the county or entity assumes all debts and
26 obligations of the district at the time of the transfer, and the
27 district is dissolved.

1 Sec. 286.104. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS
2 AFTER DISSOLUTION. (a) If the district does not transfer the
3 land, buildings, improvements, equipment, and other assets to a
4 county or another governmental entity in the district, the board
5 shall continue to control and administer the property, debts, and
6 assets of the district until all funds have been disposed of and
7 all district debts have been paid or settled.

8 (b) After the board finds that the district is dissolved,
9 the board shall:

10 (1) determine the debt owed by the district; and
11 (2) impose on the property included in the district's
12 tax rolls a tax that is in proportion of the debt to the property
13 value.

14 (c) The board may institute a suit to enforce payment of
15 taxes and to foreclose liens to secure the payment of taxes due the
16 district.

17 Sec. 286.105. RETURN OF SURPLUS TAX MONEY. (a) When all
18 outstanding debts and obligations of the district are paid, the
19 board shall order the secretary to return the pro rata share of all
20 unused tax money to each district taxpayer.

21 (b) A taxpayer may request that the taxpayer's share of
22 surplus tax money be credited to the taxpayer's county taxes. If a
23 taxpayer requests the credit, the board shall direct the secretary
24 to transmit the funds to the county tax assessor-collector.

25 Sec. 286.106. REPORT; DISSOLUTION ORDER. (a) After the
26 district has paid all its debts and has disposed of all its assets
27 and funds as prescribed by Sections 286.104 and 286.105, the board

1 shall file a written report with the commissioners court of each
2 county in which the district is located setting forth a summary of
3 the board's actions in dissolving the district.

4 (b) Not later than the 10th day after the date it receives
5 the report and determines that the requirements of this section
6 have been fulfilled, the commissioners court of each county shall
7 enter an order dissolving the district.

8 [Sections 286.107-286.120 reserved for expansion]

9 SUBCHAPTER F. DISTRICT FINANCES

10 Sec. 286.121. FISCAL YEAR. (a) The district operates on
11 the fiscal year established by the board.

12 (b) The fiscal year may not be changed if revenue bonds of
13 the district are outstanding or more than once in a 24-month
14 period.

15 Sec. 286.122. ANNUAL AUDIT. The board annually shall have
16 an audit made of the financial condition of the district.

17 Sec. 286.123. DISTRICT AUDIT AND RECORDS. The annual audit
18 and other district records are open to inspection during regular
19 business hours at the principal office of the district.

20 Sec. 286.124. ANNUAL BUDGET. (a) The administrator of the
21 district shall prepare a proposed annual budget for the district.

22 (b) The proposed budget must contain a complete financial
23 statement, including a statement of:

24 (1) the outstanding obligations of the district;
25 (2) the amount of cash on hand to the credit of each
26 fund of the district;

27 (3) the amount of money received by the district from

1 all sources during the previous year;

2 (4) the amount of money available to the district from
3 all sources during the ensuing year;

4 (5) the amount of the balances expected at the end of
5 the year in which the budget is being prepared;

6 (6) the estimated amount of revenues and balances
7 available to cover the proposed budget; and

8 (7) the estimated tax rate that will be required.

9 Sec. 286.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The
10 board shall hold a public hearing on the proposed annual budget.

11 (b) The board shall publish notice of the hearing in a
12 newspaper of general circulation in the district not later than the
13 10th day before the date of the hearing.

14 (c) Any resident of the district is entitled to be present
15 and participate at the hearing.

16 (d) At the conclusion of the hearing, the board shall adopt
17 a budget by acting on the budget proposed by the administrator.
18 The board may make any changes in the proposed budget that in its
19 judgment the interests of the taxpayers demand.

20 (e) The budget is effective only after adoption by the
21 board.

22 Sec. 286.126. AMENDING BUDGET. After adoption, the annual
23 budget may be amended on the board's approval.

24 Sec. 286.127. LIMITATION ON EXPENDITURES. Money may not be
25 spent for an expense not included in the annual budget or an
26 amendment to it.

27 Sec. 286.128. SWORN STATEMENT. As soon as practicable after

1 the close of the fiscal year, the administrator shall prepare for
2 the board a sworn statement of the amount of money that belongs to
3 the district and an account of the disbursements of that money.

4 Sec. 286.129. SPENDING AND INVESTMENT LIMITATIONS. (a)
5 Except as provided by Section 286.078(a) and by Sections 286.141,
6 286.144, and 286.145, the district may not incur a debt payable
7 from revenues of the district other than the revenues on hand or to
8 be on hand in the current and immediately following fiscal year of
9 the district.

10 (b) The board may invest operating, depreciation, or
11 building reserves only in funds or securities specified by Article
12 836 or 837, Revised Statutes.

13 Sec. 286.130. DEPOSITORY. (a) The board shall name at
14 least one bank to serve as depository for district funds.

15 (b) District funds, other than those invested as provided by
16 Section 286.129(b) and those transmitted to a bank of payment for
17 bonds or obligations issued or assumed by the district, shall be
18 deposited as received with the depository bank and must remain on
19 deposit. This subsection does not limit the power of the board to
20 place a portion of district funds on time deposit or to purchase
21 certificates of deposit.

22 (c) Before the district deposits funds in a bank in an
23 amount that exceeds the maximum amount secured by the Federal
24 Deposit Insurance Corporation, the bank must execute a bond or
25 other security in an amount sufficient to secure from loss the
26 district funds that exceed the amount secured by the Federal
27 Deposit Insurance Corporation.

1 [Sections 286.131-286.140 reserved for expansion]

2 SUBCHAPTER G. BONDS

3 Sec. 286.141. GENERAL OBLIGATION BONDS. The board may issue
4 and sell bonds authorized by an election in the name and on the
5 faith and credit of the hospital district to:

6 (1) purchase, construct, acquire, repair, or renovate
7 buildings or improvements;

8 (2) equip buildings or improvements for hospital
9 purposes; or

10 (3) acquire and operate a mobile emergency medical
11 service.

12 Sec. 286.142. TAXES TO PAY BONDS. (a) At the time the
13 bonds are issued by the district, the board shall levy a tax.

14 (b) The tax must be sufficient to create an interest and
15 sinking fund to pay the principal of and interest on the bonds as
16 they mature.

17 (c) In any year, the tax together with any other tax the
18 district levies may not exceed the limit approved by the voters at
19 the election authorizing the levy of taxes.

20 Sec. 286.143. BOND ELECTION. (a) The district may issue
21 general obligation bonds only if the bonds are authorized by a
22 majority of the qualified voters of the district voting at an
23 election called and held for that purpose.

24 (b) The board may order a bond election. The order calling
25 the election must state:

26 (1) the nature and date of the election;

27 (2) the hours during which the polls will be open;

1 (3) the location of the polling places;

2 (4) the amount of bonds to be authorized; and

3 (5) the maximum maturity of the bonds.

4 (c) Notice of a bond election shall be given as provided by
5 Article 704, Revised Statutes.

6 (d) The board shall canvass the returns and declare the
7 results of the election.

8 Sec. 286.144. REVENUE BONDS. (a) The board may issue
9 revenue bonds to:

10 (1) purchase, construct, acquire, repair, equip, or
11 renovate buildings or improvements for hospital purposes;

12 (2) acquire sites to be used for hospital purposes; or

13 (3) acquire and operate a mobile emergency medical
14 service to assist the district in carrying out its hospital
15 purposes.

16 (b) The bonds must be payable from and secured by a pledge
17 of all or part of the revenues derived from the operation of the
18 district's hospital system. The bonds may be additionally secured
19 by a mortgage or deed of trust lien on all or part of district
20 property.

21 (c) The bonds must be issued in the manner provided by
22 Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049
23 for issuance of revenue bonds by county hospital authorities.

24 Sec. 286.145. REFUNDING BONDS. (a) Refunding bonds of the
25 district may be issued to refund an outstanding indebtedness the
26 district has issued or assumed.

27 (b) The bonds must be issued in the manner provided by

1 Chapter 784, Acts of the 61st Legislature, Regular Session, 1969
2 (Article 717k-3, Vernon's Texas Civil Statutes).

3 (c) The refunding bonds may be sold and the proceeds applied
4 to the payment of outstanding indebtedness or may be exchanged in
5 whole or in part for not less than a similar principal amount of
6 outstanding indebtedness. If the refunding bonds are to be sold
7 and the proceeds applied to the payment of outstanding
8 indebtedness, the refunding bonds must be issued and payments made
9 in the manner provided by Chapter 503, Acts of the 54th
10 Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas
11 Civil Statutes).

12 Sec. 286.146. INTEREST AND MATURITY. District bonds must
13 mature not later than the 50th anniversary of the date of their
14 issuance and must bear interest at a rate not to exceed that
15 provided by Chapter 3, Acts of the 61st Legislature, Regular
16 Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

17 Sec. 286.147. EXECUTION OF BONDS. The president of the
18 board shall execute the bonds in the name of the district, and the
19 secretary of the board shall countersign the bonds in the manner
20 provided by the Texas Uniform Facsimile Signature of Public
21 Officials Act (Article 717j-1, Vernon's Texas Civil Statutes).

22 Sec. 286.148. APPROVAL AND REGISTRATION OF BONDS. (a)
23 District bonds are subject to the same requirements with regard to
24 approval by the attorney general and registration by the
25 comptroller as the law provides for approval and registration of
26 bonds issued by counties.

27 (b) On approval by the attorney general and registration by

1 the comptroller, the bonds are incontestable for any cause.

2 Sec. 286.149. BONDS AS INVESTMENTS. District bonds and
3 indebtedness assumed by the district are legal and authorized
4 investments for:

5 (1) banks;

6 (2) savings banks;

7 (3) trust companies;

8 (4) savings and loan associations;

9 (5) insurance companies;

10 (6) fiduciaries;

11 (7) trustees;

12 (8) guardians; and

13 (9) sinking funds of municipalities, counties, school
14 districts, and other political subdivisions of the state and other
15 public funds of the state and its agencies, including the permanent
16 school fund.

17 Sec. 286.150. BONDS AS SECURITY FOR DEPOSITS. District
18 bonds are eligible to secure deposits of public funds of the state
19 and of municipalities, counties, school districts, and other
20 political subdivisions of the state. The bonds are lawful and
21 sufficient security for deposits to the extent of their value if
22 accompanied by all unmatured coupons.

23 Sec. 286.151. TAX STATUS OF BONDS. Because the district
24 created under this chapter is a public entity performing an
25 essential public function, bonds issued by the district, any
26 transaction relating to the bonds, and profits made in the sale of
27 the bonds are free from taxation by the state or by any

1 municipality, county, special district, or other political
2 subdivision of the state.

3 [Sections 286.152-286.160 reserved for expansion]

4 SUBCHAPTER H. TAXES

5 Sec. 286.161. LEVY OF TAXES. (a) The board annually may
6 impose property taxes in an amount not to exceed the limit approved
7 by the voters at the election authorizing the levy of taxes.

8 (b) The tax rate for all purposes may not exceed 75 cents on
9 each \$100 valuation of all taxable property in the district.

10 (c) The taxes may be used to pay:

11 (1) the indebtedness issued or assumed by the
12 district; and

13 (2) the maintenance and operating expenses of the
14 district.

15 (d) The district may not impose taxes to pay the principal
16 of or interest on revenue bonds issued under this chapter.

17 Sec. 286.162. BOARD AUTHORITY. The board may impose taxes
18 for the entire year in which the district is created.

19 Sec. 286.163. ADOPTING TAX RATE. In adopting the tax rate,
20 the board shall consider the income of the district from sources
21 other than taxation.

22 Sec. 286.164. TAX ASSESSMENT AND COLLECTION. (a) The Tax
23 Code governs the appraisal, assessment, and collection of district
24 taxes.

25 (b) The board may provide for the appointment of a tax
26 assessor-collector for the district or may contract for the
27 assessment and collection of taxes as provided by the Tax Code.

1 [Sections 286.165-286.180 reserved for expansion]

2 SUBCHAPTER I. MISCELLANEOUS

3 Sec. 286.181. LIMITATION ON STATE ASSISTANCE. The state may
4 not become obligated for the support or maintenance of a hospital
5 district created under this chapter, and the legislature may not
6 make a direct appropriation for the construction, maintenance, or
7 improvement of a facility of the district.

8 SECTION 122. Section 343.001, Health and Safety Code, is
9 amended to conform to Section 1, Chapter 895 (S.B. 510), Acts of
10 the 71st Legislature, Regular Session, 1989, to read as follows:

11 Sec. 343.001. APPLICATION TO UNINCORPORATED AREA OF A COUNTY
12 HAVING A POPULATION OF 850,000 [~~27400,000~~] OR MORE. This chapter
13 applies to the unincorporated area of a county having a population
14 of 850,000 [~~27400,000~~] or more.

15 SECTION 123. Section 343.022(d), Health and Safety Code, is
16 amended to conform to Section 2, Chapter 895 (S.B. 510), Acts of
17 the 71st Legislature, Regular Session, 1989, to read as follows:

18 (d) The abatement procedures must require a hearing before
19 the county abates the nuisance if a hearing is requested. The
20 hearing may be conducted before the commissioners court or any
21 board, commission, or official designated by the commissioners
22 court. The commissioners court may designate a board, commission,
23 or official to conduct each hearing.

24 SECTION 124. Section 364.003(3), Health and Safety Code, is
25 amended to conform to Section 4, Chapter 1143 (S.B. 1519), Acts of
26 the 71st Legislature, Regular Session, 1989, to read as follows:

27 (3) "Public agency" means a district, municipality,

1 regional planning commission created under Chapter 391, Local
2 Government Code, or other political subdivision[7] or state agency
3 authorized to own and operate a solid waste collection,
4 transportation, or disposal facility or system.

5 SECTION 125. Subchapter A, Chapter 365, Health and Safety
6 Code, is amended to conform to Section 3, Chapter 639 (S.B. 1511),
7 Acts of the 71st Legislature, Regular Session, 1989, by adding
8 Section 365.005 to read as follows:

9 Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for
10 the prosecution of a criminal offense under Subchapter B or Section
11 365.032 or 365.033 or for a suit for injunctive relief under any of
12 those provisions is in the county in which the defendant resides,
13 in the county in which the offense or the violation occurs, or in
14 Travis County.

15 (b) If the attorney general or a local government brings a
16 suit for injunctive relief under Subchapter B or Section 365.032 or
17 365.033, a prevailing party may recover its reasonable attorney's
18 fees, court costs, and reasonable investigative costs incurred in
19 relation to the proceeding.

20 SECTION 126. Subchapter C, Chapter 365, Health and Safety
21 Code, is amended to conform to Section 1, Chapter 964 (H.B. 319),
22 Acts of the 71st Legislature, Regular Session, 1989, by adding
23 Section 365.034 to read as follows:

24 Sec. 365.034. COUNTY REGULATION OF JUNK OR REFUSE NEAR
25 PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of
26 a county may:

27 (1) by order prohibit the accumulation for more than

1 30 days of refuse or junk on a person's property within 50 feet of
2 a public highway in the county;

3 (2) provide for the removal and disposition of refuse
4 or junk accumulated near a public highway in violation of an order
5 adopted under this section; and

6 (3) provide for the assessment against a person who
7 owns the property from which refuse or junk is removed under
8 Subdivision (2) of the costs incurred by the county in removing and
9 disposing of the refuse or junk.

10 (b) Before the commissioners court takes any action to
11 remove or dispose of junk or refuse under this section, the court
12 shall send a notice by certified mail to the record owners of the
13 property on which the junk or refuse is accumulated in violation of
14 an order adopted under this section. The court may not remove or
15 dispose of the refuse or junk or assess the costs of the removal or
16 disposition against a property owner before the 30th day after the
17 date the notice is sent under this subsection.

18 (c) If a person assessed costs under this section does not
19 pay the costs within 60 days after the date of assessment:

20 (1) a lien in favor of the county attaches to the
21 property from which the refuse or junk was removed to secure the
22 payment of the costs and interest accruing at an annual rate of 10
23 percent on any unpaid part of the costs; and

24 (2) the commissioners court shall file a record of the
25 lien in the office of the county clerk.

26 (d) The violation of an order adopted under this section is
27 a Class C misdemeanor.

1 (e) In this section:

2 (1) "Junk" and "refuse" have the meanings assigned by
3 Section 365.011 except that those terms do not include equipment
4 used for agricultural purposes.

5 (2) "Public highway" has the meaning assigned by
6 Section 365.013.

7 SECTION 127. Subchapter C, Chapter 366, Health and Safety
8 Code, is amended to conform to Sections 3.10 and 3.11, Chapter 624
9 (S.B. 2), Acts of the 71st Legislature, Regular Session, 1989, by
10 adding Sections 366.035 and 366.036 to read as follows:

11 Sec. 366.035. MANDATORY APPLICATION FOR AND MAINTENANCE OF
12 DESIGNATION. A local governmental entity that applies to the Texas
13 Water Development Board for financial assistance under a program
14 for economically distressed areas must take all actions necessary
15 to receive and maintain a designation as an authorized agent of the
16 department.

17 Sec. 366.036. COUNTY MAP. (a) If the department designates
18 a local governmental entity as its authorized agent and if the
19 entity intends to apply to the Texas Water Development Board for
20 financial assistance under a program for economically distressed
21 areas, the commissioners court of the county in which the entity is
22 located shall prepare a map of the county area outside the limits
23 of municipalities. The entity shall give to the commissioners
24 court a written notice of the entity's intention to apply for the
25 assistance. The map must show the parts of the area in which the
26 different types of on-site sewage disposal systems may be
27 appropriately located and the parts in which the different types of

1 systems may not be appropriately located.

2 (b) The commissioners court shall file the map in the office
3 of the county clerk.

4 (c) The commissioners court, at least every five years,
5 shall review the map and make changes to it as necessary to keep
6 the map accurate.

7 SECTION 128. Section 367.002, Health and Safety Code, is
8 amended to conform to Section 1, Chapter 93 (S.B. 624), Acts of the
9 71st Legislature, Regular Session, 1989, to read as follows:

10 Sec. 367.002. COMPOSITION OF COUNCIL. The On-site
11 Wastewater Treatment Research Council is composed of the following
12 11 members appointed by the governor:

13 (1) two builders of housing constructed on-site in
14 this state;

15 (2) one residential real estate developer;

16 (3) one professional engaged in municipal or county
17 regulation of on-site wastewater treatment in this state;

18 (4) one practicing engineer with significant
19 experience designing on-site wastewater treatment systems;

20 (5) one employee of the department [~~professional~~
21 ~~engaged---in---monitoring---the---environmental---impact---of---on-site~~
22 ~~wastewater-treatment-systems-in-this-state~~];

23 (6) one employee of the Texas Water Commission;

24 (7) one representative of an industry using on-site
25 wastewater treatment in this state as part of its commercial or
26 manufacturing process;

27 (8) one person employed in the field of rural water

1 quality in this state;

2 (9) one soils scientist who is involved in and
3 familiar with innovative on-site wastewater disposal techniques;
4 and

5 (10) one representative of the public with a
6 demonstrated involvement in efforts to safeguard the environment.

7 SECTION 129. Section 367.003(a), Health and Safety Code, is
8 amended to conform to Section 2, Chapter 93 (S.B. 624), Acts of the
9 71st Legislature, Regular Session, 1989, to read as follows:

10 (a) The council [~~is subject to Chapter 325, Government Code~~
11 ~~{Texas Sunset Act}.~~~~Unless continued in existence as provided by~~
12 ~~that chapter, the council]~~ is abolished and this chapter expires
13 September 1, 2001 [August 31, 1989].

14 SECTION 130. The heading to Subtitle B, Title 5, Health and
15 Safety Code, is amended to read as follows:

16 SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS,
17 SEWAGE, AND LITTER

18 SECTION 131. Subtitle B, Title 5, Health and Safety Code, is
19 amended to conform to Sections 1-3, Chapter 36 (S.B. 444), Acts of
20 the 71st Legislature, Regular Session, 1989, by adding Chapter 369
21 to read as follows:

22 CHAPTER 369. PLASTIC CONTAINERS

23 Sec. 369.001. DEFINITIONS. In this chapter:

24 (1) "Department" means the Texas Department of Health.

25 (2) "Plastic" means a material made of polymeric
26 organic compounds and additives that can be shaped by flow.

27 (3) "Plastic bottle" means a plastic container that:

1 (A) has a neck smaller than the body of the
2 container;

3 (B) is designed for a screw top, snap cap, or
4 other closure; and

5 (C) has a capacity of not less than 16 fluid
6 ounces or more than five gallons.

7 (4) "Rigid plastic container" means a formed or molded
8 container, other than a plastic bottle, that:

9 (A) is intended for single use;

10 (B) is composed predominantly of plastic resin;

11 (C) has a relatively inflexible finite shape or
12 form; and

13 (D) has a capacity of not less than eight ounces
14 or more than five gallons.

15 Sec. 369.002. SYMBOLS FOR CERTAIN PLASTIC CONTAINERS. (a)
16 A person may not manufacture or distribute a plastic bottle or
17 rigid plastic container unless the appropriate symbol indicating
18 the plastic resin used to produce the bottle or container is molded
19 into or imprinted on the bottom or near the bottom of the bottle or
20 container.

21 (b) A plastic bottle or rigid plastic container with a base
22 cup or other component of a material different from the basic
23 material used in making the bottle or container shall bear the
24 symbol indicating its basic material.

25 (c) The symbols used under this section must consist of a
26 number placed within a triangle of arrows and of letters placed
27 below the triangle of arrows. The triangle must be equilateral,

1 formed by three arrows with the apex of each point of the triangle
2 at the midpoint of each arrow, rounded with a short radius. The
3 arrowhead of each arrow must be at the midpoint of each side of the
4 triangle with a short gap separating the arrowhead from the base of
5 the adjacent arrow. The triangle formed by the arrows must depict
6 a clockwise path around the number.

7 (d) The numbers, letters of the symbols, and the plastic
8 resins represented by the symbols are:

9 (1) 1 and PETE, representing polyethylene
10 terephthalate;

11 (2) 2 and HDPE, representing high density
12 polyethylene;

13 (3) 3 and V, representing vinyl;

14 (4) 4 and LDPE, representing low density polyethylene;

15 (5) 5 and PP, representing polypropylene;

16 (6) 6 and PS, representing polystyrene; and

17 (7) 7 and OTHER, representing all other resins,
18 including layered plastics of a combination of materials.

19 (e) The department shall:

20 (1) maintain a list of the symbols; and

21 (2) provide a copy of that list to any person on
22 request.

23 Sec. 369.003. PENALTY. (a) A person who violates Section
24 369.002(a) or (b) is subject to a civil penalty not to exceed \$500
25 for each act of violation.

26 (b) If it appears that a person has violated or is violating
27 Section 369.002, the attorney general or a district attorney,

1 criminal district attorney, or county attorney shall institute and
2 conduct a suit in the name of this state to recover the civil
3 penalty imposed under this section.

4 (c) A civil penalty recovered under this section shall be
5 deposited:

6 (1) in the state treasury if the attorney general
7 brings the suit; or

8 (2) in the general fund of the county in which the
9 violation occurred if a district attorney, criminal district
10 attorney, or county attorney brings the suit.

11 SECTION 132. Subtitle B, Title 5, Health and Safety Code, is
12 amended to conform to Sections 1-9, Chapter 152 (S.B. 1223), Acts
13 of the 71st Legislature, Regular Session, 1989, by adding Chapter
14 370 to read as follows:

15 CHAPTER 370. TOXIC CHEMICAL RELEASE REPORTING

16 Sec. 370.001. SHORT TITLE. This chapter may be cited as the
17 Texas Toxic Chemical Release Reporting Act.

18 Sec. 370.002. DEFINITIONS. In this chapter:

19 (1) "Administrator" means the administrator of the
20 United States Environmental Protection Agency.

21 (2) "Commission" means the Texas Water Commission.

22 (3) "Environment" means water, air, and land and the
23 interrelationship that exists among and between water, air, and
24 land and all living things.

25 (4) "Executive director" means the executive director
26 of the Texas Water Commission.

27 (5) "Facility" means all buildings, equipment,

1 structures, and other stationary items that are located on a single
2 site or on contiguous or adjacent sites and are owned or operated
3 by the same person or by any person who controls, is controlled by,
4 or is under common control with, that person.

5 (6) "Manufacture" means to produce, prepare, import,
6 or compound a toxic chemical.

7 (7) "Person" means an individual, trust, firm,
8 joint-stock company, corporation, including a government
9 corporation, partnership, association, state, commission,
10 municipality or other political subdivision of a state, or
11 interstate body.

12 (8) "Process" means to prepare a toxic chemical, after
13 its manufacture, for distribution in commerce:

14 (A) in the same form or physical state as, or in
15 a different form or physical state from, the form in which the
16 chemical was received by the person preparing the chemical; or

17 (B) as part of an article containing the toxic
18 chemical.

19 (9) "Release" means any spilling, leaking, pumping,
20 pouring, emitting, emptying, discharging, injecting, escaping,
21 leaching, dumping, or otherwise disposing into the environment any
22 toxic chemical. The term includes the abandonment or discarding of
23 barrels, containers, and other closed receptacles of any toxic
24 chemical.

25 (10) "Threshold amount" means the amount established
26 by the administrator under the Emergency Planning and Community
27 Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

1 (11) "Toxic chemical" means a chemical designated as a
2 toxic chemical by the administrator under the Emergency Planning
3 and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001
4 et seq.).

5 (12) "Toxic chemical release form" means the form
6 published by the administrator under the Emergency Planning and
7 Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et
8 seq.).

9 Sec. 370.003. TOXIC CHEMICAL RELEASE FORM REQUIRED OF
10 CERTAIN FACILITIES. (a) The owner or operator of a facility shall
11 submit a toxic chemical release form to the executive director if
12 the facility:

13 (1) has 10 or more full-time employees and a standard
14 industrial classification code between 20 and 39 that was in effect
15 on July 1, 1985, or has been designated as a facility subject to
16 these requirements by the administrator; and

17 (2) manufactured, processed, or otherwise used a toxic
18 chemical in excess of the threshold amount during the calendar year
19 for which a toxic chemical release form is required.

20 (b) The owner or operator of a facility subject to
21 Subsection (a) shall submit a toxic chemical release form for each
22 toxic chemical manufactured, processed, or otherwise used at the
23 facility during the preceding calendar year in a quantity exceeding
24 the threshold amount.

25 (c) The form shall be submitted not later than July 1 of
26 each year and must contain data that reflect each release that
27 occurred during the preceding calendar year. The administrator may

1 modify the frequency with which a report must be submitted under
2 this section as provided under the Emergency Planning and Community
3 Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

4 Sec. 370.004. THRESHOLD AMOUNTS FOR REPORTING. (a) The
5 threshold amounts for purposes of reporting a toxic chemical under
6 Section 370.003 are as follows:

7 (1) for a toxic chemical used, but not manufactured or
8 processed, at a facility, 10,000 pounds of the toxic chemical used
9 at the facility during the preceding calendar year; or

10 (2) for a toxic chemical manufactured or processed at
11 a facility, 25,000 pounds of the toxic chemical manufactured or
12 processed at the facility during the preceding calendar year.

13 (b) The administrator may establish a threshold amount for a
14 toxic chemical different from the amount established under
15 Subsection (a).

16 Sec. 370.005. USE OF AVAILABLE DATA. (a) To provide the
17 information required on the toxic chemical release form, the owner
18 or operator of a facility may use:

19 (1) readily available data, including monitoring data,
20 collected under other law; or

21 (2) reasonable estimates of the amounts involved if
22 data under Subdivision (1) are not readily available.

23 (b) This section does not require monitoring or measurement
24 of the quantities, concentration, or frequency of a toxic chemical
25 released into the environment beyond the monitoring and measurement
26 required under other law or regulation.

27 (c) To ensure consistency, data must be expressed in common

1 units, as designated by the administrator.

2 Sec. 370.006. PUBLIC AVAILABILITY OF TOXIC CHEMICAL RELEASE
3 FORM. (a) A toxic chemical release form required under this
4 chapter is intended to provide information to the public, including
5 federal, state, and local governments and citizens of the
6 communities surrounding a facility covered under Section 373.003.

7 (b) A toxic chemical release form shall be made available in
8 a manner consistent with the Emergency Planning and Community
9 Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.) and the
10 open records law, Chapter 424, Acts of the 63rd Legislature,
11 Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil
12 Statutes).

13 Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUND. (a)
14 The toxic chemical release reporting fund consists of money
15 collected by the commission from:

16 (1) fees imposed on owners and operators of facilities
17 required to submit a toxic chemical release form; and

18 (2) penalties imposed under this chapter.

19 (b) The commission may use the money collected and deposited
20 in the fund to pay for:

21 (1) costs incurred by the commission in implementing
22 this chapter; and

23 (2) other commission activities necessary to implement
24 the Emergency Planning and Community Right-to-Know Act of 1986 (42
25 U.S.C. Section 11001 et seq.).

26 Sec. 370.008. TOXIC CHEMICAL RELEASE FORM REPORTING FEES.

27 (a) The owner or operator of a facility required to submit a toxic

1 chemical release form under this chapter shall pay, at the time of
2 submission, a fee of \$25 for each toxic chemical release form
3 submitted.

4 (b) The maximum fee for a facility may not exceed \$250.

5 (c) The commission by rule may increase or decrease the
6 toxic chemical release form reporting fee as necessary.

7 (d) Fees collected under this section shall be deposited in
8 the state treasury to the credit of the toxic chemical release
9 reporting fund.

10 Sec. 370.009. ENFORCEMENT AND PENALTIES. (a) Any person,
11 other than a governmental entity, who violates this chapter is
12 liable to the commission for a civil penalty not to exceed \$10,000
13 for each violation.

14 (b) The commission may assess any civil penalty for which a
15 person is liable under this section by administrative order or may
16 refer an action to assess and collect the penalty to the attorney
17 general.

18 SECTION 133. Section 381.004, Health and Safety Code, is
19 amended to conform to Section 1, Chapter 580 (H.B. 2437), and
20 Section 2, Chapter 889 (S.B. 265), Acts of the 71st Legislature,
21 Regular Session, 1989, to read as follows:

22 Sec. 381.004. APPLICATION OF SUNSET ACT. The board is
23 subject to Chapter 325, Government Code (Texas Sunset Act). Unless
24 continued in existence as provided by that chapter, the board is
25 abolished and this chapter expires September 1, 1997 [~~1991~~].

26 SECTION 134. Section 381.016(c), Health and Safety Code, is
27 amended to conform to Section 64, Chapter 584 (H.B. 2519), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 (c) The [~~state--auditor--shall-audit-the-board's~~] financial
3 transactions of the board are subject to audit by the state auditor
4 in accordance with Chapter 321, Government Code [~~at-least-once-each~~
5 ~~biennium~~].

6 SECTION 135. Section 382.003, Health and Safety Code, is
7 amended to conform to Section 1, Chapter 1190 (S.B. 769), Acts of
8 the 71st Legislature, Regular Session, 1989, by adding a new
9 Subdivision (9) and renumbering former Subdivision (9) to read as
10 follows:

11 (9) "Select-use technology" means a technology that
12 involves simultaneous combustion of natural gas with other fuels in
13 fossil fuel-fired boilers. The term includes cofiring, gas reburn,
14 and enhanced gas reburn/sorbent injection.

15 (10) "Source" means a point of origin of air
16 contaminants, whether privately or publicly owned or operated.

17 SECTION 136. Subchapter B, Chapter 382, Health and Safety
18 Code, is amended to conform to Section 3, Chapter 1190 (S.B. 769),
19 Acts of the 71st Legislature, Regular Session, 1989, by adding
20 Section 382.0145 to read as follows:

21 Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The
22 board shall levy a clean fuel incentive surcharge of 20 cents per
23 MMBtu on fuel oil used between April 15 and October 15 of each year
24 in an industrial or utility boiler that is:

25 (1) capable of using natural gas; and
26 (2) located in a consolidated metropolitan statistical
27 area or metropolitan statistical area with a population of 350,000

1 or more that has not met federal ambient air quality standards for
2 ozone.

3 (b) The board may not levy the clean fuel incentive
4 surcharge on:

5 (1) waste oils, used oils, or hazardous waste-derived
6 fuels burned for purposes of energy recovery or disposal, if the
7 Texas Air Control Board, Texas Water Commission, or the United
8 States Environmental Protection Agency approves or permits the
9 burning;

10 (2) fuel oil used during:

11 (A) any period of full or partial natural gas
12 curtailment;

13 (B) any period when there is a failure to
14 deliver sufficient quantities of natural gas to satisfy contractual
15 obligations to the purchaser; or

16 (C) a catastrophic event as defined by Section
17 382.063;

18 (3) fuel oil used between April 15 and October 15 in
19 equipment testing or personnel training up to an aggregate of the
20 equivalent of 48 hours full-load operation; or

21 (4) any firm engaged in fixed price contracts with
22 public works agencies for contracts entered into before August 28,
23 1989.

24 SECTION 137. Section 382.017(e), Health and Safety Code, is
25 amended to conform to Section 2, Chapter 1190 (S.B. 769), Acts of
26 the 71st Legislature, Regular Session, 1989, to read as follows:

27 (e) Except as provided by Sections 382.0171

1 [382-018]-382.021, the board by rule may not specify:

2 (1) a particular method to be used to control or abate
3 air pollution;

4 (2) the type, design, or method of installation of
5 equipment to be used to control or abate air pollution; or

6 (3) the type, design, method of installation, or type
7 of construction of a manufacturing process or other kind of
8 equipment.

9 SECTION 138. Subchapter B, Chapter 382, Health and Safety
10 Code, is amended to conform to Section 2, Chapter 1190 (S.B. 769),
11 Acts of the 71st Legislature, Regular Session, 1989, by adding
12 Section 382.0171 to read as follows:

13 Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE
14 TECHNOLOGIES. (a) In adopting rules, the board shall encourage
15 and may allow the use of natural gas and other alternative fuels,
16 as well as select-use technologies, that will reduce emissions.

17 (b) Any orders or determinations made under this section
18 must be consistent with Section 382.024.

19 SECTION 139. Subchapter B, Chapter 382, Health and Safety
20 Code, is amended to conform to Section 1, Chapter 322 (H.B. 2468),
21 Acts of the 71st Legislature, Regular Session, 1989, by adding
22 Section 382.0195 to read as follows:

23 Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS.
24 (a) The board shall adopt rules prescribing the most effective
25 emissions control technology reasonably available to control
26 emissions of air contaminants from a commercial infectious waste
27 incinerator.

1 (b) Rules adopted under this section must require that the
2 prescribed emissions control technology be installed as soon as
3 practicable at each commercial infectious waste incinerator.

4 (c) In this section, "commercial infectious waste
5 incinerator" means a facility that accepts for incineration
6 infectious waste generated outside the property boundaries of the
7 facility.

8 SECTION 140. Subchapter C, Chapter 382, Health and Safety
9 Code, is amended to conform to Section 1, Chapter 1175 (H.B. 1237),
10 Acts of the 71st Legislature, Regular Session, 1989, by adding
11 Section 382.0591 to read as follows:

12 Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE
13 PROVIDED BY CERTAIN FORMER EMPLOYEES. (a) The board shall deny an
14 application for the issuance, amendment, renewal, or transfer of a
15 permit and may not issue, amend, renew, or transfer the permit if
16 the board determines that a former employee:

17 (1) participated personally and substantially as an
18 employee in the board's review, evaluation, or processing of the
19 application before leaving employment with the board; and

20 (2) after leaving employment with the board, provided
21 assistance to the applicant for the issuance, amendment, renewal,
22 or transfer of the permit, including assistance with preparation or
23 presentation of the application or legal representation of the
24 applicant.

25 (b) The board shall provide an opportunity for a hearing to
26 an applicant before denying an application under this section.

27 (c) Action taken under this section does not prejudice any

1 application other than an application in which the former employee
2 provided assistance.

3 (d) In this section, "former employee" means a person:

4 (1) who was previously employed by the board as a
5 supervisory or exempt employee; and

6 (2) whose duties during employment with the board
7 included involvement in or supervision of the board's review,
8 evaluation, or processing of applications.

9 SECTION 141. Chapter 382, Health and Safety Code, is amended
10 to conform to Section 2, Chapter 1190 (S.B. 769), Acts of the 71st
11 Legislature, Regular Session, 1989, by adding Subchapter F to read
12 as follows:

13 SUBCHAPTER F. ALTERNATIVE FUELS PROGRAM

14 Sec. 382.131. DEFINITIONS. In this subchapter:

15 (1) "Emissions" means emissions of oxides of nitrogen,
16 volatile organic compounds, carbon monoxide, particulates, or any
17 combination of those substances.

18 (2) "Fleet vehicle" means a vehicle required to be
19 registered under Chapter 88, General Laws, Acts of the 41st
20 Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's
21 Texas Civil Statutes).

22 (3) "Mass transit authority" means a transportation or
23 transit authority or department established under Chapter 141, Acts
24 of the 63rd Legislature, Regular Session, 1973 (Article 1118x,
25 Vernon's Texas Civil Statutes), Chapter 683, Acts of the 66th
26 Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas
27 Civil Statutes), or Article 1118z, Revised Statutes, that operates

1 a mass transit system under any of those laws.

2 Sec. 382.132. METROPOLITAN AREAS AFFECTED. Rules adopted by
3 the board under Sections 382.133-382.136 apply only to a
4 consolidated metropolitan statistical area or a metropolitan
5 statistical area with a population of 350,000 or more that has not
6 met federal ambient air quality standards for ozone, carbon
7 monoxide, oxides of nitrogen, or particulates.

8 Sec. 382.133. MASS TRANSIT FLEET VEHICLES. (a) The board
9 by rule shall require a mass transit authority to ensure that its
10 vehicles can operate on compressed natural gas or other alternative
11 fuels that result in comparably lower emissions.

12 (b) Rules adopted under this section must require a mass
13 transit authority to have its fleet vehicles able to operate on
14 compressed natural gas or other alternative fuel according to the
15 following schedule:

16 (1) not later than September 1, 1994, at least 30
17 percent of the vehicles; and

18 (2) not later than September 1, 1996, at least 50
19 percent of the vehicles.

20 (c) Contingent on the board's review, not later than
21 December 31, 1996, of the alternative fuels program established by
22 this section, and the board's determination that the program is
23 reducing emissions, is projected to be effective in improving
24 overall air quality, and is necessary to the attainment of federal
25 ambient air quality standards in the affected areas, the rules must
26 require a mass transit authority, not later than September 1, 1998,
27 to have at least 90 percent of its fleet vehicles able to operate

1 on compressed natural gas or other alternative fuel.

2 Sec. 382.134. LOCAL GOVERNMENT AND PRIVATE FLEET VEHICLES.

3 (a) This section applies only to:

4 (1) a local government that operates primarily in an
5 affected area a fleet of more than 15 vehicles, excluding law
6 enforcement and emergency vehicles; and

7 (2) a private person that operates primarily in an
8 affected area a fleet of more than 25 vehicles, excluding emergency
9 vehicles.

10 (b) If the board determines under Section 382.133 that the
11 alternative fuels program is reducing emissions, is projected to be
12 effective in improving overall air quality, and is necessary to
13 comply with federal ambient air quality standards for ozone, carbon
14 monoxide, oxides of nitrogen, or particulates in the affected
15 areas, the board by rule shall require a local government or a
16 private person to ensure that its vehicles can operate on
17 compressed natural gas or other alternative fuels that reduce total
18 annual emissions from motor vehicles in the area.

19 (c) Rules adopted under this section must require a local
20 government or private person to have its fleet vehicles able to
21 operate on compressed natural gas or other alternative fuel
22 according to the following schedule:

23 (1) not later than September 1, 1998, at least 30
24 percent of the vehicles;

25 (2) not later than September 1, 2000, at least 50
26 percent of the vehicles; and

27 (3) not later than September 1, 2002, at least 90

1 percent of the vehicles.

2 Sec. 382.135. DUAL FUEL CONVERSION. The percentage
3 requirements of Sections 382.133 and 382.134 may be met by the dual
4 fuel conversion or capability of gasoline-powered or diesel-powered
5 vehicles to operate also on compressed natural gas or other
6 alternative fuels that result in comparably lower emissions.

7 Sec. 382.136. EXCEPTIONS. (a) The board may make
8 exceptions to rules adopted under Sections 382.133 and 382.134 if:

9 (1) a firm engaged in fixed price contracts with
10 public works agencies can demonstrate that compliance with the
11 requirements of those sections would result in substantial economic
12 harm to the firm under a contract entered into before September 1,
13 1997;

14 (2) the board determines that the affected vehicles
15 will be operating primarily in an area that does not have or cannot
16 reasonably be expected to establish a central refueling station for
17 alternative fuels; or

18 (3) the affected entity is unable to secure financing
19 provided by or arranged through the proposed supplier or suppliers
20 of compressed natural gas or other alternative fuels sufficient to
21 cover the additional costs of alternative fueling.

22 (b) To qualify for an exception under Subsection (a), an
23 affected entity must provide data requested by the board to
24 document the unavailability of a refueling station or of financing
25 to cover the additional costs of alternative fueling.

26 Sec. 382.137. DATA COLLECTION. An affected entity shall
27 support the board in collecting reasonable information needed to

1 determine air quality benefits from use of alternative fuels in
2 affected areas.

3 Sec. 382.138. EVALUATION OF ALTERNATIVE FUELS USE. (a) In
4 conjunction with the development of state implementation plans for
5 achieving and maintaining compliance with federal ambient air
6 quality standards under the federal Clean Air Act (42 U.S.C. Sec.
7 7401 et seq.), the board shall evaluate and determine, for areas
8 required by federal law to have state implementation plans, the
9 effectiveness of and need for the use of compressed natural gas and
10 other alternative fuels in vehicles.

11 (b) The evaluation and determination must include:

12 (1) the uses of compressed natural gas or other
13 alternative fuels required by Sections 382.133 and 382.134; and

14 (2) additional or different uses of compressed natural
15 gas or other alternative fuels.

16 (c) In making evaluations and determinations under this
17 section, the board shall:

18 (1) review reports received by the board on
19 alternative fuels programs;

20 (2) consult with a reporting entity on the
21 contribution the entity's program is making toward achieving and
22 maintaining compliance with federal ambient air quality standards;
23 and

24 (3) consider for each category of vehicles the factors
25 required for the development of state implementation plans under
26 the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and this
27 chapter.

1 (d) Before making a determination under this subchapter, the
2 board shall solicit comments from the Department of Public Safety
3 and the Railroad Commission of Texas concerning any effect on
4 public safety.

5 Sec. 382.139. ADDITIONAL ALTERNATIVE FUELS USES. (a) If,
6 after considering the factors listed in Section 382.138, the board
7 determines that the use of compressed natural gas or other
8 alternative fuels for certain categories of motor vehicles is
9 effective and necessary for achieving and maintaining compliance
10 with federal ambient air quality standards, the board by rule shall
11 require those uses in addition to uses required elsewhere in this
12 subchapter.

13 (b) If, after considering the factors listed in Section
14 382.138, the board determines that the additional uses are
15 appropriate, the board may establish and implement programs
16 encouraging the use of compressed natural gas or other alternative
17 fuels for certain categories of vehicles.

18 Sec. 382.140. STUDIES; PILOT PROGRAMS. (a) In connection
19 with the evaluations and determinations required under Section
20 382.138 and encouraging the use of natural gas or other alternative
21 fuels, the board may conduct or have conducted appropriate studies
22 or pilot programs.

23 (b) A study or pilot program may assess the feasibility of
24 adopting vehicle emission standards more stringent than those
25 adopted by the United States Environmental Protection Agency under
26 the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

27 Sec. 382.141. REPORT REQUIRED. The board shall report

1 biennially its evaluations and determinations on the use of
2 compressed natural gas or other alternative fuels and recommend
3 legislative changes necessary to implement an effective and
4 feasible program for the use of compressed natural gas and other
5 alternative fuels. The report shall be submitted to the governor
6 and the legislature not later than the 30th day before the
7 commencement of each regular legislative session.

8 SECTION 142. Subchapter A, Chapter 401, Health and Safety
9 Code, is amended to conform to Section 1, Chapter 930 (S.B. 1116),
10 Acts of the 71st Legislature, Regular Session, 1989, by adding
11 Section 401.0005 to read as follows:

12 Sec. 401.0005. SHORT TITLE. This chapter may be cited as
13 the Texas Radiation Control Act.

14 SECTION 143. Chapter 401, Health and Safety Code, is amended
15 to conform to Section 2, Chapter 930 (S.B. 1116), Acts of the 71st
16 Legislature, Regular Session, 1989, by amending Sections 401.013
17 and 401.202 and adding Section 401.2625 to read as follows:

18 Sec. 401.013. DUTIES OF DIRECTOR. The director shall
19 perform the department's functions under this chapter other than
20 the licensing functions reserved to the commissioner [~~issuance-of~~
21 ~~licenses~~] under Subchapters [~~Subchapter~~] F and G.

22 Sec. 401.202. LICENSING AUTHORITY. The [~~board--or--the~~
23 ~~commissioner~~][~~7-if-designated-by--the--board,~~] shall grant, deny,
24 renew, revoke, suspend, or withdraw [~~issue~~] licenses for the
25 disposal of radioactive waste from other persons and for the
26 processing of that waste [~~under-this-subchapter~~].

27 Sec. 401.2625. LICENSING AUTHORITY. The commissioner shall

1 grant, deny, renew, revoke, suspend, or withdraw licenses for
2 uranium recovery and processing, including the disposal of uranium
3 mill tailings.

4 SECTION 144. Subchapter C, Chapter 401, Health and Safety
5 Code, is amended to conform to Section 1, Chapter 913 (S.B. 856),
6 Acts of the 71st Legislature, Regular Session, 1989, by adding
7 Section 401.0525 to read as follows:

8 Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The
9 department shall adopt and enforce groundwater protection standards
10 compatible with federal standards adopted under the Atomic Energy
11 Act of 1954 (42 U.S.C. Sec. 2011 et seq.).

12 (b) Any standards adopted by the department relating to
13 nonradioactive constituents must be reviewed by the Texas Water
14 Commission to determine compatibility with that commission's
15 groundwater protection standards adopted under other programs.

16 SECTION 145. Section 401.209, Health and Safety Code, is
17 amended to conform to Section 1, Chapter 840 (S.B. 544), Acts of
18 the 71st Legislature, Regular Session, 1989, by amending Subsection
19 (d) and adding Subsection (e) to read as follows:

20 (d) The right, title, and interest in radioactive waste
21 accepted for disposal at property and facilities acquired under
22 this section and any other interest acquired under this chapter are
23 the property of the department, acting on behalf of the state, and
24 shall be administered and controlled by the department in the name
25 of the state.

26 (e) A right, title, or interest acquired under this chapter
27 does not vest in any fund created by the Texas Constitution.

1 SECTION 146. Section 401.305(b), Health and Safety Code, is
2 amended to conform to Section 2, Chapter 172 (H.B. 1407), Acts of
3 the 71st Legislature, Regular Session, 1989, to read as follows:

4 (b) The department shall deposit to the credit of the fund
5 money and security it receives under this chapter, other than fees
6 collected under Sections 401.301 and 401.302. Interest earned on
7 money in the fund shall be credited to the fund.

8 SECTION 147. Section 402.013(b), Health and Safety Code, is
9 amended to conform to Section 3, Chapter 72 (H.B. 1400), Acts of
10 the 71st Legislature, Regular Session, 1989, to read as follows:

11 (b) The governor shall appoint the following members of the
12 board with the advice and consent of the senate:

13 (1) one [~~medical~~] doctor of medicine or doctor of
14 osteopathic medicine licensed to practice medicine in this state;

15 (2) one certified health physicist;

16 (3) one attorney licensed to practice law in this
17 state;

18 (4) one geologist; and

19 (5) two persons who represent the public.

20 SECTION 148. Section 402.275, Health and Safety Code, is
21 amended to conform to Section 1, Chapter 172 (H.B. 1407), Acts of
22 the 71st Legislature, Regular Session, 1989, by amending
23 Subsections (b)-(d) and adding Subsection (f) to read as follows:

24 (b) The account is an interest-bearing account. Interest
25 earned on money in the account shall be deposited to the credit of
26 the account.

27 (c) Money received by the authority, including waste [Waste]

1 disposal fees, processing and packaging fees, civil penalties,
2 payments to the State of Texas under Public Law 99-240, and other
3 receipts collected by the authority under this chapter shall be
4 deposited to the credit of the low-level waste account.

5 (d) Except as provided by Subsection (e), money in the
6 low-level waste account may be used to pay:

7 (1) operating and maintenance costs of the authority;

8 (2) reimbursement to the general revenue fund for
9 expenses incurred by the state before the first day of operation of
10 the disposal site and for any other maintenance and operating
11 expenses paid by appropriation from the general revenue fund;

12 (3) future costs of decommissioning, closing, and
13 postclosure maintenance and surveillance of the disposal site;

14 (4) licensing fees and to provide security required by
15 the department;

16 (5) money judgments rendered against the authority
17 that are directed by a court of this state to be paid from this
18 account;

19 (6) expenses associated with implementation of the
20 rangeland and wildlife management plan;

21 (7) impact assistance funds for ~~[allocated--to]~~
22 affected political subdivisions; and

23 (8) expenses for any other purpose, including purposes
24 unrelated to low-level waste disposal, as determined in the General
25 Appropriations Act.

26 (f) The authority may transfer money from the low-level
27 waste account to the radiation and perpetual care fund to make

1 payments required by the department under Section 401.303(a).

2 SECTION 149. Section 431.002, Health and Safety Code, is
3 amended to conform to Section 1, Chapter 1129 (H.B. 2505), Acts of
4 the 71st Legislature, Regular Session, 1989, to read as follows:

5 Sec. 431.002. DEFINITIONS. In this chapter:

6 (1) "Advertising" means all representations
7 disseminated in any manner or by any means, other than by labeling,
8 for the purpose of inducing, or that are likely to induce, directly
9 or indirectly, the purchase of food, drugs, devices, or cosmetics.

10 (2) "Animal feed," as used in Subdivision (23), in
11 Section 512 of the federal [~~Federal~~] Act, and in provisions of this
12 chapter referring to those paragraphs or sections, means an article
13 intended for use as food for animals other than man as a
14 substantial source of nutrients in the diet of the animals. The
15 term is not limited to a mixture intended to be the sole ration of
16 the animals.

17 (3) "Authorized agent" means an employee of the
18 department who is designated by the commissioner to enforce the
19 provisions of this chapter.

20 (4) "Board" means the Texas Board of Health.

21 (5) "Butter" means the food product usually known as
22 butter that is made exclusively from milk or cream, or both, with
23 or without common salt or additional coloring matter, and
24 containing not less than 80 percent by weight of milk fat, after
25 allowing for all tolerances.

26 (6)(A) "Color additive" means a material that:

27 (i) is a dye, pigment, or other substance

1 made by a process of synthesis or similar artifice, or extracted,
2 isolated, or otherwise derived, with or without intermediate or
3 final change of identity from a vegetable, animal, mineral, or
4 other source; and

5 (ii) when added or applied to a food,
6 drug, or cosmetic, or to the human body or any part of the human
7 body, is capable, alone or through reaction with other substance,
8 of imparting color. The term does not include any material
9 exempted under the federal Act.

10 (B) "Color" includes black, white, and
11 intermediate grays.

12 (C) Paragraph (A) does not apply to any
13 pesticide chemical, soil or plant nutrient, or other agricultural
14 chemical solely because of its effect in aiding, retarding, or
15 otherwise affecting, directly or indirectly, the growth or other
16 natural physiological processes of produce of the soil and thereby
17 affecting its color, whether before or after harvest.

18 (7) [†6†] "Commissioner" means the commissioner of
19 health.

20 (8) [†7†] "Consumer commodity," except as otherwise
21 provided by this subdivision, means any food, drug, device, or
22 cosmetic, as those terms are defined by this chapter or by the
23 federal Act, and any other article, product, or commodity of any
24 kind or class that is customarily produced or distributed for sale
25 through retail sales agencies or instrumentalities for consumption
26 by individuals, or for use by individuals for purposes of personal
27 care or in the performance of services ordinarily rendered within

1 the household, and that usually is consumed or expended in the
2 course of the consumption or use. The term does not include:

3 (A) a meat or meat product, poultry or poultry
4 product, or tobacco or tobacco product;

5 (B) a commodity subject to packaging or labeling
6 requirements imposed under the Federal Insecticide, Fungicide, and
7 Rodenticide Act (7 U.S.C. 136), or Section 8, Virus-Serum-Toxin
8 Act (21 U.S.C. 158);

9 (C) a drug subject to the provisions of Section
10 431.113(c)(1) or 431.112(k), or Section 503(b)(1) or 506 of the
11 federal Act;

12 (D) a beverage subject to or complying with
13 packaging or labeling requirements imposed under the Federal
14 Alcohol Administration Act (27 U.S.C. 205(e)); or

15 (E) a commodity subject to the provisions of
16 Chapter 61, Agriculture Code, relating to the inspection, labeling,
17 and sale of agricultural and vegetable seed.

18 (9) [~~+8~~] "Contaminated with filth" applies to any
19 food, drug, device, or cosmetic not securely protected from dust,
20 dirt, and as far as may be necessary by all reasonable means, from
21 all foreign or injurious contaminations.

22 (10) [~~+9~~] "Cosmetic" means articles intended to be
23 rubbed, poured, sprinkled, or sprayed on, introduced into, or
24 otherwise applied to the human body or any part of the human body
25 for cleaning, beautifying, promoting attractiveness, or altering
26 the appearance, and articles intended for use as a component of
27 those articles. The term does not include soap.

1 (11) [~~110~~] "Counterfeit drug" means a drug, or the
2 container or labeling of a drug, that, without authorization, bears
3 the trademark, trade name or other identifying mark, imprint, or
4 device of a drug manufacturer, processor, packer, or distributor
5 other than the person who in fact manufactured, processed, packed,
6 or distributed the drug, and that falsely purports or is
7 represented to be the product of, or to have been packed or
8 distributed by, the other drug manufacturer, processor, packer, or
9 distributor.

10 (12) [~~111~~] "Department" means the Texas Department of
11 Health.

12 (13) [~~112~~] "Device," except when used in Sections
13 431.003, 431.021(1), 431.082(g), 431.112(c) and 431.142(c), means
14 an instrument, apparatus, implement, machine, contrivance, implant,
15 in vitro reagent, or other similar or related article, including
16 any component, part, or accessory, that is:

17 (A) recognized in the official United States
18 Pharmacopoeia National Formulary or any supplement to it;

19 (B) intended for use in the diagnosis of
20 disease or other conditions, or in the cure, mitigation, treatment,
21 or prevention of disease in man or other animals; or

22 (C) intended to affect the structure or any
23 function of the body of man or other animals and that does not
24 achieve any of its principal intended purposes through chemical
25 action within or on the body of man or other animals and is not
26 dependent on metabolization for the achievement of any of its
27 principal intended purposes.

1 (14) [~~13~~] "Drug" means articles recognized in the
2 official United States Pharmacopoeia National Formulary, or any
3 supplement to it, articles designed or intended for use in the
4 diagnosis, cure, mitigation, treatment, or prevention of disease in
5 man or other animals, articles, other than food, intended to affect
6 the structure of any function of the body of man or other animals,
7 and articles intended for use as a component of any article
8 specified in this subdivision. The term does not include devices
9 or their components, parts, or accessories.

10 (15) [~~14~~] "Federal Act" means the Federal Food, Drug
11 and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

12 (16) [~~15~~] "Food" means:

13 (A) articles used for food or drink for man;

14 (B) chewing gum; and

15 (C) articles used for components of any such
16 article.

17 (17) [~~16~~] "Food additive" means any substance the
18 intended use of which results or may reasonably be expected to
19 result, directly or indirectly, in its becoming a component or
20 otherwise affecting the characteristics of any food (including any
21 substance intended for use in producing, manufacturing, packing,
22 processing, preparing, treating, packaging, transporting, or
23 holding food; and including any source of radiation intended for
24 any use), if such substance is not generally recognized, among
25 experts qualified by scientific training and experience to evaluate
26 its safety, as having been adequately shown through scientific
27 procedures (or, in the case of a substance used in food prior to

1 January 1, 1958, through either scientific procedures or experience
2 based on common use in food) to be safe under the conditions of its
3 intended use; except that such term does not include:

4 (A) a pesticide chemical in or on a raw
5 agricultural commodity;

6 (B) a pesticide chemical to the extent that it
7 is intended for use or is used in the production, storage, or
8 transportation of any raw agricultural commodity;

9 (C) a color additive;

10 (D) any substance used in accordance with a
11 sanction or approval granted prior to the enactment of the Food
12 Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041
13 (codified as amended in various sections of 21 U.S.C.), pursuant to
14 the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451
15 et seq.) or the Meat Inspection Act of 1907 (21 U.S.C. 603); or

16 (E) a new animal drug.

17 (18) [~~17~~] "Health authority" means a physician
18 designated to administer state and local laws relating to public
19 health.

20 (19) [~~18~~] "Immediate container" does not include
21 package liners.

22 (20) [~~19~~] "Infant formula" means a food that is
23 represented for special dietary use solely as a food for infants by
24 reason of its simulation of human milk or its suitability as a
25 complete or partial substitute for human milk.

26 (21) [~~20~~] "Label" means a display of written,
27 printed, or graphic matter upon the immediate container of any

1 article; and a requirement made by or under authority of this
2 chapter that any word, statement, or other information that appears
3 on the label shall not be considered to be complied with unless the
4 word, statement, or other information also appears on the outside
5 container or wrapper, if any, of the retail package of the article,
6 or is easily legible through the outside container or wrapper.

7 (22) [~~21~~] "Labeling" means all labels and other
8 written, printed, or graphic matter that is on an article or any of
9 the containers or wrappers that accompany the article.

10 (23) [~~22~~] "Manufacture" means the process of
11 combining or purifying food and packaging food for sale to a
12 consumer at wholesale or retail.

13 (24) [~~23~~] "New animal drug" means any drug intended
14 for use for animals other than man, including any drug intended for
15 use in animal feed:

16 (A) the composition of which is such that the
17 drug is not generally recognized among experts qualified by
18 scientific training and experience to evaluate the safety and
19 effectiveness of animal drugs as safe and effective for use under
20 the conditions prescribed, recommended, or suggested in the
21 labeling of the drug (except that such an unrecognized drug is not
22 deemed to be a "new animal drug" if at any time before June 25,
23 1938, it was subject to the Food and Drug Act of June 30, 1906, and
24 if at that time its labeling contained the same representations
25 concerning the conditions of its use);

26 (B) the composition of which is such that the
27 drug, as a result of investigations to determine its safety and

1 effectiveness for use under those conditions, has become recognized
2 but that has not, otherwise than in the investigations, been used
3 to a material extent or for a material time under those conditions;
4 or

5 (C) is composed wholly or partly of penicillin,
6 streptomycin, chlorotetracycline, chloramphenicol, or bacitracin,
7 or any derivative of those substances, unless:

8 (i) a published order of the secretary is
9 in effect that declares the drug not to be a new animal drug on the
10 grounds that the requirement of certification of batches of the
11 drug, as provided by Section 512(n) of the federal Act, is not
12 necessary to ensure that the objectives specified in Section
13 512(n)(3) of that Act are achieved; and

14 (ii) Paragraph (A) or (B) of this
15 subdivision does not apply to the drug.

16 (25) [~~24~~] "New drug" means:

17 (A) any drug, except a new animal drug, the
18 composition of which is such that such drug is not generally
19 recognized among experts qualified by scientific training and
20 experience to evaluate the safety and effectiveness of drugs, as
21 safe and effective for use under the conditions prescribed,
22 recommended, or suggested in the labeling thereof (except that such
23 an unrecognized drug is not a "new drug" if at any time before May
24 26, 1985, it was subject to the Food and Drug Act of June 30, 1906,
25 and if at that time its labeling contained the same representations
26 concerning the conditions of its use); or

27 (B) any drug, except a new animal drug, the

1 composition of which is such that such drug, as a result of
2 investigations to determine its safety and effectiveness for use
3 under such conditions, has become so recognized, but which has not,
4 otherwise than in such investigations, been used to a material
5 extent or for a material time under such conditions.

6 (26) [~~+25~~] "Official compendium" means the official
7 United States Pharmacopoeia National Formulary, or any supplement
8 to it.

9 (27) [~~+26~~] "Package" means any container or wrapping
10 in which a consumer commodity is enclosed for use in the delivery
11 or display of that consumer commodity to retail purchasers. The
12 term includes wrapped meats enclosed in papers or other materials
13 as prepared by the manufacturers thereof for sale. The term does
14 not include:

15 (A) shipping containers or wrappings used solely
16 for the transportation of a consumer commodity in bulk or in
17 quantity to manufacturers, packers, or processors, or to wholesale
18 or retail distributors;

19 (B) shipping containers or outer wrappings used
20 by retailers to ship or deliver a commodity to retail customers if
21 the containers and wrappings do not bear printed matter relating to
22 any particular commodity; or

23 (C) containers subject to the provisions of the
24 Standard Barrel Act (Apple Barrels) (15 U.S.C. 231, 21 U.S.C. 20)
25 or the Standard Barrel Act (Fruits and Vegetables) (15 U.S.C.
26 234-236).

27 (28) [~~+27~~] "Person" includes individual, partnership,

1 corporation, and association.

2 (29) [~~+28~~] "Pesticide chemical" means any substance
3 which, alone, in chemical combination or in formulation with one or
4 more other substances, is a "pesticide" within the meaning of the
5 Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C.
6 136(u)), as now in force or as amended, and that is used in the
7 production, storage, or transportation of raw agricultural
8 commodities.

9 (30) [~~+29~~] "Principal display panel" means that part
10 of a label that is most likely to be displayed, presented, shown,
11 or examined under normal and customary conditions of display for
12 retail sale.

13 (31) [~~+30~~] "Raw agricultural commodity" means any
14 food in its raw or natural state, including all fruits that are
15 washed, colored, or otherwise treated in their unpeeled natural
16 form prior to marketing.

17 (32) [~~+31~~] "Saccharin" includes calcium saccharin,
18 sodium saccharin, and ammonium saccharin.

19 (33) [~~+32~~] "Safe" refers to the health of humans or
20 animals.

21 (34) [~~+33~~] "Secretary" means the secretary of the
22 United States Department of Health and Human Services.

23 SECTION 150. Section 431.003, Health and Safety Code, is
24 amended to better conform to the law from which it is derived to
25 read as follows:

26 Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING
27 LABELING OR ADVERTISING. If an article is alleged to be misbranded

1 because the labeling or advertising is misleading, then in
2 determining whether the labeling or advertising is misleading,
3 there shall be taken into account, among other things, not only
4 representations made or suggested by statement, word, design,
5 device, sound, or any combination of these, but also the extent to
6 which the labeling or advertising fails to reveal facts material in
7 the light of such representations or material with respect to
8 consequences which may result from the use of the article to which
9 the labeling or advertising relates under the conditions of use
10 prescribed in the labeling or advertising thereof, or under such
11 conditions of use as are customary or usual.

12 SECTION 151. Section 431.021, Health and Safety Code, is
13 amended to conform to Section 2 of Chapter 1129 (H.B. 2505) and
14 Section 33 of Chapter 1195 (S.B. 959), Acts of the 71st
15 Legislature, Regular Session, 1989, to read as follows:

16 Sec. 431.021. PROHIBITED ACTS. The following acts and the
17 causing of the following acts within this state are unlawful and
18 prohibited:

19 (a) the introduction or delivery for introduction into
20 commerce of any food, drug, device, or cosmetic that is adulterated
21 or misbranded;

22 (b) the adulteration or misbranding of any food, drug,
23 device, or cosmetic in commerce;

24 (c) the receipt in commerce of any food, drug, device,
25 or cosmetic that is adulterated or misbranded, and the delivery or
26 proffered delivery thereof for pay or otherwise;

27 (d) the distribution in commerce of a consumer

1 commodity, if such commodity is contained in a package, or if there
2 is affixed to that commodity a label that does not conform to the
3 provisions of this chapter and of rules adopted under the authority
4 of this chapter; provided, however, that this prohibition shall not
5 apply to persons engaged in business as wholesale or retail
6 distributors of consumer commodities except to the extent that such
7 persons:

8 (1) are engaged in the packaging or labeling of
9 such commodities; or

10 (2) prescribe or specify by any means the manner
11 in which such commodities are packaged or labeled;

12 (e) the introduction or delivery for introduction into
13 commerce of any article in violation of Section 431.084, 431.114,
14 or 431.115;

15 (f) the dissemination of any false advertisement;

16 (g) the refusal to permit entry or inspection, or to
17 permit the taking of a sample or to permit access to or copying of
18 any record as authorized by Sections 431.042-431.044; or the
19 failure to establish or maintain any record or make any report
20 required under Section 512(j), (l), or (m) of the federal Act, or
21 the refusal to permit access to or verification or copying of any
22 such required record;

23 (h) the manufacture within this state of any food,
24 drug, device, or cosmetic that is adulterated or misbranded;

25 (i) the giving of a guaranty or undertaking referred
26 to in Section 431.059, which guaranty or undertaking is false,
27 except by a person who relied on a guaranty or undertaking to the

1 same effect signed by, and containing the name and address of the
2 person residing in this state from whom the person received in good
3 faith the food, drug, device, or cosmetic; or the giving of a
4 guaranty or undertaking referred to in Section 431.059, which
5 guaranty or undertaking is false;

6 (j) the removal or disposal of a detained or embargoed
7 article in violation of Section 431.048;

8 (k) the alteration, mutilation, destruction,
9 obliteration, or removal of the whole or any part of the labeling
10 of, or the doing of any other act with respect to a food, drug,
11 device, or cosmetic, if such act is done while such article is held
12 for sale after shipment in commerce and results in such article
13 being adulterated or misbranded;

14 (1)(1) forging, counterfeiting, simulating, or falsely
15 representing, or without proper authority using any mark, stamp,
16 tag, label, or other identification device authorized or required
17 by rules adopted under this chapter or the regulations promulgated
18 under the provisions of the federal Act;

19 (2) making, selling, disposing of, or keeping in
20 possession, control, or custody, or concealing any punch, die,
21 plate, stone, or other thing designed to print, imprint, or
22 reproduce the trademark, trade name, or other identifying mark,
23 imprint, or device of another or any likeness of any of the
24 foregoing on any drug or container or labeling thereof so as to
25 render such drug a counterfeit drug;

26 (3) the doing of any act that causes a drug to
27 be a counterfeit drug, or the sale or dispensing, or the holding

1 for sale or dispensing, of a counterfeit drug;

2 (m) the using by any person to the person's own
3 advantage, or revealing, other than to the commissioner, an
4 authorized agent, a health authority or to the courts when relevant
5 in any judicial proceeding under this chapter, of any information
6 acquired under the authority of this chapter concerning any method
7 or process that as a trade secret is entitled to protection;

8 (n) the using, on the labeling of any drug or device
9 or in any advertising relating to such drug or device, of any
10 representation or suggestion that approval of an application with
11 respect to such drug or device is in effect under Section 431.114
12 or Section 505, 515, or 520(g) of the federal Act, as the case may
13 be, or that such drug or device complies with the provisions of
14 such sections;

15 (o) the using, in labeling, advertising or other sales
16 promotion of any reference to any report or analysis furnished in
17 compliance with Sections 431.042-431.044 or Section 704 of the
18 federal Act;

19 (p) in the case of a prescription drug distributed or
20 offered for sale in this state, the failure of the manufacturer,
21 packer, or distributor of the drug to maintain for transmittal, or
22 to transmit, to any practitioner licensed by applicable law to
23 administer such drug who makes written request for information as
24 to such drug, true and correct copies of all printed matter that is
25 required to be included in any package in which that drug is
26 distributed or sold, or such other printed matter as is approved
27 under the federal Act. Nothing in this subsection shall be

1 construed to exempt any person from any labeling requirement
2 imposed by or under other provisions of this chapter;

3 (q)(1) placing or causing to be placed on any drug or
4 device or container of any drug or device, with intent to defraud,
5 the trade name or other identifying mark, or imprint of another or
6 any likeness of any of the foregoing;

7 (2) selling, dispensing, disposing of or causing
8 to be sold, dispensed, or disposed of, or concealing or keeping in
9 possession, control, or custody, with intent to sell, dispense, or
10 dispose of, any drug, device, or any container of any drug or
11 device, with knowledge that the trade name or other identifying
12 mark or imprint of another or any likeness of any of the foregoing
13 has been placed thereon in a manner prohibited by Subdivision (1)
14 of this subsection; or

15 (3) making, selling, disposing of, causing to be
16 made, sold, or disposed of, keeping in possession, control, or
17 custody, or concealing with intent to defraud any punch, die,
18 plate, stone, or other thing designed to print, imprint, or
19 reproduce the trademark, trade name, or other identifying mark,
20 imprint, or device of another or any likeness of any of the
21 foregoing on any drug or container or labeling of any drug or
22 container so as to render such drug a counterfeit drug;

23 (r) dispensing or causing to be dispensed a different
24 drug in place of the drug ordered or prescribed without the express
25 permission in each case of the person ordering or prescribing;

26 (s) the failure to register in accordance with Section
27 510 of the federal Act, the failure to provide any information

1 required by Section 510(j) or (k) of the federal Act, or the
2 failure to provide a notice required by Section 510(j)(2) of the
3 federal Act;

4 (t)(1) the failure or refusal to:

5 (A) comply with any requirement prescribed
6 under Section 518 or 520(g) of the federal Act; or

7 (B) furnish any notification or other
8 material or information required by or under Section 519 or 520(g)
9 of the federal Act;

10 (2) with respect to any device, the submission
11 of any report that is required by or under this chapter that is
12 false or misleading in any material respect;

13 (u) the movement of a device in violation of an order
14 under Section 304(g) of the federal Act or the removal or
15 alteration of any mark or label required by the order to identify
16 the device as detained; [or]

17 (v) the failure to provide the notice required by
18 Section 412(b) or 412(c), the failure to make the reports required
19 by Section 412(d)(1)(B), or the failure to meet the requirements
20 prescribed under Section 412(d)(2) of the federal Act;

21 (w) the acceptance by a person of an unused
22 prescription or drug, in whole or in part, for the purpose of
23 resale, after the drug has been originally dispensed or sold;

24 (x) engaging in the wholesale distribution of drugs in
25 this state without filing a registration statement with the
26 commissioner as required by Section 431.202;

27 (y) engaging in the manufacture of food in this state

1 without registering with the department as required by Section
2 431.222; or

3 (z) the sale, delivery, holding, or offering for sale
4 of a self-testing kit designed to indicate whether a person has a
5 human immunodeficiency virus infection, acquired immune deficiency
6 syndrome, or a related disorder or condition.

7 SECTION 152. Section 431.049, Health and Safety Code, is
8 amended to conform to Section 5, Chapter 1129 (H.B. 2505), Acts of
9 the 71st Legislature, Regular Session, 1989, to read as follows:

10 Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED
11 ARTICLE. (a) If the claimant of the detained or embargoed
12 articles or the claimant's agent fails or refuses to transfer the
13 articles to a secure place after the tag or other appropriate
14 marking has been affixed as provided by Section 431.048, the
15 commissioner or an authorized agent may order the transfer of the
16 articles to one or more secure storage areas to prevent their
17 unauthorized removal or disposal [~~The-commissioner-may, before--or~~
18 ~~in--conjunction--with--the-affixing-of-an-appropriate-marking-for-a~~
19 ~~detained-or-embargoed-article, order-the-claimant-of-the-article-or~~
20 ~~the-claimant's-agent--to--remove--the--article--to--a--secure--area~~
21 ~~approved--by-the-commissioner-or-an-authorized-agent-if-the-article~~
22 ~~is-on-display-for-sale-to-any-member-of-the-public~~].

23 (b) [~~The-removal-order-must-be-in-writing-and-signed-by--the~~
24 ~~commissioner.~~

25 [~~(c)--The-removal-order-remains-in-effect-until--the-order:~~

26 [~~(1)--expires-on-its-own-terms;~~

27 [~~(2)--is-withdrawn-by-the-commissioner, or~~

1 ~~[(3)--is--removed--by--a--court--in--an--order--denying~~
2 ~~condemnation-of-the-article-in-accordance-with-Section-431.050-~~

3 ~~[(d)]~~ The commissioner or an authorized agent may provide
4 for the transfer of [remove] the article if the claimant of the
5 article or the claimant's agent does not carry out the transfer
6 ~~[removal]~~ order in a timely manner. The costs of the transfer
7 shall be assessed against the claimant of the article or the
8 claimant's agent.

9 ~~(c)~~ ~~[(e)]~~ The claimant of the article or the claimant's
10 agent shall pay the costs of the transfer ~~[removal-and-storage-of~~
11 ~~the-article]~~.

12 ~~(d)~~ The commissioner may request the attorney general to
13 bring an action in the district court in Travis County to recover
14 the costs of the transfer. In a judgment in favor of the state,
15 the court may award costs, attorney's fees, court costs, and
16 interest from the time the expense was incurred through the date
17 the department is reimbursed.

18 SECTION 153. Chapter 431, Health and Safety Code, is amended
19 to conform to Section 7, Chapter 1129 (H.B. 2505), Acts of the 71st
20 Legislature, Regular Session, 1989, by adding Section 431.0495 to
21 read as follows:

22 Sec. 431.0495. RECALL ORDERS. (a) In conjunction with the
23 issuance of an emergency order under Section 431.045 or the
24 detention or embargo of an article under Section 431.048, the
25 commissioner may order a food, drug, device, cosmetic, or consumer
26 commodity to be recalled from commerce.

27 (b) The commissioner's recall order may require the articles

1 to be removed to one or more secure areas approved by the
2 commissioner or an authorized agent.

3 (c) The recall order must be in writing and signed by the
4 commissioner.

5 (d) The recall order may be issued before or in conjunction
6 with the affixing of the tag or other appropriate marking as
7 provided by Section 431.048(a) or in conjunction with the
8 commissioner's issuance of an emergency order under Section
9 431.045.

10 (e) The recall order is effective until the order:

11 (1) expires on its own terms;

12 (2) is withdrawn by the commissioner;

13 (3) is reversed by a court in an order denying
14 condemnation under Section 431.050; or

15 (4) is set aside at the hearing provided to affirm,
16 modify, or set aside an emergency order under Section 431.045.

17 (f) The claimant of the articles or the claimant's agent
18 shall pay the costs of the removal and storage of the articles
19 removed.

20 (g) If the claimant or the claimant's agent fails or refuses
21 to carry out the recall order in a timely manner, the commissioner
22 may provide for the recall of the articles. The costs of the
23 recall shall be assessed against the claimant of the articles or
24 the claimant's agent.

25 (h) The commissioner may request the attorney general to
26 bring an action in the district court of Travis County to recover
27 the costs of the recall. In a judgment in favor of the state, the

1 court may award costs, attorney's fees, court costs, and interest
2 from the time the expense was incurred through the date the
3 department is reimbursed.

4 SECTION 154. Subchapter C, Chapter 431, Health and Safety
5 Code, is amended to conform to Section 3, Chapter 1129 (H.B. 2505),
6 Acts of the 71st Legislature, Regular Session, 1989, by adding
7 Section 431.0585 to read as follows:

8 Sec. 431.0585. CIVIL PENALTY. (a) At the request of the
9 commissioner, the attorney general or a district, county, or city
10 attorney shall institute an action in district court to collect a
11 civil penalty from a person who has violated Section 431.021.

12 (b) The civil penalty may not exceed \$25,000 a day for each
13 violation. Each day of violation constitutes a separate violation
14 for purposes of the penalty assessment.

15 (c) The court shall consider the following in determining
16 the amount of the penalty:

17 (1) the person's history of any previous violations of
18 Section 431.021;

19 (2) the seriousness of the violation;

20 (3) any hazard posed to the public health and safety
21 by the violation; and

22 (4) demonstrations of good faith by the person
23 charged.

24 (d) Venue for a suit brought under this section is in the
25 city or county in which the violation occurred or in Travis County.

26 (e) A civil penalty recovered in a suit instituted by a
27 local government under this section shall be paid to that local

1 government.

2 SECTION 155. Section 431.059(a), Health and Safety Code, is
3 amended to conform to Section 4, Chapter 1129 (H.B. 2505), Acts of
4 the 71st Legislature, Regular Session, 1989, to read as follows:

5 (a) A person commits an offense if the person violates any
6 of the provisions of Section 431.021 relating to unlawful or
7 prohibited acts. An offense under this subsection is a Class A
8 misdemeanor. In a criminal proceeding under this section, it is
9 not necessary to prove intent, knowledge, recklessness, or criminal
10 negligence of the defendant beyond the degree of culpability, if
11 any, stated in Section 431.021 to establish criminal responsibility
12 for the violation.

13 SECTION 156. Section 431.082, Health and Safety Code, is
14 amended to conform to Section 8, Chapter 1129 (H.B. 2505), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be
17 misbranded:

18 (a) if its labeling is false or misleading in any
19 particular or fails to conform with the requirements of Section
20 431.181;

21 (b) if, in the case of a food to which Section 411 of
22 the federal Act applies, its advertising is false or misleading in
23 a material respect or its labeling is in violation of Section
24 411(b)(2) of the federal Act;

25 (c) if it is offered for sale under the name of
26 another food;

27 (d) if it is an imitation of another food, unless its

1 label bears, in prominent type of uniform size, the word
2 "imitation" and immediately thereafter the name of the food
3 imitated;

4 (e) if its container is so made, formed, or filled as
5 to be misleading;

6 (f) if in package form unless it bears a label
7 containing:

8 (1) the name and place of business of the
9 manufacturer, packer, or distributor; and

10 (2) an accurate statement, in a uniform location
11 on the principal display panel of the label, of the quantity of the
12 contents in terms of weight, measure, or numerical count; provided,
13 that under this subsection reasonable variations shall be
14 permitted, and exemptions as to small packages shall be
15 established, by rules adopted by the board;

16 (g) if any word, statement, or other information
17 required by or under the authority of this chapter to appear on the
18 label or labeling is not prominently placed thereon with such
19 conspicuousness (as compared with other words, statements, designs,
20 or devices in the labeling) and in such terms as to render it
21 likely to be read and understood by the ordinary individual under
22 customary conditions of purchase and use;

23 (h) if it purports to be or is represented as a food
24 for which a definition and standard of identity has been prescribed
25 by federal regulations or rules of the board as provided by Section
26 431.245, unless:

27 (1) it conforms to such definition and standard;

1 and

2 (2) its label bears the name of the food
3 specified in the definition and standard, and, in so far as may be
4 required by those regulations or rules, the common names of
5 optional ingredients, other than spices, flavoring, and coloring,
6 present in such food;

7 (i) if it purports to be or is represented as:

8 (1) a food for which a standard of quality has
9 been prescribed by federal regulations or rules of the board as
10 provided by Section 431.245, and its quality falls below such
11 standard unless its label bears, in such manner and form as those
12 regulations or rules specify, a statement that it falls below such
13 standard; or

14 (2) a food for which a standard or standards of
15 fill of container have been prescribed by federal regulations or
16 rules of the board as provided by Section 431.245, and it falls
17 below the standard of fill of container applicable thereto, unless
18 its label bears, in such manner and form as those regulations or
19 rules specify, a statement that it falls below such standard;

20 (j) if it is not subject to the provisions of
21 Subsection (h), unless its label bears:

22 (1) the common or usual name of the food, if
23 any; and

24 (2) in case it is fabricated from two or more
25 ingredients, the common or usual name of each such ingredient;
26 except that spices, flavorings, and colorings, other than those
27 sold as such, may be designated as spices, flavorings, and

1 colorings, without naming each; provided that, to the extent that
2 compliance with the requirements of this subdivision is impractical
3 or results in deception or unfair competition, exemptions shall be
4 established by rules of the board;

5 (k) if it purports to be or is represented for special
6 dietary uses, unless its label bears such information concerning
7 its vitamin, mineral, and other dietary properties as the board
8 determines to be, and by rule prescribed, as necessary in order to
9 fully inform purchasers as to its value for such uses; [or]

10 (l) if it bears or contains any artificial flavoring,
11 artificial coloring, or chemical preservative, unless it bears
12 labeling stating that fact; provided that, to the extent that
13 compliance with the requirements of this subsection is
14 impracticable, exemptions shall be established by rules of the
15 board. The provisions of this subsection and Subsections (h) and
16 (j) with respect to artificial coloring do not apply in the case of
17 butter, cheese, and ice cream;

18 (m) if it is a raw agricultural commodity that is the
19 produce of the soil and bears or contains a pesticide chemical
20 applied after harvest, unless the shipping container of the
21 commodity bears labeling that declares the presence of the chemical
22 in or on the commodity and the common or usual name and the
23 function of the chemical, except that the declaration is not
24 required while the commodity, after removal from the shipping
25 container, is being held or displayed for sale at retail out of the
26 container in accordance with the custom of the trade;

27 (n) if it is a product intended as an ingredient of

1 another food and if used according to the directions of the
2 purveyor will result in the final food product being adulterated or
3 misbranded;

4 (o) if it is a color additive, unless its packaging
5 and labeling are in conformity with the packaging and labeling
6 requirements applicable to the color additive as may be contained
7 in regulations issued under Section 706 of the federal Act;

8 (p) if its packaging or labeling is in violation of an
9 applicable regulation issued under Section 3 or 4 of the Federal
10 Poison Prevention Packaging Act of 1970 (15 U.S.C. 1491 et seq.);

11 (q) if it contains saccharin, unless its label and
12 labeling and retail display comply with the requirements of
13 Sections 403(o) and 403(p) of the federal Act; or

14 (r) if it contains saccharin and is offered for sale,
15 but not for immediate consumption, at a retail establishment,
16 unless the retail establishment displays prominently, where the
17 food is held for sale, notice that is provided by the manufacturer
18 of the food under Section 403(o)(2) of the federal Act for
19 consumers concerning the information required by Section 403(p) of
20 the federal Act to be on food labels and labeling.

21 SECTION 157. Section 431.114(c), Health and Safety Code, is
22 amended to conform to Section 9, Chapter 1129 (H.B. 2505), Acts of
23 the 71st Legislature, Regular Session, 1989, to read as follows:

24 (c) This section shall not apply:

25 (1) to any drug that is not a new drug as defined in
26 the federal Act; [or]

27 (2) to any drug that is licensed under the Public

1 Health Services Act of July 1, 1944 (42 U.S.C. 201 et seq.)[~~7--or~~
2 ~~under-the-Virus-Serum-Toxin-Act-(21-U.S.C.-151-158)~~]; or

3 (3) to any drug approved by the commissioner by the
4 authority of any prior law[~~7--including-this-section~~].

5 SECTION 158. Section 431.115(c), Health and Safety Code, is
6 amended to conform to Section 10, Chapter 1129 (H.B. 2505), Acts of
7 the 71st Legislature, Regular Session, 1989, to read as follows:

8 (c) This section does not apply to any drug:

9 (1) licensed under the virus-serum-toxin law of March
10 4, 1913 (21 U.S.C. 151-159);

11 (2) approved by the United States Department of
12 Agriculture; or

13 (3) approved by the commissioner by the authority of
14 any prior law[~~7--including-Section-431-112~~].

15 SECTION 159. Section 431.142, Health and Safety Code, is
16 amended to conform to Section 11, Chapter 1129 (H.B. 2505), Acts of
17 the 71st Legislature, Regular Session, 1989, to read as follows:

18 Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be
19 deemed to be misbranded:

20 (a) if:

21 (1) its labeling is false or misleading in any
22 particular; and

23 (2) its labeling or packaging fails to conform
24 with the requirements of Section 431.181;

25 (b) if in package form unless it bears a label
26 containing (1) the name and place of business of the manufacturer,
27 packer, or distributor; and (2) an accurate statement of the

1 quantity of the contents in terms of weight, measure or numerical
2 count, which statement shall be separately and accurately stated in
3 a uniform location on the principal display panel of the label;
4 provided, that under Subdivision (2) reasonable variations shall be
5 permitted, and exemptions as to small packages shall be established
6 by regulations prescribed by rules adopted by the board;

7 (c) if any word, statement, or other information
8 required by or under authority of this chapter to appear on the
9 label or labeling is not prominently placed thereon with such
10 conspicuousness (as compared with other words, statements, designs,
11 or devices, in the labeling) and in such terms as to render it
12 likely to be read and understood by the ordinary individual under
13 customary conditions of purchase and use;

14 (d) if its container is so made, formed, or filled as
15 to be misleading;

16 (e) if it is a color additive, unless its packaging
17 and labeling are in conformity with the packaging and labeling
18 requirements, applicable to the color additive, prescribed under
19 Section 706 of the federal Act. This subsection shall not apply to
20 packages of color additives which, with respect to their use for
21 cosmetics, are marketed and intended for use only in or on hair
22 dyes, as defined by Section 431.141(a); or

23 (f) if its packaging or labeling is in violation of an
24 applicable regulation issued pursuant to Section 3 or 4 of the
25 Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or
26 1473).

27 (2) [~~19~~] The board shall adopt rules exempting from any

1 labeling requirement of this chapter cosmetics that are in
2 accordance with the practice of the trade, to be processed,
3 labeled, or repacked in substantial quantities at an establishment
4 other than the establishment where it was originally processed or
5 packed, on condition that the cosmetics are not adulterated or
6 misbranded under the provisions of this chapter on removal from the
7 processing, labeling, or repacking establishment. Cosmetic
8 labeling exemptions adopted under the federal Act shall apply to
9 cosmetics in this state except insofar as modified or rejected by
10 rules adopted by the board.

11 SECTION 160. Section 431.183(b), Health and Safety Code, is
12 amended to better conform to the law from which it is derived to
13 read as follows:

14 (b) Subsection (a) does not apply to an advertisement of a
15 drug or device if the advertisement does not violate Section
16 431.182 [~~431.183(a)~~] and is disseminated:

17 (1) to the public for self-medication and is
18 consistent with the labeling claims permitted by the federal Food
19 and Drug Administration;

20 (2) only to members of the medical, dental, and
21 veterinary professions and appears only in the scientific
22 periodicals of those professions; or

23 (3) only for the purpose of public health education by
24 a person not commercially interested, directly or indirectly, in
25 the sale of the drug or device.

26 SECTION 161. Section 431.202, Health and Safety Code, is
27 amended to conform to Section 13, Chapter 1129 (H.B. 2505), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 Sec. 431.202. REGISTRATION STATEMENT REQUIRED[~~7--CRIMINAL~~
3 ~~PENALTY~~]. (a) A person may not engage in wholesale distribution
4 of drugs in this state unless the person has filed with the
5 commissioner a signed and verified registration statement on a form
6 furnished by the commissioner.

7 (b) The registration statement must be filed annually.

8 [~~(c)--A-person-commits-an-offense--if--the--person--does--not~~
9 ~~comply--with--this--section.--An-offense-under-this-subsection-is-a~~
10 ~~Class-A-misdemeanor--]~~

11 SECTION 162. Section 431.222, Health and Safety Code, is
12 amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 Sec. 431.222. REGISTRATION REQUIRED[~~7--CRIMINAL--PENALTY~~].

15 (a) A manufacturer of food in this state shall register annually
16 with the department each establishment that the manufacturer
17 operates in this state and pay a fee for each establishment.

18 (b) The registration statement must be signed and verified
19 and filed on a form furnished by the department.

20 [~~(c)--A--person--commits--an--offense--if--the--person--does--not~~
21 ~~comply-with-this-section.--An-offense-under-this--subsection--is--a~~
22 ~~Class-A-misdemeanor--]~~

23 SECTION 163. Section 431.224, Health and Safety Code, is
24 amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of
25 the 71st Legislature, Regular Session, 1989, by adding Subsection
26 (e) to read as follows:

27 (e) All registration fees received by the department under

1 this subchapter shall be deposited in the state treasury to the
2 credit of the food and drug registration fee fund.

3 SECTION 164. Section 431.225(b), Health and Safety Code, is
4 amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of
5 the 71st Legislature, Regular Session, 1989, to read as follows:

6 (b) For the year in which the registration expiration date
7 is changed, registration fees payable on or before September 1
8 shall be prorated so that each registrant pays only that portion of
9 the registration fee allocable to the number of months during which
10 the registration is valid. On renewal of the registration on the
11 new expiration date, the total registration renewal fee is payable
12 [The-department-shall-prorate-registration-fees-for-the-months-of-a
13 year-in-which-a-registration-expiration-date-is-changed].

14 SECTION 165. Section 436.024, Health and Safety Code, is
15 amended to conform to Section 13, Chapter 255 (H.B. 2622), Acts of
16 the 71st Legislature, Regular Session, 1989, to read as follows:

17 Sec. 436.024. CRIMINAL PENALTY. (a) A person commits an
18 offense if the person violates this subchapter or a rule adopted
19 under this subchapter. Each day of a continuing violation
20 constitutes a separate offense.

21 (b) An offense under Subsection (a) ~~[this-section]~~ is a
22 misdemeanor punishable by a fine of not less than \$200 or more than
23 \$1,000, confinement in jail for not more than 180 days, or both.

24 (c) If it is shown at the trial of a defendant for a
25 violation of Section 436.018 that the defendant has been convicted
26 once within five years before the trial date of a violation of
27 Section 436.018, the defendant is guilty of a misdemeanor

1 punishable by a fine of not less than \$500 or more than \$2,000,
2 confinement in jail for a term not to exceed one year, or both.

3 (d) If it is shown at the trial of a defendant for a
4 violation of Section 436.018 that the defendant has been convicted
5 two or more times within five years before the trial date of a
6 violation of Section 436.018, the defendant is guilty of a felony
7 punishable by imprisonment for a term of not more than 10 years or
8 less than two years. In addition to imprisonment, an individual
9 adjudged guilty of a felony under this subsection may be punished
10 by a fine of not less than \$2,000 or more than \$5,000.

11 [~~(e)~~--Each--day--of--a--continuing--violation--constitutes--a
12 separate-offense.]

13 SECTION 166. Section 436.044(b), Health and Safety Code, is
14 amended to conform to Section 1, Chapter 412 (H.B. 1547), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 (b) A license is nontransferable and expires the last day of
17 February [~~August-31~~] of each year.

18 SECTION 167. Subtitle A, Title 6, Health and Safety Code, is
19 amended to conform to Chapter 194, Acts of the 67th Legislature,
20 Regular Session, 1981 (Article 4476-2a, Vernon's Texas Civil
21 Statutes), by adding Chapter 440 to read as follows:

22 CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT

23 SUBCHAPTER A. GENERAL PROVISIONS

24 Sec. 440.001. SHORT TITLE. This chapter may be cited as the
25 Frozen Desserts Manufacturer Licensing Act.

26 Sec. 440.002. PURPOSE. The legislature finds that a
27 statewide licensing act is needed to:

1 (1) regulate manufacturers of frozen desserts,
2 imitation frozen desserts, products sold in semblance of frozen
3 desserts, or mixes for those products;

4 (2) provide for uniformity of inspections of the
5 premises of frozen dessert manufacturers;

6 (3) protect the health and safety of consumers by
7 preventing the manufacture or distribution of frozen desserts,
8 imitation frozen desserts, products sold in semblance of frozen
9 desserts, or mixes for those products that do not meet state
10 standards or related requirements of purity or labeling; and

11 (4) assist manufacturers in meeting state standards or
12 related requirements.

13 Sec. 440.003. DEFINITIONS. In this Act:

14 (1) "Adulterated or misbranded frozen desserts mix"
15 means any frozen dessert or mix that contains an unwholesome
16 substance, or, if defined in this standard, that does not conform
17 with its definition, or that does not comply with Chapter 431
18 (Texas Food, Drug, and Cosmetic Act) or any other applicable
19 regulation.

20 (2) "Board" means the Texas Board of Health.

21 (3) "Commissioner" means the commissioner of health.

22 (4) "Department" means the Texas Department of Health.

23 (5) "Frozen dessert" means any of the following: ice
24 cream, ice milk, fruit sherbet, water ice, nonfruit sherbet,
25 nonfruit water ice, frozen dietary dairy desserts, frozen yogurt,
26 quiescently frozen confection, quiescently frozen dairy
27 confection, mellorine, lorine, parevine, freezer-made milk shake,

1 freezer-made shake, or nondairy frozen dessert. The term includes
2 the mix used in the freezing of one of those frozen desserts.

3 (6) "Frozen desserts manufacturer" means a person who
4 manufactures, processes, converts, partially freezes, or freezes
5 any mix (regardless of whether it is dairy, nondairy, imitation,
6 pasteurized or unpasteurized), frozen desserts, imitation frozen
7 desserts, or nondairy frozen desserts for distribution or sale at
8 wholesale. The term does not include a frozen desserts retail
9 establishment.

10 (7) "Frozen desserts plant" means premises where a
11 frozen dessert or mix is manufactured, processed, or frozen for
12 sale.

13 (8) "Frozen desserts retail establishment" means
14 premises, including a retail store, approved type stand, hotel,
15 restaurant, vehicle, or mobile unit, where frozen dessert mixes are
16 frozen or partially frozen and dispensed for retail sale or
17 distribution.

18 (9) "Health authority" means the municipal, county, or
19 state health officer or the officer's representative or any other
20 agency having jurisdiction or control over the matters embraced
21 within the specifications and requirements of this chapter.

22 (10) "Imitation frozen dessert" means any frozen
23 substance, mixture, or compound, regardless of the name under which
24 it is represented, that is made in imitation or semblance of any of
25 the following products or is prepared or frozen in the manner in
26 which any of the following products is customarily prepared or
27 frozen and that is not the product: ice cream, ice milk, fruit

1 sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat
2 yogurt, nonfat yogurt, frozen yogurt, quiescently frozen
3 confection, quiescently frozen dairy confection, mellorine, lorine,
4 parevine, freezer-made milk shake, freezer-made shake, or nondairy
5 frozen dessert.

6 (11) "Manufacture" means the processing, freezing, or
7 packaging of frozen desserts, imitation frozen desserts, products
8 sold in semblance of frozen desserts, or mixes for those products
9 for sale at wholesale. The term does not include a retailer
10 purchasing those products from a manufacturer displaying the
11 retailer's brand name.

12 (12) "Mix" means the pasteurized or unpasteurized,
13 liquid or dry, unfrozen combination of the ingredients permitted in
14 a frozen dessert with or without fruits, fruit juices, candy, baked
15 goods and confections, nutmeats, or other harmless flavor or color.

16 (13) "Official laboratory" means a biological,
17 chemical, or physical laboratory that is under the supervision of a
18 state or local health authority.

19 (14) "Sale" means the:

20 (A) manufacture, production, processing,
21 packing, exposure, offer, or holding of any frozen dessert product
22 for sale;

23 (B) sale, dispensing, or giving of any frozen
24 dessert product; or

25 (C) supplying or applying of any frozen dessert
26 product in the conduct of any frozen desserts retail establishment.

27 (15) "State health officer" means the commissioner of

1 health.

2 (16) "Wholesale" means the exposing, offering,
3 possessing, selling, dispensing, holding, or giving of any frozen
4 dessert, imitation frozen dessert, product sold in semblance of
5 frozen dessert, or a mix for one of those products, to other than
6 the ultimate consumer. The term does not include sale by a retail
7 store.

8 Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

9 (1) a person operating a frozen desserts retail
10 establishment; or

11 (2) a person operating a retail store unless the
12 person is also a manufacturer.

13 Sec. 440.005. HEARINGS. (a) A hearing conducted by the
14 board in the administration of this chapter is governed by the
15 Administrative Procedure and Texas Register Act (Article 6252-13a,
16 Vernon's Texas Civil Statutes).

17 (b) Based on the record of a hearing conducted under this
18 chapter, the department shall make a finding and shall sustain,
19 change, or rescind an official notice or order considered in the
20 hearing.

21 Sec. 440.006. POWERS AND DUTIES OF BOARD. The board may:

22 (1) adopt rules prescribing standards or related
23 requirements for the operation of establishments for the
24 manufacture of frozen desserts, imitation frozen desserts, products
25 sold in semblance of frozen desserts, or mixes for those products,
26 including standards or requirements for the:

27 (A) health, cleanliness, education, and training

1 of personnel who are employed in the establishments;

2 (B) protection of raw materials, manufactured
3 merchandise, and merchandise held for sale;

4 (C) design, construction, installation, and
5 cleanliness of equipment and utensils;

6 (D) sanitary facilities and controls of the
7 establishments;

8 (E) establishment construction and maintenance,
9 including vehicles;

10 (F) production processes and controls; and

11 (G) institution and content of a system of
12 records to be maintained by the establishment; and

13 (2) adopt rules prescribing procedures for the
14 enforcement of the standards or related requirements prescribed
15 under Subdivision (1), including procedures for the:

16 (A) requirement of a valid license to operate an
17 establishment;

18 (B) issuance, suspension, revocation, and
19 reinstatement of licenses;

20 (C) administrative hearings before the board or
21 its designee;

22 (D) institution of certain court proceedings by
23 the board or its designee;

24 (E) inspection of establishments and securing of
25 samples of frozen desserts, imitation frozen desserts, products
26 sold in semblance of frozen desserts, or mixes for those products;

27 (F) access to the establishments and to the

1 vehicles used in operations;

2 (G) compliance by manufacturers outside the
3 jurisdiction of the state; and

4 (H) review of plans for future construction.

5 [Sections 440.007-440.010 reserved for expansion]

6 SUBCHAPTER B. LICENSING

7 Sec. 440.011. PROHIBITED ACT. (a) A person may not operate
8 an establishment for the manufacture of a frozen dessert, imitation
9 frozen dessert, product sold in semblance of a frozen dessert, or a
10 mix for one of those products in this state unless the person has a
11 valid license issued under this chapter.

12 (b) A political subdivision or agency of the state, other
13 than the department, may not impose a license fee on any
14 manufacturer covered by this section.

15 Sec. 440.012. LICENSE. (a) A person desiring to operate an
16 establishment for the manufacture of a frozen dessert, imitation
17 frozen dessert, product sold in semblance of a frozen dessert, or a
18 mix for one of those products may apply to the department for a
19 license. A license shall be granted under the procedural rules
20 adopted by the board and shall be issued only for the purpose and
21 use as stated on the application for a license.

22 (b) The department shall inspect the establishment under
23 Section 440.031 before issuing a license.

24 (c) A license may not be issued to a person who does not
25 comply with the standards prescribed by the board under this
26 chapter.

27 (d) A license issued under this chapter must be renewed on

1 or before September 1 of each year in accordance with rules adopted
2 by the board.

3 Sec. 440.013. FEES. (a) A \$200 nonrefundable fee for each
4 establishment must accompany each application for a license.

5 (b) The department also shall assess the following fees:

6 (1) a fee for a frozen dessert manufacturer located in
7 this state in the amount of one cent per 100 pounds of manufactured
8 or processed frozen dessert manufactured or processed and
9 distributed in this state by that manufacturer;

10 (2) a fee for a frozen dessert manufacturer not
11 located in this state in the amount of one cent per 100 pounds of
12 frozen desserts manufactured or processed by the manufacturer in
13 another state and imported for sale in this state; and

14 (3) a fee for the actual cost of analyzing samples of
15 frozen desserts for a frozen dessert manufacturer not located in
16 this state.

17 (c) The board shall adopt rules to collect fees imposed
18 under this section monthly, quarterly, semiannually, or annually
19 based on amounts due by the frozen dessert manufacturer.

20 (d) The department may revoke a license to operate a frozen
21 desserts plant if the licensee fails to make a timely payment of
22 the monthly fees required under this section. The department's
23 rules of procedure for a contested case hearing and the
24 Administrative Procedure and Texas Register Act (Article 6252-13a,
25 Vernon's Texas Civil Statutes) govern the revocation of a license.

26 Sec. 440.014. RECORDKEEPING. The board shall adopt rules
27 establishing minimum standards for recordkeeping by persons

1 required to pay fees under this chapter and the records shall be
2 made available to the department on request.

3 Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen
4 dessert, imitation frozen dessert, product sold in semblance of a
5 frozen dessert, or a mix for one of those products from a
6 manufacturer located outside this state may be sold or distributed
7 in this state if the manufacturer complies with this chapter or
8 complies with other regulatory requirements that are substantially
9 equivalent to those of this state. To determine the extent of the
10 manufacturer's compliance, the department may accept reports from
11 responsible authorities in the jurisdiction in which the
12 manufacturer is located.

13 Sec. 440.016. TEMPORARY PERMIT. The department may issue a
14 temporary permit to continue the operation of an establishment for
15 the manufacture of a frozen dessert, imitation frozen dessert,
16 product sold in semblance of a frozen dessert, or mix for one of
17 those products until the department performs the inspection
18 required by this chapter.

19 [Sections 440.017-440.030 reserved for expansion]

20 SUBCHAPTER C. ENFORCEMENT

21 Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules
22 adopted by the board, the department's authorized representatives
23 have free access at all reasonable hours to any establishment for
24 the manufacture of a frozen dessert, imitation frozen dessert,
25 product sold in semblance of a frozen dessert, or a mix for one of
26 those products, or to any vehicle being used to transport in
27 commerce a frozen dessert, imitation frozen dessert, product sold

1 in semblance of a frozen dessert, or a mix for one of those
2 products, for the purpose of:

3 (1) inspecting the establishment or vehicle to
4 determine compliance with the standards or related requirements
5 prescribed by the board under this chapter; or

6 (2) securing samples of frozen desserts, imitation
7 frozen desserts, products sold in semblance of frozen desserts, or
8 a mix for one of those products, for the purpose of making or
9 causing to be made an examination of the samples to determine
10 compliance with the standards or related requirements prescribed by
11 the board under this chapter.

12 (b) A political subdivision or an agency other than the
13 department that collects samples described by Subsection (a)(2)
14 shall bear the cost of the samples and any analyses of the samples.

15 Sec. 440.032. PENALTIES. (a) A person commits an offense
16 if the person knowingly or intentionally violates Section 440.011
17 or a rule adopted by the board under this chapter.

18 (b) An offense under this section is a Class C misdemeanor.

19 (c) The penalty prescribed by this section is in addition to
20 any civil or administrative penalty or sanction otherwise imposed
21 by law.

22 SECTION 168. Section 461.001, Health and Safety Code, is
23 amended to conform to Section 8, Chapter 23 (S.B. 57), Acts of the
24 71st Legislature, 1st Called Session, 1989, to read as follows:

25 Sec. 461.001. POLICY. Chemical dependency is a [Alcohol-and
26 drug-abuse-are] preventable and treatable illness [illnesses] and
27 public health problem [problems] affecting the general welfare and

1 the economy of the state. The legislature recognizes the need for
2 proper and sufficient facilities, programs, and procedures for
3 prevention, intervention, treatment, and rehabilitation. It is the
4 policy of this state that a chemically dependent person [~~an-alcohol~~
5 ~~or-drug-abuser~~] shall be offered a continuum of services that will
6 enable the person to lead a normal life as a productive member of
7 society.

8 SECTION 169. Section 461.002, Health and Safety Code, is
9 amended to conform to Section 8, Chapter 23 (S.B. 57), Acts of the
10 71st Legislature, 1st Called Session, 1989, to read as follows:

11 Sec. 461.002. DEFINITIONS. In this chapter:

12 (1) "Chemical dependency" means:

13 (A) abuse of alcohol or a controlled substance;

14 (B) psychological or physical dependence on
15 alcohol or a controlled substance; or

16 (C) addiction to alcohol or a controlled
17 substance.

18 (2) [~~"Alcohol--abuse"--means--the--excessive--use---of~~
19 ~~alcohol-in-a-manner-that-interferes,-but-not-chronically,-with:~~

20 [~~(A)--physical-or-psychological-functioning;~~

21 [~~(B)--social-adaptation;~~

22 [~~(C)--educational-performance;-or~~

23 [~~(D)--occupational-functioning;~~

24 [~~(2)--"Alcoholic"---means---a---person--suffering--from~~
25 ~~alcoholism.~~

26 [~~(3)--"Alcoholism"--means:~~

27 [~~(A)--a-loss-of-self-control-with-respect-to--the~~

1 use-of-alcohol;

2 [~~(B)~~--a---pathological---use---of---alcohol--that
3 chronically-impairs-social-or-occupational-functioning;-or

4 [~~(C)~~--a-physiological-dependence--on--alcohol--as
5 evidenced-by-tolerance-or-withdrawal-symptoms.

6 [~~(4)~~] "Commission" means the Texas Commission on
7 Alcohol and Drug Abuse.

8 (3) "Controlled substance" means a:

9 (A) toxic inhalant; or

10 (B) substance designated as a controlled
11 substance by Chapter 481 (Texas Controlled Substances Act).

12 (4) [~~(5)~~--"Drug-abuse"--means-misuse--or--abuse--of--any
13 controlled---substance---or---volatile---chemical--for--other--than
14 appropriate-and-duly-prescribed-medicinal-purposes.

15 [~~(6)~~--"Drug-dependent-person"--means--a--person--who--is
16 using--a--controlled-substance-or-volatile-chemical-and-who-is-in-a
17 state-of-psychological-or-physical--dependence;-or--both;-arising
18 from-administration-of-a-controlled-substance-or-volatile-chemical.
19 Drug--dependence-is-characterized-by-behavioral-and-other-responses
20 that-include-a-strong-compulsion-to-take-a-controlled-substance--or
21 volatile--chemical-in-order-to-experience-its-psychological-effects
22 or-to-avoid-the-discomfort-of-its-absence.

23 [~~(7)~~] "Intervention" means the interruption of the
24 onset or progression of chemical dependency [~~substance-abuse-or~~
25 ~~dependence~~] in the early stages.

26 (5) [~~(8)~~] "Prevention" means the reduction of a
27 person's risk of abusing [~~or-becoming-addicted-to~~] alcohol or a

1 controlled substance or becoming chemically dependent [drugs].

2 (6) [(9)] "Rehabilitation" means the reestablishment
3 of the social and vocational life of a [substance-free] person
4 after treatment.

5 (7) "Toxic inhalant" means a gaseous substance that is
6 inhaled by a person to produce a desired physical or psychological
7 effect and that may cause personal injury or illness to the
8 inhaler.

9 (8) [(10)]--"Substance--abuse"--means--alcohol--or--drug
10 abuse, or both.

11 [(11)] "Treatment" means the initiation and promotion,
12 in a planned, structured, and organized manner, of a person's
13 chemical-free status or the maintenance of a person free of illegal
14 drugs [maintenance-of-a-person's-substance-free-status].

15 (9) "Treatment facility" means a public or private
16 hospital, a detoxification facility, a primary care facility, an
17 intensive care facility, a long-term care facility, an outpatient
18 care facility, a community mental health center, a health
19 maintenance organization, a recovery center, a halfway house, an
20 ambulatory care facility, another facility that is required to be
21 licensed and approved by the commission, or a facility licensed or
22 operated by the Texas Department of Mental Health and Mental
23 Retardation. The term does not include an educational program for
24 intoxicated drivers or the individual office of a private, licensed
25 health care practitioner who personally renders private individual
26 or group services within the scope of the practitioner's license
27 and in the practitioner's office.

1 SECTION 170. Sections 461.005(a), (b), and (d), Health and
2 Safety Code, are amended to conform to Sections 9 and 10, Chapter
3 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session,
4 1989, to read as follows:

5 (a) A person is not eligible for appointment or service as a
6 commission member if the person or the person's spouse:

7 (1) is licensed by an occupational regulatory agency
8 in the field of chemical dependency [~~alcoholism-or-drug-abuse~~];

9 (2) is employed by or participates in the management
10 of a business entity or other organization regulated by the
11 commission or receiving funds from the commission;

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

16 (4) uses or receives a substantial amount of tangible
17 goods, services, or funds from the commission.

18 (b) An officer, employee, or paid consultant of an
19 association that is primarily interested in the provision of
20 services or in other matters relating to chemical dependency
21 [~~alcohol--or--drug--abuse~~] may not be a member or employee of the
22 commission.

23 (d) A person may not serve as a member of the commission or
24 act as the general counsel to the commission if the person is
25 required to register as a lobbyist under Chapter 305, Government
26 Code, because of the person's activities for compensation on behalf
27 of a provider of chemical dependency [~~alcohol--or-drug-abuse~~]

1 services.

2 SECTION 171. Section 461.012(a), Health and Safety Code, is
3 amended to conform to Section 11, Chapter 23 (S.B. 57), Acts of the
4 71st Legislature, 1st Called Session, 1989, to read as follows:

5 (a) The commission shall:

6 (1) provide for research and study of the problems of
7 chemical dependency [~~substance-abuse~~] in this state and seek to
8 focus public attention on those problems through public information
9 and education programs;

10 (2) plan, develop, coordinate, evaluate, and implement
11 constructive methods and programs for the prevention, intervention,
12 treatment, and rehabilitation of chemical dependency [~~substance~~
13 ~~abuse, alcoholism, and drug-dependence~~] in cooperation with federal
14 and state agencies, local governments, organizations, and persons,
15 and provide technical assistance, funds, and consultation services
16 for statewide and community-based services;

17 (3) cooperate with and enlist the assistance of:

18 (A) other state, federal, and local agencies;

19 (B) hospitals and clinics;

20 (C) public health, welfare, and criminal justice
21 system authorities;

22 (D) educational and medical agencies and
23 organizations; and

24 (E) other related public and private groups and
25 persons;

26 (4) expand chemical dependency [~~drug, inhalant, and~~
27 ~~alcohol-abuse~~] services for children when funds are available

1 because of the long-term benefits of those services to the state
2 and its citizens;

3 (5) sponsor, promote, and conduct educational programs
4 on the prevention and treatment of chemical dependency [~~substance~~
5 ~~abuse,--alcoholism,--and--drug--dependence~~], and maintain a public
6 information clearinghouse to purchase and provide books,
7 literature, audiovisuals, and other educational material for the
8 programs;

9 (6) sponsor, promote, and conduct training programs
10 for persons delivering prevention, intervention, treatment, and
11 rehabilitation services and for persons in the criminal justice
12 system or otherwise in a position to identify chemically dependent
13 [~~substance--abusers,--alcoholics,--drug-dependent~~] persons[7] and
14 their families in need of service;

15 (7) require programs rendering services to chemically
16 dependent [~~substance--abusers,--alcoholics,--and--drug-dependent~~]
17 persons to safeguard those persons' legal rights of citizenship and
18 maintain the confidentiality of client records as required by state
19 and federal law;

20 (8) maximize the use of available funds for direct
21 services rather than administrative services;

22 (9) consistently monitor the expenditure of funds and
23 the provision of services by all grant and contract recipients to
24 assure that the services are effective and properly staffed and
25 meet the standards adopted under this chapter;

26 (10) make the monitoring reports prepared under
27 Subdivision (9) a matter of public record;

- 1 (11) license treatment facilities under Chapter 464;
- 2 (12) use funds appropriated to the commission to carry
- 3 out this chapter and maximize the overall state allotment of
- 4 federal funds;
- 5 (13) develop and implement policies that will provide
- 6 the public with a reasonable opportunity to appear before the
- 7 commission and to speak on any issue under the commission's
- 8 jurisdiction;
- 9 (14) establish minimum criteria that peer assistance
- 10 programs must meet to be governed by and entitled to the benefits
- 11 of a law that authorizes licensing and disciplinary authorities to
- 12 establish or approve peer assistance programs for impaired
- 13 professionals; and
- 14 (15) adopt rules governing the functions of the
- 15 commission, including rules that prescribe the policies and
- 16 procedures followed by the commission in administering any
- 17 commission programs.

18 SECTION 172. Chapter 461, Health and Safety Code, is amended

19 to conform to Section 12, Chapter 23 (S.B. 57), Acts of the 71st

20 Legislature, 1st Called Session, 1989, by adding Sections 461.0121

21 and 461.0122 to read as follows:

22 Sec. 461.0121. EMERGENCY TREATMENT RESOURCES. The executive

23 director may develop emergency treatment resources for persons who

24 appear to be:

- 25 (1) chemically dependent;
- 26 (2) under the influence of alcohol or a controlled
- 27 substance and in need of medical attention; or

1 (3) undergoing withdrawal or experiencing medical
2 complications related to a chemical dependency.

3 Sec. 461.0122. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL
4 JUSTICE SYSTEM. (a) The executive director may establish programs
5 for the referral, treatment, or rehabilitation of persons from the
6 criminal justice system within the terms of bail, probation,
7 conditional discharge, parole, or other conditional release.

8 (b) A referral may not be inconsistent with medical or
9 clinical judgment or conflict with this chapter or Chapter 462 or
10 applicable federal regulations.

11 SECTION 173. Chapter 461, Health and Safety Code, is amended
12 to conform to Section 3 of Chapter 1148 (S.B. 1697) and Section 6
13 of Chapter 1195 (S.B. 959), Acts of the 71st Legislature, Regular
14 Session, 1989, by adding Sections 461.0131-461.0133 to read as
15 follows:

16 Sec. 461.0131. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS.
17 (a) The commission may fund community outreach programs that have
18 direct contact with intravenous drug users.

19 (b) An outreach program funded by the commission must:

20 (1) provide education on HIV infection based on the
21 model education program developed by the Texas Department of
22 Health;

23 (2) encourage behavior changes to reduce the
24 possibility of HIV transmission;

25 (3) promote other HIV risk reduction activities; and

26 (4) encourage behavior consistent with state criminal
27 laws.

1 (c) In this section, "HIV" means human immunodeficiency
2 virus.

3 Sec. 461.0132. MINIMUM PROGRAM REQUIREMENTS. (a) A
4 chemical dependency intensive intervention, outpatient, residential
5 treatment, or rehabilitation program that is provided by the
6 commission or that is funded in whole or part by funds allocated
7 through the commission must include:

8 (1) coping skills training;
9 (2) education regarding the manifestations and
10 dynamics of dysfunctional relationships within the family; and
11 (3) support group opportunities for children and
12 adults.

13 (b) This section does not apply to:

14 (1) a detoxification program or that part of a program
15 that provides detoxification; or

16 (2) a program provided by the Texas Youth Commission.

17 (c) In this section, "coping skills training" means
18 instruction in the elements and practice of and reasons for the
19 skills of communication, stress management, problem solving, daily
20 living, and decision making.

21 Sec. 461.0133. RELAPSE RATE REPORTING. (a) A treatment
22 program provided or funded by the commission shall report to the
23 commission on the effectiveness of the chemical dependency
24 treatment program.

25 (b) The report must show to the extent possible, without
26 violating the confidentiality of information received by the
27 program, the rate of relapse of persons who have received treatment

1 services.

2 (c) The commission by rule may provide for the content of a
3 report and the procedure for reporting under this section. Reports
4 must be uniform in classifications of persons receiving treatment
5 according to the severity of addiction, substance abused, age of
6 person treated, and modality of treatment. A report may not reveal
7 the name of an individual subject to treatment or of a family
8 member or acquaintance of an individual treated and may not
9 describe circumstances from which any of those individuals may be
10 identified.

11 SECTION 174. Section 461.014(d), Health and Safety Code, is
12 amended to conform to Section 63, Chapter 584 (H.B. 2519), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 (d) The [~~state---auditor---shall---audit---the~~] financial
15 transactions of the commission are subject to audit by the state
16 auditor in accordance with Chapter 321, Government Code [~~at-least~~
17 ~~once-each-biennium~~].

18 SECTION 175. Chapter 462, Health and Safety Code, is amended
19 to conform to Sections 8, 13, 14, and 16(1), Chapter 23 (S.B. 57),
20 Acts of the 71st Legislature, 1st Called Session, 1989, to read as
21 follows:

22 CHAPTER 462. TREATMENT OF CHEMICALLY DEPENDENT PERSONS

23 [~~ALCOHOLICS~~]

24 SUBCHAPTER A. GENERAL PROVISIONS [~~EMERGENCY-DETENTION~~]

25 Sec. 462.001. DEFINITIONS. In this chapter [~~subchapter~~]:

26 (1) "Applicant" means a person who files an
27 application for emergency detention, protective custody, or

1 commitment of a chemically dependent person.

2 (2) "Certificate" means a sworn certificate of medical
3 examination for chemical dependency executed under this chapter.

4 (3) "Chemical dependency" means:

5 (A) the abuse of alcohol or a controlled
6 substance;

7 (B) psychological or physical dependence on
8 alcohol or a controlled substance; or

9 (C) addiction to alcohol or a controlled
10 substance.

11 (4) "Commission" means the Texas Commission on Alcohol
12 and Drug Abuse.

13 (5) "Controlled substance" means a:

14 (A) toxic inhalant; or

15 (B) substance designated as a controlled
16 substance by Chapter 481 (Texas Controlled Substances Act).

17 (6) "Legal holiday" means a state holiday listed in
18 Article 4591, Revised Statutes, or an officially declared county
19 holiday applicable to a court in which proceedings under this
20 chapter are held.

21 (7) "Proposed patient" means a person named in an
22 application for emergency detention, protective custody, or
23 commitment under this chapter.

24 (8) "Toxic inhalant" means a gaseous substance that is
25 inhaled by a person to produce a desired physical or psychological
26 effect and that may cause personal injury or illness to the
27 inhaler.

1 (9) ~~"Alcoholic"~~--means--a---person---suffering---from
2 ~~alcoholism.~~

3 ~~{2}--"Alcoholism"--means:~~

4 ~~{A}--a--loss-of-self-control-with-respect-to-the~~
5 ~~use-of-alcohol;~~

6 ~~{B}--a--pathological---use---of---alcohol---that~~
7 ~~chronically-impairs-social-or-occupational-functioning;-or~~

8 ~~{C}--a--physiological--dependence--on-alcohol-as~~
9 ~~evidenced-by-tolerance-or-withdrawal-symptoms.~~

10 ~~{3}--"Approved-treatment-program"--means--a--substance~~
11 ~~abuse--treatment--facility--approved--by--the--Texas--Commission-on~~
12 ~~Alcohol-and-Drug-Abuse-to-carry-out-a-specific--provision--of--this~~
13 ~~chapter.~~

14 ~~{4}~~ "Treatment" means the initiation and promotion
15 of a person's chemical-free status or the maintenance of a person
16 free of illegal drugs [~~maintenance-of-a-person's-substance-free~~
17 ~~status~~].

18 (10) "Treatment facility" means a public or private
19 hospital, a detoxification facility, a primary care facility, an
20 intensive care facility, a long-term care facility, an outpatient
21 care facility, a community mental health center, a health
22 maintenance organization, a recovery center, a halfway house, an
23 ambulatory care facility, another facility that is required to be
24 licensed and approved by the commission, or a facility licensed or
25 operated by the Texas Department of Mental Health and Mental
26 Retardation. The term does not include an educational program for
27 intoxicated drivers or the individual office of a private, licensed

1 health care practitioner who personally renders private individual
2 or group services within the scope of the practitioner's license
3 and in the practitioner's office.

4 Sec. 462.002. FILING REQUIREMENTS. (a) Each application,
5 petition, certificate, or other paper permitted or required to be
6 filed in a court having original jurisdiction under this chapter
7 must be filed with the county clerk of the proper county.

8 (b) The county clerk shall file each paper after endorsing
9 on it:

10 (1) the date on which the paper is filed;

11 (2) the docket number; and

12 (3) the clerk's official signature, stamp, or seal.

13 (c) A person may initially file a paper with the county
14 clerk by the use of reproduced, photocopied, or electronically
15 transmitted paper if the person files the original signed copies of
16 the paper with the clerk not later than the third working day after
17 the date on which the initial filing is made.

18 Sec. 462.003. INSPECTION OF COURT RECORDS. (a) Each paper
19 in a docket for commitment proceedings in the county clerk's
20 office, including the docket book, indexes, and judgment books, is
21 a public record of a private nature that may be used, inspected, or
22 copied only under a written order issued by the:

23 (1) county judge;

24 (2) judge of a court that has probate jurisdiction; or

25 (3) judge of a district court having jurisdiction in
26 the county.

27 (b) A judge may not issue an order under Subsection (a)

1 unless the judge enters a finding that:

2 (1) the use, inspection, or copying is justified and
3 in the public interest; or

4 (2) the paper is to be released to the person to whom
5 it relates or to a person designated in a written release signed by
6 the person to whom the paper relates.

7 (c) In addition to the finding required by Subsection (b),
8 if a law relating to confidentiality of mental health information
9 or physician-patient privilege applies, the judge must find that
10 the reasons for the use, inspection, or copying fall within the
11 statutory exemptions.

12 (d) The papers shall be released to an attorney representing
13 the proposed patient in a proceeding held under this chapter.

14 (e) This section does not affect access of law enforcement
15 personnel to necessary information in the execution of a writ or
16 warrant.

17 Sec. 462.004. REPRESENTATION OF STATE. In a hearing on
18 court-ordered treatment held under this chapter:

19 (1) the county attorney shall represent the state; or

20 (2) if the county has no county attorney, the district
21 attorney shall represent the state.

22 Sec. 462.005. COSTS. (a) The laws relating to the payment
23 of the costs of commitment, support, maintenance, and treatment,
24 and to the obtaining of reimbursement for the actual costs
25 applicable to court-ordered mental health, probation, or parole
26 services apply to each item of expense incurred by the state or the
27 county in connection with the commitment, care, custody, treatment,

1 and rehabilitation of a person receiving care and treatment under
2 this chapter.

3 (b) A county that enters an order of commitment or detention
4 under this chapter is liable for payment of the costs of any
5 proceedings related to that order, including:

6 (1) court-appointed attorney's fees;
7 (2) physician examination fees;
8 (3) compensation for language or sign interpreters;
9 (4) compensation for masters; and
10 (5) expenses to transport a patient to a hearing or to
11 a treatment facility.

12 (c) A county or the state is entitled to reimbursement from
13 any of the following persons for costs actually paid by the county
14 or state and that relate to an order of commitment or detention:

15 (1) the patient;
16 (2) the applicant; or
17 (3) a person or estate liable for the patient's
18 support in a treatment facility.

19 (d) On a motion of the county or district attorney or on the
20 court's own motion, the court may require an applicant to file a
21 cost bond with the court.

22 (e) The state shall pay the costs of transporting a
23 discharged patient to the patient's home or of returning to a
24 treatment facility a patient absent without permission unless the
25 patient or a person responsible for the patient is able to pay the
26 costs.

27 (f) The state or the county may not pay any costs for a

1 patient committed to a private hospital unless authorized by the
2 commission or the commissioners court of the county, as
3 appropriate.

4 Sec. 462.006. WRIT OF HABEAS CORPUS. This chapter does not
5 limit a person's right to obtain a writ of habeas corpus.

6 Sec. 462.007. LIMITATION OF LIABILITY. (a) A person who
7 participates in the examination, certification, apprehension,
8 custody, transportation, detention, commitment, or discharge of a
9 proposed patient or in the performance of any act required or
10 authorized by this chapter and who acts in good faith, reasonably,
11 and without malice is not civilly or criminally liable for that
12 action.

13 (b) A physician performing a medical examination or
14 providing information to a court in a court proceeding under this
15 chapter is considered an officer of the court and is not civilly or
16 criminally liable for the examination or testimony when acting
17 without malice.

18 Sec. 462.008. CRIMINAL PENALTY; ENFORCEMENT. (a) A person
19 commits an offense if the person intentionally causes, conspires
20 with another person to cause, or assists another to cause the
21 unwarranted commitment of a person to a treatment facility.

22 (b) A person commits an offense if the person knowingly
23 violates this chapter.

24 (c) An offense under this section is a Class A misdemeanor.

25 (d) The appropriate district or county attorney shall
26 prosecute violations of this chapter.

27 [Sections 462.009-462.020 reserved for expansion]

1 SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION

2 Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may
3 admit an adult who requests admission for emergency or nonemergency
4 treatment or rehabilitation if:

5 (1) the facility is:

6 (A) a treatment facility licensed by the
7 commission to provide the necessary services; or

8 (B) a facility licensed or operated by the Texas
9 Department of Mental Health and Mental Retardation; and

10 (2) the admission is appropriate under the facility's
11 admission policies.

12 Sec. 462.022. VOLUNTARY ADMISSION OF MINOR. (a) A facility
13 may admit a minor for treatment and rehabilitation if:

14 (1) the facility is:

15 (A) a treatment facility licensed by the
16 commission to provide the necessary services to minors; or

17 (B) a facility licensed or operated by the Texas
18 Department of Mental Health and Mental Retardation;

19 (2) the admission is appropriate under the facility's
20 admission policies; and

21 (3) the admission is requested by:

22 (A) a parent or other person authorized to
23 consent to medical treatment of a minor under Section 35.01, Family
24 Code; or

25 (B) the minor, without parental consent, under
26 Section 35.03, Family Code.

27 (b) The admission of a minor under Subsection (a) is

1 considered a voluntary admission.

2 Sec. 462.023. DISCHARGE OR RELEASE. (a) Except as provided
3 by Subsection (b), a facility shall release a voluntary patient
4 within a reasonable time, not to exceed 96 hours, after the patient
5 requests in writing to be released.

6 (b) A facility is not required to release the patient if
7 before the end of the 96-hour period:

8 (1) the patient files a written withdrawal of the
9 request;

10 (2) an application for court-ordered treatment or
11 emergency detention is filed and the patient is detained in
12 accordance with this chapter; or

13 (3) the patient is a minor admitted with the consent
14 of a parent, guardian, or conservator and that person, after
15 consulting with facility personnel, objects in writing to the
16 release of the minor.

17 (c) Subsection (a) applies to a minor admitted under Section
18 462.022 if the request for release is made in writing to the
19 facility by the person who requested the initial admission.

20 Sec. 462.024. APPLICATION FOR COURT-ORDERED TREATMENT DURING
21 VOLUNTARY INPATIENT CARE. An application for court-ordered
22 treatment may not be filed against a patient receiving voluntary
23 care under this subchapter unless:

24 (1) a request for release of the patient has been
25 filed; or

26 (2) in the facility administrator's opinion, the
27 patient meets the criteria for court-ordered treatment and:

1 (A) is absent from the facility without
2 authorization; or

3 (B) refuses or is unable to consent to
4 appropriate and necessary treatment.

5 [Sections 462.025-462.040 reserved for expansion]

6 SUBCHAPTER C. EMERGENCY DETENTION

7 Sec. 462.041. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

8 (a) A peace officer, without a warrant, may take a person into
9 custody if the officer:

10 (1) has reason to believe and does believe that:

11 (A) the person is chemically dependent; and

12 (B) because of that chemical dependency there is
13 a substantial risk of harm to the person or to others unless the
14 person is immediately restrained; and

15 (2) believes that there is not sufficient time to
16 obtain a warrant before taking the person into custody.

17 (b) A substantial risk of serious harm to the person or
18 others under Subsection (a)(1)(B) may be demonstrated by:

19 (1) the person's behavior; or

20 (2) evidence of severe emotional distress and
21 deterioration in the person's mental or physical condition to the
22 extent that the person cannot remain at liberty.

23 (c) The peace officer may form the belief that the person
24 meets the criteria for apprehension:

25 (1) from a representation of a credible person; or

26 (2) on the basis of the conduct of the apprehended
27 person or the circumstances under which the apprehended person is

1 found.

2 (d) A peace officer who takes a person into custody under
3 Subsection (a) shall immediately transport the apprehended person
4 to:

5 (1) the nearest appropriate inpatient treatment
6 facility; or

7 (2) if an appropriate inpatient treatment facility is
8 not available, a facility considered suitable by the county's
9 health authority.

10 (e) A person may not be detained in a jail or similar
11 detention facility except in an extreme emergency. A person
12 detained in a jail or a nonmedical facility shall be kept separate
13 from any person who is charged with or convicted of a crime.

14 (f) A peace officer shall immediately file an application
15 for detention after transporting a person to a facility under this
16 section. The application for detention must contain:

17 (1) a statement that the officer has reason to believe
18 and does believe that the person evidences chemical dependency;

19 (2) a statement that the officer has reason to believe
20 and does believe that the person evidences a substantial risk of
21 serious harm to himself or others;

22 (3) a specific description of the risk of harm;

23 (4) a statement that the officer has reason to believe
24 and does believe that the risk of harm is imminent unless the
25 person is immediately restrained;

26 (5) a statement that the officer's beliefs are derived
27 from specific recent behavior, overt acts, attempts, or threats

1 that were observed by or reliably reported to the officer;

2 (6) a detailed description of the specific behavior,
3 acts, attempts, or threats; and

4 (7) the name and relationship to the apprehended
5 person of any person who reported or observed the behavior, acts,
6 attempts, or threats.

7 (g) The person shall be released on completion of a
8 preliminary examination conducted under Section 462.044 unless the
9 examining physician determines that emergency detention is
10 necessary and provides the statement prescribed by Section
11 462.044(b). If a person is not admitted to a facility, is not
12 arrested, and does not object, arrangements shall be made to
13 immediately return the person to:

14 (1) the location of the person's apprehension;

15 (2) the person's residence in this state; or

16 (3) another suitable location.

17 (h) The county in which the person was apprehended shall pay
18 the costs of the person's return.

19 (i) A treatment facility may provide to a person medical
20 assistance regardless of whether the facility admits the person or
21 refers the person to another facility.

22 Sec. 462.042 [462-002]. JUDGE'S OR MAGISTRATE'S ORDER
23 [APPLICATION] FOR EMERGENCY DETENTION. (a) An [Any] adult may
24 file a written [execute-an] application for emergency detention of
25 a minor or another adult [another-person].

26 (b) The application [must-be-in-writing-and] must state:

27 (1) that the applicant has reason to believe and does

1 believe that the person who is the subject of the application is a
2 chemically dependent person ~~[an-alcoholic]~~;

3 (2) that the applicant has reason to believe and does
4 believe that the person evidences a substantial risk of serious
5 harm to himself or others;

6 (3) a specific description of the risk of harm;

7 (4) ~~[7-describing-the-specific-risk-of-harm;~~

8 ~~[43]~~ that the applicant has reason to believe and
9 does believe that the risk of harm is imminent unless the person is
10 immediately restrained;

11 (5) ~~[44]~~ that the applicant's beliefs are derived
12 from ~~[based-on]~~ specific recent behavior, overt acts, attempts, or
13 threats;

14 (6) a detailed description of the specific behavior,
15 acts, attempts, or threats~~[7-which-must-be--described--in--detail]~~;
16 and

17 (7) ~~[45]~~ the relationship, if any, of the applicant
18 to the person.

19 (c) The application may be accompanied by any relevant
20 information.

21 ~~[46]--The--applicant--must--personally--present--the--application~~
22 ~~to-a-magistrate.]~~

23 Sec. 462.043 ~~[462-003]~~. ISSUANCE OF WARRANT ~~[MAGISTRATE'S~~
24 ~~ORDER-FOR-EMERGENCY-DETENTION]~~. (a) An applicant for emergency
25 detention must present the application personally to a judge or
26 magistrate. The judge or magistrate ~~[The-magistrate-receiving--the~~
27 ~~application--for-emergency-detention]~~ shall examine the application

1 and may interview the applicant.

2 (b) The judge or magistrate shall deny the application
3 unless the judge or magistrate finds that there is reasonable cause
4 to believe that:

5 (1) the person who is the subject of the application
6 is a chemically dependent person ~~[an-alcoholic]~~;

7 (2) the person evidences a substantial risk of serious
8 harm to himself or others;

9 (3) the risk of harm is imminent unless the person is
10 immediately restrained; and

11 (4) the necessary restraint cannot be accomplished
12 without emergency detention.

13 (c) The judge or magistrate shall issue a warrant for the
14 person's immediate apprehension if the judge or magistrate finds
15 that each criteria under Subsection (b) is satisfied.

16 (d) A person apprehended under this section shall be
17 transported for a preliminary examination in accordance with
18 Section 462.044 to:

19 (1) a treatment facility; or

20 (2) another appropriate facility if a treatment
21 facility is not readily available [~~if-the-magistrate-finds-that-the~~
22 ~~person-meets-the-criteria--for--emergency--detention--specified--by~~
23 ~~Subsection--(b),--the--magistrate--shall--issue--a--warrant-for-the~~
24 ~~immediate-apprehension-and--transportation--of--the--person--to--an~~
25 ~~approved--treatment--program,--if--one--is--readily-available,--or-to~~
26 ~~another-appropriate-facility,--for-a-preliminary--examination--by--a~~
27 ~~physician~~].

1 (e) [~~d~~] The warrant and copies of the application for the
2 warrant shall be served on the person as soon as possible and
3 [immediately] transmitted to the facility [~~approved--treatment~~
4 ~~program~~].

5 Sec. 462.044 [~~462-004~~]. PRELIMINARY EXAMINATION. (a) A
6 physician shall conduct a preliminary examination of the
7 apprehended person as soon as possible within 24 hours after the
8 time the person is apprehended under Section 462.041 or 462.043 [~~of~~
9 ~~apprehension~~].

10 (b) The person shall be released on completion of [~~when~~] the
11 preliminary examination [~~is--completed~~] unless the examining
12 physician or the physician's designee provides a written opinion
13 that the person meets the criteria specified by Section 462.043(b)
14 [~~462-003(b)~~].

15 (c) A person released under Subsection (b) is entitled to
16 reasonably prompt return to the location of apprehension or other
17 suitable place unless the person is arrested or objects to the
18 return.

19 Sec. 462.045 [~~462-005~~]. DETENTION PERIOD. (a) A [~~Unless-a~~
20 ~~written--order--for--further--detention--is--obtained,--a~~] person
21 apprehended under this subchapter may be detained for not longer
22 [~~more~~] than 24 hours after the time that the person is presented to
23 the facility unless an application for court-ordered treatment is
24 filed and a written order for further detention is obtained under
25 Section 462.065.

26 (b) If the 24-hour period ends on a Saturday, Sunday, or
27 legal holiday, the person may be detained [~~maximum-period-of~~

1 ~~detention-is-extended~~] until 4 p.m. [noon] on the next day that is
2 not a Saturday, Sunday, or legal holiday. If extremely hazardous
3 weather conditions exist or a disaster occurs, the presiding judge
4 or magistrate may, by written order made each day, extend by an
5 additional 24 hours the period during which the person may be
6 detained. The written order must declare that an emergency exists
7 because of the weather or the occurrence of a disaster.

8 Sec. 462.046. INFORMATION TO BE PROVIDED ON ADMISSION. (a)
9 The personnel of a treatment facility shall immediately advise a
10 person admitted under Section 462.044 that:

11 (1) the person may be detained for treatment for not
12 longer than 24 hours after the time of the initial detention unless
13 an order for further detention is obtained;

14 (2) if the administrator finds that the statutory
15 criteria for emergency detention no longer apply, the administrator
16 shall release the person;

17 (3) not later than the 24th hour after the hour of the
18 initial detention, the facility administrator may file in a court
19 having original jurisdiction under this chapter a petition to have
20 the person committed for court-ordered treatment under Subchapter
21 D;

22 (4) if the administrator files a petition for
23 court-ordered treatment, the person is entitled to a judicial
24 probable cause hearing not later than the 72nd hour after the hour
25 the detention begins under an order of protective custody to
26 determine whether the person should remain detained in the
27 facility;

1 (5) when the application for court-ordered services is
2 filed, the person has the right to have counsel appointed if the
3 person does not have an attorney;

4 (6) the person has the right to communicate with
5 counsel at any reasonable time and to have assistance in contacting
6 the counsel;

7 (7) the person's communications to the personnel of
8 the treatment facility may be used in making a determination
9 relating to detention, may result in the filing of a petition for
10 court-ordered treatment, and may be used at a court hearing;

11 (8) the person is entitled to present evidence and to
12 cross-examine witnesses who testify on behalf of the petitioner at
13 a hearing;

14 (9) the person may refuse medication unless there is
15 an imminent likelihood of serious physical injury to the person or
16 others if the medication is refused;

17 (10) beginning on the 24th hour before a hearing for
18 court-ordered treatment, the person may refuse to take medication
19 unless the medication is necessary to save the person's life; and

20 (11) the person is entitled to request that a hearing
21 be held in the county of the person's residence, if the county is
22 in the state.

23 (b) The personnel of the treatment facility shall provide
24 the information required by Subsection (a) to the person orally, in
25 writing, and in simple, nontechnical terms.

26 Sec. 462.047 [462:006]. RELEASE FROM EMERGENCY DETENTION.

27 (a) A person detained under this subchapter shall be released if

1 the facility administrator [~~of-the-approved-treatment--program~~] or
2 the administrator's designee determines at any time during the
3 emergency detention period [~~during-the-emergency-detention--period~~]
4 that one [~~any~~] of the criteria prescribed by Section 462.043(b) no
5 longer applies [~~specified-by-Section-462-003(b)-no-longer-apply~~].

6 (b) If a person is released from emergency detention and is
7 not arrested and does not object, arrangements [~~Arrangements~~] shall
8 be made to return the person [~~for-the-person's-return~~] to the
9 location of apprehension or other suitable place [~~unless-the-person~~
10 ~~is-arrested-or-objects-to-the-return~~].

11 Sec. 462.048 [~~462-007~~]. RIGHTS OF PERSON APPREHENDED OR
12 DETAINED. (a) A person [~~who-is~~] apprehended or detained under
13 this subchapter has the right:

14 (1) to be advised of the location of detention, the
15 reasons for the detention, and the fact that detention could result
16 in a longer period of involuntary commitment;

17 (2) to contact an attorney of the person's choice and
18 to a reasonable opportunity to contact that attorney;

19 (3) to be transported to the location of apprehension
20 or other suitable place if the person is not admitted for emergency
21 detention, unless the person is arrested or objects to the return;

22 (4) to be released from a facility as provided by
23 Section 462.047 [~~if-the-administrator--of--the--approved--treatment~~
24 ~~program--or-the-administrator's-designee-determines-that-any-of-the~~
25 ~~criteria-for-emergency-detention-specified-by-Section-462-003(b)-no~~
26 ~~longer-apply~~]; and

27 (5) to be advised that communications to a chemical

1 dependency [~~an--alcoholism~~] treatment professional may be used in
2 proceedings for further detention.

3 (b) Within 24 hours after the time of admission, a person
4 apprehended or detained under this subchapter shall be advised,
5 orally, in writing, and in simple, nontechnical terms, of the
6 rights provided by this section.

7 [Sections 462.049-462.060 [~~462.008-to-462.020~~]

8 reserved for expansion]

9 SUBCHAPTER D [B]. COURT-ORDERED TREATMENT

10 [~~Sec.-462.021--DEFINITIONS--In-this-subchapter-~~

11 [~~(1)--"Alcohol--abuse"--means--the--excessive--use--of~~
12 ~~alcohol-in-a-manner-that-interferes,-but-not-chronically,-with-~~

13 [~~(A)--physical-or-psychological-functioning,-~~

14 [~~(B)--social-adaptation,-~~

15 [~~(C)--educational-performance,-or~~

16 [~~(D)--occupational-functioning,-~~

17 [~~(2)--"Alcoholic"--means--a--person--suffering--from~~
18 ~~alcoholism-~~

19 [~~(3)--"Alcoholism"--means-~~

20 [~~(A)--a--loss-of-self-control-with-respect-to-the~~
21 ~~use-of-alcohol,-~~

22 [~~(B)--a--pathological--use--of--alcohol--that~~
23 ~~chronically-impairs-social-or-occupational-functioning,-or~~

24 [~~(C)--a--physiological--dependence--on-alcohol-as~~
25 ~~evidenced-by-tolerance-or-withdrawal-symptoms-~~

26 [~~(4)--"Approved-treatment-program"--means--a--substance~~
27 ~~abuse--treatment-facility-approved-by-the-commission-to-carry-out-a~~

1 ~~specific-provision-of-this-chapter-~~

2 ~~[+5)--"Commission"--means--the--Texas---Commission---on~~
3 ~~Alcohol-and-Drug-Abuse-~~

4 ~~[+6)--"Treatment"--means-the-initiation-and-maintenance~~
5 ~~of-a-person's-substance-free-status-]~~

6 Sec. 462.061 [462-022]. COURT-ORDERED TREATMENT;
7 JURISDICTION. (a) A proceeding for court-ordered treatment under
8 this chapter [subchapter] shall be held in a constitutional county
9 court, a statutory county court having probate jurisdiction, or a
10 statutory probate court in the county in which the proposed patient
11 resides, is found, or is receiving court-ordered treatment or
12 treatment under Section 462.041 when the application is filed
13 unless otherwise specifically designated [the-court-of-the-county
14 ~~exercising-the--jurisdiction--of--a--probate--court--in--alcoholism~~
15 ~~matters]~~.

16 (b) If the hearing is to be held in a constitutional county
17 court in which the judge is not a licensed attorney, the proposed
18 patient may request that the proceeding be transferred to a
19 statutory court having probate jurisdiction or to a district court.
20 The county judge shall transfer the case after receiving the
21 request and the receiving court shall hear the case as if it had
22 been originally filed in that court.

23 (c) The commitment of a juvenile under this subchapter must
24 be heard in a district court or statutory court that has juvenile
25 or probate jurisdiction. The commitment of a juvenile under
26 Section 462.081 may be heard only in a court that has juvenile
27 jurisdiction.

1 Sec. 462.062 [~~462-023~~]. APPLICATION FOR COURT-ORDERED
2 TREATMENT. (a) A county or district attorney or [~~any~~] other adult
3 may file a sworn written application for court-ordered treatment of
4 another person. Only the district or county attorney may file an
5 application that is not accompanied by a certificate of medical
6 examination for chemical dependency.

7 (b) The application must be filed with the county clerk in
8 the county in which the proposed patient:

9 (1) resides;[~~7~~]

10 (2) is found;[~~7~~] or

11 (3) is receiving treatment services by court order or
12 under Section 462.041.

13 (c) If the application is not filed in the county in which
14 the proposed patient resides [~~On-the-request-of-a-proposed--patient~~
15 ~~or--the--proposed-patient's-attorney~~], the court may, on request of
16 the proposed patient or the proposed patient's attorney and if good
17 cause is [~~for-good-cause~~] shown, transfer the application to that
18 [the] county [~~in--which--the--proposed--patient--resides--if--the~~
19 ~~application-was-originally-filed-in-a-different-county~~].

20 (d) The application must be styled using the initials of the
21 proposed patient and not the proposed patient's full name.

22 (e) The application must contain [~~be-in-writing-and-must~~
23 ~~state~~] the following information according to [~~based--on~~] the
24 applicant's information and belief:

25 (1) the proposed patient's name and address, including
26 the county in which the proposed patient resides, if known;

27 (2) a statement that the proposed patient is a

1 chemically dependent person who [~~an-alcoholic-and-as-a--result--the~~
2 ~~proposed-patient~~]:

3 (A) is likely to cause serious harm to himself
4 or others; or

5 (B) will continue to suffer abnormal mental,
6 emotional, or physical distress, will continue to deteriorate in
7 ability to function independently if not treated, and is unable to
8 make a rational and informed choice as to whether to submit to
9 treatment; and

10 (3) a statement that the proposed patient is not
11 charged with a criminal offense that involves an act, attempt, or
12 threat of serious bodily injury to another person.

13 (f) Subsection (e)(3) does not apply if the proposed patient
14 is a juvenile alleged to be a child engaged in delinquent conduct
15 or conduct indicating a need for supervision as defined by Section
16 51.03, Family Code.

17 Sec. 462.063. PREHEARING PROCEDURE. (a) When the
18 application is filed, the court shall set a date for a hearing on
19 the merits of the application to be held within 14 days after the
20 date on which the application is filed. The hearing may not be
21 held during the first three days after the application is filed if
22 the proposed patient or the proposed patient's attorney objects.
23 The court may grant one or more continuances of the hearing on
24 motion by a party and for good cause shown or on agreement of the
25 parties. However, the hearing shall be held not later than the
26 30th day after the date on which the original application is filed.

27 (b) Immediately after the date for the hearing is set, the

1 clerk shall give written notice of the hearing and a copy of the
2 application to the proposed patient and the proposed patient's
3 attorney in the manner the court directs.

4 (c) The court shall appoint an attorney to represent the
5 proposed patient if the proposed patient does not retain an
6 attorney of the proposed patient's choice.

7 (d) The court shall appoint an attorney for a proposed
8 patient who is a minor, regardless of the ability of the proposed
9 patient or the proposed patient's family to afford an attorney.

10 (e) The court shall allow a court-appointed attorney a
11 reasonable fee for services. The fee shall be collected as costs
12 of the court.

13 Sec. 462.064. CERTIFICATE OF MEDICAL EXAMINATION FOR
14 CHEMICAL DEPENDENCY. (a) A hearing on court-ordered treatment may
15 not be held unless there are on file with the court at least two
16 certificates of medical examination for chemical dependency
17 completed by different physicians each of whom has examined the
18 proposed patient not earlier than the 30th day before the date the
19 final hearing is held.

20 (b) If the certificates are not filed with the application,
21 the court may appoint the necessary physicians to examine the
22 proposed patient and file the certificates. The court may order
23 the proposed patient to submit to the examinations and may issue a
24 warrant authorizing a peace officer to take the proposed patient
25 into custody for the examinations.

26 (c) A certificate must be dated and signed by the examining
27 physician. The certificate must include:

1 (1) the name and address of the examining physician;
2 (2) the name and address of the proposed patient;
3 (3) the date and place of the examination;
4 (4) the period, if any, during which the proposed
5 patient has been under the care of the examining physician;
6 (5) an accurate description of the treatment, if any,
7 given by or administered under the direction of the examining
8 physician; and

9 (6) the examining physician's opinions whether the
10 proposed patient is a chemically dependent person and:

11 (A) is likely to cause serious harm to himself;

12 (B) is likely to cause serious harm to others;

13 or

14 (C) will continue to suffer abnormal mental,
15 emotional, or physical distress and to deteriorate in ability to
16 function independently if not treated and is unable to make a
17 rational and informed choice as to whether or not to submit to
18 treatment.

19 (d) The certificate must include the detailed reason for
20 each of the examining physician's opinions under this section.

21 Sec. 462.065. ORDER OF PROTECTIVE CUSTODY. (a) A motion
22 for an order of protective custody may be filed only in the court
23 in which an application for court-ordered treatment is pending.
24 The motion may be filed by the county or district attorney or on
25 the court's own motion.

26 (b) The motion must state that:

27 (1) the judge or county or district attorney has

1 reason to believe and does believe that the proposed patient meets
2 the criteria authorizing the court to order protective custody; and

3 (2) the belief is derived from:

4 (A) the representations of a credible person;

5 (B) the proposed patient's conduct; or

6 (C) the circumstances under which the proposed
7 patient is found.

8 (c) The motion must be accompanied by a certificate of
9 medical examination for chemical dependency prepared by a physician
10 who has examined the proposed patient not earlier than the fifth
11 day before the date the motion is filed.

12 (d) The judge of the court in which the application is
13 pending may designate a magistrate to issue protective custody
14 orders in the judge's absence.

15 (e) The judge or designated magistrate may issue a
16 protective custody order if the judge or magistrate determines:

17 (1) that a physician has stated his opinion and the
18 detailed basis for his opinion that the proposed patient is a
19 chemically dependent person; and

20 (2) the proposed patient presents a substantial risk
21 of serious harm to himself or others if not immediately restrained
22 pending the hearing.

23 (f) The determination that the proposed patient presents a
24 substantial risk of serious harm may be demonstrated by the
25 proposed patient's behavior or by evidence that the proposed
26 patient cannot remain at liberty. The judge or magistrate may make
27 a determination that the proposed patient meets the criteria

1 prescribed by this subsection from the application and certificate
2 alone if the judge or magistrate determines that the conclusions of
3 the applicant and certifying physician are adequately supported by
4 the information provided. The judge or magistrate may take
5 additional evidence if a fair determination of the matter cannot be
6 made from consideration of the application and certificate only.

7 (g) The judge or magistrate may issue a protective custody
8 order for a proposed patient who is charged with a criminal offense
9 if the proposed patient meets the requirements of this section and
10 the administrator of the facility designated to detain the proposed
11 patient agrees to the detention.

12 (h) A protective custody order shall direct a peace officer
13 or other designated person to take the proposed patient into
14 protective custody and transport the proposed patient immediately
15 to a treatment facility or other suitable place for detention. The
16 proposed patient shall be detained in the facility until a hearing
17 is held under Section 462.066.

18 Sec. 462.066. PROBABLE CAUSE HEARING AND DETENTION. (a)
19 The court shall set a hearing to determine if there is probable
20 cause to believe that a proposed patient under a protective custody
21 order presents a substantial risk of serious harm to himself or
22 others if not restrained until the hearing on the application. The
23 hearing must be held not later than 72 hours after the protective
24 custody order is signed unless the proposed patient waives the
25 right to a hearing. If the period ends on a Saturday, Sunday, or
26 legal holiday, the hearing must be held on the next day that is not
27 a Saturday, Sunday, or legal holiday. The judge or magistrate may

1 postpone the hearing each day for an additional 24 hours if the
2 judge or magistrate declares that an extreme emergency exists
3 because of extremely hazardous weather conditions or on the
4 occurrence of a disaster that threatens the safety of the proposed
5 patient or another essential party to the hearing.

6 (b) The hearing shall be held before a magistrate or, at the
7 discretion of the presiding judge, before a master appointed by the
8 presiding judge. The master is entitled to reasonable
9 compensation.

10 (c) The proposed patient and the proposed patient's attorney
11 are entitled to an opportunity at the hearing to appear and present
12 evidence on any allegation or statement in the certificate of
13 medical examination for chemical dependency. The magistrate or
14 master may consider any evidence. The state may prove its case on
15 the certificate.

16 (d) The magistrate or master shall order the release of a
17 person under a protective custody order if the magistrate or master
18 determines after the hearing that no probable cause exists to
19 believe that the proposed patient presents a substantial risk of
20 serious harm to himself or others.

21 (e) The magistrate shall order that a proposed patient be
22 detained until the hearing on the court-ordered treatment or until
23 the administrator of the facility determines that the proposed
24 patient no longer meets the criteria for detention under this
25 section if the magistrate or master determines that probable cause
26 does exist to believe that the proposed patient presents a
27 substantial risk of serious harm to himself or others to the extent

1 that the proposed patient cannot be at liberty pending the hearing
2 on court-ordered treatment.

3 (f) The magistrate or master shall arrange for a proposed
4 patient detained under Subsection (e) to be returned to the
5 treatment facility or other suitable place, along with a copy of
6 the certificate of medical examination for chemical dependency,
7 any affidavits or other material submitted as evidence in the
8 hearing, and the notification prepared as prescribed by Subsection
9 (g). A copy of the notification of probable cause hearing and the
10 supporting evidence shall be filed with the court that entered the
11 original order of protective custody.

12 (g) The notification of probable cause hearing shall read as
13 follows:

14 (Style of Case)

15 NOTIFICATION OF PROBABLE CAUSE HEARING

16 On this the ____ day of _____, 19__, the
17 undersigned hearing officer heard evidence concerning the need for
18 protective custody of _____ (hereinafter referred to as
19 proposed patient). The proposed patient was given the opportunity
20 to challenge the allegations that (s)he presents a substantial risk
21 of serious harm to self or others.

22 The proposed patient and the proposed patient's attorney
23 _____ have been given written notice that the proposed
24 (attorney)
25 patient was placed under an order of protective custody and the
26 reasons for such order on _____.
27 (date of notice)

28 I have examined the certificate of medical examination for

1 chemical dependency and _____.
2 (other evidence considered)

3 Based on this evidence, I find that there is probable cause to
4 believe that the proposed patient presents a substantial risk of
5 serious harm to self (yes ___ or no ___) or others (yes ___ or no
6 ___) such that (s)he cannot be at liberty pending final hearing
7 because _____.

8 _____
9 (reasons for finding; type of risk found)

10 Sec. 462.067. HEARING ON APPLICATION FOR COURT-ORDERED
11 TREATMENT. (a) A hearing on court-ordered treatment must be
12 before a jury unless the proposed patient and the proposed
13 patient's attorney waive the right to a jury. The waiver may be
14 filed at any time after the proposed patient is served with the
15 application and receives notice of the hearing. The waiver must be
16 in writing, under oath, and signed and sworn to by the proposed
17 patient and the proposed patient's attorney.

18 (b) The proposed patient is entitled to a hearing and to be
19 present at the hearing, but the proposed patient or the proposed
20 patient's attorney may waive either right.

21 (c) A court hearing may be held at any suitable location in
22 the county. On the request of the proposed patient or the proposed
23 patient's attorney, the hearing shall be held in the county
24 courthouse.

25 (d) The Texas Rules of Civil Procedure and Texas Rules of
26 Civil Evidence apply to a hearing unless the rules are inconsistent
27 with this chapter. The hearing is on the record, and the state
28 must prove each issue by clear and convincing evidence.

1 (e) In addition to the rights prescribed by this chapter,
2 the proposed patient is entitled to:

3 (1) present evidence on the proposed patient's own
4 behalf;

5 (2) cross-examine witnesses who testify on behalf of
6 the applicant;

7 (3) view and copy all petitions and reports in the
8 court file of the cause; and

9 (4) elect to have the hearing open or closed to the
10 public.

11 Sec. 462.068. RELEASE AFTER HEARING. (a) The court shall
12 enter an order denying an application for court-ordered treatment
13 if after a hearing the court or jury fails to find, from clear and
14 convincing evidence, that the proposed patient is a chemically
15 dependent person and meets the criteria for court-ordered
16 treatment.

17 (b) If the court denies the application, the court shall
18 order the discharge of a proposed patient who is not at liberty.

19 ~~[Sec.--462.024.--LIBERTY--OR--CUSTODY--PENDING-ORDER;-PROBABLE~~
20 ~~CAUSE-HEARING;--(a)--Pending-the-court-order,-the-judge-may-order-a~~
21 ~~peace-officer-or-other--designated--person--to--take--the--proposed~~
22 ~~patient--to--an--approved--facility--or--other--suitable--place-for~~
23 ~~detention-if:-~~

24 ~~[+]-a--certificate---of---medical---examination---for~~
25 ~~alcoholism--is--filed--showing--that--the-proposed-patient-has-been~~
26 ~~examined-within-five-days-of-the-date-on-which-the--certificate--is~~
27 ~~filed;-and~~

1 [(2) -- the --- certificate --- states -- the -- opinion -- of -- the
2 examining-physician-that-the-proposed-patient-is-an-alcoholic-who-

3 [(A) -- is-likely-to-cause-serious-harm-to--himself
4 or-others-if-not-immediately-restrained;-or

5 [(B) -- will--continue--to--suffer-abnormal-mental;-
6 emotional;-or-physical-distress;-will-continue--to--deteriorate--in
7 ability--to-function-independently-if-not-treated;-and-is-unable-to
8 make-a-rational-and-informed-choice-as--to--whether--to--submit--to
9 treatment-.

10 [(b) -- The-court-shall-set-a-probable-cause-hearing-to-be-held
11 within--72--hours--after--the-time-detention-begins-if-the-proposed
12 patient-is-detained-under-this-section--and--the--proposed--patient
13 does--not--waive--the--right-to-the-hearing.--If-the-72-hour-period
14 ends-on-a-Saturday;-Sunday;-or-legal-holiday;-the--probable--cause
15 hearing--shall--be--held--on--the--next-day-that-is-not-a-Saturday;
16 Sunday;-or-legal-holiday-.

17 [Sec.-462:025;--HEARING--ON--COURT-ORDERED--TREATMENT;----(a)
18 When-an-application-for-court-ordered-treatment-is-filed;-the-court
19 shall-set-a-date-for-a-hearing-on-the-merits-to-be-held-not-earlier
20 than-the-sixth-or-later-than-the-14th-day-after-the-date--on--which
21 the-application-is-filed-.

22 [(b) -- Immediately--after--the--judge--sets--the--date-for-the
23 hearing;-the-clerk-shall-give-written-notice-of-the-hearing--and--a
24 copy--of--the--application-to-the-proposed-patient-and-the-proposed
25 patient's-attorney-in-the-manner-directed-by-the-court-.

26 [(c) -- The-court-shall-appoint-an-attorney--to--represent--the
27 proposed--patient--if-the-proposed-patient-is-not-represented-by-an

1 attorney-of-the-proposed-patient's-choice.

2 [d]--The--court--shall--inform--relatives--of--the--proposed
3 patient-and-other-persons-to-appear-at-the-hearing-to-give-evidence
4 in-the-cause.

5 [e]--The-judge-may,-in-the-judge's-discretion-or-on-request,
6 require-the-proposed-patient-to-be-examined-by--a--physician.---The
7 court-shall-consider-the-results-of-the-examination-at-the-hearing.

8 [f]--The-court-may-hear-the-cause-at-the-designated-time-and
9 with--or--without-an-answer-by-the-proposed-patient-or-the-presence
10 of-the-proposed-patient-if:

11 [1]--the-notice-is-received-not-later-than-the--fourth
12 day-before-the-date-of-the-hearing;-and

13 [2]--the---proposed---patient--is--represented--by--an
14 attorney,-if-the-proposed-patient-has-not-waived-the-right-to-legal
15 counsel;]

16 Sec. 462.069 [462.026]. COURT ORDER AND PLACE OF TREATMENT.

17 (a) The court shall commit the proposed patient to a [an-approved]
18 treatment facility approved by the commission to accept court
19 commitments [program] for not more than 90 days if:

20 (1) the proposed patient admits the allegations of the
21 application; or

22 (2) at the hearing on the merits, the court or jury
23 finds that the material allegations in the application have been
24 proved by clear and convincing evidence.

25 (b) The judge may, on request by the proposed patient, enter
26 an order requiring the proposed patient to participate in a
27 licensed outpatient treatment facility or services provided by a

1 private licensed physician, psychologist, social worker, or
2 professional counselor if the judge finds that the participation is
3 in the proposed patient's best interest considering the proposed
4 patient's impairment [~~Except--as-provided-by-Subsection-(c), the~~
5 ~~court may not commit the proposed patient directly to a state~~
6 ~~mental health facility if the Texas Board of Mental Health and~~
7 ~~Mental Retardation has designated a single portal authority for the~~
8 ~~area. In that case, the court may commit the proposed patient to:~~

9 ~~[(1) a facility operated by the single portal~~
10 ~~authority;~~

11 ~~[(2) a program licensed by the commission; or~~

12 ~~[(3) a federal hospital;~~

13 ~~[(c) If the single portal authority lacks the local~~
14 ~~resources to care for the patient, the authority may transfer the~~
15 ~~patient to a state mental health facility or, at the request of the~~
16 ~~authority, the court may commit the patient directly to a state~~
17 ~~mental health facility].~~

18 Sec. 462.070. MOTION FOR MODIFICATION OF ORDER FOR
19 OUTPATIENT TREATMENT. (a) The court that entered an order
20 directing a patient to participate in outpatient care or services
21 may set a hearing to determine if the order should be modified to
22 specifically require inpatient treatment. The court may set the
23 hearing on its own motion, at the request of the person responsible
24 for the care or treatment, or at the request of any other
25 interested person.

26 (b) The court shall appoint an attorney to represent the
27 patient if a hearing is held. The patient shall be given notice of

1 the matters to be considered at the hearing. The notice must
2 comply with the requirements of Section 462.063 for notice before a
3 hearing on court-ordered treatment.

4 (c) The hearing shall be held before the court, without a
5 jury, and as prescribed by Section 462.067. The patient shall be
6 represented by an attorney and receive proper notice.

7 Sec. 462.071. ORDER FOR TEMPORARY DETENTION. (a) The
8 person responsible for a patient's court-ordered outpatient care or
9 treatment or the administrator of the outpatient treatment facility
10 in which a patient receives care or treatment shall file a sworn
11 application for the patient's temporary detention pending the
12 modification hearing.

13 (b) The application must state the applicant's opinion and
14 detail the basis for the applicant's opinion that:

15 (1) the patient meets the criteria described by
16 Section 462.072; and

17 (2) detention in an approved inpatient treatment
18 facility is necessary to evaluate the appropriate setting for
19 continued court-ordered services.

20 (c) The court may issue an order for temporary detention if
21 the court finds from the information in the application that there
22 is probable cause to believe that the opinions stated in the
23 application are valid.

24 (d) At the time the order for temporary detention is signed,
25 the court shall appoint an attorney to represent a patient who does
26 not have an attorney.

27 (e) Within 72 hours after the time the detention begins, the

1 court that issued the temporary detention order shall provide to
2 the patient and the patient's attorney a written notice that
3 states:

4 (1) that the patient has been placed under a temporary
5 detention order;

6 (2) the grounds for the order; and

7 (3) the time and place of the modification hearing.

8 (f) A temporary detention order shall direct a peace officer
9 or other designated person to take the patient into custody and
10 transport the patient immediately to:

11 (1) the nearest appropriate approved inpatient
12 treatment facility; or

13 (2) a suitable facility if an appropriate approved
14 inpatient treatment facility is not available.

15 (g) A patient may be detained under a temporary detention
16 order for not more than 72 hours. The exceptions applicable to the
17 72-hour limitation for holding a probable cause hearing for an
18 order of protective custody under Section 462.066(a) apply to
19 detention under this section.

20 (h) A facility administrator shall immediately release a
21 patient held under a temporary detention order if the facility
22 administrator does not receive notice that the patient's continued
23 detention was authorized after a modification hearing was held
24 within the period prescribed by Subsection (g).

25 (i) A patient released from an inpatient treatment facility
26 under Subsection (h) continues to be subject to the order
27 committing the person to an approved outpatient treatment facility,

1 if the order has not expired.

2 Sec. 462.072. MODIFICATION OF ORDER FOR OUTPATIENT SERVICES.

3 (a) The court may modify an order for outpatient services at the
4 modification hearing if the court determines that the patient
5 continues to meet the applicable criteria for court-ordered
6 treatment prescribed by this chapter and that:

7 (1) the patient has not complied with the court's
8 order; or

9 (2) the patient's condition has deteriorated to the
10 extent that outpatient care or services are no longer appropriate.

11 (b) A court may refuse to modify the order and may direct
12 the patient to continue to participate in outpatient care or
13 treatment in accordance with the original order even if the
14 criteria prescribed by Subsection (a) have been met.

15 (c) The court's decision to modify an order must be
16 supported by at least one certificate of medical examination for
17 chemical dependency signed by a physician who examined the patient
18 not earlier than the seventh day before the date the hearing is
19 held.

20 (d) A modification may include:

21 (1) incorporating in the order a revised treatment
22 program and providing for continued outpatient care or treatment
23 under the modified order, if a revised general program of treatment
24 was submitted to and accepted by the court; or

25 (2) providing for commitment to an approved treatment
26 facility for inpatient care.

27 (e) A court may not extend the provision of court-ordered

1 treatment beyond the period prescribed in the original order.

2 Sec. 462.073. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

3 (a) The administrator of a facility to which a patient is
4 committed for inpatient treatment may request the court that
5 entered the commitment order to modify the order to require the
6 patient to participate in outpatient care or services.

7 (b) The facility administrator's request must explain in
8 detail the reason for the request. The request must be accompanied
9 by a certificate of medical examination for chemical dependency
10 signed by a physician who examined the patient during the preceding
11 seven days.

12 (c) The patient shall be given notice of the request.

13 (d) On request of the patient or any other interested
14 person, the court shall hold a hearing on the request. The court
15 shall appoint an attorney to represent the patient at the hearing.
16 The hearing shall be held before the court without a jury and as
17 prescribed by Section 462.067. The patient shall be represented by
18 an attorney and receive proper notice.

19 (e) If a hearing is not requested, the court may make the
20 decision solely from the request and the supporting certificate.

21 (f) If the court modifies the order, the court shall
22 identify a person to be responsible for the outpatient care or
23 services.

24 (g) The person responsible for the care or services shall
25 submit to the court within two weeks after the court enters the
26 order a general program of the treatment to be provided. The
27 program must be incorporated into the court order.

1 (h) A modified order may not extend beyond the term of the
2 original order.

3 Sec. 462.074. HOSPITALIZATION OUTSIDE TREATMENT FACILITY.

4 (a) A patient receiving court-ordered treatment in a treatment
5 facility may be transferred to a hospital if, in the opinion of a
6 licensed physician, the patient requires immediate medical care and
7 treatment.

8 (b) The hospital may, with the patient's consent, provide
9 any necessary medical treatment, including surgery. The hospital
10 may provide medical treatment without the patient's consent to the
11 extent provided by other law.

12 (c) The patient shall be returned to the treatment facility
13 if the order for court-ordered treatment has not expired at the
14 completion of the hospital treatment.

15 (d) An order for court-ordered treatment may be renewed
16 while the person is in the hospital.

17 Sec. 462.075. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT.

18 (a) A court may renew an order for court-ordered treatment entered
19 under this subchapter.

20 (b) An applicant who has reasonable cause to believe that a
21 patient remains chemically dependent and that, because of the
22 chemical dependency, the patient is likely to cause serious
23 physical harm to himself or others may file an application to renew
24 the original order for court-ordered treatment. The application
25 must comply with the requirements of Section 462.062. The
26 applicant must file the application not later than the 14th day
27 before the date on which the previous order expires.

1 (c) The application must be accompanied by two new
2 certificates of medical examination for chemical dependency. The
3 certificates must comply with the requirements of Section 462.064.

4 (d) An application for renewal is considered an original
5 application for court-ordered treatment. The provisions of this
6 subchapter relating to notice, hearing procedure, and the proposed
7 patient's rights apply to the application for renewal.

8 (e) The court shall enter an order denying an application
9 for court-ordered treatment if the court or jury fails to find,
10 from clear and convincing evidence, that the proposed patient is a
11 chemically dependent person and meets the criteria for
12 court-ordered treatment. If the court denies the application, the
13 court shall order the discharge of a proposed patient who is not at
14 liberty.

15 (f) The court shall commit the proposed patient to a
16 treatment facility approved by the commission to accept commitments
17 for not more than 90 days if:

18 (1) the proposed patient admits the allegations of the
19 application; or

20 (2) at the hearing on the merits, the court or jury
21 finds that the material allegations in the application have been
22 proved by clear and convincing evidence.

23 Sec. 462.076 [462-027]. APPEAL. (a) The appeal of an order
24 requiring court-ordered treatment must be filed in the court of
25 appeals for the county in which the order is issued.

26 (b) Notice of appeal must be filed not later than the 10th
27 day after the date on which the order is signed.

1 (c) When the notice of appeal is filed, the clerk shall
2 immediately send a certified transcript of the proceedings to the
3 court of appeals.

4 (d) Pending the appeal, the [The] trial judge in whose court
5 the case is pending may:

6 (1) [may] stay the order and release the person from
7 custody pending the appeal if the judge is satisfied [determines]
8 that the person does not meet the criteria for protective custody
9 under [specified-by] Section 462.065; and

10 (2) if the person is at liberty, [462.024(a)---The
11 judge-may] require an appearance bond in an amount set [determined]
12 by the court.

13 (e) The court of appeals and supreme court shall give an
14 [An] appeal under this section preference over all other cases and
15 shall advance the appeal [shall-be-advanced] on the docket [and
16 given--a--preferential-setting-over-all-other-cases-in-the-court-of
17 appeals-and-the-supreme-court]. The courts may suspend any rule
18 concerning the time for filing briefs and docketing cases.

19 Sec. 462.077. PASS OR FURLOUGH FROM INPATIENT CARE. (a)
20 The facility administrator may permit a patient admitted to the
21 facility under an order for inpatient services to leave the
22 facility under a pass or furlough.

23 (b) A pass authorizes the patient to leave the facility for
24 not more than 72 hours. A furlough authorizes the patient to leave
25 for a longer period.

26 (c) The pass or furlough may be subject to specified
27 conditions.

1 (d) When a patient is furloughed, the facility administrator
2 shall notify the court that issued the commitment order.

3 Sec. 462.078. RETURN TO FACILITY UNDER FACILITY
4 ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The administrator
5 of a facility to which a patient was admitted for court-ordered
6 inpatient services may have an absent patient taken into custody,
7 detained, and returned to the facility by:

8 (1) signing a certificate authorizing the patient's
9 return; or

10 (2) filing the certificate with a magistrate and
11 requesting the magistrate to order the patient's return.

12 (b) A magistrate may issue an order directing a peace or
13 health officer to take a patient into custody and return the
14 patient to the facility if the facility administrator files the
15 certificate as prescribed by this section. The facility head may
16 sign or file the certificate if the facility head reasonably
17 believes that:

18 (1) the patient is absent without authority from the
19 facility;

20 (2) the patient has violated the conditions of a pass
21 or furlough; or

22 (3) the patient's condition has deteriorated to the
23 extent that the patient's continued absence from the facility under
24 a pass or furlough is inappropriate.

25 (c) A peace or health officer shall take the patient into
26 custody and return the patient to the facility as soon as possible
27 if the patient's return is authorized by the facility

1 administrator's certificate or the court order. The peace or
2 health officer may take the patient into custody without having the
3 certificate or court order in the officer's possession.

4 Sec. 462.079. REVOCATION OF FURLOUGH. (a) A furlough may
5 be revoked only after an administrative hearing held in accordance
6 with commission rules. The hearing must be held within 72 hours
7 after the patient is returned to the facility.

8 (b) A hearing officer shall conduct the hearing. The
9 hearing officer may be a mental health or chemical dependency
10 professional if the person is not directly involved in treating the
11 patient.

12 (c) The hearing is informal, and the patient is entitled to
13 present information and argument.

14 (d) The hearing officer may revoke the furlough if the
15 officer determines that the revocation is justified under Section
16 462.078(b)(1) or (2).

17 (e) A hearing officer who revokes a furlough shall place in
18 the patient's file:

19 (1) a written notation of the decision; and

20 (2) a written explanation of the reasons for the
21 decision and the information on which the hearing officer relied.

22 (f) The patient shall be permitted to leave the facility
23 under the furlough if the hearing officer determines that the
24 furlough should not be revoked.

25 [Sec.--462.028---HABEAS-CORPUS-----This--subchapter--does--not
26 abridge-the-right-of-any-person-to-a-writ-of-habeas-corpus.]

27 Sec. 462.080 [462.029]. RELEASE FROM COURT-ORDERED

1 TREATMENT. (a) The administrator of a facility to which a person
2 has been committed for treatment shall discharge the person when
3 the court order expires.

4 (b) The administrator may discharge a patient before the
5 court order expires if the administrator determines that the
6 patient no longer meets the criteria for court-ordered treatment.

7 (c) The administrator of a facility to which the patient has
8 been committed for inpatient services shall consider before
9 discharging the patient whether the patient should receive
10 outpatient court-ordered care or services in accordance with:

11 (1) a furlough under Section 462.077; or

12 (2) a modified order under Section 462.073 that
13 directs the patient to participate in outpatient treatment.

14 (d) A discharge [~~if a person is discharged under--Subsection~~
15 ~~(b),--the--court--order~~] terminates the court order, and the person
16 discharged may not be compelled to submit to involuntary treatment
17 unless a new order is issued in accordance with this subchapter.

18 (e) [~~(d)~~] When a person is discharged under this section,
19 the administrator shall prepare a certificate of discharge and file
20 it [~~that certificate~~] with the court that issued the order.

21 [~~Sec--462.030--COSTS--(a)--The laws relating to payment--of~~
22 ~~costs--of--commitment-and-support-and-to-obtaining-reimbursement-of~~
23 ~~actual-costs-for-court-ordered-mental-health-services-apply-to-each~~
24 ~~item-of-expense-incurred--by--the--state--in--connection--with--the~~
25 ~~commitment,--care,--custody,--treatment,--and--rehabilitation--of-a~~
26 ~~person-receiving-care-and-treatment-under-this-subchapter.~~

27 [~~(b)--A person admitted to an approved treatment program--who~~

1 has--sufficient-funds-shall-pay-for-the-person's-maintenance-at-the
2 same--rate--charged--to--other--patients--for--maintenance--at--the
3 facility-

4 [~~(c)~~--Chapter-152, Acts--of--the--45th--Legislature,--Regular
5 Session,--1937--(~~Article--3196a~~,--Vernon's--Texas--Civil--Statutes),
6 applies-to-a--person--admitted--to--a--state--hospital--under--this
7 subchapter-]

8 Sec. 462.081 [462-031]. COMMITMENT BY COURTS IN CRIMINAL
9 PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court
10 with jurisdiction of misdemeanor cases may remand the defendant to
11 a [an--approved] treatment facility approved by the commission to
12 accept court commitments [program] for care and treatment for not
13 more than 90 days, instead of incarceration or fine, if:

14 (1) the court or a jury has found the defendant guilty
15 of an offense classified as a Class A or B misdemeanor;

16 (2) the court finds that the offense resulted from or
17 was related to the defendant's chemical dependency [alcohol-abuse];

18 (3) a treatment facility approved by the commission
19 [an---approved---treatment--program] is available to treat the
20 defendant; and

21 (4) the treatment facility [program] agrees in writing
22 to admit the defendant under this section.

23 (b) A defendant who, in the opinion of the court, is
24 mentally ill is not eligible for sentencing under this section.

25 (c) The court's sentencing order is a final conviction, and
26 the order may be appealed in the same manner as appeals are made
27 from other judgments of that court.

1 (d) A juvenile court may remand a child to a treatment
2 facility [~~an-approved-treatment-program~~] for care and treatment for
3 not more than 90 days after the date on which the child is remanded
4 if:

5 (1) the court finds that the child has engaged in
6 delinquent conduct or conduct indicating a need for supervision and
7 that the conduct resulted from or was related to the child's
8 chemical dependency [~~alcohol-abuse~~];

9 (2) a treatment facility approved by the commission to
10 accept court commitments [~~an--approved--treatment--program~~] is
11 available to treat the child; and

12 (3) the facility [~~program~~] agrees in writing to
13 receive the child under this section.

14 [{Sections-462.032-to-462.050-reserved-for-expansion}]

15 [SUBCHAPTER-C.--VOLUNTARY-ADMISSION-TO-STATE-HOSPITAL

16 [Sec.-462.051.--ELIGIBILITY-FOR-VOLUNTARY-ADMISSION-TO--STATE
17 HOSPITAL;---A--person-is-eligible-to-be-admitted-to,--and-cared-for
18 and-treated-in,--a-state-hospital-authorized-by-law-to-care-for--and
19 treat-mentally-ill-persons-if-the-person:

20 [(1)--is--a--resident--of--this--state--at--the-time-of
21 application--for--admission--to--a--state--hospital--under--this
22 subchapter;

23 [(2)--is--an-alcoholic,--and

24 [(3)--is--not--charged--with--a-criminal-offense-at-the
25 time-of-application;

26 [Sec.-462.052.--ADMISSION-TO-STATE--HOSPITAL;--CERTIFICATION--
27 Except--as--provided--by--Section--462.053,--the-superintendent-of-a

1 state-hospital-shall-admit-to-the-hospital-for-care--and--treatment
2 an-alcoholic-who-voluntarily-applies-for-admission-if-the-hospital-

3 [(1)--has-available-facilities;-and

4 [(2)--receives--written--statements--from--a--reputable
5 citizen--of--this--state--who--is--a--recovered-alcoholic-and-from-a
6 reputable-practicing-physician-licensed--to--practice--medicine--in
7 this--state--certifying;-to-the-best-of-each-certifier's-knowledge
8 and--belief;-that--the--applicant--is--an--alcoholic--in--need--of
9 hospitalization-and-treatment-;

10 [Sec.-462:053.--DENIAL-OF-ADMISSION.--(a)--The-superintendent
11 of-a-state-hospital-may-refuse-to-admit-a-voluntary-applicant-to--a
12 state-hospital-if-

13 [(1)--the--applicant--has--been--a--patient--receiving
14 treatment-solely-for-alcoholism-in-a-state-hospital-;

15 [(2)--the-applicant-was--released--from--that--hospital
16 within-the-12-months-preceding-the-date-of-application;-and

17 [(3)--the--superintendent--determines--that--no--useful
18 purpose-would-be-served-by-admitting-the-applicant-;

19 [(b)--An--applicant--may--not-be-admitted-to-a-state-hospital
20 under-this-subchapter-if;-at--the--time--of--the--application;-the
21 hospital--has--a--waiting--list-of-mental-patients-committed-to-the
22 hospital-;

23 [Sec.-462:054.--COSTS.--(a)--A--person--may--not--be--denied
24 admission--to;-and-care-and-treatment-in;-a-state-hospital-because
25 of-the--person's--financial--inability--to--pay--for--the--person's
26 maintenance-if-the-person-is-otherwise-eligible-for-admission-under
27 this-subchapter-;

1 [(b) -- A -- person -- admitted -- to -- a -- state -- hospital -- under -- this
2 subchapter -- who -- has -- sufficient -- funds -- shall -- pay -- for -- the -- person's
3 maintenance -- at -- the -- same -- rate -- charged -- to -- other -- patients -- for
4 maintenance -- at -- the -- hospital --

5 [(c) -- Chapter -- 1527 -- Acts -- of -- the -- 45th -- Legislature, -- Regular
6 Session, -- 1937 -- (Article -- 3196a, -- Vernon's -- Texas -- Civil -- Statutes),
7 applies -- to -- any -- person -- admitted -- to -- a -- state -- hospital -- under -- this
8 subchapter --

9 [Sec. -- 462.055, -- CONSENT -- TO -- DETENTION, -- RELEASE, -- (a) -- A -- person
10 admitted -- to -- a -- state -- hospital -- under -- this -- subchapter -- is -- considered -- to
11 have -- voluntarily -- consented -- to -- detention -- in -- the -- hospital -- for -- 10 -- days
12 after -- the -- date -- of -- admission -- and -- waives -- any -- right -- to -- be -- released
13 from -- the -- hospital -- before -- that -- period -- expires --

14 [(b) -- Except -- as -- provided -- by -- Subsection -- (c), -- a -- person -- admitted
15 to -- a -- state -- hospital -- under -- this -- subchapter -- shall -- be -- cared -- for,
16 treated, -- and -- detained -- as -- a -- patient -- in -- the -- hospital -- for -- at -- least -- 10
17 but -- not -- more -- than -- 90 -- days -- after -- the -- date -- of -- admission --

18 [(c) -- A -- person -- admitted -- to -- a -- state -- hospital -- under -- this
19 subchapter -- may -- be -- released -- before -- the -- 10 -- day -- period -- expires -- if -- the
20 superintendent -- determines -- that -- the -- release -- is -- in -- the -- person's -- best
21 interest --

22 [(d) -- When -- a -- patient -- is -- released -- from -- a -- state -- hospital -- under
23 this -- section, -- the -- superintendent -- of -- the -- hospital -- shall -- notify -- each
24 person, -- other -- than -- a -- licensed -- physician, -- who -- certified -- the -- patient
25 for -- admission --

26 [{Sections -- 462.056 -- to -- 462.080 -- reserved -- for -- expansion}

1 [SUBCHAPTER-D.--CONTRIBUTING-TO-DELINQUENCY-OF

2 HABITUAL-DRUNKARD

3 [Sec.-462.081.--CONTRIBUTING---TO---DELINQUENCY--OF--HABITUAL
4 DRUNKARD;-CRIMINAL-PENALTY.--(a)--In--this--section--"delinquency"
5 means-any-act-that-tends-to-debase-or-injure-the-morals;-health;-or
6 welfare-of-a-habitual-drunkard;-and-includes:-

7 [(1)--drinking-intoxicating-liquor;-

8 [(2)--entering---or---remaining--in--any--bawdy--house;-
9 assignation-house;-disorderly-house;-roadhouse;-hotel;-or--public
10 dance-hall-where-prostitutes;-gamblers;-or-thieves-are-permitted-to
11 enter-and-ply-their-trade;-

12 [(3)--entering--a--place-where-intoxicating-liquors-are
13 kept;-drunk;-used;-or-sold;-

14 [(4)--associating-with-thieves-and-immoral-persons;-

15 [(5)--causing-a-habitual-drunkard-to-leave-home--or--to
16 leave--the--custody--of-the-drunkard's-parents;-guardian;-or-person
17 acting--for--the--drunkard's--parents--or--guardian--without--first
18 receiving-their-consent-or-against-their-will;-or

19 [(6)--causing---the---habitual---drunkard;-by---undue
20 influence;-to-unlawfully-cohabit-with-a-person-known-by--the--actor
21 to-be-a-habitual-drunkard;-

22 [(b)--A--person--commits-an-offense-if-the-person;-by-any-act
23 or-in-any-manner;-encourages;-causes;-acts-in-conjunction-with;-or
24 contributes--to--the--delinquency;-dependency;-or--neglect--of--a
25 habitual---drunkard;-regardless---of---the---drunkard's--previous
26 convictions:-

27 [(c)--An-offense-under-this-section-is-punishable-by--a--fine

1 of--not--more--than-\$500,-confinement-in-jail-for-not-more-than-one
2 year,-or-both-

3 [Sec.-462.082,-CONFLICTING-OFFENSES,-To-the-extent-of-any
4 conflict,-the-offenses-prescribed-by-the-Penal-Code-or-other-law
5 enacted-after-June-9,-1949,-prevail-over-the-offense-prescribed-by
6 Section-462.081.]

7 SECTION 176. The chapter heading to Chapter 463, Health and
8 Safety Code, is amended to conform to Sections 16(2), (3), and (5),
9 Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called
10 Session, 1989, to read as follows:

11 CHAPTER 463. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD
12 OR NARCOTIC ADDICT [TREATMENT-OF-DRUG-DEPENDENT-PERSONS]

13 SECTION 177. Subchapter A, Chapter 463, Health and Safety
14 Code, is amended to conform to Sections 16(2), (3), and (5),
15 Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called
16 Session, 1989, to read as follows:

17 SUBCHAPTER A. CONTRIBUTING TO DELINQUENCY OF HABITUAL
18 DRUNKARD [GENERAL-PROVISIONS]

19 Sec. 463.001. CONTRIBUTING TO DELINQUENCY OF HABITUAL
20 DRUNKARD; CRIMINAL PENALTY. (a) In this section, "delinquency"
21 means any act that tends to debase or injure the morals, health, or
22 welfare of a habitual drunkard, and includes:

23 (1) drinking intoxicating liquor;

24 (2) entering or remaining in any bawdy house,
25 assignation house, disorderly house, roadhouse, hotel, or public
26 dance hall where prostitutes, gamblers, or thieves are permitted to
27 enter and ply their trade;

1 (3) entering a place where intoxicating liquors are
2 kept, drunk, used, or sold;

3 (4) associating with thieves and immoral persons;

4 (5) causing a habitual drunkard to leave home or to
5 leave the custody of the drunkard's parents, guardian, or person
6 acting for the drunkard's parents or guardian without first
7 receiving their consent or against their will; or

8 (6) causing the habitual drunkard, by undue influence,
9 to unlawfully cohabit with a person known by the actor to be a
10 habitual drunkard.

11 (b) A person commits an offense if the person, by any act or
12 in any manner, encourages, causes, acts in conjunction with, or
13 contributes to the delinquency, dependency, or neglect of a
14 habitual drunkard, regardless of the drunkard's previous
15 convictions.

16 (c) An offense under this section is punishable by a fine of
17 not more than \$500, confinement in jail for not more than one year,
18 or both.

19 Sec. 463.002. CONFLICTING OFFENSES. To the extent of any
20 conflict, the offenses prescribed by the Penal Code or other law
21 enacted after June 9, 1949, prevail over the offense prescribed by
22 Section 463.001 [DEFINITIONS---In-this-subchapter-

23 [1]--"Certificate"---means---a--sworn--certificate--of
24 medical--examination--for--drug--dependency--executed--under---this
25 chapter-

26 [2]--"Commissioner"---means--the-commissioner-of-mental
27 health-and-mental-retardation-

1 [(3) -- "Controlled substance" means a toxic inhalant or
2 any substance designated as a controlled substance by Chapter 481
3 (Texas Controlled Substances Act);

4 [(4) -- "Department" means the Texas Department of Mental
5 Health and Mental Retardation;

6 [(5) -- "Drug dependence" means a state characterized by
7 behavioral and other responses that include a strong compulsion to
8 take a controlled substance in order to experience its
9 psychological effects or to avoid the discomfort of its absence;

10 [(6) -- "Drug dependent person" means a person who uses a
11 controlled substance and who is psychologically or physically
12 dependent, or both, because of the use;

13 [(7) -- "Legal holiday" means a state holiday specified
14 by Article 4591, Revised Statutes, or an officially declared county
15 holiday;

16 [(8) -- "Mental health authority" means the agency
17 designated by the commissioner to direct, operate, facilitate, or
18 coordinate services to mentally ill or drug-dependent persons in a
19 state service area;

20 [(9) -- "Mental health facility" includes:

21 [(A) -- an inpatient or outpatient mental health
22 facility operated by the department, an entity designated by the
23 department to provide mental health services, a political
24 subdivision of the state, or any other legal entity;

25 [(B) -- a community mental health and mental
26 retardation center established under Section 3.01, Texas Mental
27 Health and Mental Retardation Act (Article 5547-203, Vernon's Texas

1 Civil-Statutes},--that-provides-mental-health-services,-or

2 [~~(C)~~--the-identifiable-part-of-a-general-hospital
3 that--provides--diagnosis,--treatment,-and-care-for-mentally-ill-or
4 drug-dependent-persons-;

5 [~~(10)~~--"Toxic-inhalant"-means-a-gaseous-substance--that
6 is---inhaled---by--a--person--to--produce--a--desired--physical--or
7 psychological-effect-and-that-may-cause-personal-injury-or--illness
8 to-the-person-who-inhales-the-substance].

9 SECTION 178. Subchapters B-F, Chapter 463, Health and Safety
10 Code, are repealed to conform to Sections 16(2), (3), and (5),
11 Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called
12 Session, 1989.

13 SECTION 179. Subchapter G, Chapter 463, Health and Safety
14 Code, is amended to conform to Sections 16(2), (3), and (5),
15 Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called
16 Session, 1989, to read as follows:

17 SUBCHAPTER B [6]. CONTRIBUTING TO NARCOTIC ADDICTION

18 Sec. 463.011 [~~463.121~~]. CONTRIBUTING TO DELINQUENCY OF
19 NARCOTIC ADDICT; CRIMINAL PENALTY. (a) In this section,
20 "delinquency" means any act that tends to debase or injure the
21 morals, health, or welfare of a narcotic addict, and includes:

22 (1) drinking intoxicating liquor;

23 (2) going into or remaining in any bawdy house,
24 assignation house, disorderly house, roadhouse, hotel, or public
25 dance hall where prostitutes, gamblers, or thieves are permitted to
26 enter and ply their trade;

27 (3) going into a place where intoxicating liquors are

1 kept, drunk, used, or sold;

2 (4) associating with thieves and immoral persons;

3 (5) causing a narcotic addict to leave home or to
4 leave the custody of the addict's parents, guardian, or person
5 acting for the addict's parent or guardian without first receiving
6 that person's consent or against that person's will; or

7 (6) causing the addict, by undue influence, to
8 unlawfully cohabit with a person known by the actor to be a
9 narcotic addict.

10 (b) A person commits an offense if the person, by any act or
11 in any manner, encourages, causes, acts in conjunction with, or
12 contributes to the delinquency, dependency, or neglect of a
13 narcotic addict, regardless of the addict's previous convictions.

14 (c) An offense under this section is punishable by a fine of
15 not more than \$500, confinement in jail for not more than one year,
16 or both.

17 Sec. 463.012 [~~463-122~~]. CONFLICTING OFFENSES. To the extent
18 of any conflict, the offenses defined by the Penal Code or other
19 law enacted after June 9, 1949, prevail over the offense defined by
20 Section 463.011 [~~463-121~~].

21 SECTION 180. Sections 464.001-464.003, Health and Safety
22 Code, are amended to conform to Sections 1 and 2, Chapter 660
23 (S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989,
24 to read as follows:

25 Sec. 464.001. DEFINITIONS. In this subchapter:

26 (1) "Chemical dependency" means:

27 (A) abuse of alcohol or a controlled substance;

1 (B) psychological or physical dependence on
2 alcohol or a controlled substance; or

3 (C) addiction to alcohol or a controlled
4 substance.

5 (2) "Commission" means the Texas Commission on Alcohol
6 and Drug Abuse.

7 (3) "Controlled substance" has the meaning assigned
8 ~~[means-a-toxic-inhalant-or-any-substance-designated-as-a-controlled~~
9 ~~substance]~~ by Chapter 481 (Texas Controlled Substances Act).

10 (4) ~~["Toxic--inhalant"--means-a-gaseous-substance-that~~
11 ~~is--inhaled--by--a--person--to--produce--a--desired---physical---or~~
12 ~~psychological--effect-and-that-may-cause-personal-injury-or-illness~~
13 ~~to-the-inhaler-~~

14 [+5+] "Treatment" means a planned, structured, and
15 organized program designed to initiate and promote a person's
16 chemical-free status or to maintain the person free of illegal
17 drugs.

18 (5) [+6+] "Treatment facility" means:

19 (A) a public or private hospital;

20 (B) a detoxification facility;

21 (C) a primary care facility;

22 (D) an intensive care facility;

23 (E) a long-term care facility;

24 (F) an outpatient care facility;

25 (G) a community mental health center;

26 (H) a health maintenance organization;

27 (I) a recovery center;

1 (J) a halfway house;
2 (K) an ambulatory care facility; or
3 (L) any other facility that offers or purports
4 to offer treatment [~~required-to-be-licensed--and--approved--by--the~~
5 ~~commission~~].

6 Sec. 464.002. LICENSE REQUIRED. A person may not offer or
7 purport to offer chemical dependency treatment [~~operate-a-treatment~~
8 ~~facility-or-a-structured-program-that-treats--chemically--dependent~~
9 ~~persons~~] without a license issued under this subchapter.

10 Sec. 464.003. EXEMPTIONS. This subchapter does not apply
11 to:

12 (1) a facility maintained or operated by the federal
13 government;

14 (2) a facility directly operated by the state;

15 (3) [~~7-including~~] a facility licensed [~~or-operated~~] by
16 the Texas Department of Mental Health and Mental Retardation;

17 [~~(3)--a--boarding--home--or--shelter-that-provides-only~~
18 ~~food-and-lodging, peer-support, or other personal services that are~~
19 ~~not-represented-as-chemical-dependency--services--if--the--home--or~~
20 ~~shelter--is--licensed--by-another-state-agency-or-provides-services~~
21 ~~without-cost-to-the-residents-or-a-third-party-payor;~~]

22 (4) an educational program for intoxicated drivers;
23 [or]

24 (5) the individual office of a private, licensed
25 health care practitioner who personally renders private individual
26 or group services within the scope of the practitioner's license
27 [~~episodic--counseling--in--the--practitioner's-own-name~~] and in the

1 practitioner's office; or

2 (6) an individual who personally provides counseling
3 or support services to a chemically dependent person but does not
4 offer or purport to offer a chemical dependency treatment program
5 [but-who-does-not-purport-to-offer-a-structured-chemical-dependency
6 program].

7 SECTION 181. Sections 464.004 and 464.005, Health and Safety
8 Code, are amended to conform to Section 2, Chapter 660 (S.B. 1674),
9 Acts of the 71st Legislature, Regular Session, 1989, to read as
10 follows:

11 Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To
12 receive a license to operate a treatment facility to treat
13 chemically dependent persons, a person must:

14 (1) file a written application on a form prescribed by
15 the commission; [and]

16 (2) cooperate with the review [inspection] of the
17 facility; and

18 (3) comply with the licensing standards.

19 (b) The commission shall issue a license to an applicant:

20 (1) whose application meets the content requirements
21 of the commission; and

22 (2) who receives approval of the facility after the
23 commission's review; and

24 (3) who timely complies with the licensing standards
25 [at-least-one-on-site-inspection].

26 (c) The license is issued only for the person named in the
27 license and not the legal successors of that person.

1 (d) The license expires two years [~~one-year~~] after the date
2 on which the license is issued.

3 (e) A license may be issued without prior notice and an
4 opportunity for a hearing. A person other than the applicant and
5 commission may not contest the issuance of a license.

6 Sec. 464.005. LICENSE RENEWAL. (a) The commission shall
7 provide renewal application forms and information relating to
8 renewal procedures to each license holder.

9 (b) The commission may require an inspection before renewing
10 a license.

11 (c) The commission may establish deadlines for receiving and
12 acting on renewal applications.

13 (d) A license may be renewed without prior notice and an
14 opportunity for a hearing. A person other than the applicant and
15 commission may not contest the renewal of a license.

16 SECTION 182. Section 464.006, Health and Safety Code, is
17 amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
18 the 71st Legislature, Regular Session, 1989, to read as follows:

19 Sec. 464.006. INSPECTIONS. The commission or its
20 representative may without notice enter the premises of a treatment
21 facility at reasonable times, including any time treatment services
22 are provided, to conduct [~~make~~] an inspection or investigation the
23 commission considers necessary.

24 SECTION 183. Section 464.007(a), Health and Safety Code, is
25 amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
26 the 71st Legislature, Regular Session, 1989, to read as follows:

27 (a) The commission shall charge nonrefundable application

1 and review [~~inspection~~] fees for a license or renewal license. The
2 commission may charge a fee for approving [~~or--for--certifying~~] a
3 facility to treat court committed clients [~~receive--court~~
4 ~~commitments~~].

5 SECTION 184. Section 464.009(b), Health and Safety Code, is
6 amended to conform to Section 2, Chapter 660 (S.B. 1674), and
7 Section 4, Chapter 1148 (S.B. 1697), Acts of the 71st Legislature,
8 Regular Session, 1989, to read as follows:

9 (b) The commission shall adopt rules for:

10 (1) [~~the--organizational--structure--of~~] a treatment
11 facility's organization and structure, policies and procedures, and
12 minimum staffing requirements [~~facility,--including-the-governing~~
13 ~~authority-of-the-facility,--board--authority,--organization,--fiscal~~
14 ~~and--policy--responsibilities,--supervisory-lines-of-authority,--and~~
15 ~~staffing~~];

16 (2) the [~~program-conducted-by-a--facility,--including~~]
17 services to be provided by a facility, including:

18 (A) the categories of services the facility may
19 provide;

20 (B) the client living environment the facility
21 requires; and

22 (C) the requirement that a facility provide
23 discharge planning and client follow-up contact;

24 (3) [~~7---admission--criteria,7~~] client rights[7] and
25 standards for medication, nutrition, and emergency situations;

26 (4) [~~3~~] the client [~~clinical--and--fiscal~~] records
27 kept by a facility;

1 (5) [~~4~~] the general physical plant requirements for
2 a facility, including environmental considerations, fire
3 protection, safety, and other conditions to ensure the health and
4 comfort of the clients; [~~and~~]

5 (6) standards [~~5--any--other--aspects--of--chemical~~
6 ~~dependency-treatment-as~~] necessary to protect the client, including
7 standards required or authorized by federal or other state law; and

8 (7) the approval of a facility to treat adult or minor
9 clients who are referred by the criminal justice system or by a
10 court order for involuntary civil or criminal commitment or
11 detention.

12 SECTION 185. Sections 464.010(a), (b), (d), and (e), Health
13 and Safety Code, are amended to conform to Section 2, Chapter 660
14 (S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989,
15 to read as follows:

16 (a) A [~~An-owner-or-employee-of-a-treatment-facility--or--any~~
17 ~~other~~] person, including treatment facility personnel, who believes
18 that a client's physical or mental health or welfare has been, is,
19 or will be adversely affected by abuse or neglect caused by any
20 person shall report the facts underlying that belief to the
21 commission. This requirement is in addition to the requirements
22 [~~requirement~~] prescribed by Chapter 34, Family Code, and Chapter
23 48, Human Resources Code.

24 (b) The commission [~~by-rule~~] shall prescribe procedures for
25 the investigation of reports under Subsection (a) and for
26 coordination with law enforcement agencies or other agencies.

27 (d) The commission may request the attorney general's office

1 to file a petition for temporary care and protection of a client of
2 a residential treatment facility if it appears that immediate
3 removal of the client is necessary to prevent further abuse.

4 (e) All records made by the commission during its
5 investigation of alleged abuse or neglect are confidential and may
6 not be released except that the release may be made:

7 (1) on court order;

8 (2) on written request and consent of the person under
9 investigation or that person's authorized attorney; or

10 (3) as provided by Section 464.011.

11 SECTION 186. Section 464.011, Health and Safety Code, is
12 amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 Sec. 464.011. DISCLOSURE OF COMMISSION RECORDS. Unless
15 prohibited or limited by federal or other state law, the [The]
16 commission may make its licensing [licensure] and investigatory
17 records that identify a client available to a state or federal
18 agency or law enforcement authority on [written] request and for
19 official purposes [by--the--agency's-representative-if-the-agency
20 agrees-not-to-disclose-information-that-could-identify-a-client--in
21 violation-of-the-law].

22 SECTION 187. Section 464.012, Health and Safety Code, is
23 amended to conform to Section 2, Chapter 660 (S.B. 1674), and
24 Section 2, Chapter 1195 (S.B. 959), Acts of the 71st Legislature,
25 Regular Session, 1989, to read as follows:

26 Sec. 464.012. HIV INFECTION EDUCATION, TESTING, AND
27 COUNSELING [METHADONE-PROGRAMS;-TREATMENT-GOALS]. (a) A treatment

1 facility licensed under this chapter shall provide to employees of
2 the facility education regarding methods of transmitting and
3 preventing human immunodeficiency virus infection based on the
4 model education program developed by the Texas Department of Health
5 and shall make the education available to facility clients.

6 (b) Employees of the facility who counsel clients shall
7 provide counseling in accordance with the model protocol for
8 counseling related to HIV infection developed by the Texas
9 Department of Health.

10 (c) A treatment facility licensed under this chapter shall
11 make available or make referrals to voluntary, anonymous, and
12 affordable counseling and testing services concerning human
13 immunodeficiency virus infection [~~Treatment-of-narcotic-addiction~~
14 ~~by-a-licensed-methadone-program-is-a-specialty--area--with--federal~~
15 ~~rules--unique--to--the--provision--of--maintenance--treatment--The~~
16 ~~treatment-model-is-medical-~~

17 [~~(b)--Short-term-treatment-goals-may-emphasize--personal--and~~
18 ~~public-health,-crime-prevention,-reintegration-into-the-work-force,~~
19 ~~and--stabilization,---Attaining--abstinence--is--a--long-term-goal,~~
20 ~~subject--to--a--medical--determination---of---appropriateness---and~~
21 ~~prognosis].~~

22 SECTION 188. Sections 464.015(a), (c), and (d), Health and
23 Safety Code, are amended to conform to Section 2, Chapter 660 (S.B.
24 1674), Acts of the 71st Legislature, Regular Session, 1989, to read
25 as follows:

26 (a) The commission may petition a district court to restrain
27 a person or facility that violates the rules, standards, or

1 licensing requirements provided under this subchapter in a manner
2 that causes immediate threat to the health and safety of individual
3 clients.

4 (c) A district court, on petition of the commission and on a
5 finding by the court that a person or facility is violating this
6 subchapter or a standard adopted under this subchapter, shall grant
7 any injunctive relief warranted by the facts.

8 (d) The court granting the injunctive ~~[requested]~~ relief
9 shall order the person or facility to reimburse the commission for
10 all costs of investigation and litigation, including reasonable
11 attorney's fees, reasonable investigative expenses, and civil
12 administrative costs.

13 SECTION 189. Section 464.016(c), Health and Safety Code, is
14 amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
15 the 71st Legislature, Regular Session, 1989, to read as follows:

16 (c) A person commits an offense if the person[~~;~~

17 ~~[~~+~~]~~ has reasonable grounds to suspect ~~[believe]~~ that
18 abuse or neglect of a client may have occurred ~~[is-occurring]~~

19 ~~[~~+~~2]--is-under-a-legal-duty--to--report--the--abuse--or~~
20 ~~neglect;~~] and

21 ~~[~~+~~3]~~ does not report the suspected or possible abuse
22 or neglect.

23 SECTION 190. The chapter heading to Chapter 465, Health and
24 Safety Code, is amended to conform to Section 1, Chapter 494 (H.B.
25 2121), Acts of the 71st Legislature, Regular Session, 1989, and
26 Section 16(4), Chapter 23 (S.B. 57), Acts of the 71st Legislature,
27 1st Called Session, 1989, to read as follows:

1 CHAPTER 465. LOCAL DRUG AND ALCOHOL EDUCATION PROGRAMS

2 [~~R--B--McALLISTER-DRUG-TREATMENT-PROGRAM~~]

3 SECTION 191. Subchapter A, Chapter 465, Health and Safety
4 Code, is amended to conform to Section 1, Chapter 494 (H.B. 2121),
5 Acts of the 71st Legislature, Regular Session, 1989, and Section
6 16(4), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st
7 Called Session, 1989, to read as follows:

8 [SUBCHAPTER A---GENERAL PROVISIONS]

9 Sec. 465.001. COMMISSION. A municipality or county may
10 create and support with public funds a commission to:

11 (1) educate the public on drug and alcohol abuse;

12 (2) promote drug and alcohol education at all levels
13 of the schools;

14 (3) study the effectiveness of efforts, including the
15 commission's efforts, in reducing drug and alcohol abuse; and

16 (4) create and administer a program to counsel or
17 treat drug and alcohol abusers or to provide both counseling and
18 treatment.

19 Sec. 465.002. INDIVIDUAL OR JOINT ACTION. The municipality
20 or county may create the commission by its own action or jointly by
21 agreement with another municipality or county or a private
22 foundation, nonprofit organization, church, or other entity. If
23 the commission is created by agreement, all matters regarding the
24 creation and operation of the commission are governed as provided
25 by the agreement.

26 Sec. 465.003. REPORT. The commission shall report annually
27 to each entity that participates in the creation of the commission

1 regarding the commission's activities. [SHORT-TITLE---This chapter
2 may-be-cited-as-the-R.-B.-McAllister-Drug-Treatment-Program-Act-

3 [Sec.-465.002---DEFINITIONS---In-this-chapter-

4 [(1) --"Commission" --means--the--Texas---Commission---on
5 Alcohol-and-Drug-Abuse-

6 [(2) --"Controlled-substance"--

7 [(A) --has--the--meaning--assigned--by-Chapter-481
8 (Texas-Controlled-Substances-Act);-or

9 [(B) --means-a-toxic--inhalant--as--that--term--is
10 defined-by-the-executive-director-

11 [(3) --"Criminal--justice--system"--means-law-enforcement
12 officials,-district-attorneys,-county-attorneys,-courts,-and--the
13 Texas-Department-of-Corrections-

14 [(4) --"Day--care--services"--means--treatment--services
15 provided-for-a-part-time-resident-in-a-treatment-facility-

16 [(5) --"Drug-dependent--person"--means--a--person-who-is
17 using-a-controlled-substance-and-who-is-in-a-state-of-psychological
18 or-physical-dependence,-or-both,-arising-from-the-administration-of
19 a--controlled--substance.---Drug-dependence--is--characterized--by
20 behavioral-and-other-responses-that-include-a-strong-compulsion--to
21 take---a---controlled---substance---in---order--to--experience--its
22 psychological-effects-or-to-avoid-the-discomfort-of-its-absence-

23 [(6) --"Executive-director"--means-the-executive-director
24 of-the-commission-or-the-executive-director's-designee-

25 [(7) --"Nearest-relative"--means-the-following-persons-in
26 the-order-of-priority-stated-

27 [(A) --a-person's-legal-guardian-

1 [(B)--a-person's-spouse;
 2 [(E)--a-person's-adult-issue, whether-natural--or
 3 adopted;
 4 [(D)--a-person's-parent;
 5 [(E)--a-person's-adult-sibling, or
 6 [(F)--any--other--person--with-whom-the-person-is
 7 residing, whether-related-or-not;
 8 [(8)--"Outpatient-services"--means--treatment--services
 9 provided-to-a-client-who-is-not-a-resident-of-a-treatment-facility;
 10 [(9)--"Person--incapacitated-by-a-controlled-substance"
 11 means-a-person-who-needs-treatment-as-a-result-of--the--effects--of
 12 one-or-more-controlled-substances-and;
 13 [(A)--is--unconscious--of--the--person's-need-for
 14 treatment, or
 15 [(B)--is-incapable-of-making-a-rational--decision
 16 with--respect--to--the--person's--need--for--treatment--because-the
 17 person's-judgment-has-been-impaired;
 18 [(10)--"Prevention"--means---a---constructive---process
 19 designed--to--inhibit--or--reduce--physical,--mental,--emotional,--or
 20 social-impairment-that-results-in-or-from-the--abuse--of--licit--or
 21 illicit--chemical--substances--by-promoting-a-person's-personal-and
 22 social-growth-toward-full-human-potential;
 23 [(11)--"Private-facility"--means--a--facility--providing
 24 treatment--services--that-is-not-operated-by-the-federal, state, or
 25 local-government,--regardless--of--whether--the--facility--receives
 26 public-funds-or-operates-for-profit;
 27 [(12)--"Public--facility"--means--a--facility-providing

1 treatment-services-that-is-operated-by-the-federal, state, or local
2 government.

3 [(13) -- "Residential services" means treatment services
4 provided for a full-time resident in a treatment facility.

5 [(14) -- "Treatment" means emergency services for
6 drug-dependent persons, persons incapacitated by controlled
7 substances, or persons under the influence of controlled substances
8 and also means the full range of residential, day care, and
9 outpatient services for drug-dependent persons designed to help
10 those persons gain control over or eliminate their dependence on
11 controlled substances and to become productive, functioning members
12 of the community. The term includes diagnostic evaluation, medical
13 services, psychiatric services, psychological services, social
14 services, drug maintenance services, vocational rehabilitation, job
15 training, career counseling, educational guidance, informational
16 guidance, family counseling, and recreational services.

17 [(15) -- "Treatment facility" means a public or private
18 facility to which the executive director has authorized public
19 agencies to refer persons for treatment.]

20 SECTION 192. Subchapters B-F, Chapter 465, Health and Safety
21 Code, are repealed to conform to Section 16(4), Chapter 23 (S.B.
22 57), Acts of the 71st Legislature, 1st Called Session, 1989.

23 SECTION 193. Chapter 466, Health and Safety Code, is amended
24 to conform to Section 1, Chapter 1043 (H.B. 2706), Acts of the 71st
25 Legislature, Regular Session, 1989, to read as follows:

1 CHAPTER 466. REGULATION OF [SYNTHETIC] NARCOTIC DRUG
2 [DRUGS-IN] TREATMENT PROGRAMS [OF-DRUG-DEPENDENT-PERSONS]

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 466.001. LEGISLATIVE INTENT [DEFINITIONS]. (a) It is
5 the intent of the legislature that the department and the
6 commission exercise their respective administrative powers and
7 regulatory authority to ensure the proper use of approved narcotic
8 drugs in the treatment of narcotic dependent persons.

9 (b) Treatment of narcotic addiction by permitted treatment
10 programs is recognized as a specialty chemical dependency treatment
11 area using the medical model.

12 (c) Short-term goals should have an emphasis of personal and
13 public health, crime prevention, reintegration of narcotic addicted
14 persons into the public work force, and social and medical
15 stabilization. Narcotic treatment programs are an important
16 component of the state's effort to prevent the further
17 proliferation of the AIDS virus. Total drug abstinence is
18 recognized as a long-term goal of treatment, subject to medical
19 determination of the medical appropriateness and prognosis of the
20 narcotic addicted person.

21 Sec. 466.002. DEFINITIONS. In this chapter:

22 (1) "Approved narcotic drug" means a drug approved by
23 the United States Food and Drug Administration for maintenance or
24 detoxification of a person physiologically addicted to the opiate
25 class of drugs.

26 (2) "Authorized agent" means an employee of the
27 department who is designated by the commissioner to enforce this

1 chapter.

2 (3) [~~1~~] "Board" means the Texas Board of Health.

3 (4) "Commission" means the Texas Commission on Alcohol
4 and Drug Abuse.

5 (5) [~~2~~] "Commissioner" means the commissioner of
6 health.

7 (6) [~~3~~] "Department" means the Texas Department of
8 Health.

9 (7) "Facility" includes a medical office, an
10 outpatient clinic, a general or special hospital, a community
11 mental health center, and any other location in which a structured
12 narcotic dependency program is conducted.

13 (8) "Narcotic drug" has the meaning assigned by
14 Chapter 481 (Texas Controlled Substances Act).

15 Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for
16 the purpose of this chapter.

17 Sec. 466.004 [466-002]. POWERS AND DUTIES OF BOARD AND
18 DEPARTMENT. (a) The board shall adopt and the department shall
19 administer and enforce rules [~~and--standards--they--consider~~
20 necessary] to ensure the proper use of approved [~~synthetic~~]
21 narcotic drugs in the treatment of narcotic drug-dependent persons,
22 including rules that[-

23 [~~b~~)--To-ensure-compliance-with-this-chapter--and--rules--and
24 standards-adopted-under-this-chapter,-the-department-may]:

25 (1) require [~~that~~] an applicant or a permit holder to
26 make annual, periodic [~~periodical~~], and special reports that the
27 department determines are necessary;

1 (2) require [~~that~~] an applicant or permit holder to
2 keep records that the department determines are necessary; [~~and~~]

3 (3) provide for [~~make~~] investigations that the
4 department determines are necessary;[~~+~~]

5 (4) provide for the coordination of the approval of
6 narcotic drug treatment programs by the United States Food and Drug
7 Administration and the United States Drug Enforcement
8 Administration; and

9 (5) provide for cooperation with the commission in the
10 licensing of narcotic drug treatment programs as required by
11 Subchapter A, Chapter 464.

12 (b) The board shall adopt rules for the issuance of permits
13 to operate narcotic drug treatment programs including rules:

14 (1) governing the submission and review of
15 applications;

16 (2) establishing the criteria for the issuance and
17 renewal of permits; and

18 (3) establishing the criteria for the suspension and
19 revocation of permits.

20 Sec. 466.005. ADMINISTRATION BY COMMISSION AND DEPARTMENT.

21 (a) A permit holder is also considered to be operating a chemical
22 dependency program and is subject to licensing by the commission as
23 provided by Subchapter A, Chapter 464.

24 (b) The commission and the department shall adopt by rule a
25 memorandum of understanding defining the jurisdiction of each
26 agency and shall administer and enforce this chapter under that
27 memorandum.

1 [Sections 466.006-466.020 reserved for expansion]

2 SUBCHAPTER B. PERMIT

3 Sec. 466.021 ~~[466.003]~~. PERMIT REQUIRED. A person may not
4 operate a narcotic drug treatment program unless the person has
5 ~~[prescribe--or-administer-a-synthetic-narcotic-drug-to-a-person-for~~
6 ~~the-purpose-of-treating-drug-dependency-without]~~ a permit issued
7 under this chapter.

8 Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR
9 ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe,
10 order, or administer a narcotic drug for the purpose of treating
11 drug dependency unless the physician prescribes, orders, or
12 administers an approved narcotic drug for the maintenance or
13 detoxification of drug-dependent persons as part of a program
14 permitted by the department and the commission.

15 Sec. 466.023 ~~[466.004]~~. APPLICATION FOR PERMIT; FEES. (a)
16 ~~[A-physician-licensed-by-the-Texas-State-Board-of-Medical-Examiners~~
17 ~~or-a-public-or-private-institution-organized-and-operated-under-the~~
18 ~~laws-of-this-state-for-the-purpose-of-providing-health-services-may~~
19 ~~apply-to-the-department-on-forms-approved-by-the-department--for--a~~
20 ~~permit--to--prescribe--and--administer--synthetic-narcotic-drugs-to~~
21 ~~drug-dependent-persons-~~

22 ~~[(b)]~~ The department shall issue a permit to an applicant
23 who qualifies under rules and standards adopted by the board
24 ~~[department]~~.

25 (b) [(c)] A permit issued under this section is valid until
26 suspended or revoked by the department or surrendered ~~[to-the~~
27 ~~department]~~ by the permit holder in accordance with board rules.

1 (c) A person must obtain a permit for each facility that the
2 person operates.

3 (d) A permit issued by the department is not transferable
4 from one facility to another facility and must be returned to the
5 department if the permit holder sells or otherwise conveys the
6 facility to another person.

7 (e) The board by rule shall establish and collect a
8 nonrefundable application fee to defray the cost to the department
9 of processing each application for a permit. The application fee
10 must be submitted with the application. An application may not be
11 considered unless the application is accompanied by the application
12 fee.

13 (f) [~~1~~]-The-board-shall-collect-fees-for-each-permit
14 application-submitted-under-this-section-and-for-inspections
15 performed-in-enforcing-this-chapter-and-rules-adopted-under-this
16 chapter.-The-board-may-collect-those-fees-annually.

17 [~~1~~] The board shall adopt rules that set permit [the] fees
18 in amounts sufficient for the department to recover not less than
19 half of the actual annual expenditures of state funds by the
20 department to:

21 (1) [~~review-and-act-on-permit-applications,~~

22 [~~2~~] amend permits;

23 (2) [~~3~~] inspect facilities operated by permit
24 holders; and

25 (3) [~~4~~] implement and enforce this chapter [and
26 rules,~~standards, and orders adopted and permits issued under this~~
27 chapter].

1 (g) Fees collected by the department shall be deposited in
2 the state treasury to the credit of the narcotic treatment
3 permitting fee fund.

4 Sec. 466.024. PERMIT LIMITATIONS. (a) The department may
5 issue a permit to:

6 (1) a person constituting a legal entity organized and
7 operating under the laws of this state; or

8 (2) a physician.

9 (b) The department may issue a permit to a person other than
10 a physician only if the person provides health care services under
11 the supervision of one or more physicians licensed by the Texas
12 State Board of Medical Examiners.

13 Sec. 466.025. INSPECTION. (a) An authorized agent may
14 enter the facility of a person who is an applicant for a permit or
15 who is a permit holder during any hours in which the facility is in
16 operation for the purpose of inspecting the facility to determine:

17 (1) if the person meets the standards set in the rules
18 of the board for the issuance of a permit; or

19 (2) if a person who holds a permit is in compliance
20 with this chapter, the standards set in the rules of the board for
21 the operation of a facility, any special provisions contained in
22 the permit, or an order of the commissioner or the department.

23 (b) The inspection may be conducted without prior notice to
24 the applicant or the permit holder.

25 (c) The authorized agent shall provide the applicant or
26 permit holder with a copy of the inspection report. An inspection
27 report shall be made a part of the applicant's submission file or

1 the permit holder's compliance record.

2 Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The
3 department shall work with representatives from permitted narcotic
4 treatment programs in this state to develop recommendations for a
5 plan to prevent the simultaneous multiple enrollment of persons in
6 narcotic treatment programs. The board may adopt rules to
7 implement these recommendations.

8 Sec. 466.027 [466-005]. DENIAL, SUSPENSION, OR REVOCATION OF
9 PERMIT. (a) After notice to an applicant or a permit holder and
10 after the opportunity for a hearing, the department may:

11 (1) deny an application of the person if the person
12 fails to comply with this chapter or the rules establishing minimum
13 standards for the issuance of a permit adopted under this chapter;
14 or

15 (2) suspend or revoke the permit of a person who has
16 violated this chapter, an order issued under this chapter, or a
17 minimum standard required for the issuance of a permit.

18 (b) The board may adopt rules that establish the criteria
19 for the denial, suspension, or revocation of a permit.

20 (c) Hearings, appeals from, and judicial review of final
21 administrative decisions under this section shall be conducted
22 according to the contested case provisions of the Administrative
23 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
24 Civil Statutes) and the board's formal hearing rules.

25 (d) This section does not prevent the informal
26 reconsideration of a case before the setting of a hearing or before
27 the issuance of the final administrative decision under this

1 section. The program rules must contain provisions establishing
2 the procedures for the initiation and conduct of the informal
3 reconsideration by the department [~~The--department--may--deny,~~
4 ~~suspend,--or--revoke--the--permit--of--an--applicant--or--permit--holder--who~~
5 ~~has--violated--or--failed--to--comply--with--a--requirement--of--this--chapter~~
6 ~~or--a--rule--adopted--under--this--chapter--if--the--department--has--given~~
7 ~~the--applicant--or--permit--holder:~~

8 [~~(1)--notice--of--noncompliance;~~
9 [~~(2)--reasonable--opportunity--to--comply;--and~~
10 [~~(3)--an--opportunity--for--hearing---before---denying,~~
11 ~~suspending,--or--revoking--the--permit~~].

12 [Sections 466.028-466.040 reserved for expansion]

13 SUBCHAPTER C. ENFORCEMENT

14 Sec. 466.041 [~~466-006~~]. EMERGENCY ORDERS [DEPARTMENT
15 REPRESENTATION;--APPEAL--COSTS]. (a) The commissioner or the
16 commissioner's designee may issue an emergency order, either
17 mandatory or prohibitory in nature, in relation to the operation of
18 a permitted facility or the treatment of patients by the facility
19 staff, in the department's jurisdiction. The order may be issued
20 if the commissioner or the commissioner's designee determines that
21 the treatment of patients by the staff of the permit holder creates
22 or poses an immediate and serious threat to human life or health
23 and other procedures available to the department to remedy or
24 prevent the occurrence of the situation will result in an
25 unreasonable delay [~~An--applicant--or--permit--holder--may--appeal--the~~
26 ~~denial,--suspension,--or--revocation--of--a--permit~~].

27 (b) The commissioner or the commissioner's designee may

1 issue the emergency order, including an emergency order suspending
2 or revoking a permit issued by the department, without notice and
3 hearing, if the commissioner or the commissioner's designee
4 determines that action to be practicable under the circumstances
5 [The--attorney--general--shall--represent--the--department--in--the
6 district--court--of--Travis--County--in--any--case--involving--the
7 department's decision to deny, suspend, or revoke a permit].

8 (c) If an emergency order is issued without a hearing, the
9 department shall determine a time and place for a hearing at which
10 the emergency order is affirmed, modified, or set aside. The
11 hearing shall be held under the contested case provisions of the
12 Administrative Procedure and Texas Register Act (Article 6252-13a,
13 Vernon's Texas Civil Statutes) and the board's formal hearing rules
14 [Except--as--provided--by--a--rule--adopted--under--Section--19(f),
15 Administrative Procedure and Texas Register Act (Article--6252-13a,
16 Vernon's--Texas--Civil--Statutes), if the court affirms the decision
17 of the department, the applicant or permit holder shall pay the
18 costs of appeal. If the court does not affirm the decision of the
19 department, the department shall pay the costs of appeal].

20 (d) If an emergency order is issued to suspend or revoke the
21 permit, the department shall ensure that treatment services for the
22 patients are maintained at the same location until appropriate
23 referrals to an alternate treatment program are made.

24 Sec. 466.042 [466.007]. INJUNCTION. (a) The commissioner,
25 the commissioner's designee, or an authorized agent may request the
26 attorney general or a district, county, or municipal attorney to
27 petition the district court for a temporary restraining order to

1 restrain:

2 (1) a continuing violation of this chapter, a rule
3 adopted under this chapter, or an order or permit issued under this
4 chapter; or

5 (2) a threat of a continuing violation of this
6 chapter, a rule, or an order or permit [The-department-may-maintain
7 an-action-in-the-name-of-the--state--for--an--injunction--or--other
8 process--to--restrain--a--violation--of--this--chapter-or-a-rule-or
9 standard-adopted-under-this-chapter].

10 (b) To request a temporary restraining order, the
11 commissioner, commissioner's designee, or an authorized agent must
12 find that a person has violated, is violating, or is threatening to
13 violate this chapter, a rule adopted under this chapter, or an
14 order or permit issued under this chapter and:

15 (1) the violation or threatened violation creates an
16 immediate threat to the health and safety of the public; or

17 (2) there is reasonable cause to believe that the
18 permit holder or the staff of the permit holder is party to the
19 diversion of a narcotic drug or drugs in violation of Chapter 481
20 (Texas Controlled Substances Act).

21 (c) On finding by the court that a person is violating or
22 threatening to violate this chapter, a rule adopted under this
23 chapter, or an order or permit issued under this chapter, the court
24 shall grant the injunctive relief warranted by the facts.

25 (d) Venue for a suit brought under this section is in the
26 county in which the violation or threat of violation is alleged to
27 have occurred or in Travis County [For-cause-shown, the-district

1 court-of-Travis-County-has-jurisdiction-to-restrain-a-violation--of
2 this-chapter-or-a-rule-or-standard-adopted-under-this-chapter].

3 Sec. 466.043 [466-008]. ADMINISTRATIVE PENALTY [PROGRAMS].
4 If a person violates this chapter, a rule adopted under this
5 chapter, or an order or permit issued under this chapter, the
6 commissioner may assess an administrative penalty against the
7 person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic
8 Act) [(a)---The--Texas--Department--of--Mental--Health--and--Mental
9 Retardation--shall--promote--and--develop--comprehensive--programs--for
10 drug-dependent--persons,--including--maintenance--treatment--programs
11 that--involve--supplying--synthetic--narcotic--drugs--to--drug-dependent
12 persons.

13 [(b)---The--programs--provided--by--Subsection--(a)---shall--be
14 implemented--through--state--hospitals--and--grants--in--aid--to--boards--of
15 trustees--of--community--mental--health--and--mental--retardation
16 centers].

17 Sec. 466.044 [466-009]. CRIMINAL PENALTY. (a) A person
18 commits an offense if the person operates a narcotic drug treatment
19 program without a permit issued by the department [violates--this
20 chapter-or-a-rule-adopted-under-this-chapter].

21 (b) An offense under this section is a Class A misdemeanor
22 [punishable-by-a-fine-of-not-more-than-\$3,000,--confinement--in--the
23 county-jail-for-not-more-than-six-months,--or--both].

24 Sec. 466.045 [466-010]. CIVIL PENALTY. (a) If it appears
25 that a person has violated this chapter, a rule adopted under this
26 chapter, or an order or permit issued under this chapter, the
27 commissioner may request the attorney general or the district,

1 county, or municipal attorney of the municipality or county in
2 which the violation occurred to institute a civil suit for the
3 assessment and recovery of a civil penalty.

4 (b) The penalty may be in an amount not to exceed \$10,000
5 for each violation.

6 (c) In determining the amount of the penalty, the court
7 shall consider:

8 (1) the person's history of previous violations;

9 (2) the seriousness of the violation;

10 (3) any hazard to the health and safety of the public;

11 and

12 (4) the demonstrated good faith of the person charged.

13 (d) A civil penalty recovered in a suit instituted by the
14 attorney general under this chapter shall be deposited in the state
15 treasury to the credit of the general revenue fund. A civil
16 penalty recovered in a suit instituted by a local government under
17 this chapter shall be paid to the local government [If--a--person
18 violates--this--chapter--or--a--rule, standard, or order adopted or
19 permit issued under this chapter, the commission may assess a civil
20 penalty against that person as provided by Chapter 431-(Texas Food,
21 Drug, and Cosmetic Act)].

22 SECTION 194. Section 467.004(a), Health and Safety Code, is
23 amended to conform to Section 1, Chapter 879 (S.B. 981), Acts of
24 the 71st Legislature, Regular Session, 1989, to read as follows:

25 (a) A licensing or disciplinary authority may add a
26 surcharge of not more than \$5 [~~\$1~~] to its license or license
27 renewal fee to fund an approved peer assistance program. The

1 authority must adopt the surcharge in accordance with the procedure
2 that the authority uses to initiate and adopt an increase in its
3 license or license renewal fee.

4 SECTION 195. Chapter 467, Health and Safety Code, is amended
5 to conform to Section 1, Chapter 899 (S.B. 586), Acts of the 71st
6 Legislature, Regular Session, 1989, by adding Section 467.0041 to
7 read as follows:

8 Sec. 467.0041. FUNDING FOR TEXAS STATE BOARD OF DENTAL
9 EXAMINERS. (a) Except as provided by this section, the Texas
10 State Board of Dental Examiners is subject to Section 467.004.

11 (b) The board may add a surcharge of not more than \$5 to its
12 license or license renewal fee to fund an approved peer assistance
13 program.

14 (c) The board may collect a fee of not more than \$50 each
15 month from a participant in an approved peer assistance program.
16 Fees collected under this subsection shall be remitted to the state
17 treasurer for deposit to the credit of dental registration fund
18 no. 86.

19 (d) Subject to the General Appropriations Act, the board may
20 use the fees and surcharges collected under this section and fines
21 collected in the enforcement of Chapter 9, Title 71, Revised
22 Statutes, and that are deposited in dental registration fund
23 no. 86, to fund an approved program and to pay the administrative
24 costs incurred by the board that are related to the program.

25 SECTION 196. Chapter 468, Health and Safety Code, is
26 repealed to conform to Section 16(6), Chapter 23 (S.B. 57), Acts of
27 the 71st Legislature, 1st Called Session, 1989.

1 SECTION 197. Subchapter D, Chapter 481, Health and Safety
2 Code, is amended to conform to Section 2, Chapter 1011 (H.B. 989),
3 Acts of the 71st Legislature, Regular Session, 1989, by adding
4 Section 481.124 to read as follows:

5 Sec. 481.124. OFFENSE: DIVERSION OF SUBSTANCE OR MATERIAL.

6 (a) A person commits an offense if the person knowingly or
7 intentionally converts to the person's use or benefit or diverts to
8 the unlawful use or benefit of another person a controlled
9 substance or raw material obtained under Section 481.159.

10 (b) An offense under this section is a felony of the third
11 degree.

12 SECTION 198. Section 481.157(e), Health and Safety Code, is
13 repealed to conform to Section 6, Chapter 12 (H.B. 65), Acts of the
14 71st Legislature, 1st Called Session, 1989.

15 SECTION 199. Section 481.160, Health and Safety Code, is
16 amended to conform to Section 6, Chapter 12 (H.B. 65), Acts of the
17 71st Legislature, 1st Called Session, 1989, to read as follows:

18 Sec. 481.160. DESTRUCTION OF ITEMS FOR HEALTH,
19 ENVIRONMENTAL, OR SAFETY REASONS [EXCESS-QUANTITIES]. (a) [If--a
20 controlled--substance--is--forfeited--under-Section-481:157(e), the
21 agency--to--which--the--substance--is--forfeited--may--destroy--the
22 substance-if-the-agency-ensures-that-

23 [{+}--at-least-five-random-and--representative--samples
24 are--taken-from-the-total-amount-of-controlled-substance-or-mixture
25 containing-the-controlled-substance, and-a-sufficient--quantity--is
26 preserved---to---provide--for--discovery--by--parties--entitled--to
27 discovery;

1 [†2)--photographs-are-taken-that-reasonably-demonstrate
2 the-total-amount-of-the-controlled-substance,-and

3 [†3)--the--gross--weight--or--liquid--measure--of---the
4 controlled--substance-is-determined,-either-by-actually-weighing-or
5 measuring-the-substance-or-by-estimating-its-weight-or--measurement
6 after-making-dimensional-measurements-of-the-total-amount-seized-

7 [†b)--A--representative--sample,-photograph,-or-record-made
8 under-this-section-is-admissible-in-civil-or--criminal--proceedings
9 in--the-same-manner-and-to-the-same-extent-as-if-the-total-quantity
10 of-the-suspected-controlled--substance--was--offered--in--evidence,-
11 regardless--of--whether--the--remainder--of--the-substance-has-been
12 destroyed,-An-inference-or--presumption--of--spoliation--does--not
13 apply-to-a-substance-destroyed-under-this-section-

14 [†c)] All hazardous waste, raw materials, residuals,
15 contaminated glassware, associated equipment, and by-products from
16 illicit chemical laboratories or similar operations that create
17 health or environmental hazards or prohibit safe storage may be
18 immediately destroyed by a law enforcement agency without court
19 order if current environmental protection standards are followed.

20 (b) [†d)] A law enforcement agency seizing materials
21 described in Subsection (a) [†c)] shall ensure that photographs are
22 taken that reasonably demonstrate the total amount of the materials
23 seized and the manner in which the materials were physically
24 arranged or positioned before seizure and disposal.

25 SECTION 200. Section 483.001(13), Health and Safety Code, is
26 amended to conform to Section 24, Chapter 1027 (H.B. 18), Acts of
27 the 71st Legislature, Regular Session, 1989, to read as follows:

1 (13) "Prescription" means a written order by a
2 practitioner, [or] a telephonic order by a practitioner or by an
3 agent of the practitioner designated in writing as authorized to
4 communicate prescriptions by telephone, or an order made in
5 accordance with Section 3.06(d)(5), Medical Practice Act (Article
6 4495b, Vernon's Texas Civil Statutes), to a pharmacist for a
7 dangerous drug to be dispensed that states:

8 (A) the date of the order's issue;

9 (B) the name and address of the patient;

10 (C) if the drug is prescribed for an animal, the
11 species of the animal;

12 (D) the name and quantity of the drug
13 prescribed; and

14 (E) the directions for the use of the drug.

15 SECTION 201. Section 483.022, Health and Safety Code, is
16 amended to conform to Section 25, Chapter 1027 (H.B. 18), Acts of
17 the 71st Legislature, Regular Session, 1989, to read as follows:

18 Sec. 483.022. PRACTITIONER'S DESIGNATION OF AGENT;
19 PRACTITIONER'S RESPONSIBILITIES. (a) A practitioner shall
20 designate in writing the name of each:

21 (1) agent authorized by the practitioner to
22 communicate prescriptions by telephone for the practitioner; and

23 (2) registered nurse or physician assistant authorized
24 to carry out a prescription drug order under Section 3.06(d)(5),
25 Medical Practice Act (Article 4495b, Vernon's Texas Civil
26 Statutes).

27 (b) The practitioner shall maintain at the practitioner's

1 usual place of business a list of the designated agents and a list
2 of the designated registered nurses or physician assistants
3 authorized to carry out a prescription drug order.

4 (c) The practitioner shall provide a pharmacist with a copy
5 of the practitioner's written authorization for a specific agent,
6 registered nurse, or physician assistant on the pharmacist's
7 request.

8 (d) [~~b~~] This section does not relieve a practitioner or
9 the practitioner's agent from the requirements of Section 40, Texas
10 Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

11 (e) [~~e~~] A practitioner remains personally responsible for
12 the actions of an agent who communicates a prescription to a
13 pharmacist.

14 SECTION 202. Section 484.004, Health and Safety Code, is
15 amended to conform to Section 1, Chapter 661 (S.B. 1677), Acts of
16 the 71st Legislature, Regular Session, 1989, by amending Subsection
17 (b) and adding Subsection (c) to read as follows:

18 (b) A person commits an offense if the person:

19 (1) knowingly or intentionally:

20 (A) delivers or sells inhalant paraphernalia;

21 (B) possesses, with intent to deliver or sell,
22 inhalant paraphernalia; or

23 (C) manufactures, with intent to deliver or
24 sell, inhalant paraphernalia; and

25 (2) at the time of the act described by Subdivision
26 (1), knows that the person who receives or is intended to receive
27 the paraphernalia intends that it be used to inhale, ingest, apply,

1 use, or otherwise introduce into the human body a substance
2 containing a volatile chemical in violation of Section 484.003.

3 (c) An offense under Subsection (a) [~~this--section~~] is a
4 Class B misdemeanor, and an offense under Subsection (b) is a Class
5 A misdemeanor.

6 SECTION 203. Section 485.013, Health and Safety Code, is
7 amended to conform to Section 3, Chapter 661 (S.B. 1677), Acts of
8 the 71st Legislature, Regular Session, 1989, by adding Subsection
9 (h) to read as follows:

10 (h) The department shall monitor and enforce compliance with
11 this chapter.

12 SECTION 204. Section 485.016, Health and Safety Code, is
13 amended to conform to Section 4, Chapter 661 (S.B. 1677), Acts of
14 the 71st Legislature, Regular Session, 1989, by amending Subsection
15 (b) to read as follows:

16 (b) The comptroller shall deposit those funds to the credit
17 of the general revenue fund to be used to:

18 (1) administer, monitor, and enforce this chapter; and
19 (2) [~~to~~] finance education projects concerning the
20 hazards of abusable glue or aerosol paint and the prevention of
21 inhalant abuse.

22 SECTION 205. Subchapter B, Chapter 485, Health and Safety
23 Code, is amended to conform to Section 2, Chapter 661 (S.B. 1677),
24 Acts of the 71st Legislature, Regular Session, 1989, by adding
25 Section 485.018 to read as follows:

26 Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A
27 political subdivision or an agency of the state may not enact an

1 ordinance or rule that requires a business establishment to display
2 abusable glue or aerosol paint in a manner that makes the glue or
3 paint accessible to patrons of the business only with the
4 assistance of personnel of the business.

5 (b) This section does not apply to an ordinance or rule that
6 was enacted before September 1, 1989.

7 SECTION 206. Section 485.034, Health and Safety Code, is
8 amended to conform to Section 2, Chapter 661 (S.B. 1677), Acts of
9 the 71st Legislature, Regular Session, 1989, by amending Subsection
10 (b) and adding Subsection (c) to read as follows:

11 (b) A person commits an offense if the person:

12 (1) knowingly or intentionally:

13 (A) delivers or sells inhalant paraphernalia;

14 (B) possesses, with intent to deliver or sell,
15 inhalant paraphernalia; or

16 (C) manufactures, with intent to deliver or
17 sell, inhalant paraphernalia; and

18 (2) at the time of the act described by Subdivision
19 (1), knows that the person who receives or is intended to receive
20 the paraphernalia intends that it be used to inhale, ingest, apply,
21 use, or otherwise introduce into the human body a substance
22 containing a volatile chemical in violation of Section 485.031.

23 (c) An offense under Subsection (a) [~~this--section~~] is a
24 Class B misdemeanor, and an offense under Subsection (b) is a Class
25 A misdemeanor.

26 SECTION 207. Subtitle D, Title 6, Health and Safety Code, is
27 amended to conform to Sections 1-10, Chapter 569 (H.B. 1963), Acts

1 of the 71st Legislature, Regular Session, 1989, by adding Chapter
2 504 to read as follows:

3 CHAPTER 504. TEXAS HAZARDOUS MATERIALS SAFETY COUNCIL

4 Sec. 504.001. TEXAS HAZARDOUS MATERIALS SAFETY COUNCIL. (a)

5 The Texas Hazardous Materials Safety Council is an advisory
6 coordinating council composed of:

7 (1) a representative from the governor's office
8 appointed by the governor;

9 (2) one member from each house of the legislature,
10 appointed by the presiding officer of the applicable house;

11 (3) a representative of the general public, appointed
12 by the governor;

13 (4) a management representative of the motor carrier
14 industry involved with the transportation of hazardous materials,
15 appointed by the governor;

16 (5) a management representative of the railroad
17 industry, appointed by the governor;

18 (6) a management representative of a company that
19 manufactures or receives hazardous materials, appointed by the
20 governor; and

21 (7) one representative from each of the following
22 state agencies, appointed by the executive director or commissioner
23 of each respective agency:

24 (A) the Railroad Commission of Texas;

25 (B) the Department of Public Safety;

26 (C) the Texas Water Commission;

27 (D) the Texas Department of Health; and

1 (E) the Texas Air Control Board.

2 (b) A person who is required to register as a lobbyist under
3 Chapter 305, Government Code, may not serve as a council member.

4 Sec. 504.002. TERMS; VACANCY. (a) A member of the council
5 serves a two-year term expiring February 1 of each odd-numbered
6 year.

7 (b) If a vacancy occurs on the council, the appropriate
8 appointing authority shall appoint a person to fill the vacancy who
9 meets the qualifications prescribed for that position.

10 Sec. 504.003. PRESIDING OFFICER; COMPENSATION. (a) The
11 governor shall designate a presiding officer from the council's
12 membership. The presiding officer serves in that capacity for two
13 years. The presiding officer is entitled to vote on any matter
14 before the council.

15 (b) A member of the council may not receive compensation for
16 serving on the council. A member is entitled to reimbursement for
17 actual and necessary expenses incurred in performing functions as a
18 council member. Each appointing authority may reimburse the
19 authority's appointees from funds available for that purpose.

20 Sec. 504.004. CIVIL LIABILITY. A member of the council is
21 not subject to civil liability for any act performed in good faith
22 in the execution of duties as a council member.

23 Sec. 504.005. GROUNDS FOR REMOVAL. (a) It is a ground for
24 removal from the council if a member:

25 (1) does not have at the time of appointment the
26 qualifications required for appointment to the council;

27 (2) does not maintain during service on the council

1 the qualifications required for appointment to the council; or

2 (3) violates a prohibition established by this
3 chapter.

4 (b) The validity of an action of the council is not affected
5 by the fact that it was taken while a ground for removal of a
6 member of the council existed.

7 Sec. 504.006. MEETINGS. (a) The council shall meet at the
8 call of the presiding officer or on the request of a majority of
9 the council.

10 (b) The council is a governmental body for purposes of the
11 open meetings law, Chapter 271, Acts of the 60th Legislature,
12 Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil
13 Statutes).

14 Sec. 504.007. DUTIES. The council shall:

15 (1) coordinate the collection of information about
16 hazardous materials;

17 (2) review the planning and coordination of accident
18 response to, and investigation of, accidents involving hazardous
19 materials;

20 (3) recommend legislation on hazardous materials; and

21 (4) ensure a unified response to federal hazardous
22 material regulations.

23 Sec. 504.008. MEMORANDUM OF UNDERSTANDING. The council
24 shall secure the adoption of a memorandum of understanding relating
25 to the council's responsibilities and state agencies' jurisdiction
26 over spills of hazardous materials on land. The memorandum must be
27 approved by the council and any other state agency concerned with

1 spills or disposal of hazardous materials. A revision of a
2 memorandum must be adopted by resolution of the council and by
3 order of any state agency requesting the revision.

4 Sec. 504.009. RELATIONSHIP TO OTHER LAWS. Except as
5 specifically provided by this chapter, this chapter does not
6 diminish or limit the authority of the Texas Department of Health,
7 the Texas Water Commission, or any other state agency in performing
8 the functions relating to spills of hazardous materials vested in
9 those agencies by law.

10 SECTION 208. Section 672.002, Health and Safety Code, is
11 amended to conform to Section 1, Chapter 674 (S.B. 1785), Acts of
12 the 71st Legislature, Regular Session, 1989, to read as follows:

13 Sec. 672.002. DEFINITIONS. In this chapter:

14 (1) "Attending physician" means the physician who has
15 primary responsibility for a patient's treatment and care.

16 (2) "Competent" means possessing the ability, based on
17 reasonable medical judgment, to understand and appreciate the
18 nature and consequences of a treatment decision, including the
19 significant benefits and harms of and reasonable alternatives to a
20 proposed treatment decision.

21 (3) "Declarant" means a person who has executed or
22 issued a directive under this chapter.

23 (4) [+3+] "Directive" means an instruction made under
24 Section 672.003, 672.005, or 672.006 to withhold or withdraw
25 life-sustaining procedures in the event of a terminal condition.

26 (5) "Incompetent" means lacking the ability, based on
27 reasonable medical judgment, to understand and appreciate the

1 nature and consequences of a treatment decision, including the
2 significant benefits and harms of and reasonable alternatives to a
3 proposed treatment decision.

4 (6) [†4] "Life-sustaining procedure" means a medical
5 procedure or intervention that uses mechanical or other artificial
6 means to sustain, restore, or supplant a vital function, and only
7 artificially postpones the moment of death of a patient in a
8 terminal condition whose death is imminent or will result within a
9 relatively short time without the application of the procedure.

10 The term does not include the administration of medication or the
11 performance of a medical procedure considered to be necessary to
12 provide comfort or care or to alleviate pain.

13 (7) [†5] "Physician" means a physician licensed by
14 the Texas State Board of Medical Examiners or a properly
15 credentialed physician who holds a commission in the United States
16 armed forces and who is serving on active duty in this state.

17 (8) [†6] "Qualified patient" means a patient with a
18 terminal condition that has been diagnosed and certified in writing
19 by the attending physician and one other physician who have
20 personally examined the patient.

21 (9) [†7] "Terminal condition" means an incurable or
22 irreversible condition caused by injury, disease, or illness that
23 would produce death without [~~regardless--of~~] the application of
24 life-sustaining procedures, according to reasonable medical
25 judgment, and in which the application of life-sustaining
26 procedures serves only to postpone the moment of the patient's
27 death.

1 SECTION 209. Sections 672.003 and 672.004, Health and Safety
2 Code, are amended to conform to Section 2, Chapter 674 (S.B. 1785),
3 Acts of the 71st Legislature, Regular Session, 1989, to read as
4 follows:

5 Sec. 672.003. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE
6 TO PHYSICIAN. (a) A competent adult may at any time execute a
7 written directive.

8 (b) The declarant must sign the directive in the presence of
9 two witnesses, and those witnesses must sign the directive.

10 (c) A witness may not be:

11 (1) related to the declarant by blood or marriage;

12 (2) entitled to any part of the declarant's estate
13 after the declarant's death under a will or codicil executed by the
14 declarant or by operation of law;

15 (3) the attending physician;

16 (4) an employee of the attending physician; ~~or~~

17 (5) an employee of a health care facility in which the
18 declarant is a patient if the employee is providing direct patient
19 care to the declarant or is directly involved in the financial
20 affairs of the facility;

21 (6) ~~[+5]~~ a patient in a health care facility in which
22 the declarant is a patient; or

23 (7) ~~[+6]~~ a person who, at the time the directive is
24 executed, has a claim against any part of the declarant's estate
25 after the declarant's death.

26 (d) A declarant may include in a directive directions other
27 than those provided by Section 672.004 and may designate in a

1 directive a person to make a treatment decision for the declarant
2 in the event the declarant becomes comatose, incompetent, or
3 otherwise mentally or physically incapable of communication.

4 (e) A declarant shall notify the attending physician of the
5 existence of a written directive. If the declarant is comatose,
6 incompetent, or otherwise mentally or physically incapable of
7 communication, another person may notify the attending physician of
8 the existence of the written directive. The attending physician
9 shall make the directive a part of the declarant's medical record.

10 Sec. 672.004. FORM OF WRITTEN DIRECTIVE. A written
11 directive may be in the following form:

12 "DIRECTIVE TO PHYSICIANS

13 "Directive made this ____ day of _____ (month, year).

14 "I _____, being of sound mind, wilfully and
15 voluntarily make known my desire that my life shall not be
16 artificially prolonged under the circumstances set forth in this
17 directive.

18 "1. If at any time I should have an incurable or
19 irreversible condition caused by injury, disease, or illness
20 certified to be a terminal condition by two physicians, and if the
21 application of life-sustaining procedures would serve only to
22 artificially postpone the moment of my death, and if my attending
23 physician determines that my death is imminent or will result
24 within a relatively short time without the application of [whether
25 or--not] life-sustaining procedures [are-used], I direct that those
26 procedures be withheld or withdrawn, and that I be permitted to die
27 naturally.

"2. In the absence of my ability to give directions regarding the use of those life-sustaining procedures, it is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy."

"4. This directive is in effect until it is revoked.

"5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"6. I understand that I may revoke this directive at any time.

"Signed _____

(City, County, and State of Residence)

[The-declarant-has-been-personally-known-to-me-and--I--believe--the
declarant--to-be-of-sound-mind.] I am not related to the declarant
by blood or marriage. I would not be entitled to any portion of
the declarant's estate on the declarant's death. I am not the
attending physician of the declarant or an employee of the
attending physician [or-a-health-facility-in-which-the-declarant-is
a-patient]. I am not a patient in the health care facility in
which the declarant is a patient. I have no claim against any
portion of the declarant's estate on the declarant's death.
Furthermore, if I am an employee of a health facility in which the
declarant is a patient, I am not involved in providing direct

1 patient care to the declarant and am not directly involved in the
2 financial affairs of the health facility.

3 "Witness _____

4 "Witness _____"

5 SECTION 210. Section 691.008(d), Health and Safety Code, is
6 amended to conform to Section 1, Chapter 584 (H.B. 2519), Acts of
7 the 71st Legislature, Regular Session, 1989, to read as follows:

8 (d) The [~~state---auditor---shall---audit---the~~] financial
9 transactions of the board are subject to audit by the state auditor
10 in accordance with Chapter 321, Government Code [~~at--least--once~~
11 ~~during-each-biennium~~].

12 SECTION 211. Section 694.002, Health and Safety Code, is
13 amended to conform to Section 1, Chapter 937 (S.B. 1249), Acts of
14 the 71st Legislature, Regular Session, 1989, to read as follows:

15 Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING BURIAL
16 OF PAUPERS. The commissioners court of each county shall provide
17 for the interment or cremation [~~burial~~] of paupers. A pauper may
18 not be cremated if a relative or friend expresses objection to this
19 procedure.

20 SECTION 212. Sections 711.001(2), (5), (7), (14), (15),
21 (18), and (20), Health and Safety Code, are amended to conform to
22 Section 1, Chapter 208 (S.B. 1010), Acts of the 71st Legislature,
23 Regular Session, 1989, to read as follows:

24 (2) "Cemetery" means a place that is dedicated to and
25 that is used or intended to be used for interment, and includes a
26 graveyard, burial park, or mausoleum[~~-crematory~~,~~-or-crematory-and~~
27 ~~columbarium~~].

1 (5) "Columbarium" means[+
2 [+A+] a durable, fireproof structure or a room
3 or other space in a durable, fireproof structure, containing niches
4 and used or intended to be used to contain cremated remains[+or
5 [+B+]--a-plot-of-earth-containing-niches].

6 (7) "Cremation" means the [interment-of-remains-by]
7 reduction of remains to cremated remains [and-the--deposit--of--the
8 cremated-remains-in-a-grave,-crypt,-or-niche].

9 (14) "Interment" means the permanent disposition of
10 remains by [cremation,-inurnment,-] entombment[-] or burial.

11 (15) "Inurnment" means the placement of cremated
12 remains in an urn [and-the-permanent-disposition-of-the-urn-in-a
13 niche].

14 (18) "Niche" means a space [recess] in a columbarium
15 used or intended to be used for the placement [interment] of
16 cremated remains in an urn or other container.

17 (20) "Perpetual care" means[+
18 [+A+] the maintenance in proper order of the
19 sod, foliage, and places in which interments have been made[+and
20 [+B+]--the--provision--for--the--administration-of
21 perpetual--care--funds--on--the---contingency---that---the---person
22 administering-the-funds-does-not-act].

23 SECTION 213. Section 711.002, Health and Safety Code, is
24 amended to conform to Section 4, Chapter 208 (S.B. 1010), Acts of
25 the 71st Legislature, Regular Session, 1989, by amending Subsection
26 (a) and adding Subsections (e)-(g) to read as follows:

27 (a) Unless a decedent has left other directions for the

1 disposition of the decedent's remains, the following persons, in
2 the priority listed, have the right to control the disposition,
3 including cremation, of the person's remains, shall inter the
4 remains, and are liable for the reasonable cost of interment:

- 5 (1) the decedent's surviving spouse;
- 6 (2) the decedent's surviving adult children;
- 7 (3) the decedent's surviving parents; [or]
- 8 (4) the decedent's surviving adult siblings; or
- 9 (5) the adult person in the next degree of kinship in
10 the order named by law to inherit the estate of the deceased.

11 (e) A person may provide instructions to direct the
12 preparation for and type or place of interment of the person's
13 remains. The instructions may be modified only in writing. The
14 person or persons otherwise entitled to control the disposition of
15 the remains under this section shall faithfully carry out the
16 instructions of the decedent.

17 (f) If the instructions are in a will, they shall be carried
18 out immediately without the necessity of probate. If the will is
19 not probated or is declared invalid for testamentary purposes, the
20 instructions are valid to the extent to which they have been acted
21 on in good faith.

22 (g) A cemetery association is not liable for carrying out
23 the instructions of the decedent unless it has actual notice that
24 the representation is untrue.

25 SECTION 214. Sections 711.004(a), (c), and (d), Health and
26 Safety Code, are amended to conform to Section 5, Chapter 208
27 (S.B. 1010), Acts of the 71st Legislature, Regular Session, 1989,

1 to read as follows:

2 (a) Remains, including cremated remains, interred in a
3 cemetery may be removed from the cemetery with the consent of the
4 cemetery association operating the cemetery and the written consent
5 of the plot owner or owners and the following persons, in the
6 priority listed:

- 7 (1) the decedent's surviving spouse;
8 (2) the decedent's surviving adult children;
9 (3) the decedent's surviving parents; [or]
10 (4) the decedent's adult siblings; or
11 (5) the adult person in the next degree of kinship in
12 the order named by law to inherit the estate of the decedent.

13 (c) If the consent required by Subsection (a) cannot be
14 obtained, the remains may be removed by permission of the county
15 court of the county in which the cemetery is located. Before the
16 date of application to the court for permission to remove remains
17 under this subsection, notice must be given to:

18 (1) the cemetery association operating the cemetery in
19 which the remains are interred;

20 (2) the plot owner or owners;

21 (3) each person whose consent is required for removal
22 of the remains under Subsection (a) who does not consent to the
23 removal; and

24 (4) [+3+] any other person that the court requires to
25 be served.

26 (d) For the purposes of Subsection (c), personal notice must
27 be given not later than the 11th day before the date of application

1 to the court for permission to remove the remains, or notice by
2 certified or registered mail must be given not later than the 16th
3 day before the date of application.

4 SECTION 215. Sections 711.008(b) and (c), Health and Safety
5 Code, are amended to better conform to the law from which they are
6 derived to read as follows:

7 (b) Subsection (a) does not apply to:

8 (1) a cemetery heretofore established and operating
9 [~~on-or-before-September-37-1945~~]; or

10 (2) the establishment and use of a columbarium by an
11 organized religious society or sect as part of or attached to the
12 principal church building owned by the society or sect.

13 (c) A cemetery association operating a cemetery that
14 heretofore was used and maintained inside the limits prescribed by
15 Subsection (a) [~~on-or-before-September-37-1945~~] may acquire land
16 adjacent to the cemetery for cemetery purposes if additional land
17 is required. That land may [~~only~~] be used as an addition to the
18 cemetery.

19 SECTION 216. Section 711.008, Health and Safety Code, is
20 amended to conform to Section 1 of Chapter 292 (H.B. 2225) and
21 Section 6 of Chapter 208 (S.B. 1010), Acts of the 71st Legislature,
22 Regular Session, 1989, by amending Subsection (e) and adding
23 Subsection (j) to read as follows:

24 (e) Not later than August 31, 1990 [~~1989~~], a person who
25 desires to establish or use a cemetery [~~inside-municipal-boundaries~~
26 ~~or--within--the--distance--prohibited--by--Subsection--(a)--for--that~~
27 ~~municipality~~] may file a written application [~~with--the--governing~~

1 ~~body--of--the-municipality]~~ to establish or use the cemetery if the
2 cemetery is located inside a municipality and 80 percent or more of
3 the municipality's boundaries are contiguous with the boundaries or
4 extraterritorial jurisdiction of another municipality or if the
5 cemetery is located outside a municipality but within the distance
6 prohibited by Subsection (a) for the municipality. The application
7 must be filed with the governing body of the municipality.

8 (j) For the purpose of determining where a cemetery may be
9 located under Subsection (a), the boundary of an area annexed by a
10 municipality is not considered to be a boundary of the municipality
11 if no more than 10 percent of the boundary of the annexed area is
12 composed of a part of the boundary of the annexing municipality as
13 it existed immediately before the annexation.

14 SECTION 217. Section 711.052(b), Health and Safety Code, is
15 amended to better conform to the law from which it is derived to
16 read as follows:

17 (b) An officer, agent, or employee of a cemetery or cemetery
18 association commits an offense if the officer, agent, or employee
19 pays or offers to pay a commission, rebate, or gratuity to a
20 funeral director or the funeral director's employee [~~or-an-employee~~
21 ~~of-the-cemetery-or-cemetery-association~~].

22 SECTION 218. Section 712.003, Health and Safety Code, is
23 amended to conform to Section 1, Chapter 338 (H.B. 2586), Acts of
24 the 71st Legislature, Regular Session, 1989, by adding Subsection
25 (d) to read as follows:

26 (d) A nonprofit cemetery association operated solely for the
27 benefit of its members seeking to convert a permanent care cemetery

1 to a perpetual care cemetery under Section 712.004 and Subchapter B
2 is not required to issue capital stock to meet the minimum capital
3 requirements prescribed by this section and Section 712.004 if the
4 cemetery has existed for at least 75 years and the association has
5 operated the cemetery for the preceding 10 years.

6 SECTION 219. Section 712.028(a), Health and Safety Code, is
7 amended to conform to Section 3, Chapter 208 (S.B. 1010), Acts of
8 the 71st Legislature, Regular Session, 1989, to read as follows:

9 (a) A perpetual care cemetery shall deposit in the fund an
10 amount that is at least:

11 (1) \$1.50 [~~\$1~~] a square foot of ground area disposed
12 of or sold as perpetual care property;

13 (2) \$90 [~~\$70~~] for each crypt interment right for
14 mausoleum interment or lawn crypt interment disposed of or sold as
15 perpetual care property, or \$50 [~~\$35~~] for each crypt interment
16 right if that crypt is accessible only through another crypt; and

17 (3) \$30 [~~\$20~~] for each niche interment right for
18 columbarium interment disposed of or sold.

19 SECTION 220. Section 712.029(d), Health and Safety Code, is
20 amended to conform to Section 3, Chapter 208 (S.B. 1010), Acts of
21 the 71st Legislature, Regular Session, 1989, to read as follows:

22 (d) A seller of a plot shall deposit in the fund the
23 required amount not later than the 20th [~~10th~~] day after the end of
24 the month in which the amount is received.

25 SECTION 221. Section 712.042(a), Health and Safety Code, is
26 amended to conform to Section 2, Chapter 208 (S.B. 1010), Acts of
27 the 71st Legislature, Regular Session, 1989, to read as follows:

1 (a) On filing the statement of funds under Section 712.041,
2 the cemetery shall pay the commissioner:

3 (1) \$100 [~~\$50~~], if the cemetery serves a municipality
4 with a population of 25,000 or less; or

5 (2) \$200 [~~\$100~~], if the cemetery serves a municipality
6 with a population of more than 25,000.

7 SECTION 222. Section 713.008, Health and Safety Code, is
8 amended to better conform to the law from which it is derived to
9 read as follows:

10 Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN
11 MUNICIPALITIES. The governing body of a municipality in a county
12 with a population of at least 120,000 but not more than 128,000 may
13 abolish the municipality's perpetual trust fund for a cemetery and
14 use the fund, including both principal and interest, for permanent
15 improvements to the cemetery.

16 SECTION 223. Section 753.001(6), Health and Safety Code, is
17 amended to conform to Section 1, Chapter 1013 (H.B. 995), Acts of
18 the 71st Legislature, Regular Session, 1989, to read as follows:

19 (6) "Retail service station" means that portion of a
20 property where a flammable liquid used as motor fuel is stored and
21 dispensed as an act of retail sale from fixed equipment into the
22 fuel tank of a motor vehicle. The term does not include a marina.

23 SECTION 224. Section 753.003, Health and Safety Code, is
24 amended to conform to Section 1 of Chapter 444 (H.B. 1794), and
25 Section 2 of Chapter 1013 (H.B. 995), Acts of the 71st Legislature,
26 Regular Session, 1989, to read as follows:

27 Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS.

1 (a) The board shall administer this chapter through the state fire
2 marshal and shall adopt rules for the safe storage, handling, and
3 use of flammable liquids at retail service stations.

4 (b) The rules must substantially conform to the most recent
5 published standards of the National Fire Protection Association,
6 including standards in effect on or after August 1, 1989 [~~September~~
7 ~~17--1969~~], for the storage, handling, and use of flammable liquids
8 at retail service stations.

9 (c) In adopting rules, the board may use recognized
10 standards, including:

11 (1) standards recognized by the federal government;

12 (2) standards published by a nationally recognized
13 standards-making organization; and

14 (3) specifications and instructions of manufacturers.

15 (d) This chapter or a rule adopted under this chapter does
16 not prohibit or permit the prohibition of an unattended [a]
17 self-service gasoline station operation [~~if--the--station--requires~~
18 ~~that-an-attendant-be-on-the-station-premises~~].

19 SECTION 225. Section 753.004, Health and Safety Code, is
20 amended to conform to Section 3 of Chapter 1013 (H.B. 995), and
21 Section 2 of Chapter 1089 (S.B. 698), Acts of the 71st Legislature,
22 Regular Session, 1989, by amending Subsections (a) and (c) and
23 adding Subsections (d)-(h) to read as follows:

24 (a) Except as provided by Subsections (d) and (e), flammable
25 [~~Flammable~~] liquids may not be stored at a retail service station
26 in a tank that has a gross capacity of more than 60 gallons above
27 the surface of the ground. The individual or combined capacity or

1 size of an underground flammable liquid tank at a retail service
2 station may not be limited.

3 (c) Each aboveground tank at a bulk plant that is operated
4 in conjunction with a retail service station that is on the same or
5 contiguous property must be equipped with emergency vents of the
6 types and capacities prescribed by standards adopted under Section
7 753.003 [of-the-National-Fire-Protection-Association].

8 (d) Gasoline, diesel fuel, aviation fuel, or kerosene may be
9 stored in an aboveground storage tank with a capacity of not more
10 than 3,000 gallons at a retail service station or aircraft fueling
11 facility located:

12 (1) in an unincorporated area or in a municipality
13 with a population of less than 5,000; and

14 (2) more than five miles from the limits of a
15 municipality with a population of 15,000 or more.

16 (e) Gasoline, diesel fuel, aviation fuel, or kerosene may be
17 stored in an aboveground storage tank with a capacity of not more
18 than 4,000 gallons at a retail service station or aircraft fueling
19 facility located:

20 (1) in an unincorporated area; and

21 (2) not closer than 10 miles to a municipality with a
22 population of more than 15,000.

23 (f) Under Subsections (d) and (e), a retail service station
24 or aircraft fueling facility may have a tank not exceeding the
25 specified capacity for each separate grade of gasoline, diesel
26 fuel, aviation fuel, or kerosene, but may not have more than one
27 tank of that capacity for the same grade.

1 (g) In adopting rules under Section 753.003, the board shall
2 include rules concerning the design, construction, and installation
3 of tanks permitted to be used under Subsections (d) and (e). The
4 rules may not be more stringent than the standards of the National
5 Fire Protection Association.

6 (h) The authority of a retail service station or aircraft
7 fueling facility to store flammable liquids in an aboveground
8 storage tank under Subsections (d) and (e) is not affected by a
9 change in the boundaries or population of a municipality that
10 occurs after the date the retail service station or aircraft
11 fueling facility begins operation.

12 SECTION 226. Section 753.007, Health and Safety Code, is
13 amended to conform to Section 4, Chapter 1013 (H.B. 995), Acts of
14 the 71st Legislature, Regular Session, 1989, to read as follows:

15 Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT
16 [PUBLIC-HEARING]. In an action for declaratory judgment on the
17 validity or applicability of a rule adopted by the board under this
18 chapter, citation shall be served on the state fire marshal. [The
19 board-may-not-adopt,-amend,-or-repeal-a--rule--under--this--chapter
20 until-after-a-public-hearing-]

21 SECTION 227. Section 753.008, Health and Safety Code, is
22 amended to conform to Section 1, Chapter 1089 (S.B. 698), Acts of
23 the 71st Legislature, Regular Session, 1989, to read as follows:

24 Sec. 753.008. ENFORCEMENT. (a) The Texas Water Commission
25 has concurrent jurisdiction with the board regarding the inspection
26 of initial installation and other administrative supervision of
27 aboveground tanks authorized and regulated by this chapter. The

1 Texas Water Commission has the primary authority for inspection of
2 initial installation of the tanks. The Texas Water Commission
3 shall report all violations of this chapter in regard to
4 aboveground storage tanks to the state fire marshal for enforcement
5 proceedings.

6 (b) Under the board's supervision, the state fire marshal
7 and each county fire marshal and municipal fire marshal shall
8 enforce this chapter and the rules adopted under this chapter.

9 SECTION 228. Section 753.011(b), Health and Safety Code, is
10 amended to conform to Section 4, Chapter 1013 (H.B. 995), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 (b) An offense under this section is a Class B misdemeanor
13 [~~punishable by a fine of not more than \$1,000, confinement in the~~
14 ~~county jail for not more than 60 days, or both~~].

15 SECTION 229. Section 755.001, Health and Safety Code, is
16 amended to conform to Section 2.08, Chapter 1039 (H.B. 863), Acts
17 of the 71st Legislature, Regular Session, 1989, by amending
18 Subdivisions (6) and (7) to read as follows:

19 (6) "Commissioner" means the commissioner of licensing
20 and regulation [~~the Texas Department of Labor and Standards~~].

21 (7) "Department" means the Texas Department of
22 Licensing and Regulation [~~Labor and Standards~~].

23 SECTION 230. Section 755.024, Health and Safety Code, is
24 amended to conform to Section 2.11, Chapter 1039 (H.B. 863), Acts
25 of the 71st Legislature, Regular Session, 1989, to read as follows:

26 Sec. 755.024. AUTHORIZED INSPECTORS; EXAMINATIONS. (a) To
27 be an authorized inspector, a person must obtain a commission as a

1 boiler inspector from the commissioner and must be continuously
2 employed by an inspection agency.

3 (b) The commissioner, by written examination, shall
4 determine the qualifications of an applicant for a commission to be
5 an authorized inspector.

6 (c) Not later than the 30th day after the date an
7 examination is administered to an applicant for a commission as
8 boiler inspector, the commissioner shall notify each examinee of
9 the results of the examination.

10 (d) If an examination is graded or reviewed by a national
11 testing service, the commissioner shall notify examinees of the
12 results of the examination not later than the 14th day after the
13 date the commissioner receives the results from the testing
14 service. If the notice of examination results graded or reviewed
15 by a national testing service will be delayed for longer than 90
16 days after the examination date, the commissioner shall notify the
17 examinee of the reason for the delay before the 90th day.

18 (e) If requested in writing by a person who fails the
19 examination, the commissioner shall furnish the person with an
20 analysis of the person's performance on the examination.

21 (f) After proper investigation, the commissioner may accept
22 an inspection commission issued to a person by any other
23 jurisdiction that has a written examination equal to that of this
24 state.

25 (g) [~~†d~~] For good cause, the commissioner may rescind a
26 commission issued by this state.

27 (h) The commissioner may recognize, prepare, or administer

1 continuing education programs for authorized inspectors.
2 Participation in the programs is voluntary.

3 SECTION 231. Section 755.029(a), Health and Safety Code, is
4 amended to conform to Section 5.01(10), Chapter 1039 (H.B. 863),
5 Acts of the 71st Legislature, Regular Session, 1989, to read as
6 follows:

7 (a) The commissioner shall issue to the owner or operator of
8 a boiler a certificate of operation for the boiler if[+

9 [+}] it is found after a certificate inspection to be
10 in a safe condition for operation[+-and

11 [+2]--the-owner-or-operator-has--paid--the--appropriate
12 fees].

13 SECTION 232. Section 755.030, Health and Safety Code, is
14 amended to conform to Section 5.01(10), Chapter 1039 (H.B. 863),
15 Acts of the 71st Legislature, Regular Session, 1989, to read as
16 follows:

17 Sec. 755.030. FEES. [+a]---The--commissioner--may--set--and
18 collect-fees-for:

19 [+1]--boiler--inspections,--including--fees-for-special
20 inspections;

21 [+2]--the-issuance-of-certificates-of-operation,--and

22 [+3]--the-administration-of-examinations-required-under
23 this-chapter;

24 [+b]--The-commissioner,--with-the-advice-of-the--board,--shall
25 set--fees--under--this--chapter--in-amounts-necessary-to-defray-the
26 costs-of-administering-this-chapter.] The fee for a certificate of
27 operation may not exceed \$15.

1 [~~(c)~~--The-fees,-travel,-and-per--diem--collected--under--this
2 section---may---be--appropriated--only--to--the--boiler--inspection
3 division-]

4 SECTION 233. Subchapter C, Chapter 755, Health and Safety
5 Code, is amended to conform to Section 2.09, Chapter 1039 (H.B.
6 863), Acts of the 71st Legislature, Regular Session, 1989, by
7 adding Section 755.033 to read as follows:

8 Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The
9 commissioner shall enter into interagency agreements with the Texas
10 Department of Health and the State Board of Insurance under which
11 inspectors from those agencies who discover unsafe or unregistered
12 boilers in the course and scope of inspections conducted as part of
13 regulatory or safety programs administered by those agencies are
14 required to report the unsafe or unregistered boilers to the
15 commissioner.

16 (b) The commissioner may enter analogous agreements with
17 local fire marshals.

18 (c) The commissioner shall adopt rules relating to the terms
19 and conditions of an interagency agreement entered under this
20 section.

21 SECTION 234. Section 755.042(a), Health and Safety Code, is
22 amended to conform to Section 2.09, Chapter 1039 (H.B. 863), Acts
23 of the 71st Legislature, Regular Session, 1989, to read as follows:

24 (a) A prosecution may not be maintained if the issuance or
25 renewal of a certificate of operation has been requested for a
26 boiler but has not been acted on. However, the commissioner may
27 petition a district court for an injunction to restrain the

1 operation of the boiler until the condition restraining its use is
2 corrected and a certificate of operation is issued if the
3 commissioner determines that the operation of the boiler without a
4 certificate of operation constitutes a serious menace to the life
5 and safety of the persons in or about the premises. The attorney
6 general or the district or county attorney may bring the suit, and
7 venue is in the county in which the boiler is located or in Travis
8 County. It is not necessary for the prosecutor to verify the
9 pleadings or for the state to execute a bond.

10 SECTION 235. Section 755.043(b), Health and Safety Code, is
11 amended to conform to Section 2.12, Chapter 1039 (H.B. 863), Acts
12 of the 71st Legislature, Regular Session, 1989, to read as follows:

13 (b) An offense under this section is a Class B misdemeanor
14 [~~punishable--by--a--fine--of--not--less--than--\$50--or--more--than--\$200,~~
15 ~~confinement--in--the--county--jail--for--not--more--than--60--days--or--both~~].

16 SECTION 236. Section 755.044, Health and Safety Code, is
17 repealed to conform to Section 5.01(10), Chapter 1039 (H.B. 863),
18 Acts of the 71st Legislature, Regular Session, 1989.

19 SECTION 237. Subchapter C, Chapter 756, Health and Safety
20 Code, is amended to conform to Sections 1 and 2, Chapter 1111
21 (H.B. 1569), Acts of the 71st Legislature, Regular Session, 1989,
22 to read as follows:

23 SUBCHAPTER C. TRENCH SAFETY

24 Sec. 756.021. DEFINITION. In this subchapter, "trench" has
25 the meaning assigned by the standards adopted by the Occupational
26 Safety and Health Administration.

27 Sec. 756.022. TRENCH EXCAVATION IN STATE [~~MUNICIPALITY-OR~~

1 ~~EXTRATERRITORIAL-JURISDICTION~~]. (a) The bid documents, if bids
2 are used, and the contract for a construction project in this state
3 on which a contractor is employed and that includes a trench
4 excavation exceeding a depth of five feet [~~and-that-is-located-in-a~~
5 ~~municipality---or---the---extraterritorial---jurisdiction---of---a~~
6 ~~municipality~~] must include [~~detailed-plans-and-specifications-for~~
7 ~~trench-safety-systems-that~~]:

8 (1) [meet] a reference to the Occupational Safety and
9 Health Administration standards for trench safety that will be in
10 effect during the period of construction of the project; [and]

11 (2) a copy of special shoring requirements, if any, of
12 the state or of a political subdivision in which the construction
13 project is located, with a separate pay item for the special
14 shoring requirements;

15 (3) a copy of any geotechnical information that was
16 obtained by the owner for use in the design of the trench safety
17 system; and

18 (4) [provide] a separate pay item for [these] trench
19 excavation safety protection [systems].

20 (b) The separate pay item for trench excavation safety
21 protection must be based on the linear feet of trench excavated.
22 The separate pay item for special shoring requirements, if any, of
23 the state or of any political subdivision in which the construction
24 project is located must be based on the square feet of shoring used
25 [~~A-municipality-that-has-a--building--code--must--include--the--bid~~
26 ~~document--and--contract-requirements-specified-by-Subsection-(a)-in~~
27 ~~its-municipal-building-code~~].

1 (c) A municipality may adopt an ordinance that requires the
2 refusal of a building permit to a person who fails to certify in
3 writing that the requirement of Subsection (a) has been satisfied.
4 A municipality, in lieu of or in addition to the written
5 certification, may require an applicant for a building permit to
6 produce for inspection or file with the municipality a copy of a
7 contract that complies with Subsection (a) as a condition of
8 issuance of a building permit.

9 (d) This section [~~Subsection--(a)~~] does not apply to a
10 contract:

11 (1) governed by Section 756.023;

12 (2) governed by the State Purchasing and General
13 Services Act (Article 601b, Vernon's Texas Civil Statutes); or

14 (3) entered into by a person subject to:

15 (A) [~~1~~] the safety standards adopted under
16 Article 6053-1, Revised Statutes; and

17 (B) [~~2~~] the administrative penalty provisions
18 of Article 6053-2, Revised Statutes.

19 Sec. 756.023 [~~756-022~~]. TRENCH EXCAVATION FOR POLITICAL
20 SUBDIVISION. (a) On a project for a political subdivision of the
21 state in which trench excavation will exceed a depth of five feet,
22 the bid documents provided to all bidders and the contract must
23 include:

24 (1) a reference to the [~~detailed---plans---and~~
25 ~~specifications---for-adequate-safety-systems-that-meet~~] Occupational
26 Safety and Health Administration standards for trench safety in
27 effect during the period of construction of the project; [and]

1 (2) a copy of special shoring requirements, if any, of
2 the political subdivision, with a separate pay item for the special
3 shoring requirements;

4 (3) a copy of any geotechnical information that was
5 obtained by the owner for use by the contractor in the design of
6 the trench safety system; and

7 (4) a separate pay item for trench excavation safety
8 protection [~~requirements--for--a--safety--program--for--a--trench~~
9 ~~system~~].

10 (b) The separate pay item for trench excavation safety
11 protection must be based on the linear feet of trench excavated.
12 The separate pay item for special shoring requirements, if any, of
13 the political subdivision must be based on the square feet of
14 shoring used.

15 (c) A political subdivision may require a bidder to attend a
16 pre-bid conference to coordinate a geotechnical investigation of
17 the project site by bidders. In awarding a contract, a political
18 subdivision may not consider a bid from a bidder who failed to
19 attend a required pre-bid conference.

20 (d) This section does not apply to a person subject to:

21 (1) the safety standards adopted under Article 6053-1,
22 Revised Statutes; and

23 (2) the administrative penalty provisions of Article
24 6053-2, Revised Statutes.

25 SECTION 238. Chapter 772.206, Health and Safety Code, is
26 amended to conform to Section 1, Chapter 530 (H.B. 2805), Acts of
27 the 71st Legislature, Regular Session, 1989, by adding Subsection

1 (k) to read as follows:

2 (k) A majority of the voting members of the board
3 constitutes a quorum.

4 SECTION 239. Section 773.003, Health and Safety Code, is
5 amended to conform to Section 1 of Chapter 372 (S.B. 312) and
6 Section 29 of Chapter 1027 (H.B. 18), Acts of the 71st Legislature,
7 Regular Session, 1989, to read as follows:

8 Sec. 773.003. DEFINITIONS. In this chapter:

9 (1) "Advanced life support" means emergency
10 prehospital care that uses [~~provided--by--a--specially--skilled~~
11 ~~emergency-medical--technician--or--a--paramedic--emergency--medical~~
12 ~~technician-using~~] invasive medical acts.

13 (2) "Basic life support" means emergency prehospital
14 care that uses [~~provided-by-an-emergency-care--attendant--or--basic~~
15 ~~emergency-medical-technician-using~~] noninvasive medical acts.

16 (3) "Board" means the Texas Board of Health.

17 (4) "Bureau" means the department's bureau of
18 emergency management.

19 (5) "Bureau chief" means the chief of the bureau of
20 emergency management.

21 (6) "Department" means the Texas Department of Health.

22 (7) "Emergency medical services" means services used
23 to respond to an individual's perceived need for immediate medical
24 care and to prevent death or aggravation of physiological or
25 psychological illness or injury.

26 (8) "Emergency medical services and trauma care
27 system" means an arrangement of available resources that are

1 coordinated for the effective delivery of emergency health care
2 services in geographical regions consistent with planning and
3 management standards.

4 (9) [†7] "Emergency medical services personnel"
5 means:

- 6 (A) emergency care attendant;
7 (B) [~~basic~~] emergency medical technicians;
8 (C) [~~specially---skilled~~] emergency medical
9 technicians-intermediate [~~technicians~~]; or
10 (D) [~~paramedic~~] emergency medical
11 technicians-paramedic [~~technicians~~].

12 (10) [†8] "Emergency medical services provider" means
13 a person who [~~an-organization-that~~] uses or maintains emergency
14 medical services vehicles and [~~or~~] emergency medical services
15 personnel to provide emergency medical services [~~care---or~~
16 ~~nonemergency-transportation-of-the-sick-or-injured~~].

17 (11) [†9] "Emergency medical services vehicle" means:
18 (A) a basic life-support emergency medical
19 services vehicle;
20 (B) an advanced life-support emergency medical
21 services vehicle;
22 (C) a mobile intensive-care unit; or
23 (D) a specialized emergency medical services
24 vehicle.

25 (12) [†10] "Emergency medical services volunteer
26 [~~provider~~]" means [~~an~~] emergency medical services personnel who
27 provide [~~provider-that-provides~~] emergency prehospital care without

1 remuneration, except reimbursement for expenses.

2 (13) "Emergency medical services volunteer provider"
3 means an emergency medical services provider that has at least 75
4 percent of its total personnel as volunteers and is recognized as a
5 Section 501(c)(3) nonprofit corporation by the Internal Revenue
6 Service.

7 (14) [†††] "Emergency prehospital care" means care
8 provided to the sick or injured before or during [emergency]
9 transportation to a medical facility, and includes any necessary
10 stabilization of the sick or injured in connection with that
11 transportation.

12 (15) [††2] "Governmental entity" means a county,
13 municipality, school district, or a special district or authority
14 created in accordance with the Texas Constitution.

15 (16) [††3] "Medical supervision" means direction
16 given to emergency medical services personnel by a licensed
17 physician under the Medical Practice Act (Article 4495b, Vernon's
18 Texas Civil Statutes) and the rules adopted under that Act by the
19 Texas State Board of Medical Examiners.

20 (17) "Trauma facility" means a health care facility
21 that is capable of comprehensive treatment of seriously injured
22 persons and is a part of an emergency medical services and trauma
23 care system.

24 (18) "Trauma patient" means a critically injured
25 person who has been:

26 (A) evaluated by a physician, a registered
27 nurse, or emergency medical services personnel; and

1 (B) found to require medical care in a trauma
2 facility.

3 SECTION 240. Section 773.004(a), Health and Safety Code, is
4 amended to conform to Section 3, Chapter 372 (S.B. 312), Acts of
5 the 71st Legislature, Regular Session, 1989, to read as follows:

6 (a) This chapter does not apply to:

7 (1) a ground or air transfer vehicle and staff used to
8 transport a patient who is under a physician's care between medical
9 facilities or between a medical facility and a private residence;

10 (2) the use of ground or air transfer vehicles to
11 transport sick or injured persons in a casualty situation that
12 exceeds the basic vehicular capacity or capability of emergency
13 medical services providers in the area;

14 (3) an industrial ambulance; or

15 (4) [†3†] a physician, registered nurse, or other
16 health care practitioner licensed by this state unless the health
17 care practitioner staffs an emergency medical services vehicle
18 regularly.

19 SECTION 241. Section 773.006, Health and Safety Code, is
20 amended to conform to Section 2, Chapter 372 (S.B. 312), Acts of
21 the 71st Legislature, Regular Session, 1989, to read as follows:

22 Sec. 773.006. EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL.

23 (a) The Emergency Medical Services Advisory Council is ~~[an-adjunct~~
24 ~~to-the-bureau-~~

25 ~~[†b†--The-council-is]~~ composed of 18 members appointed by the
26 board. The board shall appoint members from different geographic
27 areas to ensure representation of urban and rural interests.

1 **(b)** [~~te~~] The members must include:

2 (1) three licensed physicians, one of whom must be a
3 board-certified emergency physician, appointed from nominations
4 received from a statewide professional association of physicians;

5 (2) two members of governing bodies of municipalities,
6 appointed from nominations received from a statewide association of
7 municipalities;

8 (3) two elected members of commissioners courts,
9 appointed from nominations received from a statewide association of
10 county judges or commissioners courts;

11 (4) a representative of hospitals, appointed from a
12 statewide association of hospitals;

13 (5) a private provider of emergency medical services,
14 appointed from nominations received from a statewide association of
15 private providers of emergency medical services;

16 (6) an emergency medical services [~~volunteer~~] provider
17 who is exempt from the payment of fees under Section 773.0581;

18 (7) a local governmental provider of emergency medical
19 services;

20 (8) an emergency medical services educator;

21 (9) an [~~a-----paramedic~~] emergency medical
22 technician-paramedic [~~technician~~], appointed from nominations
23 received from a statewide association of emergency medical
24 technicians;

25 (10) an emergency medical technician, appointed from
26 nominations received from a statewide association of emergency
27 medical technicians;

1 (11) an emergency nurse, appointed from nominations
2 received from a statewide association of licensed professional
3 nurses;

4 (12) a representative of a fire department that
5 provides emergency medical services, appointed from nominations
6 received from a statewide association of fire fighters; and

7 (13) two consumer members.

8 (c) [~~t~~d] A person is not eligible for appointment as a
9 consumer member of the council if the person or the person's
10 spouse:

11 (1) is licensed by an occupational regulatory agency
12 in the field of health care;

13 (2) is employed by or participates in the management
14 of a business entity or other organization that provides health
15 care services or that sells, manufactures, or distributes health
16 care supplies or equipment; or

17 (3) owns, controls, or has directly or indirectly more
18 than a 10 percent interest in a business entity or other
19 organization that provides health care services or that sells,
20 manufactures, or distributes health care supplies or equipment.

21 (d) [~~t~~e] Members are appointed for staggered six-year
22 terms, with the terms of six members expiring January 1 of each
23 even-numbered year. If a vacancy occurs on the council, the board
24 shall appoint a person to serve for the remainder of the unexpired
25 term.

26 (e) [~~t~~f] The council may adopt rules for the conduct of its
27 activities and may elect a chairman from among its members. The

1 council shall meet in the city of Austin at least quarterly.

2 (f) [~~g~~] A member serves without compensation, but is
3 entitled to:

4 (1) \$50 for each council meeting the member attends;
5 and

6 (2) the per diem and travel allowance authorized for
7 state employees by the General Appropriations Act.

8 (g) [~~h~~] The council shall consider the needs for emergency
9 medical services in the state and shall recommend for the board's
10 consideration rules to implement standards adopted under this
11 chapter.

12 SECTION 242. Section 773.011, Health and Safety Code, is
13 amended to conform to Sections 3 and 5, Chapter 991 (H.B. 791),
14 Acts of the 71st Legislature, Regular Session, 1989, to read as
15 follows:

16 Sec. 773.011. [~~NONPROFIT~~] SUBSCRIPTION PROGRAMS. (a) An
17 emergency medical services provider may create and operate a
18 subscription program to fund and provide emergency medical
19 services.

20 (b) The board shall adopt rules establishing minimum
21 standards for the creation and operation of a subscription program.

22 (c) The board shall adopt a rule that requires an emergency
23 medical services provider to secure a surety bond in the amount of
24 sums to be subscribed before soliciting subscriptions or to
25 purchase and maintain contractual liability insurance before
26 creating and operating a subscription program. The surety bond
27 must be issued by a company that is licensed by or eligible to do

1 business in this state.

2 (d) The board may adopt rules for waiver of the contractual
3 liability insurance or surety bond.

4 (e) The Insurance Code does not apply to a subscription
5 program established under this section [~~To--fund--an--emergency~~
6 ~~medical--service--to--provide--emergency--medical--services-vehicle~~
7 ~~services-in-their-jurisdictions,-a-municipality,-county,-hospital~~
8 ~~district,-or-any-number-and-combination-of-those-entities-may~~
9 ~~create-and-operate-a-nonprofit-subscription-program-by:~~

10 [~~1~~]~~--contract,-~~

11 [~~2~~]~~--joint-agreement,-or~~

12 [~~3~~]~~--any-other-method-provided-by:~~

13 [~~A~~]~~--The--Interlocal--Cooperation--Act--(Article~~
14 ~~4413(32c),-Vernon's-Texas-Civil-Statutes),-or~~

15 [~~B~~]~~--any--other--state--law--authorizing--local~~
16 ~~governmental-entities-to-provide-joint-programs.~~

17 [~~b~~]~~--A--nonprofit--subscription-program-under-Subsection-(a)~~
18 ~~is-exempt-from-the-Insurance-Code-for-the-sole-purpose-of-providing~~
19 ~~emergency-medical-services-vehicle-services-if:~~

20 [~~1~~]~~--the-entities-that-created--or--that--operate--the~~
21 ~~program-directly-control-and-supervise-the-program;-and~~

22 [~~2~~]~~--the--program--funds-an-emergency-medical-services~~
23 ~~vehicle-service-that-meets-the-standards-and-requirements--of--this~~
24 ~~chapter].~~

25 SECTION 243. The heading to Subchapter C, Chapter 773,
26 Health and Safety Code, is amended to conform to Chapter 372
27 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to

1 read as follows:

2 SUBCHAPTER C. LICENSES [PERMITS], CERTIFICATION,
3 AND QUALIFICATIONS

4 SECTION 244. Section 773.041, Health and Safety Code, is
5 amended to conform to Sections 3 and 7, Chapter 372 (S.B. 312),
6 Acts of the 71st Legislature, Regular Session, 1989, to read as
7 follows:

8 Sec. 773.041. LICENSE [PERMIT] OR CERTIFICATE REQUIRED. (a)
9 A person may not operate, conduct, or maintain an emergency medical
10 service, advertise that the person is an emergency medical services
11 provider, or otherwise engage in or profess to be engaged in the
12 provision of emergency medical services unless the person holds a
13 license as an emergency medical services provider issued by the
14 department [~~an--emergency--medical--services--vehicle--unless--the~~
15 ~~vehicle--has--a-permit-issued-under-this-chapter-and-the-vehicle-is~~
16 ~~staffed-by-emergency-medical-services-personnel~~] in accordance with
17 this chapter.

18 (b) A person may not practice as any type of emergency
19 medical services personnel unless the person is certified under
20 this chapter and rules adopted under this chapter.

21 (c) A certificate or license [~~permit~~] issued under this
22 chapter is not transferable.

23 SECTION 245. Section 773.045, Health and Safety Code, is
24 amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
25 the 71st Legislature, Regular Session, 1989, to read as follows:

26 Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES VEHICLE
27 QUALIFICATIONS. A vehicle, including a helicopter, boat,

1 fixed-wing aircraft, or ground [~~transfer~~] vehicle, qualifies as a
2 specialized emergency medical services vehicle if it:

3 (1) is designed for transporting the sick or injured
4 by air, water, or ground transportation;

5 (2) is not a basic or advanced life-support emergency
6 medical services vehicle or a mobile intensive-care unit; and

7 (3) has sufficient equipment and supplies to provide
8 for the specialized needs of the patient transported.

9 SECTION 246. Section 773.046, Health and Safety Code, is
10 amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS. An
13 individual qualifies as an emergency care attendant if the
14 individual[+

15 [~~{1}~~]~~--has-at-least--40-hours-of--training--approved--by~~
16 ~~the-department;--and~~

17 [~~{2}~~] is certified by the department as minimally
18 proficient to provide emergency prehospital care by providing
19 initial aid that promotes comfort and avoids aggravation of an
20 injury or illness.

21 SECTION 247. Section 773.047, Health and Safety Code, is
22 amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
23 the 71st Legislature, Regular Session, 1989, to read as follows:

24 Sec. 773.047. [~~BASIC~~] EMERGENCY MEDICAL TECHNICIAN
25 QUALIFICATIONS. An individual qualifies as an [~~a-basic~~] emergency
26 medical technician if the individual[+

27 [~~{1}~~]~~--has-at-least--120-hours-of--training--approved--by~~

1 the-department;-and

2 [+2+] is certified by the department as minimally
3 proficient to perform emergency prehospital care that is necessary
4 for basic life support and that includes cardiopulmonary
5 resuscitation and the control of hemorrhaging.

6 SECTION 248. Section 773.048, Health and Safety Code, is
7 amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
8 the 71st Legislature, Regular Session, 1989, to read as follows:

9 Sec. 773.048. [~~SPECIALLY----~~SKILLED] EMERGENCY MEDICAL
10 TECHNICIAN-INTERMEDIATE [~~TECHNICIAN~~] QUALIFICATIONS. An individual
11 qualifies as an [~~a---specially---skilled~~] emergency medical
12 technician-intermediate [~~technician~~] if the individual[+

13 [+1]--has--successfully--completed--the--basic--emergency
14 ~~medical--technician--requirements--and--at--least--160---hours---of~~
15 ~~additional--training--approved--by--the--department;-and~~

16 [+2+] is certified by the department as minimally
17 proficient to provide emergency prehospital care by initiating
18 under medical supervision certain procedures, including intravenous
19 therapy and endotracheal or esophageal intubation.

20 SECTION 249. Section 773.049, Health and Safety Code, is
21 amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
22 the 71st Legislature, Regular Session, 1989, to read as follows:

23 Sec. 773.049. [~~PARAMEDIC~~] EMERGENCY MEDICAL
24 TECHNICIAN-PARAMEDIC [~~TECHNICIAN~~] QUALIFICATIONS. An individual
25 qualifies as an [~~a---paramedic~~] emergency medical
26 technician-paramedic [~~technician~~] if the individual[+

27 [+1]--has--successfully--completed--the--basic--emergency

1 ~~medical---technician---requirements--and--at--least--400--hours--of~~
2 ~~additional-training-approved-by-the-department;-and~~

3 [~~2~~] is certified by the department as minimally
4 proficient to provide advanced life support that includes
5 initiation under medical supervision of certain procedures,
6 including intravenous therapy, endotracheal or esophageal
7 intubation, electrical cardiac defibrillation or cardioversion, and
8 drug therapy.

9 SECTION 250. Section 773.050(b), Health and Safety Code, is
10 amended to conform to Section 3, Chapter 372 (S.B. 312), Acts of
11 the 71st Legislature, Regular Session, 1989, to read as follows:

12 (b) The board by rule shall establish minimum standards for:

13 (1) staffing an advanced life-support emergency
14 medical services vehicle, a mobile intensive-care unit, or a
15 specialized emergency medical services vehicle;

16 (2) emergency medical services personnel certification
17 and performance, including certification, decertification,
18 recertification, suspension, emergency suspension, and probation;

19 (3) the approval of courses and training programs, the
20 certification of program instructors, examiners, and course
21 coordinators for emergency medical services personnel training, and
22 the revocation and probation of an approval or certification;

23 (4) medical supervision of advanced life-support
24 systems; [~~and~~]

25 (5) granting, suspending, and revoking a license
26 [~~permit~~] for [~~an~~] emergency medical services providers; and

27 (6) emergency medical services vehicles [~~vehicle~~].

1 SECTION 251. Sections 773.052(a), (c), and (f), Health and
2 Safety Code, are amended to conform to Section 8, Chapter 372
3 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to
4 read as follows:

5 (a) An emergency medical services provider with a specific
6 hardship may apply to the bureau chief for a variance from a rule
7 adopted under this chapter. The board may adopt a fee of not more
8 than \$25 for filing an application for a variance.

9 (c) The bureau chief shall grant to a [A] sole provider for
10 a service area [is--entitled--to] a variance from the minimum
11 standards for staffing and equipment for the provision of
12 [equipping---a] basic life-support emergency medical services
13 [vehicle] if the provider is:

14 (1) an emergency medical services [volunteer] provider
15 exempt from the payment of fees under Section 773.0581; or

16 (2) a municipally operated emergency medical service
17 that existed on January 1, 1983, and that provides emergency
18 prehospital care with the same personnel who provide fire or police
19 services.

20 (f) The department shall issue an emergency medical services
21 license [vehicle-permit] to a provider granted a variance under
22 this section. The license [permit] is subject to annual review by
23 the department. A provider is encouraged to upgrade staffing and
24 equipment to meet the minimum standards set by the rules adopted
25 under this chapter.

26 SECTION 252. Section 773.053(a), Health and Safety Code, is
27 amended to conform to Section 7, Chapter 372 (S.B. 312), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 (a) The bureau shall publish a proposed rule or amendment of
3 a rule in its official publications not later than the 90th day
4 before the date of adoption. Before the adoption or amendment of a
5 rule, the bureau shall make reasonable efforts to notify:

6 (1) emergency medical services providers that are
7 licensed by [organizations---owning---or--operating--ambulances
8 registered-with] the department;

9 (2) [~~emergency-medical-services-coordinators-of-health~~
10 ~~systems-agencies~~;

11 [~~3~~] emergency medical services coordinators of
12 councils of governments;

13 (3) [~~4~~] the Texas State Board of Medical Examiners;

14 (4) [~~5~~] course coordinators of established emergency
15 medical services training programs; and

16 (5) [~~6~~] any other agency or organization designated
17 by the bureau chief.

18 SECTION 253. Section 773.054, Health and Safety Code, is
19 amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
20 the 71st Legislature, Regular Session, 1989, by adding Subsection
21 (c) to read as follows:

22 (c) Each application under Subsection (a)(3) must be
23 accompanied by a nonrefundable fee of \$25. The department may not
24 require a fee for a certification from an instructor, examiner, or
25 coordinator who does not receive compensation for providing
26 services.

27 SECTION 254. Section 773.055, Health and Safety Code, is

1 amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
2 the 71st Legislature, Regular Session, 1989, to read as follows:

3 Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES
4 PERSONNEL. (a) A nonrefundable fee [~~determined-by-the-board~~] must
5 accompany each application for examination for emergency medical
6 services personnel certification. The fee may not exceed:

7 (1) \$75 [~~\$18-75~~] for examination for certification or
8 recertification of an [~~a---paramedic~~] emergency medical
9 technician-paramedic [~~technician~~] or [~~specially-skilled~~] emergency
10 medical technician-intermediate [~~technician~~]; or

11 (2) \$50 [~~\$12-50~~] for examination for certification or
12 recertification of an [~~a--basic~~] emergency medical technician or
13 emergency care attendant.

14 (b) Except as provided by Subsection (c), the department
15 shall notify each examinee of the results of an examination for
16 certification or recertification not later than the 30th day after
17 the date on which the examination is administered.

18 (c) The department shall notify an examinee of the results
19 of an examination not later than the 14th day after the date on
20 which the department receives the results if the examination is
21 graded or reviewed by a national testing service. If the notice of
22 the examination results will be delayed longer than 90 days after
23 the examination date, the department shall notify each examinee of
24 the reason for the delay before the 90th day.

25 (d) The department shall furnish a person who fails an
26 examination for certification or recertification with an analysis
27 of the person's performance on the examination if requested in

1 writing by that person. The board may adopt rules to allow a
2 person who fails the examination to retake all or part of the
3 examination. A fee of \$25 must accompany each application for
4 reexamination.

5 (e) The department shall issue certificates to emergency
6 medical services personnel who meet the minimum standards for
7 personnel certification adopted under Section 773.050. A
8 certificate is valid for four years from the date of issuance. The
9 department shall charge a fee of \$5 to replace a lost certificate.

10 (f) A [The] fee required by this section [Subsection-(a)] is
11 the obligation of the applicant but may be paid by the emergency
12 medical services provider. If an applicant is required to be
13 certified as a condition of employment, the emergency medical
14 services provider shall pay for all fees required by this section,
15 except for a fee to replace a lost certificate, in addition to any
16 other compensation paid to that applicant if the provider is a
17 municipality. A municipality that requires a fire fighter to be
18 certified as emergency medical services personnel shall pay the
19 fees required by this section.

20 SECTION 255. Section 773.056(b), Health and Safety Code, is
21 amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
22 the 71st Legislature, Regular Session, 1989, to read as follows:

23 (b) The department shall issue a certificate to each program
24 instructor, examiner, or course coordinator who meets the minimum
25 standards adopted under Section 773.050. The certificate is valid
26 for two years [one-year].

27 SECTION 256. Section 773.057, Health and Safety Code, is

1 amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
2 the 71st Legislature, Regular Session, 1989, to read as follows:

3 Sec. 773.057. EMERGENCY MEDICAL SERVICES PROVIDERS LICENSE
4 [~~VEHICLE-PERMITS~~]. (a) An emergency medical services provider
5 must submit an application for a license [~~an-emergency-medical~~
6 ~~services-vehicle-permit~~] in accordance with procedures prescribed
7 by the board. [~~An-emergency-medical-services-volunteer-provider~~
8 ~~must-submit-with-the-application-a-letter--of--sponsorship--from--a~~
9 ~~governmental-entity-~~]

10 (b) A nonrefundable fee determined by the board must
11 accompany each application. The fee may not exceed:

12 (1) \$100 for each emergency medical services vehicle
13 operated by the provider; or

14 (2) \$2,000 for a fleet of emergency medical services
15 vehicles operated by the provider.

16 (c) [~~The-department-on-inspection-shall-issue-a--permit--for~~
17 ~~an--emergency--medical--services--vehicle--that--meets--the-minimum~~
18 ~~standards-adopted-under-Section-773.050.--The-permit-is--valid--for~~
19 ~~two-years-~~]

20 [~~(d)~~] The department may delegate inspections [~~the-duty-to~~
21 ~~inspect-vehicles-under-Subsection-(c)~~] to the commissioners court
22 of a county or the governing body of a municipality. The
23 delegation must be made:

24 (1) at the request of the commissioners court or
25 governing body; and

26 (2) in accordance with criteria and procedures adopted
27 by the board.

1 (d) [~~(e)~~] The commissioners court of a county or governing
2 body of a municipality that conducts inspections under Subsection
3 (c) [~~(d)~~] shall collect and retain the fee for vehicles it
4 inspects.

5 SECTION 257. Subchapter C, Chapter 773, Health and Safety
6 Code, is amended to conform to Section 4, Chapter 372 (S.B. 312),
7 Acts of the 71st Legislature, Regular Session, 1989, by adding
8 Section 773.0571 to read as follows:

9 Sec. 773.0571. INSPECTION REQUIRED FOR LICENSE. The
10 department shall issue to an emergency medical services provider a
11 license that is valid for two years if the department conducts an
12 inspection and is satisfied that:

13 (1) the emergency medical services provider has
14 adequate staff to meet the staffing standards prescribed by this
15 chapter and the rules adopted under this chapter;

16 (2) each emergency medical services vehicle is
17 adequately constructed, equipped, maintained, and operated to
18 render basic or advanced life support services safely and
19 efficiently;

20 (3) the emergency medical services provider offers
21 safe and efficient services for emergency prehospital care and
22 transportation of patients; and

23 (4) the emergency medical services provider complies
24 with the rules adopted by the board under this chapter.

25 SECTION 258. Subchapter C, Chapter 773, Health and Safety
26 Code, is amended to conform to Section 4, Chapter 372 (S.B. 312),
27 Acts of the 71st Legislature, Regular Session, 1989, by adding

1 Section 773.0572 to read as follows:

2 Sec. 773.0572. PROVISIONAL LICENSES. The board by rule
3 shall establish conditions under which an emergency medical
4 services provider who fails to meet the minimum standards
5 prescribed by this chapter may be issued a provisional license.
6 The department may issue a provisional license to an emergency
7 medical services provider under this chapter if the department
8 finds that issuing the license would serve the public interest and
9 that the provider meets the requirements of the rules adopted under
10 this section.

11 SECTION 259. Section 773.058, Health and Safety Code, is
12 amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
13 the 71st Legislature, Regular Session, 1989, to read as follows:

14 Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual
15 who is an emergency medical services volunteer is [~~provider-and~~
16 ~~each-individual-who-actively-participates-in-the-operations--of--an~~
17 ~~emergency--medical-services-volunteer-provider-are~~] exempt from the
18 payment of fees under Sections 773.054, 773.055, 773.057, and
19 773.058 if the individual does not receive compensation for
20 providing emergency medical services. If an individual accepts
21 compensation during the certification period, the individual shall
22 pay to the department a prorated application fee for the duration
23 of the certification period. In this section, "compensation" does
24 not include reimbursement for actual expenses for medical supplies,
25 gasoline, clothing, meals, and insurance incurred in providing
26 emergency medical services [~~this-subchapter~~].

27 SECTION 260. Subchapter C, Chapter 773, Health and Safety

1 Code, is amended to conform to Section 4, Chapter 372 (S.B. 312),
2 Acts of the 71st Legislature, Regular Session, 1989, by adding
3 Section 773.0581 to read as follows:

4 Sec. 773.0581. PROVIDERS EXEMPT FROM FEES. (a) An
5 emergency medical services provider is exempt from the payment of
6 fees under this subchapter if the provider uses emergency medical
7 services volunteers exclusively to provide emergency prehospital
8 care. However, an emergency medical services provider is not
9 disqualified from the exemption if the provider compensates
10 physicians who provide medical supervision and not more than five
11 full-time staff or their equivalent.

12 (b) This chapter does not prohibit an emergency medical
13 services provider who uses volunteer emergency medical services
14 personnel but has more than five paid staff from using the word
15 "volunteer" in advertising if the organization is composed of at
16 least 75 percent volunteer personnel.

17 SECTION 261. Section 773.059, Health and Safety Code, is
18 amended to conform to Section 5, Chapter 372 (S.B. 312), Acts of
19 the 71st Legislature, Regular Session, 1989, to read as follows:

20 Sec. 773.059. LATE RECERTIFICATION. A person applying for
21 recertification whose application is received [~~later-than-the-90th~~
22 ~~day~~] after the expiration date of the person's certificate must pay
23 a late fee of \$25 in addition to the examination fee [~~meet--the~~
24 ~~requirements--of--the-initial-certification,--including-training-and~~
25 ~~fees-in-effect-on-the-date-of-the-application~~].

26 SECTION 262. Section 773.061(a), Health and Safety Code, is
27 amended to conform to Section 6, Chapter 372 (S.B. 312), Acts of

1 the 71st Legislature, Regular Session, 1989, to read as follows:

2 (a) For a violation of this chapter or a rule adopted under
3 this chapter, the department may:

4 (1) decertify, suspend, place on emergency suspension,
5 or place on probation emergency medical services personnel;

6 (2) revoke or place on probation course or training
7 program approval;

8 (3) revoke, suspend, or place on probation the
9 certificate of a program instructor, examiner, or course
10 coordinator; and

11 (4) revoke, [or] suspend, or place on probation an
12 emergency medical services provider license [vehicle-permit].

13 SECTION 263. Subchapter C, Chapter 773, Health and Safety
14 Code, is amended to conform to Section 11, Chapter 372 (S.B. 312),
15 Acts of the 71st Legislature, Regular Session, 1989, by adding
16 Section 773.0611 to read as follows:

17 Sec. 773.0611. INSPECTIONS. (a) The department or its
18 representative may enter an emergency medical services vehicle or
19 the premises of an emergency medical services provider's place of
20 business at reasonable times to ensure compliance with this chapter
21 and the rules adopted under this chapter.

22 (b) The department or its representative may conduct an
23 unannounced inspection of a vehicle or a place of business if the
24 department has reasonable cause to believe that a person is in
25 violation of this chapter or a rule adopted under this chapter.

26 (c) The board shall adopt rules for unannounced inspections
27 authorized under this section. The department or its

1 representative shall perform unannounced inspections in accordance
2 with those rules.

3 SECTION 264. Subchapter C, Chapter 773, Health and Safety
4 Code, is amended to conform to Section 11, Chapter 372 (S.B. 312),
5 Acts of the 71st Legislature, Regular Session, 1989, by adding
6 Section 773.0612 to read as follows:

7 Sec. 773.0612. ACCESS TO RECORDS. (a) The department or
8 its representative is entitled to access to records and other
9 documents maintained by a person that are directly related to
10 patient care or to emergency medical services personnel, to the
11 extent necessary to enforce this chapter and the rules adopted
12 under this chapter. A person who holds a license or certification
13 or an applicant for a certification or license is considered to
14 have given consent to a representative of the department entering
15 and inspecting a vehicle or place of business in accordance with
16 this chapter.

17 (b) A report, record, or working paper used or developed in
18 an investigation under this section is confidential and may be used
19 only for purposes consistent with the rules adopted by the board.

20 SECTION 265. Sections 773.062(a) and (b), Health and Safety
21 Code, are amended to conform to Section 7, Chapter 372 (S.B. 312),
22 Acts of the 71st Legislature, Regular Session, 1989, to read as
23 follows:

24 (a) The bureau chief shall issue an emergency order to
25 suspend any certificate or license [~~permit~~] issued under this
26 chapter if the bureau chief has reasonable cause to believe that
27 the conduct of any certificate or license [~~permit~~] holder creates

1 an imminent danger to the public health or safety.

2 (b) An emergency suspension is effective immediately without
3 a hearing on notice to the certificate or license [~~permit~~] holder.
4 Notice must also be given to the sponsoring governmental entity if
5 the holder is a [~~volunteer~~] provider exempt from payment of fees
6 under Section 773.0581.

7 SECTION 266. Sections 773.064(a) and (c), Health and Safety
8 Code, are amended to conform to Section 9, Chapter 372 (S.B. 312),
9 Acts of the 71st Legislature, Regular Session, 1989, to read as
10 follows:

11 (a) A person commits an offense if the person knowingly
12 practices as, attempts to practice as, or represents himself to be
13 an [~~a---paramedic~~] emergency medical technician-paramedic
14 [~~technician~~], [~~specially-----skilled~~] emergency medical
15 technician-intermediate [~~technician~~], [~~basie~~] emergency medical
16 technician, or emergency care attendant and the person does not
17 hold an appropriate [~~a~~] certificate issued by the department under
18 this chapter. An offense under this subsection is a Class A
19 misdemeanor.

20 (c) A person commits an offense if the person knowingly uses
21 or permits to be used a vehicle that the person owns, operates, or
22 controls to transport a sick or injured person unless the person is
23 licensed as an emergency medical services provider [~~vehicle-has-a~~
24 ~~permit-issued~~] by the department. An offense under this subsection
25 is a Class A [~~E~~] misdemeanor.

26 SECTION 267. Chapter 773, Health and Safety Code, is amended
27 to conform to Section 30, Chapter 1027 (H.B. 18), Acts of the 71st

1 Legislature, Regular Session, 1989, by adding Subchapter D to read
2 as follows:

3 SUBCHAPTER D. EMERGENCY MEDICAL SERVICES AND

4 TRAUMA CARE SYSTEMS

5 Sec. 773.081. LEGISLATIVE FINDINGS. (a) The legislature
6 finds that death caused by injury is the leading cause of death for
7 persons one through 44 years of age, and the third overall cause of
8 death for all ages. Effective emergency medical services response
9 and resuscitation systems, medical care systems, and medical
10 facilities reduce the occurrence of unnecessary mortality.

11 (b) It is estimated that trauma costs more than \$63 million
12 a day nationally, which includes lost wages, medical expenses, and
13 indirect costs. Proportionately, this cost to Texas would be more
14 than \$4 million a day. Many hospitals provide emergency medical
15 care to patients who are unable to pay for catastrophic injuries
16 directly or through an insurance or entitlement program.

17 (c) In order to improve the health of the people of the
18 state, it is necessary to improve the quality of emergency and
19 medical care to the people of Texas who are victims of
20 unintentional, life-threatening injuries by encouraging hospitals
21 to provide trauma care and increasing the availability of emergency
22 medical services.

23 Sec. 773.082. DUTIES OF BOARD; RULES. (a) The board by
24 rule shall adopt minimum standards and objectives to implement
25 emergency medical services and trauma care systems. The board by
26 rule shall provide for the designation of trauma facilities and for
27 triage, transfer, and transportation policies that reflect the

1 recommendations of the technical advisory committee. The board and
2 the technical advisory committee shall consider guidelines adopted
3 by the American College of Surgeons and the American College of
4 Emergency Physicians in adopting rules under this section.

5 (b) The rules must provide specific requirements for the
6 care of trauma patients, must ensure that the trauma care is fully
7 coordinated with all hospitals and emergency medical services in
8 the delivery area, and must reflect the geographic areas of the
9 state, considering time and distance.

10 (c) The rules must include:

11 (1) prehospital care management guidelines for triage
12 and transportation of trauma patients;

13 (2) flow patterns of trauma patients and geographic
14 boundaries regarding trauma patients;

15 (3) assurances that trauma facilities will provide
16 quality care to trauma patients referred to the facilities;

17 (4) minimum requirements for resources and equipment
18 needed by a trauma facility to treat trauma patients;

19 (5) standards for the availability and qualifications
20 of the health care personnel, including physicians and surgeons,
21 treating trauma patients within a facility;

22 (6) requirements for data collection, including trauma
23 incidence reporting, system operation, and patient outcome;

24 (7) requirements for periodic performance evaluation
25 of the system and its components; and

26 (8) assurances that designated trauma facilities will
27 not refuse to accept the transfer of a trauma patient from another

1 facility solely because of the person's inability to pay for
2 services or because of the person's age, sex, race, religion, or
3 national origin.

4 Sec. 773.083. DUTIES OF BUREAU. (a) The bureau shall:

5 (1) develop and monitor a statewide emergency medical
6 services and trauma care system;

7 (2) designate trauma facilities;

8 (3) develop and maintain a trauma reporting and
9 analysis system to:

10 (A) identify severely injured trauma patients at
11 each health care facility in this state;

12 (B) identify the total amount of uncompensated
13 trauma care expenditures made each fiscal year by each health care
14 facility in this state; and

15 (C) monitor trauma patient care in each health
16 care facility, including each designated trauma center, in
17 emergency medical services and trauma care systems in this state;
18 and

19 (4) provide for coordination and cooperation between
20 this state and any other state with which this state shares a
21 standard metropolitan statistical area.

22 (b) The bureau may grant an exception to a rule adopted
23 under Section 773.082 if it finds that compliance with the rule
24 would not be in the best interests of the persons served in the
25 affected local emergency medical services and trauma care delivery
26 area.

27 Sec. 773.084. SYSTEM REQUIREMENTS. (a) Each emergency

1 medical services and trauma care system must have:

2 (1) local or regional medical control for all field
3 care and transportation, consistent with geographic and current
4 communications capability;

5 (2) triage, transport, and transfer protocols; and

6 (3) one or more hospitals categorized according to
7 trauma care capabilities using standards adopted by board rule.

8 (b) This subchapter does not prohibit a health care facility
9 from providing services that it is authorized to provide under a
10 license issued to the facility by the department.

11 Sec. 773.085. TRAUMA FACILITIES. (a) The bureau may
12 designate trauma facilities that are a part of an emergency medical
13 services and trauma care system. A trauma facility shall be
14 designated by the level of trauma care and services provided in
15 accordance with the American College of Surgeons guidelines for
16 level I, II, and III trauma centers and rules adopted by the board
17 for level IV trauma centers. In adopting rules under this section,
18 the board may consider trauma caseloads, geographic boundaries, or
19 minimum population requirements, but the bureau may not deny
20 designation solely on these criteria. The board may not set an
21 arbitrary limit on the number of facilities designated as trauma
22 facilities.

23 (b) A health care facility may apply to the bureau for
24 designation as a trauma facility and the bureau shall grant the
25 designation if the facility meets the requirements for designation
26 prescribed by board rules.

27 (c) After September 1, 1993, a health care facility may not

1 use the terms "trauma facility," "trauma hospital," "trauma
2 center," or similar terminology in its signs or advertisements or
3 in the printed materials and information it provides to the public
4 unless the facility has been designated as a trauma facility under
5 this subchapter.

6 Sec. 773.086. FEES. (a) The bureau shall charge a fee to a
7 health care facility that applies for initial or continuing
8 designation as a trauma facility.

9 (b) The board by rule shall set the amount of the fee
10 schedule for initial or continuing designation as a trauma facility
11 according to the number of beds in the health care facility.

12 (c) The board shall set the fee for the highest level
13 designation at not more than \$3 a bed, but the total fee for the
14 facility may not be less than \$100 or more than \$3,000. The fee
15 for an intermediate level designation shall be set at not more than
16 \$2 a bed, but the total fee for the facility may not be less than
17 \$100 or more than \$2,000. The fee for the lowest level designation
18 shall be set at not more than \$1 a bed, but the total fee for the
19 facility may not be less than \$100 or more than \$1,000.

20 (d) A fee under Subsection (c) may not exceed the cost
21 directly related to designating trauma facilities under this
22 subchapter.

23 (e) This section does not restrict the authority of a health
24 care facility to provide a service for which it has received a
25 license under other state law.

26 Sec. 773.087. DENIAL, SUSPENSION, OR REVOCATION OF
27 DESIGNATION. (a) The department may deny, suspend, or revoke a

1 health care facility's designation as a trauma facility if the
2 facility fails to comply with the rules adopted under this
3 subchapter.

4 (b) The denial, suspension, or revocation of a designation
5 by the department and the appeal from that action are governed by
6 the department's rules for a contested case hearing and by the
7 Administrative Procedure and Texas Register Act (Article 6252-13a,
8 Vernon's Texas Civil Statutes).

9 Sec. 773.088. ADVISORY COMMITTEE. (a) The board shall
10 appoint a 12-member technical advisory committee to advise the
11 bureau in areas requiring professional medical expertise and to
12 review and comment on hospital administrative and operational
13 considerations relating to rules adopted under this subchapter.

14 (b) Appointees to the technical advisory committee must
15 include:

16 (1) hospital administrators who represent both urban
17 and rural facilities, chosen from a list of nominees submitted by
18 statewide associations of hospitals;

19 (2) representatives appointed from statewide
20 associations of emergency nurses;

21 (3) practicing physicians who are board-certified in
22 emergency medicine, neurosurgery, surgery, and anesthesiology;

23 (4) two family practice physicians, at least one of
24 whom has been in active practice in a rural area for at least five
25 years preceding appointment; and

26 (5) at least one member who usually represents
27 claimants, chosen from a list of nominees submitted by the

1 statewide association of trial lawyers.

2 (c) A member of the technical advisory committee is entitled
3 to the per diem and travel allowance authorized by the General
4 Appropriations Act for state employees.

5 Sec. 773.089. GRANT PROGRAM. (a) The department shall
6 establish a program to award grants to initiate, expand, maintain,
7 and improve emergency medical services and to support medical
8 systems and facilities that provide trauma care.

9 (b) The board by rule shall establish eligibility criteria
10 for awarding the grants. The rules must require the department to
11 consider:

12 (1) the need of an area for the provision of emergency
13 medical services or trauma care and the extent to which the grant
14 would meet the identified need;

15 (2) the availability of personnel and training
16 programs;

17 (3) the availability of other funding sources;

18 (4) the assurance of providing quality services;

19 (5) the use or acquisition of helicopters for
20 emergency medical evacuation; and

21 (6) the development or existence of an emergency
22 medical services system.

23 (c) The department may approve grants according to the rules
24 adopted by the board. A grant awarded under this section is
25 governed by the Uniform Grant and Contract Management Act of 1981
26 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules
27 adopted under that Act.

1 (d) The department may require a grantee to provide matching
2 funds equal to not more than 75 percent of the amount of the grant.

3 Sec. 773.090. ACCEPTANCE OF GIFTS. A trauma facility or an
4 emergency medical services and trauma care system may accept gifts
5 or other contributions for the purposes of this subchapter.

6 SECTION 268. Chapter 773, Health and Safety Code, is amended
7 to conform to Section 2, Chapter 991 (H.B. 791), Acts of the 71st
8 Legislature, Regular Session, 1989, by adding Subchapter E to read
9 as follows:

10 SUBCHAPTER E. POISON CONTROL CENTERS

11 Sec. 773.101. COORDINATION AND SUPPORT. The department
12 shall provide coordination and support for a statewide system of
13 poison and drug information services.

14 Sec. 773.102. FUNDING. The department may allocate funds to
15 regional centers for poison control throughout the state. The
16 department shall give priority to stabilizing regional poison
17 control centers that are in existence on September 1, 1989,
18 publicly funded, and operated by The University of Texas Medical
19 Branch at Galveston or the Dallas County Hospital District. The
20 department shall identify and may contract with public agencies
21 that have the capability and commitment to operate a regional
22 poison control center in regions not served by a center.

23 Sec. 773.103. PUBLIC AGENCY SERVICES. A public agency that
24 contracts with the department under this subchapter shall provide:

25 (1) a 24-hour toll-free telephone referral and
26 information service for the public and health care professionals
27 that is supervised by a physician in the field of clinical

1 toxicology and is staffed by licensed professionals according to
2 the requirements of the American Association of Poison Control
3 Centers;

4 (2) information and education to health professionals
5 involved in the management of poisoning and overdose victims;

6 (3) community education programs designed to inform
7 the public of poison prevention methods;

8 (4) information to health professionals regarding
9 appropriate therapeutic use of medications, their compatibility and
10 stability, and adverse drug reactions and interactions; and

11 (5) professional and technical assistance to state
12 agencies requesting toxicologic assistance.

13 Sec. 773.104. POISON CONTROL CENTER SERVICES. A poison
14 control center shall answer requests by telephone for poison
15 information, recommend appropriate emergency management, and
16 provide treatment referrals for poisoning exposure and overdose
17 victims. A center shall provide the services at all times of the
18 day or night. The services must include:

19 (1) determining whether treatment can be accomplished
20 at the scene of the incident or whether transport to an emergency
21 treatment facility is required;

22 (2) recommending treatment measures to appropriate
23 personnel; and

24 (3) ensuring that adequate care is provided after an
25 emergency incident in which the poison control center provided
26 services.

27 Sec. 773.105. POISON CONTROL CENTER PERSONNEL. (a) A

1 poison control center shall use physicians, pharmacists, nurses,
2 and support personnel trained in various aspects of toxicology,
3 poison control and prevention, and drug information retrieval and
4 analysis.

5 (b) Poison control center personnel shall:

6 (1) provide education after an emergency incident in
7 which the poison control center provided services, to prevent
8 similar incidents for poison or overdose victims;

9 (2) provide community education programs designed to
10 improve public awareness of poisoning and overdose problems and to
11 educate the public regarding prevention of those problems; and

12 (3) answer drug information questions from health
13 professionals by providing current, accurate, and unbiased
14 information regarding drugs and their therapeutic uses.

15 Sec. 773.106. COORDINATING COMMITTEE. (a) The coordinating
16 committee on poison control is a committee in the department. The
17 committee shall advise the department on the implementation of this
18 subchapter.

19 (b) The committee is composed of 10 members, with the chief
20 executive officers of each of the following entities appointing one
21 member:

22 (1) The University of Texas Medical Branch at
23 Galveston;

24 (2) the Dallas County Hospital District;

25 (3) the Amarillo Hospital District;

26 (4) the El Paso County Hospital District;

27 (5) the Texas Tech University Health Sciences Center;

1 (6) The University of Texas Health Science Center at
2 San Antonio;

3 (7) The University of Texas Southwest Medical Center
4 at Dallas;

5 (8) the Texas Veterinary Medical Diagnostic
6 Laboratory;

7 (9) the Texas Department of Agriculture; and

8 (10) the department.

9 Sec. 773.107. TERM OF COMMITTEE MEMBERS. A member of the
10 committee serves for a term of two years or until the person
11 terminates employment with the agency the person represents,
12 whichever occurs first.

13 Sec. 773.108. COMMITTEE OPERATIONS. (a) The members of the
14 committee shall:

15 (1) annually elect one member to serve as chairperson;

16 (2) meet at least quarterly;

17 (3) adopt rules for the conduct of committee meetings;

18 and

19 (4) establish a policy for carrying out the
20 committee's duties.

21 (b) An action taken by the committee must be approved by a
22 majority vote of the members present.

23 SECTION 269. Section 775.017(a), Health and Safety Code, is
24 amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of
25 the 71st Legislature, Regular Session, 1989, to read as follows:

26 (a) If after the hearing the commissioners court finds that
27 creation of the district is feasible and will promote the public

1 safety, welfare, health, and convenience of persons residing in the
2 proposed district, the commissioners court shall grant the petition
3 and fix the district's boundaries. If the proposed district,
4 according to its boundaries stated in the petition, is located
5 wholly in a county with a population of more than 2.4 million, the
6 commissioners court may amend the petition to change the boundaries
7 of the proposed district if the commissioners court finds the
8 change is necessary or desirable. For the purposes of this
9 provision, the population of the county is determined according to
10 the most recent federal decennial census available at the time the
11 petition is filed.

12 SECTION 270. Section 775.018, Health and Safety Code, is
13 amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of
14 the 71st Legislature, Regular Session, 1989, to read as follows:

15 Sec. 775.018. ELECTION. (a) Except as provided by
16 Subsection (b), on [On] the granting of a petition, the
17 commissioners court shall order an election to confirm the
18 district's creation and authorize the imposition of a tax not to
19 exceed 10 cents on each \$100 of the taxable value of property
20 taxable by the district or two cents on each \$100 of the taxable
21 value of property taxable by the district if any area in the
22 district is also included in a rural fire prevention district.

23 (b) If a proposed district is located wholly in a county
24 with a population of more than 2.4 million, the commissioners court
25 shall order an election to confirm the district's creation and
26 authorize the imposition of an ad valorem tax not to exceed three
27 cents on each \$100 of the taxable value of property taxable by the

1 district, except that if the petition seeks conversion of a rural
2 fire prevention district into an emergency services district, the
3 election must be to authorize the imposition of an ad valorem tax
4 not to exceed six cents on each \$100 of the taxable value of
5 property taxable by the district. For the purposes of this
6 subsection, the population of the county is determined according to
7 the most recent federal decennial census available at the time the
8 petition is filed.

9 (c) If the petition indicates that the proposed district
10 will contain territory in more than one county, the commissioners
11 court may not order an election until the commissioners court of
12 each county in which the district will be located has granted the
13 petition.

14 (d) [~~f~~e] Subject to Section 4.003, Election Code, the
15 notice of the election shall be given in the same manner as the
16 notice of the petition hearing.

17 (e) [~~f~~d] The election shall be held on the first authorized
18 uniform election date prescribed by the Election Code that allows
19 sufficient time to comply with other requirements of law.

20 SECTION 271. Subchapter B, Chapter 775, Health and Safety
21 Code, is amended to conform to Section 2, Chapter 1132 (H.B. 2626),
22 Acts of the 71st Legislature, Regular Session, 1989, by adding
23 Section 775.021 to read as follows:

24 Sec. 775.021. EXCLUSION OF TERRITORY LOCATED WITHIN OTHER
25 TAXING AUTHORITY. (a) This section applies only to a district
26 located in whole or in part in a county that:

27 (1) borders the Gulf of Mexico; and

1 (2) has a population of less than 1.5 million.

2 (b) The board of a district may exclude from the district
3 the territory located within the boundaries of another taxing
4 authority if the other taxing authority provides the same services
5 to the territory as those provided by the district.

6 (c) The board, at its discretion, may hold a hearing to
7 consider the exclusion of the territory.

8 (d) The board shall hold a hearing to consider the exclusion
9 of the territory if the board receives a petition requesting a
10 hearing on the issue that is signed by at least five percent of the
11 qualified voters who own taxable real property in the district. A
12 petition submitted under this subsection must describe the proposed
13 new boundaries of the district or describe the boundaries of the
14 territory to be excluded from the district.

15 (e) The board shall issue a notice of a hearing to be held
16 under Subsection (c) or (d). The provisions of Section 775.015
17 relating to the procedure for issuing notice of a hearing to create
18 the district apply to the notice for the hearing under this
19 section. The notice must state:

20 (1) the proposed new boundaries of the district or of
21 the territory to be excluded;

22 (2) the time and place of the hearing; and

23 (3) that each person who has an interest in the
24 exclusion or nonexclusion of the territory may attend the hearing
25 and present the person's opinion for or against the exclusion of
26 the territory.

27 (f) After the hearing the board either may order an election

1 on the question of the exclusion of the territory or may declare by
2 resolution the territory excluded from the district. However, the
3 board may not declare the territory as excluded if the owners of at
4 least three percent of the property located in the district protest
5 the exclusion.

6 (g) If the board excludes the territory by resolution, the
7 board shall state in the resolution the new boundaries of the
8 district. The board shall file a copy of the resolution in the
9 office of the county clerk of each county in which the district is
10 located. The county clerk of each affected county shall record the
11 resolution in the county records. After the resolution is
12 recorded, the excluded territory is no longer a part of the
13 district.

14 (h) The board shall order an election on the question of
15 exclusion if:

16 (1) the owners of at least three percent of the
17 property located in the district protest the exclusion; or

18 (2) the board:

19 (A) despite the lack of a protest, refuses to
20 exclude the territory; and

21 (B) after refusing to exclude the territory,
22 receives a petition requesting an election that is signed by a
23 majority of the qualified voters who own taxable real property in
24 the territory proposed to be excluded.

25 (i) Except as otherwise required by the Election Code, the
26 election notice, the manner and time of giving the notice, and the
27 manner of holding the election are governed by the applicable

1 provisions of this chapter relating to the original election to
2 create the district.

3 (j) If a majority of the voters voting in the election favor
4 excluding the territory from the district, the board shall enter an
5 order declaring the territory excluded from the district and
6 stating the new boundaries of the district. The board shall file a
7 copy of the order in the office of the county clerk of each county
8 in which the district is located. The county clerk of each
9 affected county shall record the order in the county records.
10 After the order is recorded, the excluded territory is no longer a
11 part of the district.

12 (k) If a majority of the voters voting in the election do
13 not favor excluding the territory, the board may not act on a
14 petition to exclude all or part of the territory until the first
15 anniversary of the date of the most recent election to exclude the
16 territory from the district.

17 (l) The exclusion of territory under this section does not
18 diminish or impair the rights of the holders of any outstanding and
19 unpaid bonds, warrants, or other obligations of the district.

20 (m) Territory excluded under this section is not released
21 from the payment of its pro rata share of the district's
22 indebtedness. The district shall continue to levy taxes each year
23 on the excluded territory at the same rate levied on territory in
24 the district until the taxes collected from the excluded territory
25 equal its pro rata share of the indebtedness of the district at the
26 time the territory was excluded. The taxes collected under this
27 subsection shall be applied exclusively to the payment of the

1 excluded territory's pro rata share of the indebtedness. The owner
2 of all or part of the excluded territory may pay in full, at any
3 time, the owner's share of the pro rata share of the district's
4 indebtedness.

5 SECTION 272. Section 775.031, Health and Safety Code, is
6 amended by adding a new Subsection (b) and relettering the existing
7 Subsections (b) and (c) to conform to Section 1, Chapter 259
8 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989,
9 to read as follows:

10 (b) A district located wholly within a county with a
11 population of more than 2.4 million may not provide fire prevention
12 or fire-fighting services unless the district was originally a
13 rural fire prevention district and was converted under Section
14 775.056.

15 (c) A district may contract with the state or a political
16 subdivision for law enforcement services. A district may not
17 commission a peace officer or employ a person as a peace officer.

18 (d) ~~[(e)]~~ A district is not required to perform all the
19 functions authorized by this chapter. A district may be created to
20 provide limited services.

21 SECTION 273. Section 775.032(a), Health and Safety Code, is
22 amended to conform to Section 1, Chapter 606 (S.B. 88), Acts of the
23 71st Legislature, Regular Session, 1989, to read as follows:

24 (a) A business entity ~~[located-in-a-district]~~ is not subject
25 to the ad valorem tax authorized by this chapter or subject to the
26 district's powers if the business entity:

27 (1) provides ~~[is--providing]~~ its own fire prevention

1 and fire control services and owns or operates fire-fighting
2 equipment or systems equivalent to or better than those of a Class
3 I rural fire prevention district, metropolitan county fire
4 protection system, as defined by the State Board of Insurance, for
5 which the business entity receives the appropriate approval from
6 the Texas Industrial Fire Training Board of the State Firemen's and
7 Fire Marshals' Association of Texas [~~protection-on-the-date-the~~
8 ~~district-is-created~~];

9 (2) provides and operates its own equipped industrial
10 ambulance with a licensed driver and provides industrial victim
11 care by an emergency care attendant trained to provide the
12 equivalent of ordinary basic life support, as defined by Section
13 773.003 [~~receives-the-appropriate-certification-from-the-Commission~~
14 ~~on--Fire-Protection-Personnel-Standards-and-Education-and-the-Texas~~
15 ~~State-Board-of-Medical-Examiners~~]; and

16 (3) provides ordinary emergency services for the
17 business entity, such as emergency response, as defined by 29
18 C.F.R. Sec. 1910.120, rescue, disaster planning, or security
19 services, as recognized by the Texas Industrial Fire Training Board
20 of the State Firemen's and Fire Marshals' Association of Texas, and
21 provides the equipment, training, and facilities necessary to
22 safely handle emergencies and protect the business entity and its
23 neighbors in the community [~~owns--or--operates---fire-fighting,~~
24 ~~medical,~~~~--or--ambulance--equipment--equivalent-to-or-better-than-an~~
25 ~~emergency-services-district-or-metropolitan-county-fire--protection~~
26 ~~system,~~~~as-defined-by-the-State-Board-of-Insurance~~].

27 SECTION 274. Section 775.036(b), Health and Safety Code, is

1 amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of
2 the 71st Legislature, Regular Session, 1989, to read as follows:

3 (b) The board may require inspections in the district
4 relating to the causes and prevention of fires and medical
5 emergencies, except as provided by Section 775.031(b).

6 SECTION 275. Section 775.074, Health and Safety Code, is
7 amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of
8 the 71st Legislature, Regular Session, 1989, by adding Subsection
9 (f) to read as follows:

10 (f) The duties imposed by this section on a board do not
11 apply in a district subject to Section 775.0741.

12 SECTION 276. Subchapter E, Chapter 775, Health and Safety
13 Code, is amended to conform to Sections 1 and 2, Chapter 259
14 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989,
15 by adding Section 775.0741 to read as follows:

16 Sec. 775.0741. AD VALOREM TAX IN DISTRICT LOCATED WHOLLY IN
17 POPULOUS COUNTY. (a) The board of a district located wholly in a
18 county with a population of more than 2.4 million shall prepare
19 annually a budget for the district and shall submit the budget to
20 the commissioners court of the county for approval. The budget
21 shall be treated in the same manner as a budget submitted by a
22 county agency or department.

23 (b) The commissioners court shall annually impose an ad
24 valorem tax on all real and personal property located in the
25 district and subject to district taxation for the district's
26 support and the purposes authorized by this chapter.

27 (c) The tax may not exceed three cents on each \$100 of the

1 taxable value of property taxable by the district. If the district
2 was originally a rural fire prevention district and was converted
3 under Section 775.056, the tax may not exceed six cents on each
4 \$100 of the taxable value of property taxable by the district.

5 (d) In setting and certifying the tax rate, the
6 commissioners court is subject to the same duties that are imposed
7 on a board by Sections 775.074(b)-(e).

8 (e) The funds collected under this section shall be
9 deposited in a county depository except as provided by Section
10 775.072(b).

11 SECTION 277. Section 776.032(a), Health and Safety Code, is
12 amended to conform to Section 2, Chapter 606 (S.B. 88), Acts of the
13 71st Legislature, Regular Session, 1989, to read as follows:

14 (a) A business entity [~~located-in-a-district~~] is not subject
15 to the ad valorem tax authorized by this chapter or subject to the
16 district's powers if the business entity:

17 (1) provides its own fire prevention and fire control
18 [emergency] services and owns or operates fire-fighting equipment
19 or systems equivalent to or better than those of a Class I rural
20 fire prevention district, metropolitan county fire protection
21 system, as defined by the State Board of Insurance, for which the
22 business entity[

23 [+2}] receives the appropriate approval
24 [certification] from the Texas Industrial Fire Training Board of
25 the State Firemen's and Fire Marshals' Association of Texas
26 [Commission--on--Fire--Protection--Personnel--Standards--and--Education
27 and-the-Texas-State-Board-of-Medical-Examiners];

1 (2) provides and
2 ~~[(3)--owns-or]~~ operates its own equipped industrial
3 ambulance with a licensed driver and provides industrial victim
4 care by an emergency care attendant trained to provide the
5 equivalent of ordinary basic life support [~~fire-fighting--medical--~~
6 ~~or--ambulance--equipment--equivalent--to--or--better--than--a--Class--I~~
7 ~~emergency--services--district--or--metropolitan--fire--protection~~
8 ~~system~~], as defined by Section 773.003; and

9 (3) provides ordinary emergency services for the
10 business entity, such as emergency response, as defined by 29
11 C.F.R. Sec. 1910.120, rescue, disaster planning, or security
12 services, as recognized by the Texas Industrial Fire Training Board
13 of the State Firemen's and Fire Marshals' Association of Texas, and
14 provides the equipment, training, and facilities necessary to
15 safely handle emergencies and protect the business entity and its
16 neighbors in the community [~~the--State--Board--of--Insurance--on~~
17 ~~December-17-1987~~].

18 SECTION 278. Subchapter D, Chapter 794, Health and Safety
19 Code, is amended to conform to Section 1, Chapter 1132 (H.B. 2626),
20 Acts of the 71st Legislature, Regular Session, 1989, by adding
21 Section 794.0525 to read as follows:

22 Sec. 794.0525. EXCLUSION OF TAXING AUTHORITY PROVIDING ITS
23 OWN FIRE SERVICE. (a) The voters of a taxing authority located
24 within the boundaries of a district may exclude the taxing
25 authority from the district under this section if the taxing
26 authority provided services to fight fires throughout the taxing
27 authority's territory before the date of the election to confirm

1 the organization of the district under this chapter.

2 (b) The governing body of the taxing authority shall order
3 an election on the exclusion of the taxing authority from the
4 district on receipt of a petition signed by at least three percent
5 of the registered voters of the taxing authority or, on its own
6 motion, may call an election on the exclusion of the taxing
7 authority from the district. The provisions of the Election Code
8 relating to a petition authorized to be filed in connection with an
9 election apply to a petition submitted under this section.

10 (c) The provisions of this chapter relating to the election
11 to create a district apply to the election notice, the manner and
12 time of giving the notice, and the manner of holding the election
13 under this section.

14 (d) If a majority of the voters voting in the election favor
15 excluding the taxing authority from the district, the board shall
16 enter an order declaring the territory of the taxing authority
17 excluded from the district and describing the new boundaries of the
18 district.

19 (e) The board shall file a copy of the order in the office
20 of the county clerk of each county in which the district is
21 located. The county clerk of each affected county shall record the
22 order in the county records. After the order is recorded, the
23 excluded territory is no longer a part of the district.

24 (f) If a majority of the voters voting in the election do
25 not favor excluding the taxing authority from the district, a
26 subsequent election to exclude the same taxing authority from the
27 district under this section may not be held before the first

1 anniversary of the most recent election to exclude the territory.

2 (g) The exclusion of territory under this section does not
3 diminish or impair the rights of the holders of any outstanding and
4 unpaid bonds, warrants, or other obligations of the district.

5 (h) Territory excluded under this section is not released
6 from the payment of its pro rata share of the district's
7 indebtedness. The district shall continue to levy taxes each year
8 on the excluded territory at the same rate levied on territory in
9 the district until the amount of taxes collected from the excluded
10 territory equals its pro rata share of the indebtedness of the
11 district at the time the territory was excluded. The taxes
12 collected under this subsection shall be applied exclusively to the
13 payment of the excluded territory's pro rata share of the
14 indebtedness. The owner of all or part of the excluded territory
15 may pay in full, at any time, the owner's share of the pro rata
16 share of the district's indebtedness for which taxes are to be
17 collected.

18 SECTION 279. Subtitle C, Title 9, Health and Safety Code, is
19 amended to conform to Sections 1-3, Chapter 1092 (S.B. 806), Acts
20 of the 71st Legislature, Regular Session, 1989, by adding Chapter
21 795 to read as follows:

22 CHAPTER 795. USE OF CERTAIN FIRE TRUCKS

23 Sec. 795.001. DEFINITION. In this chapter, "fire
24 department" means:

- 25 (1) a volunteer fire department; or
26 (2) a department of a municipality, county, or special
27 district or authority that provides fire-fighting services.

1 Sec. 795.002. GOOD AND DEPENDABLE CONDITION REQUIRED. (a)

2 This chapter applies only to a fire truck in a good and dependable
3 operating condition. A fire truck is considered to be in a good
4 and dependable operating condition if:

5 (1) the truck complies with the standards established
6 by or under state law for the operating condition of a fire truck;
7 and

8 (2) the fire department that uses the truck has
9 secured certification by an underwriters laboratory that meets
10 NATIONAL FIRE PROTECTION STANDARDS 1901.

11 (b) A fire truck may not be considered to be in a condition
12 other than a good and dependable operating condition solely because
13 the truck is 25 years old or older.

14 Sec. 795.003. CERTAIN RESTRICTIONS INVOLVING AGE OF FIRE
15 TRUCK PROHIBITED. A contract, including any form of an insurance
16 contract, or an order, ordinance, rule, or similar decree of a
17 local government or state agency may not:

18 (1) restrict a fire department from using a fire truck
19 that is 25 years old or older; or

20 (2) prevent any benefit from being claimed because the
21 claim arises out of circumstances in which a fire truck that is 25
22 years old or older is used.

23 SECTION 280. Section 823.002, Health and Safety Code, is
24 amended to conform to Section 1, Chapter 314 (H.B. 2379), Acts of
25 the 71st Legislature, Regular Session, 1989, to read as follows:

26 Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES,
27 [~~MUNICIPALITIES~~] CLINICS, AND FACILITIES. This chapter does not

1 apply to:

2 (1) a county having a population of less than 75,000;

3 (2) ~~[an--animal--shelter--within--the--limits---of---a~~
4 ~~municipality-having-a-population-of-less-than-75,000;~~

5 [+3+] a veterinary medicine clinic; or

6 (3) [+4+] a livestock commission facility.

7 SECTION 281. Title 10, Health and Safety Code, is amended to
8 conform to Sections 1-8, Chapter 1118 (H.B. 1787), Acts of the 71st
9 Legislature, Regular Session, 1989 (Article 4447aa, Vernon's Texas
10 Civil Statutes), by adding Chapter 827 to read as follows:

11 CHAPTER 827. RIDING STABLES

12 Sec. 827.001. DEFINITIONS. In this chapter:

13 (1) "Board" means the Texas Board of Health.

14 (2) "Commissioner" means the commissioner of health.

15 (3) "Department" means the Texas Department of Health.

16 (4) "Person" means an individual, partnership,
17 corporation, trust, estate, joint-stock company, foundation,
18 political subdivision, or association of individuals.

19 (5) "Riding stable" means an establishment open to the
20 public that keeps one or more equine animals for hire for
21 recreational purposes for riding or driving.

22 Sec. 827.002. EXEMPTIONS. This chapter does not apply to:

23 (1) a youth camp regulated under Chapter 141 (Texas
24 Youth Camp Safety and Health Act); or

25 (2) a person operating a riding stable under a
26 concession contract in a national park located in the state.

27 Sec. 827.003. REGISTRATION OF RIDING STABLES. (a) A person

1 may not operate a riding stable without a certificate of
2 registration issued by the department for each separate location at
3 which a stable is to be operated.

4 (b) The board shall set reasonable fees for registration and
5 renewal of registration sufficient to pay all costs of the
6 registration program established under this chapter. A certificate
7 of registration is not transferable and is valid for two years from
8 the date of issuance or renewal unless suspended or revoked.

9 (c) As a condition to the grant or renewal of a certificate
10 of registration, the facilities and personnel of the applicant must
11 meet standards prescribed by the board for the humane care and
12 treatment, health and disease control, housing, sanitation, and
13 control of equine animals.

14 (d) An application for a certificate of registration to
15 operate a riding stable or for renewal of a certificate must be
16 made on the appropriate form prescribed by the board and must be
17 accompanied by the appropriate fee. The fees are nonrefundable.
18 Each application for a certificate or renewal of a certificate must
19 be accompanied by a signed statement issued by a veterinarian
20 licensed to practice in the state that states that the veterinarian
21 inspected the facilities of the applicant not earlier than the 90th
22 day before the date of the application and finds those facilities
23 to be in compliance with the standards prescribed under Section
24 827.004(a). The applicant shall choose and compensate the
25 inspecting veterinarian.

26 Sec. 827.004. POWERS AND DUTIES OF BOARD AND DEPARTMENT.

27 (a) The board shall establish standards that are for the operation

1 of riding stables and designed to ensure:

2 (1) the maintenance of sanitary conditions in the
3 facilities that keep equine animals;

4 (2) the provision of proper ventilation for those
5 facilities;

6 (3) the provision of humane care and treatment of
7 equine animals, including the provision of adequate nutrition and
8 water; and

9 (4) the exercise of reasonable care to protect the
10 health of equine animals kept in riding stable facilities and to
11 prevent the spread of disease among the animals.

12 (b) The board may adopt rules it considers necessary to
13 carry out this chapter.

14 (c) The board may enter into contracts or other agreements
15 necessary to carry out this chapter.

16 (d) The department may use any available funds to pay for
17 material, equipment, and services covered by a contract or other
18 agreement made by the board.

19 Sec. 827.005. INSPECTIONS. If the department has reasonable
20 grounds to believe that the standards established by the board have
21 been violated, the department or its agents may enter the facility
22 or other premises regulated by this chapter at reasonable times to
23 determine compliance with the standards. For this purpose, the
24 department shall employ agents and shall prescribe qualifications
25 for them.

26 Sec. 827.006. DENIAL, SUSPENSION, OR REVOCATION OF
27 CERTIFICATE OF REGISTRATION. (a) If the commissioner finds after

1 inspection that an applicant has failed to comply with the minimum
2 standards for the humane care and treatment, health and disease
3 control, housing, sanitation, and control of equine animals, the
4 commissioner:

5 (1) may not issue a certificate of registration to the
6 applicant;

7 (2) shall give the applicant written notice of the
8 denial and the reasons for it;

9 (3) shall conduct a hearing on the denial not later
10 than the 31st day after the date a request for a hearing is
11 received from the applicant; and

12 (4) may not issue a certificate of registration if
13 after the hearing the commissioner finds noncompliance with the
14 standards.

15 (b) If the commissioner finds after inspection that a
16 registered riding stable has failed to comply with the minimum
17 standards, the commissioner shall give written notice to the
18 registrant of a hearing to be held not later than the 31st day
19 after the date the notice is given. If after the hearing the
20 commissioner finds noncompliance with the standards, the
21 commissioner shall revoke the certificate of registration.

22 (c) If the commissioner finds after inspection that a
23 registrant has committed a gross violation of the standards, the
24 commissioner, after giving notice to the registrant, may suspend
25 the certificate of registration pending a hearing for a period not
26 to exceed 31 days and shall give written notice of a hearing to be
27 held not later than the 31st day after the date the notice is

1 given. If after the hearing the commissioner finds noncompliance
2 with the standards, the commissioner shall revoke the certificate
3 of registration.

4 Sec. 827.007. SEIZURE AND SALE OF ANIMALS. (a) If the
5 commissioner suspends or revokes a certificate of registration for
6 a riding stable, the commissioner may apply to a justice of the
7 peace for a writ ordering a sheriff or other peace officer to seize
8 any of the animals kept at the riding stable. The justice of the
9 peace shall issue the writ if the justice finds probable cause to
10 believe that any of the animals are in danger of being harmed by a
11 gross violation of standards required for registration.

12 (b) Employees of the department are entitled to accompany
13 the peace officer carrying out the seizure.

14 (c) If the department revokes the certificate of
15 registration after a hearing, the commissioner shall order that the
16 animals be sold at public auction unless before the sale the
17 commissioner's action to revoke the certificate is reversed on
18 judicial review. The person whose registration was revoked or that
19 person's agent may not participate in the auction.

20 (d) Proceeds from the sale of the animals shall be applied
21 first to the expenses incurred in conducting the sale. The
22 commissioner shall return the remainder of the proceeds to the
23 person whose certificate of registration was revoked.

24 (e) If the commissioner is unable to sell an animal at
25 auction, the commissioner may have the animal destroyed in a humane
26 manner or may give the animal to a nonprofit animal shelter, pound,
27 or society for the protection of animals.

1 Sec. 827.008. INFORMAL DISPOSITION OF MATTER. Sections
2 827.006 and 827.007 do not preclude an informal disposition of a
3 matter by an agreed order between a registrant and the department.

4 Sec. 827.009. APPEAL. A person whose application for a
5 certificate of registration or renewal has been denied or whose
6 certificate of registration has been revoked by the commissioner is
7 entitled to judicial review in accordance with the Administrative
8 Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas
9 Civil Statutes).

10 Sec. 827.010. DISPOSITION OF FEES. The fees collected under
11 this chapter may be used by the department only for the
12 administration and enforcement of this chapter.

13 Sec. 827.011. PENALTY. (a) A person commits an offense if
14 the person intentionally or knowingly operates a riding stable in
15 violation of Section 827.003(a).

16 (b) An offense under this section is a Class B misdemeanor.
17 Each day of violation is a separate offense.

18 SECTION 282. Article 59.04(f), Code of Criminal Procedure,
19 is amended to conform to Section 1, Chapter 838 (S.B. 539), Acts of
20 the 71st Legislature, Regular Session, 1989, to read as follows:

21 (f) If the property is an aircraft or a part of an aircraft,
22 and if there is reasonable cause to believe that a perfected
23 security instrument affects the property, the attorney representing
24 the state shall request an administrator of the Federal Aviation
25 Administration to identify from the records of that agency the
26 record owner of the property and the holder of the perfected
27 security instrument. The attorney representing the state shall

1 also notify the Department of Public Safety in writing of the fact
2 that an aircraft has been seized and shall provide the department
3 with a description of the aircraft.

4 SECTION 283. Chapter 59, Code of Criminal Procedure, is
5 amended by adding Article 59.11 to conform to Section 2, Chapter
6 838 (S.B. 539), Acts of the 71st Legislature, Regular Session,
7 1989, to read as follows:

8 Art. 59.11. REPORT OF SEIZED AND FORFEITED AIRCRAFT. Not
9 later than the 10th day after the last day of each quarter of the
10 fiscal year, the Department of Public Safety shall report to the
11 State Aircraft Pooling Board:

12 (1) a description of each aircraft that the department
13 has received by forfeiture under this chapter during the preceding
14 quarter and the purposes for which the department intends to use
15 the aircraft; and

16 (2) a description of each aircraft the department
17 knows to have been seized under this chapter during the preceding
18 quarter and the purposes for which the department would use the
19 aircraft if it were forfeited to the department.

20 PRELIMINARY DRAFT

21 CROSS-REFERENCE CORRECTIONS

22 SECTION 284. In the attached table of cross-reference
23 amendments, a reference described in Column A is amended to read as
24 provided by the corresponding reference described in Column B, at
25 each place at which the reference appears in an article or act, as
26 compiled in Vernon's Texas Civil Statutes, or in a code cited in
27 Column C:

TABLE OF CROSS-REFERENCE AMENDMENTS

Column A Reference To Be Amended	Column B New Reference	Column C Law In Which The Reference Appears
(1) "Articles 912a-10 et seq., Vernon's Revised Civil Statutes of Texas"	(1) "Chapter 711 or 712, Health and Safety Code"	(1) Subdivision 1(b), Article 6674w-3
(2) "Section 3, 9-1-1 Emergency Number Act (Article 1432c, Vernon's Texas Civil Statutes)"	(2) "Section 772.001, Health and Safety Code"	(2) Section 42.061(a), Penal Code
(3) "Section 1, Chapter 909, Acts of the 69th Legislature, Regular Session, 1985 (Article 1432f, Vernon's Texas Civil Statutes)"	(3) "Section 771.001, Health and Safety Code"	(3) Section 101.062(a), Civil Practice and Remedies Code
(4) "the Health Facilities Development Act (Article 1528j, Vernon's Texas Civil Statutes)"	(4) "Chapter 221, Health and Safety Code"	(4) Section A(2)(a), Article 1302-7.06 Section 4, Article 1528m
(5) "Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes)"	(5) "Chapter 794, Health and Safety Code"	(5) Section 1(13), Article 6243e.3
(6) "the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes)"	(6) "Chapter 104 or 225, Health and Safety Code"	(6) Section (a), Article 5547-93
(7) "Subdivision (2), Subsection (c), Section 9.03, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)"	(7) "Section 81.103(d), Health and Safety Code"	(7) Section (c), Article 21.31, Code of Criminal Procedure

Column A Reference To Be Amended	Column B New Reference	Column C Law In Which The Reference Appears
(8) "Section 4.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)"	(8) "Section 81.083, Health and Safety Code"	(8) Section 24(a), Article 42.12, Code of Criminal Procedure
(9) "Article 8 of the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)"	(9) "Subchapter G, Chapter 81, Health and Safety Code"	(9) Section 24(a), Article 42.12, Code of Criminal Procedure
(10) "Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)"	(10) "Section 81.101, Health and Safety Code"	(10) Section (a), Article 46A.01, Code of Criminal Procedure Section 22.023(a), Human Resources Code Section (b)(1), Article 1.24C, Insurance Code Section (a), Article 3.51-6D, Insurance Code Section (a), Article 3.70-3A, Insurance Code Section (a)(1), Article 21.21-4, Insurance Code Section 157.006(a), Local Government Code Section 22.012(b), Penal Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(11)	"the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes)"	(11)	"Chapter 35, Health and Safety Code"	(11)	Section 110.001(1)(E), Civil Practice and Remedies Code Section 10(b)(6), Article 3.77, Insurance Code (as added by Chapter 1094, Acts of the 71st Legislature, Regular Session, 1989)
(12)	"Chapter 216, Acts of the 49th Legislature, 1945 (Article 4419c, Vernon's Texas Civil Statutes)"	(12)	"Chapter 35, Health and Safety Code"	(12)	Section 11.42(a), Education Code
(13)	"the Hospital Authority Act (Article 4437e, Vernon's Texas Civil Statutes)"	(13)	"Chapter 262, Health and Safety Code"	(13)	Section 1(1)(H), Article 717q Section A(2)(a), Article 1302-7.06
(14)	"the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes)"	(14)	"Chapter 241, Health and Safety Code"	(14)	Section 84.007(e), Civil Practice and Remedies Code Section 2(11), Article 3.77, Insurance Code (as added by Chapter 1094, Acts of the 71st Legislature, Regular Session, 1989) Section 38.01(7), Penal Code Section 1.03(a)(5)(A), Article 4495b Section 5(7), Article 4542a-1
(15)	"Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's	(15)	"Chapter 241, Health and Safety Code"	(15)	Section 2(3), Article 5.15-1, Insurance Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

Texas Civil Statutes)"

Section (e), Article 5.15-2,
Insurance Code

Section 1.03(a)(5), Article 4590i

(16) "Chapter 56, Acts of the 62nd
Legislature, Regular Session, 1971
(Article 4437f-1, Vernon's Texas
Civil Statutes)"

(16) "Subchapter A, Chapter 301, Health
and Safety Code"

(16) Section 171.073, Tax Code

Section A(2)(a), Article 1302-7.06

(17) "the Texas Primary Health Care
Services Act (Article 4438d,
Vernon's Texas Civil Statutes)"

(17) "Chapter 31, Health and Safety
Code"

(17) Section 110.001(1)(D), Civil
Practice and Remedies Code

(18) "the Indigent Health Care and
Treatment Act (Article 4438f,
Vernon's Texas Civil Statutes)"

(18) "Chapter 61, Health and Safety
Code"

(18) Section 110.001(1)(A), Civil
Practice and Remedies Code

Section 26.04(e)(4), Tax Code (as
amended by Chapters 699 and 988,
Acts of the 70th Legislature,
Regular Session, 1987)

(19) "the Indigent Health Care and
Treatment Act (Article 4438f,
Vernon's Texas Civil Statutes),
said County shall assist the
prisoner in applying for
reimbursement through that Act"

(19) "Chapter 61, Health and Safety
Code, said county shall assist the
prisoner in applying for
reimbursement through that chapter"

(19) Section (d), Article 104.002, Code
of Criminal Procedure

(20) "Chapter 413, Acts of the 53rd
Legislature, Regular Session, 1953
(Article 4442c, Vernon's Texas
Civil Statutes)"

(20) "Chapter 242, Health and Safety
Code"

(20) Section 84.007(e), Civil Practice
and Remedies Code

Section 101.051(2), Human Resources

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

			Code
			Section 102.001(1), Human Resources Code
			Section 106.001(1), Human Resources Code
			Section 106.001(2), Human Resources Code
(21) "Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes). Failure to report abuse, exploitation, or neglect that occurs in a facility licensed under that Act is governed by that Act"	(21) "Chapter 242, Health and Safety Code. Failure to report abuse, exploitation, or neglect that occurs in a facility licensed under that chapter is governed by that chapter"	(21)	Section 48.0361(b), Human Resources Code
(22) "Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), the person shall report the information as prescribed by Section 16 of that Act, and the Texas Department of Health shall investigate the report as prescribed by that section"	(22) "Chapter 242, Health and Safety Code, the person shall report the information as prescribed by Subchapter E of that chapter, and the Texas Department of Health shall investigate the report as prescribed by that subchapter"	(22)	Section 48.036(c), Human Resources Code
(23) "Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas	(23) "Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that	(23)	Section 22.01(b)(1), Penal Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that subsection"

- (24) "Subsection (a)(6), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection"

- (25) "Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric

section, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that section"

- (24) "Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by causing bodily injury to a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section"

- (25) "Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that section, and the offense is committed by threatening a patient

- (24) Section 22.01(b)(2), Penal Code

- (25) Section 22.01(c)(1), Penal Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

treatment at an institution described in that subsection, and the offense is committed by threatening a patient or resident of an institution described in that subsection"

or resident of an institution described in that section"

(26) "Subsection (a)(6), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that subsection"

(26) "Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section"

(26) Section 22.01(c)(2), Penal Code

(27) "Article 4442C, Vernon's Texas Civil Statutes or any amendment thereto"

(27) "Chapter 242, Health and Safety Code"

(27) Section 2(3), Article 4442d

(28) "Section 3.04, Chapter 636, Acts of the 63rd Legislature, Regular Session, 1973 (Article 4447o, Vernon's Texas Civil Statutes)"

(28) "Section 773.057, Health and Safety Code"

(28) Section (g), Article 6675a-3

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(29)	"Chapter 195, Acts of the 64th Legislature, 1975 (Article 4447r, Vernon's Texas Civil Statutes)"	(29)	"Subchapter B, Chapter 301, Health and Safety Code"	(29)	Section 171.075, Tax Code Section A(2)(a), Article 1302-7.06
(30)	"Chapter 642, Acts of the 66th Legislature, Regular Session, 1979 (Article 4447u, Vernon's Texas Civil Statutes)"	(30)	"Chapter 142, Health and Safety Code"	(30)	Section 102.001(2), Human Resources Code Section 106.001(3), Human Resources Code Section 1(2), Article 3.70-3B, Insurance Code
(31)	"the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes)"	(31)	"Chapter 32, Health and Safety Code"	(31)	Section 110.001(1)(C), Civil Practice and Remedies Code Section 131.0042(b)(1), Human Resources Code
(32)	"Section 2, Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes)"	(32)	"Section 431.002, Health and Safety Code"	(32)	Section 22.09(a)(1), Penal Code
(33)	"the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes)"	(33)	"Chapter 431, Health and Safety Code"	(33)	Section 4542a-1 17(b)(1)(B), Article Section 4542a-1 17(b)(1)(C), Article Section 4542a-1 26(b)(4)(D), Article

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

- | | | |
|--|--|---|
| (34) "Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes)" | (34) "Chapter 484, Health and Safety Code" | (34) Section 21.3011(b)(5), Education Code

Section 21.302(3), Education Code

Section 2(3), Article 3.51-9, Insurance Code |
| (35) "Section 2, Chapter 323, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-13a, Vernon's Texas Civil Statutes)" | (35) "Section 484.002, Health and Safety Code" | (35) Section 51.03(b)(5), Family Code |
| (36) "Section 2(a), Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes)" | (36) "Section 483.001, Health and Safety Code" | (36) Section 499.004(e)(3), Government Code |
| (37) "Section 2, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes)" | (37) "Section 483.001, Health and Safety Code" | (37) Section 361.082(c)(3), Local Government Code |
| (38) "the Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes)" | (38) "Chapter 483, Health and Safety Code" | (38) Section 4, Article 18.20, Code of Criminal Procedure

Section 5, Article 6252-13d |
| (39) "the Texas dangerous drug law, Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes)" | (39) "Chapter 483, Health and Safety Code" | (39) Section 21.3011(b)(2)(B), Education Code

Section 21.302(2), Education Code |

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(40) "Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes)"

(40) "Chapter 483, Health and Safety Code"

(40) Section 51.305(c), Government Code
Section 3.08(4)(D), Article 4495b
Section 3.08(4)(F), Article 4495b

(41) "Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes)"

(41) "Chapter 483, Health and Safety Code"

(41) Section 4.01(b), Article 4495b
Section 4.10, Article 4495b
Section 4.11(a), Article 4495b
Article 4506a
Section 12(g), Article 4542a
Section 12 (final paragraph), Article 4542a
Section 12A, Article 4542a
Section 17A, Article 4542a
Section 5(13), Article 4542a-1
Section 2, Article 4549
Article 4549-1
Section (g), Article 4573 (as added by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)
Article 4573a

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(42) "the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"

(42) "Chapter 481, Health and Safety Code"

(42) Section 125.001, Civil Practice and Remedies Code

Section 125.002(c)(4), Civil Practice and Remedies Code

Section 125.004(a), Civil Practice and Remedies Code

Section 125.021(7), Civil Practice and Remedies Code

Section 125.041(6), Civil Practice and Remedies Code

Section 21.3011(b)(2)(A), Education Code

Section 21.302(1), Education Code

Section 54.042(a)(2), Family Code

Section 2(2), Article 3.51-9, Insurance Code

Article 5.06-5(a), Insurance Code (as added by Chapter 568, Acts of the 71st Legislature, Regular Session, 1989)

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

		Article 5.06-5(b), Insurance Code (as added by Chapter 568, Acts of the 71st Legislature, Regular Session, 1989)
		Section 2, Article 46f-3
		Section 3.08(4)(B), Article 4495b
		Section 3.08(4)(D), Article 4495b
		Section 3.08(4)(F), Article 4495b
		Section 3(8)(B), Article 6687b-2
		Section 7(b), Article 8890
(43) "the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)"	(43) "Chapter 481, Health and Safety Code"	(43) Section 12(g), Article 4542a (as amended by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)
		Section 5(10), Article 4542a-1
		Section 5(11), Article 4542a-1
(44) "the Controlled Substances Act or"	(44) "the Controlled Substances Act, Section 485.033, Health and Safety Code, or the"	(44) Section 26A(d)(1), Article 4542a-1 Section 26A(d)(2), Article 4542a-1
(45) "Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(45) "Section 481.002, Health and Safety Code"	(45) Article 17.03(f), Code of Criminal Procedure Section 361.082(c)(2), Local

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

Government Code

Section 361.082(c)(4), Local
Government Code

Section 361.082(c)(5), Local
Government Code

Section 31.097(a)(3), Parks and
Wildlife Code

Section 31.097(a)(4), Parks and
Wildlife Code

Section 31.097(a)(5), Parks and
Wildlife Code

Section 159.001(1), Tax Code

Section 159.001(2), Tax Code

Section 159.001(4), Tax Code

Section 3(j)(2), Article 67011-5

Section 3(j)(3), Article 67011-5

(46) "Section 1.02(4), Texas Controlled
Substances Act (Article 4476-15,
Vernon's Texas Civil Statutes)"

(46) "Section 481.002, Health and Safety
Code"

(46) Article 17.42(b), Code of Criminal
Procedure (as added by Chapter 785,
Acts of the 71st Legislature,
Regular Session, 1989)

Column A Reference To Be Amended	Column B New Reference	Column C Law In Which The Reference Appears
(47) "Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(47) "Section 481.002, Health and Safety Code"	(47) Section (a)(5), Article 67011-1
(48) "Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(48) "Section 481.002, Health and Safety Code"	(48) Section (a)(6), Article 67011-1
(49) "Section 3.09 of the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)"	(49) "Section 481.075, Health and Safety Code"	(49) Section 3(a)(18), Article 6252-17a
(50) "Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)"	(50) "Sections 481.107(b) through (e), Health and Safety Code"	(50) Article 44.04(b), Code of Criminal Procedure
(51) "Section 4.012(b), 4.052, or 4.053 of that Act"	(51) "Sections 481.107(b) through (e), 481.122, or 481.126, Health and Safety Code"	(51) Section 106.008(b)(2), Human Resources Code
(52) "Section 4.052 or 4.053, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), an offense listed in Section 4.012(b) of that Act"	(52) "Sections 481.107(b) through (e), 481.122, or 481.126, Health and Safety Code"	(52) Section 5(d), Article 42.12, Code of Criminal Procedure
(53) "Section 4.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(53) "Section 481.109, Health and Safety Code"	(53) Article 55.01(2), Code of Criminal Procedure

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(54) "Section 5.08, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(54) "Article 59.06, Code of Criminal Procedure"	(54) Section 159.205, Tax Code
(55) "a controlled substance as defined in the Texas Controlled Substances Act or a dangerous drug as defined in the dangerous drug law (Articles 4476-15 and 4476-14, Vernon's Texas Civil Statutes)"	(55) "a controlled substance as defined in Chapter 481, Health and Safety Code, or a dangerous drug as defined in Chapter 483, Health and Safety Code"	(55) Section 6.06(a)(10), Article 179e Section 7.04(9), Article 179e
(56) "the Texas Controlled Substances Act"	(56) "Chapter 481, Health and Safety Code"	(56) Section 25.06(a)(5), Alcoholic Beverage Code
(57) "the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(57) "Chapter 481, Health and Safety Code, or Section 485.033, Health and Safety Code"	(57) Section (b)(2), Article 17.03, Code of Criminal Procedure Section 4, Article 18.20, Code of Criminal Procedure Section 11.033(d)(3), Education Code Section 11.064(e)(3), Education Code Section 16.032(e)(9), Family Code Section 22.006(d)(3), Human Resources Code Section 106.003(b)(3), Human Resources Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(58) "the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)"

(58) "Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code"

Section 135.003(d)(4), Human Resources Code

(58) Section 4.01(b), Article 4495b

Section 4.10, Article 4495b

Section 4.11(a), Article 4495b

Article 4506a

Section 12 (final paragraph), Article 4542a (as amended by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)

Section 12A, Article 4542a (as added by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)

Section 17A, Article 4542a (as added by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)

Section 2, Article 4549

Article 4549-1

Section (g), Article 4573 (as added by Chapter 52, Acts of the 67th Legislature, Regular Session, 1981)

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

			Article 4573a
			Section 14(a), Article 8890
			Section 14(c), Article 8890
(59) "the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(59) "Chapter 481, Health and Safety Code, Section 485.033, Health and Safety Code"	(59)	Section 51.305(c), Government Code Section 5, Article 6252-13d
(60) "the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(60) "Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code"	(60)	Section 24(a), Article 42.12, Code of Criminal Procedure Article 104.003(a), Code of Criminal Procedure Section 106.008(b), Human Resources Code Section (a)(4), Article 6166a-4
(61) "the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(61) "Chapter 485, Health and Safety Code"	(61)	Section 21.302(3), Education Code
(62) "Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(62) "Section 485.001, Health and Safety Code"	(62)	Section 2(3), Article 3.51-9, Insurance Code
(63) "Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)"	(63) "Sections 485.031 through 485.035, Health and Safety Code"	(63)	Section 21.3011(b)(5), Education Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(64)	"the Controlled Substances Act or Dangerous Drug Act or rules relating to those acts"	(64)	"the Controlled Substances Act or Dangerous Drug Act or a rule relating to those acts or any provision of Sections 485.031-485.035, Health and Safety Code, or a rule adopted under Section 485.011, Health and Safety Code"	(64)	Section 26(a)(9), Article 4542a-1
(65)	"Section 1, Chapter 306, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-15b, Vernon's Texas Civil Statutes)"	(65)	"Section 482.001, Health and Safety Code"	(65)	Section 159.001(5), Tax Code
(66)	"Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343"	(66)	"Section 193.005, Health and Safety Code"	(66)	Section 6(6), Article 49.25, Code of Criminal Procedure
(67)	"Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927"	(67)	"Section 193.004, Health and Safety Code"	(67)	Section 6(7), Article 49.25, Code of Criminal Procedure
(68)	"Section 21, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 54a, Article 4477, Vernon's Texas Civil Statutes)"	(68)	"Subchapter C, Chapter 191, Health and Safety Code"	(68)	Section 118.015, Local Government Code
(69)	"pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule	(69)	"pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox"	(69)	Section 10, Article 49.25, Code of Criminal Procedure

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

77, Sanitary Code of Texas, Article 4477, Revised Civil Statutes of Texas, 1925"

(70)	"Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes)"	(70)	"Chapter 341, Health and Safety Code"	(70)	Section 26.130, Water Code Section 4(c)(8), Article 9003 Section 5(b), Article 9003 Section 7(a)(3), Article 9003
(71)	"Chapter 178, Acts of the 49th Legislature, 1945 (Article 4477-1, Vernon's Texas Civil Statutes)"	(71)	"Chapter 341, Health and Safety Code"	(71)	Section 16.343(b), Water Code
(72)	"Chapter 178, Acts of the 49th Legislature, 1945, and particularly with Section 19 thereof (Section 19, Article 4477-1, Vernon's Texas Civil Statutes)"	(72)	"Chapter 341, Health and Safety Code, and particularly with Section 341.016, Health and Safety Code"	(72)	Section 15(b), Article 5182a
(73)	"the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes)"	(73)	"Chapter 826, Health and Safety Code"	(73)	Section 161.042, Agriculture Code
(74)	"Section 3, Chapter 677, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-6b, Vernon's Texas Civil Statutes)"	(74)	"Section 823.004, Health and Safety Code"	(74)	Section 3(c), Article 8890
(75)	"the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)"	(75)	"Chapter 361, Health and Safety Code"	(75)	Section 31.066(b), Natural Resources Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

			Section 5.013(a)(12), Water Code		
			Section 26.264(1), Water Code		
			Section 26.267(c), Water Code		
			Section 26.268(a), Water Code		
			Section 31.002(2), Water Code		
			Section 1, Article 6701d-19a		
(76)	"Section 2(15), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)"	(76)	"Section 361.003, Health and Safety Code"	(76)	Section 27.002(15), Water Code
(77)	"Section 4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)"	(77)	"Section 361.063, Health and Safety Code"	(77)	Section 27.018(d), Water Code
(78)	"Article 4477-7e, Revised Statutes"	(78)	"Chapter 366, Health and Safety Code"	(78)	Section 16.343(c), Water Code
(79)	"Section 6A, Article 4477-7e, Revised Statutes, as added by Chapter 406, Acts of the 70th Legislature, Regular Session, 1987"	(79)	"Section 366.102, Health and Safety Code"	(79)	Section 17.927(b)(5)(A), Water Code
(80)	"the Texas Litter Abatement Act"	(80)	"Article V, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981"	(80)	Section 31.03(c)(6)(B), Penal Code Section (a)(1-A)(iv)(G), Article 6686

Column A Reference To Be Amended	Column B New Reference	Column C Law In Which The Reference Appears
(81) "the Texas Litter Abatement Act"	(81) "Article IV, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981"	(81) Section 6(b)(5), Article 6674v.2
(82) "Texas Litter Abatement Act"	(82) "Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981"	(82) Section 216.013(d), Local Government Code Section 12(a)(1), Article 6674v-3 Section (b), Article 6687-2
(83) "the Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes) and that is subject to Section 4.08 of that Act"	(83) "Article IV, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), and that is subject to Section 4.08 of that law"	(83) Section 2(a)(2), Article 2372dd-1
(84) "Chapter 886, Acts of the 69th Legislature, Regular Session, 1985 (Article 4477-70, Vernon's Texas Civil Statutes)"	(84) "Chapter 37, Health and Safety Code"	(84) Section 13(c) (introductory provision), Article 4512b Section 13(c)(2), Article 4512b
(85) "Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 4494i, Vernon's Texas Civil Statutes)"	(85) "Subchapter B, Chapter 265, Health and Safety Code"	(85) Section 841.001(14), Government Code
(86) "the County Hospital Authority Act (Article 4494r, Vernon's Texas Civil Statutes)"	(86) "Chapter 264, Health and Safety Code"	(86) Section 1(1)(H), Article 717q Section A(2)(a), Article 1302-7.06
(87) "Article 4589, Revised Statutes"	(87) "Section 691.008, Health and Safety Code"	(87) Section 404.093(b)(5), Government Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(88) "the Texas Anatomical Gift Act (Article 4590-2, Vernon's Texas Civil Statutes)"	(88) "Chapter 692, Health and Safety Code"	(88) Section 11B(a), Article 6687b
(89) "Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes)"	(89) "Chapter 401, Health and Safety Code"	(89) Section 2(6), Article 21.49-3, Insurance Code Section 26.131(a)(2), Water Code
(90) "Chapter 72, Acts of the 57th Legislature, 1961 (Article 4590f, Vernon's Texas Civil Statutes)"	(90) "Chapter 401, Health and Safety Code"	(90) Section 14b, Article 4512b
(91) "Section 3.07A of the Texas Low-Level Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil Statutes)"	(91) "Subchapter E, Chapter 402, Health and Safety Code"	(91) Section 51.0511, Natural Resources Code
(92) "the Hazard Communication Act (Article 5182b, Vernon's Texas Civil Statutes)"	(92) "Chapter 502, Health and Safety Code"	(92) Section 125.017(a), Agriculture Code
(93) "Chapter 436, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 5221c, Vernon's Texas Civil Statutes)"	(93) "Chapter 755, Health and Safety Code"	(93) Section 15(b), Article 5182a
(94) "these previously existing articles"	(94) "those laws"	(94) Section 15(b), Article 5182a
(95) "the Texas boiler inspection law, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937"	(95) "Chapter 755, Health and Safety Code"	(95) Section 2(7), Article 8861

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(Article 5221c, Vernon's Texas Civil Statutes)"

(96) "Section 1(b)(3), Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes)"

(97) "(B) the Texas Alcohol and Drug Abuse Services Act (Article 5561c-2, Vernon's Texas Civil Statutes);

(C) Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes); or

(D) Section 11.10 or 17.03, Family Code."

(98) "Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes)"

(99) "Chapter 281, Acts of the 51st Legislature, Regular Session, 1949 (Article 9202, Vernon's Texas Civil Statutes)"

(96) "Section 462.001, Health and Safety Code"

(97) "(B) Chapter 462, Health and Safety Code; or

(C) Section 11.10 or 17.03, Family Code."

(98) "Chapter 467, Health and Safety Code"

(99) "Subchapter A, Chapter 756, Health and Safety Code"

(96) Section 3(n), Probate Code

(97) Articles 26.058(g)(3)(B)-(D), Code of Criminal Procedure

(98) Section (g)(3), Article 4525
Section 8, Article 4525a
Section 14(3), Article 4525a
Section 3(b)(3), Article 4525b

(99) Section 52.171(g), Water Code

Column A
Reference To
Be Amended

Column B
New Reference

Column C
Law In Which The
Reference Appears

(100) "This subchapter does not repeal the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter D of Chapter 76"

(100) "This subchapter does not repeal Subchapter B, Chapter 436, Health and Safety Code, or the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76"

(100) Section 33.005(a),
Resources Code

Natural

1 SECTION 285. (a) The following laws are repealed:

2 (1) Section 1, Chapter 215, Acts of the 49th
3 Legislature, Regular Session, 1945 (Article 695e, Vernon's Texas
4 Civil Statutes); and

5 (2) Chapter 194, Acts of the 67th Legislature, Regular
6 Session, 1981 (Article 4476-2a, Vernon's Texas Civil Statutes);

7 (b) The following provisions of the Acts of the 71st
8 Legislature, Regular Session, 1989, are repealed:

9 (1) Chapter 36;

10 (2) Chapter 55;

11 (3) Section 3, Chapter 72;

12 (4) Sections 1-3, Chapter 93;

13 (5) Chapter 152;

14 (6) Chapter 166;

15 (7) Chapter 172;

16 (8) Chapter 206;

17 (9) Chapter 208;

18 (10) Section 13, Chapter 255;

19 (11) Chapter 259;

20 (12) Sections 6-9, Chapter 271;

21 (13) Chapter 292;

22 (14) Chapter 312;

23 (15) Chapter 314;

24 (16) Chapter 322;

25 (17) Chapter 338;

26 (18) Sections 1-9 and 11, Chapter 372;

27 (19) Section 36, Chapter 375;

1 (20) Chapter 412;
2 (21) Chapter 434;
3 (22) Chapter 444;
4 (23) Chapter 493;
5 (24) Chapter 494;
6 (25) Chapter 500;
7 (26) Chapter 530;
8 (27) Chapter 538;
9 (28) Chapter 569;
10 (29) Section 1, Chapter 580;
11 (30) Sections 1, 48, 49, 51, 52, 63, and 64, Chapter
12 584;
13 (31) Sections 1 and 2, Chapter 606;
14 (32) Chapter 607;
15 (33) Section 8, Chapter 622;
16 (34) Sections 3.10 and 3.11, Chapter 624;
17 (35) Chapter 631;
18 (36) Section 3, Chapter 639;
19 (37) Chapter 660;
20 (38) Sections 1-4, Chapter 661;
21 (39) Chapter 666;
22 (40) Chapter 674;
23 (41) Chapter 681;
24 (42) Chapter 694;
25 (43) Sections 1-5, Chapter 696;
26 (44) Chapter 701;
27 (45) Chapter 732;

1 (46) Chapter 770;
2 (47) Chapter 838;
3 (48) Chapter 840;
4 (49) Section 1, Chapter 879;
5 (50) Section 2, Chapter 889;
6 (51) Chapter 895;
7 (52) Chapter 899;
8 (53) Chapter 913;
9 (54) Sections 3-8, Chapter 920;
10 (55) Sections 1 and 3, Chapter 925;
11 (56) Chapter 930;
12 (57) Chapter 937;
13 (58) Chapter 964;
14 (59) Sections 2, 3, and 5, Chapter 991;
15 (60) Chapter 1011;
16 (61) Chapter 1013;
17 (62) Sections 1-9, 24, 25, 29, and 30, Chapter 1027;
18 (63) Sections 2.08-2.12, and 5.01(9) and (10), Chapter
19 1039;
20 (64) Sections 2 and 3, Chapter 1041;
21 (65) Chapter 1043;
22 (66) Chapter 1049;
23 (67) Sections 7-9 and 11-16, Chapter 1085;
24 (68) Chapter 1089;
25 (69) Chapter 1092;
26 (70) Sections 1 and 2, Chapter 1111;
27 (71) Sections 1-8, Chapter 1118;

1 (72) Sections 1-14, Chapter 1129;
2 (73) Chapter 1132;
3 (74) Sections 8-10, Chapter 1141;
4 (75) Section 4, Chapter 1143;
5 (76) Sections 3 and 4, Chapter 1148;
6 (77) Section 1, Chapter 1175;
7 (78) Section 2, Chapter 1181;
8 (79) Chapter 1190;
9 (80) Sections 1, 2, 5, 6, 11, 12, and 19-33, Chapter
10 1195;
11 (81) Section 4, Chapter 1225;
12 (82) Sections 5 and 6, Chapter 1240; and
13 (83) Sections 5 and 6, Chapter 1248.

14 (c) The following provisions of the Acts of the 71st
15 Legislature, 1st Called Session, 1989, are repealed:

- 16 (1) Sections 8-14 and 16, Chapter 23; and
17 (2) Section 2.11(a), Chapter 24.

18 SECTION 286. This Act takes effect September 1, 1991.

19 SECTION 287. The importance of this legislation and the
20 crowded condition of the calendars in both houses create an
21 emergency and an imperative public necessity that the
22 constitutional rule requiring bills to be read on three several
23 days in each house be suspended, and this rule is hereby suspended.

H. B. No. 949

By Slinder

A BILL TO BE ENTITLED

AN ACT

relating to conforming the Health and Safety Code to certain Acts of the 71st Legislature, to nonsubstantively codifying in that code certain related health and safety laws, to making corrective changes in that code, and to making conforming changes to other laws involving health and safety matters.

FEB 12 1991

1. Filed with the Chief Clerk.

FEB 21 1991

2. Read first time and Referred to Committee on

STATE AFFAIRS

3. Reported favorably (as amended) and sent to Printer at
(as substituted)

4. Printed and distributed at

5. Sent to Committee on Calendars at

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote)
(Record Vote of yeas, nays, present, not voting).

7. Motion to reconsider and table the vote by which H.B. was ordered
engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of yeas,
 nays, and present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed
to suspend) by a four-fifths vote of yeas, nays, and
present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote
of yeas, nays, present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. was finally passed
prevailed (failed) by a (Non-Record Vote) (Record Vote of yeas,
nays, and present, not voting).

12. Ordered Engrossed at

13. Engrossed.

14. Returned to Chief Clerk at

15. Sent to Senate.

Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read
first time.

20. Ordered not printed.

21. Regular order of business suspended by
(a viva voce vote.)
(yeas, nays.)

_____ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of _____ yeas, _____ nays.

_____ 23. Read second time _____ passed to third reading by:
(a viva voce vote.)
(_____ yeas, _____ nays.)

_____ 24. Caption ordered amended to conform to body of bill.

_____ 25. Senate and Constitutional 3-Day Rules suspended by vote of _____ yeas,
_____ nays to place bill on third reading and final passage.

_____ 26. Read third time and passed by _____
(a viva voce vote.)
(_____ yeas, _____ nays.)

OTHER ACTION:

OTHER ACTION:

Secretary of the Senate

_____ 27. Returned to the House.

_____ 28. Received from the Senate (with amendments.)
(as substituted.)

_____ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record
(Substitute) Vote) (Record Vote of _____ yeas, _____ nays, _____ present,
not voting).

_____ 30. Conference Committee Ordered.

_____ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record
Vote of _____ yeas, _____ nays, and _____ present, not voting).

_____ 32. Ordered Enrolled at _____