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.

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

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

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

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

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

(4) making necessary conforming amendments to other
laws.

(b) Chapter 311, Government Code, applies to this Act as if
this Act were a code governed by that chapter.
(c) The repeal of a law by this Act does not remove, void, or otherwise affect in any manner a validation under the repealed law. The validation is preserved and continues to have the same effect that it would have if the law were not repealed. This subsection does not diminish the saving provisions prescribed by Section 311.031, Government Code.

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

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

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

\[+50\text{ for each advisory committee meeting attended}\]

\[\text{by-the-member and}\]

\[\text{the per diem and travel allowance authorized by the General Appropriations Act for state employees.}\]

SECTION 3. Chapter 11, Health and Safety Code, is amended to conform to Section 1, Chapter 631 (S.B. 1362), Acts of the 71st
Legislature, Regular Session, 1989, by adding Section 11.0161 to read as follows:

Sec. 11.0161. COMPENSATORY PER DIEM FOR ADVISORY COMMITTEE

MEMBER. (a) Within the limit of available funds, a member of an advisory committee appointed to assist the board and the department is entitled to receive, if authorized by board rule, a compensatory per diem, not to exceed the rate set in the General Appropriations Act, for each meeting the member attends.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 12.071. OFFICE OF TEXAS-MEXICO HEALTH AND ENVIRONMENTAL
ISSUES. The department shall establish and maintain an office in
the department to coordinate and promote health and environmental
issues between this state and Mexico.

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

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

(b) The council also must include:

(1) a representative of the Governor's Commission on Texas-Mexico Affairs;
(2) a representative of the Texas-Mexico Exchange;
(3) a representative of the department, appointed by the commissioner;
(4) a representative of the Texas Department of Human Services, appointed by the commissioner of human services;
(5) a representative of the Department of Agriculture, appointed by the commissioner of agriculture;
(6) a representative of the General Land Office, appointed by the land commissioner;
(7) a representative of the Texas Water Commission, appointed by the water commissioners;
(8) a representative of the Texas/Mexico Authority,
appointed by the authority;

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

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

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

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

Sec. 12.074. COUNCIL DUTIES. The council shall:

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

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

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

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

CHAPTER 33. PHENYLKETONURIA, [AND] OTHER HERITABLE DISEASES, AND HYPOTHYROIDISM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. DEFINITIONS. In this chapter:

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

(2) "Hypothyroidism" means a condition that may cause
severe mental retardation if not treated.

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

(A) benefits available under:

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

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

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

(iv) the Veterans' Administration;

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

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

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

(C) benefits resulting from a cause of action for health care expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.
(4) "Phenylketonuria" means an inherited condition
that may cause severe mental retardation if not treated.

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

Sec. 33.002. DETECTION AND TREATMENT PROGRAM ESTABLISHED.
(a) The department shall carry out a program to combat morbidity,
including mental retardation, and mortality in persons who have
phenylketonuria, other heritable diseases, or hypothyroidism.

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

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

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

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

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

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

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

[Sections 33.004-33.010 reserved for expansion]

SUBCHAPTER B. NEWBORN SCREENING

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

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

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

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

(b) If a parent, managing conservator, or guardian objects to the screening tests, the physician or the person attending the newborn child that is not attended by a physician shall ensure that the objection of the parent, managing conservator, or guardian is
entered into the medical record of the child. The parent, managing
conservator, or guardian shall sign the entry.

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

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

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

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

(3) the parents of the newborn child;

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

or

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

(b) If a screening test indicates that a newborn child is at
high risk, the department shall recommend that the child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant pediatric specialist in the child's geographic area.

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

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

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

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

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

(1) participation in the national roster encourages systematic follow-up in the participating states;
(2) incidence and prevalence information is made available to participating newborn screening programs in other states; and

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

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

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

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

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

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

(f) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the board and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).
[Sections 33.017-33.030 reserved for expansion]

SUBCHAPTER C. NEWBORN SCREENING PROGRAM SERVICES

Sec. 33.031. COORDINATION WITH CHRONICALLY ILL AND DISABLED CHILDREN’S SERVICES. (a) All newborn children and other individuals under 21 years of age who have been screened, have been found to be presumptively positive through the newborn screening program, and may be financially eligible, may be referred to the department's chronically ill and disabled children's services program.

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

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

(b) The board may adopt:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) good cause for the waiver is shown; and

(2) enforcement of the requirement would tend to defeat the purpose of this chapter or disrupt the administration or prevent the provision of services to an otherwise eligible recipient.

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

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

Sec. 33.036. DENIAL, MODIFICATION, SUSPENSION, AND REVOCATION OF ELIGIBILITY TO RECEIVE SERVICES. (a) After notice
to the individual or, if the individual is a minor, the
individual's parent, managing conservator, or guardian and an
opportunity for a fair hearing, the department may deny, modify,
suspend, or revoke the determination of a person's eligibility to
receive services at no cost or at reduced cost under this chapter.

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

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

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

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

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

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

(2) a third party with a legal obligation to pay other
benefits and who has received prior written notice of the
department’s interests in the other benefits.

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

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

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

[Sec. 33:000+—DETECTION—AND—TREATMENT—PROGRAM—ESTABLISHED+
(a)—The department shall carry out a program to combat mental
retardation in children with phenylketonuria or other heritable
diseases;

(b)—The board may adopt rules necessary to carry out the
program, including a rule specifying the heritable diseases covered
by this chapter;

(tc)—The department shall establish and maintain a
diagnostic laboratory to

(tt)—conduct experiments, projects, and other undertakings necessary to develop tests for the early detection of
phenylketonuria and other heritable diseases;

(tz)—develop ways and means or discover methods to be used to prevent and treat phenylketonuria and other heritable
diseases in children and
(t3)--serve-other-purposes-considered-necessary-by-the
department-to-carry-out-the-program;

(t4)--other-board--agencies--departments--and--political
subdivisions-of-the-state-capable-of-assisting--the-department--in
carrying-out-the-program-may-cooperate-with-the-department-and-are
calculated-to-furnish-their-services--and--facilities--to--aid--the
program;

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

(t6)--The-department-may-prescribe-the-test-procedures-to-be
employed--and-the-standards-of-accuracy-and-precision--required--for
each-test;

(t3)--The-tests--required--by-this-section-must-be-performed
by;

(t5)--the-diagnostic--laboratory--established--by-the
department-under-Section-33.001 or
(t2)--a-laboratory-approved--by-the-department-under
Section-33.003;

(t6)--Tests-may-not-be-administered-to-a-child-whose-guardian
or--parents-object-on-the-ground-that-the-tests-conflict-with-their
religious-tenets--or-practices;

(t5)--A-physician--technician--or-other-person--administering
the-tests--required--by--this-chapter--is-not-liable--or--responsible
because-of-the-failure--or--refusal--of--a--guardian--or--parent--to
consent-to-the-tests-provided-for-by-this-chapter.

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

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

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

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

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

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

(1) the physician—attending—the-newborn-child—or—the
physician's-designee;
or

(2) the person—attending—the-delivery—of—the-newborn
child—that-was—not—attended—by—a-physician—or—the-parents—of—the
newborn-child.

(b) If—a-test—indicates—high-risk, the department shall
recommend that the newborn child be placed under the medical care of a licensed physician for diagnosis and provide the name of a consultant physician in the newborn child's geographic area.

[†c—] The municipal or county health authority may follow up a positive test with the attending physician who notified the authority or with a parent of the newborn child if the notification was made by a person other than a physician.

[†d—] On confirmation of a positive test and if funds, services, and facilities are available, the department and other boards, departments, agencies, and political subdivisions in the state cooperating in the program may:

[‡†—] offer, to the extent needed, their services and facilities to the family and attending physician; and

[‡2—] provide for, in cooperation with an attending physician, the dietary and other related needs of the affected children if necessary or desirable.

[Sec. 33:005—] COOPERATION OF PHYSICIANS AND HOSPITALS — The department may invite all physicians and hospitals in the state that provide maternity and newborn infant care to cooperate and participate in any program established by the department under this chapter.


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

Sec. 35.002. DEFINITIONS. In this chapter:

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

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

(3) "Case management services" includes:

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

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

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

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

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

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

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

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

(6) "Dentist" means a person licensed by the State Board of Dental Examiners to practice dentistry in this state.

(7) "Facility" includes a hospital, an ambulatory surgical center, and an outpatient clinic.

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

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

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

(B) Title XVIII or Title XIX of the Social
Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.);

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of
the Uniformed Services;

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

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

(G) a cause of action for the cost of care,
including medical care, dental care, facility care, and medical
supplies, required for a person applying for or receiving services
from the department, or a settlement or judgment based on the cause
of action, if the expenses are related to the need for services
provided under this chapter.

(10) [¶8] "Physician" means a person licensed by the
Texas State Board of Medical Examiners to practice medicine in this
state.

(11) [¶9] "Program" means the chronically ill and
disabled children's services program.

(12) [¶10] "Provider" means a person who delivers
services purchased by the department for the purposes of this
chapter.
"Rehabilitation services" means the process of the physical restoration of a body function destroyed or impaired by congenital defect, disease, or injury, and includes:

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

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

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

"Services" means the care, activities, and supplies provided under this chapter or program rules, including medical care, dental care, facility care, medical supplies, occupational and physical therapy, and other care specified by program rules.

"Specialty center" means a facility and staff that meets minimum standards established under the program and is designated by the board for program use in the comprehensive diagnostic and treatment services for a specific medical condition.

"Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.

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

(c) The [state-auditor-shall-verify-in-the--records--of--the department--the] purchase of the items described by Subsection (b)
is subject to audit by the state auditor in accordance with Chapter

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

Sec. 42.0045. DISTRIBUTION OF DRUGS AND DEVICES. (a)
Sections 483.041(a) and 483.042 of this code, the Texas Pharmacy
Act (Article 4542a-1, Vernon's Texas Civil Statutes), and other
applicable laws establishing prohibitions do not apply to a
dialysate, device, or drug exclusively used or necessary to perform
dialysis that a physician prescribes or orders for administration
or delivery to a person with chronic kidney failure if:
(1) the dialysate, device, or drug is lawfully held by
a manufacturer or wholesaler registered with the board;
(2) the manufacturer or wholesaler delivers the
dialysate, device, or drug to:
(A) a person with chronic kidney failure for
self-administration at the person's home or a specified address, as
ordered by a physician; or
(B) a physician for administration or delivery
to a person with chronic kidney failure; and
(3) the manufacturer or wholesaler has sufficient and
qualified supervision to adequately protect the public health.
(b) The board shall adopt rules necessary to ensure the safe
distribution, without the interruption of supply, of a dialysate,
device, or drug covered by Subsection (a). The rules must include
provisions regarding manufacturer and wholesaler licensing, record keeping, evidence of a delivery to a patient or a patient's designee, patient training, specific product and quantity limitation, physician prescriptions or order forms, adequate facilities, and appropriate labeling to ensure that necessary information is affixed to or accompanies the dialysate, device, or drug.

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

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

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

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

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

CHAPTER 44. SEXUAL ASSAULT PREVENTION AND CRISIS SERVICES

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

Sec. 44.002. PURPOSE. The purpose of this chapter is to promote the development throughout the state of locally based and supported nonprofit programs for the survivors of sexual assault.
and to standardize the quality of services provided.

Sec. 44.003. DEFINITIONS. In this chapter:

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

(2) "Service" means the Sexual Assault Prevention and

Crisis Service.

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

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

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

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

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

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

(b) To be eligible for a grant, a program must provide at a
minimum:
(1) a 24-hour crisis hotline;
(2) crisis counseling;
(3) public education;
(4) advocacy and accompaniment to hospitals, law enforcement offices, prosecutors' offices, and courts for survivors and their family members;
(5) professional training on sexual assault for law enforcement, medical and mental health personnel, prosecutors, and educators;
(6) crisis intervention volunteer training; and
(7) liaison with law enforcement and medical personnel and prosecutors on behalf of survivors.

(c) The board by rule shall require a program receiving a grant to:

(1) submit quarterly and annual financial reports to the department;
(2) submit to an annual independent financial audit;
(3) cooperate with the department during site-monitoring visits; and
(4) offer the minimum services described by Subsection (b) for at least nine months before receiving a grant.

(d) This section does not prohibit a program from offering any additional service, including a service for sexual assault offenders.

(e) A grant is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and rules adopted under that Act.
(f) The receipt of grant money by a program may be suspended in case of a dispute about the eligibility of the program to receive the money under this chapter. A hearing on the dispute must be held within a reasonable time, as established by department rule.

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

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

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

Sec. 44.008. CONFIDENTIALITY. The department may not disclose any information received from reports, collected case information, or site-monitoring visits that would identify a person
working at or receiving services from a program.

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

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

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

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

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

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

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

Sec. 61.051. APPLICATION OF SUBCHAPTER. (a) This
subchapter applies to health care services and assistance provided
to a person who resides in the service area of a public hospital or
hospital district.

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

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

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

(3) was established under Section 265.031.

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

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

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

(1) a law enforcement officer;
(2) a fire fighter;
(3) an emergency medical service employee or paramedic; or
(4) a correctional officer.

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

(1) has experienced the exposure in the course of the person's employment or volunteer service;
(2) believes that the exposure places the person at risk of a reportable disease, including HIV infection; and
(3) presents to the department or health authority a sworn affidavit that delineates the reasons for the request.

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

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

(1) state the grounds and provisions of the order, including the factual basis for its issuance;
(2) refer the person to appropriate health care facilities where the person can be tested for reportable diseases, including HIV infection; and
(3) inform the person who is subject to the order of that person's right to refuse to be tested and the authority of the department or health authority to ask for a court order requiring the test.

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

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

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

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

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

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

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

SECTION 18. Subchapter C, Chapter 81, Health and Safety
Code, is amended to conform to Section 20, Chapter 1195 (S.B. 959),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 81.051 to read as follows:

Sec. 81.051. PARTNER NOTIFICATION PROGRAMS; HIV INFECTION.

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

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

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

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

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

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

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

(e) The employee may not disclose:

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

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

(f) If the person with HIV infection also makes the notification, the person should provide the information listed in
Subsection (d).

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

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

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

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

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

(b) The department shall routinely analyze and determine trends in incidence and prevalence of AIDS and HIV infection by region, age, gender, race, ethnicity, transmission category, and other factors as appropriate.
(c) The department shall annually project the number of AIDS cases expected in this state based on the reports.

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

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

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

(1) immunization;
(2) detention;
(3) restriction;
(4) disinfection;
(5) decontamination;
(6) isolation;
(7) quarantine;
(8) disinfestation;
(9) chemoprophylaxis; [end]
(10) preventive therapy;
(11) prevention; and
(12) education.

SECTION 21. Subchapter E, Chapter 81, Health and Safety Code, is amended to conform to Section 24, Chapter 1195 (S.B. 959), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 81.093 to read as follows:
Sec. 81.093. PERSONS PROSECUTED FOR CERTAIN CRIMES. (a) A court may direct a person convicted of an offense under Section 43.02, Penal Code, under Chapter 481 (Texas Controlled Substances Act), or under Sections 485.031-485.035 to be subject to the control measures of Section 81.083 and to the court-ordered management provisions of Subchapter G.

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

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

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

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

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

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

(1) the medical procedure or test is required under Subsection (d), under Section 81.050, [امي-כ-טג] or under Article 21.31, Code of Criminal Procedure;

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

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

(4) [כיigmatic] the medical procedure or test is necessary:

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

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

(C) in relation to a particular person under
this chapter;

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

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

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

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

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

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

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

(c) Protocols adopted under Subsection (a)(4)(D) [(a)(3)(B)] must clearly establish procedural guidelines with criteria for testing that respect the rights of the person with the infection and the person who may be exposed to that infection. The protocols may not require the person who may have been exposed to be tested
and must ensure the confidentiality of the person with the
infection in accordance with this chapter.

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

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

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

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

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

(b) A test result may be released to:

(1) the department under this chapter;

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

(3) the Centers for Disease Control of the United
States Public Health Service if reporting is required by federal
law or regulation;
(4) the physician or other person authorized by law who ordered the test;

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

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

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

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

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

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

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

Sec. 81.105. INFORMED CONSENT. (a) Except as otherwise
provided by law, a person may not perform a test designed to
identify HIV or its antigen or antibody without first obtaining the
informed consent of the person to be tested.

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

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

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

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

SECTION 28. Subchapter F, Chapter 81, Health and Safety
Code, is amended to conform to Section 12, Chapter 1195 (S.B. 959),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 81.107 to read as follows:

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

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

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

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

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

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

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

SECTION 30. Subchapter F, Chapter 81, Health and Safety Code, is amended to conform to Sections 1 and 29, Chapter 1195 (S.B. 959), Acts of the 71st Legislature, Regular Session, 1989, by
adding Section 81.109 to read as follows:

Sec. 81.109. COUNSELING REQUIRED FOR POSITIVE TEST RESULTS.

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

(1) the meaning of the test result;
(2) the possible need for additional testing;
(3) measures to prevent the transmission of HIV;
(4) the availability of appropriate health care services, including mental health care, and appropriate social and support services in the geographic area of the person's residence;
(5) the benefits of partner notification; and
(6) the availability of partner notification programs.

(b) Post-test counseling should:

(1) increase a person's understanding of HIV infection;
(2) explain the potential need for confirmatory testing;
(3) explain ways to change behavior conducive to HIV transmission;
(4) encourage the person to seek appropriate medical care; and
(5) encourage the person to notify persons with whom there has been contact capable of transmitting HIV.

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

(1) a report of a test result is used for statistical or research purposes only and any information that could identify
the person is removed from the report; or

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

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

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

and

(2) reasonable attorney's fees.

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

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

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

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

SECTION 32. The heading to Chapter 82, Health and Safety
Code, is amended to read as follows:
CHAPTER 82. CANCER REGISTRY

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

Sec. 82.001. SHORT TITLE. This chapter may be cited as the Texas Cancer Incidence Reporting [Center] Act.

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

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

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

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

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

(1) recording the data on a form prescribed by the department; or

(2) making the records available to the board or its
representative—on—the—presentation-of-proper-identification—at
the-hospital—or-laboratory—or-treatment-center-during-normal—working
hours—so—that—the-board—or-its-authorized-representative-may-record
the-data-on] a format [form] prescribed by the department.

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

[¶7] The data required to be furnished under this section
must include[†] patient identification and

[¶8] diagnosis[*]
[¶9] stage-of-disease[*]
[¶10] medical—history—including—occupational
information—if—available;

[¶11] laboratory-data;
[¶12] tissue-diagnosis;
[¶13] method-of-treatment—and
[¶14] family-history-of-cancer].

(d) [¶15] The board by rule may [the—department—shall]
determine a reasonable amount for compensation to [fee—to
compensate] the hospital, clinical laboratory, or cancer treatment
center for the cost of collecting or furnishing the data and shall
pay that amount, within the limits of funds appropriated expressly
for that purpose.

[¶16] The department—is—responsible—for—an—annual—follow-up
of—each—patient—for—five—years.]

SECTION 36. Subtitle D, Title 2, Health and Safety Code, is
amended to conform to Sections 1 and 11 of Chapter 1195 (S.B. 959)
and Section 6 of Chapter 1240 (H.B. 2473), Acts of the 71st
Legislature, Regular Session, 1989, and to Section 2.11(a), Chapter
24 (S.B. 59), Acts of the 71st Legislature, 1st Called Session, 1989, by adding Chapter 85 to read as follows:

CHAPTER 85. ACQUIRED IMMUNE DEFICIENCY SYNDROME AND HUMAN
IMMUNODEFICIENCY VIRUS INFECTION

SUBCHAPTER A. GENERAL PROVISIONS AND EDUCATION PROGRAMS

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

Sec. 85.002. DEFINITIONS. In this chapter:

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

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

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

(4) "HIV" means human immunodeficiency virus.

(5) "State agency" means:

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

(B) the legislature or a legislative agency; and
(C) the supreme court, the court of appeals, the State Bar of Texas, or another
state judicial agency.

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

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

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

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

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

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

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

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

(4) educate the public about state laws relating to
the transmission and conduct that may result in the transmission of
HIV.

Sec. 85.005. SPECIAL COMPONENTS OF EDUCATION PROGRAMS. (a)
The department shall include in the education programs special
components designed to reach:

(1) persons with behavior conducive to HIV
transmission;

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

(3) minority groups.

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

Sec. 85.006. EDUCATION PROGRAMS FOR DISABLED PERSONS. (a)
The department shall develop and promote HIV education and
prevention programs specifically designed to address the concerns
of persons with physical or mental disabilities.

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

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

Sec. 85.007. EDUCATION PROGRAMS FOR MINORS. (a) The
department shall give priority to developing model education
programs for persons younger than 18 years of age.
(b) The materials in the education programs intended for persons younger than 18 years of age must:

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

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

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

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

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

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

Sec. 85.011. CONTRACTS FOR EDUCATION PROGRAMS. (a) The
department may contract with any person, other than a person who
advocates or promotes conduct that violates state law, for the
design, development, and distribution of education programs.

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

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

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

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

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

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

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

(5) persons with HIV infection are entitled to the
same rights and opportunities as persons with other communicable
diseases; and
(6) Employers and employees should not engage in discrimination against persons with HIV infection unless based on accurate scientific information.

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

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

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

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

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

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

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

(b) To encourage and maximize the use of federal and private funds, the department shall forward the information as soon as possible after receipt to public and nonprofit agencies that may be eligible for funding and shall make the information available to public and private entities on request.
(c) The department may seek, accept, and spend funds from state, federal, local, and private entities to carry out this section.

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

(b) The department shall provide technical assistance in:

(1) recruiting, training, and effectively using volunteers in the delivery of HIV-related services;

(2) identifying funding opportunities and sources, including information on developing sound grant proposals; and

(3) developing and implementing effective service delivery approaches for community-based health care, education, prevention, and social support services pertaining to HIV.

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

(1) the contract would minimize duplication of effort and would deliver services cost-effectively; and

(2) the contracting entity does not advocate or promote conduct that violates state law.

(b) Subsection (a)(2) does not restrict an education program from providing accurate information about ways to reduce the risk of exposure to or transmission of HIV.
(c) The department may audit an entity contracting with the department under Subsection (a).

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

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

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

[Sections 85.017-85.030 reserved for expansion]

SUBCHAPTER B. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS

Sec. 85.031. STATE GRANT PROGRAM TO COMMUNITY ORGANIZATIONS.

The department shall establish and administer a state grant program to nonprofit community organizations for:

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

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

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

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

(2) a system of priorities regarding the types of services provided, geographic areas covered, or classes of individuals or communities targeted for services under the program;
(3) a process for resolving conflicts between the department and a program receiving money under this subchapter.

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

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

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

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

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

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

(5) encourage cooperation among local service providers.

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

(b) The department shall consult with the Texas Department of Human Services to ensure that programs funded under this subchapter complement and do not unnecessarily duplicate services provided through the Texas Department of Human Services.
Sec. 85.034. APPLICATION PROCEDURES AND ELIGIBILITY

GUIDELINES. (a) The department shall establish application procedures and eligibility guidelines for the state grants under this subchapter.

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

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

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

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

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

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

(4) any other information requested by the department.

Sec. 85.036. AWARDING OF GRANTS. (a) In awarding grants for education programs under this subchapter, the department shall
give special consideration to nonprofit community organizations
whose primary purpose is serving persons younger than 18 years of
age.

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

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

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

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

Sec. 85.038. RESTRICTIONS ON FUNDS. (a) The department may
not use more than five percent of the funds appropriated for the
grant program to employ sufficient staff to review and process
grant applications, monitor and evaluate the effectiveness of
funded programs, and provide technical assistance to grantees.
(b) Not more than one-third of the funds available under this subchapter may be used for HIV education, prevention, and risk reduction.

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

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

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

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

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

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

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

Sec. 85.041. RECORDS AND REPORTS. (a) The department
shall require each program receiving a grant under this subchapter
to maintain records and information specified by the department.

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

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

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

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

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

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

[Sections 85.045-85.060 reserved for expansion]
SUBCHAPTER C. HIV MEDICATION PROGRAM

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

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

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

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by board rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity set by the board.

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

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

(1) application and distribution procedures;

(2) eligibility guidelines to ensure the most appropriate distribution of funds available each year; and
(3) appellate procedures to resolve any eligibility or funding conflicts.

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

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

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

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

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

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

Sec. 85.065. SLIDING FEE SCALE TO PURCHASE MEDICATION. The department may institute a sliding fee scale to help eligible
HIV-infected individuals purchase medications under the program.

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

[Sections 85.067-85.080 reserved for expansion]

SUBCHAPTER D. TESTING PROGRAMS AND COUNSELING

Sec. 85.081. MODEL PROTOCOLS FOR COUNSELING AND TESTING.

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

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

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

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

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

(d) A person who is injured by an intentional violation of
Subsection (c) may bring a civil action for damages and may recover
for each violation from a person who violates Subsection (c):
(1) $1,000 or actual damages, whichever is greater;

and

(2) reasonable attorney's fees.

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

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

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

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

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

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

(1) obtain the informed consent of the person to be
tested before conducting the test; and

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

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

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

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

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

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

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

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

Sec. 85.088. STATE-FUNDED HEALTH CLINICS. (a) State-funded
primary health, women's reproductive health, and sexually transmitted disease clinics shall:

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

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

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

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

[Sections 85.090-85.110 reserved for expansion]

SUBCHAPTER E. DUTIES OF STATE AGENCIES AND STATE CONTRACTORS

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

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

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

(3) conduct that may result in the transmission of HIV infection.
(b) The educational pamphlet shall be provided to a newly hired state employee on the first day of employment.

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

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

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

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

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

(1) the Texas Commission on Alcohol and Drug Abuse;
(2) the Texas Commission for the Blind;
(3) the Texas Commission for the Deaf;
(4) the Texas Juvenile Probation Commission;
(5) the Texas Department of Criminal Justice;
(6) the Texas Youth Commission;
(7) the department;
(8) the Texas Department of Human Services;
(9) the Texas Department of Mental Health and Mental Retardation; and

(10) the Texas Rehabilitation Commission.

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

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

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

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

(c) The confidentiality guidelines shall be consistent with guidelines published by the department and with state and federal law and regulations.
(d) An entity that does not adopt confidentiality guidelines as required by Subsection (b) is not eligible to receive state funds until the guidelines are developed and implemented.

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

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

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

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

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

(d) The cost of a state employee's testing and counseling shall be paid from funds appropriated for payment of workers' compensation benefits to state employees. The director of the
workers' compensation division of the attorney general's office shall adopt rules necessary to administer this subsection.

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

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

[Sections 85.117-85.130 reserved for expansion]

SUBCHAPTER F. DEMONSTRATION PROJECTS ON NURSING CARE

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

Sec. 85.132. DEMONSTRATION PROJECTS IN NURSING FACILITIES. (a) The Texas Department of Human Services shall establish one or more demonstration projects in nursing facilities to:

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

(2) provide test sites in designated nursing facilities to study the costs and requirements of the operation of
those facilities and the provision of appropriate nursing care and
other related programs and services;

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

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

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

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

[Sections 85.133-85.140 reserved for expansion]

SUBCHAPTER G. POLICIES OF CORRECTIONAL AND LAW
ENFORCEMENT AGENCIES, FIRE DEPARTMENTS, AND EMERGENCY
MEDICAL SERVICES PROVIDERS

Sec. 85.141. MODEL POLICIES CONCERNING PERSONS IN CUSTODY.
The department, in consultation with appropriate correctional and
law enforcement agencies, fire departments, and emergency medical
services providers, shall develop model policies regarding the
handling, care, and treatment of persons with AIDS or HIV infection
who are in the custody of the Texas Department of Criminal Justice,
local law enforcement agencies, municipal and county correctional
facilities, and district probation departments.

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

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

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

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

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

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

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

[Sections 85.144-85.160 reserved for expansion]
SUBCHAPTER H. HIV MEDICATION PROGRAM

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

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

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

(1) must not be eligible for Medicaid benefits;

(2) must meet financial eligibility criteria set by board rule;

(3) must not qualify for any other state or federal program available for financing the purchase of the prescribed medication; and

(4) must be diagnosed by a licensed physician as having AIDS or an HIV-related condition or illness of at least the minimal severity as determined by the board.

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

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

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

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

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

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

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

SUBCHAPTER A. INFORMATION ON ALTERNATIVE TREATMENTS FOR BREAST CANCER

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

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

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

(c) The advisory council shall develop the summary.

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

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

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

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

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

(4) a representative of the Texas Cancer Council.

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

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

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

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

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

[Sections 86.006-86.010 reserved for expansion]

SUBCHAPTER B. BREAST CANCER SCREENING

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

(b) The Center for Rural Health Initiatives may provide the breast cancer screening through contracts with public or private
entities to provide mobile units and on-site screening services.

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

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

(b) The advisory committee may be composed of:

(1) physicians who practice in rural areas;
(2) administrators of hospitals in rural areas; and
(3) representatives of organizations formed to promote
breast cancer awareness.

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

SUBTITLE E. HEALTH CARE COUNCILS AND RESOURCE CENTERS

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

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

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

CHAPTER 105. HEALTH PROFESSIONS RESOURCE CENTER

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

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

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

(1) data concerning nursing personnel; and

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

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

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

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

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

(1) the educational and employment trends for health
professions;
(2) the supply and demand of health professions; and
(3) other issues, as necessary, concerning health
professions in this state.

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

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

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

CHAPTER 106. CENTER FOR RURAL HEALTH INITIATIVES

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

(b) "Executive committee" means the executive committee of
the Center for Rural Health Initiatives.
Sec. 106.002. PURPOSE. (a) The Center for Rural Health Initiatives shall assume a leadership role in working or contracting with state and federal agencies, universities, private interest groups, communities, foundations, and offices of rural health to develop rural health initiatives and maximize use of existing resources without duplicating existing effort.

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

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

(b) The executive committee is composed of:

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

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

(3) three members appointed by the speaker of the house of representatives, one of whom is a physician licensed to practice in this state, one of whom is a hospital administrator, and one of whom is a health economist.
(c) The appointments to the executive committee must be individuals who reside, work, or practice in rural areas of the state or who have demonstrated knowledge and expertise in rural issues.

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

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

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

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

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

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

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

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

(b) The executive director serves at the will of the
executive committee.

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

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

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

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

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

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

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

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

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

Sec. 106.006. ADMINISTRATIVE AND STAFF SUPPORT. The Texas
Department of Health shall provide administrative support to the center as necessary to carry out the duties of this chapter. The department and the other agencies represented on the advisory committee shall provide staff support to the center and may provide staff and other support services to the executive committee.

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

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

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

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

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

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

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

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

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

(9) assist rural health care providers, communities, and individuals in applying for public and private grants and programs;
(10) encourage the development of regional emergency transportation networks;

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

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

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

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

(b) The center may:

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

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

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

Sec. 106.009. APPLICATION OF SUNSET ACT. The Center for Rural Health Initiatives is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by
that chapter, the center is abolished and this chapter expires September 1, 2001.

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

    (1) "Certified agency" means a person who:
        (A) provides a home health service; and
        (B) is certified [held--a--current--letter-of approval--signed] by an official of the Department of Health and Human Services as in [that--indicates] compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).

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

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

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

Sec. 142.0025. TEMPORARY LICENSE. If a person is in the process of becoming certified by the Department of Health and Human Services to qualify as a certified agency, the Texas Department of
Health may issue a temporary Class A home health service license to the person. A temporary license is effective as provided by board rules.

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

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

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

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

SECTION 47. Section 142.011, Health and Safety Code, is
amended to conform to Section 7, Chapter 493 (H.B. 2117), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsections (c) and (d) to read as follows:

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

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

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

(a) The Home Health Services Advisory Council is composed of the following members, appointed by the governor:

(1) one representative of the department;
(2) two representatives of consumers of home health agency and hospice services;

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

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

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

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

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

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

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

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

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

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

CHAPTER 145. TANNING FACILITIES

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

Sec. 145.002. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

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

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

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

(2) overexposure to ultraviolet light causes burns;

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

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

(A) foods;

(B) cosmetics; or

(C) medications, including:

(i) tranquilizers;

(ii) diuretics;

(iii) antibiotics;

(iv) high blood pressure medicines; or

(v) birth control pills; and

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

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

Sec. 145.006. WARNING SIGNS. (a) A tanning facility shall post a warning sign in a conspicuous location where it is readily visible by persons entering the establishment. The sign must have
dimensions of at least 36 inches on each side and must contain the following wording:

DANGER: ULTRAVIOLET RADIATION

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

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

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

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF AN ULTRAVIOLET OR SUNLAMP.

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

DANGER: ULTRAVIOLET RADIATION

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

2. Avoid too frequent or lengthy exposure. As with natural sunlight, exposure can cause serious eye and skin injuries and allergic reactions. Repeated exposure may cause skin cancer.
3. Wear protective eyewear. Failure to use protective eyewear may result in severe burns or permanent damage to the eyes.

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

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

IF YOU DO NOT TAN IN THE SUN, YOU WILL NOT TAN FROM USE OF THIS DEVICE.

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

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

(b) Before each use of a tanning device, the operator shall provide the customer with properly sanitized protective eyewear that protects the eyes from ultraviolet radiation and allows adequate vision to maintain balance. The operator may not allow a person to use a tanning device if that person does not use the protective eyewear. The operator also shall show each customer how
to use suitable physical aids, such as handrails and markings on the floor, to maintain proper exposure distance as recommended by the manufacturer of the tanning device.

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

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

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

Sec. 145.009. PERMITS. (a) A person may not operate a
tanning facility unless the person holds a permit issued by the
department to operate the facility.

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

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

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

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

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

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

(3) a violation of this chapter; or

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

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

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

(b) The commissioner or an authorized agent may inspect a
tanning facility at any reasonable time to determine compliance
with this chapter.
Sec. 145.012. INJUNCTION. (a) If the commissioner, an authorized agent, or a health authority finds that a person has violated, or is violating or threatening to violate, this chapter and that the violation or threat of violation creates an immediate threat to the health and safety of the public, the commissioner, authorized agent, or health authority may petition the district court for a temporary restraining order to restrain the violation or threat of violation.

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

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

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

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

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

SECTION 50. Subchapter H, Chapter 161, Health and Safety Code, is amended to conform to Section 1, Chapter 607 (S.B. 115), Acts of the 71st Legislature, Regular Session, 1989, by amending
Section 161.081 and adding Section 161.082 to read as follows:

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

(1) sells, gives, or causes to be sold or given a cigarette or other tobacco product to someone the person knows [a minor who] is younger than 18 [16] years of age; or

(2) [knowingly] sells, gives, or causes to be sold or given a cigarette or other tobacco product to another person knowing that the person receiving the cigarette or other tobacco product intends to deliver it to someone [for-delivery-to-a-minor] who is younger than 18 [16] years of age.

(b) An offense under this section is a Class C misdemeanor [punishable-by-a-fine-of-not-less-than-$50-or-more-than-$100].

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

Sec. 161.082. WARNING NOTICE. (a) Each person who sells tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the tobacco products may be purchased.
(b) The sign must include the statement:
SALE OR PROVISION OF TOBACCO PRODUCTS TO A
MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY
LAW. UPON CONVICTION, A MAXIMUM FINE OF UP TO
$200 MAY BE IMPOSED.

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

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

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

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

CHAPTER 163. EDUCATION PROGRAM ABOUT SEXUAL CONDUCT AND
SUBSTANCE ABUSE

Sec. 163.001. PROGRAM. (a) The department shall develop a
model public health education program suitable for school-age
children and shall make the program available to any person on
request. The program should emphasize:
(1) that abstinence from sexual intercourse is the most effective protection against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually;

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

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

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

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

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

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

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

(4) information concerning the laws relating to the
financial responsibilities associated with pregnancy, childbirth, and child rearing;

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

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

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

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

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

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

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

(2) preparing and issuing copies and certified copies
of birth, death, fetal death, marriage, divorce, annulment, and
other records; and

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

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

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

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

Sec. 191.0046 (19±954). FEE EXEMPTIONS. (a) On the
request of a child's parent or guardian, the state registrar shall
issue without fee a certificate necessary for admission to school
or to secure employment. The certificate shall be limited to a
statement of the child's date of birth.

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

(c) On court order, the state registrar may issue without
fee a certified copy of a birth record in cases related to child labor or the public schools.

SECTION 53. Section 191.005, Health and Safety Code, is amended to conform to Sections 3 and 8, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 191.005. VITAL STATISTICS FUND. (a) The vital statistics fund is in the state treasury.

(b) The legislature shall make appropriations to the department from the [The] fund to [shall] be used to defray expenses incurred in the administration and enforcement [and operation] of the system of vital statistics [this title].

(c) All [The state registrar shall keep an account of fees the state registrar collects under this title and shall deposit the fees with the state treasurer at the end of each month and at other times the state registrar considers advisable.]

[d]--[The state--treasurer shall deposit the] fees collected by the bureau of vital statistics shall be deposited to the credit of the vital statistics fund.

SECTION 54. Section 191.028(c), Health and Safety Code, is repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 55. Sections 191.053 and 191.055, Health and Safety Code, are repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 56. Section 192.002(b), Health and Safety Code, is amended to conform to Section 1, Chapter 681 (S.B. 1248), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), or appropriate state or federal agencies for statistical research. The board may adopt rules to implement this subsection.

SECTION 57. Section 192.006(a), Health and Safety Code, is amended to conform to Section 36, Chapter 375 (S.B. 401), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:

(1) becomes the [legitimate] child of the person's father by the subsequent marriage of the person's parents;

(2) has the person's parentage determined by a court of competent jurisdiction; or

(3) is adopted under the laws of any state.

SECTION 58. Section 192.006(e), Health and Safety Code, is repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 59. Section 192.010(c), Health and Safety Code, is repealed to conform to Section 8, Chapter 920 (S.B. 973), Acts of
the 71st Legislature, Regular Session, 1989.

SECTION 60. Section 192.028, Health and Safety Code, is repealed to conform to Section 7, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 61. Sections 194.004(c) and (d), Health and Safety Code, are repealed to conform to Sections 5 and 6, Chapter 920 (S.B. 973), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 62. Chapter 195, Health and Safety Code, is amended by adding Section 195.005 to conform to Section 2, Chapter 681 (S.B. 1248), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 195.005. DISCLOSURE OF CONFIDENTIAL INFORMATION.
(a) A person commits an offense if the person knowingly violates Section 192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section.

(b) An offense under this section is a Class A misdemeanor.

SECTION 63. Subchapter B, Chapter 222, Health and Safety Code, is amended to conform to Section 4, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 222.027 to read as follows:

Sec. 222.027. PHYSICIAN ON SURVEY TEAM. The Texas Department of Health shall ensure that a licensed physician involved in direct patient care as defined by the Texas State Board of Medical Examiners is included on a survey team sent under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when surveying the quality of services provided by physicians in
hospitals.

SECTION 64. Chapter 222, Health and Safety Code, is amended to conform to Section 8, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 222.0255 and amending Section 222.026 to read as follows:

Sec. 222.0255. NURSING HOMES. (a) The Texas Department of Health and the Texas Department of Human Services jointly shall develop one set of standards for nursing homes that apply to licensing and to certification for participation in the medical assistance program under Chapter 32, Human Resources Code.

(b) The standards must comply with federal regulations. If the federal regulations at the time of adoption are less stringent than the state standards, the departments shall keep and comply with the state standards.

(c) The departments by rule shall adopt the standards and any amendments to the standards.

(d) The Texas Department of Health shall maintain a set of standards for nursing homes that are licensed only.

Sec. 222.026. PATIENT TRANSFER AUTHORITY NOT AFFECTED. Sections 222.024, [and] 222.025, and 222.0255 do not affect the authority of the Texas Department of Health to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) relating to the transfer of hospital patients or the department's means of implementing and enforcing those provisions.

SECTION 65. Chapter 222, Health and Safety Code, is amended to conform to Sections 8-10, Chapter 1141 (S.B. 1426), Acts of the 71st Legislature, Regular Session, 1989, by adding Subchapter C to
read as follows:

SUBCHAPTER C. SURVEYS OF INTERMEDIATE CARE FACILITIES
FOR MENTALLY RETARDED

Sec. 222.041. DEFINITIONS. In this subchapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "ICF-MR" means the medical assistance program
serving persons receiving care in intermediate care facilities for
mentally retarded persons.

Sec. 222.042. LICENSING OF ICF-MR BEDS AND FACILITIES. The
department may not approve as meeting licensing standards new
ICF-MR beds or the expansion of an existing ICF-MR facility unless:

(1) the new beds or the expansion was included in the
plan approved by the Interagency Council on ICF-MR Facilities in
accordance with Section 2.43, Texas Mental Health and Mental
Retardation Act (Article 5547-202, Vernon's Texas Civil Statutes);
and

(2) the Texas Department of Mental Health and Mental
Retardation has approved the beds or the expansion for
certification in accordance with Section 2.44, Texas Mental Health
and Mental Retardation Act (Article 5547-202, Vernon's Texas Civil
Statutes).

Sec. 222.043. REVIEW OF ICF-MR SURVEYS. (a) The board by
rule shall establish policies and procedures as prescribed by this
section to conduct an informal review of ICF-MR surveys when the
survey findings are disputed by the provider. The board shall
provide that the procedure may be used only if the deficiencies
cited in the survey report do not pose an imminent threat of danger
to the health or safety of a resident.

(b) The department shall designate at least one employee in
the bureau for special health services to conduct on a full-time
basis the review provided by this section. The person must be
impartial and may not be directly involved in or supervise any
initial or recertification surveys. The person may participate in
or direct follow-up surveys for quality assurance purposes only at
the discretion of the associate commissioner for special health
services or under Chapter 242, Health and Safety Code.

(c) The employee designated under Subsection (b) should have
current knowledge of applicable federal laws and survey processes.
The employee reports directly to the associate commissioner of
special health services.

(d) If a provider disputes the findings of a survey team or
files a complaint relating to the conduct of the survey, the
employee designated under Subsection (b) shall conduct an informal
review as soon as possible, but before the 45th day after the date
of receiving the request for a review or the expiration of the
period during which the provider is required to correct the alleged
deficiency, whichever is sooner.

(e) The employee conducting the review shall sustain, alter,
or reverse the original findings of the survey team after
consulting with the associate commissioner for special health
services.

Sec. 222.044. FOLLOW-UP SURVEYS. (a) The bureau of
long-term care quality assurance team shall conduct follow-up
surveys of ICF-MR facilities to:

(1) evaluate and monitor the findings of the certification or licensing survey teams; and

(2) ensure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(b) A provider shall correct any additional deficiency cited by the quality assurance team. The department may not impose an additional punitive action for the deficiency unless the provider fails to correct the deficiency within the period during which the provider is required to correct the deficiency.

Sec. 222.045. NOTIFICATION OF CHANGE IN ICF-MR PROGRAM. The department shall notify in writing the Texas Department of Human Services of any change in the rules or in the interpretation of the rules relating to the ICF-MR program that might affect the cost of providing services so that the Texas Department of Human Services may amend the payment rates to reflect the change.

Sec. 222.046. SURVEYS OF ICF-MR FACILITIES. (a) The department shall ensure that each survey team sent to survey an ICF-MR facility includes a qualified mental retardation professional, as that term is defined by federal law.

(b) The department shall require that each survey team sent to survey an ICF-MR facility conduct a final interview with the provider to ensure that the survey team informs the provider of the survey findings and that the survey team has requested the necessary information from the provider. The survey team shall allow the provider to record the interview. The provider shall immediately give the survey team a copy of any recording.
SECTION 66. Section 224.004, Health and Safety Code, is amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.004. TAXATION OF FINANCING COUNCIL BONDS. [AND HEALTH-RELATED-EQUIPMENT.--(a)--The-financing-council--may--as--a matter--of--public--policy,--engage--only--in--the--performance--of charitable--functions--and--is--exempt--from--all--taxation--by--this--state and--by--each--political--subdivision--of--the--state--]

[(b)--Health-related---equipment---including---a---leasehold interest--in--health-related--equipment,--owned--by--the--financing council--that--would--otherwise--be--taxable--to--the--financing--council under--Title--17--Tax-Code,--but--for--the--purposes--and--nonprofit--nature of--the--financing--council,--shall--be--assessed--to--the--participating health-care-provider--using--the--health-related--equipment.--If--there is--more--than--one--participating--health-care-provider--using--the equipment--the--assessment--is--to--be--made--to--each--provider--in proportion--to--the--provider's--share--of--the--value--of--the--rights--in the--equipment--of--all--the--providers.--A--participating--health-care provider--is--entitled--to--the--exemptions--from--taxation--if--any,--as--if the--health-related--equipment--were--owned--by--the--participating--health care--provider.--Each--participating--health-care-provider--is considered--to--be--the--owner--of--health-related--equipment--used--by--the participating--health-care-provider--for--the--purposes--of--taxes--levied or--imposed--by--this--state--or--any--political--subdivision--of--this state.]

[(c)] Bonds issued by the financing council, the interest on those bonds, the transfer of bonds, and profits from the sale or
exchange of the bonds are exempt from taxation by this state or a
political subdivision of this state.

SECTION 67. Section 224.012, Health and Safety Code, is
amended to conform to Section 1, Chapter 696 (S.B. 1387), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.012. APPLICATION OF SUNSET ACT. The financing
council is subject to Chapter 325, Government Code (Texas Sunset
Act). Unless continued in existence as provided by that chapter,
the financing council is abolished September 1, 1997, except that
if on that date all bonds of the council that are outstanding on
September 1, 1989, have not been paid and discharged or adequate
provisions for those bonds have not been made, the council is not
abolished.

SECTION 68. Sections 224.013(a) and (b), Health and Safety
Code, are amended to conform to Section 3, Chapter 696 (S.B. 1387),
Acts of the 71st Legislature, Regular Session, 1989, to read as
follows:

(a) The council is composed of three [four] trustees appointed
by the governor with the advice and consent of the senate.

(b) Trustees serve six-year terms, with the term [terms] of
one trustee [four trustees] expiring on September 1 of each
odd-numbered year.

SECTION 69. Section 224.017, Health and Safety Code, is
amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.017. FINANCING COUNCIL OFFICERS. (a) The
financing council shall elect one trustee as the chairman. The
chairman is [shall:

{+}--preside-at-meetings-of-the-financing-council;

{+}--be] the chief executive and administrative
officer of the financing council[;--and

{+}--administer--the--duties--and--functions--of--the
financing-council].

(b) The financing council may elect other officers as
necessary to perform its functions [shall--elect--one--trustee--as
vice-chairman:--The--vice-chairman--shall--perform--the--duties--of--the
chairman--when--the--chairman--is--absent--or--incapable--of--performing--the
chairman's--duties].

(c) [The-financing-council--shall--elect--a-secretary;--who--is
the--official--custodian--of--the--minutes--books,--records--and--seal--of
the-council:--The-financing-council--may--elect--assistant--secretaries
who--may--perform--any--duty--of--the--secretary:

{+}--The-financing-council--may--elect--a-treasurer;

{+}--The-secretary--and--treasurer--may--be--the--same--individual;

{+}--The-secretary--treasurer--and--assistant--secretaries
need--not--be--trustees;

{+}--The--financing--council--may--require--other--duties--of--the
officers.

{+}--The officers serve one-year terms or until a successor
is elected [shall--be--elected--at--the--first--financing--council--meeting
occurring--on--or--after--September--1--of--each--odd--numbered--year--and
when--necessary--to--fill--a--vacancy].

SECTION 70. Section 224.018, Health and Safety Code, is
amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:
Sec. 224.018. FINANCING COUNCIL MEETINGS. (a) The financing council may [shall] meet [regularly] at any time and place in the state [the--times--and--places] specified by the [financing-council--The] chairman or any two other trustees [may call--a--special--meeting--to--be-held-at-any-time-and-place-in-the state].
(b) Written [The-secretary--of--state--shall--post--written] notice of the date, hour, place, and subject of each financing council meeting must be posted in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes) [at least] [two hours before the scheduled time of the meeting;--The--secretary--of the state--may publish the notice in the Texas Register;--The notice is sufficient if posted two hours before the convening of a meeting on an emergency or an urgent public necessity, which must be expressed in the notice;--An action taken by the financing council on a subject for which notice was not given as required by this section is voidable].
SECTION 71. Section 224.019(a), Health and Safety Code, is amended to conform to Section 4, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:
(a) The financing council may act [acts] by written resolution adopted by a majority of the trustees present at a meeting at which a quorum is present.
SECTION 72. Section 224.020, Health and Safety Code, is amended to conform to Sections 4 and 5, Chapter 696 (S.B. 1387),
Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.020. RULES. The council may adopt rules only to the extent necessary in relation to bonds of the council that are outstanding on September 1, 1989, which may include provisions for the management-of-the-affairs-of-the-financing-council.

SECTION 73. Subchapter B, Chapter 224, Health and Safety Code, is amended to conform to Section 2, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 224.0245 to read as follows:

Sec. 224.0245. OFFICIAL CUSTODIAN. The state treasurer is the official custodian of the minutes, books, records, and seal of the financing council.

SECTION 74. Subchapter B, Chapter 224, Health and Safety Code, is amended to conform to Section 2, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 224.027 to read as follows:

Sec. 224.027. SUPPORT STAFF. The office of the state treasurer shall provide staff and other support necessary to carry out the duties and powers of the financing council.

SECTION 75. Section 224.051, Health and Safety Code, is amended to conform to Sections 1 and 5, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.051. [GENERAB] POWERS AND DUTIES. (a) The financing council exists to preserve the validity and enforceability of the bonds of the financing council that are
outstanding on September 1, 1989, according to the terms of the
bonds and subject to all applicable terms and conditions of the law
and proceedings authorizing the bonds.

(b) The financing council has only the powers necessary in
connection with the bonds of the council that are outstanding on
September 1, 1989.

(c) The financing council shall carry out all covenants
contained in the bonds and the proceedings and amendments
authorizing the bonds.

(d) The financing council shall provide for the bond
payments from the authorized sources of payment in accordance with
the terms of the bonds until the bonds and any interest are paid
and the bonds are discharged or adequate provisions for the bonds
have been made [The financing council--may--provide--at--reasonable
cost-health-related-equipment-that-will-improve-the-adequacy,-cost,
and-accessibility-of-health-care-in-this-state].

SECTION 76. Sections 224.052-224.054, 224.056-224.059, and
224.061, Health and Safety Code, are repealed to conform to Section
5, Chapter 696 (S.B. 1387), Acts of the 71st Legislature, Regular

SECTION 77. Section 224.101, Health and Safety Code, is
amended to conform to Sections 1 and 5, Chapter 696 (S.B. 1387),
Acts of the 71st Legislature, Regular Session, 1989, to read as
follows:

Sec. 224.101. ENFORCEABLE BONDS [AUTHORITY-TO-ISSUE--BONDS].
The bonds of the financing council that are outstanding on
September 1, 1989, are valid and enforceable according to their
terms and subject to all applicable terms and conditions of the law
and proceedings authorizing the bonds [\(\text{a}\) -- The -- financing -- council
may-issue-its-bonds;]

[\(\text{b}\) -- The financing council shall sell the bonds at public or
private-sale-for-the-price-it-determines].

SECTION 78. Sections 224.102 through 224.109, Health and
Safety Code, are repealed to conform to Section 5, Chapter 696

SECTION 79. Section 224.110, Health and Safety Code, is
amended to conform to Section 5, Chapter 696 (S.B. 1387), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 224.110. BONDS AND OTHER AGREEMENTS AS EXEMPT
SECURITIES. [\(\text{a}\) -- Financing -- council -- bonds, including interest
coupons, are securities within the meaning of Chapter 87 Business &
Commerce Code, notwithstanding a provision of Section 87.027
Business & Commerce Code, to the contrary;]

[\(\text{b}\)] Financing council bonds, including interest coupons,
are exempt securities under the Securities Act (Article 581-1 et
seq., Vernon's Texas Civil Statutes). A lease agreement, sales
agreement, or other contract under this chapter is not a security
within the meaning of that Act.

SECTION 80. Sections 224.111 and 224.115, Health and Safety
Code, are repealed to conform to Section 5, Chapter 696

SECTION 81. Section 9, Chapter 678 (H.B. 2136), Acts of the
71st Legislature, Regular Session, 1989, is repealed to conform to
Section 3, Chapter 696 (S.B. 1387), Acts of the 71st Legislature,

SECTION 82. Section 241.022(c), Health and Safety Code, is amended to conform to Section 7, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(c) The department shall require that each hospital show evidence that:

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed; and

(2) the governing body of the hospital:
   (A) has adopted and implemented a patient transfer policy in accordance with Section [Sections] 241.027; and
   (B) has implemented patient transfer agreements in accordance with Section 241.028 or has complied with rules adopted under Section 241.029.

SECTION 83. Section 241.027, Health and Safety Code, is amended to conform to Section 6, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, by amending Subsections (a) and (b) and adding Subsection (d) to read as follows:

(a) The board shall adopt rules to implement the minimum standards governing the transfer of patients between hospitals that do not have a transfer agreement and governing services not included in transfer agreements [as-provided-by-this-section]. The board shall base the rules on the recommendations made by the advisory committee established by Section 241.029.

(b) The rules must provide that patient transfers between
hospitals [should] be accomplished through hospital policies that
result in [a] medically appropriate transfers [manner] from
physician to physician and from hospital to hospital by providing
[for]:

(1) for notification to the receiving hospital before
the patient is transferred and confirmation by the receiving
hospital that the patient meets the receiving hospital's admissions
criteria relating to appropriate bed, physician, and other services
necessary to treat the patient;

(2) for the use of medically appropriate life support
measures that a reasonable and prudent physician exercising
ordinary care in the same or a similar locality would use to
stabilize the patient before the transfer and to sustain the
patient during the transfer;

(3) for the provision of appropriate personnel and
equipment that a reasonable and prudent physician exercising
ordinary care in the same or a similar locality would use for the
transfer; [and]

(4) for the transfer of all necessary records for
continuing the care for the patient; and

(5) that the transfer of a patient not be predicated
on arbitrary, capricious, or unreasonable discrimination because of
race, religion, national origin, age, sex, physical condition, or
economic status.

(d) The rules also shall provide that a public hospital or
hospital district shall accept the transfer of its eligible
residents if the public hospital or hospital district has
appropriate facilities, services, and staff available for providing
care to the patient.

SECTION 84. Section 241.028, Health and Safety Code, is
amended to conform to Section 6, Chapter 1027 (H.B. 18), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 241.028. [ADOPTION---OF---PATIENT] TRANSFER AGREEMENTS
[PROVISIONS]. (a) If hospitals execute a transfer agreement that is
consistent with the requirements of this section, all patient
transfers between the hospitals are governed by the agreement.

(b) The hospitals shall submit the agreement to the
department for review for compliance with the requirements of this
section. The department shall complete the review of the agreement
within 30 days after the date the agreement is submitted by the
hospitals.

(c) At a minimum, a transfer agreement must provide that:

(1) transfers be accomplished in a medically
appropriate manner and comply with Sections 241.027(b)(2)-(5);

(2) the transfer or receipt of patients in need of
emergency care not be based on the individual's inability to pay
for the services rendered by the transferring or receiving
hospital;

(3) multiple transfer agreements be entered into by a
hospital based on the type or level of medical services available
at other hospitals;

(4) the hospitals recognize the right of an individual
to request transfer to the care of a physician and hospital of the
individual's choice,
(5) the hospitals recognize and comply with the requirements of Chapter 61 (Indigent Health Care and Treatment Act) relating to the transfer of patients to mandated providers; and

(6) consideration be given to availability of appropriate facilities, services, and staff for providing care to the patient [A-hospital-shall-adopt-binding-policies-relating-to patient-transfers-that-are-consistent-with-the-rules-adopted-by-the board.]

[b]---The-board-by-rule-shall-set-the-date-by-which-a hospital-must-adopt-the-patient-transfer-policies.

[c]---A-hospital-shall, if possible, implement its-transfer policies-by-adopting-transfer-agreements-with-other-hospitals].

SECTION 85. Subchapter B, Chapter 241, Health and Safety Code, is amended to conform to Section 6, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 241.029 to read as follows:

Sec. 241.029. DEPARTMENT TRANSFER RULES; ADVISORY COMMITTEE ON PATIENT TRANSFERS. (a) The department may adopt rules to facilitate the transfer of patients between hospitals that do not have a transfer agreement. The rules must be based on recommendations of the advisory committee on patient transfers.

(b) The advisory committee on patient transfers is composed of the following members appointed by the board:

(1) two physicians who have been in active practice in a rural area;

(2) two physicians who have been in active practice in an urban area;
(3) two hospital administrators who have been in active hospital administration in a rural area, one representing a public hospital and one representing a private hospital;

(4) two hospital administrators who have been in active hospital administration in an urban area, one representing a public hospital and one representing a private hospital;

(5) an emergency medical technician;

(6) a person serving as a volunteer to an emergency medical services provider; and

(7) two consumer members.

SECTION 86. Section 241.055, Health and Safety Code, is amended to conform to Section 8, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 241.055. CIVIL PENALTY. (a) A hospital is liable for a civil penalty if the hospital:

(1) [that] does not timely adopt, implement, and enforce a patient transfer policy in accordance with Section [Sections] 241.027;

(2) [that] executes patient transfer agreements but does not implement the agreements in accordance with Section [and] 241.028;

or

(3) engages in an activity governed by the rules adopted under Section 241.029 but does not comply with the rules.

(b) The [is--liable--for--a] civil penalty may be set in an amount of not more than $1,000 for each day of violation and for each act of violation.

(c) [fb] In determining the amount of the penalty, the
district court shall consider:

(1) the hospital's previous violations;
(2) the seriousness of the violation;
(3) whether the health and safety of the public was threatened by the violation; and

(4) the demonstrated good faith of the hospital.

SECTION 87. Section 241.056, Health and Safety Code, is amended to conform to Section 9, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, by amending the section heading and Subsection (a) to read as follows:


SECTION 88. Section 242.003(a), Health and Safety Code, is amended to conform to Section 9, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) Except as otherwise provided, this [This] chapter does not apply to:

(1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;
(2) a hospital;
(3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the
sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules:

(4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;

(5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;

(6) a facility that:

(A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the Texas Rehabilitation Commission, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Commission for the Blind, Texas Commission on Alcohol and Drug Abuse, institutional division of the Texas Department of Criminal Justice [Corrections], and the Veteran's Administration; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; and

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services.

SECTION 89. Section 242.046(a), Health and Safety Code, is amended to conform to Section 12, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:
(a) The department shall hold an [at-least-one] open hearing [each-year] in a [each] licensed institution, other than an institution that provides maternity care, if the department has taken a punitive action against the institution in the preceding 12 months or if the department receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the institution and the department has reasonable cause to believe the complaint is valid.

The department is not required to hold more than one open meeting in a particular institution in each year [to hear any complaints of substandard care or licensing violations].

SECTION 90. Subchapter B, Chapter 242, Health and Safety Code, is amended to conform to Section 12, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 242.048 to read as follows:

Sec. 242.048. LICENSING SURVEYS. The department shall provide a team to conduct surveys to validate findings of licensing surveys. The purpose of validation surveys is to assure that survey teams throughout the state survey in a fair and consistent manner. A facility subjected to a validation survey must correct deficiencies cited by the validation team but is not subject to punitive action for those deficiencies.

SECTION 91. Section 242.133, Health and Safety Code, is amended to conform to Sections 1 and 2, Chapter 538 (H.B. 3042), Acts of the 71st Legislature, Regular Session, 1989, by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) The petitioner [must--file--a--signed--and--written
complaint] not later than the 90th day after the date on which the
person's employment is suspended or terminated, must bring suit or
notify the Texas Employment Commission of the petitioner's intent
to sue under this section. A petitioner who notifies the Texas
Employment Commission under this subsection must bring suit not
later than the 90th day after the date of the delivery of the
notice to the commission. On receipt of the notice, the commission
shall notify the institution of the petitioner's intent to bring
suit under this section.

(g) Each institution shall require each employee of the
institution, as a condition of employment with the institution, to
sign a statement that the employee understands the employee's
rights under this section. The statement must be part of the
statement required under Section 242.122. If an institution does
not require an employee to read and sign the statement, the periods
under Subsection (d) do not apply, and the petitioner must bring
suit not later than the second anniversary of the date on which the
person's employment is suspended or terminated.

SECTION 92. Subchapter E, Chapter 242, Health and Safety
Code, is amended to conform to Section 13, Chapter 1085 (S.B. 487),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 242.134 to read as follows:

Sec. 242.134. REPORTS RELATING TO RESIDENT DEATHS. (a) An
institution licensed under this chapter shall submit a report to
the department within 10 working days after the date a resident of
the institution dies.

(b) The institution must make the report on a form
prescribed by the department. The report must contain the:

(1) name and age of the deceased;

(2) official cause of death listed on the death certificate;

(3) date, time, and place of death; and

(4) name and address of the institution in which the deceased resided.

(c) A record under this section is confidential and not subject to the provisions of the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). However, a licensed institution shall make available historical statistics on all required information on request of an applicant or applicant's representative.

SECTION 93. Section 242.154, Health and Safety Code, is amended to conform to Section 11, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsection (f) to read as follows:

(f) The department may issue a permit to an employee of a state or federal agency listed in Section 242.003(a)(6)(B).

SECTION 94. Subchapter H, Chapter 242, Health and Safety Code, is repealed to conform to Section 2 of Chapter 1181 (S.B. 332), and Section 4 of Chapter 1225 (H.B. 1466), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 95. Section 246.002(3), Health and Safety Code, is amended to conform to Section 1, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:
(3) "Continuing care" means the furnishing of a living unit [board--and--lodging], together with personal care services, and nursing services, medical services, or other health-related services, regardless of whether the services and the living unit [lodging] are provided at the same location:

(A) to an individual who is not related by consanguinity or affinity to the person furnishing the care; and

(B) under a contract [agreement] that requires the payment of an entrance fee and that is effective either for the life of the individual or for more than one year.

SECTION 96. Section 246.024, Health and Safety Code, is amended to conform to Section 2, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY. A certificate of authority may not be transferred without the prior approval of [unless] the commissioner [approves-the-transfer].

SECTION 97. Section 246.025, Health and Safety Code, is amended to conform to Section 2, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY. The commissioner may suspend or revoke a provider's certificate of authority if the provider:

(1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;

(2) draws on its loan reserve fund escrow in an amount greater than provided for by Section 246.078; or

(3) intentionally violates this chapter.
SECTION 98. Section 246.043, Health and Safety Code, is amended to conform to Section 8, Chapter 622 (S.B. 224), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must:

(1) state, in a prominent location and in [boldfaced] type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous, the date of the statement; and

(2) include a statement that this chapter requires the delivery of the disclosure statement to a contracting party before the execution of a continuing care contract, but that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information.

SECTION 99. Section 246.050, Health and Safety Code, is amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. (a) The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract at a facility, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in
the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) [the--provider's] income statements and a statement of cash flow for each of the three most recent fiscal years that the provider has been in existence.

(b) Financial statements required by Subsection (a)(2) must be prepared in accordance with generally accepted accounting principles and must be audited by an independent certified public accountant, who shall state in the audit report whether the financial statements were prepared in accordance with those principles.

SECTION 100. Section 246.051, Health and Safety Code, is amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

(1) [a--beginning--cash--balance--consistent--with-the income-statement-required-under-Section-246.050-or--if-operation-of the-facility-has--not--begun--consistent--with-the--statement--of anticipated-source-and-application--of-funds--required-under-Section 246.052]
(2) [§3] anticipated earning on any cash reserves;

(3) [§4] estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of calculation for the projection of entrance fee receipts;

(4) [§5] an estimate of gifts or bequests to be relied on to meet operating expenses;

(5) [§6] a projection of estimated income from fees and charges, excluding entrance fees, that:

(A) states individual rates anticipated to be charged; and

(B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;

(6) [§7] a projection of the facility's operating expenses, including:

(A) a description of the assumptions used in computing the expenses; and

(B) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(7) [§8] an estimate of annual payments of principal and interest required by a mortgage loan or other long-term
financing arrangement relating to the facility.

SECTION 101. Section 246.053, Health and Safety Code, is
amended to conform to Section 3, Chapter 770 (H.B. 1475), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.053. STANDARD CONTRACT FORM. (a) A copy of the
standard contract form used by a provider must be attached as an
exhibit to each disclosure statement.

(b) The standard contract form must specify the refund
provisions of Sections 246.056 and 246.057.

SECTION 102. Section 246.056, Health and Safety Code, is
amended to conform to Section 8 of Chapter 622 (S.B. 224) and
Section 3 of Chapter 770 (H.B. 1475), Acts of the 71st Legislature,
Regular Session, 1989, to read as follows:

Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE.

(a) A person who executes a continuing care contract with a
provider may rescind the contract at any time before the later of
midnight of the seventh day, or a later day if specified in the
contract:

(1) after the date on which the contract is executed;
or

(2) after the date on which the person receives a
disclosure statement that meets the requirements of this
subchapter.

(b) A resident who executes a continuing care contract may
not be required to move into the facility before the expiration of
the [seven-day] period during which the contract may be rescinded.

(c) If a contract is rescinded under this section, any money
or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must include the following statement or a substantially equivalent statement [state] in [boldfaced] type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:

[†††] "You may cancel this contract at any time prior to midnight of the seventh day, or a later day if specified in the contract, after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit."

(e) Each continuing contract also must include the following statement in type that is boldfaced, capitalized, underlined, or otherwise set out from the surrounding written material so as to be conspicuous:[†-end

[‡‡‡] "This document, if executed, constitutes a legal and binding contract between you and __________. You may wish to consult a legal or financial advisor before signing, although it is not required that you do so to make this contract binding."

SECTION 103. Section 246.058, Health and Safety Code, is amended to conform to Section 10, Chapter 770 (H.B. 1475), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files a [an-annual] disclosure statement under Section 246.041 or 246.054 shall pay to the commissioner:

(1) a filing fee of $500; and
(2) a fee of not more than $2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home.

SECTION 104. Section 246.072, Health and Safety Code, is amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.072. RELEASE OR RETURN OF ENTRANCE FEE. Unless the escrow agent receives a written request from or on behalf of a provider [payee], a resident, or the personal representative of a resident for the return of an entrance fee under Section 246.056, the agent shall release the fee to the provider or[7] place the fee in a loan reserve fund escrow[7-or-return-the-fee-to-the-payee-as provided-by-this-subchapter].

SECTION 105. Section 246.073, Health and Safety Code, is amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:
(A) uncanceled executed continuing care contracts with those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each contract;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any loan reserve fund escrow required to be maintained by the provider under Section 246.077; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility; and:
(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges; or

(B) if construction or purchase of the facility
has been substantially completed:

(i) an occupancy permit covering the
living unit has been issued by the local government that has
authority to issue the permit; and

(ii) if the entrance fee applies to a
living unit that has been previously occupied, the living unit is
available for occupancy by the new resident.

(b) Before the date on which the loan reserve fund escrow
required under Section 246.077 is first established, the aggregate
amount of entrance fees that may be released to the provider under
this section may not exceed an amount equal to the aggregate amount
of entrance fees received or receivable by the provider under
binding continuing care contracts minus the amount of entrance fees
received or receivable that are required to be maintained initially
in the loan reserve fund escrow.

SECTION 106. Section 246.074, Health and Safety Code, is
amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.074. RETURN OF ENTRANCE FEE. The escrow agent
shall return an entrance fee to the person who paid it if the fee
is not released to the provider or placed in the loan reserve fund
escrow required under Section 246.077 within:

(1) 36 months after the date on which any portion of
the entrance fee is received by the provider; or

(2) a longer time specified by the provider in the
disclosure statement delivered with the continuing care contract of
the person who paid the fee.
SECTION 107. Section 246.077, Health and Safety Code, is amended to conform to Section 5, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 246.077. LOAN RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a reserve fund [portion--of all entrance-fees received by the provider in an amount] equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. The requirements of this section may be met in whole or in part by other reserve funds held for the purpose of meeting loan obligations if the total amount equals or exceeds the amount required by this subsection.

(b) At the option of the facility, the loan reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing home.

(c) The provider shall maintain the loan reserve fund escrow in an account that is fully covered by federal deposit insurance and is separate from the provider's business account or in other accounts or investments approved by the commissioner. The funds in the reserve fund escrow account may be invested, with earnings payable to the provider.

SECTION 108. Section 246.078, Health and Safety Code, is amended to conform to Section 5, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:
Sec. 246.078. RELEASE OF LOAN RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the loan reserve fund required by Section 246.077 [original principal balance of the escrow account] if the provider requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds from the loan reserve fund escrow under this section more than once during a calendar year. A provider at any time may apply to the commissioner for the withdrawal of all or part of the loan reserve escrow funds. The provider may withdraw the funds on the approval of the withdrawal by the commissioner. The application must be made and the approval given as provided by rule.

(d) The provider must repay to the loan reserve fund escrow account the amount released to the provider under Subsection (a) or (c) not later than 18 months after the date the amount is released. The commissioner may place the provider or facility under supervision under Section 246.091 or take any other appropriate action as provided by law if the provider does not repay the loan reserve fund escrow account within the required period.

SECTION 109. Section 246.079(a), Health and Safety Code, is amended to conform to Section 9, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A provider who operates a facility that existed on September 1, 1987, must comply with the filing requirements imposed under Section 246.041 and the escrow requirements imposed under
Sections 246.077 and 246.078 [this--subchapter] not later than September 1, 1990.

SECTION 110. Chapter 246, Health and Safety Code, is amended to conform to Section 4, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 246.080 to read as follows:

Sec. 246.080. APPLICABILITY. Sections 246.071-246.076 do not apply to a facility that on September 1, 1987, was completed and occupied by at least one person.

SECTION 111. Sections 246.091(a) and (c), Health and Safety Code, are amended to conform to Section 6, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The commissioner may place a provider or facility under [into] supervision if:

(1) the provider draws on the provider's entrance fee escrow in an amount greater than permitted by Section 246.073 [requests-release-of-more-than--one-twelfth--of-the--reserve--fund escrow-required-under-Section-246.077];

(2) the provider draws on the provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Section 246.078 [requests-release-of-the-reserve fund-escrow-more-than-once-in-a-12-month-period];

(3) the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully
perform its obligations under continuing care contracts is
endangered; or

(4) the provider is bankrupt, insolvent, or has filed
for protection from creditors under a federal or state
reorganization, bankruptcy, or insolvency law.

(c) The commissioner may provide that the provider
[facility] may not, during the supervision period and without the
prior approval of the commissioner or the supervisor:

(1) dispose of, convey, or encumber its assets;
(2) withdraw its bank accounts;
(3) lend its funds;
(4) invest its funds;
(5) transfer its property;
(6) incur a debt, obligation, or liability; or
(7) merge or consolidate with another facility.

SECTION 112. Section 246.092(a), Health and Safety Code, is
amended to conform to Section 7, Chapter 770 (H.B. 1475), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The commissioner shall request the attorney general to
apply to a district court of this state, or to the federal
bankruptcy court that has exercised jurisdiction over a provider or
facility, for an order directing the appointment of a trustee to
rehabilitate or liquidate the facility if the commissioner elects
not to place the facility under [into] supervision and:

(1) the provider draws from the provider's loan
reserve fund escrow an amount greater than permitted by [requests
release--of--more--than--one-twelfth--of--the--reserve--fund-escrow
required-under Section 246.078 [246;077];

(2) the provider does not repay the loan reserve fund escrow as required by Section 246.078 [requests-release-of-the reserve-fund-escrow-more-than-once-in-a-t2-month-period];

(3) the board determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

SECTION 113. Section 246.114, Health and Safety Code, is amended to conform to Section 8, Chapter 770 (H.B. 1475), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsection (d) to read as follows:

(d) The commissioner may require an actuarial review of a facility before the end of the five-year interval in which the facility would otherwise be required to file an actuarial review if, in the opinion of the commissioner, the facility exhibits conditions of financial instability warranting an earlier review.

SECTION 114. Subtitle B, Title 4, Health and Safety Code, is amended to conform to Section 15, Chapter 1085 (S.B. 487), Acts of the 71st Legislature, Regular Session, 1989, by adding Chapter 247 to read as follows:
CHAPTER 247. PERSONAL CARE FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 247.001. SHORT TITLE. This chapter may be cited as the Personal Care Facility Licensing Act.

Sec. 247.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Personal care facility" means a place in which a person provides or attempts to provide a resident with personal care services.

(4) "Personal care services" means:

(A) assistance with meals, dressing, movement, bathing, or other personal needs or maintenance;

(B) the administration of medication by a person licensed to administer medication or the assistance with or supervision of medication; or

(C) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in a personal care facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person.

Sec. 247.003. APPLICATION OF OTHER LAW. (a) Except as provided by Subsection (b), Chapter 242 does not apply to a personal care facility licensed under this chapter.

(b) Subchapter D, Chapter 242, applies to a personal care facility, and the department shall administer and enforce that
subchapter for a personal care facility in the same manner it is
administered and enforced for a nursing home.

[Sections 247.004-247.020 reserved for expansion]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 247.021. LICENSE REQUIRED. A person may not establish
or operate a personal care facility without a license issued under
this chapter.

Sec. 247.022. LICENSE APPLICATION. (a) An applicant for a
personal care facility license must submit an application to the
department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable
license fee in an amount set by the board.

Sec. 247.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
department shall issue a license if, after inspection and
investigation, it finds that the applicant and the personal care
facility meet the requirements of this chapter and the standards
adopted under this chapter.

(b) To renew a license, the licensee must submit to the
department the annual license renewal fee.

Sec. 247.024. LICENSE FEES. (a) The board shall set fees
imposed by this chapter in amounts reasonable and necessary to
defray the cost of administering this chapter.

(b) All fees collected under this chapter shall be deposited
in the state treasury to the credit of the personal care facility
licensing fund and may be appropriated to the department only to
administer and enforce this chapter.

Sec. 247.025. ADOPTION OF RULES. The board shall adopt
rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate a personal care facility.

Sec. 247.026. MINIMUM STANDARDS. (a) The board by rule shall prescribe minimum standards to protect the health and safety of a personal care facility resident.

(b) The standards must:

(1) clearly differentiate a personal care facility from an institution required to be licensed under Chapter 242; and

(2) ensure quality care and protection of the residents' health and safety without excessive cost.

Sec. 247.027. INSPECTIONS. The department may inspect a personal care facility at reasonable times as necessary to assure compliance with this chapter.

[Sections 247.028-247.040 reserved for expansion]

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 247.041. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 247.042. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) If the department finds a personal care facility operating in violation of the standards prescribed under this chapter and the
violations create an immediate threat to the health and safety of a
resident in the facility, the department shall suspend the license
or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is
effective immediately on written notice to the license holder or on
the date specified in the order.

(c) The order suspending the license and ordering closure of
all or part of a personal care facility is valid for 10 days after
its effective date.

Sec. 247.043. INJUNCTION. (a) The department may petition
a district court for a temporary restraining order to restrain a
continuing violation of the standards or licensing requirements
provided under this chapter if the department finds that the
violation creates an immediate threat to the health and safety of
the personal care facility residents.

(b) A district court, on petition of the department and on a
finding by the court that a person is violating the standards or
licensing requirements provided under this chapter, may by
injunction:

(1) prohibit a person from continuing a violation of
the standards or licensing requirements provided under this
chapter;

(2) restrain the establishment or operation of a
personal care facility without a license issued under this chapter;
or

(3) grant any other injunctive relief warranted by the
facts.
(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the personal care facility is located or in Travis County.

Sec. 247.044. CIVIL PENALTIES. A person who violates this chapter or who fails to comply with a rule authorized by this chapter determined by the department to threaten the health and safety of a resident is subject to a civil penalty of not less than $100 or more than $10,000 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery.

Sec. 247.045. TRANSITION. The department shall grant to a personal care facility licensed on or before December 31, 1990, under Chapter 242 a temporary permit to continue operation until the department performs any inspection or investigation required by this chapter.

[Sections 247.046-247.050 reserved for expansion]

SUBCHAPTER D. ADVISORY COMMITTEE ON PERSONAL CARE FACILITIES

Sec. 247.051. ADVISORY COMMITTEE. (a) The Advisory Committee on Personal Care Facilities consists of nine members appointed by the board. The commissioner of health shall appoint one staff member from the department to serve as a nonvoting advisory member.

(b) The board shall appoint the advisory committee to provide for a balanced representation of personal care providers and consumers and shall appoint one member who has expertise in
life safety code regulations. At least one of the provider members
must be representative of a nonprofit facility.

(c) The committee shall elect the presiding officer from
among its members.

(d) The committee shall advise the department on standards
for licensing personal care facilities and on the implementation of
this chapter.

SECTION 115. Subtitle B, Title 4, Health and Safety Code, is
amended to conform to Section 16, Chapter 1085 (S.B. 487), Acts of
the 71st Legislature, Regular Session, 1989, by adding Chapter 248
to read as follows:

CHAPTER 248. SPECIAL CARE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248.001. SHORT TITLE. This chapter may be cited as the
Texas Special Care Facility Licensing Act.

Sec. 248.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Department" means the Texas Department of Health.

(3) "Medical care" means care that is:

(A) required for improving life span and quality
of life, for comfort, for prevention and treatment of illness, and
for maintenance of bodily and mental function;

(B) under the continued supervision of a
physician; and

(C) provided by a registered nurse or licensed
vocational nurse available to carry out a physician's plan of care
for a resident.
(4) "Nursing care" means services provided by nursing personnel as prescribed by a physician, including services to:
   (A) promote and maintain health;
   (B) prevent illness and disability;
   (C) manage health care during acute and chronic phases of illness;
   (D) provide guidance and counseling of individuals and families; and
   (E) provide referrals to physicians, other health care providers, and community resources when appropriate.

(5) "Person" means an individual, organization, establishment, or association of any kind.

(6) "Resident" means an individual accepted for care in a special care facility.

(7) "Services" means the provision of medical or nursing care, assistance, or treatment by special care facility personnel, volunteers, or other qualified individuals, agencies, or staff of an organization or other entity to meet a resident's medical, nursing, social, spiritual, and emotional needs.

(8) "Special care facility" means an institution or establishment that provides a continuum of nursing or medical care or services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. The term includes a special residential care facility.

Sec. 248.003. EXEMPTIONS. This chapter does not apply to:

(1) a home health agency required to be licensed under Chapter 142;
(2) a person required to be licensed under Chapter 241 (Texas Hospital Licensing Law);

(3) an institution required to be licensed under Chapter 242;

(4) an ambulatory surgical center required to be licensed under Chapter 243 (Texas Ambulatory Surgical Center Licensing Act);

(5) a birthing center required to be licensed under Chapter 244 (Texas Birthing Center Licensing Act);

(6) a facility required to be licensed under Chapter 245 (Texas Abortion Facility Reporting and Licensing Act); or

(7) a person providing medical or nursing care or services under a license or permit issued under other state law.

[Sections 248.004-248.020 reserved for expansion]

SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS

Sec. 248.021. LICENSE REQUIRED. A person may not establish or operate a special care facility unless the person holds a license issued under this chapter.

Sec. 248.022. APPLICATION. (a) An applicant for a license must submit an application to the department on a form prescribed by the department and in accordance with board rules.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The department may require that an application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation.
Sec. 248.023. ISSUANCE AND RENEWAL OF LICENSE. (a) The
department shall issue a license to an applicant if on inspection
and investigation it finds that the applicant meets the
requirements of this chapter and the rules adopted by the board.

(b) A license shall be renewed at the times and in
accordance with the rules established by the board.

Sec. 248.024. FEES. (a) The board shall establish a
license application fee in the amount of $25 for each facility bed
or $200, whichever is greater, but the fees may not exceed $1,000.

(b) The board may establish other reasonable and necessary
fees in amounts that are adequate, with the license application and
license renewal fees, to collect sufficient revenue to meet the
expenses necessary to administer this chapter. The fees may
include construction plan review and inspection fees.

(c) All fees collected under this chapter are nonrefundable.

(d) All fees received by the department shall be deposited
to the credit of the general revenue fund and may be appropriated
only to the department to administer this chapter.

Sec. 248.025. NONTRANSFERABILITY; POSTING. (a) A license
issued under this chapter is not transferable or assignable.

(b) A special care facility shall post in plain sight the
license issued under this chapter.

Sec. 248.026. DUTIES OF BOARD. (a) The board shall adopt
rules necessary to implement this chapter. The rules must
establish minimum standards for special care facilities relating
to:

(1) the issuance, renewal, denial, suspension, and
revocation of the license required by this chapter;
(2) the qualifications, duties, and supervision of
professional and nonprofessional personnel and volunteers;
(3) residents' rights;
(4) medical and nursing care and services provided by
a license holder;
(5) the organizational structure, lines of authority,
delegation of responsibility, and operation of a special care
facility;
(6) records of care and services kept by the license
holder, including the disposal or destruction of those records;
(7) safety, fire prevention, and sanitary provisions;
(8) transfer of residents in a medically appropriate
manner from or to a special care facility;
(9) construction plan approval and inspection; and
(10) any aspects of a special care facility as
necessary to protect the public or residents of the facility.

(b) Subsection (a) does not authorize the board to establish
the qualifications of licensed health care providers or permit the
board to authorize persons to provide health care services who are
not authorized to provide those services under other state law.

Sec. 248.027. CONSTRUCTION STANDARDS. (a) If there are no
local regulations in effect or enforced in the area in which a
special care facility is located, the facility's construction must
conform to the minimum standards established by the board.

(b) Construction of a facility is subject to construction
plan approval by the department.
Sec. 248.028. INSPECTIONS; INVESTIGATIONS. (a) The department may inspect a special care facility and its records at reasonable times as necessary to ensure compliance with this chapter.

(b) The department shall investigate each complaint received regarding a special care facility.

[Sections 248.029-248.050 reserved for expansion]

SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 248.051. LICENSE DENIAL, SUSPENSION, OR REVOCA TION. (a) The department may deny, revoke, or suspend a license issued under this chapter for a violation of this chapter or the rules adopted under this chapter.

(b) Except as provided by Section 248.052, the procedures by which the department denies, revokes, or suspends a license and by which those actions are appealed are governed by the department's rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 248.052. EMERGENCY SUSPENSION. The department may issue an emergency order to suspend any license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder. On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the
emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by the department's rules for a contested case hearing and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 248.053. INJUNCTION. (a) The department may request that the attorney general petition a district court to restrain a license holder or other person from continuing to violate this chapter or any rule adopted by the board under this chapter. Venue for a suit for injunctive relief is in Travis County.

(b) On application for injunctive relief and a finding that a license holder or other person has violated this chapter or board rules, the district court shall grant the injunctive relief that the facts warrant.

Sec. 248.054. CIVIL PENALTY. A license holder or person who violates this chapter or a rule adopted by the board under this chapter is liable for a civil penalty, to be imposed by a district court, of not more than $1,000 for each day of violation. All penalties collected under this section shall be deposited to the credit of the general revenue fund.

Sec. 248.055. CRIMINAL PENALTY. (a) A person who knowingly establishes or operates a special care facility without a license issued under this chapter commits an offense.

(b) An offense under this section is a Class B misdemeanor.

(c) Each day of a continuing violation constitutes a separate offense.

SECTION 116. Section 262.030, Health and Safety Code, is
amended to conform to Section 5, Chapter 1248 (H.B. 1285), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 262.030. MEDICAL RECORDS. (a) The preservation, microfilming, destruction, or other disposition of the records of the authority is subject to Subtitle C, Title 6, Local Government Code. [The governing body may authorize the board to dispose of medical records of a patient on or after the 18th anniversary of the date on which the patient was last treated in the hospital. However, if the patient is under the age of 18 at the time of the last treatment, the disposal of the medical records may not be made until on or after the patient's 20th birthday.]

(b) The period that medical records are retained shall be in accordance with rules relating to the retention of medical records adopted by the Texas Department of Health and with other applicable federal and state laws and rules. [The governing body may authorize the board to transfer, destroy, or otherwise dispose of any other authority records that are more than five years old and that the board determines not to be of use to the authority as official records].

[tc]—The hospital may not destroy medical records that relate to a matter involved in litigation if the hospital knows the litigation has not been finally resolved.

[td]—A district may microfilm and retain medical records and any other records that the board considers necessary to preserve in the manner provided by Sections 181.002-181.005, Local Government Code.}

SECTION 117. Subchapter C, Chapter 262, Health and Safety
Code, is amended to conform to Section 1, Chapter 701 (S.B. 1479),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 262.034 to read as follows:

Sec. 262.034. NURSING HOMES. (a) This section applies to
an authority created by a municipality with a population of more
than 24,000 that is located in a county with a population of 1.5
million or more.

(b) The authority may construct, acquire, own, operate,
enlarge, improve, furnish, or equip one or more nursing homes or
similar facilities for the care of the elderly. The nursing home
or similar facility may be located outside the municipal limits.

(c) The authority may lease or enter into an operations or
management agreement relating to all or part of a nursing home or
similar facility for the care of the elderly that is owned by the
authority. The authority may sell or close all or part of the
nursing home or similar facility.

(d) The authority may issue revenue bonds and other notes in
accordance with this chapter to acquire, construct, or improve a
nursing home or similar facility for the care of the elderly.

(e) For the purposes of this section, a nursing home or
similar facility for the care of the elderly is considered to be a
hospital project under Chapter 223 (Hospital Project Financing
Act).

SECTION 118. Section 281.073, Health and Safety Code, is
amended to conform to Section 6, Chapter 1248 (H.B. 1285), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 281.073. DISPOSITION OF DISTRICT RECORDS. (a) The
preservation, microfilming, destruction, or other disposition of
the records of a district is subject to Subtitle C, Title 6, Local
Government Code. [The-commissioners-court-may-authorize-the-board
to-transfer-destroy-or-otherwise-dispose-of-district-records;
other-than-medical-records-that-are;

(1) more-than-five-years-old; and
(2) determined--by-the-board-to-be-of-no-further-use
to-the-district-as-official-records;]

(b) The period that medical records are retained shall be in
accordance with rules relating to the retention of medical records
adopted by the Texas Department of Health and with other applicable
federal and state laws and rules [The-commissioners-court-may
authorize-the-disposal-of-the-medical-records-of-a-patient-on-or
after-the--10th--anniversary-of-the-date-on-which-the-patient-was
last-treated-in-the-hospital].

(1) if a-patient-was-younger-than-10-years-of-age-when--the
patient-was--last-treated,-the-hospital-may-authorize-the-disposal
of-medical-records-relating-to-the-patient-only--on-or-after-the-
date-of-the-patient's--20th--birthday-or--on-or-after-the-10th
anniversary-of-the-date-on-which-the-patient-was--last-treated;
whichever-date-is-later.

(2) The-hospital--may--not--destroy--medical-records-that
relate-to-any-matter-that-is-involved-in-litigation-if-the-hospital
knows-the-litigation-has-not-been-finally-resolved.

(3) A district may-microfilm-andretain-medical-records-and
any-other-records-the-board-consider-necessary-to-preserve-in--the
manner--provided--by--Sections--181.002-181.005--Local--Government
SECTION 119. Sections 282.062 and 282.063, Health and Safety Code, are amended to conform to Section 2, Chapter 166 (H.B. 1051), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 282.062. TREASURER. (a) The county treasurer of the county in which the district is located serves as treasurer of the construction and maintenance fund and the interest and sinking fund of the district.

(b) All money to be credited to the construction and maintenance fund or the interest and sinking fund [Funds--received by-the-district] shall be paid to the treasurer.

(c) [District--funds--shall--be--deposited--in--the--county depositories-in-the-manner-required-by-law-for-county-depositories--interest-collected-on-those-funds-belongs-to-the-district] [†d†] The treasurer may not pay money from the construction and maintenance fund or the interest and sinking fund [district funds] unless the treasurer receives a warrant ordering the payment signed by the district board chairman or another district officer designated by the board.

[†e†] The treasurer shall maintain in the district's name the funds--created-by-the-board-and-shall-place-money-in-those-funds-as the-board-by-resolution-directs.

(d) [†f†] The treasurer shall open a construction and maintenance fund account and an interest and sinking fund [an] account with the district and shall keep a record of all of the district's money received for the accounts [account] and paid from

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the accounts [account]. The treasurer may not pay money from the accounts [account] except on a voucher signed by the chairman or two board members.

(e) [††] The treasurer shall maintain a file of the payment orders from the accounts.

(f) [†††] As required by the board or the commissioners court, the treasurer shall give a correct accounting to the board or the commissioners court of all matters relating to the accounts [district-finances].

(g) [†††] For services on behalf of the district, the treasurer is entitled to receive an amount equal to:

(1) one-fourth of one percent of all money received by the treasurer for the construction and maintenance fund or the interest and sinking fund [on-behalf-of-the-district]; and

(2) one-eighth of one percent of all money received by the treasurer and paid out of the construction and maintenance fund or the interest and sinking fund [paid-out-by-the-treasurer-on--the order] of the district.

(h) [†††] The treasurer is not entitled to receive a commission under Subsection (g) [†††] on district money the treasurer receives from the preceding treasurer.

Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS. (a) The treasurer shall maintain a construction and maintenance fund and an interest and sinking fund for the district and shall place money in those funds as required by this chapter or as the board by resolution directs. All other money received by the district shall be placed in a fund or funds as provided by the board.
(b) The amount of taxes collected that is necessary to pay the principal of and interest on the bonds as they mature shall be credited to the interest and sinking fund. All money [other-funds and-property] received by the district from the sale of bonds shall be credited to the construction and maintenance fund.

(c) The treasurer shall pay from the construction and maintenance fund or from a fund or funds designated by the board the expenses, debts, and obligations of the district created after the filing of the original petition and incurred in the creation, operation, and maintenance of the district, other than the principal of and interest on bonds.

(d) The interest and sinking fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(e) The construction and maintenance fund and interest and sinking fund shall be held for the purposes for which they were created. If money is improperly paid from either fund, the commissioners court may require the county treasurer to transfer to the fund from the district account the amount necessary to restore that amount.

(f) District funds shall be deposited in the county depositories in the manner required by law for county depositories. Interest collected on those funds belongs to the district.

SECTION 120. Subchapter D, Chapter 282, Health and Safety Code, is amended to conform to Section 1, Chapter 166 (H.B. 1051), Acts of the 71st Legislature, Regular Session, 1989, by adding Sections 282.064 and 282.065 to read as follows:
Sec. 282.064. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding.

(c) The fiscal year may not be changed more than once in any 24-month period.

Sec. 282.065. ANNUAL AUDIT; OPEN RECORDS. (a) The board annually shall have an audit made of the financial condition of the district.

(b) The audit and other district records are open to inspection during regular business hours at the district's principal office.

SECTION 121. Subtitle D, Title 4, Health and Safety Code, is amended to conform to Sections 1.01 through 9.01, Chapter 206 (S.B. 907), Acts of the 71st Legislature, Regular Session, 1989, by adding Chapter 286 to read as follows:

CHAPTER 286. HOSPITAL DISTRICTS CREATED

BY VOTER APPROVAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 286.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the district.

(2) "District" means a hospital district created under this chapter.

(3) "Director" means a member of the board.

Sec. 286.002. DISTRICT AUTHORIZATION. A hospital district may be created and established and, if created, must be maintained,
operated, and financed in the manner provided by Article IX, Section 9, of the Texas Constitution and by this chapter.

[Sections 286.003-286.020 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 286.021. PETITION FOR CREATION OF DISTRICT. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 registered voters of the territory of the proposed district.

(b) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 registered voters of the territory of the county in which the judge presides and of the proposed district.

(c) If there are fewer than 100 registered voters in any area for which a separate petition must be filed, the petition must be signed by a majority of the registered voters in the area.

Sec. 286.022. CONTENTS OF PETITION. (a) The petition prescribed by Section 286.021 must show:

(1) that the district is to be created and is to operate under Article IX, Section 9, of the Texas Constitution;

(2) the name of the proposed district;

(3) the district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) that none of the territory in the district is included in another hospital district;
(5) the names of the temporary directors the commissioners court must appoint under Section 286.030 or a request that the commissioners court appoint temporary directors;

(6) the maximum tax rate to be voted on at the creation election, which may not exceed 75 cents on the $100 valuation of all taxable property in the district;

(7) the method by which the permanent directors will be elected, as provided by Subsection (c); and

(8) the mailing address of each petitioner.

(b) The petition must provide for the appointment of the same number of temporary directors as there will be permanent directors.

(c) The petition may provide:

(1) the number of directors for the district, which number must be an odd number; and

(2) the method by which directors are to be elected, whether at large, by place, or both, so that a specific number of directors are elected from each commissioner precinct and a specific number are elected at large.

Sec. 286.023. FILING OF PETITION; HEARING; ORDERING ELECTION. (a) If the petition is in proper form, the county judge shall receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.
(c) The county clerk shall issue a notice of the hearing in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(d) At the time and place set for the hearing, the commissioners court shall consider the petition. The commissioners court shall grant the petition if the court finds that the petition is in proper form and contains the information required by Section 286.022.

(e) If a petition is granted, the commissioners court shall order an election to confirm the district's creation and to authorize the levy of a tax not to exceed the amount prescribed by the petition on each $100 of the taxable value of all taxable property in the district.

(f) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(g) The election shall be held after the 45th day and on or before the 60th day after the date the election is ordered.

(h) Section 41.001(a), Election Code, does not apply to an election ordered under this section.

Sec. 286.024. ELECTION ORDER. The order calling the election must state:

(1) the nature of the election, including the proposition that is to appear on the ballot;
(2) the date of the election;

(3) the hours during which the polls will be open; and

(4) the location of the polling places.

Sec. 286.025. NOTICE. (a) The commissioners court shall
give notice of the election by publishing a substantial copy of the
election order in a newspaper with general circulation in the
proposed district once a week for two consecutive weeks.

(b) The first publication must appear before the 35th day
before the date set for the election.

Sec. 286.026. BALLOT PROPOSITION. The ballot for the
election shall be printed to permit voting for or against the
proposition: "The creation of the ______ (name of district)
Hospital District and the levy of annual taxes for hospital
purposes at a rate not to exceed ______ (insert the amount
prescribed by the petition, not to exceed 75 cents) cents on each
$100 valuation of all taxable property in the district."

Sec. 286.027. ELECTION RESULT. (a) Except as provided in
Subsections (b) and (c), a district is created and organized under
this chapter if a majority of the votes cast in the election favor
creation of the district.

(b) If the proposed district contains territory in more than
one county, a majority of the votes cast in each county must also
favor creation of the district.

(c) If a majority of the votes cast in a county within the
proposed district are against the creation of the district and a
majority of the votes cast in the remaining county or counties
favor creation of the district, the district may be created only in
the counties voting in favor of the proposed district.

(d) If a majority of those voting at the election vote against creation of the district, another election on the question of creating the district may not be held before the first anniversary of the most recent election concerning the creation of the district.

Sec. 286.028. COMMISSIONERS COURT ORDER. When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

"Whereas, at an election held on the _____ day of ________, 19__, in that part of ________ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into a hospital district under state law; and

"Whereas, at the election ______ votes were cast in favor of formation of the district and ______ votes were cast against formation; and

"Whereas, the formation of the hospital district received the affirmative vote of the majority of the votes cast at the election as provided by law;

"Now, therefore, the Commissioners Court of ________ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into a hospital district (or a portion thereof) under the name of ________, under Article IX, Section 9, of the Texas Constitution, and has the
powers vested by law in the district."

Sec. 286.029. OVERLAPPING DISTRICTS. (a) If the territory
in one or more districts overlaps, the commissioners court of the
county in which the most recently created district is located by
order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on
the date the election approving its creation was held. If the
elections approving the creation of two or more districts are held
on the same date, the most recently created district is the
district for which the hearing required by Section 286.023 was most
recently held.

(c) The fact that a district is created with boundaries that
overlap the boundaries of another district does not affect the
validity of either district.

Sec. 286.030. TEMPORARY DIRECTORS. (a) On the date a
commissioners court enters the order required by Section 286.028,
the commissioners court shall also appoint the temporary directors
of the district.

(b) If the petition prescribed by Section 286.021
specifically names temporary directors, the commissioners court
shall name those persons to serve as temporary directors of the
district. If the petition requests that the commissioners court
appoint the temporary directors, the court shall appoint the
appropriate number of persons to serve as temporary directors of
the district. If the petition fails to name or state the number of
directors, there are five directors.

(c) If the district is located in more than one county, the
commissioners courts shall each appoint a percentage of temporary
directors equal to the ratio that the number of district residents
in the county bears to the total number of district residents.

(d) From the time the district is created under Section
286.027 until the elected directors take office, the temporary
directors serve as directors of the district.

(e) The commissioners court shall fill a vacancy in the
office of temporary director by appointment.

[Sections 286.031-286.040 reserved for expansion]

SUBCHAPTER C. DISTRICT ADMINISTRATION

Sec. 286.041. BOARD OF DIRECTORS. The directors shall be
elected in accordance with the petition prescribed by Section
286.021.

Sec. 286.042. DIRECTOR'S ELECTION. (a) The initial
directors shall be elected at an election to be held on the first
Saturday in May following the creation of the district.

(b) If the directors are elected at large:

(1) the appropriate number of candidates receiving the
highest number of votes at the initial election of directors are
directors for the district;

(2) the number of directors equal to a majority of the
directors who receive the highest number of votes at the initial
election serve for a term of two years; and

(3) the remaining directors serve for a term of one
year.

(c) If the directors are elected by place:

(1) the candidate for a place receiving the highest
number of votes for election to that place is a director for the
district;

(2) a director elected to fill an even-numbered place
at the initial election serves for a term of one year; and

(3) a director elected to fill an odd-numbered place
at the initial election serves for a term of two years.

(d) If the directors are elected from commissioners
precincts and at large:

(1) the number of candidates equal to the number of
directors to be elected from each precinct who receive the highest
number of votes from a commissioner precinct are directors for that
precinct;

(2) the number of candidates equal to the number of
directors to be elected at large who receive the highest number of
votes from the district at large are directors for the district at
large;

(3) a candidate elected from an odd-numbered precinct
at the initial election serves for a term of two years;

(4) a candidate elected from an even-numbered precinct
at the initial election serves for a term of one year;

(5) a candidate elected as the director from the
district at large at the initial election serves for a term of two
years; and

(6) if more than one director is elected at large,
half of the directors elected serve two-year terms, and the other
half serve one-year terms.

(e) After the initial election of directors, an election
shall be held on the first Saturday in May each year to elect the appropriate number of successor directors for two-year terms.

Sec. 286.043. NOTICE OF ELECTION. Before the 35th day before the date of an election of directors, notice of the election shall be published one time in a newspaper with general circulation in the district.

Sec. 286.044. PETITION. (a) A person who wishes to have the person's name printed on the ballot as a candidate for director must file an application with the secretary of the board.

(b) The application must be filed with the secretary not later than the 31st day before the date of the election.

(c) If directors are elected by place, the application must specify the place for which the applicant is to be a candidate.

(d) If the directors are elected from commissioners precincts and at large, the application must specify:

(1) the commissioner precinct the candidate wishes to represent; or

(2) that the candidate wishes to represent the district at large.

Sec. 286.045. QUALIFICATIONS FOR OFFICE. (a) To be eligible to be a candidate for or to serve as a director, a person must be:

(1) a resident of the district; and

(2) a qualified voter.

(b) In addition to the qualifications required by Subsection (a), if directors are elected from commissioners precincts, a person who is elected from a commissioner precinct or who is
appointed to fill a vacancy for a commissioner precinct must be a resident of that commissioner precinct.

(c) An employee of the district may not serve as a director.

Sec. 286.046. BOND. (a) Before assuming the duties of the office, each director must execute a bond for $5,000 payable to the district, conditioned on the faithful performance of the person's duties as director.

(b) The bond shall be kept in the permanent records of the district.

(c) The board may pay for directors' bonds with district funds.

Sec. 286.047. BOARD VACANCY. A vacancy in the office of director shall be filled for the unexpired term by appointment by the remaining directors.

Sec. 286.048. OFFICERS. (a) The board shall elect from among its members a president and a vice-president.

(b) The board shall appoint a secretary who need not be a director.

Sec. 286.049. OFFICERS' TERMS; VACANCY. (a) Each officer of the board serves for a term of one year.

(b) The board shall fill a vacancy in a board office for the unexpired term.

Sec. 286.050. COMPENSATION. (a) Directors and officers serve without compensation but may be reimbursed for actual expenses incurred in the performance of official duties.

(b) Expenses reimbursed under this section must be:

(1) reported in the district's minute book or other
district records; and

   (2) approved by the board.

Sec. 286.051. VOTING REQUIREMENT. A majority of the members
of the board voting must concur in a matter relating to the
business of the district.

Sec. 286.052. ADMINISTRATOR, ASSISTANT ADMINISTRATOR, AND
ATTORNEY. (a) The board may appoint qualified persons as
administrator of the district, assistant administrator, and
attorney for the district.
(b) The administrator, assistant administrator, and attorney
serve at the will of the board.
(c) The administrator, assistant administrator, and attorney
are entitled to compensation as determined by the board.
(d) Before assuming the administrator's duties, the
administrator shall execute a bond payable to the hospital district
in an amount not less than $5,000 as determined by the board,
conditioned on the faithful performance of the administrator's
duties under this chapter. The board may pay for the bond with
district funds.

Sec. 286.053. APPOINTMENTS TO STAFF. The board may:
(1) appoint to the staff any doctors the board
considers necessary for the efficient operation of the district;
and
(2) make temporary appointments the board considers
necessary.

Sec. 286.054. TECHNICIANS, NURSES, AND OTHER DISTRICT
EMPLOYEES. (a) The district may employ technicians, nurses,
fiscal agents, accountants, architects, additional attorneys, and
other necessary employees.

(b) The board may delegate to the administrator the
authority to employ persons for the district.

Sec. 286.055. GENERAL DUTIES OF ADMINISTRATOR. The
administrator shall:

(1) supervise the work and activities of the district;
and

(2) direct the general affairs of the district,
subject to the limitations prescribed by the board.

Sec. 286.056. RETIREMENT BENEFITS. The board may provide
retirement benefits for employees of the district by:

(1) establishing or administering a retirement
program; or

(2) electing to participate in the Texas County and
District Retirement System or in any other statewide retirement
system in which the district is eligible to participate.

(Sections 286.057-286.070 reserved for expansion)

SUBCHAPTER D. POWERS AND DUTIES

Sec. 286.071. RESPONSIBILITY OF GOVERNMENTAL ENTITY. On
creation of a district, a county, municipality, or other
governmental entity in which the district is located shall convey
or transfer to the district:

(1) title to land, buildings, improvements, and
equipment related to the hospital system located wholly in the
district that are owned by the county, municipality, or other
governmental entity in which the district is located;
(2) operating funds and reserves for operating expenses and funds that have been budgeted by the county, municipality, or other governmental entity in which the district is located to provide medical care for residents of the district for the remainder of the fiscal year in which the district is established;

(3) taxes levied by the county, municipality, or other governmental entity in which the district is located for hospital purposes for residents of the district for the year in which the district is created; and

(4) funds established for payment of indebtedness assumed by the district.

Sec. 286.072. LIMITATION ON GOVERNMENTAL ENTITY. On or after creation of the district, a county, municipality, or other governmental entity in which the district is located may not levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care for the residents of the district.

Sec. 286.073. DISTRICT RESPONSIBILITIES. (a) On creation of a district, the district:

(1) assumes full responsibility for operating hospital facilities and for furnishing medical and hospital care for the district's needy inhabitants;

(2) assumes any outstanding indebtedness incurred by a county, municipality, or other governmental entity in which all or part of the district is located in providing hospital care for residents of the territory of the district before the district's creation; and
(3) may operate or provide for the operation of a mobile emergency medical service.

(b) If part of a county, municipality, or other governmental entity is included in a district and part is not included in the district, the amount of indebtedness the district assumes under Subsection (a)(2) is that portion of the total outstanding indebtedness of the county, municipality, or other entity for hospital care for all residents of the county, municipality, or other entity that the value of taxable property in the district bears to the total value of taxable property in the county, municipality, or other entity according to the last preceding approved assessment rolls of the county, municipality, or other entity before the district is confirmed.

Sec. 286.074. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital system and the funds and resources of the district.

Sec. 286.075. DISTRICT RULES. The board may adopt rules governing the operation of the hospital and hospital system and the duties, functions, and responsibilities of district staff and employees.

Sec. 286.076. METHODS AND PROCEDURES. The board may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

Sec. 286.077. HOSPITAL PROPERTY, FACILITIES, AND EQUIPMENT.
(a) The board shall determine:

(1) the type, number, and location of buildings required to establish and maintain an adequate hospital system; and

(2) the type of equipment necessary for hospital care.

(b) The board may:

(1) acquire property, facilities, and equipment for the district for use in the hospital system;

(2) mortgage or pledge the property, facilities, or equipment acquired as security for the payment of the purchase price;

(3) transfer by lease to physicians, individuals, companies, corporations, or other legal entities, or acquire by lease district hospital facilities; and

(4) sell or otherwise dispose of district property, facilities, or equipment.

Sec. 286.078. CONSTRUCTION CONTRACTS. (a) The board may enter into construction contracts for the district.

(b) The board may enter into construction contracts that involve spending more than $10,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code.

(c) Article 5160, Revised Statutes, as it relates to performance and payment bonds, applies to construction contracts let by the district.

Sec. 286.079. DISTRICT OPERATING AND MANAGEMENT CONTRACTS. The board may enter into operating or management contracts relating to hospital facilities.

Sec. 286.080. EMINENT DOMAIN. (a) A district may exercise
the power of eminent domain to acquire a fee simple or other
interest in property located in the territory of the district if
the property interest is necessary to the exercise of the rights or
authority conferred by this chapter.

(b) A district must exercise the power of eminent domain in
the manner provided by Chapter 21, Property Code, but the district
is not required to deposit in the trial court money or a bond as
provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by a district, the
district is not required to:

(1) pay in advance or give bond or other security for
costs in the trial court;

(2) give bond for the issuance of a temporary
restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or
writ of error.

Sec. 286.081. EXPENSES FOR MOVING FACILITIES OF RAILROADS OR
UTILITIES. If, in exercising the power of eminent domain, the
board requires relocating, raising, lowering, rerouting, changing
the grade, or altering the construction of any railroad, highway,
pipeline, or electric transmission and electric distribution,
telegraph, or telephone lines, conduits, poles, or facilities, the
district must bear the actual cost of relocating, raising,
lowering, rerouting, changing the grade, or altering the
construction to provide comparable replacement without enhancement
of a facility, after deducting the net salvage value derived from
the old facility.
Sec. 286.082. INDIGENT CARE. (a) The district without charge shall supply to a patient residing in the district the care and treatment that the patient or a relative of the patient who is legally responsible for the patient's support cannot pay.

(b) Not later than the first day of each operating year, the district shall adopt an application procedure to determine eligibility for assistance, as provided by Section 61.053.

(c) The administrator of the district may have an inquiry made into the financial circumstances of:

(1) a patient residing in the district and admitted to a district facility; and
(2) a relative of the patient who is legally responsible for the patient's support.

(d) On finding that a patient or a relative of the patient legally responsible for the patient's support can pay for all or any part of the care and treatment provided by the district, the administrator shall report that finding to the board, and the board shall issue an order directing the patient or the relative to pay the district each week a specified amount that the individual is able to pay.

(e) The administrator may collect money owed to the district from the estate of a patient or from that of a relative who was legally responsible for the patient's support in the manner provided by law for collection of expenses in the last illness of a deceased person.

(f) If there is a dispute relating to an individual's ability to pay or if the administrator has any doubt concerning an
individual's ability to pay, the board shall call witnesses, hear
and resolve the question, and issue a final order. An appeal from
a final order of the board must be made to a district court in the
county in which the district is located, and the substantial
evidence rule applies.

Sec. 286.083. REIMBURSEMENT FOR SERVICES. (a) The board
shall require reimbursement from a county, municipality, or public
hospital located outside the boundaries of the district for the
district's care and treatment of a sick, diseased, or injured
person of that county, municipality, or public hospital as provided
by Chapter 61 (Indigent Health Care and Treatment Act).

(b) The board shall require reimbursement from the sheriff
or police chief of a county or municipality for the district's care
and treatment of a person confined in a jail facility of the county
or municipality who is not a resident of the district.

(c) The board may contract with the state or federal
government for the state or federal government to reimburse the
district for treatment of a sick, diseased, or injured person.

Sec. 286.084. SERVICE CONTRACTS. The board may contract
with a municipality, county, special district, or other political
subdivision of the state or with a state or federal agency for the
district to:

(1) furnish a mobile emergency medical service; or

(2) provide for the investigatory or welfare needs of
inhabitants of the district.

Sec. 286.085. GIFTS AND ENDOWMENTS. On behalf of the
district, the board may accept gifts and endowments to be held in
trust for any purpose and under any direction, limitation, or
 provision prescribed in writing by the donor that is consistent
 with the proper management of the district.

Sec. 286.086. AUTHORITY TO SUE AND BE SUED. The board may
 sue and be sued on behalf of the district.

[Sections 286.087-286.100 reserved for expansion]

SUBCHAPTER E. CHANGE IN BOUNDARIES OR
DISSOLUTION OF DISTRICT

Sec. 286.101. EXPANSION OF DISTRICT TERRITORY. (a)
Registered voters of a defined territory that is not included in a
district may file a petition with the secretary of the board
requesting the inclusion of the territory in the district. The
petition must be signed by at least 50 registered voters of the
territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a
hearing on the petition to include the territory in the district.
The board shall set a date for the hearing that is after the 30th
day after the date the board issues the order.

(c) If after the hearing the board finds that annexation of
the territory into the district would be feasible and would benefit
the district, the board may approve the annexation by a resolution
entered in its minutes. The board is not required to include all
of the territory described in the petition if the board finds that
a modification or change is necessary or desirable.

(d) Annexation of territory is final when approved by a
majority of the voters at an election held in the district and by a
majority of the voters at a separate election held in the territory
to be annexed. If the district has outstanding debts or taxes, the
voters in the election to approve the annexation must also
determine if the annexed territory will assume its proportion of
the debts or taxes if added to the district.

(e) The election ballots shall be printed to provide for
voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to
the ______ Hospital District."

(2) "(Description of territory to be added) assuming
its proportionate share of the outstanding debts and taxes of the
_______ Hospital District, if it is added to the district."

(f) The election shall be held after the 45th day and on or
before the 60th day after the date the election is ordered. The
election shall be ordered and notice of the election shall be given
in the same manner as provided by Sections 286.024 and 286.025 for
ordering and giving notice of an election authorizing creation of
the district. Section 41.001(a), Election Code, does not apply to
an election held under this section.

Sec. 286.102. DISSOLUTION. (a) A district may be dissolved
as provided by this section.

(b) The board may order an election on the question of
dissolving the district and disposing of the district's assets and
obligations. The board shall order an election if the board
receives a petition requesting an election that is signed by a
number of residents of the district equal to at least 15 percent of
the registered voters in the district.

(c) The election shall be held not later than the 60th day
after the date the election is ordered. Section 41.001(a),
Election Code, does not apply to an election ordered under this
section.
(d) The ballot for the election shall be printed to permit
voting for or against the proposition: "The dissolution of the
Hospital District." The election shall be held in
accordance with the applicable provisions of the Election Code.
(e) If a majority of the votes in the election favor
dissolution, the board shall find that the district is dissolved.
If a majority of the votes in the election do not favor
dissolution, the board shall continue to administer the district,
and another election on the question of dissolution may not be held
before the first anniversary of the most recent election to
dissolve the district.

Sec. 286.103. TRANSFER OF ASSETS AFTER DISSOLUTION. (a) If
a majority of the votes in the election favor dissolution, the
board shall:
(1) transfer the land, buildings, improvements,
equipment, and other assets that belong to the district to a county
or another governmental entity in the district; or
(2) administer the property, assets, and debts in
accordance with Section 286.104.
(b) If the district transfers the land, buildings,
 improvements, equipment, and other assets to a county or other
governmental entity, the county or entity assumes all debts and
obligations of the district at the time of the transfer, and the
district is dissolved.
Sec. 286.104. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS

AFTER DISSOLUTION. (a) If the district does not transfer the
land, buildings, improvements, equipment, and other assets to a
county or another governmental entity in the district, the board
shall continue to control and administer the property, debts, and
assets of the district until all funds have been disposed of and
all district debts have been paid or settled.

(b) After the board finds that the district is dissolved, the board shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's
tax rolls a tax that is in proportion of the debt to the property
value.

(c) The board may institute a suit to enforce payment of
taxes and to foreclose liens to secure the payment of taxes due the
district.

Sec. 286.105. RETURN OF SURPLUS TAX MONEY. (a) When all
outstanding debts and obligations of the district are paid, the
board shall order the secretary to return the pro rata share of all
unused tax money to each district taxpayer.

(b) A taxpayer may request that the taxpayer's share of
surplus tax money be credited to the taxpayer's county taxes. If a
taxpayer requests the credit, the board shall direct the secretary
to transmit the funds to the county tax assessor-collector.

Sec. 286.106. REPORT; DISSOLUTION ORDER. (a) After the
district has paid all its debts and has disposed of all its assets
and funds as prescribed by Sections 286.104 and 286.105, the board
shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district.

(b) Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

[Sections 286.107-286.120 reserved for expansion]

SUBCHAPTER F. DISTRICT FINANCES

Sec. 286.121. FISCAL YEAR. (a) The district operates on the fiscal year established by the board.

(b) The fiscal year may not be changed if revenue bonds of the district are outstanding or more than once in a 24-month period.

Sec. 286.122. ANNUAL AUDIT. The board annually shall have an audit made of the financial condition of the district.

Sec. 286.123. DISTRICT AUDIT AND RECORDS. The annual audit and other district records are open to inspection during regular business hours at the principal office of the district.

Sec. 286.124. ANNUAL BUDGET. (a) The administrator of the district shall prepare a proposed annual budget for the district.

(b) The proposed budget must contain a complete financial statement, including a statement of:

(1) the outstanding obligations of the district;
(2) the amount of cash on hand to the credit of each fund of the district;
(3) the amount of money received by the district from
all sources during the previous year;

(4) the amount of money available to the district from all sources during the ensuing year;

(5) the amount of the balances expected at the end of the year in which the budget is being prepared;

(6) the estimated amount of revenues and balances available to cover the proposed budget; and

(7) the estimated tax rate that will be required.

Sec. 286.125. NOTICE; HEARING; ADOPTION OF BUDGET. (a) The board shall hold a public hearing on the proposed annual budget.

(b) The board shall publish notice of the hearing in a newspaper of general circulation in the district not later than the 10th day before the date of the hearing.

(c) Any resident of the district is entitled to be present and participate at the hearing.

(d) At the conclusion of the hearing, the board shall adopt a budget by acting on the budget proposed by the administrator. The board may make any changes in the proposed budget that in its judgment the interests of the taxpayers demand.

(e) The budget is effective only after adoption by the board.

Sec. 286.126. AMENDING BUDGET. After adoption, the annual budget may be amended on the board’s approval.

Sec. 286.127. LIMITATION ON EXPENDITURES. Money may not be spent for an expense not included in the annual budget or an amendment to it.

Sec. 286.128. SWORN STATEMENT. As soon as practicable after
the close of the fiscal year, the administrator shall prepare for
the board a sworn statement of the amount of money that belongs to
the district and an account of the disbursements of that money.

Sec. 286.129. SPENDING AND INVESTMENT LIMITATIONS. (a)
Except as provided by Section 286.078(a) and by Sections 286.141,
286.144, and 286.145, the district may not incur a debt payable
from revenues of the district other than the revenues on hand or to
be on hand in the current and immediately following fiscal year of
the district.

(b) The board may invest operating, depreciation, or
building reserves only in funds or securities specified by Article
836 or 837, Revised Statutes.

Sec. 286.130. DEPOSITORY. (a) The board shall name at
least one bank to serve as depository for district funds.

(b) District funds, other than those invested as provided by
Section 286.129(b) and those transmitted to a bank of payment for
bonds or obligations issued or assumed by the district, shall be
deposited as received with the depository bank and must remain on
deposit. This subsection does not limit the power of the board to
place a portion of district funds on time deposit or to purchase
certificates of deposit.

(c) Before the district deposits funds in a bank in an
amount that exceeds the maximum amount secured by the Federal
Deposit Insurance Corporation, the bank must execute a bond or
other security in an amount sufficient to secure from loss the
district funds that exceed the amount secured by the Federal
Deposit Insurance Corporation.
[Sections 286.131-286.140 reserved for expansion]

SUBCHAPTER G. BONDS

Sec. 286.141. GENERAL OBLIGATION BONDS. The board may issue and sell bonds authorized by an election in the name and on the faith and credit of the hospital district to:

(1) purchase, construct, acquire, repair, or renovate buildings or improvements;

(2) equip buildings or improvements for hospital purposes; or

(3) acquire and operate a mobile emergency medical service.

Sec. 286.142. TAXES TO PAY BONDS. (a) At the time the bonds are issued by the district, the board shall levy a tax.

(b) The tax must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature.

(c) In any year, the tax together with any other tax the district levies may not exceed the limit approved by the voters at the election authorizing the levy of taxes.

Sec. 286.143. BOND ELECTION. (a) The district may issue general obligation bonds only if the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The board may order a bond election. The order calling the election must state:

(1) the nature and date of the election;

(2) the hours during which the polls will be open;
(3) the location of the polling places;
(4) the amount of bonds to be authorized; and
(5) the maximum maturity of the bonds.

(c) Notice of a bond election shall be given as provided by
Article 704, Revised Statutes.

(d) The board shall canvass the returns and declare the
results of the election.

Sec. 286.144. REVENUE BONDS. (a) The board may issue
revenue bonds to:

(1) purchase, construct, acquire, repair, equip, or
renovate buildings or improvements for hospital purposes;

(2) acquire sites to be used for hospital purposes; or

(3) acquire and operate a mobile emergency medical
service to assist the district in carrying out its hospital
purposes.

(b) The bonds must be payable from and secured by a pledge
of all or part of the revenues derived from the operation of the
district's hospital system. The bonds may be additionally secured
by a mortgage or deed of trust lien on all or part of district
property.

(c) The bonds must be issued in the manner provided by
Sections 264.042, 264.043, 264.046, 264.047, 264.048, and 264.049
for issuance of revenue bonds by county hospital authorities.

Sec. 286.145. REFUNDING BONDS. (a) Refunding bonds of the
district may be issued to refund an outstanding indebtedness the
district has issued or assumed.

(b) The bonds must be issued in the manner provided by
Chapter 784, Acts of the 61st Legislature, Regular Session, 1969
(Article 717k-3, Vernon's Texas Civil Statutes).

(c) The refunding bonds may be sold and the proceeds applied
to the payment of outstanding indebtedness or may be exchanged in
whole or in part for not less than a similar principal amount of
outstanding indebtedness. If the refunding bonds are to be sold
and the proceeds applied to the payment of outstanding
indebtedness, the refunding bonds must be issued and payments made
in the manner provided by Chapter 503, Acts of the 54th
Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas
Civil Statutes).

Sec. 286.146. INTEREST AND MATURITY. District bonds must
mature not later than the 50th anniversary of the date of their
issuance and must bear interest at a rate not to exceed that
provided by Chapter 3, Acts of the 61st Legislature, Regular
Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

Sec. 286.147. EXECUTION OF BONDS. The president of the
board shall execute the bonds in the name of the district, and the
secretary of the board shall countersign the bonds in the manner
provided by the Texas Uniform Facsimile Signature of Public
Officials Act (Article 717j-1, Vernon's Texas Civil Statutes).

Sec. 286.148. APPROVAL AND REGISTRATION OF BONDS. (a)
District bonds are subject to the same requirements with regard to
approval by the attorney general and registration by the
comptroller as the law provides for approval and registration of
bonds issued by counties.

(b) On approval by the attorney general and registration by
the comptroller, the bonds are incontestable for any cause.

Sec. 286.149. BONDS AS INVESTMENTS. District bonds and
indebtedness assumed by the district are legal and authorized
investments for:

(1) banks;
(2) savings banks;
(3) trust companies;
(4) savings and loan associations;
(5) insurance companies;
(6) fiduciaries;
(7) trustees;
(8) guardians; and
(9) sinking funds of municipalities, counties, school
districts, and other political subdivisions of the state and other
public funds of the state and its agencies, including the permanent
school fund.

Sec. 286.150. BONDS AS SECURITY FOR DEPOSITS. District
bonds are eligible to secure deposits of public funds of the state
and of municipalities, counties, school districts, and other
political subdivisions of the state. The bonds are lawful and
sufficient security for deposits to the extent of their value if
accompanied by all unmatured coupons.

Sec. 286.151. TAX STATUS OF BONDS. Because the district
created under this chapter is a public entity performing an
essential public function, bonds issued by the district, any
transaction relating to the bonds, and profits made in the sale of
the bonds are free from taxation by the state or by any
municipality, county, special district, or other political subdivision of the state.

[Sections 286.152-286.160 reserved for expansion]

SUBCHAPTER H. TAXES

Sec. 286.161. LEVY OF TAXES. (a) The board annually may impose property taxes in an amount not to exceed the limit approved by the voters at the election authorizing the levy of taxes.

(b) The tax rate for all purposes may not exceed 75 cents on each $100 valuation of all taxable property in the district.

(c) The taxes may be used to pay:

(1) the indebtedness issued or assumed by the district; and

(2) the maintenance and operating expenses of the district.

(d) The district may not impose taxes to pay the principal of or interest on revenue bonds issued under this chapter.

Sec. 286.162. BOARD AUTHORITY. The board may impose taxes for the entire year in which the district is created.

Sec. 286.163. ADOPTING TAX RATE. In adopting the tax rate, the board shall consider the income of the district from sources other than taxation.

Sec. 286.164. TAX ASSESSMENT AND COLLECTION. (a) The Tax Code governs the appraisal, assessment, and collection of district taxes.

(b) The board may provide for the appointment of a tax assessor-collector for the district or may contract for the assessment and collection of taxes as provided by the Tax Code.
[Sections 286.165-286.180 reserved for expansion]

SUBCHAPTER I. MISCELLANEOUS

Sec. 286.181. LIMITATION ON STATE ASSISTANCE. The state may
not become obligated for the support or maintenance of a hospital
district created under this chapter, and the legislature may not
make a direct appropriation for the construction, maintenance, or
improvement of a facility of the district.

SECTION 122. Section 343.001, Health and Safety Code, is
amended to conform to Section 1, Chapter 895 (S.B. 510), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 343.001. APPLICATION TO UNINCORPORATED AREA OF A COUNTY
HAVING A POPULATION OF 850,000 [2,400,000] OR MORE. This chapter
applies to the unincorporated area of a county having a population
of 850,000 [2,400,000] or more.

SECTION 123. Section 343.022(d), Health and Safety Code, is
amended to conform to Section 2, Chapter 895 (S.B. 510), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(d) The abatement procedures must require a hearing before
the county abates the nuisance if a hearing is requested. The
hearing may be conducted before the commissioners court or any
board, commission, or official designated by the commissioners
court. The commissioners court may designate a board, commission,
or official to conduct each hearing.

SECTION 124. Section 364.003(3), Health and Safety Code, is
amended to conform to Section 4, Chapter 1143 (S.B. 1519), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(3) "Public agency" means a district, municipality,
regional planning commission created under Chapter 391, Local
Government Code, or other political subdivision or state agency
authorized to own and operate a solid waste collection,
transportation, or disposal facility or system.

SECTION 125. Subchapter A, Chapter 365, Health and Safety
Code, is amended to conform to Section 3, Chapter 639 (S.B. 1511),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 365.005 to read as follows:

Sec. 365.005. VENUE AND RECOVERY OF COSTS. (a) Venue for
the prosecution of a criminal offense under Subchapter B or Section
365.032 or 365.033 or for a suit for injunctive relief under any of
those provisions is in the county in which the defendant resides,
in the county in which the offense or the violation occurs, or in
Travis County.

(b) If the attorney general or a local government brings a
suit for injunctive relief under Subchapter B or Section 365.032 or
365.033, a prevailing party may recover its reasonable attorney's
fees, court costs, and reasonable investigative costs incurred in
relation to the proceeding.

SECTION 126. Subchapter C, Chapter 365, Health and Safety
Code, is amended to conform to Section 1, Chapter 964 (H.B. 319),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 365.034 to read as follows:

Sec. 365.034. COUNTY REGULATION OF JUNK OR REFUSE NEAR
PUBLIC HIGHWAY; CRIMINAL PENALTY. (a) The commissioners court of
a county may:

(1) by order prohibit the accumulation for more than
30 days of refuse or junk on a person's property within 50 feet of a public highway in the county;

(2) provide for the removal and disposition of refuse or junk accumulated near a public highway in violation of an order adopted under this section; and

(3) provide for the assessment against a person who owns the property from which refuse or junk is removed under Subdivision (2) of the costs incurred by the county in removing and disposing of the refuse or junk.

(b) Before the commissioners court takes any action to remove or dispose of junk or refuse under this section, the court shall send a notice by certified mail to the record owners of the property on which the junk or refuse is accumulated in violation of an order adopted under this section. The court may not remove or dispose of the refuse or junk or assess the costs of the removal or disposition against a property owner before the 30th day after the date the notice is sent under this subsection.

(c) If a person assessed costs under this section does not pay the costs within 60 days after the date of assessment:

(1) a lien in favor of the county attaches to the property from which the refuse or junk was removed to secure the payment of the costs and interest accruing at an annual rate of 10 percent on any unpaid part of the costs; and

(2) the commissioners court shall file a record of the lien in the office of the county clerk.

(d) The violation of an order adopted under this section is a Class C misdemeanor.
(e) In this section:

(1) "Junk" and "refuse" have the meanings assigned by
Section 365.011 except that those terms do not include equipment
used for agricultural purposes.

(2) "Public highway" has the meaning assigned by
Section 365.013.

SECTION 127. Subchapter C, Chapter 366, Health and Safety
Code, is amended to conform to Sections 3.10 and 3.11, Chapter 624
adding Sections 366.035 and 366.036 to read as follows:

Sec. 366.035. MANDATORY APPLICATION FOR AND MAINTENANCE OF
DESIGNATION. A local governmental entity that applies to the Texas
Water Development Board for financial assistance under a program
for economically distressed areas must take all actions necessary
to receive and maintain a designation as an authorized agent of the
department.

Sec. 366.036. COUNTY MAP. (a) If the department designates
a local governmental entity as its authorized agent and if the
entity intends to apply to the Texas Water Development Board for
financial assistance under a program for economically distressed
areas, the commissioners court of the county in which the entity is
located shall prepare a map of the county area outside the limits
of municipalities. The entity shall give to the commissioners
court a written notice of the entity's intention to apply for the
assistance. The map must show the parts of the area in which the
different types of on-site sewage disposal systems may be
appropriately located and the parts in which the different types of
systems may not be appropriately located.

(b) The commissioners court shall file the map in the office of the county clerk.

(c) The commissioners court, at least every five years, shall review the map and make changes to it as necessary to keep the map accurate.

SECTION 128. Section 367.002, Health and Safety Code, is amended to conform to Section 1, Chapter 93 (S.B. 624), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 367.002. COMPOSITION OF COUNCIL. The On-site Wastewater Treatment Research Council is composed of the following 11 members appointed by the governor:

1. two builders of housing constructed on-site in this state;
2. one residential real estate developer;
3. one professional engaged in municipal or county regulation of on-site wastewater treatment in this state;
4. one practicing engineer with significant experience designing on-site wastewater treatment systems;
5. one employee of the department [professional engaged---in---monitoring---the---environmental---impact---of---on-site wastewater-treatment-systems-in-this-state];
6. one employee of the Texas Water Commission;
7. one representative of an industry using on-site wastewater treatment in this state as part of its commercial or manufacturing process;
8. one person employed in the field of rural water
quality in this state;

(9) one soils scientist who is involved in and familiar with innovative on-site wastewater disposal techniques;

and

(10) one representative of the public with a demonstrated involvement in efforts to safeguard the environment.

SECTION 129. Section 367.003(a), Health and Safety Code, is amended to conform to Section 2, Chapter 93 (S.B. 624), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The council [is subject to Chapter 325, Government Code (Texas-Sunset Act)] unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 2001 [August 31, 1989].

SECTION 130. The heading to Subtitle B, Title 5, Health and Safety Code, is amended to read as follows:

SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, AND LITTER

SECTION 131. Subtitle B, Title 5, Health and Safety Code, is amended to conform to Sections 1-3, Chapter 36 (S.B. 444), Acts of the 71st Legislature, Regular Session, 1989, by adding Chapter 369 to read as follows:

CHAPTER 369. PLASTIC CONTAINERS

Sec. 369.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Health.

(2) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(3) "Plastic bottle" means a plastic container that:
(A) has a neck smaller than the body of the
container;

(B) is designed for a screw top, snap cap, or
other closure; and

(C) has a capacity of not less than 16 fluid
ounces or more than five gallons.

(4) "Rigid plastic container" means a formed or molded
container, other than a plastic bottle, that:

(A) is intended for single use;

(B) is composed predominantly of plastic resin;

(C) has a relatively inflexible finite shape or
form; and

(D) has a capacity of not less than eight ounces
or more than five gallons.

Sec. 369.002. SYMBOLS FOR CERTAIN PLASTIC CONTAINERS. (a)
A person may not manufacture or distribute a plastic bottle or
rigid plastic container unless the appropriate symbol indicating
the plastic resin used to produce the bottle or container is molded
into or imprinted on the bottom or near the bottom of the bottle or
container.

(b) A plastic bottle or rigid plastic container with a base
cup or other component of a material different from the basic
material used in making the bottle or container shall bear the
symbol indicating its basic material.

(c) The symbols used under this section must consist of a
number placed within a triangle of arrows and of letters placed
below the triangle of arrows. The triangle must be equilateral,
formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow must be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle formed by the arrows must depict a clockwise path around the number.

(d) The numbers, letters of the symbols, and the plastic resins represented by the symbols are:

(1) 1 and PETE, representing polyethylene terephthalate;

(2) 2 and HDPE, representing high density polyethylene;

(3) 3 and V, representing vinyl;

(4) 4 and LDPE, representing low density polyethylene;

(5) 5 and PP, representing polypropylene;

(6) 6 and PS, representing polystyrene; and

(7) 7 and OTHER, representing all other resins, including layered plastics of a combination of materials.

(e) The department shall:

(1) maintain a list of the symbols; and

(2) provide a copy of that list to any person on request.

Sec. 369.003. PENALTY. (a) A person who violates Section 369.002(a) or (b) is subject to a civil penalty not to exceed $500 for each act of violation.

(b) If it appears that a person has violated or is violating Section 369.002, the attorney general or a district attorney,
criminal district attorney, or county attorney shall institute and
conduct a suit in the name of this state to recover the civil
penalty imposed under this section.

(c) A civil penalty recovered under this section shall be
deposited:

(1) in the state treasury if the attorney general
brings the suit; or

(2) in the general fund of the county in which the
violation occurred if a district attorney, criminal district
attorney, or county attorney brings the suit.

SECTION 132. Subtitle B, Title 5, Health and Safety Code, is
amended to conform to Sections 1-9, Chapter 152 (S.B. 1223), Acts
of the 71st Legislature, Regular Session, 1989, by adding Chapter
370 to read as follows:

CHAPTER 370. TOXIC CHEMICAL RELEASE REPORTING
Sec. 370.001. SHORT TITLE. This chapter may be cited as the
Sec. 370.002. DEFINITIONS. In this chapter:

(1) "Administrator" means the administrator of the
United States Environmental Protection Agency.

(2) "Commission" means the Texas Water Commission.

(3) "Environment" means water, air, and land and the
interrelationship that exists among and between water, air, and
land and all living things.

(4) "Executive director" means the executive director
of the Texas Water Commission.

(5) "Facility" means all buildings, equipment,
structures, and other stationary items that are located on a single
site or on contiguous or adjacent sites and are owned or operated
by the same person or by any person who controls, is controlled by,
or is under common control with, that person.

(6) "Manufacture" means to produce, prepare, import,
or compound a toxic chemical.

(7) "Person" means an individual, trust, firm,
joint-stock company, corporation, including a government
corporation, partnership, association, state, commission,
municipality or other political subdivision of a state, or
interstate body.

(8) "Process" means to prepare a toxic chemical, after
its manufacture, for distribution in commerce:

(A) in the same form or physical state as, or in
a different form or physical state from, the form in which the
chemical was received by the person preparing the chemical; or

(B) as part of an article containing the toxic
chemical.

(9) "Release" means any spilling, leaking, pumping,
pouring, emitting, emptying, discharging, injecting, escaping,
leaching, dumping, or otherwise disposing into the environment any
toxic chemical. The term includes the abandonment or discarding of
barrels, containers, and other closed receptacles of any toxic
chemical.

(10) "Threshold amount" means the amount established
by the administrator under the Emergency Planning and Community
Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).
(11) "Toxic chemical" means a chemical designated as a toxic chemical by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

(12) "Toxic chemical release form" means the form published by the administrator under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Sec. 370.003. TOXIC CHEMICAL RELEASE FORM REQUIRED OF CERTAIN FACILITIES. (a) The owner or operator of a facility shall submit a toxic chemical release form to the executive director if the facility:

(1) has 10 or more full-time employees and a standard industrial classification code between 20 and 39 that was in effect on July 1, 1985, or has been designated as a facility subject to these requirements by the administrator; and

(2) manufactured, processed, or otherwise used a toxic chemical in excess of the threshold amount during the calendar year for which a toxic chemical release form is required.

(b) The owner or operator of a facility subject to Subsection (a) shall submit a toxic chemical release form for each toxic chemical manufactured, processed, or otherwise used at the facility during the preceding calendar year in a quantity exceeding the threshold amount.

(c) The form shall be submitted not later than July 1 of each year and must contain data that reflect each release that occurred during the preceding calendar year. The administrator may
modify the frequency with which a report must be submitted under this section as provided under the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Sec. 370.004. THRESHOLD AMOUNTS FOR REPORTING. (a) The threshold amounts for purposes of reporting a toxic chemical under Section 370.003 are as follows:

(1) for a toxic chemical used, but not manufactured or processed, at a facility, 10,000 pounds of the toxic chemical used at the facility during the preceding calendar year; or

(2) for a toxic chemical manufactured or processed at a facility, 25,000 pounds of the toxic chemical manufactured or processed at the facility during the preceding calendar year.

(b) The administrator may establish a threshold amount for a toxic chemical different from the amount established under Subsection (a).

Sec. 370.005. USE OF AVAILABLE DATA. (a) To provide the information required on the toxic chemical release form, the owner or operator of a facility may use:

(1) readily available data, including monitoring data, collected under other law; or

(2) reasonable estimates of the amounts involved if data under Subdivision (1) are not readily available.

(b) This section does not require monitoring or measurement of the quantities, concentration, or frequency of a toxic chemical released into the environment beyond the monitoring and measurement required under other law or regulation.

(c) To ensure consistency, data must be expressed in common
units, as designated by the administrator.

Sec. 370.006. PUBLIC AVAILABILITY OF TOXIC CHEMICAL RELEASE FORM. (a) A toxic chemical release form required under this chapter is intended to provide information to the public, including federal, state, and local governments and citizens of the communities surrounding a facility covered under Section 373.003.

(b) A toxic chemical release form shall be made available in a manner consistent with the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.) and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 370.007. TOXIC CHEMICAL RELEASE REPORTING FUND. (a) The toxic chemical release reporting fund consists of money collected by the commission from:

(1) fees imposed on owners and operators of facilities required to submit a toxic chemical release form; and

(2) penalties imposed under this chapter.

(b) The commission may use the money collected and deposited in the fund to pay for:

(1) costs incurred by the commission in implementing this chapter; and

(2) other commission activities necessary to implement the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.).

Sec. 370.008. TOXIC CHEMICAL RELEASE FORM REPORTING FEES. (a) The owner or operator of a facility required to submit a toxic
chemical release form under this chapter shall pay, at the time of
submission, a fee of $25 for each toxic chemical release form
submitted.

(b) The maximum fee for a facility may not exceed $250.

(c) The commission by rule may increase or decrease the
toxic chemical release form reporting fee as necessary.

(d) Fees collected under this section shall be deposited in
the state treasury to the credit of the toxic chemical release
reporting fund.

Sec. 370.009. ENFORCEMENT AND PENALTIES. (a) Any person,
other than a governmental entity, who violates this chapter is
liable to the commission for a civil penalty not to exceed $10,000
for each violation.

(b) The commission may assess any civil penalty for which a
person is liable under this section by administrative order or may
refer an action to assess and collect the penalty to the attorney
general.

SECTION 133. Section 381.004, Health and Safety Code, is
amended to conform to Section 1, Chapter 580 (H.B. 2437), and
Section 2, Chapter 889 (S.B. 265), Acts of the 71st Legislature,
Regular Session, 1989, to read as follows:

Sec. 381.004. APPLICATION OF SUNSET ACT. The board is
subject to Chapter 325, Government Code (Texas Sunset Act). Unless
continued in existence as provided by that chapter, the board is
abolished and this chapter expires September 1, 1997 [±99±].

SECTION 134. Section 381.016(c), Health and Safety Code, is
amended to conform to Section 64, Chapter 584 (H.B. 2519), Acts of

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the 71st Legislature, Regular Session, 1989, to read as follows:

(c) The [state-- auditor-- shall-- audit -the- board's] financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code [at least once each biennium].

SECTION 135. Section 382.003, Health and Safety Code, is amended to conform to Section 1, Chapter 1190 (S.B. 769), Acts of the 71st Legislature, Regular Session, 1989, by adding a new Subdivision (9) and renumbering former Subdivision (9) to read as follows:

(9) "Select-use technology" means a technology that involves simultaneous combustion of natural gas with other fuels in fossil fuel-fired boilers. The term includes cofiring, gas reburn, and enhanced gas reburn/sorbent injection.

(10) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated.

SECTION 136. Subchapter B, Chapter 382, Health and Safety Code, is amended to conform to Section 3, Chapter 1190 (S.B. 769), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 382.0145 to read as follows:

Sec. 382.0145. CLEAN FUEL INCENTIVE SURCHARGE. (a) The board shall levy a clean fuel incentive surcharge of 20 cents per MMBtu on fuel oil used between April 15 and October 15 of each year in an industrial or utility boiler that is:

(1) capable of using natural gas; and

(2) located in a consolidated metropolitan statistical area or metropolitan statistical area with a population of 350,000
or more that has not met federal ambient air quality standards for ozone.

(b) The board may not levy the clean fuel incentive surcharge on:

(1) waste oils, used oils, or hazardous waste-derived fuels burned for purposes of energy recovery or disposal, if the Texas Air Control Board, Texas Water Commission, or the United States Environmental Protection Agency approves or permits the burning;

(2) fuel oil used during:

(A) any period of full or partial natural gas curtailment;

(B) any period when there is a failure to deliver sufficient quantities of natural gas to satisfy contractual obligations to the purchasers; or

(C) a catastrophic event as defined by Section 382.063;

(3) fuel oil used between April 15 and October 15 in equipment testing or personnel training up to an aggregate of the equivalent of 48 hours full-load operation; or

(4) any firm engaged in fixed price contracts with public works agencies for contracts entered into before August 28, 1989.

SECTION 137. Section 382.017(e), Health and Safety Code, is amended to conform to Section 2, Chapter 1190 (S.B. 769), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(e) Except as provided by Sections 382.0171
[382-018]-382.021, the board by rule may not specify:

   (1) a particular method to be used to control or abate air pollution;

   (2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

   (3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment.

SECTION 138. Subchapter B, Chapter 382, Health and Safety Code, is amended to conform to Section 2, Chapter 1190 (S.B. 769), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 382.0171 to read as follows:

Sec. 382.0171. ALTERNATIVE FUELS AND SELECT-USE TECHNOLOGIES. (a) In adopting rules, the board shall encourage and may allow the use of natural gas and other alternative fuels, as well as select-use technologies, that will reduce emissions.

(b) Any orders or determinations made under this section must be consistent with Section 382.024.

SECTION 139. Subchapter B, Chapter 382, Health and Safety Code, is amended to conform to Section 1, Chapter 322 (H.B. 2468), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 382.0195 to read as follows:

Sec. 382.0195. COMMERCIAL INFECTIOUS WASTE INCINERATORS. (a) The board shall adopt rules prescribing the most effective emissions control technology reasonably available to control emissions of air contaminants from a commercial infectious waste incinerator.
(b) Rules adopted under this section must require that the prescribed emissions control technology be installed as soon as practicable at each commercial infectious waste incinerator.

(c) In this section, "commercial infectious waste incinerator" means a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility.

SECTION 140. Subchapter C, Chapter 382, Health and Safety Code, is amended to conform to Section 1, Chapter 1175 (H.B. 1237), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 382.0591 to read as follows:

Sec. 382.0591. DENIAL OF APPLICATION FOR PERMIT; ASSISTANCE PROVIDED BY CERTAIN FORMER EMPLOYEES. (a) The board shall deny an application for the issuance, amendment, renewal, or transfer of a permit and may not issue, amend, renew, or transfer the permit if the board determines that a former employee:

(1) participated personally and substantially as an employee in the board's review, evaluation, or processing of the application before leaving employment with the board; and

(2) after leaving employment with the board, provided assistance to the applicant for the issuance, amendment, renewal, or transfer of the permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) The board shall provide an opportunity for a hearing to an applicant before denying an application under this section.

(c) Action taken under this section does not prejudice any
application other than an application in which the former employee
provided assistance.

(d) In this section, "former employee" means a person:

(1) who was previously employed by the board as a
supervisory or exempt employee; and

(2) whose duties during employment with the board
included involvement in or supervision of the board's review,
evaluation, or processing of applications.

SECTION 141. Chapter 382, Health and Safety Code, is amended
to conform to Section 2, Chapter 1190 (S.B. 769), Acts of the 71st
Legislature, Regular Session, 1989, by adding Subchapter F to read
as follows:

SUBCHAPTER F. ALTERNATIVE FUELS PROGRAM

Sec. 382.131. DEFINITIONS. In this subchapter:

(1) "Emissions" means emissions of oxides of nitrogen,
volatile organic compounds, carbon monoxide, particulates, or any
combination of those substances.

(2) "Fleet vehicle" means a vehicle required to be
registered under Chapter 88, General Laws, Acts of the 41st
Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's
Texas Civil Statutes).

(3) "Mass transit authority" means a transportation or
transit authority or department established under Chapter 141, Acts
of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), Chapter 683, Acts of the 66th
Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas
Civil Statutes), or Article 1118z, Revised Statutes, that operates
a mass transit system under any of those laws.

Sec. 382.132. METROPOLITAN AREAS AFFECTED. Rules adopted by
the board under Sections 382.133-382.136 apply only to a
consolidated metropolitan statistical area or a metropolitan
statistical area with a population of 350,000 or more that has not
met federal ambient air quality standards for ozone, carbon
monoxide, oxides of nitrogen, or particulates.

Sec. 382.133. MASS TRANSIT FLEET VEHICLES. (a) The board
by rule shall require a mass transit authority to ensure that its
vehicles can operate on compressed natural gas or other alternative
fuels that result in comparably lower emissions.

(b) Rules adopted under this section must require a mass
transit authority to have its fleet vehicles able to operate on
compressed natural gas or other alternative fuel according to the
following schedule:

(1) not later than September 1, 1994, at least 30
percent of the vehicles; and

(2) not later than September 1, 1996, at least 50
percent of the vehicles.

(c) Contingent on the board's review, not later than
December 31, 1996, of the alternative fuels program established by
this section, and the board's determination that the program is
reducing emissions, is projected to be effective in improving
overall air quality, and is necessary to the attainment of federal
ambient air quality standards in the affected areas, the rules must
require a mass transit authority, not later than September 1, 1998,
to have at least 90 percent of its fleet vehicles able to operate
on compressed natural gas or other alternative fuel.

Sec. 382.134. LOCAL GOVERNMENT AND PRIVATE FLEET VEHICLES.

(a) This section applies only to:

(1) a local government that operates primarily in an affected area a fleet of more than 15 vehicles, excluding law enforcement and emergency vehicles; and

(2) a private person that operates primarily in an affected area a fleet of more than 25 vehicles, excluding emergency vehicles.

(b) If the board determines under Section 382.133 that the alternative fuels program is reducing emissions, is projected to be effective in improving overall air quality, and is necessary to comply with federal ambient air quality standards for ozone, carbon monoxide, oxides of nitrogen, or particulates in the affected areas, the board by rule shall require a local government or a private person to ensure that its vehicles can operate on compressed natural gas or other alternative fuels that reduce total annual emissions from motor vehicles in the area.

(c) Rules adopted under this section must require a local government or private person to have its fleet vehicles able to operate on compressed natural gas or other alternative fuel according to the following schedule:

(1) not later than September 1, 1998, at least 30 percent of the vehicles;

(2) not later than September 1, 2000, at least 50 percent of the vehicles; and

(3) not later than September 1, 2002, at least 90
percent of the vehicles.

Sec. 382.135. DUAL FUEL CONVERSION. The percentage requirements of Sections 382.133 and 382.134 may be met by the dual fuel conversion or capability of gasoline-powered or diesel-powered vehicles to operate also on compressed natural gas or other alternative fuels that result in comparably lower emissions.

Sec. 382.136. EXCEPTIONS. (a) The board may make exceptions to rules adopted under Sections 382.133 and 382.134 if:

1. a firm engaged in fixed price contracts with public works agencies can demonstrate that compliance with the requirements of those sections would result in substantial economic harm to the firm under a contract entered into before September 1, 1997;

2. the board determines that the affected vehicles will be operating primarily in an area that does not have or cannot reasonably be expected to establish a central refueling station for alternative fuels; or

3. the affected entity is unable to secure financing provided by or arranged through the proposed supplier or suppliers of compressed natural gas or other alternative fuels sufficient to cover the additional costs of alternative fueling.

(b) To qualify for an exception under Subsection (a), an affected entity must provide data requested by the board to document the unavailability of a refueling station or of financing to cover the additional costs of alternative fueling.

Sec. 382.137. DATA COLLECTION. An affected entity shall support the board in collecting reasonable information needed to
determine air quality benefits from use of alternative fuels in
affected areas.

Sec. 382.138. EVALUATION OF ALTERNATIVE FUELS USE. (a) In
conjunction with the development of state implementation plans for
achieving and maintaining compliance with federal ambient air
quality standards under the federal Clean Air Act (42 U.S.C. Sec.
7401 et seq.), the board shall evaluate and determine, for areas
required by federal law to have state implementation plans, the
effectiveness of and need for the use of compressed natural gas and
other alternative fuels in vehicles.

(b) The evaluation and determination must include:

(1) the uses of compressed natural gas or other
alternative fuels required by Sections 382.133 and 382.134; and

(2) additional or different uses of compressed natural
gas or other alternative fuels.

(c) In making evaluations and determinations under this
section, the board shall:

(1) review reports received by the board on
alternative fuels programs;

(2) consult with a reporting entity on the
contribution the entity's program is making toward achieving and
maintaining compliance with federal ambient air quality standards;

and

(3) consider for each category of vehicles the factors
required for the development of state implementation plans under
the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.) and this
chapter.
(d) Before making a determination under this subchapter, the board shall solicit comments from the Department of Public Safety and the Railroad Commission of Texas concerning any effect on public safety.

Sec. 382.139. ADDITIONAL ALTERNATIVE FUELS USES. (a) If, after considering the factors listed in Section 382.138, the board determines that the use of compressed natural gas or other alternative fuels for certain categories of motor vehicles is effective and necessary for achieving and maintaining compliance with federal ambient air quality standards, the board by rule shall require those uses in addition to uses required elsewhere in this subchapter.

(b) If, after considering the factors listed in Section 382.138, the board determines that the additional uses are appropriate, the board may establish and implement programs encouraging the use of compressed natural gas or other alternative fuels for certain categories of vehicles.

Sec. 382.140. STUDIES; PILOT PROGRAMS. (a) In connection with the evaluations and determinations required under Section 382.138 and encouraging the use of natural gas or other alternative fuels, the board may conduct or have conducted appropriate studies or pilot programs.

(b) A study or pilot program may assess the feasibility of adopting vehicle emission standards more stringent than those adopted by the United States Environmental Protection Agency under the federal Clean Air Act (42 U.S.C. Sec. 7401 et seq.).

Sec. 382.141. REPORT REQUIRED. The board shall report
biennially its evaluations and determinations on the use of
compressed natural gas or other alternative fuels and recommend
legislative changes necessary to implement an effective and
feasible program for the use of compressed natural gas and other
alternative fuels. The report shall be submitted to the governor
and the legislature not later than the 30th day before the
commencement of each regular legislative session.

SECTION 142. Subchapter A, Chapter 401, Health and Safety
Code, is amended to conform to Section 1, Chapter 930 (S.B. 1116),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 401.0005 to read as follows:

Sec. 401.0005. SHORT TITLE. This chapter may be cited as
the Texas Radiation Control Act.

SECTION 143. Chapter 401, Health and Safety Code, is amended
to conform to Section 2, Chapter 930 (S.B. 1116), Acts of the 71st
Legislature, Regular Session, 1989, by amending Sections 401.013
and 401.202 and adding Section 401.2625 to read as follows:

Sec. 401.013. DUTIES OF DIRECTOR. The director shall
perform the department's functions under this chapter other than
the licensing functions reserved to the commissioner [issuance-of
licenses] under Subchapters [Subchapter] F and G.

Sec. 401.202. LICENSING AUTHORITY. The [board--or--the]
commissioner[if-designated-by--the--board] shall grant, deny,
renew, revoke, suspend, or withdraw [issue] licenses for the
disposal of radioactive waste from other persons and for the
processing of that waste [under-this-subchapter].

Sec. 401.2625. LICENSING AUTHORITY. The commissioner shall
grant, deny, renew, revoke, suspend, or withdraw licenses for
uranium recovery and processing, including the disposal of uranium
mill tailings.

SECTION 144. Subchapter C, Chapter 401, Health and Safety
Code, is amended to conform to Section 1, Chapter 913 (S.B. 856),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 401.0525 to read as follows:

Sec. 401.0525. GROUNDWATER PROTECTION STANDARDS. (a) The
department shall adopt and enforce groundwater protection standards
compatible with federal standards adopted under the Atomic Energy
Act of 1954 (42 U.S.C. Sec. 2011 et seq.).

(b) Any standards adopted by the department relating to
nonradioactive constituents must be reviewed by the Texas Water
Commission to determine compatibility with that commission's
groundwater protection standards adopted under other programs.

SECTION 145. Section 401.209, Health and Safety Code, is
amended to conform to Section 1, Chapter 840 (S.B. 544), Acts of
the 71st Legislature, Regular Session, 1989, by amending Subsection
(d) and adding Subsection (e) to read as follows:

(d) The right, title, and interest in radioactive waste
accepted for disposal at property and facilities acquired under
this section and any other interest acquired under this chapter are
the property of the department, acting on behalf of the state, and
shall be administered and controlled by the department in the name
of the state.

(e) A right, title, or interest acquired under this chapter
does not vest in any fund created by the Texas Constitution.
SECTION 146. Section 401.305(b), Health and Safety Code, is amended to conform to Section 2, Chapter 172 (H.B. 1407), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The department shall deposit to the credit of the fund money and security it receives under this chapter, other than fees collected under Sections 401.301 and 401.302. Interest earned on money in the fund shall be credited to the fund.

SECTION 147. Section 402.013(b), Health and Safety Code, is amended to conform to Section 3, Chapter 72 (H.B. 1400), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The governor shall appoint the following members of the board with the advice and consent of the senate:

(1) one medical doctor of medicine or doctor of osteopathic medicine licensed to practice medicine in this state;

(2) one certified health physicist;

(3) one attorney licensed to practice law in this state;

(4) one geologist; and

(5) two persons who represent the public.

SECTION 148. Section 402.275, Health and Safety Code, is amended to conform to Section 1, Chapter 172 (H.B. 1407), Acts of the 71st Legislature, Regular Session, 1989, by amending Subsections (b)-(d) and adding Subsection (f) to read as follows:

(b) The account is an interest-bearing account. Interest earned on money in the account shall be deposited to the credit of the account.

(c) Money received by the authority, including waste [Waste]
disposal fees, processing and packaging fees, civil penalties, payments to the State of Texas under Public Law 99-240, and other receipts collected by the authority under this chapter shall be deposited to the credit of the low-level waste account.

(d) Except as provided by Subsection (e), money in the low-level waste account may be used to pay:

(1) operating and maintenance costs of the authority;
(2) reimbursement to the general revenue fund for expenses incurred by the state before the first day of operation of the disposal site and for any other maintenance and operating expenses paid by appropriation from the general revenue fund;
(3) future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;
(4) licensing fees and to provide security required by the department;
(5) money judgments rendered against the authority that are directed by a court of this state to be paid from this account;
(6) expenses associated with implementation of the rangeland and wildlife management plan;
(7) impact assistance funds for [allocated--to] affected political subdivisions; and
(8) expenses for any other purpose, including purposes unrelated to low-level waste disposal, as determined in the General Appropriations Act.

(f) The authority may transfer money from the low-level waste account to the radiation and perpetual care fund to make
payments required by the department under Section 401.303(a).

SECTION 149. Section 431.002, Health and Safety Code, is amended to conform to Section 1, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.002. DEFINITIONS. In this chapter:

(1) "Advertising" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Animal feed," as used in Subdivision (23), in Section 512 of the federal [Federâ€?] Act, and in provisions of this chapter referring to those paragraphs or sections, means an article intended for use as food for animals other than man as a substantial source of nutrients in the diet of the animals. The term is not limited to a mixture intended to be the sole ration of the animals.

(3) "Authorized agent" means an employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

(4) "Board" means the Texas Board of Health.

(5) "Butter" means the food product usually known as butter that is made exclusively from milk or cream, or both, with or without common salt or additional coloring matter, and containing not less than 80 percent by weight of milk fat, after allowing for all tolerances.

(6)(A) "Color additive" means a material that:

(i) is a dye, pigment, or other substance
made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and

(ii) when added or applied to a food, drug, or cosmetic, or to the human body or any part of the human body, is capable, alone or through reaction with other substance, of imparting color. The term does not include any material exempted under the federal Act.

(B) "Color" includes black, white, and intermediate grays.

(C) Paragraph (A) does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

(7) [f6] "Commissioner" means the commissioner of health.

(8) [f7] "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within
the household, and that usually is consumed or expended in the
course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry
product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling
requirements imposed under the Federal Insecticide, Fungicide, and
Rodenticide Act (7 U.S.C. 136), or Section 8, Virus-Serum-Toxin
Act (21 U.S.C. 158);

(C) a drug subject to the provisions of Section
431.113(c)(1) or 431.112(k), or Section 503(b)(1) or 506 of the
federal Act;

(D) a beverage subject to or complying with
packaging or labeling requirements imposed under the Federal
Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of
Chapter 61, Agriculture Code, relating to the inspection, labeling,
and sale of agricultural and vegetable seed.

(9) "Contaminated with filth" applies to any
food, drug, device, or cosmetic not securely protected from dust,
dirt, and as far as may be necessary by all reasonable means, from
all foreign or injurious contaminations.

(10) "Cosmetic" means articles intended to be
rubbed, poured, sprinkled, or sprayed on, introduced into, or
otherwise applied to the human body or any part of the human body
for cleaning, beautifying, promoting attractiveness, or altering
the appearance, and articles intended for use as a component of
those articles. The term does not include soap.
"Counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor.

"Department" means the Texas Department of Health.

"Device," except when used in Sections 431.003, 431.021(1), 431.082(g), 431.112(c) and 431.142(c), means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolism for the achievement of any of its principal intended purposes.
(14) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure of any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories.

(15) "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(16) "Food" means:

A. articles used for food or drink for man;
B. chewing gum; and
C. articles used for components of any such article.

(17) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to
January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1907 (21 U.S.C. 603); or

(E) a new animal drug.

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

(19) "Immediate container" does not include package liners.

(20) "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.

(21) "Label" means a display of written, printed, or graphic matter upon the immediate container of any
article; and a requirement made by or under authority of this chapter that any word, statement, or other information that appears on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of the article, or is easily legible through the outside container or wrapper.

(22) [‡‡‡] "Labeling" means all labels and other written, printed, or graphic matter that is on an article or any of the containers or wrappers that accompany the article.

(23) [‡‡‡] "Manufacture" means the process of combining or purifying food and packaging food for sale to a consumer at wholesale or retail.

(24) [‡‡‡] "New animal drug" means any drug intended for use for animals other than man, including any drug intended for use in animal feed:

(A) the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of the drug (except that such an unrecognized drug is not deemed to be a "new animal drug" if at any time before June 25, 1938, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use);

(B) the composition of which is such that the drug, as a result of investigations to determine its safety and
effectiveness for use under those conditions, has become recognized
but that has not, otherwise than in the investigations, been used
to a material extent or for a material time under those conditions;

(C) is composed wholly or partly of penicillin,
streptomycin, chloratetracycline, chloramphenicol, or bacitracin,
or any derivative of those substances, unless:

(i) a published order of the secretary is
in effect that declares the drug not to be a new animal drug on the
grounds that the requirement of certification of batches of the
drug, as provided by Section 512(n) of the federal Act, is not
necessary to ensure that the objectives specified in Section
512(n)(3) of that Act are achieved; and

(ii) Paragraph (A) or (B) of this
subdivision does not apply to the drug.

(25) "New drug" means:

(A) any drug, except a new animal drug, the
composition of which is such that such drug is not generally
recognized among experts qualified by scientific training and
experience to evaluate the safety and effectiveness of drugs, as
safe and effective for use under the conditions prescribed,
recommended, or suggested in the labeling thereof (except that such
an unrecognized drug is not a "new drug" if at any time before May
26, 1985, it was subject to the Food and Drug Act of June 30, 1906,
and if at that time its labeling contained the same representations
concerning the conditions of its use); or

(B) any drug, except a new animal drug, the
composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(26) [(25)] "Official compendium" means the official United States Pharmacopoeia National Formulary, or any supplement to it.

(27) [(26)] "Package" means any container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term includes wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. The term does not include:

(A) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(B) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings do not bear printed matter relating to any particular commodity; or


(28) [(27)] "Person" includes individual, partnership,
corporation, and association.

(29) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), as now in force or as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(30) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(31) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(32) "Saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin.

(33) "Safe" refers to the health of humans or animals.

(34) "Secretary" means the secretary of the United States Department of Health and Human Services.

SECTION 150. Section 431.003, Health and Safety Code, is amended to better conform to the law from which it is derived to read as follows:

Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING LABELING OR ADVERTISING. If an article is alleged to be misbranded
because the labeling or advertising is misleading, then in
determining whether the labeling or advertising is misleading,
there shall be taken into account, among other things, not only
representations made or suggested by statement, word, design,
device, sound, or any combination of these, but also the extent to
which the labeling or advertising fails to reveal facts material in
the light of such representations or material with respect to
consequences which may result from the use of the article to which
the labeling or advertising relates under the conditions of use
prescribed in the labeling or advertising thereof, or under such
conditions of use as are customary or usual.

SECTION 151. Section 431.021, Health and Safety Code, is
amended to conform to Section 2 of Chapter 1129 (H.B. 2505) and
Section 33 of Chapter 1195 (S.B. 959), Acts of the 71st
Legislature, Regular Session, 1989, to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the
causing of the following acts within this state are unlawful and
prohibited:

(a) the introduction or delivery for introduction into
commerce of any food, drug, device, or cosmetic that is adulterated
or misbranded;

(b) the adulteration or misbranding of any food, drug,
device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device,
or cosmetic that is adulterated or misbranded, and the delivery or
proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer
commodity, if such commodity is contained in a package, or if there
is affixed to that commodity a label that does not conform to the
provisions of this chapter and of rules adopted under the authority
of this chapter; provided, however, that this prohibition shall not
apply to persons engaged in business as wholesale or retail
distributors of consumer commodities except to the extent that such
persons:

(1) are engaged in the packaging or labeling of
such commodities; or

(2) prescribe or specify by any means the manner
in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into
commerce of any article in violation of Section 431.084, 431.114,
or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to
permit the taking of a sample or to permit access to or copying of
any record as authorized by Sections 431.042-431.044; or the
failure to establish or maintain any record or make any report
required under Section 512(j), (l), or (m) of the federal Act, or
the refusal to permit access to or verification or copying of any
such required record;

(h) the manufacture within this state of any food,
drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred
to in Section 431.059, which guaranty or undertaking is false,
except by a person who relied on a guaranty or undertaking to the
same effect signed by, and containing the name and address of the
person residing in this state from whom the person received in good
faith the food, drug, device, or cosmetic; or the giving of a
 guaranty or undertaking referred to in Section 431.059, which
 guaranty or undertaking is false;

 (j) the removal or disposal of a detained or embargoed
 article in violation of Section 431.048;

 (k) the alteration, mutilation, destruction,
 obliteration, or removal of the whole or any part of the labeling
 of, or the doing of any other act with respect to a food, drug,
 device, or cosmetic, if such act is done while such article is held
 for sale after shipment in commerce and results in such article
 being adulterated or misbranded;

 (l)(1) forging, counterfeiting, simulating, or falsely
 representing, or without proper authority using any mark, stamp,
 tag, label, or other identification device authorized or required
 by rules adopted under this chapter or the regulations promulgated
 under the provisions of the federal Act;

 (2) making, selling, disposing of, or keeping in
 possession, control, or custody, or concealing any punch, die,
 plate, stone, or other thing designed to print, imprint, or
 reproduce the trademark, trade name, or other identifying mark,
 imprint, or device of another or any likeness of any of the
 foregoing on any drug or container or labeling thereof so as to
 render such drug a counterfeit drug;

 (3) the doing of any act that causes a drug to
 be a counterfeit drug, or the sale or dispensing, or the holding
for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be
construed to exempt any person from any labeling requirement
imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or
device or container of any drug or device, with intent to defraud,
the trade name or other identifying mark, or imprint of another or
any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing
to be sold, dispensed, or disposed of, or concealing or keeping in
possession, control, or custody, with intent to sell, dispense, or
dispose of, any drug, device, or any container of any drug or
device, with knowledge that the trade name or other identifying
mark or imprint of another or any likeness of any of the foregoing
has been placed thereon in a manner prohibited by Subdivision (1)
of this subsection; or

(3) making, selling, disposing of, causing to be
made, sold, or disposed of, keeping in possession, control, or
custody, or concealing with intent to defraud any punch, die,
plate, stone, or other thing designed to print, imprint, or
reproduce the trademark, trade name, or other identifying mark,
imprint, or device of another or any likeness of any of the
foregoing on any drug or container or labeling of any drug or
container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different
drug in place of the drug ordered or prescribed without the express
permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section
510 of the federal Act, the failure to provide any information
required by Section 510(j) or (k) of the federal Act, or the
failure to provide a notice required by Section 510(j)(2) of the
federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed
under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other
material or information required by or under Section 519 or 520(g)
of the federal Act;

(2) with respect to any device, the submission
of any report that is required by or under this chapter that is
false or misleading in any material respect;

(u) the movement of a device in violation of an order
under Section 304(g) of the federal Act or the removal or
alteration of any mark or label required by the order to identify
the device as detained; [or]

(v) the failure to provide the notice required by
Section 412(b) or 412(c), the failure to make the reports required
by Section 412(d)(1)(B), or the failure to meet the requirements
prescribed under Section 412(d)(2) of the federal Act;

(w) the acceptance by a person of an unused
prescription or drug, in whole or in part, for the purpose of
resale, after the drug has been originally dispensed or sold;

(x) engaging in the wholesale distribution of drugs in
this state without filing a registration statement with the
commissioner as required by Section 431.202;

(y) engaging in the manufacture of food in this state
without registering with the department as required by Section 431.222; or

(z) the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition.

SECTION 152. Section 431.049, Health and Safety Code, is amended to conform to Section 5, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE. (a) If the claimant of the detained or embargoed articles or the claimant's agent fails or refuses to transfer the articles to a secure place after the tag or other appropriate marking has been affixed as provided by Section 431.048, the commissioner or an authorized agent may order the transfer of the articles to one or more secure storage areas to prevent their unauthorized removal or disposal [(The commissioner may, before or in conjunction with the affixing of an appropriate marking for a detained or embargoed article, order the claimant of the article or the claimant's agent to remove the article to a secure area approved by the commissioner or an authorized agent if the article is on display for sale to any member of the public)].

(b) [(The removal order must be in writing and signed by the commissioner).]

[(c) The removal order remains in effect until the order expires on its own terms;]

[(d) is withdrawn by the commissioner; or]
is removed by a court in accordance with Section 431.050.

The commissioner or an authorized agent may provide for the transfer of the article if the claimant of the article or the claimant's agent does not carry out the transfer order in a timely manner. The costs of the transfer shall be assessed against the claimant of the article or the claimant's agent.

The claimant of the article or the claimant's agent shall pay the costs of the transfer.

The commissioner may request the attorney general to bring an action in the district court in Travis County to recover the costs of the transfer. In a judgment in favor of the state, the court may award costs, attorney's fees, court costs, and interest from the time the expense was incurred through the date the department is reimbursed.

SECTION 153. Chapter 431, Health and Safety Code, is amended to conform to Section 7, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 431.0495 to read as follows:

Sec. 431.0495. RECALL ORDERS. (a) In conjunction with the issuance of an emergency order under Section 431.045 or the detention or embargo of an article under Section 431.048, the commissioner may order a food, drug, device, cosmetic, or consumer commodity to be recalled from commerce.

(b) The commissioner's recall order may require the articles...
to be removed to one or more secure areas approved by the commissioner or an authorized agent.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 431.048(a) or in conjunction with the commissioner's issuance of an emergency order under Section 431.045.

(e) The recall order is effective until the order:

(1) expires on its own terms;
(2) is withdrawn by the commissioner;
(3) is reversed by a court in an order denying condemnation under Section 431.050; or
(4) is set aside at the hearing provided to affirm, modify, or set aside an emergency order under Section 431.045.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent fails or refuses to carry out the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in the district court of Travis County to recover the costs of the recall. In a judgment in favor of the state, the
court may award costs, attorney's fees, court costs, and interest
from the time the expense was incurred through the date the
department is reimbursed.

SECTION 154. Subchapter C, Chapter 431, Health and Safety
Code, is amended to conform to Section 3, Chapter 1129 (H.B. 2505),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 431.0585 to read as follows:

Sec. 431.0585. CIVIL PENALTY. (a) At the request of the
commissioner, the attorney general or a district, county, or city
attorney shall institute an action in district court to collect a
civil penalty from a person who has violated Section 431.021.

(b) The civil penalty may not exceed $25,000 a day for each
violation. Each day of violation constitutes a separate violation
for purposes of the penalty assessment.

(c) The court shall consider the following in determining
the amount of the penalty:

(1) the person's history of any previous violations of
Section 431.021;

(2) the seriousness of the violation;

(3) any hazard posed to the public health and safety
by the violation; and

(4) demonstrations of good faith by the person
charged.

(d) Venue for a suit brought under this section is in the
city or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a
local government under this section shall be paid to that local
government.

SECTION 155. Section 431.059(a), Health and Safety Code, is amended to conform to Section 4, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. An offense under this subsection is a Class A misdemeanor. In a criminal proceeding under this section, it is not necessary to prove intent, knowledge, recklessness, or criminal negligence of the defendant beyond the degree of culpability, if any, stated in Section 431.021 to establish criminal responsibility for the violation.

SECTION 156. Section 431.082, Health and Safety Code, is amended to conform to Section 8, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its
label bears, in prominent type of uniform size, the word
"imitation" and immediately thereafter the name of the food
imitated;

(e) if its container is so made, formed, or filled as
to be misleading;

(f) if in package form unless it bears a label
containing:

(1) the name and place of business of the
manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location
on the principal display panel of the label, of the quantity of the
contents in terms of weight, measure, or numerical count; provided,
that under this subsection reasonable variations shall be
permitted, and exemptions as to small packages shall be
established, by rules adopted by the board;

(g) if any word, statement, or other information
required by or under the authority of this chapter to appear on the
label or labeling is not prominently placed thereon with such
conspicuousness (as compared with other words, statements, designs,
or devices in the labeling) and in such terms as to render it
likely to be read and understood by the ordinary individual under
customary conditions of purchase and use;

(h) if it purports to be or is represented as a food
for which a definition and standard of identity has been prescribed
by federal regulations or rules of the board as provided by Section
431.245, unless:

(1) it conforms to such definition and standard;
and 

(2) its label bears the name of the food 
specified in the definition and standard, and, in so far as may be 
required by those regulations or rules, the common names of 
optional ingredients, other than spices, flavoring, and coloring, 
present in such food; 

(i) if it purports to be or is represented as: 

(1) a food for which a standard of quality has 
been prescribed by federal regulations or rules of the board as 
provided by Section 431.245, and its quality falls below such 
standard unless its label bears, in such manner and form as those 
regulations or rules specify, a statement that it falls below such 
standard; or 

(2) a food for which a standard or standards of 
fill of container have been prescribed by federal regulations or 
rules of the board as provided by Section 431.245, and it falls 
below the standard of fill of container applicable thereto, unless 
its label bears, in such manner and form as those regulations or 
rules specify, a statement that it falls below such standard; 

(j) if it is not subject to the provisions of 
Subsection (h), unless its label bears: 

(1) the common or usual name of the food, if 
any; and 

(2) in case it is fabricated from two or more 
ingredients, the common or usual name of each such ingredient; 
except that spices, flavorings, and colorings, other than those 
sold as such, may be designated as spices, flavorings, and
colorings, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by rules of the board;

(k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses; [or]

(l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by rules of the board. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream;

(m) if it is a raw agricultural commodity that is the produce of the soil and bears or contains a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical, except that the declaration is not required while the commodity, after removal from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade;

(n) if it is a product intended as an ingredient of
another food and if used according to the directions of the
purveyor will result in the final food product being adulterated or
misbranded;

(o) if it is a color additive, unless its packaging
and labeling are in conformity with the packaging and labeling
requirements applicable to the color additive as may be contained
in regulations issued under Section 706 of the federal Act;

(p) if its packaging or labeling is in violation of an
applicable regulation issued under Section 3 or 4 of the Federal

(g) if it contains saccharin, unless its label and
labeling and retail display comply with the requirements of
Sections 403(o) and 403(p) of the federal Act; or

(r) if it contains saccharin and is offered for sale,
but not for immediate consumption, at a retail establishment,
unless the retail establishment displays prominently, where the
food is held for sale, notice that is provided by the manufacturer
of the food under Section 403(o)(2) of the federal Act for
consumers concerning the information required by Section 403(p) of
the federal Act to be on food labels and labeling.

SECTION 157. Section 431.114(c), Health and Safety Code, is
amended to conform to Section 9, Chapter 1129 (H.B. 2505), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in
the federal Act; [or]

(2) to any drug that is licensed under the Public
Health Services Act of July 1, 1944 (42 U.S.C. 201 et seq.) [or under-the-Virus-Serum-Toxin-Act-(21-U.S.C.-§511-§58)] or

(3) to any drug approved by the commissioner by the authority of any prior law [including this section].

SECTION 158. Section 431.115(c), Health and Safety Code, is amended to conform to Section 10, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(c) This section does not apply to any drug:

(1) licensed under the virus-serum-toxin law of March 4, 1913 (21 U.S.C. 151-159);

(2) approved by the United States Department of Agriculture; or

(3) approved by the commissioner by the authority of any prior law [including Section 431.112].

SECTION 159. Section 431.142, Health and Safety Code, is amended to conform to Section 11, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.142. MISBRANDED COSMETIC. (1) A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and

(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the
quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by rules adopted by the board;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section 706 of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes, as defined by Section 431.141(a); or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(2) [†]+ The board shall adopt rules exempting from any
labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by rules adopted by the board.

SECTION 160. Section 431.183(b), Health and Safety Code, is amended to better conform to the law from which it is derived to read as follows:

(b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate Section 431.182 [431:0133:01] and is disseminated:

(1) to the public for self-medication and is consistent with the labeling claims permitted by the federal Food and Drug Administration;

(2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or

(3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.

SECTION 161. Section 431.202, Health and Safety Code, is amended to conform to Section 13, Chapter 1129 (H.B. 2505), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.202. REGISTRATION STATEMENT REQUIRED[7—CRIMINAL PENALTY]. (a) A person may not engage in wholesale distribution of drugs in this state unless the person has filed with the commissioner a signed and verified registration statement on a form furnished by the commissioner.

(b) The registration statement must be filed annually.

SEC. 162. Section 431.222, Health and Safety Code, is amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 431.222. REGISTRATION REQUIRED[7—CRIMINAL—PENALTY].

(a) A manufacturer of food in this state shall register annually with the department each establishment that the manufacturer operates in this state and pay a fee for each establishment.

(b) The registration statement must be signed and verified and filed on a form furnished by the department.

SEC. 163. Section 431.224, Health and Safety Code, is amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsection (e) to read as follows:

(e) All registration fees received by the department under
this subchapter shall be deposited in the state treasury to the credit of the food and drug registration fee fund.

SECTION 164. Section 431.225(b), Health and Safety Code, is amended to conform to Section 14, Chapter 1129 (H.B. 2505), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) For the year in which the registration expiration date is changed, registration fees payable on or before September 1 shall be prorated so that each registrant pays only that portion of the registration fee allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable [The department shall prorate registration fees for the months of a year in which a registration expiration date is changed].

SECTION 165. Section 436.024, Health and Safety Code, is amended to conform to Section 13, Chapter 255 (H.B. 2622), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 436.024. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter. Each day of a continuing violation constitutes a separate offense.

(b) An offense under Subsection (a) [this section] is a misdemeanor punishable by a fine of not less than $200 or more than $1,000, confinement in jail for not more than 180 days, or both.

(c) If it is shown at the trial of a defendant for a violation of Section 436.018 that the defendant has been convicted once within five years before the trial date of a violation of Section 436.018, the defendant is guilty of a misdemeanor
punishable by a fine of not less than $500 or more than $2,000, confinement in jail for a term not to exceed one year, or both.

(d) If it is shown at the trial of a defendant for a violation of Section 436.018 that the defendant has been convicted two or more times within five years before the trial date of a violation of Section 436.018, the defendant is guilty of a felony punishable by imprisonment for a term of not more than 10 years or less than two years. In addition to imprisonment, an individual adjudged guilty of a felony under this subsection may be punished by a fine of not less than $2,000 or more than $5,000.

[(e)--Each--day--of--a--continuing--violation--constitutes--a separate-offense--]

SECTION 166. Section 436.044(b), Health and Safety Code, is amended to conform to Section 1, Chapter 412 (H.B. 1547), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) A license is nontransferable and expires the last day of February [August-31] of each year.

SECTION 167. Subtitle A, Title 6, Health and Safety Code, is amended to conform to Chapter 194, Acts of the 67th Legislature, Regular Session, 1981 (Article 4476-2a, Vernon's Texas Civil Statutes), by adding Chapter 440 to read as follows:

CHAPTER 440. FROZEN DESSERTS MANUFACTURER LICENSING ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 440.001. SHORT TITLE. This chapter may be cited as the Frozen Desserts Manufacturer Licensing Act.

Sec. 440.002. PURPOSE. The legislature finds that a statewide licensing act is needed to:
(1) regulate manufacturers of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products;

(2) provide for uniformity of inspections of the premises of frozen dessert manufacturers;

(3) protect the health and safety of consumers by preventing the manufacture or distribution of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products that do not meet state standards or related requirements of purity or labeling; and

(4) assist manufacturers in meeting state standards or related requirements.

Sec. 440.003. DEFINITIONS. In this Act:

(1) "Adulterated or misbranded frozen desserts mix" means any frozen dessert or mix that contains an unwholesome substance, or, if defined in this standard, that does not conform with its definition, or that does not comply with Chapter 431 (Texas Food, Drug, and Cosmetic Act) or any other applicable regulation.

(2) "Board" means the Texas Board of Health.

(3) "Commissioner" means the commissioner of health.

(4) "Department" means the Texas Department of Health.

(5) "Frozen dessert" means any of the following: ice cream, ice milk, fruit sherbet, water ice, nonfruit sherbet, nonfruit water ice, frozen dietary dairy desserts, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake.
freezer-made shake, or nondairy frozen dessert. The term includes
the mix used in the freezing of one of those frozen desserts.

(6) "Frozen desserts manufacturer" means a person who
manufactures, processes, converts, partially freezes, or freezes
any mix (regardless of whether it is dairy, nondairy, imitation,
pasteurized or unpasteurized), frozen desserts, imitation frozen
desserts, or nondairy frozen desserts for distribution or sale at
wholesale. The term does not include a frozen desserts retail
establishment.

(7) "Frozen desserts plant" means premises where a
frozen dessert or mix is manufactured, processed, or frozen for
sale.

(8) "Frozen desserts retail establishment" means
premises, including a retail store, approved type stand, hotel,
restaurant, vehicle, or mobile unit, where frozen dessert mixes are
frozen or partially frozen and dispensed for retail sale or
distribution.

(9) "Health authority" means the municipal, county, or
state health officer or the officer's representative or any other
agency having jurisdiction or control over the matters embraced
within the specifications and requirements of this chapter.

(10) "Imitation frozen dessert" means any frozen
substance, mixture, or compound, regardless of the name under which
it is represented, that is made in imitation or semblance of any of
the following products or is prepared or frozen in the manner in
which any of the following products is customarily prepared or
frozen and that is not the product: ice cream, ice milk, fruit
sherbet, water ice, nonfruit sherbet, nonfruit ice, frozen low fat yogurt, nonfat yogurt, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, lorine, parevine, freezer-made milk shake, freezer-made shake, or nondairy frozen dessert.

(11) "Manufacture" means the processing, freezing, or packaging of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products for sale at wholesale. The term does not include a retailer purchasing those products from a manufacturer displaying the retailer's brand name.

(12) "Mix" means the pasteurized or unpasteurized, liquid or dry, unfrozen combination of the ingredients permitted in a frozen dessert with or without fruits, fruit juices, candy, baked goods and confections, nutmeats, or other harmless flavor or color.

(13) "Official laboratory" means a biological, chemical, or physical laboratory that is under the supervision of a state or local health authority.

(14) "Sale" means the:

(A) manufacture, production, processing, packing, exposure, offer, or holding of any frozen dessert product for sale;

(B) sale, dispensing, or giving of any frozen dessert product; or

(C) supplying or applying of any frozen dessert product in the conduct of any frozen desserts retail establishment.

(15) "State health officer" means the commissioner of
health.

(16) "Wholesale" means the exposing, offering, possessing, selling, dispensing, holding, or giving of any frozen dessert, imitation frozen dessert, product sold in semblance of frozen dessert, or a mix for one of those products, to other than the ultimate consumer. The term does not include sale by a retail store.

Sec. 440.004. EXEMPTIONS. This chapter does not apply to:

(1) a person operating a frozen desserts retail establishment; or

(2) a person operating a retail store unless the person is also a manufacturer.

Sec. 440.005. HEARINGS. (a) A hearing conducted by the board in the administration of this chapter is governed by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Based on the record of a hearing conducted under this chapter, the department shall make a finding and shall sustain, change, or rescind an official notice or order considered in the hearing.

Sec. 440.006. POWERS AND DUTIES OF BOARD. The board may:

(1) adopt rules prescribing standards or related requirements for the operation of establishments for the manufacture of frozen desserts, imitation frozen desserts, products sold in semblance of frozen desserts, or mixes for those products, including standards or requirements for the:

(A) health, cleanliness, education, and training
of personnel who are employed in the establishments;

(B) protection of raw materials, manufactured
merchandise, and merchandise held for sale;

(C) design, construction, installation, and
cleanliness of equipment and utensils;

(D) sanitary facilities and controls of the
establishments;

(E) establishment construction and maintenance,
including vehicles;

(F) production processes and controls; and

(G) institution and content of a system of
records to be maintained by the establishment; and

(2) adopt rules prescribing procedures for the
enforcement of the standards or related requirements prescribed
under Subdivision (1), including procedures for the:

(A) requirement of a valid license to operate an
establishment;

(B) issuance, suspension, revocation, and
reinstatement of licenses;

(C) administrative hearings before the board or
its designee;

(D) institution of certain court proceedings by
the board or its designee;

(E) inspection of establishments and securing of
samples of frozen desserts, imitation frozen desserts, products
sold in semblance of frozen desserts, or mixes for those products;

(F) access to the establishments and to the
vehicles used in operations;

(G) compliance by manufacturers outside the jurisdiction of the state; and

(H) review of plans for future construction.

[Sections 440.007-440.010 reserved for expansion]

SUBCHAPTER B. LICENSING

Sec. 440.011. PROHIBITED ACT. (a) A person may not operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products in this state unless the person has a valid license issued under this chapter.

(b) A political subdivision or agency of the state, other than the department, may not impose a license fee on any manufacturer covered by this section.

Sec. 440.012. LICENSE. (a) A person desiring to operate an establishment for the manufacture of a frozen dessert, imitation frozen dessert, product sold in semblance of a frozen dessert, or a mix for one of those products may apply to the department for a license. A license shall be granted under the procedural rules adopted by the board and shall be issued only for the purpose and use as stated on the application for a license.

(b) The department shall inspect the establishment under Section 440.031 before issuing a license.

(c) A license may not be issued to a person who does not comply with the standards prescribed by the board under this chapter.

(d) A license issued under this chapter must be renewed on
or before September 1 of each year in accordance with rules adopted
by the board.

Sec. 440.013. FEES. (a) A $200 nonrefundable fee for each
establishment must accompany each application for a license.

(b) The department also shall assess the following fees:

(1) a fee for a frozen dessert manufacturer located in
this state in the amount of one cent per 100 pounds of manufactured
or processed frozen dessert manufactured or processed and
distributed in this state by that manufacturer;

(2) a fee for a frozen dessert manufacturer not
located in this state in the amount of one cent per 100 pounds of
frozen desserts manufactured or processed by the manufacturer in
another state and imported for sale in this state; and

(3) a fee for the actual cost of analyzing samples of
frozen desserts for a frozen dessert manufacturer not located in
this state.

(c) The board shall adopt rules to collect fees imposed
under this section monthly, quarterly, semiannually, or annually
based on amounts due by the frozen dessert manufacturer.

(d) The department may revoke a license to operate a frozen
desserts plant if the licensee fails to make a timely payment of
the monthly fees required under this section. The department's
rules of procedure for a contested case hearing and the
Administrative Procedure and Texas Register Act (Article 6252-13a,
Vernon's Texas Civil Statutes) govern the revocation of a license.

Sec. 440.014. RECORDKEEPING. The board shall adopt rules
establishing minimum standards for recordkeeping by persons
required to pay fees under this chapter and the records shall be
made available to the department on request.

Sec. 440.015. ESTABLISHMENTS OUTSIDE STATE. A frozen
dessert, imitation frozen dessert, product sold in semblance of a
frozen dessert, or a mix for one of those products from a
manufacturer located outside this state may be sold or distributed
in this state if the manufacturer complies with this chapter or
complies with other regulatory requirements that are substantially
equivalent to those of this state. To determine the extent of the
manufacturer's compliance, the department may accept reports from
responsible authorities in the jurisdiction in which the
manufacturer is located.

Sec. 440.016. TEMPORARY PERMIT. The department may issue a
temporary permit to continue the operation of an establishment for
the manufacture of a frozen dessert, imitation frozen dessert,
product sold in semblance of a frozen dessert, or mix for one of
those products until the department performs the inspection
required by this chapter.

Sections 440.017-440.030 reserved for expansion

SUBCHAPTER C. ENFORCEMENT

Sec. 440.031. INSPECTION BY DEPARTMENT. (a) Under rules
adopted by the board, the department's authorized representatives
have free access at all reasonable hours to any establishment for
the manufacture of a frozen dessert, imitation frozen dessert,
product sold in semblance of a frozen dessert, or a mix for one of
those products, or to any vehicle being used to transport in
commerce a frozen dessert, imitation frozen dessert, product sold
in semblance of a frozen dessert, or a mix for one of those
products, for the purpose of:

(l) inspecting the establishment or vehicle to
determine compliance with the standards or related requirements
prescribed by the board under this chapter; or

(2) securing samples of frozen desserts, imitation
frozen desserts, products sold in semblance of frozen desserts, or
a mix for one of those products, for the purpose of making or
causing to be made an examination of the samples to determine
compliance with the standards or related requirements prescribed by
the board under this chapter.

(b) A political subdivision or an agency other than the
department that collects samples described by Subsection (a)(2)
shall bear the cost of the samples and any analyses of the samples.

Sec. 440.032. PENALTIES. (a) A person commits an offense
if the person knowingly or intentionally violates Section 440.011
or a rule adopted by the board under this chapter.

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

(c) The penalty prescribed by this section is in addition to
any civil or administrative penalty or sanction otherwise imposed
by law.

SECTION 168. Section 461.001, Health and Safety Code, is
amended to conform to Section 8, Chapter 23 (S.B. 57), Acts of the
71st Legislature, 1st Called Session, 1989, to read as follows:

Sec. 461.001. POLICY. Chemical dependency is a [Alcohol-and
drug-abuse-are] preventable and treatable illness [illnesses] and
public health problem [problems] affecting the general welfare and
the economy of the state. The legislature recognizes the need for
proper and sufficient facilities, programs, and procedures for
prevention, intervention, treatment, and rehabilitation. It is the
policy of this state that a chemically dependent person [an-alcohol
or-drug-abuser] shall be offered a continuum of services that will
enable the person to lead a normal life as a productive member of
society.

SECTION 169. Section 461.002, Health and Safety Code, is
amended to conform to Section 8, Chapter 23 (S.B. 57), Acts of the
71st Legislature, 1st Called Session, 1989, to read as follows:

Sec. 461.002. DEFINITIONS. In this chapter:

(1) "Chemical dependency" means:

(A) abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on

alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled

substance.

(2) "Alcohol--abuse"--means--the--excessive--use---of
alcohol-in-a-manner-that-interferes--but-not-chronically--with:

(A)--physical-or-psychological-functioning;

(B)--social-adaptation;

(C)--educational-performance; or

(D)--occupational-functioning;

(2)--"Alcoholic"--means--a--person--suffering--from

alcoholism--

(3)--"Alcoholism"--means--

(A)--a-loss-of-self-control-with-respect-to--the
use-of-alcohol;

(B) a pathological use of alcohol that chronically impairs social or occupational functioning; or

(E) a physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms;

(f) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(3) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(4) (a) "Drug-abuse" means misuse--or--abuse--of--any controlled--substance--or--volatile--chemical--for--other--than appropriate-and-duly-prescribed-medicinal--purposes;

(b) "Drug-dependent-person" means a--person--who--is using--a--controlled-substance--or--volatile--chemical--and--who--is--in--a state-of-psychological--or--physical--dependence--or--both--arising from administration--of--a--controlled-substance--or--volatile--chemical;

Drug--dependence--is--characterized--by--behavioral--and--other--responses that include a strong compulsion to take a controlled substance--or volatile--chemical--in--order--to--experience--its--psychological--effects or to avoid the discomfort of its absence;

(f) "Intervention" means the interruption of the onset or progression of chemical dependency [substance-abuse-or dependence] in the early stages.

(5) (f) "Prevention" means the reduction of a person's risk of abusing [or--becoming-addicted-to] alcohol or a
controlled substance or becoming chemically dependent [drugs].

(6) [t+g+] "Rehabilitation" means the reestablishment of the social and vocational life of a [substance-free] person after treatment.

(7) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.

(8) [t+g]--"Substance--abuse"--means--alcohol--or--drug abuse--or--both--

[t+g+] "Treatment" means the initiation and promotion, in a planned, structured, and organized manner, of a person's chemical-free status or the maintenance of a person free of illegal drugs [maintenance-of-a-person's-substance-free-status].

(9) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the commission, or a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license and in the practitioner's office.
SECTION 170. Sections 461.005(a), (b), and (d), Health and Safety Code, are amended to conform to Sections 9 and 10, Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

(a) A person is not eligible for appointment or service as a commission member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of chemical dependency [alcoholism-or-drug-abuse];

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(b) An officer, employee, or paid consultant of an association that is primarily interested in the provision of services or in other matters relating to chemical dependency [alcoholism--or--drug--abuse] may not be a member or employee of the commission.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a provider of chemical dependency [alcoholism--or--drug--abuse]
services.

SECTION 171. Section 461.012(a), Health and Safety Code, is amended to conform to Section 11, Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

(a) The commission shall:

(1) provide for research and study of the problems of chemical dependency [substance-abuse] in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of chemical dependency [substance abuse-alcoholism-and-drug-dependence] in cooperation with federal and state agencies, local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

(A) other state, federal, and local agencies;

(B) hospitals and clinics;

(C) public health, welfare, and criminal justice system authorities;

(D) educational and medical agencies and organizations; and

(E) other related public and private groups and persons;

(4) expand chemical dependency [drug-inhalant-and alcohol-abuse] services for children when funds are available

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because of the long-term benefits of those services to the state
and its citizens;

(5) sponsor, promote, and conduct educational programs
on the prevention and treatment of chemical dependency [substance
abuse, alcoholism, and drug dependence], and maintain a public
information clearinghouse to purchase and provide books,
literature, audiovisuals, and other educational material for the
programs;

(6) sponsor, promote, and conduct training programs
for persons delivering prevention, intervention, treatment, and
rehabilitation services and for persons in the criminal justice
system or otherwise in a position to identify chemically dependent
[substance-abusers, alcoholics, drug-dependent] persons[7] and
their families in need of service;

(7) require programs rendering services to chemically
dependent [substance-abusers, alcoholics, drug-dependent]
persons to safeguard those persons' legal rights of citizenship and
maintain the confidentiality of client records as required by state
and federal law;

(8) maximize the use of available funds for direct
services rather than administrative services;

(9) consistently monitor the expenditure of funds and
the provision of services by all grant and contract recipients to
assure that the services are effective and properly staffed and
meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under
Subdivision (9) a matter of public record;
(11) license treatment facilities under Chapter 464;
(12) use funds appropriated to the commission to carry out this chapter and maximize the overall state allotment of federal funds;
(13) develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction;
(14) establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals; and
(15) adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

SECTION 172. Chapter 461, Health and Safety Code, is amended to conform to Section 12, Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, by adding Sections 461.0121 and 461.0122 to read as follows:

Sec. 461.0121. EMERGENCY TREATMENT RESOURCES. The executive director may develop emergency treatment resources for persons who appear to be:

(1) chemically dependent;
(2) under the influence of alcohol or a controlled substance and in need of medical attention; or
(3) undergoing withdrawal or experiencing medical complications related to a chemical dependency.

Sec. 461.0122. REFERRAL SERVICES FOR PERSONS FROM CRIMINAL JUSTICE SYSTEM. (a) The executive director may establish programs for the referral, treatment, or rehabilitation of persons from the criminal justice system within the terms of bail, probation, conditional discharge, parole, or other conditional release.

(b) A referral may not be inconsistent with medical or clinical judgment or conflict with this chapter or Chapter 462 or applicable federal regulations.

SECTION 173. Chapter 461, Health and Safety Code, is amended to conform to Section 3 of Chapter 1148 (S.B. 1697) and Section 6 of Chapter 1195 (S.B. 959), Acts of the 71st Legislature, Regular Session, 1989, by adding Sections 461.0131-461.0133 to read as follows:

Sec. 461.0131. OUTREACH PROGRAMS FOR INTRAVENOUS DRUG USERS. (a) The commission may fund community outreach programs that have direct contact with intravenous drug users.

(b) An outreach program funded by the commission must:

(1) provide education on HIV infection based on the model education program developed by the Texas Department of Health;

(2) encourage behavior changes to reduce the possibility of HIV transmission;

(3) promote other HIV risk reduction activities; and

(4) encourage behavior consistent with state criminal laws.
(c) In this section, "HIV" means human immunodeficiency
virus.

Sec. 461.0132. MINIMUM PROGRAM REQUIREMENTS. (a) A
chemical dependency intensive intervention, outpatient, residential
treatment, or rehabilitation program that is provided by the
commission or that is funded in whole or part by funds allocated
through the commission must include:

(1) coping skills training;

(2) education regarding the manifestations and
dynamics of dysfunctional relationships within the family; and

(3) support group opportunities for children and
adults.

(b) This section does not apply to:

(1) a detoxification program or that part of a program
that provides detoxification; or

(2) a program provided by the Texas Youth Commission.

(c) In this section, "coping skills training" means
instruction in the elements and practice of and reasons for the
skills of communication, stress management, problem solving, daily
living, and decision making.

Sec. 461.0133. RELAPSE RATE REPORTING. (a) A treatment
program provided or funded by the commission shall report to the
commission on the effectiveness of the chemical dependency
treatment program.

(b) The report must show to the extent possible, without
violating the confidentiality of information received by the
program, the rate of relapse of persons who have received treatment
services.

(c) The commission by rule may provide for the content of a report and the procedure for reporting under this section. Reports must be uniform in classifications of persons receiving treatment according to the severity of addiction, substance abused, age of person treated, and modality of treatment. A report may not reveal the name of an individual subject to treatment or of a family member or acquaintance of an individual treated and may not describe circumstances from which any of those individuals may be identified.

SECTION 174. Section 461.014(d), Health and Safety Code, is amended to conform to Section 63, Chapter 584 (H.B. 2519), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(d) The [state---auditor---shall---audit---the] financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code [at least once-each-biennium].

SECTION 175. Chapter 462, Health and Safety Code, is amended to conform to Sections 8, 13, 14, and 16(1), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

CHAPTER 462. TREATMENT OF CHEMICALLY DEPENDENT PERSONS

[Abgehobenes]

SUBCHAPTER A. GENERAL PROVISIONS [EMERGENCY-DETENTION]

Sec. 462.001. DEFINITIONS. In this chapter [subchapter]:

(1) "Applicant" means a person who files an application for emergency detention, protective custody, or
commitment of a chemically dependent person.

(2) "Certificate" means a sworn certificate of medical examination for chemical dependency executed under this chapter.

(3) "Chemical dependency" means:

(A) the abuse of alcohol or a controlled substance;

(B) psychological or physical dependence on alcohol or a controlled substance; or

(C) addiction to alcohol or a controlled substance.

(4) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(5) "Controlled substance" means a:

(A) toxic inhalant; or

(B) substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(6) "Legal holiday" means a state holiday listed in Article 4591, Revised Statutes, or an officially declared county holiday applicable to a court in which proceedings under this chapter are held.

(7) "Proposed patient" means a person named in an application for emergency detention, protective custody, or commitment under this chapter.

(8) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.
alcoholism:

(9) "Alcoholic"—means—a—person—suffering—from alcoholism.

(10) "Alcoholic"—means:


[B]—a—pathological—use—of—alcohol—that chronically-impairs-social-or-occupational-functioning—or

[C]—a—physiological—dependence—on-alcohol—as evidenced-by-tolerance—or-withdrawal-symptoms.


(12) "Treatment" means the initiation and promotion of a person's chemical-free status or the maintenance of a person free of illegal drugs [maintenance-of-a-person's-substance-free status].

(13) "Treatment facility" means a public or private hospital, a detoxification facility, a primary care facility, an intensive care facility, a long-term care facility, an outpatient care facility, a community mental health center, a health maintenance organization, a recovery center, a halfway house, an ambulatory care facility, another facility that is required to be licensed and approved by the commission, or a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation. The term does not include an educational program for intoxicated drivers or the individual office of a private, licensed
health care practitioner who personally renders private individual
or group services within the scope of the practitioner's license
and in the practitioner's office.

Sec. 462.002. FILING REQUIREMENTS. (a) Each application,
petition, certificate, or other paper permitted or required to be
filed in a court having original jurisdiction under this chapter
must be filed with the county clerk of the proper county.

(b) The county clerk shall file each paper after endorsing
on it:

(1) the date on which the paper is filed;

(2) the docket number; and

(3) the clerk's official signature, stamp, or seal.

(c) A person may initially file a paper with the county
clerk by the use of reproduced, photocopied, or electronically
transmitted paper if the person files the original signed copies of
the paper with the clerk not later than the third working day after
the date on which the initial filing is made.

Sec. 462.003. INSPECTION OF COURT RECORDS. (a) Each paper
in a docket for commitment proceedings in the county clerk's
office, including the docket book, indexes, and judgment books, is
a public record of a private nature that may be used, inspected, or
copied only under a written order issued by the:

(1) county judge;

(2) judge of a court that has probate jurisdiction; or

(3) judge of a district court having jurisdiction in
the county.

(b) A judge may not issue an order under Subsection (a)
unless the judge enters a finding that:

(1) the use, inspection, or copying is justified and
in the public interest; or

(2) the paper is to be released to the person to whom
it relates or to a person designated in a written release signed by
the person to whom the paper relates.

(c) In addition to the finding required by Subsection (b),
if a law relating to confidentiality of mental health information
or physician-patient privilege applies, the judge must find that
the reasons for the use, inspection, or copying fall within the
statutory exemptions.

(d) The papers shall be released to an attorney representing
the proposed patient in a proceeding held under this chapter.

(e) This section does not affect access of law enforcement
personnel to necessary information in the execution of a writ or
warrant.

Sec. 462.004. REPRESENTATION OF STATE. In a hearing on
court-ordered treatment held under this chapter:

(1) the county attorney shall represent the state; or

(2) if the county has no county attorney, the district
attorney shall represent the state.

Sec. 462.005. COSTS. (a) The laws relating to the payment
of the costs of commitment, support, maintenance, and treatment,
and to the obtaining of reimbursement for the actual costs
applicable to court-ordered mental health, probation, or parole
services apply to each item of expense incurred by the state or the
county in connection with the commitment, care, custody, treatment,
and rehabilitation of a person receiving care and treatment under this chapter.

(b) A county that enters an order of commitment or detention under this chapter is liable for payment of the costs of any proceedings related to that order, including:

(1) court-appointed attorney's fees;
(2) physician examination fees;
(3) compensation for language or sign interpreters;
(4) compensation for masters; and
(5) expenses to transport a patient to a hearing or to a treatment facility.

(c) A county or the state is entitled to reimbursement from any of the following persons for costs actually paid by the county or state and that relate to an order of commitment or detention:

(1) the patient;
(2) the applicant; or
(3) a person or estate liable for the patient's support in a treatment facility.

(d) On a motion of the county or district attorney or on the court's own motion, the court may require an applicant to file a cost bond with the court.

(e) The state shall pay the costs of transporting a discharged patient to the patient's home or of returning to a treatment facility a patient absent without permission unless the patient or a person responsible for the patient is able to pay the costs.

(f) The state or the county may not pay any costs for a
patient committed to a private hospital unless authorized by the
commission or the commissioners court of the county, as
appropriate.

Sec. 462.006. WRIT OF HABEAS CORPUS. This chapter does not
limit a person's right to obtain a writ of habeas corpus.

Sec. 462.007. LIMITATION OF LIABILITY. (a) A person who
participates in the examination, certification, apprehension,
custody, transportation, detention, commitment, or discharge of a
proposed patient or in the performance of any act required or
authorized by this chapter and who acts in good faith, reasonably,
and without malice is not civilly or criminally liable for that
action.

(b) A physician performing a medical examination or
providing information to a court in a court proceeding under this
chapter is considered an officer of the court and is not civilly or
criminally liable for the examination or testimony when acting
without malice.

Sec. 462.008. CRIMINAL PENALTY; ENFORCEMENT. (a) A person
commits an offense if the person intentionally causes, conspires
with another person to cause, or assists another to cause the
unwarranted commitment of a person to a treatment facility.

(b) A person commits an offense if the person knowingly
violates this chapter.

(c) An offense under this section is a Class A misdemeanor.

(d) The appropriate district or county attorney shall
prosecute violations of this chapter.

[Sections 462.009-462.020 reserved for expansion]
SUBCHAPTER B. VOLUNTARY TREATMENT OR REHABILITATION

Sec. 462.021. VOLUNTARY ADMISSION OF ADULT. A facility may admit an adult who requests admission for emergency or nonemergency treatment or rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services; or

(B) a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation; and

(2) the admission is appropriate under the facility's admission policies.

Sec. 462.022. VOLUNTARY ADMISSION OF MINOR. (a) A facility may admit a minor for treatment and rehabilitation if:

(1) the facility is:

(A) a treatment facility licensed by the commission to provide the necessary services to minors; or

(B) a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation;

(2) the admission is appropriate under the facility's admission policies; and

(3) the admission is requested by:

(A) a parent or other person authorized to consent to medical treatment of a minor under Section 35.01, Family Code; or

(B) the minor, without parental consent, under Section 35.03, Family Code.

(b) The admission of a minor under Subsection (a) is
considered a voluntary admission.

Sec. 462.023. DISCHARGE OR RELEASE. (a) Except as provided by Subsection (b), a facility shall release a voluntary patient within a reasonable time, not to exceed 96 hours, after the patient requests in writing to be released.

(b) A facility is not required to release the patient if before the end of the 96-hour period:

(1) the patient files a written withdrawal of the request;

(2) an application for court-ordered treatment or emergency detention is filed and the patient is detained in accordance with this chapter; or

(3) the patient is a minor admitted with the consent of a parent, guardian, or conservator and that person, after consulting with facility personnel, objects in writing to the release of the minor.

(c) Subsection (a) applies to a minor admitted under Section 462.022 if the request for release is made in writing to the facility by the person who requested the initial admission.

Sec. 462.024. APPLICATION FOR COURT-ORDERED TREATMENT DURING VOLUNTARY INPATIENT CARE. An application for court-ordered treatment may not be filed against a patient receiving voluntary care under this subchapter unless:

(1) a request for release of the patient has been filed; or

(2) in the facility administrator's opinion, the patient meets the criteria for court-ordered treatment and:
(A) is absent from the facility without
authorization; or

(B) refuses or is unable to consent to
appropriate and necessary treatment.

[Sections 462.025-462.040 reserved for expansion]

SUBCHAPTER C. EMERGENCY DETENTION

Sec. 462.041. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT.

(a) A peace officer, without a warrant, may take a person into
custody if the officer:

(1) has reason to believe and does believe that:

(A) the person is chemically dependent; and

(B) because of that chemical dependency there is

a substantial risk of harm to the person or to others unless the

person is immediately restrained; and

(2) believes that there is not sufficient time to

obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or

others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and
deterioration in the person's mental or physical condition to the
extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person
meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended

person or the circumstances under which the apprehended person is
found.

(d) A peace officer who takes a person into custody under Subsection (a) shall immediately transport the apprehended person to:

(1) the nearest appropriate inpatient treatment facility; or

(2) if an appropriate inpatient treatment facility is not available, a facility considered suitable by the county's health authority.

(e) A person may not be detained in a jail or similar detention facility except in an extreme emergency. A person detained in a jail or a nonmedical facility shall be kept separate from any person who is charged with or convicted of a crime.

(f) A peace officer shall immediately file an application for detention after transporting a person to a facility under this section. The application for detention must contain:

(1) a statement that the officer has reason to believe and does believe that the person evidences chemical dependency;

(2) a statement that the officer has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) a statement that the officer has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) a statement that the officer's beliefs are derived from specific recent behavior, overt acts, attempts, or threats
that were observed by or reliably reported to the officer;

   (6) a detailed description of the specific behavior, acts, attempts, or threats; and

   (7) the name and relationship to the apprehended person of any person who reported or observed the behavior, acts, attempts, or threats.

   (g) The person shall be released on completion of a preliminary examination conducted under Section 462.044 unless the examining physician determines that emergency detention is necessary and provides the statement prescribed by Section 462.044(b). If a person is not admitted to a facility, is not arrested, and does not object, arrangements shall be made to immediately return the person to:

   (1) the location of the person's apprehension;

   (2) the person's residence in this state; or

   (3) another suitable location.

   (h) The county in which the person was apprehended shall pay the costs of the person's return.

   (i) A treatment facility may provide to a person medical assistance regardless of whether the facility admits the person or refers the person to another facility.

   Sec. 462.042 [462-002].  JUDGE'S OR MAGISTRATE'S ORDER [APPLICATION] FOR EMERGENCY DETENTION.  (a) An [Any] adult may file a written [execute-an] application for emergency detention of a minor or another adult [another-person].

   (b) The application [must-be-in-writing-and] must state:

   (1) that the applicant has reason to believe and does
believe that the person who is the subject of the application is a chemically dependent person [alcoholic];

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others;

(3) a specific description of the risk of harm;

(4) [7-describing-the-specific-risk-of-harm,]

[7+] that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(5) [7+] that the applicant's beliefs are derived from [based-on] specific recent behavior, overt acts, attempts, or threats;

(6) a detailed description of the specific behavior, acts, attempts, or threats [which must be described in detail]; and

(7) [7+] the relationship, if any, of the applicant to the person.

(c) The application may be accompanied by any relevant information.

[7--The--applicant--must--personally-present-the-application to-a--magistrate--]

Sec. 462.043 [462:03]. ISSUANCE OF WARRANT [MAGISTRATE'S ORDER-FOR-EMERGENCY-DETENTION]. (a) An applicant for emergency detention must present the application personally to a judge or magistrate. The judge or magistrate [The--magistrate--receiving--the application--for-emergency-detention] shall examine the application.
and may interview the applicant.

(b) The judge or magistrate shall deny the application unless the judge or magistrate finds that there is reasonable cause to believe that:

1. the person who is the subject of the application is a chemically dependent person [an alcoholic];
2. the person evidences a substantial risk of serious harm to himself or others;
3. the risk of harm is imminent unless the person is immediately restrained; and
4. the necessary restraint cannot be accomplished without emergency detention.

(c) The judge or magistrate shall issue a warrant for the person's immediate apprehension if the judge or magistrate finds that each criteria under Subsection (b) is satisfied.

(d) A person apprehended under this section shall be transported for a preliminary examination in accordance with Section 462.044 to:

1. a treatment facility; or
2. another appropriate facility if a treatment facility is not readily available [if the magistrate finds that the person meets the criteria for emergency detention specified by Subsection (b) the magistrate shall issue a warrant for the immediate apprehension and transportation of the person to an approved treatment program, if one is readily available, or to another appropriate facility for a preliminary examination by a physician].

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(e) [4d] The warrant and copies of the application for the warrant shall be served on the person as soon as possible and [immediately] transmitted to the facility [approved--treatment program].

Sec. 462.044 [462:004]. PRELIMINARY EXAMINATION. (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time the person is apprehended under Section 462.041 or 462.043 [of apprehension].

(b) The person shall be released on completion of [when] the preliminary examination [is--completed] unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.043(b) [462:003{b}].

(c) A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return.

Sec. 462.045 [462:005]. DETENTION PERIOD. (a) A [Unless--a written--order--for--further--detention--is--obtained] person apprehended under this subchapter may be detained for not longer [more] than 24 hours after the time that the person is presented to the facility unless an application for court-ordered treatment is filed and a written order for further detention is obtained under Section 462.065.

(b) If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the person may be detained [maximum--period--of
detention-is-extended] until 4 p.m. [noon] on the next day that is not a Saturday, Sunday, or legal holiday. If extremely hazardous weather conditions exist or a disaster occurs, the presiding judge or magistrate may, by written order made each day, extend by an additional 24 hours the period during which the person may be detained. The written order must declare that an emergency exists because of the weather or the occurrence of a disaster.

Sec. 462.046. INFORMATION TO BE PROVIDED ON ADMISSION. (a) The personnel of a treatment facility shall immediately advise a person admitted under Section 462.044 that:

(1) the person may be detained for treatment for not longer than 24 hours after the time of the initial detention unless an order for further detention is obtained;

(2) if the administrator finds that the statutory criteria for emergency detention no longer apply, the administrator shall release the person;

(3) not later than the 24th hour after the hour of the initial detention, the facility administrator may file in a court having original jurisdiction under this chapter a petition to have the person committed for court-ordered treatment under Subchapter D;

(4) if the administrator files a petition for court-ordered treatment, the person is entitled to a judicial probable cause hearing not later than the 72nd hour after the hour the detention begins under an order of protective custody to determine whether the person should remain detained in the facility;
(5) when the application for court-ordered services is
filed, the person has the right to have counsel appointed if the
person does not have an attorney;

(6) the person has the right to communicate with
counsel at any reasonable time and to have assistance in contacting
the counsel;

(7) the person's communications to the personnel of
the treatment facility may be used in making a determination
relating to detention, may result in the filing of a petition for
court-ordered treatment, and may be used at a court hearing;

(8) the person is entitled to present evidence and to
cross-examine witnesses who testify on behalf of the petitioner at
a hearing;

(9) the person may refuse medication unless there is
an imminent likelihood of serious physical injury to the person or
others if the medication is refused;

(10) beginning on the 24th hour before a hearing for
court-ordered treatment, the person may refuse to take medication
unless the medication is necessary to save the person's life; and

(11) the person is entitled to request that a hearing
be held in the county of the person's residence, if the county is
in the state.

(b) The personnel of the treatment facility shall provide
the information required by Subsection (a) to the person orally, in
writing, and in simple, nontechnical terms.

Sec. 462.047 [462-906]. RELEASE FROM EMERGENCY DETENTION.

(a) A person detained under this subchapter shall be released if
the facility administrator [of-the-approved-treatment--program] or
the administrator's designee determines at any time during the
emergency detention period [during-the-emergency-detention--period]
that one [any] of the criteria prescribed by Section 462.043(b) no
longer applies [specified-by-Section-462.003(b)--no-longer-apply].

(b) If a person is released from emergency detention and is
not arrested and does not object, arrangements [Arrangements] shall
be made to return the person [for-the-person's-return] to the
location of apprehension or other suitable place [unless-the-person
is-arrested-or-objects-to-the-return].
Sec. 462.048 [462:007]. RIGHTS OF PERSON APPREHENDED OR
DETAINED. (a) A person [who-is] apprehended or detained under
this subchapter has the right:

(1) to be advised of the location of detention, the
reasons for the detention, and the fact that detention could result
in a longer period of involuntary commitment;

(2) to contact an attorney of the person's choice and
to a reasonable opportunity to contact that attorney;

(3) to be transported to the location of apprehension
or other suitable place if the person is not admitted for emergency
detention, unless the person is arrested or objects to the return;

(4) to be released from a facility as provided by
Section 462.047 [if-the-administrator--of-the--approved--treatment
program--or-the-administrator's-designee-determines-that-any-of-the
criteria-for-emergency-detention-specified-by-Section-462.003(b)--no
longer-apply]; and

(5) to be advised that communications to a chemical
dependency [an--alcoholism] treatment professional may be used in proceedings for further detention.

(b) Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section.

[Sections 462.049-462.060 [462:000-to-462:020]
reserved for expansion]

SUBCHAPTER D [B]. COURT-ORDERED TREATMENT

[Sec 462:02:--DEFINITIONS:--In-this-subchapter:

(1) "Alcohol--abuse"--means--the-excessive--use-of alcohol-in-a-manner-that-interferes---but-not-chronically-with:

[A]--physical-or-psychological-functioning;

[B]--social-adaptation;

[C]--educational-performance;--or

[D]--occupational-functioning;

(2) "Alcoholic"--means--a---person---suffering---from alcoholism;

(3) "Alcoholism"--means:

[A]--a--loss-of-self-control-with-respect-to-the use-of-alcohol;

[B]--a--pathological--use---of---alcohol---that chronically--impairs-social-or-occupational-functioning;--or

[C]--a--physiological--dependence--on-alcohol-as evidenced-by-tolerance-or-withdrawal--symptoms;

[D]--"Approved-treatment-program"--means--a--substance abuse--treatment-facility-approved-by-the-commission-to-carry-out-a
specific-provision-of-this-chapter

[+5] "Commission"--means--the--Texas--Commission--on
Alcohol-and-Drug-Abuse;

of-a-person's-substance-free-status;

Sec. 462.061 [462.022]. COURT-ORDERED TREATMENT;

JURISDICTION. (a) A proceeding for court-ordered treatment under
this chapter [subchapter] shall be held in a constitutional county
court, a statutory county court having probate jurisdiction, or a
statutory probate court in the county in which the proposed patient
resides, is found, or is receiving court-ordered treatment or
treatment under Section 462.041 when the application is filed
unless otherwise specifically designated [the-court-of-the-county
exercising-the--jurisdiction--of--a--probate--court--in--alcoholism
matters].

(b) If the hearing is to be held in a constitutional county
court in which the judge is not a licensed attorney, the proposed
patient may request that the proceeding be transferred to a
statutory court having probate jurisdiction or to a district court.
The county judge shall transfer the case after receiving the
request and the receiving court shall hear the case as if it had
been originally filed in that court.

(c) The commitment of a juvenile under this subchapter must
be heard in a district court or statutory court that has juvenile
or probate jurisdiction. The commitment of a juvenile under
Section 462.081 may be heard only in a court that has juvenile
jurisdiction.
Sec. 462.062 [462:023]. APPLICATION FOR COURT-ORDERED TREATMENT. (a) A county or district attorney or any other adult may file a sworn written application for court-ordered treatment of another person. Only the district or county attorney may file an application that is not accompanied by a certificate of medical examination for chemical dependency.

(b) The application must be filed with the county clerk in the county in which the proposed patient:
   (1) resides;
   (2) is found or
   (3) is receiving treatment services by court order or under Section 462.041.

(c) If the application is not filed in the county in which the proposed patient resides [on-the-request-of-a-proposed-patient or-the-proposed-patient's-attorney], the court may, on request of the proposed patient or the proposed patient's attorney and if good cause is [for-good-cause] shown, transfer the application to that [the] county [in-which-the-proposed-patient-resides--if-the application-was-originally-filed-in-a-different-county].

(d) The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e) The application must contain [be-in-writing-and-must state] the following information according to [based--on] the applicant's information and belief:
   (1) the proposed patient's name and address, including the county in which the proposed patient resides, if known;
   (2) a statement that the proposed patient is a
chemically dependent person who [an-alcoholic-and-as-a--result--the proposed-patient]:

(A) is likely to cause serious harm to himself or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f) Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code.

Sec. 462.063. PREHEARING PROCEDURE. (a) When the application is filed, the court shall set a date for a hearing on the merits of the application to be held within 14 days after the date on which the application is filed. The hearing may not be held during the first three days after the application is filed if the proposed patient or the proposed patient's attorney objects. The court may grant one or more continuances of the hearing on motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed.

(b) Immediately after the date for the hearing is set, the
clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner the court directs.

(c) The court shall appoint an attorney to represent the proposed patient if the proposed patient does not retain an attorney of the proposed patient's choice.

(d) The court shall appoint an attorney for a proposed patient who is a minor, regardless of the ability of the proposed patient or the proposed patient's family to afford an attorney.

(e) The court shall allow a court-appointed attorney a reasonable fee for services. The fee shall be collected as costs of the court.

Sec. 462.064. CERTIFICATE OF MEDICAL EXAMINATION FOR CHEMICAL DEPENDENCY. (a) A hearing on court-ordered treatment may not be held unless there are on file with the court at least two certificates of medical examination for chemical dependency completed by different physicians each of whom has examined the proposed patient not earlier than the 30th day before the date the final hearing is held.

(b) If the certificates are not filed with the application, the court may appoint the necessary physicians to examine the proposed patient and file the certificates. The court may order the proposed patient to submit to the examinations and may issue a warrant authorizing a peace officer to take the proposed patient into custody for the examinations.

(c) A certificate must be dated and signed by the examining physician. The certificate must include:
(1) the name and address of the examining physician;
(2) the name and address of the proposed patient;
(3) the date and place of the examination;
(4) the period, if any, during which the proposed
patient has been under the care of the examining physician;
(5) an accurate description of the treatment, if any,
given by or administered under the direction of the examining
physician; and
(6) the examining physician's opinions whether the
proposed patient is a chemically dependent person and:

(A) is likely to cause serious harm to himself;
(B) is likely to cause serious harm to others;
or
(C) will continue to suffer abnormal mental,
emotional, or physical distress and to deteriorate in ability to
function independently if not treated and is unable to make a
rational and informed choice as to whether or not to submit to
treatment.

(d) The certificate must include the detailed reason for
each of the examining physician's opinions under this section.

Sec. 462.065. ORDER OF PROTECTIVE CUSTODY. (a) A motion
for an order of protective custody may be filed only in the court
in which an application for court-ordered treatment is pending.
The motion may be filed by the county or district attorney or on
the court's own motion.

(b) The motion must state that:

(1) the judge or county or district attorney has
reason to believe and does believe that the proposed patient meets
the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;
(B) the proposed patient's conduct; or
(C) the circumstances under which the proposed
patient is found.

(c) The motion must be accompanied by a certificate of
medical examination for chemical dependency prepared by a physician
who has examined the proposed patient not earlier than the fifth
day before the date the motion is filed.

(d) The judge of the court in which the application is
pending may designate a magistrate to issue protective custody
orders in the judge's absence.

(e) The judge or designated magistrate may issue a
protective custody order if the judge or magistrate determines:

(1) that a physician has stated his opinion and the
detailed basis for his opinion that the proposed patient is a
chemically dependent person; and

(2) the proposed patient presents a substantial risk
of serious harm to himself or others if not immediately restrained
pending the hearing.

(f) The determination that the proposed patient presents a
substantial risk of serious harm may be demonstrated by the
proposed patient's behavior or by evidence that the proposed
patient cannot remain at liberty. The judge or magistrate may make
a determination that the proposed patient meets the criteria
prescribed by this subsection from the application and certificate alone if the judge or magistrate determines that the conclusions of the applicant and certifying physician are adequately supported by the information provided. The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and certificate only.

(g) The judge or magistrate may issue a protective custody order for a proposed patient who is charged with a criminal offense if the proposed patient meets the requirements of this section and the administrator of the facility designated to detain the proposed patient agrees to the detention.

(h) A protective custody order shall direct a peace officer or other designated person to take the proposed patient into protective custody and transport the proposed patient immediately to a treatment facility or other suitable place for detention. The proposed patient shall be detained in the facility until a hearing is held under Section 462.066.

Sec. 462.066. PROBABLE CAUSE HEARING AND DETENTION. (a) The court shall set a hearing to determine if there is probable cause to believe that a proposed patient under a protective custody order presents a substantial risk of serious harm to himself or others if not restrained until the hearing on the application. The hearing must be held not later than 72 hours after the protective custody order is signed unless the proposed patient waives the right to a hearing. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may
postpone the hearing each day for an additional 24 hours if the
judge or magistrate declares that an extreme emergency exists
because of extremely hazardous weather conditions or on the
occurrence of a disaster that threatens the safety of the proposed
patient or another essential party to the hearing.

(b) The hearing shall be held before a magistrate or, at the
discretion of the presiding judge, before a master appointed by the
presiding judge. The master is entitled to reasonable
compensation.

(c) The proposed patient and the proposed patient's attorney
are entitled to an opportunity at the hearing to appear and present
evidence on any allegation or statement in the certificate of
medical examination for chemical dependency. The magistrate or
master may consider any evidence. The state may prove its case on
the certificate.

(d) The magistrate or master shall order the release of a
person under a protective custody order if the magistrate or master
determines after the hearing that no probable cause exists to
believe that the proposed patient presents a substantial risk of
serious harm to himself or others.

(e) The magistrate shall order that a proposed patient be
detained until the hearing on the court-ordered treatment or until
the administrator of the facility determines that the proposed
patient no longer meets the criteria for detention under this
section if the magistrate or master determines that probable cause
does exist to believe that the proposed patient presents a
substantial risk of serious harm to himself or others to the extent
that the proposed patient cannot be at liberty pending the hearing on court-ordered treatment.

(f) The magistrate or master shall arrange for a proposed patient detained under Subsection (e) to be returned to the treatment facility or other suitable place, along with a copy of the certificate of medical examination for chemical dependency, any affidavits or other material submitted as evidence in the hearing, and the notification prepared as prescribed by Subsection (g). A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody.

(g) The notification of probable cause hearing shall read as follows:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the ___ day of __________, 19___, the undersigned hearing officer heard evidence concerning the need for protective custody of __________ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and the proposed patient's attorney have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on __________ (date of notice).

I have examined the certificate of medical examination for
Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to self (yes __ or no ___) or others (yes __ or no ___) such that (s)he cannot be at liberty pending final hearing because _____________________________.

(reasons for finding; type of risk found)

Sec. 462.067. HEARING ON APPLICATION FOR COURT-ORDERED TREATMENT. (a) A hearing on court-ordered treatment must be before a jury unless the proposed patient and the proposed patient's attorney waive the right to a jury. The waiver may be filed at any time after the proposed patient is served with the application and receives notice of the hearing. The waiver must be in writing, under oath, and signed and sworn to by the proposed patient and the proposed patient's attorney.

(b) The proposed patient is entitled to a hearing and to be present at the hearing, but the proposed patient or the proposed patient's attorney may waive either right.

(c) A court hearing may be held at any suitable location in the county. On the request of the proposed patient or the proposed patient's attorney, the hearing shall be held in the county courthouse.

(d) The Texas Rules of Civil Procedure and Texas Rules of Civil Evidence apply to a hearing unless the rules are inconsistent with this chapter. The hearing is on the record, and the state must prove each issue by clear and convincing evidence.
(e) In addition to the rights prescribed by this chapter, the proposed patient is entitled to:

(1) present evidence on the proposed patient's own behalf;

(2) cross-examine witnesses who testify on behalf of the applicant;

(3) view and copy all petitions and reports in the court file of the cause; and

(4) elect to have the hearing open or closed to the public.

Sec. 462.068. RELEASE AFTER HEARING. (a) The court shall enter an order denying an application for court-ordered treatment if after a hearing the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment.

(b) If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

[Sec. 462.024.--LIBERTY--OR--CUSTODY--PENDING-ORDER--PROBABLE CAUSE-HEARING.--(a)--Pending-the-court-order,-the-judge-may-order-a peace-officer-or-other--designated--person--to--take--the--proposed patient--to--an--approved--facility--or--other--suitable--place-for detention--if;

[++]--a--certificate--of--medical--examination--for alcoholism--is--filed--showing--that--the-proposed-patient-has-been examined-within-five-days-of-the-date-on-which-the--certificate--is filed--and

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(f2)---the---certificate---states---the---opinion---of---the
examiner---physician-that-the-proposed-patient-is-an-alcoholic-whor
(A)---is-likely-to-cause-serious-harm-to-himself
or-others-if-not-immediately-restrained; or
(B)---will---continue-to---suffer-abnormal-mental;
emotional---or-physical-distress; will-continue---to---deteriorate---in
ability---to-function-independently-if-not-treated; and-is-unable-to
make-a-rational-and-informed-choice-as---to---whether---to---submit---to
treatment.
(b)---the-court-shall-set-a-probable-cause-hearing-to-be-held
within---72-hours---after-the-time-detention-begins-if-the-proposed
patient-is-detained-under-this-section---and---the-proposed-patient
does---not-waive---the-right-to-the-hearing;---if-the-72-hour-period
ends-on-a-Saturday,-Sunday,-or-legal-holiday;---the-probable-cause
hearing---shall---be-held---on-the-next-day-that-is-not-a-Saturday,
Sunday,-or-legal-holiday.

[Sec.462:825]---HEARING---ON---COURT-ORDERED---TREATMENT;----(a)
When-an-application-for-court-ordered-treatment-is-filed,-the-court
shall-set-a-date-for-a-hearing-on-the-merits-to-be-held-not-earlier
than-the-sixth-or-later-than-the-14th-day-after-the-date---on---which
the-application-is-filed;
(b)---immediately---after-the-judge-sets-the-date-for-the
hearing,-the-clerk-shall-give-written-notice-of-the-hearing-and-a
copy---of-the-application-to-the-proposed-patient-and-the-proposed
patient's-attorney-in-the-manner-directed-by-the-court;
(c)---the-court-shall-appoint-an-attorney---to---represent-the
proposed-patient-if-the-proposed-patient-is-not-represented-by-an
attorney-of-the-proposed-patient’s-choice:

{fd}--The-court-shall-inform-relatives-of-the-proposed
patient-and-other-persons-to-appear-at-the-hearing-to-give-evidence
in-the-cause:

{fe}--The-judge-may-in-the-judge’s-discretion-or-on-request,
require-the-proposed-patient-to-be-examined-by-a-physician.--The
court-shall-consider-the-results-of-the-examination-at-the-hearing.

{ff}--The-court-may-hear-the-cause-at-the-designated-time-and
with-or-without-an-answer-by-the-proposed-patient-or-the-presence
of-the-proposed-patient-if:

{fi}--the-notice-is-received-not-later-than-the-fourth
day-before-the-date-of-the-hearing-and

{fj}--the-proposed-patient-is-represented-by-an
attorney,-if-the-proposed-patient-has-not-waived-the-right-to-legal
counsel;

Sec. 462.069 [462:026]. COURT ORDER AND PLACE OF TREATMENT.

(a) The court shall commit the proposed patient to a [an-approved]
treatment facility approved by the commission to accept court
commitments [program] for not more than 90 days if:

(1) the proposed patient admits the allegations of the
application; or

(2) at the hearing on the merits, the court or jury
finds that the material allegations in the application have been
proved by clear and convincing evidence.

(b) The judge may, on request by the proposed patient, enter
an order requiring the proposed patient to participate in a
licensed outpatient treatment facility or services provided by a
private licensed physician, psychologist, social worker, or professional counselor if the judge finds that the participation is in the proposed patient's best interest considering the proposed patient's impairment. [Except as provided by Subsection (c), the court may not commit the proposed patient directly to a state mental health facility if the Texas Board of Mental Health and Mental Retardation has designated a single portal authority for the area in that case, the court may commit the proposed patient to:

- a facility operated by the single portal authority;
- a program licensed by the commission; or
- a federal hospital;
- if the single portal authority lacks the local resources to care for the patient, the authority may transfer the patient to a state mental health facility or at the request of the authority, the court may commit the patient directly to a state mental health facility].

Sec. 462.070. MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT. (a) The court that entered an order directing a patient to participate in outpatient care or services may set a hearing to determine if the order should be modified to specifically require inpatient treatment. The court may set the hearing on its own motion, at the request of the person responsible for the care or treatment, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the patient if a hearing is held. The patient shall be given notice of
the matters to be considered at the hearing. The notice must comply with the requirements of Section 462.063 for notice before a hearing on court-ordered treatment.

(c) The hearing shall be held before the court, without a jury, and as prescribed by Section 462.067. The patient shall be represented by an attorney and receive proper notice.

Sec. 462.071. ORDER FOR TEMPORARY DETENTION. (a) The person responsible for a patient's court-ordered outpatient care or treatment or the administrator of the outpatient treatment facility in which a patient receives care or treatment shall file a sworn application for the patient's temporary detention pending the modification hearing.

(b) The application must state the applicant's opinion and detail the basis for the applicant's opinion that:

(1) the patient meets the criteria described by Section 462.072; and

(2) detention in an approved inpatient treatment facility is necessary to evaluate the appropriate setting for continued court-ordered services.

(c) The court may issue an order for temporary detention if the court finds from the information in the application that there is probable cause to believe that the opinions stated in the application are valid.

(d) At the time the order for temporary detention is signed, the court shall appoint an attorney to represent a patient who does not have an attorney.

(e) Within 72 hours after the time the detention begins, the
court that issued the temporary detention order shall provide to
the patient and the patient's attorney a written notice that
states:

(1) that the patient has been placed under a temporary
detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing.

(f) A temporary detention order shall direct a peace officer
or other designated person to take the patient into custody and
transport the patient immediately to:

(1) the nearest appropriate approved inpatient
treatment facility; or

(2) a suitable facility if an appropriate approved
inpatient treatment facility is not available.

(g) A patient may be detained under a temporary detention
order for not more than 72 hours. The exceptions applicable to the
72-hour limitation for holding a probable cause hearing for an
order of protective custody under Section 462.066(a) apply to
detention under this section.

(h) A facility administrator shall immediately release a
patient held under a temporary detention order if the facility
administrator does not receive notice that the patient's continued
detention was authorized after a modification hearing was held
within the period prescribed by Subsection (g).

(i) A patient released from an inpatient treatment facility
under Subsection (h) continues to be subject to the order
committing the person to an approved outpatient treatment facility.
if the order has not expired.

Sec. 462.072. MODIFICATION OF ORDER FOR OUTPATIENT SERVICES.

(a) The court may modify an order for outpatient services at the
modification hearing if the court determines that the patient
continues to meet the applicable criteria for court-ordered
treatment prescribed by this chapter and that:

(1) the patient has not complied with the court's
order; or

(2) the patient's condition has deteriorated to the
extent that outpatient care or services are no longer appropriate.

(b) A court may refuse to modify the order and may direct
the patient to continue to participate in outpatient care or
treatment in accordance with the original order even if the
criteria prescribed by Subsection (a) have been met.

(c) The court's decision to modify an order must be
supported by at least one certificate of medical examination for
chemical dependency signed by a physician who examined the patient
not earlier than the seventh day before the date the hearing is
held.

(d) A modification may include:

(1) incorporating in the order a revised treatment
program and providing for continued outpatient care or treatment
under the modified order, if a revised general program of treatment
was submitted to and accepted by the court; or

(2) providing for commitment to an approved treatment
facility for inpatient care.

(e) A court may not extend the provision of court-ordered
treatment beyond the period prescribed in the original order.

Sec. 462.073. MODIFICATION OF ORDER FOR INPATIENT TREATMENT.

(a) The administrator of a facility to which a patient is
committed for inpatient treatment may request the court that
entered the commitment order to modify the order to require the
patient to participate in outpatient care or services.

(b) The facility administrator's request must explain in
detail the reason for the request. The request must be accompanied
by a certificate of medical examination for chemical dependency
signed by a physician who examined the patient during the preceding
seven days.

(c) The patient shall be given notice of the request.

(d) On request of the patient or any other interested
person, the court shall hold a hearing on the request. The court
shall appoint an attorney to represent the patient at the hearing.
The hearing shall be held before the court without a jury and as
prescribed by Section 462.067. The patient shall be represented by
an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the
decision solely from the request and the supporting certificate.

(f) If the court modifies the order, the court shall
identify a person to be responsible for the outpatient care or
services.

(g) The person responsible for the care or services shall
submit to the court within two weeks after the court enters the
order a general program of the treatment to be provided. The
program must be incorporated into the court order.
(h) A modified order may not extend beyond the term of the original order.

Sec. 462.074. HOSPITALIZATION OUTSIDE TREATMENT FACILITY.
(a) A patient receiving court-ordered treatment in a treatment facility may be transferred to a hospital if, in the opinion of a licensed physician, the patient requires immediate medical care and treatment.
(b) The hospital may, with the patient's consent, provide any necessary medical treatment, including surgery. The hospital may provide medical treatment without the patient's consent to the extent provided by other law.
(c) The patient shall be returned to the treatment facility if the order for court-ordered treatment has not expired at the completion of the hospital treatment.
(d) An order for court-ordered treatment may be renewed while the person is in the hospital.

Sec. 462.075. RENEWAL OF ORDER FOR COURT-ORDERED TREATMENT.
(a) A court may renew an order for court-ordered treatment entered under this subchapter.
(b) An applicant who has reasonable cause to believe that a patient remains chemically dependent and that, because of the chemical dependency, the patient is likely to cause serious physical harm to himself or others may file an application to renew the original order for court-ordered treatment. The application must comply with the requirements of Section 462.062. The applicant must file the application not later than the 14th day before the date on which the previous order expires.
(c) The application must be accompanied by two new certificates of medical examination for chemical dependency. The certificates must comply with the requirements of Section 462.064.

(d) An application for renewal is considered an original application for court-ordered treatment. The provisions of this subchapter relating to notice, hearing procedure, and the proposed patient's rights apply to the application for renewal.

(e) The court shall enter an order denying an application for court-ordered treatment if the court or jury fails to find, from clear and convincing evidence, that the proposed patient is a chemically dependent person and meets the criteria for court-ordered treatment. If the court denies the application, the court shall order the discharge of a proposed patient who is not at liberty.

(f) The court shall commit the proposed patient to a treatment facility approved by the commission to accept commitments for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court or jury finds that the material allegations in the application have been proved by clear and convincing evidence.

Sec. 462.076 [462.027]. APPEAL. (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.
(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) Pending the appeal, the [The] trial judge in whose court the case is pending may:

(1) [may] stay the order and release the person from custody pending the appeal if the judge is satisfied [determines] that the person does not meet the criteria for protective custody under [specified-by] Section 462.065; and

(2) if the person is at liberty, [462.024(a)--The judge-may] require an appearance bond in an amount set [determined] by the court.

(e) The court of appeals and supreme court shall give an [Am] appeal under this section preference over all other cases and shall advance the appeal [shall be advanced] on the docket [and given--a--preferential-setting-over-all-other-cases-in-the-court-of appeals-and-the-supreme-court]. The courts may suspend any rule concerning the time for filing briefs and docketing cases.

Sec. 462.077. PASS OR FURLOUGH FROM INPATIENT CARE. (a) The facility administrator may permit a patient admitted to the facility under an order for inpatient services to leave the facility under a pass or furlough.

(b) A pass authorizes the patient to leave the facility for not more than 72 hours. A furlough authorizes the patient to leave for a longer period.

(c) The pass or furlough may be subject to specified conditions.
(d) When a patient is furloughed, the facility administrator shall notify the court that issued the commitment order.

Sec. 462.078. RETURN TO FACILITY UNDER FACILITY ADMINISTRATOR'S CERTIFICATE OR COURT ORDER. (a) The administrator of a facility to which a patient was admitted for court-ordered inpatient services may have an absent patient taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the patient's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the patient's return.

(b) A magistrate may issue an order directing a peace or health officer to take a patient into custody and return the patient to the facility if the facility administrator files the certificate as prescribed by this section. The facility head may sign or file the certificate if the facility head reasonably believes that:

(1) the patient is absent without authority from the facility;

(2) the patient has violated the conditions of a pass or furlough; or

(3) the patient's condition has deteriorated to the extent that the patient's continued absence from the facility under a pass or furlough is inappropriate.

(c) A peace or health officer shall take the patient into custody and return the patient to the facility as soon as possible if the patient's return is authorized by the facility.
administrator's certificate or the court order. The peace or
health officer may take the patient into custody without having the
certificate or court order in the officer's possession.

Sec. 462.079. REVOCATION OF FURLough. (a) A furlough may
be revoked only after an administrative hearing held in accordance
with commission rules. The hearing must be held within 72 hours
after the patient is returned to the facility.

(b) A hearing officer shall conduct the hearing. The
hearing officer may be a mental health or chemical dependency
professional if the person is not directly involved in treating the
patient.

(c) The hearing is informal, and the patient is entitled to
present information and argument.

(d) The hearing officer may revoke the furlough if the
officer determines that the revocation is justified under Section
462.078(b)(1) or (2).

(e) A hearing officer who revokes a furlough shall place in
the patient's file:

(1) a written notation of the decision; and

(2) a written explanation of the reasons for the
decision and the information on which the hearing officer relied.

(f) The patient shall be permitted to leave the facility
under the furlough if the hearing officer determines that the
furlough should not be revoked.

[Sec.: 462:028---HABEAS-CORPUS:----This--subchapter--does--not
abridge-the-right-of-any-person-to-a-writ-of-habeas-corpus?]

Sec. 462.080 [462:029]. RELEASE FROM COURT-ORDERED

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TREATMENT.  (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b) The administrator may discharge a patient before the court order expires if the administrator determines that the patient no longer meets the criteria for court-ordered treatment.

(c) The administrator of a facility to which the patient has been committed for inpatient services shall consider before discharging the patient whether the patient should receive outpatient court-ordered care or services in accordance with:

(1) a furlough under Section 462.077; or

(2) a modified order under Section 462.073 that directs the patient to participate in outpatient treatment.

(d) A discharge [If-a-person-is-discharged-under--Subsection (b)--the--court--order] terminates the court order, and the person discharged may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(e) [td] When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file it [that-certificate] with the court that issued the order.

[Sec. 462.030--COSTS--;--(a)--The-laws-relating-to-payment--of costs--of--commitment-and-support-and-to-obtaining-reimbursement-of actual-costs-for-court-ordered-mental-health-services-apply-to-each item-of-expense-incurred--by--the--state--in--connection--with--the commitment--care--custody--treatment--and--rehabilitation--of-a person-receiving-care-and-treatment-under-this-subchapter;]

(b)--A-person-admitted-to-an-approved-treatment-program--who
has--sufficient-funds--shall--pay--for-the-person's-maintenance-at-the
same--rate--charged--to--other--patients--for--maintenance--at--the
facility;

[tc]--Chapter--1527--Acts--of--the--45th--Legislature.--Regular
Session--1937--{Article--3196a--Vernon's--Texas--Civil--Statutes};
appplies-to-a--person--admitted--to-a--state--hospital--under--this
subchapter.]

Sec. 462.081 [462-081]. COMMITMENT BY COURTS IN CRIMINAL
PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court
with jurisdiction of misdemeanor cases may remand the defendant to
a [an--approved] treatment facility approved by the commission to
accept court commitments [program] for care and treatment for not
more than 90 days, instead of incarceration or fine, if:

(1) the court or a jury has found the defendant guilty
of an offense classified as a Class A or B misdemeanor;

(2) the court finds that the offense resulted from or
was related to the defendant's chemical dependency [alcohol--abuse];

(3) a treatment facility approved by the commission
[an---approved---treatment---program] is available to treat the
defendant; and

(4) the treatment facility [program] agrees in writing
to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is
mentally ill is not eligible for sentencing under this section.

(c) The court's sentencing order is a final conviction, and
the order may be appealed in the same manner as appeals are made
from other judgments of that court.
(d) A juvenile court may remand a child to a treatment facility [an-approved-treatment-program] for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's chemical dependency [alcohol-abuse];

(2) a treatment facility approved by the commission to accept court commitments [an-approved-treatment-program] is available to treat the child; and

(3) the facility [program] agrees in writing to receive the child under this section.

[Sects.462:032-to-462:058-reserved-for-expansion]

[Subchapter-C.—Voluntary-ADMISSION-TO-STATE-HOSPITAL]

[Sect.462:051.—Eligibility-For-Voluntary-ADMISSION-TO-STATE HOSPITAL.—A—person—is—eligible—to—be—admitted—to—and—cared—for and—treated—in—a-state-hospital—authorized—by—law—to—care—for—and treat—mentally—ill—persons—if—the—person:

[1] is a—resident—of—the—time—of
time—of—application—of—admission—to—a—state—hospital—under—this subchapter;

[2] is an—alcoholic—and


[Sect.462:052.—ADMISSION-TO-STATE-—HOSPITAL—CERTIFICATION—Except—as—provided—by—Section—462:053—the—superintendent—of—a

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state-hospital-shall-admit-to-the-hospital-for-care-and-treatment
an-alcoholic-who-voluntarily-applies-for-admission-if-the-hospital-

[f1]--has-available-facilities;--and

[f2]--receives--written--statements--from--a--reputable
citizen--of--this--state--who--is--a-recovered-alcoholic-and-from-a
reputable-practicing-physician-licensed--to--practice--medicine--in
this--state--certifying--to-the-best-of-each-certifier's-knowledge
and--belief--that--the--applicant--is--an--alcoholic--in--need--of
hospitalization-and-treatment;

[Sec.462:053.--DENIAL-OF-ADMISSION.--(a) --The-superintendent
of-a-state-hospital-may-refuse-to-admit-a-voluntary-applicant-to--a
state-hospital-if:

[f1]--the--applicant--has--been--a--patient--receiving
treatment-soley-for-alcoholism-in-a-state-hospital;

[f2]--the-applicant-was-released--from--that--hospital
within-the-12-months-preceding-the-date-of-application;--and

[f3]--the--superintendent--determines--that--no--useful
purpose--would-be-served-by-admitting-the-applicant;

[fb]--An--applicant--may--not-be-admitted-to-a-state-hospital
under-this-subchapter-if,at--the-time--of--the--application,--the
hospital--has--a--waiting--list-of-mental-patients-committed-to-the
hospital;

[Sec.462:054.--COSTS.--(a) --A--person--may--not--be-denied
admission--to--and-care-and-treatment-in--a-state-hospital-because
of-the--person's--financial--inability--to--pay--for--the--person's
maintenance-if-the-person-is-otherwise-eligible-for-admission-under
this-subchapter;
(b) A person admitted to a state hospital under this subchapter who has sufficient funds shall pay for the person's maintenance at the same rate charged to other patients for maintenance at the hospital.

(c) Chapter 152 of Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), applies to any person admitted to a state hospital under this subchapter.

Sect 462.055. Consent to Detention, Release. (a) A person admitted to a state hospital under this subchapter is considered to have voluntarily consented to detention in the hospital for 10 days after the date of admission and waives any right to be released from the hospital before that period expires.

(b) Except as provided by Subsection (c), a person admitted to a state hospital under this subchapter shall be cared for, treated, and detained as a patient in the hospital for at least 10 but not more than 90 days after the date of admission.

(c) A person admitted to a state hospital under this subchapter may be released before the 10-day period expires if the superintendent determines that the release is in the person's best interest.

(d) When a patient is released from a state hospital under this section, the superintendent of the hospital shall notify each person other than a licensed physician who certified the patient for admission.

(Sections 462.055 to 462.080 reserved for expansion)
[SUBCHAPTER-D---CONTRIBUTING-TO-DELINQUENCY-OP

HABITUAL-BRUNKARD

SECTION 462.007--CONTRIBUTING---TO---DELINQUENCY---OF---Habitual

BRUNKARD---CRIMINAL-PENALTY:---(a)---in---this---section,---"delinquency"

means-any-act-that-tends-to-debase-or-injure-the-morality-health,-or

welfare-of-a-habitual-drunkard,-and-includes:

(1)---drinking-intoxicating-liquor;

(2)---entering---or---remaining-in---any---bawdy---house;

assignation-house,-disorderly-house,-roadhouse,-hotel,-or---public

dance-hall-where-prostitutes,-gamblers,-or-thieves-are-permitted-to

enter-and-ply-their-trade;

(3)---entering-a-place-where-intoxicating-liquors-are

kept,-drunk-used,-or-sold;

(4)---associating-with-thieves-and-immoral-persons;

(5)---causing-a-habitual-drunkard-to-leave-home-or-to

leave-the-custody-of-the-drunkard's-parents,-guardian,-or-person

acting-for-the-drunkard's-parents-or-guardian-without-first

receiving-their-consent-or-against-their-will;

(6)---causing-the-habitual-drunkard,-by---undue

influence---to-unlawfully-cohabit-with-a-person-known-by-the-actor

to-be-a-habitual-drunkard;

(b)---A-person---comits-an-offense-if-the-person---by-any-act

or-in-any-manner,-encourages,-causes,-acts-in-conjunction-with,-or

contributes-to-the-delinquency,-dependency,-or-neglect-of-a

habitual-drunkard,-regardless-of-the-drunkard's-previous

convictions;

(c)---An-offense-under-this-section-is-punishable-by-a---fine

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of—not—more—than—$500, confinement in jail for not more than one year, or both.

[Sec. 462:082. — CONFLICTING OFFENSES: — To the extent of any conflict, the offenses prescribed by the Penal Code or other laws enacted after June 9, 1949, prevail over the offense prescribed — by Section 462:084.]

SECTION 176. The chapter heading to Chapter 463, Health and Safety Code, is amended to conform to Sections 16(2), (3), and (5), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

CHAPTER 463. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD OR NARCOTIC ADDICT [TREATMENT OF BRUS-DEPENDENT-PERSONS]

SECTION 177. Subchapter A, Chapter 463, Health and Safety Code, is amended to conform to Sections 16(2), (3), and (5), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

SUBCHAPTER A. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD [GENERAL PROVISIONS]

Sec. 463.001. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD; CRIMINAL PENALTY. (a) In this section, "delinquency" means any act that tends to debase or injure the morals, health, or welfare of a habitual drunkard, and includes:

(1) drinking intoxicating liquor;

(2) entering or remaining in any bawdy house, assignation house, disorderly house, roadhouse, hotel, or public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade;
(3) entering a place where intoxicating liquors are kept, drunk, used, or sold;

(4) associating with thieves and immoral persons;

(5) causing a habitual drunkard to leave home or to leave the custody of the drunkard's parents, guardian, or person acting for the drunkard's parents or guardian without first receiving their consent or against their will; or

(6) causing the habitual drunkard, by undue influence, to unlawfully cohabit with a person known by the actor to be a habitual drunkard.

(b) A person commits an offense if the person, by any act or in any manner, encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of a habitual drunkard, regardless of the drunkard's previous convictions.

(c) An offense under this section is punishable by a fine of not more than $500, confinement in jail for not more than one year, or both.

Sec. 463.002. CONFLICTING OFFENSES. To the extent of any conflict, the offenses prescribed by the Penal Code or other law enacted after June 9, 1949, prevail over the offense prescribed by Section 463.001 [DEFINITIONS--IN THIS SUBCHAPTER;]

[(1)]--"Certificate"--means--a--sworn--certificate--of medical--examination--for--drug--dependency--executed--under--this chapter--;

[(2)]--"Commissioner"--means--the--commissioner--of--mental health--and--mental--retardation--.
"Controlled-substance" means a toxic inhalant--or any substance--designated as a controlled substance by Chapter 481 (Texas-Controlled-Substances Act).

"Department" means the Texas Department of Mental Health and Mental Retardation.

"Drug-dependence" means a state characterized by behavioral--and other responses that include a strong compulsion to take a controlled substance--in order to experience its psychological effects or to avoid the discomfort of its absence.

"Drug-dependent-person" means a person who uses a controlled substance--and who is psychologically--or physically dependent--or both--because of the use.

"Legal-holiday" means a state--holiday--specified by Article 45917-Revised Statutes--or an officially--declared--county holiday.

"Mental-health-authority" means the agency designated by the commissioner to direct, operate, facilitate, or coordinate services to mentally ill or drug dependent persons in a state service area.

"Mental-health-facility" includes

(A) an inpatient--or outpatient--mental health facility--operated by the department, an entity designated by the department--to provide mental health services--a political subdivision of the state, or any other legal entity,

(B) a community mental health--and mental retardation center--established under Section 3.017--Texas--Mental Health and Mental Retardation Act (Article 5547-203--Vernon's--Texas
Civil-Statutes—that-provides-mental-health-services;--or

[‡6]—the-identifiable-part-of-a-general-hospital

that—provides—diagnosis,—treatment,—and-care-for-mentally-ill—or
drug-dependent-persons;

[‡8]—"Toxic-inhalant"—means—a-gaseous-substance—that
is—inhaled—by—a-person—to—produce—a—desired—physical—or
psychological-effect—and-that-may-cause-personal-injury—or—illness
to-the-person-who-inhaled-the-substance].

SECTION 178. Subchapters B-F, Chapter 463, Health and Safety
Code, are repealed to conform to Sections 16(2), (3), and (5),
Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called

SECTION 179. Subchapter G, Chapter 463, Health and Safety
Code, is amended to conform to Sections 16(2), (3), and (5),
Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called
Session, 1989, to read as follows:

SUBCHAPTER B [§]. CONTRIBUTING TO NARCOTIC ADDICTION

Sec. 463.011 [463.125]. CONTRIBUTING TO DELINQUENCY OF
NARCOTIC ADDICT; CRIMINAL PENALTY. (a) In this section,
"delinquency" means any act that tends to debase or injure the
morals, health, or welfare of a narcotic addict, and includes:

(1) drinking intoxicating liquor;

(2) going into or remaining in any bawdy house,
assignation house, disorderly house, roadhouse, hotel, or public
dance hall where prostitutes, gamblers, or thieves are permitted to
enter and ply their trade;

(3) going into a place where intoxicating liquors are
kept, drunk, used, or sold;

(4) associating with thieves and immoral persons;
(5) causing a narcotic addict to leave home or to
leave the custody of the addict's parents, guardian, or person
acting for the addict's parent or guardian without first receiving
that person's consent or against that person's will; or
(6) causing the addict, by undue influence, to
unlawfully cohabit with a person known by the actor to be a
narcotic addict.

(b) A person commits an offense if the person, by any act or
in any manner, encourages, causes, acts in conjunction with, or
contributes to the delinquency, dependency, or neglect of a
narcotic addict, regardless of the addict's previous convictions.

(c) An offense under this section is punishable by a fine of
not more than $500, confinement in jail for not more than one year,
or both.

Sec. 463.012 [463±22]. CONFLICTING OFFENSES. To the extent
of any conflict, the offenses defined by the Penal Code or other
law enacted after June 9, 1949, prevail over the offense defined by
Section 463.011 [463±24].

SECTION 180. Sections 464.001-464.003, Health and Safety
Code, are amended to conform to Sections 1 and 2, Chapter 660
(S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989,
to read as follows:

Sec. 464.001. DEFINITIONS. In this subchapter:
(1) "Chemical dependency" means:
   (A) abuse of alcohol or a controlled substance:
(B) psychological or physical dependence on alcohol or a controlled substance; or
(C) addiction to alcohol or a controlled substance.

(2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(3) "Controlled substance" has the meaning assigned [means-a-toxic-inhaled-or-any-substance-designated-as-a-controlled substance] by Chapter 481 (Texas Controlled Substances Act).

(4) ["Toxic--inhaled"--means-a-gaseous-substance-that is--inhaled--by--a--person--to--produce--a--desired--physical--or psychological--effect-and-that-may-cause-personal--injury-or--illness to-the-inhaier.

(5) "Treatment" means a planned, structured, and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.

(6) "Treatment facility" means:
(A) a public or private hospital;
(B) a detoxification facility;
(C) a primary care facility;
(D) an intensive care facility;
(E) a long-term care facility;
(F) an outpatient care facility;
(G) a community mental health center;
(H) a health maintenance organization;
(I) a recovery center;
(J) a halfway house;
(K) an ambulatory care facility; or
(L) any other facility that offers or purports to offer treatment [required-to-be-licensed--and--approved--by--the commission].

Sec. 464.002. LICENSE REQUIRED. A person may not offer or purport to offer chemical dependency treatment [operate-a-treatment facility-or-a-structured-program-that-treats--chemically--dependent persons] without a license issued under this subchapter.

Sec. 464.003. EXEMPTIONS. This subchapter does not apply to:

(1) a facility maintained or operated by the federal government;
(2) a facility directly operated by the state;
(3) [r--including] a facility licensed [or-operated] by the Texas Department of Mental Health and Mental Retardation;

[4]--a--boarding--home--or--shelter-that-provides-only food-and-lodging,-peer-support,-or-other-personal-services-that-are not-represented-as-chemical-dependency--services--if--the--home--or shelter--is--licensed--by-another-state-agency-or-provides-services without-cost-to-the-residents-or-a-third-party-payer;]

(4) an educational program for intoxicated drivers;
[or]

(5) the individual office of a private, licensed health care practitioner who personally renders private individual or group services within the scope of the practitioner's license [episodic--counseling--in--the--practitioner's-own-name] and in the
practitioner's office; or

   (6) an individual who personally provides counseling
or support services to a chemically dependent person but does not
offer or purport to offer a chemical dependency treatment program
[but-who-does-not-purport-to-offer-a-structured-chemical-dependency
program].

SECTION 181. Sections 464.004 and 464.005, Health and Safety
Code, are amended to conform to Section 2, Chapter 660 (S.B. 1674),
Acts of the 71st Legislature, Regular Session, 1989, to read as
follows:

Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To
receive a license to operate a treatment facility to treat
chemically dependent persons, a person must:

   (1) file a written application on a form prescribed by
the commission; [and]

   (2) cooperate with the review [inspection] of the
facility; and

   (3) comply with the licensing standards.

(b) The commission shall issue a license to an applicant:

   (1) whose application meets the content requirements
of the commission; and

   (2) who receives approval of the facility after the
commission's review; and

   (3) who timely complies with the licensing standards
[at-least-one-on-site-inspection].

(c) The license is issued only for the person named in the
license and not the legal successors of that person.
(d) The license expires two years [one-year] after the date on which the license is issued.

(e) A license may be issued without prior notice and an opportunity for a hearing. A person other than the applicant and commission may not contest the issuance of a license.

Sec. 464.005. LICENSE RENEWAL. (a) The commission shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The commission may require an inspection before renewing a license.

(c) The commission may establish deadlines for receiving and acting on renewal applications.

(d) A license may be renewed without prior notice and an opportunity for a hearing. A person other than the applicant and commission may not contest the renewal of a license.

SECTION 182. Section 464.006, Health and Safety Code, is amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 464.006. INSpections. The commission or its representative may without notice enter the premises of a treatment facility at reasonable times, including any time treatment services are provided, to conduct [make] an inspection or investigation the commission considers necessary.

SECTION 183. Section 464.007(a), Health and Safety Code, is amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The commission shall charge nonrefundable application
and review [inspection] fees for a license or renewal license. The commission may charge a fee for approving [or--for--certifying] a facility to treat court committed clients [receive--court commitments].

SECTION 184. Section 464.009(b), Health and Safety Code, is amended to conform to Section 2, Chapter 660 (S.B. 1674), and Section 4, Chapter 1148 (S.B. 1697), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The commission shall adopt rules for:

(1) [the--organizational--structure--of] a treatment facility's organization and structure, policies and procedures, and minimum staffing requirements [facility, including the governing authority of the facility, board, authority, organization, fiscal and policy responsibilities, supervisory lines of authority, and staffing];

(2) the [program conducted by a facility, including]
services to be provided by a facility, including:

(A) the categories of services the facility may provide;

(B) the client living environment the facility requires; and

(C) the requirement that a facility provide discharge planning and client follow-up contact;

(3) [admission criteria] client rights and standards for medication, nutrition, and emergency situations;

(4) [clinical and fiscal] records kept by a facility;

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(5) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients; [and]

(6) standards necessary to protect the client, including standards required or authorized by federal or other state law; and

(7) the approval of a facility to treat adult or minor clients who are referred by the criminal justice system or by a court order for involuntary civil or criminal commitment or detention.

SECTION 185. Sections 464.010(a), (b), (d), and (e), Health and Safety Code, are amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A [an-owner-or-employee-of-a-treatment-facility--or--any other] person, including treatment facility personnel, who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the commission. This requirement is in addition to the requirements prescribed by Chapter 34, Family Code, and Chapter 48, Human Resources Code.

(b) The commission [by rule] shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(d) The commission may request the attorney general's office
to file a petition for temporary care and protection of a client of
a residential treatment facility if it appears that immediate
removal of the client is necessary to prevent further abuse.

(e) All records made by the commission during its
investigation of alleged abuse or neglect are confidential and may
not be released except that the release may be made:

(1) on court order;
(2) on written request and consent of the person under
investigation or that person's authorized attorney; or

(3) as provided by Section 464.011.

SECTION 186. Section 464.011, Health and Safety Code, is
amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 464.011. DISCLOSURE OF COMMISSION RECORDS. Unless
prohibited or limited by federal or other state law, the [The]
commission may make its licensing [licensure] and investigatory
records that identify a client available to a state or federal
agency or law enforcement authority on [written] request and for
official purposes [by--the--agency's--representative-if-the-agency
agrees-not-to-disclose-information-that-could-identify-a-client--in
violation-of-the-law].

SECTION 187. Section 464.012, Health and Safety Code, is
amended to conform to Section 2, Chapter 660 (S.B. 1674), and
Section 2, Chapter 1195 (S.B. 959), Acts of the 71st Legislature,
Regular Session, 1989, to read as follows:

Sec. 464.012. HIV INFECTION EDUCATION, TESTING, AND
COUNSELING [METHADONE-PROGRAMS,-TREATMENT-GOALS]. (a) A treatment
facility licensed under this chapter shall provide to employees of
the facility education regarding methods of transmitting and
preventing human immunodeficiency virus infection based on the
model education program developed by the Texas Department of Health
and shall make the education available to facility clients.

(b) Employees of the facility who counsel clients shall
provide counseling in accordance with the model protocol for
counseling related to HIV infection developed by the Texas
Department of Health.

(c) A treatment facility licensed under this chapter shall
make available or make referrals to voluntary, anonymous, and
affordable counseling and testing services concerning human
immunodeficiency virus infection.

[Traditional narcotic-addiction
by-a-licensed-methadone-program-is-a-specialty--area--with--federal
rules--unique--to--the--provision--of--maintenance--treatment--The

treatment-model-is-medical--]

[(b)--Short-term-treatment-goals-may-emphasize--personal--and
public-health-crime-prevention--reintegration-into-the-work-force;
and--stabilization--Attaining--abstinence--is--a--long-term-goal:
subject-to--a--medical--determination---of--appropriateness--and
prognosis].

SECTION 188. Sections 464.015(a), (c), and (d), Health and
Safety Code, are amended to conform to Section 2, Chapter 660 (S.B.
1674), Acts of the 71st Legislature, Regular Session, 1989, to read
as follows:

(a) The commission may petition a district court to restrain
a person or facility that violates the rules, standards, or
licensing requirements provided under this subchapter in a manner
that causes immediate threat to the health and safety of individual
clients.

(c) A district court, on petition of the commission and on a
finding by the court that a person or facility is violating this
subchapter or a standard adopted under this subchapter, shall grant
any injunctive relief warranted by the facts.

(d) The court granting the injunctive [requested] relief
shall order the person or facility to reimburse the commission for
all costs of investigation and litigation, including reasonable
attorney's fees, reasonable investigative expenses, and civil
administrative costs.

SECTION 189. Section 464.016(c), Health and Safety Code, is
amended to conform to Section 2, Chapter 660 (S.B. 1674), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(c) A person commits an offense if the person[†
[††] has reasonable grounds to suspect [believe] that
abuse or neglect of a client may have occurred [is occurring;
[‡‡] is-under-a-legal-duty--to--report--the--abuse--or
neglect;] and

[§§] does not report the suspected or possible abuse
or neglect.

SECTION 190. The chapter heading to Chapter 465, Health and
Safety Code, is amended to conform to Section 1, Chapter 494 (H.B.
2121), Acts of the 71st Legislature, Regular Session, 1989, and
Section 16(4), Chapter 23 (S.B. 57), Acts of the 71st Legislature,
1st Called Session, 1989, to read as follows:
CHAPTER 465. LOCAL DRUG AND ALCOHOL EDUCATION PROGRAMS

[RT-BT-McALLISTER-DRUG-TREATMENT-PROGRAM]

SECTION 191. Subchapter A, Chapter 465, Health and Safety Code, is amended to conform to Section 1, Chapter 494 (H.B. 2121), Acts of the 71st Legislature, Regular Session, 1989, and Section 16(4), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

[SUBCHAPTER-A--GENERAL-PROVISIONS]

Sec. 465.001. COMMISSION. A municipality or county may create and support with public funds a commission to:

(1) educate the public on drug and alcohol abuse;

(2) promote drug and alcohol education at all levels of the schools;

(3) study the effectiveness of efforts, including the commission's efforts, in reducing drug and alcohol abuse; and

(4) create and administer a program to counsel or treat drug and alcohol abusers or to provide both counseling and treatment.

Sec. 465.002. INDIVIDUAL OR JOINT ACTION. The municipality or county may create the commission by its own action or jointly by agreement with another municipality or county or a private foundation, nonprofit organization, church, or other entity. If the commission is created by agreement, all matters regarding the creation and operation of the commission are governed as provided by the agreement.

Sec. 465.003. REPORT. The commission shall report annually to each entity that participates in the creation of the commission.
regarding the commission's activities. [SHORT-TITLE: This chapter
may-be-cited-as-the-R. v. McAllister-Drug-Treatment-Program-Act]

[Sect. 465.002: DEFINITIONS: In this chapter:

(1) "Commission"—means—The—Texas—Commission—on
Alcohol-and-Drug-Abuse;

(2) "Controlled-substance":
(A) has—the—meaning—assigned—by—Chapter-48;
(Texas-Controlled-Substances-Act); or
(B) means—a-toxic—inhalant—as—that—term—is
defined-by—the-executive-director;

(3) "Criminal-justice-system"—means—law-enforcement
officials, district attorneys, county attorneys, courts, and—the
Texas-Department-of-Corrections;

(4) "Day-care-services"—means—treatment—services
provided—for—a-part-time-resident—in—a-treatment-facility;

(5) "Drug-dependent—person"—means—a—person—who—is
using—a-controlled-substance—and—who—is—in—a-state-of-psychological
or-physical-dependence, or—both—arising—from—the-administration-of
a—controlled—substance. Drug-dependence—is—characterized—by
behavioral-and-other-responses—that—include—a—strong-compulsion—to
take—a—controlled—substance—in—the—order—to—experience—its
psychological-effects—or—to—avoid—the—discomfort—of—its—absence;

(6) "Executive-director"—means—the-executive-director
of—the-commission—or—the-executive-director's-designee;

(7) "Nearest-relative"—means—the-following-persons—in
the-order-of-priority-stated:
(A) a person's legal guardian;
adopted;

{E}--a-person's-adult-issue--whether-natural--or

{E}--a-person's-parent;

{E}--a-person's-adult-sibling--or

{E}--any--other--person--with-which-the-person-is

residing--whether-related-or-not;

{A}--"Outpatient-services"--means--treatment--services

provided-to-a-client-who-is-not-a-resident-of-a-treatment-facility;

{A}--"Person--incapacitated-by-a-controlled-substance"

means-a-person-who-needs-treatment-as-a-result-of--the--effects--of

one-or-more-controlled-substances-and;

{A}--is--unconscious--of--the-person's-need-for

 treatment--or

{A}--is-incapable-of-making-a-rational--decision

with--respect--to--the--person's-need--for--treatment--because-the

person's-judgment-has-been-impaired;

{A}--"Prevention"--means--a---constructive---process

designed--to--inhibit--or--reduce--physical--mental--emotional--or

social--impairment-that-results-in-or-from-the--abuse--of--licit--or

 illicit--chemical--substances--by-promoting-a-person's-personal--and

social--growth-toward-full-human-potential;

{A}--"Private-facility"--means--a--facility--providing

treatment--services--that--is--not-operated-by-the-federal--state--or

local-government,--regardless--of--whether--the--facility--receives

public-funds--or-operates-for-profit;

{A}--"Public-facility"--means--a--facility--providing

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 treatment-services-that-is-operated-by-the-federal--state--or-local
 government:

 (t13)--"Residential-services"—means—treatment—services
 provided-for—a—full—time—resident—in—a—treatment—facility;

 (t14)—"Treatment"—means—emergency—services—for
 drug-dependent—persons,—persons—incapacitated—by—controlled
 substances,—or—persons—under—the—influence—of—controlled—substances
 and—also—means—the—full—range—of—residential,—day—care,—and
 outpatient—services—for—drug-dependent—persons—designed—to—help
 those—persons—gain—control—over—or—eliminate—their—dependence—on
 controlled—substances—and—to—become—productive,—functioning—members
 of—the—community.—The—term—includes—diagnostic—evaluation,—medical
 services,—psychiatric—services,—psychological—services,—social
 services,—drug—maintenance—services,—vocational—rehabilitation,—job
 training,—career—counseling,—educational—guidance,—informational—
guidance,—family—counseling,—and—recreational—services;

 (t15)—"Treatment—facility"—means—a—public—or—a—private
 facility—to—which—the—executive—director—has—authorized—public
 agencies—to—refer—persons—for—treatment;

 SECTION 192. Subchapters B-F, Chapter 465, Health and Safety
 Code, are repealed to conform to Section 16(4), Chapter 23 (S.B.

 SECTION 193. Chapter 466, Health and Safety Code, is amended
 to conform to Section 1, Chapter 1043 (H.B. 2706), Acts of the 71st
 Legislature, Regular Session, 1989, to read as follows:
CHAPTER 466. REGULATION OF [SYNTHETIC] NARCOTIC DRUG
[DRUGS-IN] TREATMENT PROGRAMS [OP-DRUG-DEPENDENT-PEOPLE]

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 466.001. LEGISLATIVE INTENT [DEFINITIONS]. (a) It is the intent of the legislature that the department and the commission exercise their respective administrative powers and regulatory authority to ensure the proper use of approved narcotic drugs in the treatment of narcotic dependent persons.

(b) Treatment of narcotic addiction by permitted treatment programs is recognized as a specialty chemical dependency treatment area using the medical model.

(c) Short-term goals should have an emphasis of personal and public health, crime prevention, reintegration of narcotic addicted persons into the public work force, and social and medical stabilization. Narcotic treatment programs are an important component of the state's effort to prevent the further proliferation of the AIDS virus. Total drug abstinence is recognized as a long-term goal of treatment, subject to medical determination of the medical appropriateness and prognosis of the narcotic addicted person.

Sec. 466.002. DEFINITIONS. In this chapter:

(1) "Approved narcotic drug" means a drug approved by the United States Food and Drug Administration for maintenance or detoxification of a person physiologically addicted to the opiate class of drugs.

(2) "Authorized agent" means an employee of the department who is designated by the commissioner to enforce this
(3) "Board" means the Texas Board of Health.

(4) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(5) "Commissioner" means the commissioner of health.

(6) "Department" means the Texas Department of Health.

(7) "Facility" includes a medical office, an outpatient clinic, a general or special hospital, a community mental health center, and any other location in which a structured narcotic dependency program is conducted.

(8) "Narcotic drug" has the meaning assigned by Chapter 481 (Texas Controlled Substances Act).

Sec. 466.003. EXCLUSION OF COCAINE. Cocaine is excluded for the purpose of this chapter.

Sec. 466.004 [466-002]. POWERS AND DUTIES OF BOARD AND DEPARTMENT. (a) The board shall adopt and the department shall administer and enforce rules [and--standards--they--consider necessary] to ensure the proper use of approved [synthetic] narcotic drugs in the treatment of narcotic drug-dependent persons, including rules that[']

[b]--To-ensure-compliance-with-this-chapter--and--rules--and standards-adopted-under-this-chapter--the-department-may]:

(1) require [that] an applicant or a permit holder to make annual, periodic [periodical], and special reports that the department determines are necessary;
(2) require [that] an applicant or permit holder to
keep records that the department determines are necessary; [and]
(3) provide for [make] investigations that the
department determines are necessary;[
(4) provide for the coordination of the approval of
narcotic drug treatment programs by the United States Food and Drug
Administration and the United States Drug Enforcement
Administration; and
(5) provide for cooperation with the commission in the
licensing of narcotic drug treatment programs as required by
Subchapter A, Chapter 464.
(b) The board shall adopt rules for the issuance of permits
to operate narcotic drug treatment programs including rules:
(1) governing the submission and review of
applications;
(2) establishing the criteria for the issuance and
renewal of permits; and
(3) establishing the criteria for the suspension and
revocation of permits.
Sec. 466.005. ADMINISTRATION BY COMMISSION AND DEPARTMENT.
(a) A permit holder is also considered to be operating a chemical
dependency program and is subject to licensing by the commission as
provided by Subchapter A, Chapter 464.
(b) The commission and the department shall adopt by rule a
memorandum of understanding defining the jurisdiction of each
agency and shall administer and enforce this chapter under that
memorandum.
[Sections 466.006-466.020 reserved for expansion]

SUBCHAPTER B. PERMIT

Sec. 466.021 [466-003]. PERMIT REQUIRED. A person may not operate a narcotic drug treatment program unless the person has [prescribe—or-administer-a-synthetic-narcotic-drug-to-a-person-for the-purpose-of-treating-drug-dependency-without] a permit issued under this chapter.

Sec. 466.022. LIMITATION ON PRESCRIPTION, ORDER, OR ADMINISTRATION OF NARCOTIC DRUG. A physician may not prescribe, order, or administer a narcotic drug for the purpose of treating drug dependency unless the physician prescribes, orders, or administers an approved narcotic drug for the maintenance or detoxification of drug-dependent persons as part of a program permitted by the department and the commission.

Sec. 466.023 [466-004]. APPLICATION FOR PERMIT; FEES. (a) [A-physician-licensed-by-the-Texas-State-Board-of-Medical-Examiners or-a-public-or-private-institution-organized-and-operated-under-the laws-of-this-state-for-the-purpose-of-providing-health-services-may apply-to-the-department-on-forms-approved-by-the-department—for—a permit—to-prescribe—and-administer—synthetic-narcotic-drugs-to drug-dependent-persons—]

{[b]} The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the board [department].

{[b]} A permit issued under this section is valid until suspended or revoked by the department or surrendered [to-the department] by the permit holder in accordance with board rules.
(c) A person must obtain a permit for each facility that the
person operates.

(d) A permit issued by the department is not transferable
from one facility to another facility and must be returned to the
department if the permit holder sells or otherwise conveys the
facility to another person.

(e) The board by rule shall establish and collect a
nonrefundable application fee to defray the cost to the department
of processing each application for a permit. The application fee
must be submitted with the application. An application may not be
considered unless the application is accompanied by the application
fee.

(f) The board shall collect fees for each permit
application submitted under this section and for inspections
performed in enforcing this chapter and rules adopted under this
chapter. The board may collect those fees annually.

The board shall adopt rules that set permit fees
in amounts sufficient for the department to recover not less than
half of the actual annual expenditures of state funds by the
department to:

(1) review and act on permit applications;

(2) amend permits;

(3) inspect facilities operated by permit
holders; and

(4) implement and enforce this chapter and
rules, standards, and orders adopted and permits issued under this
chapter.
(g) Fees collected by the department shall be deposited in the state treasury to the credit of the narcotic treatment permitting fee fund.

Sec. 466.024. PERMIT LIMITATIONS. (a) The department may issue a permit to:

(1) a person constituting a legal entity organized and operating under the laws of this state; or

(2) a physician.

(b) The department may issue a permit to a person other than a physician only if the person provides health care services under the supervision of one or more physicians licensed by the Texas State Board of Medical Examiners.

Sec. 466.025. INSPECTION. (a) An authorized agent may enter the facility of a person who is an applicant for a permit or who is a permit holder during any hours in which the facility is in operation for the purpose of inspecting the facility to determine:

(1) if the person meets the standards set in the rules of the board for the issuance of a permit; or

(2) if a person who holds a permit is in compliance with this chapter, the standards set in the rules of the board for the operation of a facility, any special provisions contained in the permit, or an order of the commissioner or the department.

(b) The inspection may be conducted without prior notice to the applicant or the permit holder.

(c) The authorized agent shall provide the applicant or permit holder with a copy of the inspection report. An inspection report shall be made a part of the applicant's submission file or
the permit holder's compliance record.

Sec. 466.026. MULTIPLE ENROLLMENT PREVENTION. The department shall work with representatives from permitted narcotic treatment programs in this state to develop recommendations for a plan to prevent the simultaneous multiple enrollment of persons in narcotic treatment programs. The board may adopt rules to implement these recommendations.

Sec. 466.027 [466-005]. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) After notice to an applicant or a permit holder and after the opportunity for a hearing, the department may:

(1) deny an application of the person if the person fails to comply with this chapter or the rules establishing minimum standards for the issuance of a permit adopted under this chapter; or

(2) suspend or revoke the permit of a person who has violated this chapter, an order issued under this chapter, or a minimum standard required for the issuance of a permit.

(b) The board may adopt rules that establish the criteria for the denial, suspension, or revocation of a permit.

(c) Hearings, appeals from, and judicial review of final administrative decisions under this section shall be conducted according to the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and the board's formal hearing rules.

(d) This section does not prevent the informal reconsideration of a case before the setting of a hearing or before the issuance of the final administrative decision under this...
section. The program rules must contain provisions establishing
the procedures for the initiation and conduct of the informal
reconsideration by the department [The department may deny,
suspend or revoke the permit of an applicant or permit holder who
has violated or failed to comply with a requirement of this chapter
or a rule adopted under this chapter if the department has given
the applicant or permit holder:

[(1) notice of noncompliance;
(2) reasonable opportunity to comply; and
(3) an opportunity for hearing before denying,
suspending or revoking the permit].

[Sections 466.028-466.040 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT

Sec. 466.041 [466-006]. EMERGENCY ORDERS [DEPARTMENT
REPRESENTATION; APPEAL; COSTS]. (a) The commissioner or the
commissioner's designee may issue an emergency order, either
mandatory or prohibitory in nature, in relation to the operation of
a permitted facility or the treatment of patients by the facility
staff, in the department's jurisdiction. The order may be issued
if the commissioner or the commissioner's designee determines that
the treatment of patients by the staff of the permit holder creates
or poses an immediate and serious threat to human life or health
and other procedures available to the department to remedy or
prevent the occurrence of the situation will result in an
unreasonable delay [An applicant or permit holder may appeal the
denial, suspension, or revocation of a permit].

(b) The commissioner or the commissioner's designee may
issue the emergency order, including an emergency order suspending
or revoking a permit issued by the department, without notice and
hearing, if the commissioner or the commissioner's designee
determines that action to be practicable under the circumstances
(The--attorney--general--shall--represent--the--department--in--the
district--court--of--Travis--County--in--any--case--involving--the
department's--decision--to--deny--suspend--or--revoke--a--permit).

(c) If an emergency order is issued without a hearing, the
department shall determine a time and place for a hearing at which
the emergency order is affirmed, modified, or set aside. The
hearing shall be held under the contested case provisions of the
Administrative Procedure and Texas Register Act (Article 6252-13a,
Vernon's Texas Civil Statutes) and the board's formal hearing rules
[Except--as--provided--by--a--rule--adopted--under--Section--19(e)]
Administrative-Procedure-and-Texas-Register-Act-(Article--6252-13a,
Vernon's--Texas--Civil--Statutes)--if-the-court-affirms-the-decision
of-the-department--the-applicant-or-permit--holder--shall--pay--the
costs--of-appeal--if-the-court-does-not-affirm-the-decision-of-the
department--the-department-shall-pay-the-costs-of-appeal].

(d) If an emergency order is issued to suspend or revoke the
permit, the department shall ensure that treatment services for the
patients are maintained at the same location until appropriate
referrals to an alternate treatment program are made.

Sec. 466.042 [466:007]. INJUNCTION. (a) The commissioner,
the commissioner's designee, or an authorized agent may request the
attorney general or a district, county, or municipal attorney to
petition the district court for a temporary restraining order to
restrain:

(1) a continuing violation of this chapter, a rule
adopted under this chapter, or an order or permit issued under this chapter; or

(2) a threat of a continuing violation of this chapter, a rule, or an order or permit [The department may maintain an action in the name of the state for an injunction or other process to restrain a violation of this chapter or a rule or standard adopted under this chapter].

(b) To request a temporary restraining order, the commissioner, commissioner's designee, or an authorized agent must find that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter and:

(1) the violation or threatened violation creates an immediate threat to the health and safety of the public; or

(2) there is reasonable cause to believe that the permit holder or the staff of the permit holder is party to the diversion of a narcotic drug or drugs in violation of Chapter 481 (Texas Controlled Substances Act).

(c) On finding by the court that a person is violating or threatening to violate this chapter, a rule adopted under this chapter, or an order or permit issued under this chapter, the court shall grant the injunctive relief warranted by the facts.

(d) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County [For cause shown, the district
court-of-Travis-County-haves-jurisdiction-to-restrain-a-violation--of
this-chapter-or-a-rule-or-standard-adopted-under-this-chapter].

Sec. 466.043 [466-008]. ADMINISTRATIVE PENALTY [PROGRAMS].
If a person violates this chapter, a rule adopted under this
chapter, or an order or permit issued under this chapter, the
commissioner may assess an administrative penalty against the
person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic
Act) [(a)--The--Texas--Department--of--Mental--Health--and-Mental
Retardation--shall--promote-and-develop--comprehensive--programs--for
drug-dependent--persons--including--maintenance-treatment-programs
that-involve-supplying-synthetic-narcotic-drugs--to--drug-dependent
persons--]

[(b)--The--programs--provided--by--Subsection--(a)--shall--be
implemented--through-state-hospitals-and-grants-in-aid-to-boards-of
trustees--of--community--mental--health--and--mental--retardation
centers].

Sec. 466.044 [466-009]. CRIMINAL PENALTY. (a) A person
commits an offense if the person operates a narcotic drug treatment
program without a permit issued by the department [violates--this
chapter-or-a-rule-adopted-under-this-chapter].

(b) An offense under this section is a Class A misdemeanor
[punishable-by-a-fine-of-not-more-than-$3,000, confinement--in--the
county-jail-for-not-more-than-six-months, or both].

Sec. 466.045 [466-010]. CIVIL PENALTY. (a) If it appears
that a person has violated this chapter, a rule adopted under this
chapter, or an order or permit issued under this chapter, the
commissioner may request the attorney general or the district,
county, or municipal attorney of the municipality or county in
which the violation occurred to institute a civil suit for the
assessment and recovery of a civil penalty.

(b) The penalty may be in an amount not to exceed $10,000
for each violation.

(c) In determining the amount of the penalty, the court
shall consider:

1. the person's history of previous violations;
2. the seriousness of the violation;
3. any hazard to the health and safety of the public;
and
4. the demonstrated good faith of the person charged.

(d) A civil penalty recovered in a suit instituted by the
attorney general under this chapter shall be deposited in the state
treasury to the credit of the general revenue fund. A civil
penalty recovered in a suit instituted by a local government under
this chapter shall be paid to the local government [If--a--person
violates--this--chapter--or--a--rule,--standard,--or--order--adopted--or
permit--issued--under--this--chapter,--the--commission--may--assess--a--civil
penalty--against--that--person--as--provided--by--Chapter--431--{Texas--Food,
Drug,--and--Cosmetic--Act}].

SECTION 194. Section 467.004(a), Health and Safety Code, is
amended to conform to Section 1, Chapter 879 (S.B. 981), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A licensing or disciplinary authority may add a
surcharge of not more than $5 {$5} to its license or license
renewal fee to fund an approved peer assistance program. The
authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

SECTION 195. Chapter 467, Health and Safety Code, is amended to conform to Section 1, Chapter 899 (S.B. 586), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 467.0041 to read as follows:

Sec. 467.0041. FUNDING FOR TEXAS STATE BOARD OF DENTAL EXAMINERS. (a) Except as provided by this section, the Texas State Board of Dental Examiners is subject to Section 467.004.

(b) The board may add a surcharge of not more than $5 to its license or license renewal fee to fund an approved peer assistance program.

(c) The board may collect a fee of not more than $50 each month from a participant in an approved peer assistance program. Fees collected under this subsection shall be remitted to the state treasurer for deposit to the credit of dental registration fund no. 86.

(d) Subject to the General Appropriations Act, the board may use the fees and surcharges collected under this section and fines collected in the enforcement of Chapter 9, Title 71, Revised Statutes, and that are deposited in dental registration fund no. 86, to fund an approved program and to pay the administrative costs incurred by the board that are related to the program.

SECTION 196. Chapter 468, Health and Safety Code, is repealed to conform to Section 16(6), Chapter 23 (S.B. 57), Acts of the 71st Legislature, 1st Called Session, 1989.
SECTION 197. Subchapter D, Chapter 481, Health and Safety Code, is amended to conform to Section 2, Chapter 1011 (H.B. 989), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 481.124 to read as follows:

Sec. 481.124. OFFENSE: DIVERSION OF SUBSTANCE OR MATERIAL.
(a) A person commits an offense if the person knowingly or intentionally converts to the person's use or benefit or diverts to the unlawful use or benefit of another person a controlled substance or raw material obtained under Section 481.159.

(b) An offense under this section is a felony of the third degree.

SECTION 198. Section 481.157(e), Health and Safety Code, is repealed to conform to Section 6, Chapter 12 (H.B. 65), Acts of the 71st Legislature, 1st Called Session, 1989.

SECTION 199. Section 481.160, Health and Safety Code, is amended to conform to Section 6, Chapter 12 (H.B. 65), Acts of the 71st Legislature, 1st Called Session, 1989, to read as follows:

Sec. 481.160. DESTRUCTION OF ITEMS FOR HEALTH, ENVIRONMENTAL, OR SAFETY REASONS [EXCESS QUANTITIES]. (a) [If--a controlled--substance--is--forfeited--under--Section--481.157(e)--the agency--to--which--the--substance--is--forfeited--may--destroy--the substance if the agency ensures that:

[(i)--at--least--five--random--and--representative--samples are--taken--from--the--total--amount--of--controlled--substance--or--mixture containing--the--controlled--substance, and--a--sufficient--quantity--is preserved--to--provide--for--discovery--by--parties--entitled--to discovery;]
(f2) photographs are taken that reasonably demonstrate
the total amount of the controlled substance; and

(f3) the gross weight or liquid measure of the
controlled substance is determined, either by actually weighing or
measuring the substance or by estimating its weight or measurement
after making dimensional measurements of the total amount seized;

(fb) A representative sample, photography, or record made
under this section is admissible in civil or criminal proceedings
in the same manner and to the same extent as if the total quantity
of the suspected controlled substance was offered in evidence;
regardless of whether the remainder of the substance has been
destroyed; An inference or presumption of spoliation does not
apply to a substance destroyed under this section.

(tc) All hazardous waste, raw materials, residuals,
contaminated glassware, associated equipment, and by-products from
illicit chemical laboratories or similar operations that create
health or environmental hazards or prohibit safe storage may be
immediately destroyed by a law enforcement agency without court
order if current environmental protection standards are followed.

(b) (td) A law enforcement agency seizing materials
described in Subsection (a) (tc) shall ensure that photographs are
taken that reasonably demonstrate the total amount of the materials
seized and the manner in which the materials were physically
arranged or positioned before seizure and disposal.

SECTION 200. Section 483.001(13), Health and Safety Code, is
amended to conform to Section 24, Chapter 1027 (H.B. 18), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:
"Prescription" means a written order by a practitioner, or a telephonic order by a practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone, or an order made in accordance with Section 3.06(d)(5), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to a pharmacist for a dangerous drug to be dispensed that states:

(A) the date of the order's issue;
(B) the name and address of the patient;
(C) if the drug is prescribed for an animal, the species of the animal;
(D) the name and quantity of the drug prescribed; and
(E) the directions for the use of the drug.

SECTION 201. Section 483.022, Health and Safety Code, is amended to conform to Section 25, Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 483.022. PRACTITIONER'S DESIGNATION OF AGENT; PRACTITIONER'S RESPONSIBILITIES. (a) A practitioner shall designate in writing the name of each:

(1) agent authorized by the practitioner to communicate prescriptions by telephone for the practitioner; and

(2) registered nurse or physician assistant authorized to carry out a prescription drug order under Section 3.06(d)(5), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(b) The practitioner shall maintain at the practitioner's
usual place of business a list of the designated agents and a list
of the designated registered nurses or physician assistants
authorized to carry out a prescription drug order.

(c) The practitioner shall provide a pharmacist with a copy
of the practitioner's written authorization for a specific agent,
registered nurse, or physician assistant on the pharmacist's
request.

(d) [tf†] This section does not relieve a practitioner or
the practitioner's agent from the requirements of Section 40, Texas
Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(e) [tf†] A practitioner remains personally responsible for
the actions of an agent who communicates a prescription to a
pharmacist.

SECTION 202. Section 484.004, Health and Safety Code, is
amended to conform to Section 1, Chapter 661 (S.B. 1677), Acts of
the 71st Legislature, Regular Session, 1989, by amending Subsection
(b) and adding Subsection (c) to read as follows:

(b) A person commits an offense if the person:

(1) knowingly or intentionally:

(A) delivers or sells inhalant paraphernalia;

(B) possesses, with intent to deliver or sell,

inhalant paraphernalia; or

(C) manufactures, with intent to deliver or

sell, inhalant paraphernalia; and

(2) at the time of the act described by Subdivision

(l), knows that the person who receives or is intended to receive

the paraphernalia intends that it be used to inhale, ingest, apply,
use, or otherwise introduce into the human body a substance
containing a volatile chemical in violation of Section 484.003.

(c) An offense under Subsection (a) [this--section] is a
Class B misdemeanor, and an offense under Subsection (b) is a Class
A misdemeanor.

SECTION 203. Section 485.013, Health and Safety Code, is
amended to conform to Section 3, Chapter 661 (S.B. 1677), Acts of
the 71st Legislature, Regular Session, 1989, by adding Subsection
(h) to read as follows:

(h) The department shall monitor and enforce compliance with
this chapter.

SECTION 204. Section 485.016, Health and Safety Code, is
amended to conform to Section 4, Chapter 661 (S.B. 1677), Acts of
the 71st Legislature, Regular Session, 1989, by amending Subsection
(b) to read as follows:

(b) The comptroller shall deposit those funds to the credit
of the general revenue fund to be used to:

(1) administer, monitor, and enforce this chapter; and

(2) [to] finance education projects concerning the
hazards of abusable glue or aerosol paint and the prevention of
inhaling abuse.

SECTION 205. Subchapter B, Chapter 485, Health and Safety
Code, is amended to conform to Section 2, Chapter 661 (S.B. 1677),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 485.018 to read as follows:

Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A
political subdivision or an agency of the state may not enact an
ordinance or rule that requires a business establishment to display
abusable glue or aerosol paint in a manner that makes the glue or
paint accessible to patrons of the business only with the
assistance of personnel of the business.

(b) This section does not apply to an ordinance or rule that
was enacted before September 1, 1989.

SECTION 206. Section 485.034, Health and Safety Code, is
amended to conform to Section 2, Chapter 661 (S.B. 1677), Acts of
the 71st Legislature, Regular Session, 1989, by amending Subsection
(b) and adding Subsection (c) to read as follows:

(b) A person commits an offense if the person:

(1) knowingly or intentionally:

(A) delivers or sells inhalant paraphernalia;

(B) possesses, with intent to deliver or sell,

inhalant paraphernalia; or

(C) manufactures, with intent to deliver or

sell, inhalant paraphernalia; and

(2) at the time of the act described by Subdivision

(1), knows that the person who receives or is intended to receive
the paraphernalia intends that it be used to inhale, ingest, apply,
use, or otherwise introduce into the human body a substance
containing a volatile chemical in violation of Section 485.031.

(c) An offense under Subsection (a) [this--section] is a
Class B misdemeanor, and an offense under Subsection (b) is a Class
A misdemeanor.

SECTION 207. Subtitle D, Title 6, Health and Safety Code, is
amended to conform to Sections 1-10, Chapter 569 (H.B. 1963), Acts
of the 71st Legislature, Regular Session, 1989, by adding Chapter 504 to read as follows:

CHAPTER 504. TEXAS HAZARDOUS MATERIALS SAFETY COUNCIL

Sec. 504.001. TEXAS HAZARDOUS MATERIALS SAFETY COUNCIL. (a)
The Texas Hazardous Materials Safety Council is an advisory coordinating council composed of:

(1) a representative from the governor's office appointed by the governor;

(2) one member from each house of the legislature, appointed by the presiding officer of the applicable house;

(3) a representative of the general public, appointed by the governor;

(4) a management representative of the motor carrier industry involved with the transportation of hazardous materials, appointed by the governor;

(5) a management representative of the railroad industry, appointed by the governor;

(6) a management representative of a company that manufactures or receives hazardous materials, appointed by the governor; and

(7) one representative from each of the following state agencies, appointed by the executive director or commissioner of each respective agency:

(A) the Railroad Commission of Texas;

(B) the Department of Public Safety;

(C) the Texas Water Commission;

(D) the Texas Department of Health; and
(E) the Texas Air Control Board.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a council member.

Sec. 504.002. TERMS; VACANCY. (a) A member of the council serves a two-year term expiring February 1 of each odd-numbered year.

(b) If a vacancy occurs on the council, the appropriate appointing authority shall appoint a person to fill the vacancy who meets the qualifications prescribed for that position.

Sec. 504.003. PRESIDING OFFICER; COMPENSATION. (a) The governor shall designate a presiding officer from the council's membership. The presiding officer serves in that capacity for two years. The presiding officer is entitled to vote on any matter before the council.

(b) A member of the council may not receive compensation for serving on the council. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a council member. Each appointing authority may reimburse the authority's appointees from funds available for that purpose.

Sec. 504.004. CIVIL LIABILITY. A member of the council is not subject to civil liability for any act performed in good faith in the execution of duties as a council member.

Sec. 504.005. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required for appointment to the council;

(2) does not maintain during service on the council
the qualifications required for appointment to the council; or

(3) violates a prohibition established by this chapter.

(b) The validity of an action of the council is not affected by the fact that it was taken while a ground for removal of a member of the council existed.

Sec. 504.006. MEETINGS. (a) The council shall meet at the call of the presiding officer or on the request of a majority of the council.

(b) The council is a governmental body for purposes of the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

Sec. 504.007. DUTIES. The council shall:

(1) coordinate the collection of information about hazardous materials;

(2) review the planning and coordination of accident response to, and investigation of, accidents involving hazardous materials;

(3) recommend legislation on hazardous materials; and

(4) ensure a unified response to federal hazardous material regulations.

Sec. 504.008. MEMORANDUM OF UNDERSTANDING. The council shall secure the adoption of a memorandum of understanding relating to the council's responsibilities and state agencies' jurisdiction over spills of hazardous materials on land. The memorandum must be approved by the council and any other state agency concerned with
spills or disposal of hazardous materials. A revision of a memorandum must be adopted by resolution of the council and by order of any state agency requesting the revision.

Sec. 504.009. RELATIONSHIP TO OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the Texas Department of Health, the Texas Water Commission, or any other state agency in performing the functions relating to spills of hazardous materials vested in those agencies by law.

SECTION 208. Section 672.002, Health and Safety Code, is amended to conform to Section 1, Chapter 674 (S.B. 1785), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 672.002. DEFINITIONS. In this chapter:

(1) "Attending physician" means the physician who has primary responsibility for a patient's treatment and care.

(2) "Competent" means possessing the ability, based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(3) "Declarant" means a person who has executed or issued a directive under this chapter.

(4) [††] "Directive" means an instruction made under Section 672.003, 672.005, or 672.006 to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

(5) "Incompetent" means lacking the ability, based on reasonable medical judgment, to understand and appreciate the
nature and consequences of a treatment decision, including the
significant benefits and harms of and reasonable alternatives to a
proposed treatment decision.

(6) [f4t] "Life-sustaining procedure" means a medical
procedure or intervention that uses mechanical or other artificial
means to sustain, restore, or supplant a vital function, and only
artificially postpones the moment of death of a patient in a
terminal condition whose death is imminent or will result within a
relatively short time without the application of the procedure.
The term does not include the administration of medication or the
performance of a medical procedure considered to be necessary to
provide comfort or care or to alleviate pain.

(7) [f5t] "Physician" means a physician licensed by
the Texas State Board of Medical Examiners or a properly
credentialed physician who holds a commission in the United States
armed forces and who is serving on active duty in this state.

(8) [f6t] "Qualified patient" means a patient with a
terminal condition that has been diagnosed and certified in writing
by the attending physician and one other physician who have
personally examined the patient.

(9) [f7t] "Terminal condition" means an incurable or
irreversible condition caused by injury, disease, or illness that
would produce death without [regardless--of] the application of
life-sustaining procedures, according to reasonable medical
judgment, and in which the application of life-sustaining
procedures serves only to postpone the moment of the patient's
death.

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SECTION 209. Sections 672.003 and 672.004, Health and Safety Code, are amended to conform to Section 2, Chapter 674 (S.B. 1785), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 672.003. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) The declarant must sign the directive in the presence of two witnesses, and those witnesses must sign the directive.

(c) A witness may not be:

(1) related to the declarant by blood or marriage;
(2) entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;
(3) the attending physician;
(4) an employee of the attending physician; [or]
(5) an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is directly involved in the financial affairs of the facility;

(6) [§5] a patient in a health care facility in which the declarant is a patient; or

(7) [§6] a person who, at the time the directive is executed, has a claim against any part of the declarant's estate after the declarant's death.

(d) A declarant may include in a directive directions other than those provided by Section 672.004 and may designate in a
directive a person to make a treatment decision for the declarant 
in the event the declarant becomes comatose, incompetent, or 
otherwise mentally or physically incapable of communication. 
(e) A declarant shall notify the attending physician of the 
existence of a written directive. If the declarant is comatose, 
incompetent, or otherwise mentally or physically incapable of 
communication, another person may notify the attending physician of 
the existence of the written directive. The attending physician 
shall make the directive a part of the declarant's medical record.

Sec. 672.004. FORM OF WRITTEN DIRECTIVE. A written 
directive may be in the following form:

"DIRECTIVE TO PHYSICIANS

"Directive made this ____ day of ________ (month, year).

"I __________, being of sound mind, wilfully and 
voluntarily make known my desire that my life shall not be 
artificially prolonged under the circumstances set forth in this 
directive.

"1. If at any time I should have an incurable or 
irreversible condition caused by injury, disease, or illness 
certified to be a terminal condition by two physicians, and if the 
application of life-sustaining procedures would serve only to 
artificially postpone the moment of my death, and if my attending 
physician determines that my death is imminent or will result 
within a relatively short time without the application of [whether 
or--not] life-sustaining procedures [are-used], I direct that those 
procedures be withheld or withdrawn, and that I be permitted to die 
naturally.

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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
patient care to the declarant and am not directly involved in the
financial affairs of the health facility.

"Witness _____________

"Witness _____________"

SECTION 210. Section 691.008(d), Health and Safety Code, is
amended to conform to Section 1, Chapter 584 (H.B. 2519), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(d) The [state---auditor---shall---audit---the] financial
transactions of the board are subject to audit by the state auditor
in accordance with Chapter 321, Government Code [at---least---once
during-each-biennium].

SECTION 211. Section 694.002, Health and Safety Code, is
amended to conform to Section 1, Chapter 937 (S.B. 1249), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 694.002. DUTY OF COMMISSIONERS COURT CONCERNING BURIAL
OF PAUPERS. The commissioners court of each county shall provide
for the interment or cremation [burial] of paupers. A pauper may
not be cremated if a relative or friend expresses objection to this
procedure.

SECTION 212. Sections 711.001(2), (5), (7), (14), (15),
(18), and (20), Health and Safety Code, are amended to conform to
Section 1, Chapter 208 (S.B. 1010), Acts of the 71st Legislature,
Regular Session, 1989, to read as follows:

(2) "Cemetery" means a place that is dedicated to and
that is used or intended to be used for interment, and includes a
graveyard, burial park, or mausoleum[y-crematory, or-crematory-and
columbarium].
(5) "Columbarium" means [A] a durable, fireproof structure or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains [B]--a-plot-of-earth-containing-niches.

(7) "Cremation" means the [interment-of-remains-by] reduction of remains to cremated remains [and-the--deposit--of--the cremated-remains-in-a-grave--crypt-or-niche].

(14) "Interment" means the permanent disposition of remains by [cremation--inurnment] entombment [or burial.

(15) "Inurnment" means the placement of cremated remains in an urn [and-the-permanent-disposition-of-the-urn-in-a niche].

(18) "Niche" means a space [recess] in a columbarium used or intended to be used for the placement [interment] of cremated remains in an urn or other container.

(20) "Perpetual care" means [A] the maintenance in proper order of the sod, foliage, and places in which interments have been made [and [B]--the--provision--for--the--administration-of perpetual-care-funds--on-the--contingency---that---the---person administering-the-funds--does-not-act].

SECTION 213. Section 711.002, Health and Safety Code, is amended to conform to Section 4, Chapter 208 (S.B. 1010), Acts of the 71st Legislature, Regular Session, 1989, by amending Subsection (a) and adding Subsections (e)-(g) to read as follows:

(a) Unless a decedent has left other directions for the
disposition of the decedent's remains, the following persons, in
the priority listed, have the right to control the disposition,
including cremation, of the person's remains, shall inter the
remains, and are liable for the reasonable cost of interment:

(1) the decedent's surviving spouse;
(2) the decedent's surviving adult children;
(3) the decedent's surviving parents; [er]
(4) the decedent's surviving adult siblings; or
(5) the adult person in the next degree of kinship in
the order named by law to inherit the estate of the deceased.

(e) A person may provide instructions to direct the
preparation for and type or place of interment of the person's
remains. The instructions may be modified only in writing. The
person or persons otherwise entitled to control the disposition of
the remains under this section shall faithfully carry out the
instructions of the decedent.

(f) If the instructions are in a will, they shall be carried
out immediately without the necessity of probate. If the will is
not probated or is declared invalid for testamentary purposes, the
instructions are valid to the extent to which they have been acted
on in good faith.

(g) A cemetery association is not liable for carrying out
the instructions of the decedent unless it has actual notice that
the representation is untrue.

SECTION 214. Sections 711.004(a), (c), and (d), Health and
Safety Code, are amended to conform to Section 5, Chapter 208
(S.B. 1010), Acts of the 71st Legislature, Regular Session, 1989,
to read as follows:

(a) Remains, including cremated remains, interred in a
cemetery may be removed from the cemetery with the consent of the
cemetery association operating the cemetery and the written consent
of the plot owner or owners and the following persons, in the
priority listed:

1. the decedent's surviving spouse;
2. the decedent's surviving adult children;
3. the decedent's surviving parents; [or]
4. the decedent's adult siblings; or
5. the adult person in the next degree of kinship in
the order named by law to inherit the estate of the decedent.

(c) If the consent required by Subsection (a) cannot be
obtained, the remains may be removed by permission of the county
court of the county in which the cemetery is located. Before the
date of application to the court for permission to remove remains
under this subsection, notice must be given to:

1. the cemetery association operating the cemetery in
which the remains are interred;
2. the plot owner or owners;
3. each person whose consent is required for removal
of the remains under Subsection (a) who does not consent to the
removal; and
4. [t3+] any other person that the court requires to
be served.

(d) For the purposes of Subsection (c), personal notice must
be given not later than the 11th day before the date of application
to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application.

SECTION 215. Sections 711.008(b) and (c), Health and Safety Code, are amended to better conform to the law from which they are derived to read as follows:

(b) Subsection (a) does not apply to:

(1) a cemetery heretofore established and operating [on-or-before-September-3y-1945]; or

(2) the establishment and use of a columbarium by an organized religious society or sect as part of or attached to the principal church building owned by the society or sect.

(c) A cemetery association operating a cemetery that heretofore was used and maintained inside the limits prescribed by Subsection (a) [on-or-before-September-3y-1945] may acquire land adjacent to the cemetery for cemetery purposes if additional land is required. That land may [only] be used as an addition to the cemetery.

SECTION 216. Section 711.008, Health and Safety Code, is amended to conform to Section 1 of Chapter 292 (H.B. 2225) and Section 6 of Chapter 208 (S.B. 1010), Acts of the 71st Legislature, Regular Session, 1989, by amending Subsection (e) and adding Subsection (j) to read as follows:

(e) Not later than August 31, 1990 [1989], a person who desires to establish or use a cemetery [inside-municipal-boundaries or--within--the--distance--prohibited--by--Subsection--(a)--for--that municipality] may file a written application [with--the--governing
body--of--the-municipality] to establish or use the cemetery if the
cemetery is located inside a municipality and 80 percent or more of
the municipality's boundaries are contiguous with the boundaries or
extraterritorial jurisdiction of another municipality or if the
cemetery is located outside a municipality but within the distance
prohibited by Subsection (a) for the municipality. The application
must be filed with the governing body of the municipality.

(j) For the purpose of determining where a cemetery may be
located under Subsection (a), the boundary of an area annexed by a
municipality is not considered to be a boundary of the municipality
if no more than 10 percent of the boundary of the annexed area is
composed of a part of the boundary of the annexing municipality as
it existed immediately before the annexation.

SECTION 217. Section 711.052(b), Health and Safety Code, is
amended to better conform to the law from which it is derived to
read as follows:

(b) An officer, agent, or employee of a cemetery or cemetery
association commits an offense if the officer, agent, or employee
pays or offers to pay a commission, rebate, or gratuity to a
funeral director or the funeral director's employee [or-an-employee
of-the-cemetery-or-cemetery-association].

SECTION 218. Section 712.003, Health and Safety Code, is
amended to conform to Section 1, Chapter 338 (H.B. 2586), Acts of
the 71st Legislature, Regular Session, 1989, by adding Subsection
(d) to read as follows:

(d) A nonprofit cemetery association operated solely for the
benefit of its members seeking to convert a permanent care cemetery
to a perpetual care cemetery under Section 712.004 and Subchapter B
is not required to issue capital stock to meet the minimum capital
requirements prescribed by this section and Section 712.004 if the
cemetery has existed for at least 75 years and the association has
operated the cemetery for the preceding 10 years.

SECTION 219. Section 712.028(a), Health and Safety Code, is
amended to conform to Section 3, Chapter 208 (S.B. 1010), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A perpetual care cemetery shall deposit in the fund an
amount that is at least:

(1) $1.50 [@] a square foot of ground area disposed
of or sold as perpetual care property;

(2) $90 [@90] for each crypt interment right for
mausoleum interment or lawn crypt interment disposed of or sold as
perpetual care property, or $50 [@50] for each crypt interment
right if that crypt is accessible only through another crypt; and

(3) $30 [@30] for each niche interment right for
columbarium interment disposed of or sold.

SECTION 220. Section 712.029(d), Health and Safety Code, is
amended to conform to Section 3, Chapter 208 (S.B. 1010), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(d) A seller of a plot shall deposit in the fund the
required amount not later than the 20th [40th] day after the end of
the month in which the amount is received.

SECTION 221. Section 712.042(a), Health and Safety Code, is
amended to conform to Section 2, Chapter 208 (S.B. 1010), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:
(a) On filing the statement of funds under Section 712.041, the cemetery shall pay the commissioner:

(1) $100 ($50), if the cemetery serves a municipality with a population of 25,000 or less; or

(2) $200 ($100), if the cemetery serves a municipality with a population of more than 25,000.

SECTION 222. Section 713.008, Health and Safety Code, is amended to better conform to the law from which it is derived to read as follows:

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. The governing body of a municipality in a county with a population of at least 120,000 but not more than 128,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

SECTION 223. Section 753.001(6), Health and Safety Code, is amended to conform to Section 1, Chapter 1013 (H.B. 995), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. The term does not include a marina.

SECTION 224. Section 753.003, Health and Safety Code, is amended to conform to Section 1 of Chapter 444 (H.B. 1794), and Section 2 of Chapter 1013 (H.B. 995), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS.
(a) The board shall administer this chapter through the state fire
marshal and shall adopt rules for the safe storage, handling, and
use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the most recent
published standards of the National Fire Protection Association,
including standards in effect on or after August 1, 1989 [September
14-1989], for the storage, handling, and use of flammable liquids
at retail service stations.

(c) In adopting rules, the board may use recognized
standards, including:

(1) standards recognized by the federal government;

(2) standards published by a nationally recognized
standards-making organization; and

(3) specifications and instructions of manufacturers.

(d) This chapter or a rule adopted under this chapter does
not prohibit or permit the prohibition of an unattended [a]
self-service gasoline station operation [if--the--station--requires
that-an-attendant-be-on-the-station-premises].

SECTION 225. Section 753.004, Health and Safety Code, is
amended to conform to Section 3 of Chapter 1013 (H.B. 995), and
Section 2 of Chapter 1089 (S.B. 698), Acts of the 71st Legislature,
Regular Session, 1989, by amending Subsections (a) and (c) and
adding Subsections (d)-(h) to read as follows:

(a) Except as provided by Subsections (d) and (e), flammable
[Flammable] liquids may not be stored at a retail service station
in a tank that has a gross capacity of more than 60 gallons above
the surface of the ground. The individual or combined capacity or
size of an underground flammable liquid tank at a retail service
station may not be limited.

c) Each aboveground tank at a bulk plant that is operated
in conjunction with a retail service station that is on the same or
contiguous property must be equipped with emergency vents of the
types and capacities prescribed by standards adopted under Section
753.003 [of-the-National-Fire-Protection-Association].

d) Gasoline, diesel fuel, aviation fuel, or kerosene may be
stored in an aboveground storage tank with a capacity of not more
than 3,000 gallons at a retail service station or aircraft fueling
facility located:

(1) in an unincorporated area or in a municipality
with a population of less than 5,000; and

(2) more than five miles from the limits of a
municipality with a population of 15,000 or more.

e) Gasoline, diesel fuel, aviation fuel, or kerosene may be
stored in an aboveground storage tank with a capacity of not more
than 4,000 gallons at a retail service station or aircraft fueling
facility located:

(1) in an unincorporated area; and

(2) not closer than 10 miles to a municipality with a
population of more than 15,000.

(f) Under Subsections (d) and (e), a retail service station
or aircraft fueling facility may have a tank not exceeding the
specified capacity for each separate grade of gasoline, diesel
fuel, aviation fuel, or kerosene, but may not have more than one
tank of that capacity for the same grade.
(g) In adopting rules under Section 753.003, the board shall include rules concerning the design, construction, and installation of tanks permitted to be used under Subsections (d) and (e). The rules may not be more stringent than the standards of the National Fire Protection Association.

(h) The authority of a retail service station or aircraft fueling facility to store flammable liquids in an aboveground storage tank under Subsections (d) and (e) is not affected by a change in the boundaries or population of a municipality that occurs after the date the retail service station or aircraft fueling facility begins operation.

SECTION 226. Section 753.007, Health and Safety Code, is amended to conform to Section 4, Chapter 1013 (H.B. 995), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 753.007. CITATION IN ACTION FOR DECLARATORY JUDGMENT [PUBLIC-HEARING]. In an action for declaratory judgment on the validity or applicability of a rule adopted by the board under this chapter, citation shall be served on the state fire marshal. [The board-may-not-adopt-amend-or-repeal-a--rule--under--this--chapter until-after-a-public-hearing.]}

SECTION 227. Section 753.008, Health and Safety Code, is amended to conform to Section 1, Chapter 1089 (S.B. 698), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 753.008. ENFORCEMENT. (a) The Texas Water Commission has concurrent jurisdiction with the board regarding the inspection of initial installation and other administrative supervision of aboveground tanks authorized and regulated by this chapter. The
Texas Water Commission has the primary authority for inspection of initial installation of the tanks. The Texas Water Commission shall report all violations of this chapter in regard to aboveground storage tanks to the state fire marshal for enforcement proceedings.

(b) Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter.

SECTION 228. Section 753.011(b), Health and Safety Code, is amended to conform to Section 4, Chapter 1013 (H.B. 995), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) An offense under this section is a Class B misdemeanor punishable by a fine of not more than $1,000, confinement in the county jail for not more than 60 days, or both.

SECTION 229. Section 755.001, Health and Safety Code, is amended to conform to Section 2.08, Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, by amending Subdivisions (6) and (7) to read as follows:

(6) "Commissioner" means the commissioner of licensing and regulation [the Texas Department of Labor and Standards].

(7) "Department" means the Texas Department of Licensing and Regulation [Labor and Standards].

SECTION 230. Section 755.024, Health and Safety Code, is amended to conform to Section 2.11, Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 755.024. AUTHORIZED INSPECTORS; EXAMINATIONS. (a) To be an authorized inspector, a person must obtain a commission as a
boiler inspector from the commissioner and must be continuously
employed by an inspection agency.
(b) The commissioner, by written examination, shall
determine the qualifications of an applicant for a commission to be
an authorized inspector.
(c) Not later than the 30th day after the date an
examination is administered to an applicant for a commission as
boiler inspector, the commissioner shall notify each examinee of
the results of the examination.
(d) If an examination is graded or reviewed by a national
testing service, the commissioner shall notify examinees of the
results of the examination not later than the 14th day after the
date the commissioner receives the results from the testing
service. If the notice of examination results graded or reviewed
by a national testing service will be delayed for longer than 90
days after the examination date, the commissioner shall notify the
examinee of the reason for the delay before the 90th day.
(e) If requested in writing by a person who fails the
examination, the commissioner shall furnish the person with an
analysis of the person's performance on the examination.
(f) After proper investigation, the commissioner may accept
an inspection commission issued to a person by any other
jurisdiction that has a written examination equal to that of this
state.
(g) [deleted] For good cause, the commissioner may rescind a
commission issued by this state.
(h) The commissioner may recognize, prepare, or administer
continuing education programs for authorized inspectors.

Participation in the programs is voluntary.

SECTION 231. Section 755.029(a), Health and Safety Code, is amended to conform to Section 5.01(10), Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The commissioner shall issue to the owner or operator of a boiler a certificate of operation for the boiler if:

[†††] it is found after a certificate inspection to be in a safe condition for operation[†-and

[‡‡]--the-owner-or-operator-has--paid--the--appropriate fees].

SECTION 232. Section 755.030, Health and Safety Code, is amended to conform to Section 5.01(10), Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 755.030. FEES. [†a]--The--commissioner--may--set--and collect fees for:

[††]--boiler--inspections;--including--fees--for--special inspections;

[‡‡]--the--issuance--of--certificates--of--operation;--and

[‡‡]--the--administration--of--examinations--required--under this chapter;

[‡b]--the--commissioner,--with--the--advice--of--the--board,--shall set--fees--under--this--chapter--in--amounts--necessary--to--defray--the costs--of--administering--this--chapter. The fee for a certificate of operation may not exceed $15.
SECTION 233. Subchapter C, Chapter 755, Health and Safety Code, is amended to conform to Section 2.09, Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 755.033 to read as follows:

Sec. 755.033. INTERAGENCY INSPECTION AGREEMENTS. (a) The commissioner shall enter into interagency agreements with the Texas Department of Health and the State Board of Insurance under which inspectors from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the commissioner.

(b) The commissioner may enter analogous agreements with local fire marshals.

(c) The commissioner shall adopt rules relating to the terms and conditions of an interagency agreement entered under this section.

SECTION 234. Section 755.042(a), Health and Safety Code, is amended to conform to Section 2.09, Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the commissioner may petition a district court for an injunction to restrain the
operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the commissioner determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located or in Travis County. It is not necessary for the prosecutor to verify the pleadings or for the state to execute a bond.

SECTION 235. Section 755.043(b), Health and Safety Code, is amended to conform to Section 2.12, Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) An offense under this section is a Class B misdemeanor [punishable—by—a—fine—of—not—less—than—$50—or—more—than—$200; confinement in the county jail for not more than 60 days; or both].

SECTION 236. Section 755.044, Health and Safety Code, is repealed to conform to Section 5.01(10), Chapter 1039 (H.B. 863), Acts of the 71st Legislature, Regular Session, 1989.

SECTION 237. Subchapter C, Chapter 756, Health and Safety Code, is amended to conform to Sections 1 and 2, Chapter 1111 (H.B. 1569), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

SUBCHAPTER C. TRENCH SAFETY

Sec. 756.021. DEFINITION. In this subchapter, "trench" has the meaning assigned by the standards adopted by the Occupational Safety and Health Administration.

Sec. 756.022. TRENCH EXCAVATION IN STATE [MUNICIPALITY-OR

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EXTRATERRITORIAL-JURISDICTION]. (a) The bid documents, if bids are used, and the contract for a construction project in this state on which a contractor is employed and that includes a trench excavation exceeding a depth of five feet [and-that-is-located-in-a municipality---or---the---extraterritorial---jurisdiction---of---a municipality] must include [detailed-plans-and-specifications-for trench-safety-systems-that]:

(1) [meet] a reference to the Occupational Safety and Health Administration standards for trench safety that will be in effect during the period of construction of the project; [and]

(2) a copy of special shoring requirements, if any, of the state or of a political subdivision in which the construction project is located, with a separate pay item for the special shoring requirements;

(3) a copy of any geotechnical information that was obtained by the owner for use in the design of the trench safety system; and

(4) [provide] a separate pay item for [those] trench excavation safety protection [systems].

(b) The separate pay item for trench excavation safety protection must be based on the linear feet of trench excavated. The separate pay item for special shoring requirements, if any, of the state or of any political subdivision in which the construction project is located must be based on the square feet of shoring used [A-municipality-that-has-a-building-code-must-include-the-bid document---and---contract-requirements-specified-by-Subsection-(a)---in its-municipal-building-code].
(c) A municipality may adopt an ordinance that requires the refusal of a building permit to a person who fails to certify in writing that the requirement of Subsection (a) has been satisfied. A municipality, in lieu of or in addition to the written certification, may require an applicant for a building permit to produce for inspection or file with the municipality a copy of a contract that complies with Subsection (a) as a condition of issuance of a building permit.

(d) This section [Subsection--(a)] does not apply to a contract:

(1) governed by Section 756.023;

(2) governed by the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes); or

(3) entered into by a person subject to:

[A] [†††] the safety standards adopted under Article 6053-1, Revised Statutes; and

[B] [‡‡‡] the administrative penalty provisions of Article 6053-2, Revised Statutes.

Sec. 756.023 [756:023]. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION. (a) On a project for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents provided to all bidders and the contract must include:

(1) a reference to the [detailed--plans--and specifications--for-adequate-safety-systems-that-meet] Occupational Safety and Health Administration standards for trench safety in effect during the period of construction of the project; [and]
(2) a copy of special shoring requirements, if any, of
the political subdivision, with a separate pay item for the special
shoring requirements;

(3) a copy of any geotechnical information that was
obtained by the owner for use by the contractor in the design of
the trench safety system; and

(4) a separate pay item for trench excavation safety
protection [requirements--for--a--safety--program--for--a--trench
system].

(b) The separate pay item for trench excavation safety
protection must be based on the linear feet of trench excavated.
The separate pay item for special shoring requirements, if any, of
the political subdivision must be based on the square feet of
shoring used.

(c) A political subdivision may require a bidder to attend a
pre-bid conference to coordinate a geotechnical investigation of
the project site by bidders. In awarding a contract, a political
subdivision may not consider a bid from a bidder who failed to
attend a required pre-bid conference.

(d) This section does not apply to a person subject to:

(1) the safety standards adopted under Article 6053-1,
Revised Statutes; and

(2) the administrative penalty provisions of Article
6053-2, Revised Statutes.

SECTION 238. Chapter 772.206, Health and Safety Code, is
amended to conform to Section 1, Chapter 530 (H.B. 2805), Acts of
the 71st Legislature, Regular Session, 1989, by adding Subsection
(k) to read as follows:

(k) A majority of the voting members of the board constitutes a quorum.

SECTION 239. Section 773.003, Health and Safety Code, is amended to conform to Section 1 of Chapter 372 (S.B. 312) and Section 29 of Chapter 1027 (H.B. 18), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.003. DEFINITIONS. In this chapter:

(1) "Advanced life support" means emergency prehospital care that uses [provided--by--a--specially--skilled emergency-medical--technician--or--a--paramedic--emergency--medical technician--using] invasive medical acts.

(2) "Basic life support" means emergency prehospital care that uses [provided--by--an--emergency--care--attendant--or--basic emergency-medical--technician--using] noninvasive medical acts.

(3) "Board" means the Texas Board of Health.

(4) "Bureau" means the department's bureau of emergency management.

(5) "Bureau chief" means the chief of the bureau of emergency management.

(6) "Department" means the Texas Department of Health.

(7) "Emergency medical services" means services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(8) "Emergency medical services and trauma care system" means an arrangement of available resources that are
coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(9) "Emergency medical services personnel" means:

(A) emergency care attendant;

(B) [basic] emergency medical technicians;

(C) [specialty-skilled] emergency medical technicians-intermediate [technicians]; or

(D) [paramedic] emergency medical technicians-paramedic [technicians].

(10) "Emergency medical services provider" means a person who [an-organization-that] uses or maintains emergency medical services vehicles and [or] emergency medical services personnel to provide emergency medical services [care—or nonemergency-transportation-of-the-sick-or-injured].

(11) "Emergency medical services vehicle" means:

(A) a basic life-support emergency medical services vehicle;

(B) an advanced life-support emergency medical services vehicle;

(C) a mobile intensive-care unit; or

(D) a specialized emergency medical services vehicle.

(12) "Emergency medical services volunteer [provider]" means [an] emergency medical services personnel who provide [provider-that-provides] emergency prehospital care without
remuneration, except reimbursement for expenses.

(13) "Emergency medical services volunteer provider" means an emergency medical services provider that has at least 75 percent of its total personnel as volunteers and is recognized as a Section 501(c)(3) nonprofit corporation by the Internal Revenue Service.

(14) "Emergency prehospital care" means care provided to the sick or injured before or during emergency transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(15) "Governmental entity" means a county, municipality, school district, or a special district or authority created in accordance with the Texas Constitution.

(16) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and the rules adopted under that Act by the Texas State Board of Medical Examiners.

(17) "Trauma facility" means a health care facility that is capable of comprehensive treatment of seriously injured persons and is a part of an emergency medical services and trauma care system.

(18) "Trauma patient" means a critically injured person who has been:

(A) evaluated by a physician, a registered nurse, or emergency medical services personnel; and
(B) found to require medical care in a trauma facility.

SECTION 240. Section 773.004(a), Health and Safety Code, is amended to conform to Section 3, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) This chapter does not apply to:

(1) a ground or air transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence;

(2) the use of ground or air transfer vehicles to transport sick or injured persons in a casualty situation that exceeds the basic vehicular capacity or capability of emergency medical services providers in the area;

(3) an industrial ambulance; or

(4) [tf] a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

SECTION 241. Section 773.006, Health and Safety Code, is amended to conform to Section 2, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.006. EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL.

(a) The Emergency Medical Services Advisory Council is an adjunct to-the-bureau:

[tf] The council is composed of 18 members appointed by the board. The board shall appoint members from different geographic areas to ensure representation of urban and rural interests.
(b) [te4] The members must include:

(1) three licensed physicians, one of whom must be a board-certified emergency physician, appointed from nominations received from a statewide professional association of physicians;

(2) two members of governing bodies of municipalities, appointed from nominations received from a statewide association of municipalities;

(3) two elected members of commissioners courts, appointed from nominations received from a statewide association of county judges or commissioners courts;

(4) a representative of hospitals, appointed from a statewide association of hospitals;

(5) a private provider of emergency medical services, appointed from nominations received from a statewide association of private providers of emergency medical services;

(6) an emergency medical services [volunteer] provider who is exempt from the payment of fees under Section 773.0581;

(7) a local governmental provider of emergency medical services;

(8) an emergency medical services educator;

(9) an emergency medical technician-paramedic [technician], appointed from nominations received from a statewide association of emergency medical technicians;

(10) an emergency medical technician, appointed from nominations received from a statewide association of emergency medical technicians;
(11) an emergency nurse, appointed from nominations received from a statewide association of licensed professional nurses;

(12) a representative of a fire department that provides emergency medical services, appointed from nominations received from a statewide association of fire fighters; and

(13) two consumer members.

(c) [ff†] A person is not eligible for appointment as a consumer member of the council if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

(3) owns, controls, or has directly or indirectly more than a 10 percent interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.

(d) [ff†] Members are appointed for staggered six-year terms, with the terms of six members expiring January 1 of each even-numbered year. If a vacancy occurs on the council, the board shall appoint a person to serve for the remainder of the unexpired term.

(e) [ff†] The council may adopt rules for the conduct of its activities and may elect a chairman from among its members. The
council shall meet in the city of Austin at least quarterly.

(f) [†††] A member serves without compensation, but is entitled to:

(1) $50 for each council meeting the member attends;

and

(2) the per diem and travel allowance authorized for state employees by the General Appropriations Act.

(g) [†††] The council shall consider the needs for emergency medical services in the state and shall recommend for the board's consideration rules to implement standards adopted under this chapter.

SECTION 242. Section 773.011, Health and Safety Code, is amended to conform to Sections 3 and 5, Chapter 991 (H.B. 791), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.011. [NONPROFIT] SUBSCRIPTION PROGRAMS. (a) An emergency medical services provider may create and operate a subscription program to fund and provide emergency medical services.

(b) The board shall adopt rules establishing minimum standards for the creation and operation of a subscription program.

(c) The board shall adopt a rule that requires an emergency medical services provider to secure a surety bond in the amount of sums to be subscribed before soliciting subscriptions or to purchase and maintain contractual liability insurance before creating and operating a subscription program. The surety bond must be issued by a company that is licensed by or eligible to do
business in this state.

(d) The board may adopt rules for waiver of the contractual liability insurance or surety bond.

(e) The Insurance Code does not apply to a subscription program established under this section [9o--fund--an--emergency medical--service--to--provide--emergency--medical--services--vehicle services-in-their-jurisdictions--a--municipality--county--hospital district--or--any--number--and--combination--of--those--entities--may create-and-operate-a-nonprofit-subscription-program-by:

1. [1]--contract;
2. [2]--joint-agreement--or
3. [3]--any-other-method-provided-by;

- The Interlocal Cooperation Act--(Article 4413(32c)--Vernon's Texas Civil Statutes)--or
- any-other--state--law--authorizing--local governmental-entities-to-provide-joint-programs;

(b) A--nonprofit--subscription-program-under-Subsection-(a) is-exempt-from-the-insurance-Code-for-the-sole-purpose-of-providing emergency-medical-services--vehicle--services-if:

1. [1]--the--entities-that-created--or--that--operate--the program-directly-control-and-supervise-the-program;--and
2. [2]--the--program--funds-an-emergency-medical-services vehicle-service-that-meets-the-standards-and-requirements--of--this chapter].

SECTION 243. The heading to Subchapter C, Chapter 773, Health and Safety Code, is amended to conform to Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to
read as follows:

SUBCHAPTER C. LICENSES [PERMITS], CERTIFICATION, AND QUALIFICATIONS

SECTION 244. Section 773.041, Health and Safety Code, is amended to conform to Sections 3 and 7, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.041. LICENSE [PERMIT] OR CERTIFICATE REQUIRED. (a) A person may not operate, conduct, or maintain an emergency medical service, advertise that the person is an emergency medical services provider, or otherwise engage in or profess to be engaged in the provision of emergency medical services unless the person holds a license as an emergency medical services provider issued by the department [an--emergency--medical--services--vehicle--unless--the vehicle--has--a-permit-issued-under-this-chapter-and-the-vehicle-is staffed-by-emergency--medical--services--personnel] in accordance with this chapter.

(b) A person may not practice as any type of emergency medical services personnel unless the person is certified under this chapter and rules adopted under this chapter.

(c) A certificate or license [permit] issued under this chapter is not transferable.

SECTION 245. Section 773.045, Health and Safety Code, is amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES VEHICLE QUALIFICATIONS. A vehicle, including a helicopter, boat,
fixed-wing aircraft, or ground [transfer] vehicle, qualifies as a
specialized emergency medical services vehicle if it:

(1) is designed for transporting the sick or injured
by air, water, or ground transportation;

(2) is not a basic or advanced life-support emergency
medical services vehicle or a mobile intensive-care unit; and

(3) has sufficient equipment and supplies to provide
for the specialized needs of the patient transported.

SECTION 246. Section 773.046, Health and Safety Code, is
amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS. An
individual qualifies as an emergency care attendant if the
individual[

[++has-at-least-40-hours-of--training--approved--by
the-department;--and

[++is certified by the department as minimally
proficient to provide emergency prehospital care by providing
initial aid that promotes comfort and avoids aggravation of an
injury or illness.

SECTION 247. Section 773.047, Health and Safety Code, is
amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.047. [BASE] EMERGENCY MEDICAL TECHNICIAN
QUALIFICATIONS. An individual qualifies as an [a-base] emergency
medical technician if the individual[

[++has-at-least-20-hours-of--training--approved--by
the-department;--and

[f2] is certified by the department as minimally
proficient to perform emergency prehospital care that is necessary
for basic life support and that includes cardiopulmonary
resuscitation and the control of hemorrhaging.

SECTION 248. Section 773.048, Health and Safety Code, is
amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.048. [SPECIALITY----SKILLED] EMERGENCY MEDICAL
TECHNICIAN-INTERMEDIATE [TECHNICIAN] QUALIFICATIONS. An individual
qualifies as an [a---specialty---skilled] emergency medical
technician-intermediate [technician] if the individual[+]

[f+] has successfully completed the basic emergency
medical technician requirements and at least 460 hours of
additional training approved by the department;--and

[f2] is certified by the department as minimally
proficient to provide emergency prehospital care by initiating
under medical supervision certain procedures, including intravenous
therapy and endotracheal or esophageal intubation.

SECTION 249. Section 773.049, Health and Safety Code, is
amended to conform to Section 1, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.049. [PARAMEDIC] EMERGENCY MEDICAL
TECHNICIAN-PARAMEDIC [TECHNICIAN] QUALIFICATIONS. An individual
qualifies as an [a---paramedic] emergency medical
technician-paramedic [technician] if the individual[+]

[f+] has successfully completed the basic emergency
medical technician requirements and at least 400 hours of additional training approved by the department and

[‡‡] is certified by the department as minimally proficient to provide advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy.

SECTION 250. Section 773.050(b), Health and Safety Code, is amended to conform to Section 3, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The board by rule shall establish minimum standards for:

(1) staffing an advanced life-support emergency medical services vehicle, a mobile intensive-care unit, or a specialized emergency medical services vehicle;

(2) emergency medical services personnel certification and performance, including certification, decertification, recertification, suspension, emergency suspension, and probation;

(3) the approval of courses and training programs, the certification of program instructors, examiners, and course coordinators for emergency medical services personnel training, and the revocation and probation of an approval or certification;

(4) medical supervision of advanced life-support systems; [and]

(5) granting, suspending, and revoking a license [permit] for [an] emergency medical services providers; and

(6) emergency medical services vehicles [vehicle].
SECTION 251. Sections 773.052(a), (c), and (f), Health and Safety Code, are amended to conform to Section 8, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) An emergency medical services provider with a specific hardship may apply to the bureau chief for a variance from a rule adopted under this chapter. The board may adopt a fee of not more than $25 for filing an application for a variance.

(c) The bureau chief shall grant to a [A] sole provider for a service area [is--entitled--to] a variance from the minimum standards for staffing and equipment for the provision of [equipping---a] basic life-support emergency medical services [vehicle] if the provider is:

(1) an emergency medical services [volunteer] provider exempt from the payment of fees under Section 773.0581; or

(2) a municipally operated emergency medical service that existed on January 1, 1983, and that provides emergency prehospital care with the same personnel who provide fire or police services.

(f) The department shall issue an emergency medical services license [vehicle-permit] to a provider granted a variance under this section. The license [permit] is subject to annual review by the department. A provider is encouraged to upgrade staffing and equipment to meet the minimum standards set by the rules adopted under this chapter.

SECTION 252. Section 773.053(a), Health and Safety Code, is amended to conform to Section 7, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(a) The bureau shall publish a proposed rule or amendment of a rule in its official publications not later than the 90th day before the date of adoption. Before the adoption or amendment of a rule, the bureau shall make reasonable efforts to notify:

(1) emergency medical services providers that are licensed by organizations---owning---or---operating---ambulances registered with] the department;

(2) emergency-medical-services-coordinators-of-health systems-agencies;

(3) emergency medical services coordinators of councils of governments;

(3) the Texas State Board of Medical Examiners;

(4) course coordinators of established emergency medical services training programs; and

(5) any other agency or organization designated by the bureau chief.

SECTION 253. Section 773.054, Health and Safety Code, is amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsection (c) to read as follows:

(c) Each application under Subsection (a)(3) must be accompanied by a nonrefundable fee of $25. The department may not require a fee for a certification from an instructor, examiner, or coordinator who does not receive compensation for providing services.

SECTION 254. Section 773.055, Health and Safety Code, is
amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES
PERSONNEL. (a) A nonrefundable fee [determined-by-the-board] must
accompany each application for examination for emergency medical
services personnel certification. The fee may not exceed:

(1) $75 [9+8+75] for examination for certification or
recertification of an [a---paramedic] emergency medical
technician-paramedic [technician] or [specialty-skilled] emergency
medical technician-intermediate [technician]; or

(2) $50 [6+2+50] for examination for certification or
recertification of an [a--basic] emergency medical technician or
emergency care attendant.

(b) Except as provided by Subsection (c), the department
shall notify each examinee of the results of an examination for
certification or recertification not later than the 30th day after
the date on which the examination is administered.

(c) The department shall notify an examinee of the results
of an examination not later than the 14th day after the date on
which the department receives the results if the examination is
graded or reviewed by a national testing service. If the notice of
the examination results will be delayed longer than 90 days after
the examination date, the department shall notify each examinee of
the reason for the delay before the 90th day.

(d) The department shall furnish a person who fails an
examination for certification or recertification with an analysis
of the person's performance on the examination if requested in
writing by that person. The board may adopt rules to allow a
person who fails the examination to retake all or part of the
examination. A fee of $25 must accompany each application for
reexamination.

(e) The department shall issue certificates to emergency
medical services personnel who meet the minimum standards for
personnel certification adopted under Section 773.050. A
certificate is valid for four years from the date of issuance. The
department shall charge a fee of $5 to replace a lost certificate.

(f) A [The] fee required by this section [Subsection-(a)] is
the obligation of the applicant but may be paid by the emergency
medical services provider. If an applicant is required to be
certified as a condition of employment, the emergency medical
services provider shall pay for all fees required by this section,
except for a fee to replace a lost certificate, in addition to any
other compensation paid to that applicant if the provider is a
municipality. A municipality that requires a fire fighter to be
certified as emergency medical services personnel shall pay the
fees required by this section.

SECTION 255. Section 773.056(b), Health and Safety Code, is
amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The department shall issue a certificate to each program
instructor, examiner, or course coordinator who meets the minimum
standards adopted under Section 773.050. The certificate is valid
for two years [one-year].

SECTION 256. Section 773.057, Health and Safety Code, is
amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.057. EMERGENCY MEDICAL SERVICES PROVIDERS LICENSE
[VEHICLE-PERMITS]. (a) An emergency medical services provider
must submit an application for a license [an-emergency-medical
services-vehicle-permit] in accordance with procedures prescribed
by the board. [An-emergency-medical-services-volunteer-provider
must-submit-with-the-application-a-letter-of-sponsorship-from-a
governmental-entity.]

(b) A nonrefundable fee determined by the board must
accompany each application. The fee may not exceed:

(1) $100 for each emergency medical services vehicle
operated by the provider; or

(2) $2,000 for a fleet of emergency medical services
vehicles operated by the provider.

(c) [The-department-on-inspection-shall-issue-a-permit-for
an--emergency--medical--services--vehicle--that--meets--the-minimum
standards-adopted-under-Section-773.050,-The-permit-is--valid--for
two-years.]

[fd†] The department may delegate inspections [the-duty-to
inspect-vehicles-under-Subsection-(c)] to the commissioners court
of a county or the governing body of a municipality. The
delegation must be made:

(1) at the request of the commissioners court or
governing body; and

(2) in accordance with criteria and procedures adopted
by the board.
(d) The commissioners court of a county or governing body of a municipality that conducts inspections under Subsection (c) shall collect and retain the fee for vehicles it inspects.

SECTION 257. Subchapter C, Chapter 773, Health and Safety Code, is amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 773.0571 to read as follows:

Sec. 773.0571. INSPECTION REQUIRED FOR LICENSE. The department shall issue to an emergency medical services provider a license that is valid for two years if the department conducts an inspection and is satisfied that:

(1) the emergency medical services provider has adequate staff to meet the staffing standards prescribed by this chapter and the rules adopted under this chapter;

(2) each emergency medical services vehicle is adequately constructed, equipped, maintained, and operated to render basic or advanced life support services safely and efficiently;

(3) the emergency medical services provider offers safe and efficient services for emergency prehospital care and transportation of patients; and

(4) the emergency medical services provider complies with the rules adopted by the board under this chapter.

SECTION 258. Subchapter C, Chapter 773, Health and Safety Code, is amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 773.0572 to read as follows:

Sec. 773.0572. PROVISIONAL LICENSES. The board by rule shall establish conditions under which an emergency medical services provider who fails to meet the minimum standards prescribed by this chapter may be issued a provisional license. The department may issue a provisional license to an emergency medical services provider under this chapter if the department finds that issuing the license would serve the public interest and that the provider meets the requirements of the rules adopted under this section.

SECTION 259. Section 773.058, Health and Safety Code, is amended to conform to Section 4, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.058. VOLUNTEERS EXEMPT FROM FEES. An individual who is an emergency medical services volunteer is [provider-and each-individual-who-actively-participates-in-the-operations--of--an emergency--medical-services-volunteer-provider-are] exempt from the payment of fees under Sections 773.054, 773.055, 773.057, and 773.058 if the individual does not receive compensation for providing emergency medical services. If an individual accepts compensation during the certification period, the individual shall pay to the department a prorated application fee for the duration of the certification period. In this section, "compensation" does not include reimbursement for actual expenses for medical supplies, gasoline, clothing, meals, and insurance incurred in providing emergency medical services [this-subchapter].

SECTION 260. Subchapter C, Chapter 773, Health and Safety
Code, is amended to conform to Section 4, Chapter 372 (S.B. 312),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 773.0581 to read as follows:

Sec. 773.0581. PROVIDERS EXEMPT FROM FEES. (a) An
emergency medical services provider is exempt from the payment of
fees under this subchapter if the provider uses emergency medical
services volunteers exclusively to provide emergency prehospital
care. However, an emergency medical services provider is not
disqualified from the exemption if the provider compensates
physicians who provide medical supervision and not more than five
full-time staff or their equivalent.

(b) This chapter does not prohibit an emergency medical
services provider who uses volunteer emergency medical services
personnel but has more than five paid staff from using the word
"volunteer" in advertising if the organization is composed of at
least 75 percent volunteer personnel.

SECTION 261. Section 773.059, Health and Safety Code, is
amended to conform to Section 5, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 773.059. LATE RECERTIFICATION. A person applying for
recertification whose application is received [later-than-the-90th
day] after the expiration date of the person's certificate must pay
a late fee of $25 in addition to the examination fee [meet--the
requirements--of--the-initial-certification,-including-training-and
fees-in-effect-on-the-date-of-the-application].

SECTION 262. Section 773.061(a), Health and Safety Code, is
amended to conform to Section 6, Chapter 372 (S.B. 312), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

(a) For a violation of this chapter or a rule adopted under this chapter, the department may:

(1) decertify, suspend, place on emergency suspension, or place on probation emergency medical services personnel;

(2) revoke or place on probation course or training program approval;

(3) revoke, suspend, or place on probation the certificate of a program instructor, examiner, or course coordinator; and

(4) revoke, [or] suspend, or place on probation an emergency medical services provider license [vehicle permit].

SECTION 263. Subchapter C, Chapter 773, Health and Safety Code, is amended to conform to Section 11, Chapter 372 (S.B. 312), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 773.0611 to read as follows:

Sec. 773.0611. INSPECTIONS. (a) The department or its representative may enter an emergency medical services vehicle or the premises of an emergency medical services provider's place of business at reasonable times to ensure compliance with this chapter and the rules adopted under this chapter.

(b) The department or its representative may conduct an unannounced inspection of a vehicle or a place of business if the department has reasonable cause to believe that a person is in violation of this chapter or a rule adopted under this chapter.

(c) The board shall adopt rules for unannounced inspections authorized under this section. The department or its
representative shall perform unannounced inspections in accordance
with those rules.

SECTION 264. Subchapter C, Chapter 773, Health and Safety
Code, is amended to conform to Section 11, Chapter 372 (S.B. 312),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 773.0612 to read as follows:

Sec. 773.0612. ACCESS TO RECORDS. (a) The department or
its representative is entitled to access to records and other
documents maintained by a person that are directly related to
patient care or to emergency medical services personnel, to the
extent necessary to enforce this chapter and the rules adopted
under this chapter. A person who holds a license or certification
or an applicant for a certification or license is considered to
have given consent to a representative of the department entering
and inspecting a vehicle or place of business in accordance with
this chapter.

(b) A report, record, or working paper used or developed in
an investigation under this section is confidential and may be used
only for purposes consistent with the rules adopted by the board.

SECTION 265. Sections 773.062(a) and (b), Health and Safety
Code, are amended to conform to Section 7, Chapter 372 (S.B. 312),
Acts of the 71st Legislature, Regular Session, 1989, to read as
follows:

(a) The bureau chief shall issue an emergency order to
suspend any certificate or license [permit] issued under this
chapter if the bureau chief has reasonable cause to believe that
the conduct of any certificate or license [permit] holder creates
an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without
a hearing on notice to the certificate or license [permit] holder.
Notice must also be given to the sponsoring governmental entity if
the holder is a [volunteer] provider exempt from payment of fees
under Section 773.0581.

SECTION 266. Sections 773.064(a) and (c), Health and Safety
Code, are amended to conform to Section 9, Chapter 372 (S.B. 312),
Acts of the 71st Legislature, Regular Session, 1989, to read as
follows:

(a) A person commits an offense if the person knowingly
practices as, attempts to practice as, or represents himself to be
an [---paramedic] emergency medical technician-paramedic
[technician], [specially-skilled] emergency medical
technician-intermediate [technician], [basic] emergency medical
technician, or emergency care attendant and the person does not
hold an appropriate [a] certificate issued by the department under
this chapter. An offense under this subsection is a Class A
misdemeanor.

(c) A person commits an offense if the person knowingly uses
or permits to be used a vehicle that the person owns, operates, or
controls to transport a sick or injured person unless the person is
licensed as an emergency medical services provider [vehicle-has-a
permit-issued] by the department. An offense under this subsection
is a Class A [E] misdemeanor.

SECTION 267. Chapter 773, Health and Safety Code, is amended
to conform to Section 30, Chapter 1027 (H.B. 18), Acts of the 71st
Legislature, Regular Session, 1989, by adding Subchapter D to read as follows:

SUBCHAPTER D. EMERGENCY MEDICAL SERVICES AND TRAUMA CARE SYSTEMS

Sec. 773.081. LEGISLATIVE FINDINGS. (a) The legislature finds that death caused by injury is the leading cause of death for persons one through 44 years of age, and the third overall cause of death for all ages. Effective emergency medical services response and resuscitation systems, medical care systems, and medical facilities reduce the occurrence of unnecessary mortality.

(b) It is estimated that trauma costs more than $63 million a day nationally, which includes lost wages, medical expenses, and indirect costs. Proportionately, this cost to Texas would be more than $4 million a day. Many hospitals provide emergency medical care to patients who are unable to pay for catastrophic injuries directly or through an insurance or entitlement program.

(c) In order to improve the health of the people of the state, it is necessary to improve the quality of emergency and medical care to the people of Texas who are victims of unintentional, life-threatening injuries by encouraging hospitals to provide trauma care and increasing the availability of emergency medical services.

Sec. 773.082. DUTIES OF BOARD; RULES. (a) The board by rule shall adopt minimum standards and objectives to implement emergency medical services and trauma care systems. The board by rule shall provide for the designation of trauma facilities and for triage, transfer, and transportation policies that reflect the
recommendations of the technical advisory committee. The board and
the technical advisory committee shall consider guidelines adopted
by the American College of Surgeons and the American College of
Emergency Physicians in adopting rules under this section.

(b) The rules must provide specific requirements for the
care of trauma patients, must ensure that the trauma care is fully
coordinated with all hospitals and emergency medical services in
the delivery area, and must reflect the geographic areas of the
state, considering time and distance.

(c) The rules must include:

(1) prehospital care management guidelines for triage
and transportation of trauma patients;

(2) flow patterns of trauma patients and geographic
boundaries regarding trauma patients;

(3) assurances that trauma facilities will provide
quality care to trauma patients referred to the facilities;

(4) minimum requirements for resources and equipment
needed by a trauma facility to treat trauma patients;

(5) standards for the availability and qualifications
of the health care personnel, including physicians and surgeons,
treating trauma patients within a facility;

(6) requirements for data collection, including trauma
incidence reporting, system operation, and patient outcome;

(7) requirements for periodic performance evaluation
of the system and its components; and

(8) assurances that designated trauma facilities will
not refuse to accept the transfer of a trauma patient from another
facility solely because of the person's inability to pay for services or because of the person's age, sex, race, religion, or national origin.

Sec. 773.083. DUTIES OF BUREAU. (a) The bureau shall:

(1) develop and monitor a statewide emergency medical services and trauma care system;

(2) designate trauma facilities;

(3) develop and maintain a trauma reporting and analysis system to:

(A) identify severely injured trauma patients at each health care facility in this state;

(B) identify the total amount of uncompensated trauma care expenditures made each fiscal year by each health care facility in this state; and

(C) monitor trauma patient care in each health care facility, including each designated trauma center, in emergency medical services and trauma care systems in this state; and

(4) provide for coordination and cooperation between this state and any other state with which this state shares a standard metropolitan statistical area.

(b) The bureau may grant an exception to a rule adopted under Section 773.082 if it finds that compliance with the rule would not be in the best interests of the persons served in the affected local emergency medical services and trauma care delivery area.

Sec. 773.084. SYSTEM REQUIREMENTS. (a) Each emergency
medical services and trauma care system must have:

(1) local or regional medical control for all field care and transportation, consistent with geographic and current communications capability;

(2) triage, transport, and transfer protocols; and

(3) one or more hospitals categorized according to trauma care capabilities using standards adopted by board rule.

(b) This subchapter does not prohibit a health care facility from providing services that it is authorized to provide under a license issued to the facility by the department.

Sec. 773.085. TRAUMA FACILITIES. (a) The bureau may designate trauma facilities that are a part of an emergency medical services and trauma care system. A trauma facility shall be designated by the level of trauma care and services provided in accordance with the American College of Surgeons guidelines for level I, II, and III trauma centers and rules adopted by the board for level IV trauma centers. In adopting rules under this section, the board may consider trauma caseloads, geographic boundaries, or minimum population requirements, but the bureau may not deny designation solely on these criteria. The board may not set an arbitrary limit on the number of facilities designated as trauma facilities.

(b) A health care facility may apply to the bureau for designation as a trauma facility and the bureau shall grant the designation if the facility meets the requirements for designation prescribed by board rules.

(c) After September 1, 1993, a health care facility may not
use the terms "trauma facility," "trauma hospital," "trauma center," or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the facility has been designated as a trauma facility under this subchapter.

Sec. 773.086. FEES. (a) The bureau shall charge a fee to a health care facility that applies for initial or continuing designation as a trauma facility.

(b) The board by rule shall set the amount of the fee schedule for initial or continuing designation as a trauma facility according to the number of beds in the health care facility.

(c) The board shall set the fee for the highest level designation at not more than $3 a bed, but the total fee for the facility may not be less than $100 or more than $3,000. The fee for an intermediate level designation shall be set at not more than $2 a bed, but the total fee for the facility may not be less than $100 or more than $2,000. The fee for the lowest level designation shall be set at not more than $1 a bed, but the total fee for the facility may not be less than $100 or more than $1,000.

(d) A fee under Subsection (c) may not exceed the cost directly related to designating trauma facilities under this subchapter.

(e) This section does not restrict the authority of a health care facility to provide a service for which it has received a license under other state law.

Sec. 773.087. DENIAL, SUSPENSION, OR REVOCATION OF DESIGNATION. (a) The department may deny, suspend, or revoke a
health care facility's designation as a trauma facility if the
facility fails to comply with the rules adopted under this
subchapter.

(b) The denial, suspension, or revocation of a designation
by the department and the appeal from that action are governed by
the department's rules for a contested case hearing and by the
Administrative Procedure and Texas Register Act (Article 6252-13a,
Vernon's Texas Civil Statutes).

Sec. 773.088. ADVISORY COMMITTEE. (a) The board shall
appoint a 12-member technical advisory committee to advise the
bureau in areas requiring professional medical expertise and to
review and comment on hospital administrative and operational
considerations relating to rules adopted under this subchapter.

(b) Appointees to the technical advisory committee must
include:

(1) hospital administrators who represent both urban
and rural facilities, chosen from a list of nominees submitted by
statewide associations of hospitals;

(2) representatives appointed from statewide
associations of emergency nurses;

(3) practicing physicians who are board-certified in
emergency medicine, neurosurgery, surgery, and anesthesiology;

(4) two family practice physicians, at least one of
whom has been in active practice in a rural area for at least five
years preceding appointment; and

(5) at least one member who usually represents
claimants, chosen from a list of nominees submitted by the
statewide association of trial lawyers.

(c) A member of the technical advisory committee is entitled to the per diem and travel allowance authorized by the General Appropriations Act for state employees.

Sec. 773.089. GRANT PROGRAM. (a) The department shall establish a program to award grants to initiate, expand, maintain, and improve emergency medical services and to support medical systems and facilities that provide trauma care.

(b) The board by rule shall establish eligibility criteria for awarding the grants. The rules must require the department to consider:

(1) the need of an area for the provision of emergency medical services or trauma care and the extent to which the grant would meet the identified need;

(2) the availability of personnel and training programs;

(3) the availability of other funding sources;

(4) the assurance of providing quality services;

(5) the use or acquisition of helicopters for emergency medical evacuation; and

(6) the development or existence of an emergency medical services system.

(c) The department may approve grants according to the rules adopted by the board. A grant awarded under this section is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and by the rules adopted under that Act.
(d) The department may require a grantee to provide matching funds equal to not more than 75 percent of the amount of the grant.

Sec. 773.090. ACCEPTANCE OF GIFTS. A trauma facility or an emergency medical services and trauma care system may accept gifts or other contributions for the purposes of this subchapter.

SECTION 268. Chapter 773, Health and Safety Code, is amended to conform to Section 2, Chapter 991 (H.B. 791), Acts of the 71st Legislature, Regular Session, 1989, by adding Subchapter E to read as follows:

SUBCHAPTER E. POISON CONTROL CENTERS

Sec. 773.101. COORDINATION AND SUPPORT. The department shall provide coordination and support for a statewide system of poison and drug information services.

Sec. 773.102. FUNDING. The department may allocate funds to regional centers for poison control throughout the state. The department shall give priority to stabilizing regional poison control centers that are in existence on September 1, 1989, publicly funded, and operated by The University of Texas Medical Branch at Galveston or the Dallas County Hospital District. The department shall identify and may contract with public agencies that have the capability and commitment to operate a regional poison control center in regions not served by a center.

Sec. 773.103. PUBLIC AGENCY SERVICES. A public agency that contracts with the department under this subchapter shall provide:

(1) a 24-hour toll-free telephone referral and information service for the public and health care professionals that is supervised by a physician in the field of clinical
toxicology and is staffed by licensed professionals according to
the requirements of the American Association of Poison Control
Centers;

(2) information and education to health professionals
involved in the management of poisoning and overdose victims;
(3) community education programs designed to inform
the public of poison prevention methods;

(4) information to health professionals regarding
appropriate therapeutic use of medications, their compatibility and
stability, and adverse drug reactions and interactions; and
(5) professional and technical assistance to state
agencies requesting toxicologic assistance.

Sec. 773.104. POISON CONTROL CENTER SERVICES. A poison
control center shall answer requests by telephone for poison
information, recommend appropriate emergency management, and
provide treatment referrals for poisoning exposure and overdose
victims. A center shall provide the services at all times of the
day or night. The services must include:

(1) determining whether treatment can be accomplished
at the scene of the incident or whether transport to an emergency
treatment facility is required;

(2) recommending treatment measures to appropriate
personnel; and

(3) ensuring that adequate care is provided after an
emergency incident in which the poison control center provided
services.

Sec. 773.105. POISON CONTROL CENTER PERSONNEL. (a) A
poison control center shall use physicians, pharmacists, nurses, and support personnel trained in various aspects of toxicology, poison control and prevention, and drug information retrieval and analysis.

(b) Poison control center personnel shall:

(1) provide education after an emergency incident in which the poison control center provided services, to prevent similar incidents for poison or overdose victims;

(2) provide community education programs designed to improve public awareness of poisoning and overdose problems and to educate the public regarding prevention of those problems; and

(3) answer drug information questions from health professionals by providing current, accurate, and unbiased information regarding drugs and their therapeutic uses.

Sec. 773.106. COORDINATING COMMITTEE. (a) The coordinating committee on poison control is a committee in the department. The committee shall advise the department on the implementation of this subchapter.

(b) The committee is composed of 10 members, with the chief executive officers of each of the following entities appointing one member:

(1) The University of Texas Medical Branch at Galveston;

(2) the Dallas County Hospital District;

(3) the Amarillo Hospital District;

(4) the El Paso County Hospital District;

(5) the Texas Tech University Health Sciences Center;
(6) The University of Texas Health Science Center at San Antonio;

(7) The University of Texas Southwest Medical Center at Dallas;

(8) the Texas Veterinary Medical Diagnostic Laboratory;

(9) the Texas Department of Agriculture; and

(10) the department.

Sec. 773.107. TERM OF COMMITTEE MEMBERS. A member of the committee serves for a term of two years or until the person terminates employment with the agency the person represents, whichever occurs first.

Sec. 773.108. COMMITTEE OPERATIONS. (a) The members of the committee shall:

(1) annually elect one member to serve as chairperson;

(2) meet at least quarterly;

(3) adopt rules for the conduct of committee meetings;

and

(4) establish a policy for carrying out the committee's duties.

(b) An action taken by the committee must be approved by a majority vote of the members present.

SECTION 269. Section 775.017(a), Health and Safety Code, is amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(a) If after the hearing the commissioners court finds that creation of the district is feasible and will promote the public
safety, welfare, health, and convenience of persons residing in the
proposed district, the commissioners court shall grant the petition
and fix the district's boundaries. If the proposed district,
according to its boundaries stated in the petition, is located
wholly in a county with a population of more than 2.4 million, the
commissioners court may amend the petition to change the boundaries
of the proposed district if the commissioners court finds the
change is necessary or desirable. For the purposes of this
provision, the population of the county is determined according to
the most recent federal decennial census available at the time the
petition is filed.

SECTION 270. Section 775.018, Health and Safety Code, is
amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of
the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 775.018. ELECTION. (a) Except as provided by
Subsection (b), on [6m] the granting of a petition, the
commissioners court shall order an election to confirm the
district's creation and authorize the imposition of a tax not to
exceed 10 cents on each $100 of the taxable value of property
taxable by the district or two cents on each $100 of the taxable
value of property taxable by the district if any area in the
district is also included in a rural fire prevention district.

(b) If a proposed district is located wholly in a county
with a population of more than 2.4 million, the commissioners court
shall order an election to confirm the district's creation and
authorize the imposition of an ad valorem tax not to exceed three
cents on each $100 of the taxable value of property taxable by the
district, except that if the petition seeks conversion of a rural
fire prevention district into an emergency services district, the
election must be to authorize the imposition of an ad valorem tax
not to exceed six cents on each $100 of the taxable value of
property taxable by the district. For the purposes of this
subsection, the population of the county is determined according to
the most recent federal decennial census available at the time the
petition is filed.

(c) If the petition indicates that the proposed district
will contain territory in more than one county, the commissioners
court may not order an election until the commissioners court of
each county in which the district will be located has granted the
petition.

(d) [te†] Subject to Section 4.003, Election Code, the
notice of the election shall be given in the same manner as the
notice of the petition hearing.

(e) [td†] The election shall be held on the first authorized
uniform election date prescribed by the Election Code that allows
sufficient time to comply with other requirements of law.

SECTION 271. Subchapter B, Chapter 775, Health and Safety
Code, is amended to conform to Section 2, Chapter 1132 (H.B. 2626),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 775.021 to read as follows:

Sec. 775.021. EXCLUSION OF TERRITORY LOCATED WITHIN OTHER
TAXING AUTHORITY. (a) This section applies only to a district
located in whole or in part in a county that:

(i) borders the Gulf of Mexico; and
(2) has a population of less than 1.5 million.

(b) The board of a district may exclude from the district the territory located within the boundaries of another taxing authority if the other taxing authority provides the same services to the territory as those provided by the district.

(c) The board, at its discretion, may hold a hearing to consider the exclusion of the territory.

(d) The board shall hold a hearing to consider the exclusion of the territory if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition submitted under this subsection must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.

(e) The board shall issue a notice of a hearing to be held under Subsection (c) or (d). The provisions of Section 775.015 relating to the procedure for issuing notice of a hearing to create the district apply to the notice for the hearing under this section. The notice must state:

(1) the proposed new boundaries of the district or of the territory to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory may attend the hearing and present the person's opinion for or against the exclusion of the territory.

(f) After the hearing the board either may order an election
on the question of the exclusion of the territory or may declare by
resolution the territory excluded from the district. However, the
board may not declare the territory as excluded if the owners of at
least three percent of the property located in the district protest
the exclusion.

(g) If the board excludes the territory by resolution, the
board shall state in the resolution the new boundaries of the
district. The board shall file a copy of the resolution in the
office of the county clerk of each county in which the district is
located. The county clerk of each affected county shall record the
resolution in the county records. After the resolution is
recorded, the excluded territory is no longer a part of the
district.

(h) The board shall order an election on the question of
exclusion if:

(1) the owners of at least three percent of the
property located in the district protest the exclusion; or

(2) the board:

(A) despite the lack of a protest, refuses to
exclude the territory; and

(B) after refusing to exclude the territory,
receives a petition requesting an election that is signed by a
majority of the qualified voters who own taxable real property in
the territory proposed to be excluded.

(i) Except as otherwise required by the Election Code, the
election notice, the manner and time of giving the notice, and the
manner of holding the election are governed by the applicable
provisions of this chapter relating to the original election to create the district.

(j) If a majority of the voters voting in the election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and stating the new boundaries of the district. The board shall file a copy of the order in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the order in the county records. After the order is recorded, the excluded territory is no longer a part of the district.

(k) If a majority of the voters voting in the election do not favor excluding the territory, the board may not act on a petition to exclude all or part of the territory until the first anniversary of the date of the most recent election to exclude the territory from the district.

(l) The exclusion of territory under this section does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(m) Territory excluded under this section is not released from the payment of its pro rata share of the district's indebtedness. The district shall continue to levy taxes each year on the excluded territory at the same rate levied on territory in the district until the taxes collected from the excluded territory equal its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied exclusively to the payment of the
excluded territory's pro rata share of the indebtedness. The owner
of all or part of the excluded territory may pay in full, at any
time, the owner's share of the pro rata share of the district's
indebtedness.

SECTION 272. Section 775.031, Health and Safety Code, is
amended by adding a new Subsection (b) and relettering the existing
Subsections (b) and (c) to conform to Section 1, Chapter 259
(H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989,
to read as follows:

(b) A district located wholly within a county with a
population of more than 2.4 million may not provide fire prevention
or fire-fighting services unless the district was originally a
rural fire prevention district and was converted under Section
775.056.

(c) A district may contract with the state or a political
subdivision for law enforcement services. A district may not
commission a peace officer or employ a person as a peace officer.

(d) [Repealed by the 71st Legislature, Regular Session, 1989.]

SECTION 273. Section 775.032(a), Health and Safety Code, is
amended to conform to Section 1, Chapter 606 (S.B. 88), Acts of the
71st Legislature, Regular Session, 1989, to read as follows:

(a) A business entity [located-in-a-district] is not subject
to the ad valorem tax authorized by this chapter or subject to the
district's powers if the business entity:

(1) provides [is--providing] its own fire prevention
and fire control services and owns or operates fire-fighting
equipment or systems equivalent to or better than those of a Class
I rural fire prevention district, metropolitan county fire
protection system, as defined by the State Board of Insurance, for
which the business entity receives the appropriate approval from
the Texas Industrial Fire Training Board of the State Firemen's and
Fire Marshals' Association of Texas [protection-on-the-date-the
district-is-created];

(2) provides and operates its own equipped industrial
ambulance with a licensed driver and provides industrial victim
care by an emergency care attendant trained to provide the
equivalent of ordinary basic life support, as defined by Section
773.003 [receives-the-appropriate-certification-from-the-Commission
on-Fire-Protection-Personnel-Standards-and-Education-and-the-Texas
State-Board-of-Medical-Examiners]; and

(3) provides ordinary emergency services for the
business entity, such as emergency response, as defined by 29
C.F.R. Sec. 1910.120, rescue, disaster planning, or security
services, as recognized by the Texas Industrial Fire Training Board
of the State Firemen's and Fire Marshals' Association of Texas, and
provides the equipment, training, and facilities necessary to
safely handle emergencies and protect the business entity and its
neighbors in the community [owns--or--operates---fire-fighting;
medical--;or--;ambulance--equipment--equivalent-to-or-better-than-an
emergency-services-district-or-metropolitan-county-fire--protection
system--;as--defined--by--the--State--Board--of--Insurance].

SECTION 274. Section 775.036(b), Health and Safety Code, is
amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(b) The board may require inspections in the district relating to the causes and prevention of fires and medical emergencies, except as provided by Section 775.031(b).

SECTION 275. Section 775.074, Health and Safety Code, is amended to conform to Section 1, Chapter 259 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989, by adding Subsection (f) to read as follows:

(f) The duties imposed by this section on a board do not apply in a district subject to Section 775.0741.

SECTION 276. Subchapter E, Chapter 775, Health and Safety Code, is amended to conform to Sections 1 and 2, Chapter 259 (H.B. 2631), Acts of the 71st Legislature, Regular Session, 1989, by adding Section 775.0741 to read as follows:

Sec. 775.0741. AD VALOREM TAX IN DISTRICT LOCATED WHOLLY IN POPULOUS COUNTY. (a) The board of a district located wholly in a county with a population of more than 2.4 million shall prepare annually a budget for the district and shall submit the budget to the commissioners court of the county for approval. The budget shall be treated in the same manner as a budget submitted by a county agency or department.

(b) The commissioners court shall annually impose an ad valorem tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(c) The tax may not exceed three cents on each $100 of the
taxable value of property taxable by the district. If the district
was originally a rural fire prevention district and was converted
under Section 775.056, the tax may not exceed six cents on each
$100 of the taxable value of property taxable by the district.
(d) In setting and certifying the tax rate, the
commissioners court is subject to the same duties that are imposed
on a board by Sections 775.074(b)-(e).
(e) The funds collected under this section shall be
deposited in a county depository except as provided by Section
775.072(b).
SECTION 277. Section 776.032(a), Health and Safety Code, is
amended to conform to Section 2, Chapter 606 (S.B. 88), Acts of the
71st Legislature, Regular Session, 1989, to read as follows:
(a) A business entity [located-in-a-district] is not subject
to the ad valorem tax authorized by this chapter or subject to the
district's powers if the business entity:
(1) provides its own fire prevention and fire control
[emergency] services and owns or operates fire-fighting equipment
or systems equivalent to or better than those of a Class I rural
fire prevention district, metropolitan county fire protection
system, as defined by the State Board of Insurance, for which the
business entity[7]
[42] receives the appropriate approval
[certification] from the Texas Industrial Fire Training Board of
the State Firemen's and Fire Marshals' Association of Texas
[Commission-on--Fire--Protection-Personnel-] Standards and Education
and-the-Texas-State-Board-of-Medical-Examiners];
(2) provides and

[3] owns or operates its own equipped industrial
ambulance with a licensed driver and provides industrial victim
care by an emergency care attendant trained to provide the
equivalent of ordinary basic life support [fire-fighting--medical--
ambulance--equipment--equivalent--to--or--better-than--class--
emergency--services--district--or--metropolitan--fire--protection
system], as defined by Section 773.003; and

(3) provides ordinary emergency services for the
business entity, such as emergency response, as defined by 29
C.F.R. Sec. 1910.120, rescue, disaster planning, or security
services, as recognized by the Texas Industrial Fire Training Board
of the State Firemen's and Fire Marshals' Association of Texas, and
provides the equipment, training, and facilities necessary to
safely handle emergencies and protect the business entity and its
neighbors in the community [the--State--Board--of--Insurance-on
December 1, 1989].

SECTION 278. Subchapter D, Chapter 794, Health and Safety
Code, is amended to conform to Section 1, Chapter 1132 (H.B. 2626),
Acts of the 71st Legislature, Regular Session, 1989, by adding
Section 794.0525 to read as follows:

Sec. 794.0525. EXCLUSION OF TAXING AUTHORITY PROVIDING ITS
OWN FIRE SERVICE. (a) The voters of a taxing authority located
within the boundaries of a district may exclude the taxing
authority from the district under this section if the taxing
authority provided services to fight fires throughout the taxing
authority's territory before the date of the election to confirm
the organization of the district under this chapter.

(b) The governing body of the taxing authority shall order an election on the exclusion of the taxing authority from the district on receipt of a petition signed by at least three percent of the registered voters of the taxing authority or, on its own motion, may call an election on the exclusion of the taxing authority from the district. The provisions of the Election Code relating to a petition authorized to be filed in connection with an election apply to a petition submitted under this section.

(c) The provisions of this chapter relating to the election to create a district apply to the election notice, the manner and time of giving the notice, and the manner of holding the election under this section.

(d) If a majority of the voters voting in the election favor excluding the taxing authority from the district, the board shall enter an order declaring the territory of the taxing authority excluded from the district and describing the new boundaries of the district.

(e) The board shall file a copy of the order in the office of the county clerk of each county in which the district is located. The county clerk of each affected county shall record the order in the county records. After the order is recorded, the excluded territory is no longer a part of the district.

(f) If a majority of the voters voting in the election do not favor excluding the taxing authority from the district, a subsequent election to exclude the same taxing authority from the district under this section may not be held before the first
anniversary of the most recent election to exclude the territory.

(g) The exclusion of territory under this section does not
diminish or impair the rights of the holders of any outstanding and
unpaid bonds, warrants, or other obligations of the district.

(h) Territory excluded under this section is not released
from the payment of its pro rata share of the district's
indebtedness. The district shall continue to levy taxes each year
on the excluded territory at the same rate levied on territory in
the district until the amount of taxes collected from the excluded
territory equals its pro rata share of the indebtedness of the
district at the time the territory was excluded. The taxes
collected under this subsection shall be applied exclusively to the
payment of the excluded territory's pro rata share of the
indebtedness. The owner of all or part of the excluded territory
may pay in full, at any time, the owner's share of the pro rata
share of the district's indebtedness for which taxes are to be
collected.

SECTION 279. Subtitle C, Title 9, Health and Safety Code, is
amended to conform to Sections 1-3, Chapter 1092 (S.B. 806), Acts
of the 71st Legislature, Regular Session, 1989, by adding Chapter
795 to read as follows:

CHAPTER 795. USE OF CERTAIN FIRE TRUCKS

Sec. 795.001. DEFINITION. In this chapter, "fire
department" means:

(1) a volunteer fire department; or
(2) a department of a municipality, county, or special
district or authority that provides fire-fighting services.
Sec. 795.002. GOOD AND DEPENDABLE CONDITION REQUIRED.  (a) This chapter applies only to a fire truck in a good and dependable operating condition. A fire truck is considered to be in a good and dependable operating condition if:

(1) the truck complies with the standards established by or under state law for the operating condition of a fire truck; and

(2) the fire department that uses the truck has secured certification by an underwriters laboratory that meets NATIONAL FIRE PROTECTION STANDARDS 1901.

(b) A fire truck may not be considered to be in a condition other than a good and dependable operating condition solely because the truck is 25 years old or older.

Sec. 795.003. CERTAIN RESTRICTIONS INVOLVING AGE OF FIRE TRUCK PROHIBITED. A contract, including any form of an insurance contract, or an order, ordinance, rule, or similar decree of a local government or state agency may not:

(1) restrict a fire department from using a fire truck that is 25 years old or older; or

(2) prevent any benefit from being claimed because the claim arises out of circumstances in which a fire truck that is 25 years old or older is used.

SECTION 280. Section 823.002, Health and Safety Code, is amended to conform to Section 1, Chapter 314 (H.B. 2379), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, [MUNICIPALITIES], CLINICS, AND FACILITIES. This chapter does not
apply to:

(1) a county having a population of less than 75,000;

(2) an animal shelter within the limits of a municipality having a population of less than 75,000;

(3) a veterinary medicine clinic; or

(4) a livestock commission facility.

SECTION 281. Title 10, Health and Safety Code, is amended to conform to Sections 1-8, Chapter 1118 (H.B. 1787), Acts of the 71st Legislature, Regular Session, 1989 (Article 4447aa, Vernon's Texas Civil Statutes), by adding Chapter 827 to read as follows:

CHAPTER 827. RIDING STABLES

Sec. 827.001. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

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

(3) "Department" means the Texas Department of Health.

(4) "Person" means an individual, partnership, corporation, trust, estate, joint-stock company, foundation, political subdivision, or association of individuals.

(5) "Riding stable" means an establishment open to the public that keeps one or more equine animals for hire for recreational purposes for riding or driving.

Sec. 827.002. EXEMPTIONS. This chapter does not apply to:

(1) a youth camp regulated under Chapter 141 (Texas Youth Camp Safety and Health Act); or

(2) a person operating a riding stable under a concession contract in a national park located in the state.

Sec. 827.003. REGISTRATION OF RIDING STABLES. (a) A person
may not operate a riding stable without a certificate of registration issued by the department for each separate location at which a stable is to be operated.

(b) The board shall set reasonable fees for registration and renewal of registration sufficient to pay all costs of the registration program established under this chapter. A certificate of registration is not transferable and is valid for two years from the date of issuance or renewal unless suspended or revoked.

(c) As a condition to the grant or renewal of a certificate of registration, the facilities and personnel of the applicant must meet standards prescribed by the board for the humane care and treatment, health and disease control, housing, sanitation, and control of equine animals.

(d) An application for a certificate of registration to operate a riding stable or for renewal of a certificate must be made on the appropriate form prescribed by the board and must be accompanied by the appropriate fee. The fees are nonrefundable. Each application for a certificate or renewal of a certificate must be accompanied by a signed statement issued by a veterinarian licensed to practice in the state that states that the veterinarian inspected the facilities of the applicant not earlier than the 90th day before the date of the application and finds those facilities to be in compliance with the standards prescribed under Section 827.004(a). The applicant shall choose and compensate the inspecting veterinarian.

Sec. 827.004. POWERS AND DUTIES OF BOARD AND DEPARTMENT.

(a) The board shall establish standards that are for the operation
of riding stables and designed to ensure:

1. the maintenance of sanitary conditions in the
   facilities that keep equine animals;
2. the provision of proper ventilation for those
   facilities;
3. the provision of humane care and treatment of
   equine animals, including the provision of adequate nutrition and
   water; and
4. the exercise of reasonable care to protect the
   health of equine animals kept in riding stable facilities and to
   prevent the spread of disease among the animals.

(b) The board may adopt rules it considers necessary to
carry out this chapter.

c) The board may enter into contracts or other agreements
necessary to carry out this chapter.

(d) The department may use any available funds to pay for
material, equipment, and services covered by a contract or other
agreement made by the board.

Sec. 827.005. INSPECTIONS. If the department has reasonable
grounds to believe that the standards established by the board have
been violated, the department or its agents may enter the facility
or other premises regulated by this chapter at reasonable times to
determine compliance with the standards. For this purpose, the
department shall employ agents and shall prescribe qualifications
for them.

Sec. 827.006. DENIAL, SUSPENSION, OR REVOCATION OF
CERTIFICATE OF REGISTRATION. (a) If the commissioner finds after
inspection that an applicant has failed to comply with the minimum standards for the humane care and treatment, health and disease control, housing, sanitation, and control of equine animals, the commissioner:

(1) may not issue a certificate of registration to the applicant;

(2) shall give the applicant written notice of the denial and the reasons for it;

(3) shall conduct a hearing on the denial not later than the 31st day after the date a request for a hearing is received from the applicant; and

(4) may not issue a certificate of registration if after the hearing the commissioner finds noncompliance with the standards.

(b) If the commissioner finds after inspection that a registered riding stable has failed to comply with the minimum standards, the commissioner shall give written notice to the registrant of a hearing to be held not later than the 31st day after the date the notice is given. If after the hearing the commissioner finds noncompliance with the standards, the commissioner shall revoke the certificate of registration.

(c) If the commissioner finds after inspection that a registrant has committed a gross violation of the standards, the commissioner, after giving notice to the registrant, may suspend the certificate of registration pending a hearing for a period not to exceed 31 days and shall give written notice of a hearing to be held not later than the 31st day after the date the notice is
given. If after the hearing the commissioner finds noncompliance
with the standards, the commissioner shall revoke the certificate
of registration.

Sec. 827.007. SEIZURE AND SALE OF ANIMALS. (a) If the
commissioner suspends or revokes a certificate of registration for
a riding stable, the commissioner may apply to a justice of the
peace for a writ ordering a sheriff or other peace officer to seize
any of the animals kept at the riding stable. The justice of the
peace shall issue the writ if the justice finds probable cause to
believe that any of the animals are in danger of being harmed by a
gross violation of standards required for registration.

(b) Employees of the department are entitled to accompany
the peace officer carrying out the seizure.

(c) If the department revokes the certificate of
registration after a hearing, the commissioner shall order that the
animals be sold at public auction unless before the sale the
commissioner's action to revoke the certificate is reversed on
judicial review. The person whose registration was revoked or that
person's agent may not participate in the auction.

(d) Proceeds from the sale of the animals shall be applied
first to the expenses incurred in conducting the sale. The
commissioner shall return the remainder of the proceeds to the
person whose certificate of registration was revoked.

(e) If the commissioner is unable to sell an animal at
auction, the commissioner may have the animal destroyed in a humane
manner or may give the animal to a nonprofit animal shelter, pound,
or society for the protection of animals.
Sec. 827.008. INFORMAL DISPOSITION OF MATTER. Sections 827.006 and 827.007 do not preclude an informal disposition of a matter by an agreed order between a registrant and the department.

Sec. 827.009. APPEAL. A person whose application for a certificate of registration or renewal has been denied or whose certificate of registration has been revoked by the commissioner is entitled to judicial review in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 827.010. DISPOSITION OF FEES. The fees collected under this chapter may be used by the department only for the administration and enforcement of this chapter.

Sec. 827.011. PENALTY. (a) A person commits an offense if the person intentionally or knowingly operates a riding stable in violation of Section 827.003(a).

(b) An offense under this section is a Class B misdemeanor. Each day of violation is a separate offense.

SECTION 282. Article 59.04(f), Code of Criminal Procedure, is amended to conform to Section 1, Chapter 838 (S.B. 539), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

(f) If the property is an aircraft or a part of an aircraft, and if there is reasonable cause to believe that a perfected security instrument affects the property, the attorney representing the state shall request an administrator of the Federal Aviation Administration to identify from the records of that agency the record owner of the property and the holder of the perfected security instrument. The attorney representing the state shall
also notify the Department of Public Safety in writing of the fact that an aircraft has been seized and shall provide the department with a description of the aircraft.

SECTION 283. Chapter 59, Code of Criminal Procedure, is amended by adding Article 59.11 to conform to Section 2, Chapter 838 (S.B. 539), Acts of the 71st Legislature, Regular Session, 1989, to read as follows:

Art. 59.11. REPORT OF SEIZED AND FORFEITED AIRCRAFT. Not later than the 10th day after the last day of each quarter of the fiscal year, the Department of Public Safety shall report to the State Aircraft Pooling Board:

(1) a description of each aircraft that the department has received by forfeiture under this chapter during the preceding quarter and the purposes for which the department intends to use the aircraft; and

(2) a description of each aircraft the department knows to have been seized under this chapter during the preceding quarter and the purposes for which the department would use the aircraft if it were forfeited to the department.

PRELIMINARY DRAFT

CROSS-REFERENCE CORRECTIONS

SECTION 284. In the attached table of cross-reference amendments, a reference described in Column A is amended to read as provided by the corresponding reference described in Column B, at each place at which the reference appears in an article or act, as compiled in Vernon's Texas Civil Statutes, or in a code cited in Column C:
<table>
<thead>
<tr>
<th>Column A Reference To Be Amended</th>
<th>Column B New Reference</th>
<th>Column C Law In Which The Reference Appears</th>
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</thead>
<tbody>
<tr>
<td>&quot;Articles 912a-10 et seq., Vernon's Revised Civil Statutes of Texas&quot;</td>
<td>&quot;Chapter 711 or 712, Health and Safety Code&quot;</td>
<td>Subdivision 1(b), Article 6674w-3</td>
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<tr>
<td>&quot;Section 3, 9-1-1 Emergency Number Act (Article 1432c, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Section 772.001, Health and Safety Code&quot;</td>
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<td>&quot;Section 1, Chapter 909, Acts of the 69th Legislature, Regular Session, 1985 (Article 1432f, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Section 771.001, Health and Safety Code&quot;</td>
<td>Section 101.062(a), Civil Practice and Remedies Code</td>
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<tr>
<td>&quot;the Health Facilities Development Act (Article 1528j, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Chapter 221, Health and Safety Code&quot;</td>
<td>Section A(2)(a), Article 1302-7.06</td>
</tr>
<tr>
<td>&quot;Chapter 57, Acts of the 55th Legislature, Regular Session, 1957 (Article 2351a-6, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Chapter 794, Health and Safety Code&quot;</td>
<td>Section 4, Article 1528m</td>
</tr>
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<td>&quot;the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Chapter 104 or 225, Health and Safety Code&quot;</td>
<td>Section 1(13), Article 6243e.3</td>
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<tr>
<td>&quot;Subdivision (2), Subsection (c), Section 9.03, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Section 81.103(d), Health and Safety Code&quot;</td>
<td>Section (a), Article 5547-93</td>
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<td>(8) &quot;Section 4.02, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)&quot;</td>
<td>(8) &quot;Section 81.083, Health and Safety Code&quot;</td>
<td>(8) Section 24(a), Article 42.12, Code of Criminal Procedure</td>
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<tr>
<td>(9) &quot;Article 8 of the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)&quot;</td>
<td>(9) &quot;Subchapter G, Chapter 81, Health and Safety Code&quot;</td>
<td>(9) Section 24(a), Article 42.12, Code of Criminal Procedure</td>
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<tr>
<td>(10) &quot;Section 9.01, Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes)&quot;</td>
<td>(10) &quot;Section 81.101, Health and Safety Code&quot;</td>
<td>(10) Section (a), Article 46A.01, Code of Criminal Procedure</td>
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<td>Section 22.023(a), Human Resources Code</td>
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<td>(11) &quot;the Chronically Ill and Disabled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes)&quot;</td>
<td>(11) &quot;Chapter 35, Health and Safety Code&quot;</td>
<td>(11) Section 110.001(1)(E), Civil Practice and Remedies Code</td>
</tr>
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<td>(13) &quot;the Hospital Authority Act (Article 4437e, Vernon's Texas Civil Statutes)&quot;</td>
<td>(13) &quot;Chapter 262, Health and Safety Code&quot;</td>
<td>(13) Section 1(1)(H), Article 717q</td>
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<tr>
<td>(14) &quot;the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes)&quot;</td>
<td>(14) &quot;Chapter 241, Health and Safety Code&quot;</td>
<td>(14) Section 84.007(e), Civil Practice and Remedies Code</td>
</tr>
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</table>
(16) "Chapter 56, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4437f-1, Vernon's Texas Civil Statutes)"

(17) "the Texas Primary Health Care Services Act (Article 4438d, Vernon's Texas Civil Statutes)"

(18) "the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes)"

(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"

(20) "Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes)"

(16) "Subchapter A, Chapter 301, Health and Safety Code"

(17) "Chapter 31, Health and Safety Code"

(18) "Chapter 61, Health and Safety Code"

(19) "Chapter 61, Health and Safety Code, said county shall assist the prisoner in applying for reimbursement through that chapter"

(20) "Chapter 242, Health and Safety Code"

Section (e), Article 5.15-2, Insurance Code
Section 1.03(a)(5), Article 45901
Section 171.073, Tax Code
Section A(2)(a), Article 1302-7.06
Section 110.001(1)(D), Civil Practice and Remedies Code
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)
Section (d), Article 104.002, Code of Criminal Procedure
Section 84.007(e), Civil Practice and Remedies Code
Section 101.051(2), Human Resources
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<td>&quot;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&quot;</td>
<td>&quot;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&quot;</td>
<td>Section 102.001(1), Human Resources Code</td>
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<tr>
<td>&quot;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&quot;</td>
<td>&quot;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&quot;</td>
<td>Section 106.001(1), Human Resources Code</td>
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<tr>
<td>&quot;Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that&quot;</td>
<td>Section 106.001(2), Human Resources Code</td>
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<td>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&quot;</td>
<td>section, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that section&quot;</td>
<td>(24) Section 22.01(b)(2), Penal Code</td>
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<tr>
<td>(24) &quot;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&quot;</td>
<td>&quot;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&quot;</td>
<td>(24) Section 22.01(b)(2), Penal Code</td>
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<td>(25) &quot;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</td>
<td>(25) &quot;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</td>
<td>(25) Section 22.01(c)(1), Penal Code</td>
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<td>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&quot;</td>
<td>or resident of an institution described in that section&quot;</td>
<td>Section 22.01(c)(2), Penal Code</td>
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<tr>
<td>&quot;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&quot;</td>
<td>&quot;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&quot;</td>
<td>Section 22.01(c)(2), Penal Code</td>
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<td>&quot;Article 4442C, Vernon's Texas Civil Statutes or any amendment thereto&quot;</td>
<td>&quot;Chapter 242, Health and Safety Code&quot;</td>
<td>Section 2(3), Article 4442d</td>
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<td>&quot;Section 3.04, Chapter 636, Acts of the 63rd Legislature, Regular Session, 1973 (Article 44470, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Section 773.057, Health and Safety Code&quot;</td>
<td>Section (g), Article 6675a-3</td>
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<td>(31) &quot;the Maternal and Infant Health Improvement Act (Article 4447y, Vernon's Texas Civil Statutes)&quot;</td>
<td>(31) &quot;Chapter 32, Health and Safety Code&quot;</td>
<td>Section 102.001(2), Human Resources Code</td>
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<td>(33) &quot;the Texas Food, Drug and Cosmetic Act, as amended (Article 4476-5, Vernon's Texas Civil Statutes)&quot;</td>
<td>(33) &quot;Chapter 431, Health and Safety Code&quot;</td>
<td>Section 1(2), Article 3.70-3B, Insurance Code</td>
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<td>Section 110.001(1)(C), Civil Practice and Remedies Code</td>
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<td>Section 131.0042(b)(1), Human Resources Code</td>
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<td>Section 22.09(a)(1), Penal Code</td>
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<td>Section 21.302(3), Education Code</td>
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<td>Section 51.03(b)(5), Family Code</td>
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<td>Section 361.082(c)(3), Local Government Code</td>
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<td>&quot;the Texas Dangerous Drug Act (Article 4476-14, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Chapter 483, Health and Safety Code&quot;</td>
<td>Section 4, Article 18.20, Code of Criminal Procedure</td>
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<td>Section 5, Article 6252-13d</td>
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<td>Section 21.302(2), Education Code</td>
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<td>(40) &quot;Chapter 425, Acts of the 56th Legislature, Regular Session, 1959 (Article 4476-14, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(41) &quot;Chapter 425, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4476-14, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(40) &quot;Chapter 483, Health and Safety Code&quot;</td>
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<td>(41) &quot;Chapter 483, Health and Safety Code&quot;</td>
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<td>(40) Section 51.305(c), Government Code</td>
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<td>Section 3.08(4)(D), Article 4495b</td>
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<td>Section 3.08(4)(F), Article 4495b</td>
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<td>Section 2, Article 4549</td>
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<td>(42) &quot;the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;the Controlled Substances Act or&quot;</td>
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<td>&quot;Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(47) &quot;Subdivision (5), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(48) &quot;Subdivision (14), Section 1.02, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(49) &quot;Section 3.09 of the Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(50) &quot;Section 4.012(b), Texas Controlled Substances Act, as amended (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(51) &quot;Section 4.012(b), 4.052, or 4.053 of that Act&quot;</td>
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<td>(52) &quot;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&quot;</td>
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<td>(53) &quot;Section 4.12 of the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(54) &quot;Section 5.08, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(55) &quot;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)&quot;</td>
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<td>(56) &quot;the Texas Controlled Substances Act&quot;</td>
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<td>(59) &quot;the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(60) &quot;the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(61) &quot;the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(63) &quot;Section 4.13, Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes)&quot;</td>
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<tr>
<td>&quot;the Controlled Substances Act or Dangerous Drug Act or rules relating to those acts&quot;</td>
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<td>&quot;Section 1, Chapter 306, Acts of the 68th Legislature, Regular Session, 1983 (Article 4476-15b, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;Rule 41a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, General Laws, 46th Legislature, 1939, page 343&quot;</td>
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<tr>
<td>&quot;Rule 40a, Sanitary Code of Texas, Article 4477, Revised Civil Statutes, Chapter 41, Acts, First Called Session, 40th Legislature, 1927&quot;</td>
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<td>&quot;Section 21, Chapter 41, Acts of the 40th Legislature, 1st Called Session, 1927 (Rule 54a, Article 4477, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, named in Rule 72R3204 MRB-D&quot;</td>
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<td>&quot;Chapter 178, Acts of the 49th Legislature, 1945 (Article 4477-1, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;Chapter 178, Acts of the 49th Legislature, 1945, and particularly with Section 19 thereof (Section 19, Article 4477-1, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;Section 3, Chapter 677, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-6b, Vernon's Texas Civil Statutes)&quot;</td>
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<td>&quot;the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(76) &quot;Section 2(15), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(77) &quot;Section 4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(78) &quot;Article 4477-7e, Revised Statutes&quot;</td>
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<td>(79) &quot;Section 6A, Article 4477-7e, Revised Statutes, as added by Chapter 406, Acts of the 70th Legislature, Regular Session, 1987&quot;</td>
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<td>(80) &quot;the Texas Litter Abatement Act&quot;</td>
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<td>(81) &quot;the Texas Litter Abatement Act&quot;</td>
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<td>(82) &quot;Texas Litter Abatement Act&quot;</td>
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<td>(83) &quot;the Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes) and that is subject to Section 4.08 of that Act&quot;</td>
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<td>(84) &quot;Chapter 886, Acts of the 69th Legislature, Regular Session, 1985 (Article 4477-70, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(85) &quot;Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 44941, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(86) &quot;the County Hospital Authority Act (Article 4494r, Vernon's Texas Civil Statutes)&quot;</td>
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<td>(87) &quot;Article 4589, Revised Statutes&quot;</td>
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(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

(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
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<td>(Article 5221c, Vernon's Texas Civil Statutes)</td>
<td>&quot;Section 462.001, Health and Safety Code&quot;</td>
<td>Section 3(n), Probate Code</td>
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<td>(C) Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes); or</td>
<td>(C) Section 11.10 or 17.03, Family Code.&quot;</td>
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<td>&quot;Chapter 281, Acts of the 51st Legislature, Regular Session, 1949 (Article 9202, Vernon's Texas Civil Statutes)&quot;</td>
<td>&quot;Subchapter A, Chapter 756, Health and Safety Code&quot;</td>
<td>Section 8, Article 4525a</td>
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<td>(100) &quot;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&quot;</td>
<td>(100) &quot;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&quot;</td>
<td>(100) Section 33.005(a), Natural Resources Code</td>
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SECTION 285. (a) The following laws are repealed:

(1) Section 1, Chapter 215, Acts of the 49th Legislature, Regular Session, 1945 (Article 695e, Vernon's Texas Civil Statutes); and

(2) Chapter 194, Acts of the 67th Legislature, Regular Session, 1981 (Article 4476-2a, Vernon's Texas Civil Statutes);

(b) The following provisions of the Acts of the 71st Legislature, Regular Session, 1989, are repealed:

(1) Chapter 36;

(2) Chapter 55;

(3) Section 3, Chapter 72;

(4) Sections 1-3, Chapter 93;

(5) Chapter 152;

(6) Chapter 166;

(7) Chapter 172;

(8) Chapter 206;

(9) Chapter 208;

(10) Section 13, Chapter 255;

(11) Chapter 259;

(12) Sections 6-9, Chapter 271;

(13) Chapter 292;

(14) Chapter 312;

(15) Chapter 314;

(16) Chapter 322;

(17) Chapter 338;

(18) Sections 1-9 and 11, Chapter 372;

(19) Section 36, Chapter 375;
(20) Chapter 412;
(21) Chapter 434;
(22) Chapter 444;
(23) Chapter 493;
(24) Chapter 494;
(25) Chapter 500;
(26) Chapter 530;
(27) Chapter 538;
(28) Chapter 569;
(29) Section 1, Chapter 580;
(30) Sections 1, 48, 49, 51, 52, 63, and 64, Chapter 584;
(31) Sections 1 and 2, Chapter 606;
(32) Chapter 607;
(33) Section 8, Chapter 622;
(34) Sections 3.10 and 3.11, Chapter 624;
(35) Chapter 631;
(36) Section 3, Chapter 639;
(37) Chapter 660;
(38) Sections 1-4, Chapter 661;
(39) Chapter 666;
(40) Chapter 674;
(41) Chapter 681;
(42) Chapter 694;
(43) Sections 1-5, Chapter 696;
(44) Chapter 701;
(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 1039;
19 (64) Sections 2 and 3, Chapter 1041;
20 (65) Chapter 1043;
21 (66) Chapter 1049;
22 (67) Sections 7-9 and 11-16, Chapter 1085;
23 (68) Chapter 1089;
24 (69) Chapter 1092;
25 (70) Sections 1 and 2, Chapter 1111;
26 (71) Sections 1-8, Chapter 1118;
(72) Sections 1-14, Chapter 1129;

(73) Chapter 1132;

(74) Sections 8-10, Chapter 1141;

(75) Section 4, Chapter 1143;

(76) Sections 3 and 4, Chapter 1148;

(77) Section 1, Chapter 1175;

(78) Section 2, Chapter 1181;

(79) Chapter 1190;

(80) Sections 1, 2, 5, 6, 11, 12, and 19-33, Chapter 1195;

(81) Section 4, Chapter 1225;

(82) Sections 5 and 6, Chapter 1240; and

(83) Sections 5 and 6, Chapter 1248.

(c) The following provisions of the Acts of the 71st Legislature, 1st Called Session, 1989, are repealed:

(1) Sections 8-14 and 16, Chapter 23; and

(2) Section 2.11(a), Chapter 24.

SECTION 286. This Act takes effect September 1, 1991.

SECTION 287. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.
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 substituted) and sent to Printer at

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 ________ yea, ________ nays.

23. Read second time ________ passed to third reading by:
   (a viva voce vote.)
   (_________ yea, _________ nays.)

24. Caption ordered amended to conform to body of bill.

25. Senate and Constitutional 3-Day Rules suspended by vote of ________ yea, ________ nays to place bill on third reading and final passage.

26. Read third time and passed by:
   (a viva voce vote.)
   (_________ yea, _________ nays.)

OTHER ACTION:

Secretary of the Senate

27. Returned to the House.

28. Received from the Senate (with amendments.)
(zas substituted.)

29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record Vote) (Record Vote of ________ yea, ________ nays, ________ present, not voting).

30. Conference Committee Ordered.

31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record Vote of ________ yea, ________ nays, and ________ present, not voting).

32. Ordered Enrolled at ___________________