By: _____ S.B. No. 1322

A BILL TO BE ENTITLED

AN ACT

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 77th Legislature to other Acts of that legislature.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.001. This Act is enacted as part of the state's continuing statutory revision program under Chapter 323, Government Code. This Act is a revision for purposes of Section 43, Article III, Texas Constitution, and has the purposes of:

(1) codifying without substantive change or providing for other appropriate disposition of various statutes that were omitted from enacted codes;

(2) conforming codifications enacted by the 77th Legislature to other Acts of that legislature that amended the laws codified or added new law to subject matter codified;

(3) making necessary corrections to enacted codifications; and

(4) renumbering titles, chapters, and sections of codes that duplicate title, chapter, or section numbers.

SECTION 1.002. (a) The repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 78th Legislature, Regular Session, 2003. The amendment,

revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(b) If any provision of this Act conflicts with a statute enacted by the 78th Legislature, Regular Session, 2003, the statute controls.

SECTION 1.003. (a) A transition or saving provision of a law codified by this Act applies to the codified law to the same extent as it applied to the original law.

(b) The repeal of a transition or saving provision by this Act does not affect the application of the provision to the codified law.

(c) In this section, "transition provision" includes any temporary provision providing for a special situation in the transition period between the existing law and the establishment or implementation of the new law.

ARTICLE 2. CHANGES RELATING TO AGRICULTURE CODE

SECTION 2.001. (a) The Agriculture Code is amended by adding Title 9 to codify Article 1, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), as Chapter 301, Agriculture Code, and to more appropriately locate Chapter 20, Agriculture Code, as added by Article 2, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, as Chapter 302, Agriculture Code, to read as follows:

TITLE 9. WEATHER AND CLIMATE

CHAPTER 301. WEATHER MODIFICATION AND CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS. In this chapter:

(1) "Executive director" means the executive director of the Texas Department of Licensing and Regulation.

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(3) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(4) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

(5) "Weather modification and control program" means the research, development, licensing, and permitting and other associated activities to be administered by the Texas Department of Licensing and Regulation.

[Sections 301.002-301.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT OF LICENSING AND REGULATION

Sec. 301.051. RULES. The Texas Department of Licensing and

Regulation may adopt rules necessary to:

(1) exercise the powers and perform the duties under this chapter;

(2) establish procedures and conditions for the issuance of licenses and permits under this chapter; and

(3) establish standards and instructions to govern the carrying out of research or projects in weather modification and control that the Texas Department of Licensing and Regulation considers necessary or desirable to minimize danger to health or property.

Sec. 301.052. STUDIES; INVESTIGATIONS; HEARINGS. The Texas Department of Licensing and Regulation may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

Sec. 301.053. ADVISORY COMMITTEES. The Texas Department of Licensing and Regulation may establish advisory committees to advise the Texas Department of Licensing and Regulation and to make recommendations to the Texas Department of Licensing and Regulation concerning legislation, policies, administration, research, and other matters related to the duties, powers, or functions of the Texas Department of Licensing and Regulation under this chapter.

Sec. 301.054. PERSONNEL. The executive director may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

Sec. 301.055. MATERIALS AND EQUIPMENT. The Texas Department of Licensing and Regulation may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

Sec. 301.056. INTERSTATE COMPACTS. The executive director may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

Sec. 301.057. CONTRACTS AND COOPERATIVE AGREEMENTS. (a) The Texas Department of Licensing and Regulation may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The Texas Department of Licensing and Regulation may enter into cooperative agreements with the United States or any of its agencies, with counties and municipalities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The Texas Department of Licensing and Regulation may represent the state, counties, municipalities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

Sec. 301.058. PROMOTION OF RESEARCH AND DEVELOPMENT. (a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the Texas Department of Licensing and Regulation shall promote continuous research and development in:

(1) the theory and development of methods of weather modification and control, including processes, materials, and

devices related to these methods;

(2) the use of weather modification and control for agricultural, industrial, commercial, and other purposes; and

(3) the protection of life and property during research and operational activities.

(b) The Texas Department of Licensing and Regulation with approval of the executive director may conduct and may contract for research and development activities relating to the purposes of this section.

Sec. 301.059. GRANTS AND GIFTS. Subject to any limitations imposed by law, the Texas Department of Licensing and Regulation may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the Texas Department of Licensing and Regulation may spend the money for the administration of this chapter.

Sec. 301.060. DISPOSITION OF LICENSE AND PERMIT FEES. The Texas Department of Licensing and Regulation shall deposit all license and permit fees in the state treasury.

[Sections 301.061-301.100 reserved for expansion]

SUBCHAPTER C. LICENSES AND PERMITS

Sec. 301.101. LICENSE AND PERMIT REQUIRED. Except as provided by rule of the Texas Department of Licensing and Regulation under Section 301.102, a person may not engage in activities for weather modification and control:

(1) without a weather modification license and weather modification permit issued by the department; or

(2) in violation of any term or condition of the license or permit.

Sec. 301.102. EXEMPTIONS. (a) The Texas Department of Licensing and Regulation by rule, to the extent it considers exemptions practical, shall provide for exempting the following activities from the license and permit requirements of this chapter:

(1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;

(2) laboratory research and experiments;

(3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and

(4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

(b) The Texas Department of Licensing and Regulation by rule may modify or revoke an exemption.

Sec. 301.103. ISSUANCE OF LICENSE. (a) The Texas Department of Licensing and Regulation, in accordance with the rules adopted under this chapter, shall issue a weather modification license to each applicant who:

(1) pays the license fee; and

(2) demonstrates, to the satisfaction of the Texas Department of Licensing and Regulation, competence in the field of meteorology that is reasonably necessary to engage in weather modification and control activities.

(b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

Sec. 301.104. LICENSE FEE. The fee for an original or renewal license is $150.

Sec. 301.105. EXPIRATION DATE. Each original or renewal license expires at the end of the state fiscal year for which it was issued.

Sec. 301.106. RENEWAL LICENSE. At the expiration of the license period, the Texas Department of Licensing and Regulation shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

Sec. 301.107. ISSUANCE OF PERMIT. (a) The Texas Department of Licensing and Regulation, in accordance with the rules adopted under this chapter and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area in which the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if governed by Subchapter D, may issue a weather modification permit to each applicant who:

(1) holds a valid weather modification license;

(2) pays the permit fee;

(3) publishes a notice of intention and submits proof of publication as required by this chapter; and

(4) furnishes proof of financial responsibility.

(b) The Texas Department of Licensing and Regulation shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

Sec. 301.108. PERMIT FEE. The fee for each permit is $75.

Sec. 301.109. SCOPE OF PERMIT. A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The Texas Department of Licensing and Regulation may not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

Sec. 301.110. APPLICATION AND NOTICE OF INTENTION. Before undertaking any operation, a license holder must file an application for a permit and have a notice of intention published as required by this chapter.

Sec. 301.111. CONTENT OF NOTICE. In the notice of intention, the applicant must include:

(1) the name and address of the license holder;

(2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;

(3) the area in which and the approximate time during which the operation is to be conducted;

(4) the area that is intended to be affected by the operation; and

(5) the materials and methods to be used in conducting

the operation.

Sec. 301.112. PUBLICATION OF NOTICE. The notice of intention required under Section 301.110 must be published at least once a week for three consecutive weeks in a newspaper of general circulation in each county in which the operation is to be conducted.

Sec. 301.113. PROOF OF PUBLICATION; AFFIDAVIT. The applicant shall file proof of the publication, together with the publishers' affidavits, with the Texas Department of Licensing and Regulation during the 15-day period immediately after the date of the last publication.

Sec. 301.114. PROOF OF FINANCIAL RESPONSIBILITY. Proof of financial responsibility is made by showing to the satisfaction of the Texas Department of Licensing and Regulation that the license holder has the ability to respond in damages for liability that might reasonably result from the operation for which the permit is sought.

Sec. 301.115. MODIFICATION OF PERMIT. The Texas Department of Licensing and Regulation may modify the terms and conditions of a permit if:

(1) the license holder is first given notice and a reasonable opportunity for a hearing on the need for a modification; and

(2) it appears to the Texas Department of Licensing and Regulation that a modification is necessary to protect the health or property of any person.

Sec. 301.116. SCOPE OF ACTIVITY. Once a permit is issued,

the license holder shall confine the license holder's activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the Texas Department of Licensing and Regulation. The license holder shall comply with any terms and conditions of the permit as originally issued or as subsequently modified by the Texas Department of Licensing and Regulation.

Sec. 301.117. RECORDS AND REPORTS. (a) A license holder shall keep a record of each operation conducted under a permit, showing:

(1) the method employed;

(2) the type of equipment used;

(3) the kind and amount of each material used;

(4) the times and places the equipment is operated;

(5) the name and mailing address of each individual, other than the license holder, who participates or assists in the operation; and

(6) other information required by the Texas Department of Licensing and Regulation.

(b) The Texas Department of Licensing and Regulation shall require written reports for each operation, whether the operation is exempt or conducted under a permit. A license holder shall submit a written report at the time and in the manner required by the Texas Department of Licensing and Regulation.

(c) All information on an operation shall be submitted to the Texas Department of Licensing and Regulation before it is released to the public.

(d) The reports and records in the custody of the Texas Department of Licensing and Regulation shall be kept open for public inspection.

[Sections 301.118-301.150 reserved for expansion]

SUBCHAPTER D. ELECTION FOR APPROVAL OF PERMIT THAT INCLUDES AUTHORIZATION FOR HAIL SUPPRESSION

Sec. 301.151. DEFINITIONS. (a) In this subchapter:

(1) "Operational area" means that area that joins the target area and is reasonably necessary to use in order to effectuate the purposes over the target area without affecting the land or landowners in the operational area.

(2) "Target area" means that area described by metes and bounds or other specific bounded description set out in the application for a permit.

(b) The Texas Department of Licensing and Regulation by rule shall define hail suppression as used in this subchapter, using the most current scientifically accepted technological concepts.

Sec. 301.152. OPERATIONAL AREA. (a) No part of an operational area may be more than eight miles from the limits of the target area.

(b) The operational area must be described by metes and bounds or other specific bounded description and set out in the application for a permit.

(c) If the application for a permit does not describe the operational area, the Texas Department of Licensing and Regulation may designate an area located inside and up to eight miles from the limits of the target area described in the application as the

operational area of the permit for the purposes of this chapter.

Sec. 301.153. DATE OF PERMIT ISSUANCE; PERMIT AREA. A permit may not be issued by the Texas Department of Licensing and Regulation before the end of the 30-day period immediately following the first publication of notice and then only in:

(1) those counties or parts of counties in the target area or operational area in which the majority of the qualified voters voting have approved or have not disapproved the issuance of a permit if an election has been held; or

(2) any county or part of a county in the target area or operational area if no petition for an election has been filed.

Sec. 301.154. ELIGIBLE VOTERS. (a) Persons eligible to vote in elections held under this subchapter include qualified voters in counties or parts of counties included in the target area or operational area.

(b) If the target area or operational area for a permit including authorization for hail suppression includes only part of a county, an election held under this subchapter may be held only in the election precincts that are included entirely within or are partially included in those areas, and only those qualified voters residing in an election precinct or precincts of the county included in the target area or operational area are eligible to sign a petition and to vote at an election under this subchapter. In computing the vote, only a majority of qualified voters residing in those areas and voting in the election is necessary to carry the proposition in that county.

Sec. 301.155. APPLICATION FOR PETITION SEEKING ELECTION.

(a) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation.

(b) An application for a petition seeking an election to disapprove the issuance of a permit must:

(1) be headed "Application for Election to Disapprove a Weather Modification Permit"; and

(2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see disapproved the issuance of a permit for weather modification, including hail suppression."

(c) An application for a petition seeking an election to approve the issuance of a permit must:

(1) be headed "Application for Election to Approve a Weather Modification Permit"; and

(2) contain the following statement just ahead of the signatures of the applicants: "It is the hope, purpose, and intent of the applicants whose signatures appear on this application to see approved the issuance of a permit for weather modification, including hail suppression."

Sec. 301.156. ELECTION ON PETITION. (a) On the return to the county clerks of petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or

operational area in the notice requesting an election, the commissioners court of each county shall call and hold an election. Notice under Chapter 111, Local Government Code, of the commissioners court meeting to call and hold the election is not required. The date of the election shall be determined by the commissioners court in accordance with this subchapter, notwithstanding Sections 41.004 and 41.0041, Election Code.

(b) A petition under this subchapter must be filed with the clerk of each county within 30 days immediately following the date of the first publication of notice.

(c) An election under this subchapter must be held within 45 days after the date the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit.

(d) Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the executive director of the date of the election.

(e) Except as otherwise provided by this chapter, elections must be held in accordance with the Election Code.

Sec. 301.157. PETITION REQUIREMENTS. (a) The petition for an election under this subchapter must read substantially as follows:

"The following qualified voters of _____ County request the Commissioners Court of _____ County to call an election at which the qualified voters shall be asked to vote on the proposition of whether or not they approve of the issuance of a weather modification permit that includes authorization for hail

suppression (description of area)."

(b) Each qualified voter signing the petition must give the voter's full name and address and voter registration number.

Sec. 301.158. CERTIFICATION OF PETITION. (a) Within five days after the date of receiving a petition under this subchapter, the commissioners court shall have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. If only a part of a county is included in the target area or operational area, the county clerk shall also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area.

(b) On certification by the county clerk, the petition must be filed with the official records of the county and be made available for public inspection.

Sec. 301.159. DEPOSIT REQUIRED. (a) A person filing a petition with the county clerk shall deposit with the county clerk an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county clerk until the result of the election to approve or disapprove the issuance of the permit is officially announced.

(b) If the result of the election favors the party petitioning for the election, the county clerk shall return the deposit to the person filing the petition or to the person's agent or attorney.

(c) If the result of the election does not favor the party petitioning for the election, the county clerk shall pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or to the person's agent or attorney.

Sec. 301.160. FORM OF BALLOT. The ballots for an election under this subchapter must be printed to provide for voting for or against the proposition:

"The issuance of a permit providing for weather modification, including authorization for hail suppression and control in (description of area)."

Sec. 301.161. ELECTION ORDER. (a) The order calling the election shall provide for:

(1) the time and place or places for holding the election;

(2) the form of the ballots; and

(3) the presiding judge for each voting place.

(b) The commissioners court shall publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least 30 days preceding the day of the election.

Sec. 301.162. RESULTS OF ELECTION. (a) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the commissioners court not later than the fifth day after the date of the election.

(b) A copy of the results must be filed with the county clerk and is a public record.

(c) Not later than the fifth day after the results are filed, the commissioners court shall declare the results.

(d) The commissioners court of each county holding an election shall send certified copies of the results of the election to the executive director not later than 24 hours after the results are declared under Subsection (a).

Sec. 301.163. ISSUANCE OR DENIAL OF PERMIT FOLLOWING ELECTION. (a) If a majority of the qualified voters voting in the election precincts any part of which are located in the target area vote against issuance of the permit, a permit may not be issued.

(b) If a majority of the qualified voters voting in the election precincts any part of which are located within the target area vote in favor of issuance of the permit, the Texas Department of Licensing and Regulation may issue the permit as provided in this subchapter, except that if a majority of the qualified voters voting in any of the following areas vote against issuance of the permit, that area is excluded from the coverage of the permit:

(1) an election precinct any part of which is located in the operational area; or

(2) an election precinct located wholly within the target area and contiguous with its outer boundary.

(c) If the Texas Department of Licensing and Regulation finds that a weather modification and control operation is still feasible, a permit may be issued covering areas in which no election is requested or areas in which the voters give their approval as provided by this subchapter.

(d) If a permit is denied under Subsection (a), an

application for a permit covering all or part of the same target area or operational area that was denied may not be considered, and for a period of two years following the date of the election, a permit under that application may not be issued by the Texas Department of Licensing and Regulation and an election may not be held under this chapter.

Sec. 301.164. PERMIT FOR HAIL SUPPRESSION PROHIBITED OUTSIDE TARGET AREA OR IN AREA EXCLUDED BY ELECTION. (a) A permit may not be issued that provides for or allows the seeding of clouds for hail suppression outside the target area or within those counties or parts of counties located in any operational or target areas that were excluded from the coverage of the permit by an election under Section 301.163(a) or (b). Seeding may be done in those counties or parts of counties located in the operational or target area that were not excluded from the coverage of the permit by an election under Section 301.163(a) or (b), provided the seeding is reasonably calculated to take effect only within the target area.

(b) This section does not prohibit the observation of cloud and cloud formations.

Sec. 301.165. MONITOR OF PROGRAM. The Texas Department of Licensing and Regulation may monitor any program under conditions the Texas Department of Licensing and Regulation determines advisable.

Sec. 301.166. PETITION IN ADJACENT COUNTY. (a) On petition as provided in this subchapter, the commissioners court of any county outside but adjacent to a county included in the operational

area of an existing or proposed permit shall call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county.

(b) If the county voters voting in the election disapprove the issuance of permits authorizing hail suppression, the Texas Department of Licensing and Regulation may not issue a permit covering the county until the proposition has been approved at a subsequent election.

Sec. 301.167. INCLUSION OF CERTAIN COUNTIES AND PARTS OF COUNTIES. (a) If any county or part of a county has disapproved the issuance of a permit at a previous election held under this subchapter, that county or part of a county may not be included in any permit issued by the Texas Department of Licensing and Regulation until the voters of that county or part of a county have participated in a subsequent election at which a permit is approved.

(b) The applicant for a permit that includes that county or part of a county has the burden of petitioning for an election and depositing costs in the manner provided by this subchapter for the original election to approve or disapprove a permit.

[Sections 301.168-301.200 reserved for expansion]

SUBCHAPTER E. SANCTIONS

Sec. 301.201. PENALTIES. A person who violates this chapter is subject to Subchapters F and G, Chapter 51, Occupations Code, in the same manner as a person regulated by the Texas Department of Licensing and Regulation under other law is subject

to those subchapters.

Sec. 301.202. ACT OF GOD. If a person can establish that an event that would otherwise be a violation of this chapter or a rule adopted or order or permit issued under this chapter was caused solely by an act of God, war, strike, riot, or other catastrophe, the event is not a violation of this chapter or a rule, order, or permit issued under this chapter.

Sec. 301.203. DEFENSE EXCLUDED. Unless otherwise provided by this chapter, the fact that a person holds a permit issued by the Texas Department of Licensing and Regulation does not relieve that person from liability for the violation of this chapter or a rule adopted or order or permit issued under this chapter.

[Sections 301.204-301.250 reserved for expansion]

SUBCHAPTER F. REVOCATION AND SUSPENSION OF PERMIT

Sec. 301.251. DEFINITION. In this subchapter, "permit holder" includes each member of a partnership or association that is a permit holder and, with respect to a corporation that is a permit holder, each officer and the owner or owners of a majority of the corporate stock, provided that the member or owner controls at least 20 percent of the permit holder.

Sec. 301.252. GROUNDS FOR REVOCATION OR SUSPENSION OF PERMIT. After notice and hearing, the Texas Department of Licensing and Regulation may revoke or suspend a permit issued under this chapter on any of the following grounds:

(1) violating any term or condition of the permit, and revocation or suspension is necessary to maintain the quality of water or the quality of air in the state, or to otherwise protect

human health and the environment consistent with the objectives of the law within the jurisdiction of the Texas Department of Licensing and Regulation;

(2) having a record of environmental violations in the preceding five years at the permitted site;

(3) causing a discharge, release, or emission contravening a pollution control standard set by the Texas Department of Licensing and Regulation or contravening the intent of a law within the jurisdiction of the Texas Department of Licensing and Regulation;

(4) misrepresenting or failing to disclose fully all relevant facts in obtaining the permit or misrepresenting to the Texas Department of Licensing and Regulation any relevant fact at any time;

(5) being indebted to the state for fees, payment of penalties, or taxes imposed by the law within the department's jurisdiction;

(6) failing to ensure that the management of the permitted facility conforms or will conform to the law within the jurisdiction of the Texas Department of Licensing and Regulation;

(7) abandoning the permit or operations under the permit;

(8) the finding by the Texas Department of Licensing and Regulation that a change in conditions requires elimination of the discharge authorized by the permit; or

(9) failing to continue to possess qualifications necessary for the issuance of the permit.

Sec. 301.253. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE. (a) This section applies to a license issued under this chapter or under a rule adopted under this chapter.

(b) After notice and hearing, the Texas Department of Licensing and Regulation may suspend or revoke a license, place on probation a person whose license has been suspended, reprimand a license holder, or refuse to renew or reissue a license on any of the following grounds:

(1) having a record of environmental violations in the preceding five years at a permit site;

(2) committing fraud or deceit in obtaining the license;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as license holder;

(4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the Texas Department of Licensing and Regulation by the license holder;

(5) failing to keep and transmit records as required by a law within the jurisdiction of the Texas Department of Licensing and Regulation;

(6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a law within the jurisdiction of the Texas Department of Licensing and Regulation; or

(7) failing to continue to possess qualifications necessary for the issuance of the license.

Sec. 301.254. PROCEDURES FOR NOTICE AND HEARINGS. The

Texas Department of Licensing and Regulation by rule shall establish procedures for public notice and any public hearing under this subchapter.

Sec. 301.255. HEARINGS. A hearing under this subchapter shall be conducted in accordance with the hearing rules adopted by the Texas Department of Licensing and Regulation and the applicable provisions of Chapter 2001, Government Code.

Sec. 301.256. REVOCATION OR SUSPENSION BY CONSENT. If a permit holder or license holder requests or consents to the revocation or suspension of the permit or license, the executive director may revoke or suspend the permit or license without a hearing.

Sec. 301.257. OTHER RELIEF. A proceeding brought by the Texas Department of Licensing and Regulation under this subchapter does not affect the authority of the Texas Department of Licensing and Regulation to bring suit for injunctive relief or a penalty, or both, under this chapter.

Sec. 301.258. PROBATION REQUIREMENTS. If a license suspension is probated, the Texas Department of Licensing and Regulation may require the license holder:

(1) to report regularly to the Texas Department of Licensing and Regulation on matters that are the basis of the probation;

(2) to limit activities to the areas prescribed by the Texas Department of Licensing and Regulation; or

(3) to continue or renew professional education until the registrant attains a degree of skill satisfactory to the Texas

Department of Licensing and Regulation in those areas that are the basis of the probation.

[Sections 301.259-301.300 reserved for expansion]

SUBCHAPTER G. IMMUNITY; CERTAIN LEGAL RELATIONSHIPS

Sec. 301.301. IMMUNITY OF STATE. The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons or groups.

Sec. 301.302. PRIVATE LEGAL RELATIONSHIPS. (a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity that makes the participants subject to liability without fault.

(b) The fact that a person holds a license or permit under this chapter or that the person has complied with this chapter or the rules issued under this chapter is not admissible as evidence in any legal proceeding brought against the person.

CHAPTER 302. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM

Sec. 302.001. FINDINGS. The legislature finds that weather modification and control activities may have a significant impact on Texas agriculture. The legislature further finds that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities.

Sec. 302.002. DEFINITION. In this chapter, "weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural

development of atmospheric cloud forms or precipitation forms that occur in the troposphere.

Sec. 302.003. WEATHER MODIFICATION AND CONTROL GRANT PROGRAM. The department shall develop and administer a program awarding matching grants to political subdivisions of this state for weather modification and control.

Sec. 302.004. RULES. The department may adopt rules necessary to administer this chapter.

Sec. 302.005. CONTRACTS. The department may enter into contracts with public or private entities to assist the department in the administration or evaluation of the weather modification and control grant program or to conduct research relating to the effectiveness of weather modification and control activities.

Sec. 302.006. FUNDING. The department may accept appropriations and may solicit and accept gifts, grants, and other donations from any source to administer the weather modification and control grant program.

(b) Article 1, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001 (Article 165c, Vernon's Texas Civil Statutes), is repealed.

(c) Chapter 20, Agriculture Code, as added by Article 2, Chapter 376, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

ARTICLE 3. CHANGE RELATING TO ALCOHOLIC BEVERAGE CODE

SECTION 3.001. Section 251.11(c), Alcoholic Beverage Code, as added by Chapters 1001 and 1062, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(c) A petition for a local option election related to the legalization of the sale of wine on the premises of a holder of a winery permit must have the actual signatures, residence addresses, and voter registration certificate numbers of a number of qualified voters of the political subdivision equal to 25 percent of the registered voters in the subdivision who voted in the most recent general election.

ARTICLE 4. CHANGES RELATING TO BUSINESS & COMMERCE CODE

SECTION 4.001. (a) Section 17.46(b), Business & Commerce Code, as amended by Chapters 962 and 1229, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has

a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 19A, Article 21.07-6, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

(19) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or

anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21) promoting a pyramid promotional scheme, as defined by Section 17.461;

(22) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the

county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction; [~~or~~]

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act; or

(27) [~~(26)~~] taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or

another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

(b) Section 17.49(c), Business & Commerce Code, is amended to correct a reference to read as follows:

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(24) [~~17.46(b)(23)~~];

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or

(5) a violation of Section 17.46(b)(26).

SECTION 4.002. Section 35.42, Business & Commerce Code, is repealed as substantively identical to Section 35.45, Business & Commerce Code.

ARTICLE 5. CHANGES RELATING TO CODE OF CRIMINAL PROCEDURE

SECTION 5.0005. Article 2.13(c), Code of Criminal Procedure, is amended to correct a reference to read as follows:

(c) It is the duty of every officer to take possession of a child under Article 63.009(g) [~~62.009(g)~~].

SECTION 5.001. Article 12.01, Code of Criminal Procedure, as amended by Chapters 12, 1479, and 1482, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Art. 12.01. FELONIES. Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

(1) no limitation:

(A) murder and manslaughter; [~~or~~]

(B) sexual assault, if during the investigation of the offense biological matter is collected and subjected to forensic DNA testing and the testing results show that the matter does not match the victim or any other person whose identity is readily ascertained; or

(C) [~~, and~~] an offense involving leaving the scene of an accident under Section 550.021, Transportation Code, if the accident resulted in the death of a person;

(2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(D) injury to a child, elderly individual, or disabled individual punishable as a felony of the first degree under Section 22.04, Penal Code; or

(E) sexual assault, except as provided by Subdivision (1) or (5);

(3) seven years from the date of the commission of the offense:

(A) misapplication of fiduciary property or property of a financial institution;

(B) securing execution of document by deception; or

(C) a violation under Sections 153.403(22)-(39), Tax Code;

(4) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

(C) kidnapping;

(D) injury to a child, elderly individual, or disabled individual that is not punishable as a felony of the first degree under Section 22.04, Penal Code; or

(E) abandoning or endangering a child;

(5) ten years from the 18th birthday of the victim of the offense:

(A) indecency with a child under Section 21.11(a)(1) or (2), Penal Code; or

(B) except as provided by Subdivision (1), sexual

assault under Section 22.011(a)(2), Penal Code, or aggravated sexual assault under Section 22.021(a)(1)(B), Penal Code; or

(6) three years from the date of the commission of the offense: all other felonies.

SECTION 5.002. Article 45.050, Code of Criminal Procedure, as amended by Chapters 1297 and 1514, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Art. 45.050. FAILURE TO PAY FINE; CONTEMPT: JUVENILES. (a) In this article, "child" has the meaning assigned by Article 45.058(h).

(b) A justice or municipal court may not order the confinement of a child for:

(1) the failure to pay all or any part of a fine or costs imposed for the conviction of an offense punishable by fine only; or

(2) contempt of another order of a justice or municipal court.

(c) If a child fails to obey an order of a justice or municipal court under circumstances that would constitute contempt of court, the justice or municipal court:

(1) has jurisdiction to refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or

(2) may retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order [~~as provided by Section 54.023, Family Code~~] and impose a fine not to exceed $500; or

(B) order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child until the child fully complies with the orders of the court.

(d) A court that orders suspension or denial of a driver's license or permit under Subsection (c)(2)(B) shall notify the Department of Public Safety on receiving proof that the child has fully complied with the orders of the court.

SECTION 5.0025. Article 57.01(4), Code of Criminal Procedure, is amended to correct a reference to read as follows:

(4) "Victim" means a person who was the subject of an offense the commission of which leads to a reportable conviction or adjudication under Chapter 62 [~~Article 6252-13c.1, Revised Statutes~~].

SECTION 5.003. (a) Article 62.08, Code of Criminal Procedure, as amended by Chapters 211 and 932, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Art. 62.08. CENTRAL DATABASE; PUBLIC INFORMATION. (a) The department shall maintain a computerized central database containing only the information required for registration under this chapter.

(b) The information contained in the database is public information, with the exception of any information:

(1) regarding the person's social security number, driver's license number, or telephone number;

(2) that is required by the department under Article 62.02(b)(6); or

(3) that would identify the victim of the offense for which the person is subject to registration.

(c) Notwithstanding Chapter 730, Transportation Code, the department shall maintain in the database, and shall post on any department website related to the database, any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license under Section 521.103 or 521.272, Transportation Code. The department shall update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.

(d) A local law enforcement authority shall release public information described under Subsection (b) to any person who submits to the authority a written request for the information. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(e) [~~(d)~~] The department shall provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. The department shall provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

(f) [~~(e)~~] On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, the department shall release any information described by Subsection (a) to the licensing authority.

(g) [~~(f)~~] For the purposes of Subsections (e) [~~(d)~~] and (f) [~~(e)~~]:

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) "Licensing authority" means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

(b) Article 62.02(b), Code of Criminal Procedure, is amended to read as follows:

(b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority, county jail, and court with a form for registering persons required by this chapter to register. The registration form shall require:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, shoe size, and home address;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the

person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.08(g) [~~62.08(f)~~], that is held or sought by the person; and

(6) any other information required by the department.

SECTION 5.004. Article 103.013, Code of Criminal Procedure, is repealed to conform to the repeal of the law from which it was derived by Chapter 1279, Acts of the 77th Legislature, Regular Session, 2001.

ARTICLE 6. CHANGES RELATING TO EDUCATION CODE

SECTION 6.001. Section 25.093, Education Code, as amended by Chapters 1504 and 1514, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 25.093. PARENT CONTRIBUTING TO TRUANCY. (a) If a warning is issued as required by Section 25.095(a), the parent with criminal negligence fails to require the child to attend school as required by law, and the child has absences for the amount of time specified under Section 25.094, the parent commits an offense.

(b) The attendance officer or other appropriate school official shall file a complaint against the parent in a justice court of any precinct in the county in which the parent resides or

in which the school is located or in a municipal court of the municipality in which the parent resides or in which the school is located.

(c) An offense under Subsection (a) is a Class C misdemeanor. Each day the child remains out of school may constitute a separate offense. Two or more offenses under Subsection (a) may be consolidated and prosecuted in a single action. If the court orders deferred disposition under Article 45.051, Code of Criminal Procedure, the court may require the defendant to provide personal services to a charitable or educational institution as a condition of the deferral.

(d) A fine collected under this section shall be deposited as follows:

(1) one-half shall be deposited to the credit of the operating fund of, as applicable:

(A) the school district in which the child attends school;

(B) the open-enrollment charter school the child attends; or

(C) the juvenile justice alternative education program that the child has been ordered to attend; and

(2) one-half shall be deposited to the credit of:

(A) the general fund of the county, if the complaint is filed in the county court or justice court; or

(B) the general fund of the municipality, if the complaint is filed in municipal court.

(e) At the trial of any person charged with violating this

section, the attendance records of the child may be presented in court by any authorized employee of the school district or open-enrollment charter school, as applicable.

(f) The court in which a conviction, deferred adjudication, or deferred disposition for an offense under Subsection (a) occurs may order the defendant to attend a program for parents of students with unexcused absences that provides instruction designed to assist those parents in identifying problems that contribute to the students' unexcused absences and in developing strategies for resolving those problems if a program is available.

(g) If a parent refuses to obey a court order entered under this section, the court may punish the parent for contempt of court under Section 21.002, Government Code.

(h) It is an affirmative defense to prosecution for an offense under Subsection (a) that one or more of the absences required to be proven under Subsection (a) was excused by a school official or should be excused by the court. The burden is on the defendant to show by a preponderance of the evidence that the absence has been or should be excused. A decision by the court to excuse an absence for purposes of this section does not affect the ability of the school district to determine whether to excuse the absence for another purpose.

(i) In this section, "parent" includes a person standing in parental relation.

SECTION 6.002. Section 25.095(a), Education Code, as amended by Chapters 1504 and 1514, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) A school district or open-enrollment charter school shall notify a student's parent in writing at the beginning of the school year that if the student is absent from school on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period:

(1) the student's parent is subject to prosecution under Section 25.093; and

(2) the student is subject to prosecution under Section 25.094 or to referral to a juvenile court in a county with a population of less than 100,000 for conduct that violates that section.

SECTION 6.003. Sections 28.025(a) and (c), Education Code, as amended by Chapters 187 and 834, Acts of the 77th Legislature, Regular Session, 2001, are reenacted to read as follows:

(a) The State Board of Education by rule shall determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under Section 28.002.

(c) A person may receive a diploma if the person is eligible for a diploma under Section 28.0251. In other cases, a student may graduate and receive a diploma only if:

(1) the student successfully completes the curriculum requirements identified by the State Board of Education under Subsection (a) and complies with Section 39.025(a); or

(2) the student successfully completes an individualized education program developed under Section 29.005.

SECTION 6.0031. Section 29.903, Education Code, as added by Chapter 451, Acts of the 77th Legislature, Regular Session, 2001, is renumbered as Section 29.907, Education Code, and the heading of the section is amended to read as follows:

Sec. 29.907 [~~29.903~~]. CELEBRATE FREEDOM WEEK.

SECTION 6.004. Section 31.151(a), Education Code, as amended by Chapters 129 and 805, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) A publisher or manufacturer of textbooks:

(1) shall furnish any textbook the publisher or manufacturer offers in this state, at a price that does not exceed the lowest price at which the publisher offers that textbook for adoption or sale to any state, public school, or school district in the United States;

(2) shall automatically reduce the price of a textbook sold for use in a school district or open-enrollment charter school to the extent that the price is reduced elsewhere in the United States;

(3) shall provide any textbook or ancillary item free of charge in this state to the same extent that the publisher or manufacturer provides the textbook or ancillary item free of charge to any state, public school, or school district in the United States;

(4) shall guarantee that each copy of a textbook sold in this state is at least equal in quality to copies of that textbook sold elsewhere in the United States and is free from factual error;

(5) may not become associated or connected with, directly or indirectly, any combination in restraint of trade in textbooks or enter into any understanding or combination to control prices or restrict competition in the sale of textbooks for use in this state;

(6) shall:

(A) maintain a depository in this state or arrange with a depository in this state to receive and fill orders for textbooks, other than on-line textbooks or on-line textbook components, consistent with State Board of Education rules; or

(B) deliver textbooks to a school district or open-enrollment charter school without a delivery charge to the school district, open-enrollment charter school, or state, if:

(i) the publisher or manufacturer does not maintain or arrange with a depository in this state under Paragraph [~~Subsection~~] (A) and the publisher's or manufacturer's textbooks and related products are warehoused or otherwise stored less than 300 miles from a border of this state; or

(ii) the textbooks are on-line textbooks or on-line textbook components;

(7) shall, at the time an order for textbooks is acknowledged, provide to school districts or open-enrollment charter schools an accurate shipping date for textbooks that are back-ordered;

(8) shall guarantee delivery of textbooks at least 10 business days before the opening day of school of the year for which the textbooks are ordered if the textbooks are ordered by a date

specified in the sales contract; and

(9) shall submit to the State Board of Education an affidavit certifying any textbook the publisher or manufacturer offers in this state to be free of factual errors at the time the publisher executes the contract required by Section 31.026.

SECTION 6.005. (a) Section 33.002, Education Code, is amended to read as follows:

Sec. 33.002. CERTIFIED COUNSELOR. (a) <u>This section applies only to a school district that receives funds as provided by Section 42.152(i).</u>

<u>(b)</u> A school district with 500 or more students enrolled in elementary school grades shall employ a counselor certified under the rules of the State Board for Educator Certification for each elementary school in the district. A school district shall employ at least one counselor for every 500 elementary school students in the district.

<u>(c)</u> [~~(b)~~] A school district with fewer than 500 students enrolled in elementary school grades shall provide guidance and counseling services to elementary school students by:

(1) employing a part-time counselor certified under the rules of the State Board for Educator Certification;

(2) employing a part-time teacher certified as a counselor under the rules of the State Board for Educator Certification; or

(3) entering into a shared services arrangement agreement with one or more school districts to share a counselor certified under the rules of the State Board for Educator

Certification.

(b) Section 33.001, Education Code, as amended by Chapters 1223 and 1487, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 6.006. Section 37.004, Education Code, as amended by Chapters 767 and 1225, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 37.004. PLACEMENT OF STUDENTS WITH DISABILITIES. (a) The placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee.

(b) Any disciplinary action regarding a student with a disability who receives special education services that would constitute a change in placement under federal law may be taken only after the student's admission, review, and dismissal committee conducts a manifestation determination review under 20 U.S.C. Section 1415(k)(4) and its subsequent amendments. Any disciplinary action regarding the student shall be determined in accordance with federal law and regulations, including laws or regulations requiring the provision of:

(1) functional behavioral assessments;

(2) positive behavioral interventions, strategies, and supports; [~~and~~]

(3) behavioral intervention plans; and

<u>(4)</u> the manifestation determination review.

(c) A student with a disability who receives special education services may not be placed in alternative education

programs solely for educational purposes.

(d) A teacher in an alternative education program under Section 37.008 who has a special education assignment must hold an appropriate certificate or permit for that assignment.

[~~(e) Notwithstanding any other provision of this subchapter, in a county with a juvenile justice alternative education program established under Section 37.011, the expulsion under a provision of Section 37.007 described by this subsection of a student with a disability who receives special education services must occur in accordance with this subsection and Subsection (f). The school district from which the student was expelled shall, in accordance with applicable federal law, provide the administrator of the juvenile justice alternative education program or the administrator's designee with reasonable notice of the meeting of the student's admission, review, and dismissal committee to discuss the student's expulsion. A representative of the juvenile justice alternative education program may participate in the meeting to the extent that the meeting relates to the student's placement in the program. This subsection applies only to an expulsion under:~~

[~~(1) Section 37.007(b), (c), or (f); or~~

[~~(2) Section 37.007(d) as a result of conduct that contains the elements of any offense listed in Section 37.007(b)(3) against any employee or volunteer in retaliation for or as a result of the person's employment or association with a school district.~~

[~~(f) If, after placement of a student in a juvenile justice alternative education program under Subsection (e), the administrator of the program or the administrator's designee has~~

~~concerns that the student's educational or behavioral needs cannot be met in the program, the administrator or designee shall immediately provide written notice of those concerns to the school district from which the student was expelled. The student's admission, review, and dismissal committee shall meet to reconsider the placement of the student in the program. The district shall, in accordance with applicable federal law, provide the administrator or designee with reasonable notice of the meeting, and a representative of the program may participate in the meeting to the extent that the meeting relates to the student's continued placement in the program.~~

[~~(g) Subsections (e) and (f) and this subsection expire September 1, 2003.~~]

SECTION 6.007. Section 39.027(e), Education Code, as amended by Chapters 8 and 725, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(e) The commissioner shall develop an assessment system that shall be used for evaluating the academic progress, including reading proficiency in English, of all students of limited English proficiency, as defined by Section 29.052. A student who is exempt from the administration of an assessment instrument under Subsection (a)(3) or (4) who achieves reading proficiency in English as determined by the assessment system developed under this subsection shall be administered the assessment instruments described by Sections 39.023(a) and (c). The performance under the assessment system developed under this subsection of students to whom Subsection (a)(3) or (4) applies shall be included in the

academic excellence indicator system under Section 39.051, the performance report under Section 39.053, and the comprehensive annual report under Section 39.182.

SECTION 6.008. Section 42.103(e), Education Code, is amended to correct cross-references to read as follows:

(e) The commissioner may make the adjustment authorized by Subsection (d)(2) [~~(d)(3)~~] only if the district's wealth per student does not exceed the equalized wealth level under Section 41.002. For purposes of this subsection, a district's wealth per student is determined in the manner provided by Section 41.001, except that the adjustment provided by Subsection (d)(2) [~~(d)(3)~~] is not used in computing the number of students in weighted average daily attendance.

SECTION 6.009. Section 42.152(r), Education Code, is amended to correct a cross-reference to read as follows:

(r) The commissioner shall grant a one-year exemption from the requirements of Subsection (q) [~~(g)~~] to a school district in which the group of students who have failed to perform satisfactorily in the preceding school year on an assessment instrument required under Section 39.023(a), (c), or (l) subsequently performs on those assessment instruments at a level that meets or exceeds a level prescribed by commissioner rule. Each year the commissioner, based on the most recent information available, shall determine if a school district is entitled to an exemption for the following school year and notify the district of that determination.

SECTION 6.010. Section 54.060(b), Education Code, as

amended by Chapters 80 and 1392, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(b) The foreign student tuition fee prescribed in this chapter does not apply to a foreign student who is a resident of a nation situated adjacent to Texas, demonstrates financial need as provided by Subsection (c), and registers in:

(1) any general academic teaching institution or component of the Texas State Technical College System located in a county immediately adjacent to the nation in which the foreign student resides;

(2) lower division courses at a community or junior college having a partnership agreement pursuant to Subchapter N, Chapter 51, with an upper-level university and both institutions are located in the county immediately adjacent to the nation in which the foreign student resides;

(3) Texas A&M University--Kingsville, Texas A&M University--Corpus Christi, or The University of Texas at San Antonio; or

(4) courses that are part of a graduate degree program in public health and are conducted in a county immediately adjacent to the nation in which the foreign student resides.

SECTION 6.011. Section 105.302(d), Education Code, as amended by Chapters 25 and 224, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(d) A member of the advisory board serves for a term of six years. If reappointed, a member may serve for more than one term.

SECTION 6.012. (a) The Education Code is amended to codify

the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) by adding Title 5 to read as follows:

TITLE 5. OTHER EDUCATION

CHAPTER 1001. DRIVER AND TRAFFIC SAFETY EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1001.001. DEFINITIONS. In this chapter:

(1) "Agency" means the Texas Education Agency.

(2) "Approved driving safety course" means a driving safety course approved by the commissioner.

(3) "Commissioner" means the commissioner of education.

(4) "Course provider" means an enterprise that:

(A) maintains a place of business or solicits business in this state;

(B) is operated by an individual, association, partnership, or corporation; and

(C) has received an approval for a driving safety course from the commissioner or has been designated by a person who has received that approval to conduct business and represent the person in this state.

(5) "Department" means the Texas Department of Public Safety.

(6) "Driver education" means a nonvocational course of instruction that provides the knowledge and hands-on experience to prepare persons for written and practical driving tests that lead to authorization to operate a vehicle.

(7) "Driver education school" means an enterprise that:

(A) maintains a place of business or solicits business in this state; and

(B) is operated by an individual, association, partnership, or corporation for educating and training persons at a primary or branch location in driver education or driver education instructor development.

(8) "Driver training" means:

(A) driver education provided by a driver education school; or

(B) driving safety training provided by a driving safety school.

(9) "Driver training school" means a driver education school or driving safety school.

(10) "Driver training school employee" means a person, other than an owner, who directly or indirectly receives compensation from a driver training school for instructional or other services rendered.

(11) "Driver training school owner" means:

(A) in the case of a driver training school owned by an individual, the individual;

(B) in the case of a driver training school owned by a partnership, all full, silent, or limited partners; or

(C) in the case of a driver training school owned by a corporation, the corporation, its directors and officers, and each shareholder owning at least 10 percent of the total of the

outstanding shares.

(12) "Driving safety course" means a course of instruction intended to improve a driver's knowledge, perception, and attitude about driving.

(13) "Driving safety school" means an enterprise that:

(A) maintains a place of business or solicits business in this state; and

(B) is operated by an individual, association, partnership, or corporation for educating and training persons in driving safety.

(14) "Instructor" means an individual who holds a license for the type of instruction being given.

(15) "Person" means an individual, firm, partnership, association, corporation, or other private entity or combination of persons.

Sec. 1001.002. EXEMPTIONS. (a) An organization is exempt from this chapter if the organization:

(1) has 50,000 or more members;

(2) qualifies for a tax exemption under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c)(4) of that code; and

(3) conducts for its members and other individuals who are at least 50 years of age a driving safety course that is not used for purposes of Article 45.0511, Code of Criminal Procedure.

(b) A driving safety course is exempt from this chapter if the course is taught without providing a uniform certificate of course completion to a person who successfully completes the

course.

(c) A driver education course is exempt from this chapter, other than Section 1001.055, if the course is:

(1) conducted by a vocational driver training school operated to train or prepare a person for a field of endeavor in a business, trade, technical, or industrial occupation;

(2) conducted by a school or training program that offers only instruction of purely avocational or recreational subjects as determined by the commissioner;

(3) sponsored by an employer to train its own employees without charging tuition;

(4) sponsored by a recognized trade, business, or professional organization with a closed membership to instruct the members of the organization; or

(5) conducted by a school regulated and approved under another law of this state.

Sec. 1001.003. LEGISLATIVE INTENT REGARDING SMALL BUSINESSES. It is the intent of the legislature that agency rules that affect driver training schools that qualify as small businesses be adopted and administered so as to have the least possible adverse economic effect on the schools.

Sec. 1001.004. COST OF ADMINISTERING CHAPTER. The cost of administering this chapter shall be included in the state budget allowance for the agency.

[Sections 1001.005-1001.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

Sec. 1001.051. JURISDICTION OVER SCHOOLS. The agency has

jurisdiction over and control of driver training schools regulated under this chapter.

Sec. 1001.052. RULES. The agency shall adopt and administer comprehensive rules governing driving safety courses.

Sec. 1001.053. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall:

(1) administer the policies of this chapter;

(2) enforce minimum standards for driver training schools under this chapter;

(3) adopt and enforce rules necessary to administer this chapter; and

(4) visit a driver training school or course provider and reexamine the school or course provider for compliance with this chapter.

(b) The commissioner may designate a person knowledgeable in the administration of regulating driver training schools to administer this chapter.

(c) The commissioner may adopt rules to ensure the integrity of approved driving safety courses and to enhance program quality.

Sec. 1001.054. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) The commissioner may not adopt a rule restricting advertising or competitive bidding by a driver training school except to prohibit a false, misleading, or deceptive practice.

(b) The commissioner may not include in rules to prohibit false, misleading, or deceptive practices by a driver training school a rule that restricts:

(1) the use of an advertising medium;

(2) the outside dimensions of a printed advertisement or outdoor display;

(3) the duration of an advertisement; or

(4) advertisement under a trade name.

(c) The commissioner by rule may restrict advertising by a branch location of a driver training school so that the location adequately identifies the primary location of the school in a solicitation.

Sec. 1001.055. DRIVER EDUCATION CERTIFICATES. (a) The agency shall print and supply to each licensed or exempt driver education school driver education certificates to be used for certifying completion of an approved driver education course to satisfy the requirements of Section 521.204(a)(2), Transportation Code. The certificates must be numbered serially.

(b) The agency by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized reproduction or misuse of the certificates.

(c) The agency may charge a fee of not more than $4 for each certificate.

Sec. 1001.056. UNIFORM CERTIFICATES OF COURSE COMPLETION. (a) In this section, "operator" means a person approved by a course provider to conduct an approved driving safety course.

(b) The agency shall print and supply to each licensed course provider uniform certificates of course completion. The certificates must be numbered serially.

(c) The agency by rule shall provide for the design and distribution of the certificates in a manner that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates.

(d) A certificate under this section must:

(1) be in a form required by the agency; and

(2) include an identifying number by which the agency, a court, or the department may verify its authenticity with the course provider.

(e) The agency may charge a fee of not more than $4 for each certificate. A course provider shall charge an operator a fee equal to the amount of the fee paid to the agency for a certificate.

(f) A course provider license entitles a course provider to purchase certificates for only one approved driving safety course.

(g) The agency shall issue duplicate certificates. The commissioner by rule shall determine the amount of the fee for issuance of a duplicate certificate.

Sec. 1001.057. ELECTRONIC TRANSMISSION OF DRIVING SAFETY COURSE INFORMATION. The agency shall investigate options to develop and implement procedures to electronically transmit information relating to driving safety courses to municipal and justice courts.

[Sections 1001.058-1001.100 reserved for expansion]

SUBCHAPTER C. CURRICULUM

Sec. 1001.101. DRIVER EDUCATION COURSE CURRICULUM AND TEXTBOOKS. The commissioner by rule shall establish the curriculum and designate the textbooks to be used in a driver education course.

Sec. 1001.102. ALCOHOL AWARENESS INFORMATION. (a) The agency by rule shall require that information relating to alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle be included in the curriculum of any driver education course or driving safety course.

(b) In developing rules under this section, the agency shall consult with the department.

Sec. 1001.103. DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS. (a) In this section, "drug and alcohol driving awareness program" means a course with emphasis on curricula designed to prevent or deter misuse and abuse of controlled substances.

(b) The agency shall develop standards for a separate school certification and approve curricula for drug and alcohol driving awareness programs that include one or more courses. Except as provided by agency rule, a program must be offered in the same manner as a driving safety course.

(c) The standards under Subsection (b) may require a course provider to evaluate procedures, projects, techniques, and controls conducted as part of the program.

(d) In accordance with Section 461.013(b), Health and Safety Code, the agency and the Texas Commission on Alcohol and Drug Abuse shall enter into a memorandum of understanding for the interagency approval of the required curricula.

(e) Notwithstanding Section 1001.056, Subchapter D, and Sections 1001.213 and 1001.303, the commissioner may establish fees in connection with the programs under this section. The fees must be in amounts reasonable and necessary to administer the agency's

duties under this section.

Sec. 1001.104. HOSPITAL AND REHABILITATION FACILITIES. (a) The agency shall enter into a memorandum of understanding with the Texas Rehabilitation Commission and the department for the interagency development of curricula and licensing criteria for hospital and rehabilitation facilities that teach driver education.

(b) The agency shall administer comprehensive rules governing driver education courses adopted by mutual agreement among the agency, the Texas Rehabilitation Commission, and the department.

Sec. 1001.105. TEXAS DEPARTMENT OF INSURANCE. The agency shall enter into a memorandum of understanding with the Texas Department of Insurance for the interagency development of a curriculum for driving safety courses.

Sec. 1001.106. INFORMATION RELATING TO RAILROAD AND HIGHWAY GRADE CROSSING SAFETY. (a) A driving safety course must include information on railroad and highway grade crossing safety.

(b) The commissioner by rule shall provide minimum standards of curriculum relating to operation of vehicles at railroad and highway grade crossings.

(c) Sections 1001.454, 1001.456, and 1001.553 do not apply to a violation of this section or a rule adopted under this section.

(d) Sections 1001.455(a)(6), 1001.501, 1001.551, 1001.552, and 1001.554 do not apply to a violation of this section.

Sec. 1001.107. INFORMATION RELATING TO LITTER PREVENTION. (a) The commissioner by rule shall require that information

relating to litter prevention be included in the curriculum of each driver education and driving safety course.

(b) In developing rules under this section, the commissioner shall consult the department.

Sec. 1001.108. INFORMATION RELATING TO ANATOMICAL GIFTS. (a) The commissioner by rule shall require that information relating to anatomical gifts be included in the curriculum of each driver education course and driving safety course.

(b) The curriculum must include information about each matter listed in Section 49.001(a), Health and Safety Code.

(c) In developing rules under this section, the commissioner shall consult with the department and the Texas Department of Health.

[Sections 1001.109-1001.150 reserved for expansion]

SUBCHAPTER D. FEES

Sec. 1001.151. APPLICATION, LICENSE, AND REGISTRATION FEES. (a) The commissioner shall collect application, license, and registration fees. The fees must be in amounts sufficient to cover administrative costs and are nonrefundable.

(b) The fee for an initial driver education school license is $1,000 plus $850 for each branch location.

(c) The fee for an initial driving safety school license is an appropriate amount established by the commissioner not to exceed $200.

(d) The fee for an initial course provider license is an appropriate amount established by the commissioner not to exceed $2,000, except that the agency may waive the fee if revenue received

from the course provider is sufficient to cover the cost of licensing the course provider.

(e) The annual renewal fee for a course provider, driving safety school, driver education school, or branch location is an appropriate amount established by the commissioner not to exceed $200, except that the agency may waive the fee if revenue generated by the issuance of uniform certificates of course completion and driver education certificates is sufficient to cover the cost of administering this chapter and Article 45.0511, Code of Criminal Procedure.

(f) The fee for a change of address of:

(1) a driver education school is $180; and

(2) a driving safety school or course provider is $50.

(g) The fee for a change of name of:

(1) a driver education school or course provider or an owner of a driver education school or course provider is $100; and

(2) a driving safety school or owner of a driving safety school is $50.

(h) The application fee for each additional driver education or driving safety course at a driver training school is $25.

(i) The application fee for:

(1) each director is $30; and

(2) each assistant director or administrative staff member is $15.

(j) Each application for approval of a driving safety course that has not been evaluated by the commissioner must be accompanied

by a nonrefundable fee of $9,000.

(k) An application for an original driver education or driving safety instructor license must be accompanied by a processing fee of $50 and an annual license fee of $25, except that the commissioner may not collect the processing fee from an applicant for a driver education instructor license who is currently teaching a driver education course in a public school in this state.

(l) The commissioner shall establish the amount of the fee for a duplicate license.

Sec. 1001.152. DUTY TO REVIEW AND RECOMMEND ADJUSTMENTS IN FEE AMOUNTS. The commissioner shall periodically review the amounts of fees and recommend to the legislature adjustments to those amounts.

Sec. 1001.153. COMPLAINT INVESTIGATION FEE. (a) The commissioner shall establish the amount of the fee to investigate a driver training school or course provider to resolve a complaint against the school or course provider.

(b) The fee may be charged only if:

(1) the complaint could not have been resolved solely by telephone or in writing;

(2) a representative of the agency visited the school or course provider as a part of the complaint resolution process; and

(3) the school or course provider was found to be at fault.

[Sections 1001.154-1001.200 reserved for expansion]

SUBCHAPTER E. LICENSING OF SCHOOLS AND COURSE PROVIDERS

Sec. 1001.201. LICENSE REQUIRED. A person may not:

(1) operate a school that provides a driver education course unless the person holds a driver education school license;

(2) operate a school that provides driving safety courses unless the person holds a driving safety school license; or

(3) operate as a course provider unless the person holds a course provider license.

Sec. 1001.202. LOCATIONS. (a) A driver education school that teaches a driver education course at one or more branch locations must obtain a separate driver education school license for its main business location and for each branch location. A driver education school may not operate a branch location of a branch location.

(b) A driving safety school may use multiple classroom locations to teach a driving safety course if each location:

(1) is approved by the parent school and the agency;

(2) has the same name as the parent school; and

(3) has the same ownership as the parent school.

Sec. 1001.203. APPLICATION. To operate or do business in this state, a driver training school must apply to the commissioner for the appropriate license. The application must:

(1) be in writing;

(2) be in the form prescribed by the commissioner;

(3) include all required information; and

(4) be verified.

Sec. 1001.204. REQUIREMENTS FOR DRIVER EDUCATION SCHOOL LICENSE. The commissioner shall approve an application for a driver education school license if, on investigation of the premises of the school, it is determined that the school:

(1) has courses, curricula, and instruction of a quality, content, and length that reasonably and adequately achieve the stated objective for which the courses, curricula, and instruction are offered;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality in the classroom and behind the wheel;

(3) has directors, instructors, and administrators who have adequate educational qualifications and experience;

(4) provides to each student before enrollment:

(A) a copy of:

(i) the refund policy;

(ii) the schedule of tuition, fees, and other charges; and

(iii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) the name, mailing address, and telephone number of the agency for the purpose of directing complaints to the agency;

(5) maintains adequate records as prescribed by the commissioner to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(6) on completion of training, issues each student a certificate indicating the course name and satisfactory completion;

(7) complies with all county, municipal, state, and federal regulations, including fire, building, and sanitation codes and assumed name registration;

(8) is financially sound and capable of fulfilling its commitments for training;

(9) has administrators, directors, owners, and instructors who are of good reputation and character;

(10) maintains and publishes as part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the commissioner;

(12) does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing by the commissioner;

(13) submits to the agency for approval the applicable course hour lengths and curriculum content for each course offered by the school;

(14) does not owe an administrative penalty under this chapter; and

(15) meets any additional criteria required by the

agency.

Sec. 1001.205. REQUIREMENTS FOR DRIVING SAFETY SCHOOL LICENSE. The commissioner shall approve an application for a driving safety school license if on investigation the agency determines that the school:

(1) has driving safety courses, curricula, and instruction of a quality, content, and length that reasonably and adequately achieve the stated objective for which the course, curricula, and instruction are developed by the course provider;

(2) has adequate space, equipment, instructional material, and instructors to provide training of good quality;

(3) has instructors and administrators who have adequate educational qualifications and experience;

(4) maintains adequate records as prescribed by the commissioner to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(5) complies with all county, municipal, state, and federal laws, including fire, building, and sanitation codes and assumed name registration;

(6) has administrators, owners, and instructors who are of good reputation and character;

(7) does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the commissioner;

(8) does not use a name similar to the name of another existing school or tax-supported educational establishment in this

state, unless specifically approved in writing by the commissioner;

(9) maintains and uses the approved contract and policies developed by the course provider;

(10) does not owe an administrative penalty under this chapter;

(11) will not provide a driving safety course to a person for less than $25; and

(12) meets additional criteria required by the commissioner.

Sec. 1001.206. REQUIREMENTS FOR COURSE PROVIDER LICENSE. The commissioner shall approve an application for a course provider license if on investigation the agency determines that:

(1) the course provider has an approved course that at least one licensed driving safety school is willing to offer;

(2) the course provider has adequate educational qualifications and experience;

(3) the course provider will:

(A) develop and provide to each driving safety school that offers the approved course a copy of:

(i) the refund policy; and

(ii) the regulations relating to absence, grading policy, and rules of operation and conduct; and

(B) provide to the driving safety school the name, mailing address, and telephone number of the agency for the purpose of directing complaints to the agency;

(4) a copy of the information provided to each driving safety school under Subdivision (3) will be provided to each

student by the school before enrollment;

(5) not later than the 15th working day after the date the person successfully completes the course, the course provider will mail a uniform certificate of course completion to the person indicating the course name and successful completion;

(6) the course provider maintains adequate records as prescribed by the commissioner to show attendance and progress or grades and enforces satisfactory standards relating to attendance, progress, and conduct;

(7) the course provider complies with all county, municipal, state, and federal laws, including assumed name registration and other applicable requirements;

(8) the course provider is financially sound and capable of fulfilling its commitments for training;

(9) the course provider is of good reputation and character;

(10) the course provider maintains and publishes as a part of its student enrollment contract the proper policy for the refund of the unused portion of tuition, fees, and other charges if a student fails to take the course or withdraws or is discontinued from the school at any time before completion;

(11) the course provider does not use erroneous or misleading advertising, either by actual statement, omission, or intimation, as determined by the commissioner;

(12) the course provider does not use a name similar to the name of another existing school or tax-supported educational institution in this state, unless specifically approved in writing

by the commissioner;

(13) the course provider does not owe an administrative penalty under this chapter; and

(14) the course provider meets additional criteria required by the commissioner.

Sec. 1001.207. BOND REQUIREMENTS: DRIVER EDUCATION SCHOOL. (a) Before a driver education school may be issued a license, the school must file a corporate surety bond with the commissioner in the amount of:

(1) $10,000 for the primary location of the school; and

(2) $5,000 for each branch location.

(b) A bond issued under Subsection (a) must be:

(1) issued in a form approved by the commissioner;

(2) issued by a company authorized to do business in this state;

(3) payable to the state to be used only for payment of a refund due to a student or potential student;

(4) conditioned on the compliance of the school and its officers, agents, and employees with this chapter and rules adopted under this chapter; and

(5) issued for a period corresponding to the term of the license.

(c) Posting of a bond in the amount required under Subsection (a) satisfies the requirements for financial stability for driver education schools under this chapter.

Sec. 1001.208. BOND NOT REQUIRED FOR DRIVING SAFETY SCHOOL.

A driving safety school is not required to post a surety bond.

Sec. 1001.209. BOND REQUIREMENTS: COURSE PROVIDER. (a) Before a course provider may be issued a license, the course provider must provide a corporate surety bond in the amount of $25,000.

(b) A bond issued under Subsection (a) must be:

(1) issued by a company authorized to do business in this state;

(2) payable to the state to be used:

(A) for payment of a refund due a student of the course provider's approved course;

(B) to cover the payment of unpaid fees or penalties assessed by the agency; or

(C) to recover the cost of uniform certificates of course completion the agency demands be returned or any cost associated with the certificates;

(3) conditioned on the compliance of the course provider and its officers, agents, and employees with this chapter and rules adopted under this chapter; and

(4) issued for a period corresponding to the term of the license.

Sec. 1001.210. ALTERNATE FORM OF SECURITY. Instead of the bond required by Section 1001.207 or 1001.209, a driver education school or course provider may provide another form of security that is:

(A) approved by the commissioner; and

(B) in the amount required for a comparable bond

under Section 1001.207 or 1001.209.

Sec. 1001.211. ISSUANCE AND FORM OF LICENSE. (a) The commissioner shall issue a license to an applicant for a license under this subchapter if:

(1) the application is submitted in accordance with this subchapter; and

(2) the applicant meets the requirements of this chapter.

(b) A license must be in a form determined by the commissioner and must show in a clear and conspicuous manner:

(1) the date of issuance, effective date, and term of the license;

(2) the name and address of the driver training school or course provider;

(3) the authority for and conditions of approval;

(4) the commissioner's signature; and

(5) any other fair and reasonable representation that is consistent with this chapter and that the commissioner considers necessary.

(c) An applicant may obtain both a driver education school license and a driving safety school license.

Sec. 1001.212. NOTICE OF DENIAL OF LICENSE. The commissioner shall provide a person whose application for a license under this subchapter is denied a written statement of the reasons for the denial.

Sec. 1001.213. LICENSE NOT TRANSFERABLE; CHANGE OF OWNERSHIP. (a) A license under this subchapter may not be

transferred and is the property of the state.

(b) If a change in ownership of a driver training school or course provider is proposed, a new owner shall apply for a new school or course provider license at least 30 days before the date of the change.

(c) Instead of the fees required by Section 1001.151, the fee for a new driver education school or course provider license under Subsection (b) is $500, plus $200 for each branch location, if:

(1) the new owner is substantially similar to the previous owner; and

(2) there is no significant change in the management or control of the driver education school or course provider.

(d) The commissioner is not required to reinspect a school or a branch location after a change of ownership.

Sec. 1001.214. DUPLICATE LICENSE. A duplicate license may be issued to a driver training school or course provider if:

(1) the original license is lost or destroyed; and

(2) an affidavit of that fact is filed with the agency.

[Sections 1001.215-1001.250 reserved for expansion]

SUBCHAPTER F. LICENSING OF INSTRUCTORS

Sec. 1001.251. LICENSE REQUIRED FOR INSTRUCTOR. (a) A person may not teach or provide driver education, either as an individual or in a driver education school, or conduct any phase of driver education, unless the person holds a driver education instructor license issued by the agency.

(b) A person may not teach or provide driving safety

training, either as an individual or in a driving safety school, or conduct any phase of driving safety education, unless the person holds a driving safety instructor license issued by the agency. This subsection does not apply to an instructor of a driving safety course that does not provide a uniform certificate of course completion to its graduates.

Sec. 1001.252. SIGNATURE AND SEAL ON LICENSE REQUIRED. A license under this subchapter must be signed by the commissioner.

Sec. 1001.253. DRIVER EDUCATION INSTRUCTOR TRAINING. (a) The commissioner shall establish standards for certification of professional and paraprofessional personnel who conduct driver education programs in driver education schools.

(b) A driver education instructor license authorizing a person to teach or provide behind-the-wheel training may not be issued unless the person has successfully completed six semester hours of driver and traffic safety education or a program of study in driver education approved by the commissioner from an approved driver education school.

(c) A person who holds a driver education instructor license authorizing behind-the-wheel training may not be approved to assist a classroom instructor in the classroom phase of driver education unless the person has successfully completed the three additional semester hours of training required for a classroom instructor or a program of study in driver education approved by the commissioner.

(d) Except as provided by Section 1001.254, a driver education instructor license authorizing a person to teach or provide classroom training may not be issued unless the person:

(1) has completed nine semester hours of driver and traffic safety education or a program of study in driver education approved by the commissioner from an approved driver education school; and

(2) holds a teaching certificate and any additional certification required to teach driver education.

(e) A driver education instructor who has completed the educational requirements prescribed by Subsection (d)(1) may not teach instructor training classes unless the instructor has successfully completed a supervising instructor development program consisting of at least six additional semester hours or a program of study in driver education approved by the commissioner that includes administering driver education programs and supervising and administering traffic safety education.

(f) A driver education school may submit for agency approval a curriculum for an instructor development program for driver education instructors. The program must:

(1) be taught by a person who has completed a supervising instructor development program under Subsection (e); and

(2) satisfy the requirements of this section for the particular program or type of training to be provided.

Sec. 1001.254. TEMPORARY LICENSE. (a) A temporary driver education instructor license may be issued authorizing a person to teach or provide classroom driver education training if the person:

(1) has completed the educational requirements prescribed by Section 1001.253(d)(1);

(2) holds a Texas teaching certificate with an effective date before February 1, 1986;

(3) meets all license requirements, other than successful completion of the examination required under rules adopted by the State Board for Educator Certification to revalidate the teaching certificate; and

(4) demonstrates, in a manner prescribed by the commissioner, the intention to comply with the examination requirement at the first available opportunity.

(b) A license issued under this section is valid for six months and may not be renewed.

Sec. 1001.255. REGULATION OF CERTAIN DRIVER EDUCATION INSTRUCTORS. (a) The agency shall regulate as a driver education school a driver education instructor who:

(1) teaches driver education courses in a county having a population of 50,000 or less; and

(2) does not teach more than 200 students annually.

(b) An instructor described by Subsection (a) must submit to the agency an application for an initial or renewal driver education school license, together with all required documentation and information.

(c) The commissioner may waive initial or renewal driver education school license fees or the fee for a director or administrative staff member.

(d) An instructor described by Subsection (a) is not exempt from a licensing requirement or fee.

Sec. 1001.256. DUPLICATE LICENSE. A duplicate license may

be issued to a driver education instructor or driving safety instructor if:

(1) the original license is lost or destroyed; and

(2) an affidavit of that fact is filed with the agency.

[Sections 1001.257-1001.300 reserved for expansion]

SUBCHAPTER G. LICENSE EXPIRATION AND RENEWAL

Sec. 1001.301. EXPIRATION OF SCHOOL OR COURSE PROVIDER LICENSE. The term of a driver education school, driving safety school, or course provider license may not exceed one year.

Sec. 1001.302. EXPIRATION OF INSTRUCTOR LICENSE. The term of a driver education instructor or driving safety instructor license may not exceed one year.

Sec. 1001.303. RENEWAL OF SCHOOL OR COURSE PROVIDER LICENSE. (a) To renew the license of a driver education school, driving safety school, or course provider, the school or course provider must submit to the commissioner a complete application for renewal at least 30 days before the expiration date of the license.

(b) A school or course provider that does not comply with Subsection (a) must, as a condition of renewal of the person's license, pay a late renewal fee. The late renewal fee is in addition to the annual renewal fee. The late renewal fee must be in the amount established by board rule of at least $100, subject to Subchapter D.

(c) The commissioner may reexamine a driver education school's premises.

(d) The commissioner shall renew or cancel the driver education school, driving safety school, or course provider

license.

Sec. 1001.304. RENEWAL OF INSTRUCTOR LICENSE. (a) An application to renew a driver education instructor or driving safety instructor license must include evidence of completion of continuing education and be postmarked at least 30 days before the expiration date of the license.

(b) The continuing education must be:

(1) in courses approved by the commissioner; and

(2) for the number of hours established by the commissioner.

(c) An applicant who does not comply with Subsection (a) must pay a late renewal fee of $25.

[Sections 1001.305-1001.350 reserved for expansion]

SUBCHAPTER H. PRACTICE BY LICENSE HOLDERS

Sec. 1001.351. COURSE PROVIDER RESPONSIBILITIES. (a) Not later than the 15th working day after the course completion date, a course provider or a person at the course provider's facilities shall mail a uniform certificate of course completion to a person who successfully completes an approved driving safety course.

(b) A course provider shall electronically submit to the agency in the manner established by the agency data identified by the agency relating to uniform certificates of course completion.

(c) A course provider shall conduct driving safety instructor development courses for its approved driving safety courses.

Sec. 1001.352. FEES FOR DRIVING SAFETY COURSE. A course provider shall charge each student:

(1) at least $25 for a driving safety course; and

(2) a fee of at least $3 for course materials and for supervising and administering the course.

Sec. 1001.353. DRIVER TRAINING COURSE AT PUBLIC OR PRIVATE SCHOOL. A driver training school may conduct a driver training course at a public or private school for students of the public or private school as provided by an agreement with the public or private school. The course is subject to any law applicable to a course conducted at the main business location of the driver training school.

Sec. 1001.354. LOCATIONS AUTHORIZED FOR DRIVING SAFETY COURSE. (a) A driving safety course may be taught at a driving safety school if the school is approved by the agency.

(b) A driving safety school may teach an approved driving safety course by an alternative method that does not require students to be present in a classroom if the commissioner approves the alternative method. The commissioner may approve the alternative method if:

(1) the commissioner determines that the approved driving safety course can be taught by the alternative method; and

(2) the alternative method includes testing and security measures that are at least as secure as the measures available in the usual classroom setting.

(c) On approval, the alternative method is considered to satisfy the requirements of this chapter for a driving safety course.

(d) A location at which a student receives supplies or

equipment for a course under Subsection (b) is considered a classroom of the school providing the course.

Sec. 1001.355. WITHHOLDING CERTAIN RECORDS. A driver training school may withhold a student's diploma or certificate of completion until the student fulfills the student's financial obligation to the school.

Sec. 1001.356. REQUIREMENT TO CARRY LICENSE. A driver education instructor or driving safety instructor shall carry the person's instructor license at all times while instructing a driver education course or driving safety course.

Sec. 1001.357. CONTRACT WITH UNLICENSED DRIVER TRAINING SCHOOL. A contract entered into with a person for a course of instruction by or on behalf of a person operating an unlicensed driver training school is unenforceable.

[Sections 1001.358-1001.400 reserved for expansion]

SUBCHAPTER I. REFUND POLICIES

Sec. 1001.401. CANCELLATION AND SETTLEMENT POLICY. As a condition for obtaining a driver education school license or course provider license, the school or course provider must maintain a cancellation and settlement policy that provides a full refund of all money paid by a student if:

(1) the student cancels the enrollment contract before midnight of the third day, other than a Saturday, Sunday, or legal holiday, after the date the enrollment contract is signed by the student, unless the student successfully completes the course or receives a failing grade on the course examination; or

(2) the enrollment of the student was procured as a

result of a misrepresentation in:

(A) advertising or promotional materials of the school or course provider; or

(B) a representation made by an owner or employee of the school or course provider.

Sec. 1001.402. TERMINATION POLICY. (a) As a condition for obtaining a driver education school license, the school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges if a student, after expiration of the cancellation period described by Section 1001.401, does not enter the course or withdraws or is discontinued from the course at any time before completion.

(b) The policy must provide that:

(1) refunds are based on the period of enrollment computed on the basis of course time expressed in clock hours;

(2) the effective date of the termination for refund purposes is the earliest of:

(A) the last day of attendance, if the student's enrollment is terminated by the school;

(B) the date the school receives written notice from the student; or

(C) the 10th school day after the last day of attendance;

(3) if tuition is collected in advance of entrance and if a student does not enter the school, terminates enrollment, or withdraws, the school:

(A) may retain not more than $50 as an

administrative expense; and

(B) shall refund that portion of the student's remaining classroom tuition and fees and behind-the-wheel tuition and fees that corresponds to services the student does not receive;

(4) the school shall refund items of extra expense to the student, including instructional supplies, books, laboratory fees, service charges, rentals, deposits, and all other charges not later than the 30th day after the effective date of enrollment termination if:

(A) the extra expenses are separately stated and shown in the information provided to the student before enrollment; and

(B) the student returns to the school any school property in the student's possession; and

(5) refunds shall be completed not later than the 30th day after the effective date of enrollment termination.

Sec. 1001.403. REFUND FOR DISCONTINUED COURSE. On the discontinuation of a course by a driver education school or a course provider that prevents a student from completing the course, all tuition and fees paid become refundable.

Sec. 1001.404. INTEREST ON REFUND. (a) If a refund is not timely made, the driver education school or course provider shall pay interest on the amount of the refund. Interest begins to accrue on the first day after the expiration of the refund period and ends on the day preceding the date the refund is made.

(b) The commissioner shall establish annually the rate of interest for a refund at a rate sufficient to provide a deterrent to

the retention of student money.

(c) The agency may except a driver education school or course provider from the payment of interest if the school or course provider makes a good-faith effort to refund tuition, fees, and other charges but is unable to locate the student to whom the refund is owed. On request of the agency, the school or course provider shall document the effort to locate a student.

[Sections 1001.405-1001.450 reserved for expansion]

SUBCHAPTER J. PROHIBITED PRACTICES AND DISCIPLINARY ACTIONS

Sec. 1001.451. PROHIBITED PRACTICES. A person may not:

(1) use advertising designed to mislead or deceive a prospective student;

(2) fail to notify the commissioner of the discontinuance of the operation of a driver training school before the fourth working day after the date of cessation of classes and make available accurate records as required by this chapter;

(3) issue, sell, trade, or transfer:

(A) a uniform certificate of course completion or driver education certificate to a person or driver training school not authorized to possess the certificate;

(B) a uniform certificate of course completion to a person who has not successfully completed an approved, six-hour driving safety course; or

(C) a driver education certificate to a person who has not successfully completed a commissioner-approved driver education course;

(4) negotiate a promissory instrument received as payment of tuition or another charge before the student completes 75 percent of the course, except that before that time the instrument may be assigned to a purchaser who becomes subject to any defense available against the school named as payee; or

(5) conduct any part of an approved driver education course or driving safety course without having an instructor physically present in appropriate proximity to the student for the type of instruction being given.

Sec. 1001.452. COURSE OF INSTRUCTION. A driver training school may not maintain, advertise, solicit for, or conduct a course of instruction in this state before the later of:

(1) the 30th day after the date the school applies for a driver training school license; or

(2) the date the school receives a driver training school license from the commissioner.

Sec. 1001.453. DISTRIBUTION OF WRITTEN INFORMATION ON COURSE PROVIDER. (a) A person may not distribute within 500 feet of a court with jurisdiction over an offense to which Article 45.0511, Code of Criminal Procedure, applies written information that advertises a course provider.

(b) A course provider loses its course provider status if the course provider or the course provider's agent, employee, or representative violates this section.

(c) This section does not apply to distribution of information:

(1) by a court; or

(2) to a court to advise the court of the availability of the course or to obtain approval of the course.

(d) Sections 1001.454, 1001.456(a), and 1001.553 do not apply to a violation of this section or a rule adopted under this section.

(e) Sections 1001.455(a)(6), 1001.501, 1001.551, 1001.552, and 1001.554 do not apply to a violation of this section.

Sec. 1001.454. REVOCATION OF OR PLACEMENT OF CONDITIONS ON SCHOOL OR COURSE PROVIDER LICENSE. (a) The commissioner may revoke the license of a driver training school or course provider or may place reasonable conditions on the school or course provider if the commissioner has reasonable cause to believe that the school or course provider has violated this chapter or a rule adopted under this chapter.

(b) On revocation of or placement of conditions on the license, the commissioner shall notify the license holder, in writing, of the action and the grounds for the action.

(c) The commissioner may reexamine a school or course provider two or more times during any year in which the commissioner provides a notice relating to the school or course provider under this section.

Sec. 1001.455. DENIAL, SUSPENSION, OR REVOCATION OF INSTRUCTOR LICENSE. (a) The agency may deny an application for an instructor license or suspend or revoke the license of an instructor if the instructor:

(1) fails to meet a requirement for issuance of or holding a license under this chapter;

(2) permits fraud or engages in fraudulent practices relating to the application;

(3) induces or countenances fraud or fraudulent practices on the part of an applicant for a driver's license or permit;

(4) permits or engages in any other fraudulent practice in an action between the applicant or license holder and the public;

(5) fails to comply with agency rules relating to driver instruction; or

(6) fails to comply with this chapter.

(b) Not later than the 10th day after the date of a denial, suspension, or revocation under this section, the agency shall notify the applicant or license holder of that action by certified mail.

Sec. 1001.456. OTHER DISCIPLINARY ACTIONS. (a) If the agency believes that a driver education school or instructor has violated this chapter or a rule adopted under this chapter, the agency may, without notice:

(1) order a peer review;

(2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or

(3) suspend the right to purchase driver education certificates.

(b) If the agency believes that a course provider, driving safety school, or driving safety instructor has violated this chapter or a rule adopted under this chapter, the agency may,

without notice:

(1) order a peer review of the course provider, driving safety school, or driving safety instructor;

(2) suspend the enrollment of students in the school or the offering of instruction by the instructor; or

(3) suspend the right to purchase uniform certificates of course completion.

(c) A peer review ordered under this section must be conducted by a team of knowledgeable persons selected by the agency. The team shall provide the agency with an objective assessment of the content of the school's or course provider's curriculum and its application. The school or course provider shall pay the costs of the peer review.

(d) A suspension of enrollment under Subsection (a)(2) or (b)(2) means a ruling by the commissioner that restricts a school from:

(1) accepting enrollments or reenrollments;

(2) advertising;

(3) soliciting; or

(4) directly or indirectly advising prospective students of its program or course offerings.

Sec. 1001.457. TERM OF LICENSE SUSPENSION. A license may not be suspended for less than 30 days or more than one year.

Sec. 1001.458. SURRENDER OF LICENSE. (a) A license holder whose license is suspended or revoked shall surrender the license to the agency not later than the fifth day after the date of suspension or revocation.

(b) The agency may reinstate a suspended license on full compliance by the license holder with this chapter.

Sec. 1001.459. APPEAL AND REQUEST FOR HEARING. (a) A person aggrieved by a denial, suspension, or revocation of a license may appeal the action and request a hearing before the commissioner.

(b) The request must be submitted not later than the 15th day after the date the person receives notice under Section 1001.455. On receipt of a request for a hearing, the commissioner shall set a time and place for the hearing and send notice of the time and place to the aggrieved person.

Sec. 1001.460. HEARING. (a) The hearing on an appeal shall be held not later than the 30th day after the date the request for a hearing is received under Section 1001.459.

(b) Except as provided by Subsection (e), the commissioner shall conduct the hearing and may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, and documents.

(c) At the hearing, the aggrieved person may appear in person or by counsel and present evidence. Any interested person may appear and present oral or documentary evidence.

(d) Based on the evidence submitted at the hearing, the commissioner shall take the action the commissioner considers necessary in connection with the denial, suspension, or revocation of the license. Not later than the 10th day after the date of the hearing, the commissioner shall notify the aggrieved person by certified mail of the commissioner's decision.

(e) The agency may contract with another entity to conduct a hearing under this subchapter.

Sec. 1001.461. JUDICIAL REVIEW. (a) A decision under Section 1001.460 may be appealed to a district court in Travis County.

(b) Unless stayed by the court on a showing of good cause, the commissioner's decision may not be superseded during appeal.

(c) On filing the appeal, citation shall be served on the commissioner, who shall make a complete record of all proceedings before the commissioner and certify a copy to the court.

(d) Trial is before the court and shall be based on the record before the commissioner. The court shall make its decision based on the record. The court shall affirm the commissioner's decision if the court finds substantial evidence in the record to support the decision, unless the court finds the commissioner's decision to be:

(1) arbitrary and capricious;

(2) in violation of the constitution or a law of the United States or this state; or

(3) in violation of a rule adopted by the commissioner under this chapter.

(e) A decision of the court is subject to appeal in the manner provided for civil actions generally.

[Sections 1001.462-1001.500 reserved for expansion]

SUBCHAPTER K. CLASS ACTION SUITS

Sec. 1001.501. AUTHORITY TO BRING CLASS ACTION. (a) A person who is injured by an act taken or permitted in violation of

this chapter may, on behalf of the person and others similarly situated, bring an action in a district court, regardless of the amount in controversy, for damages, temporary or permanent injunctive relief, declaratory relief, or other relief in accordance with Rule 42, Texas Rules of Civil Procedure. Venue for an action under this section is in Travis County.

(b) A person who files an action under this section shall promptly notify the attorney general. The attorney general may join in the action as a party plaintiff on the filing of an application not later than the 30th day after the date the action is filed.

Sec. 1001.502. NOTICE. (a) In a class action under Section 1001.501, the court:

(1) shall direct the defendant to serve the best notice practicable on each member of the class; and

(2) may direct that individual notice be served on each member of the class who can be identified through reasonable efforts.

(b) The notice must inform each recipient that:

(1) the person is thought to be a member of the class; and

(2) if the person is a member of the class, the person may enter an appearance and join in the action.

Sec. 1001.503. JUDGMENT. (a) The court shall enter judgment in the class action in a form that may be justified.

(b) Damages may be awarded only to a member of the class joined as a party plaintiff. All other relief granted by the court

inures to the benefit of all members of the class.

(c) A prevailing plaintiff in a class action shall be awarded court costs and reasonable attorney's fees. A legal aid society or legal services program that represents a prevailing plaintiff shall be awarded a service fee instead of attorney's fees.

[Sections 1001.504-1001.550 reserved for expansion]

SUBCHAPTER L. PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 1001.551. INJUNCTION IN GENERAL. (a) If a person violates this chapter, the commissioner, through the attorney general, shall apply in the state's name for an order to enjoin the violation of or to enforce compliance with this chapter.

(b) On a finding by a court in which a verified petition is filed that a person has violated this chapter, the court may issue, without notice or bond, a temporary restraining order enjoining the continued violation of this chapter. If after a hearing it is established that the person has violated or is violating this chapter, the court may issue a permanent injunction to enjoin the violation of or to enforce compliance with this chapter.

(c) A proceeding under this section is in addition to any other remedy or penalty provided by this chapter.

Sec. 1001.552. INJUNCTION AGAINST SCHOOL. (a) If the commissioner believes that a driver training school has violated this chapter, the commissioner shall apply for an injunction restraining the violation.

(b) Venue for an action under this section is in Travis County.

Sec. 1001.553. ADMINISTRATIVE PENALTY. (a) After an opportunity for a hearing, the commissioner may impose an administrative penalty on a person who violates this chapter or a rule adopted under this chapter.

(b) The amount of the penalty may not exceed $1,000 a day for each violation.

(c) The attorney general, at the request of the agency, may bring an action to collect the penalty.

(d) A penalty imposed under this section is in addition to any other remedy provided by law, including injunctive relief.

Sec. 1001.554. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not less than $100 or more than $20,000;

(2) confinement in the county jail for a term not to exceed six months; or

(3) both the fine and confinement.

Sec. 1001.555. UNAUTHORIZED TRANSFER OR POSSESSION OF CERTIFICATE; OFFENSE. (a) A person commits an offense if the person knowingly sells, trades, issues, or otherwise transfers, or possesses with intent to sell, trade, issue, or otherwise transfer, a uniform certificate of course completion or a driver education certificate to an individual, firm, or corporation not authorized to possess the certificate.

(b) The agency shall contract with the department to provide undercover and investigative assistance in the enforcement of Subsection (a).

(c) A person commits an offense if the person knowingly possesses a uniform certificate of course completion or a driver education certificate and is not authorized to possess the certificate.

(d) An offense under this section is a felony punishable by imprisonment in the institutional division of the Texas Department of Criminal Justice for a term not to exceed five years.

(b) The Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) is repealed.

ARTICLE 7. CHANGES RELATING TO FAMILY CODE

SECTION 7.001. (a) Section 52.027, Family Code, as amended by Chapter 1297, Acts of the 77th Legislature, Regular Session, 2001, and repealed by Chapter 1514, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

(b) Section 54.023(a), Family Code, is amended to correct a reference to read as follows:

(a) If a child intentionally or knowingly fails to obey a lawful order of disposition after an adjudication of guilt of an offense that a justice or municipal court has jurisdiction of under Article 4.11 or 4.14, Code of Criminal Procedure, the justice or municipal court may:

(1) refer the child to the appropriate juvenile court for delinquent conduct for contempt of the justice or municipal court order; or

(2) retain jurisdiction of the case and:

(A) hold the child in contempt of the justice or municipal court order and impose a fine not to exceed $500;

(B) order the child to be held in a place of nonsecure custody designated under Article 45.058, Code of Criminal Procedure [~~Section 52.027~~] for a single period not to exceed six hours; or

(C) order the Department of Public Safety to suspend the driver's license or permit of the child or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child and, if the child has a continuing obligation under the court's order, require that the suspension or denial be effective until the child fully discharges the obligation.

SECTION 7.002. (a) The changes made by this section are to correct references to Section 71.01, Family Code.

(b) Section 85.001(3), Civil Practice and Remedies Code, is amended to read as follows:

(3) "Family" has the meaning assigned by Section 71.003 [~~71.01~~], Family Code.

(c) Article 5.02, Code of Criminal Procedure, is amended to read as follows:

Art. 5.02. DEFINITIONS. In this chapter, "family violence," "family," "household," and "member of a household" have the meanings assigned by Chapter 71 [~~Section 71.01~~], Family Code.

(d) Article 14.03(f), Code of Criminal Procedure, is amended to read as follows:

(f) In this article, "family," "household," and "member of a household" have the meanings assigned to those terms by Chapter 71 [~~Section 71.01~~], Family Code.

(e) Article 17.29(d), Code of Criminal Procedure, is

amended to read as follows:

(d) In this article, "family violence" has the meaning assigned by Section 71.004 [~~71.01~~], Family Code.

(f) Article 17.291(a), Code of Criminal Procedure, is amended to read as follows:

(a) In this article:

(1) "family violence" has the meaning assigned to that phrase by Section 71.004 [~~71.01(b)(2)~~], Family Code; and

(2) "magistrate" has the meaning assigned to it by Article 2.09 of this code[~~, as amended by Chapters 25, 79, 916, and 1068, Acts of the 71st Legislature, Regular Session, 1989~~].

(g) Article 38.36(b), Code of Criminal Procedure, is amended to read as follows:

(b) In a prosecution for murder, if a defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33, Penal Code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:

(1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.004 [~~71.01~~], Family Code; and

(2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion.

(h) Article 42.013, Code of Criminal Procedure, is amended

to read as follows:

Art. 42.013. FINDING OF FAMILY VIOLENCE. In the trial of an offense under Title 5, Penal Code, if the court determines that the offense involved family violence, as defined by Section 71.004 [~~71.01~~], Family Code, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

(i) Sections 1(3), (4), and (6), Article 42.141, Code of Criminal Procedure, are amended to read as follows:

(3) "Family" has the meaning assigned by Section 71.003 [~~71.01~~], Family Code.

(4) "Family violence" has the meaning assigned by Section 71.004 [~~71.01~~], Family Code.

(6) "Household" has the meaning assigned by Section 71.005 [~~71.01~~], Family Code.

(j) Article 42.21(c), Code of Criminal Procedure, is amended to read as follows:

(c) In this article, "family violence" has the meaning assigned by Section 71.004 [~~71.01~~], Family Code.

(k) Article 56.11(g), Code of Criminal Procedure, is amended to read as follows:

(g) In this article:

(1) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(2) "Family violence" has the meaning assigned by Section 71.004 [~~71.01~~], Family Code.

(l) Article 59.05(c), Code of Criminal Procedure, is

amended to read as follows:

(c) It is an affirmative defense to forfeiture under this chapter of property belonging to the spouse of a person whose acts gave rise to the seizure of community property that, because of an act of family violence, as defined by Section 71.004 [~~71.01~~], Family Code, the spouse was unable to prevent the act giving rise to the seizure.

(m) Section 262.102(c), Family Code, is amended to read as follows:

(c) If, based on the recommendation of or a request by the department, the court finds that child abuse or neglect has occurred and that the child requires protection from family violence by a member of the child's family or household, the court shall render a temporary order under Chapter 71 for the protection of the child. In this subsection, "family violence" has the meaning assigned by Section 71.004 [~~71.01~~].

(n) Section 25.2223(l), Government Code, is amended to read as follows:

(l) The County Criminal Court No. 5 of Tarrant County shall give preference to cases brought under Title 5, Penal Code, involving family violence as defined by Section 71.004 [~~71.01~~], Family Code, and cases brought under Sections 25.07 and 42.072, Penal Code.

(o) Section 92.010(b), Property Code, is amended to read as follows:

(b) A landlord may allow an occupancy rate of more than three adult tenants per bedroom:

(1) to the extent that the landlord is required by a state or federal fair housing law to allow a higher occupancy rate; or

(2) if an adult whose occupancy causes a violation of Subsection (a) is seeking temporary sanctuary from family violence, as defined by Section 71.004 [~~71.01~~], Family Code, for a period that does not exceed one month.

ARTICLE 8. CHANGES RELATING TO FINANCE CODE

SECTION 8.001. Section 12.107, Finance Code, as amended by Chapters 412 and 699, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 12.107. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state that:

(1) is primarily designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest; and

(2) includes business and professional competitors located in this state among its members.

(b) A person may not be a department employee if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the department; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the department.

(c) A person may not act as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department.

(d) A department employee may not:

(1) purchase an asset owned by a person regulated by the department in the possession of the banking commissioner or other receiver for purposes of liquidation, unless the asset is purchased at public auction or with the approval of the receivership court;

(2) except as provided by Subsection (e), become directly or indirectly indebted to a person regulated by the department;

(3) except as provided by Subsection (f), become directly or indirectly financially interested in a person regulated by the department; or

(4) obtain a product or service from a person regulated by the department, or an affiliate of a person regulated by the department, on terms or rates that are more favorable to the employee than those prevailing at the time for comparable transactions with or involving other similarly situated consumers.

(e) Subject to Subsection (d)(4) and except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(2) does not prohibit indebtedness of:

(1) a clerical or administrative employee to a person regulated by the department, if the employee does not exercise

discretionary decision-making authority with respect to the person; or

(2) an employee of the department, other than a clerical or administrative employee, if the indebtedness was permissible when incurred and became prohibited indebtedness under Subsection (d)(2) as a result of employment by the department or a circumstance over which the employee has no control, including a merger, acquisition, purchase or sale of assets, or assumption of liabilities involving a regulated person, if the employee:

(A) repays the indebtedness; or

(B) does not knowingly participate in or consider any matter concerning the person to whom the employee is indebted.

(f) Except as otherwise provided by employment policies adopted by the banking commissioner, Subsection (d)(3) does not prohibit a financial interest of an employee of the department solely because:

(1) the employee owns publicly traded shares of a registered investment company (mutual fund) that owns publicly traded equity securities issued by a person regulated by the department; or

(2) the spouse of or other person related to the employee is employed by a person regulated by the department and receives equity securities of the person through participation in an employee benefit plan, including an employee stock option, bonus, or ownership plan, if:

(A) the sole purpose of the plan is to compensate employees with an ownership interest in the person for services

rendered; and

(B) the employee does not knowingly participate in or consider any matter concerning the person until the spouse or other related person no longer owns equity securities issued by the person.

(g) The banking commissioner may adopt employment policies relating to this section, including policies to:

(1) require employees to notify the department of possible conflicts of interest;

(2) specify the manner or extent of required recusal;

(3) define the circumstances under which adverse employment action may be taken; and

(4) impose more restrictive requirements on senior officers of the department for whom recusal is not viable or consistent with the prudent exercise of the department's responsibilities.

(h) The finance commission may adopt rules to administer this section, including rules to:

(1) codify employment policies of the banking commissioner adopted under Subsection (g);

(2) define or further define terms used by this section; and

(3) establish limits, requirements, or exemptions other than those specified by this section, except that an exempted employee must be recused from participation in or consideration of all regulatory matters specifically concerning the person to whom the exempted indebtedness is owed or the financial interest

relates.

(i) Before the 11th day after the date on which an employee begins employment with the department, the employee shall read the conflict-of-interest statutes, rules, and policies applicable to employees of the department and sign a notarized affidavit stating that the employee has read those statutes, rules, and policies.

SECTION 8.002. (a) Section 152.102, Finance Code, as amended by Chapters 867 and 1012, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 152.102. RULES. The commission may adopt rules necessary to enforce and administer this chapter, including rules to:

(1) implement and clarify this chapter;

(2) establish fees for applications, licenses, notices, and examinations to defray the cost of administering this chapter;

(3) create additional exemptions or reduced requirements applicable to specific circumstances, if the exemption or reduction is in the public interest and subject to appropriate requirements or conditions;

(4) identify additional permissible investments subject to appropriate investment limits; and

(5) protect the interests of check purchasers.

(b) Section 152.103, Finance Code, as amended by Chapters 867 and 1012, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 152.103. EXAMINATIONS. (a) The commissioner shall

examine each license holder annually, on a periodic basis as required by any rules adopted under this chapter, or more often as the commissioner considers necessary to efficiently enforce this chapter and other applicable law.

(b) The commissioner, in the exercise of discretion and as necessary for the efficient enforcement of this chapter or other applicable law, may:

(1) examine a license holder at its primary place of business;

(2) examine off-site documents that the license holder furnishes to the department; and

(3) defer a required examination for not more than six months.

(c) Information in a report of an examination under this section is confidential and may be disclosed only under the circumstances provided by Section 152.105.

(d) Disclosure of information to the commissioner under an examination request does not waive or otherwise affect or diminish a privilege to which the information is otherwise subject.

(c) Section 152.202(b), Finance Code, as amended by Chapters 867 and 1012, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(b) A person who meets the requirements of Subsection (a)(5) is subject to:

(1) all provisions of this chapter other than the license requirement of Section 152.201 to the extent the person engages in the business of selling checks; and

(2) rules adopted under this chapter to administer and carry out that subsection, including rules to:

(A) define a term used in that subsection; and

(B) establish limits or requirements on the bonding and net worth of the person and the person's activities relating to the sale of checks other than those specified by that subsection.

SECTION 8.003. Section 154.406(a), Finance Code, as amended by Chapters 699 and 867, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department; or

(2) engages in a pattern of violations, as determined by the commissioner.

ARTICLE 9. CHANGES RELATING TO GOVERNMENT CODE

SECTION 9.001. (a) Section 23.101(a), Government Code, is amended to correct cross-references to read as follows:

(a) The trial courts of this state shall regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of the following:

(1) temporary injunctions;

(2) criminal actions, with the following actions given

preference over other criminal actions:

(A) criminal actions against defendants who are detained in jail pending trial;

(B) criminal actions involving a charge that a person committed an act of family violence, as defined by Section 71.004 [~~71.01~~], Family Code; and

(C) an offense under:

(i) Section 21.11, Penal Code;

(ii) Chapter 22, Penal Code, if the victim of the alleged offense is younger than 17 years of age;

(iii) Section 25.02, Penal Code, if the victim of the alleged offense is younger than 17 years of age; or

(iv) Section 25.06, Penal Code;

(3) election contests and suits under the Election Code;

(4) orders for the protection of the family under Subtitle B, Title 4 [~~Section 3.581, 71.11, or 71.12~~], Family Code;

(5) appeals of final rulings and decisions of the Texas Workers' Compensation Commission and claims under the Federal Employers' Liability Act and the Jones Act; and

(6) appeals of final orders of the commissioner of the General Land Office under Section 51.3021, Natural Resources Code.

(b) Section 25.2223(l), Government Code, is amended to correct a cross-reference to read as follows:

(l) The County Criminal Court No. 5 of Tarrant County shall give preference to cases brought under Title 5, Penal Code, involving family violence as defined by Section 71.004 [~~71.01~~],

Family Code, and cases brought under Sections 25.07 and 42.072, Penal Code.

(c) Section 41.110, Government Code, is amended to correct a cross-reference to read as follows:

Sec. 41.110. TRAINING RELATED TO FAMILY VIOLENCE. The court of criminal appeals shall adopt rules regarding the training of prosecuting attorneys relating to cases involving a charge that a person committed an act of family violence as defined by Section 71.004 [~~71.01~~], Family Code.

SECTION 9.002. Section 25.0022, Government Code, as amended by Chapters 65, 440, 468, and 820, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 25.0022. ADMINISTRATION OF STATUTORY PROBATE COURTS. (a) "Statutory probate court" has the meaning assigned by Section 3, Texas Probate Code.

(b) The judges of the statutory probate courts shall elect from their number a presiding judge of the statutory probate courts. The presiding judge serves a four-year term from the date of qualification as the presiding judge.

(c) The presiding judge may perform the acts necessary to carry out this section and to improve the management of the statutory probate courts and the administration of justice.

(d) The presiding judge shall:

(1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;

(2) advise local statutory probate court judges on

case flow management practices and auxiliary court services;

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

(5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;

(7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section; and

(8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions.

(e) In addition to all other compensation, expenses, and perquisites authorized by law, the presiding judge shall be paid for performing the duties of a presiding judge an annual salary equal to the maximum salary authorized by Section 74.051(b) for a presiding judge of an administrative judicial region. The presiding judge is entitled to receive reasonable expenses incurred in administering those duties. The salary and expenses are paid by

the counties that have statutory probate courts, apportioned according to the number of statutory probate courts in the county.

(f) Each county pays annually to the presiding judge, from fees collected pursuant to Section 118.052(2)(A)(vi), Local Government Code, the amount of the salary apportioned to it as provided by this section and the other expenses authorized by this section. The presiding judge shall place each county's payment of salary and other expenses in an administrative fund, from which the salary and other expenses are paid. The salary shall be paid in equal monthly installments.

(g) The assistant presiding judge may assign probate judges as provided by this section and perform the office of presiding judge:

(1) on the death or resignation of the presiding judge and until a successor presiding judge is elected; or

(2) when the presiding judge is unable to perform the duties of the office because of absence, disqualification, disabling illness, or other incapacity.

(h) A judge or a former or retired judge of a statutory probate court may be assigned to hold court in a statutory probate court, county court, or any statutory court exercising probate jurisdiction when:

(1) a statutory probate judge requests assignment of another judge to the judge's court;

(2) a statutory probate judge is absent, disabled, or disqualified for any reason;

(3) a statutory probate judge is present or is trying

cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;

(4) the office of a statutory probate judge is vacant;

(5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to hear a probate matter in a county court or statutory county court;

(6) a motion to recuse the judge of a statutory probate court has been filed;

(7) a county court judge requests the assignment of a statutory probate judge to hear a probate matter in the county court; or

(8) a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court.

(i) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 5, 5A, 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.

(j) [~~To be eligible for assignment under this section a former or retired judge of a statutory probate court must:~~

[~~(1) not have been removed from office; and~~

[~~(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that the judge did not resign from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided by Section 33.022 and before the final~~

~~disposition of the proceedings.~~

[~~(k)~~] Except as otherwise provided by this section, the salary, compensation, and expenses of a judge assigned under this section are paid in accordance with state law.

(k) [~~(l)~~] The daily compensation of a former or retired judge for purposes of this section is set at an amount equal to the daily compensation of a judge of a statutory probate court in the county in which the former or retired judge is assigned. A former or retired judge assigned to a county that does not have a statutory probate court shall be paid an amount equal to the daily compensation of a judge of a statutory probate court in the county where the assigned judge was last elected.

(l) [~~(m)~~] An assigned judge is entitled to receive reasonable and necessary expenses for travel, lodging, and food. The assigned judge shall furnish the presiding judge, for certification, an accounting of those expenses with a statement of the number of days the judge served.

(m) [~~(n) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 5, 5A, 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.~~

[~~(n)~~] The presiding judge shall certify to the county judge in the county in which the assigned judge served:

(1) the expenses approved under Subsection (l) [~~(m)~~]; and

(2) a determination of the assigned judge's salary.

(n) [~~(o)~~] A judge who has jurisdiction over a suit pending

in one county may, unless a party objects, conduct any of the judicial proceedings except the trial on the merits in a different county.

(o) The county in which the assigned judge served shall pay out of the general fund of the county:

(1) expenses certified under Subsection (m) [~~(n)~~] to the assigned judge; and

(2) the salary certified under Subsection (m) [~~(n)~~] to the county in which the assigned judge serves, or, if the assigned judge is a former or retired judge, to the assigned judge.

[~~(p) Except as otherwise provided by this section, the salary, compensation, and expenses of a judge assigned under this section are paid in accordance with state law.~~]

(p) In addition to all compensation and expenses authorized by this section and other law, a judge who is assigned to a court outside the county of the judge's residence is entitled to receive $25 for each day or fraction of a day served. The county in which the judge served shall pay the additional compensation from the county's general fund on certification by the presiding judge.

[~~(q) The daily compensation of a former or retired judge for purposes of this section is set at an amount equal to the daily compensation of a judge of a statutory probate court in the county in which the former or retired judge is assigned. A former or retired judge assigned to a county that does not have a statutory probate court shall be paid an amount equal to the daily compensation of a judge of a statutory probate court in the county where the assigned judge was last elected.~~]

(q) When required to attend an annual or special meeting prescribed by this section, a judge is entitled to receive, in addition to all other compensation allowed by law, actual and necessary travel expenses incurred going to and returning from the place of the meeting and actual and necessary expenses while attending the meeting. On certification by the presiding judge, the judge's county of residence shall pay the expenses from the county's general fund.

[~~(r) An assigned judge is entitled to receive reasonable and necessary expenses for travel, lodging, and food. The assigned judge shall furnish the presiding judge, for certification, an accounting of those expenses with a statement of the number of days the judge served.~~]

(r) Chapter 74 and Subchapter I, Chapter 75, do not apply to the assignment under this section of statutory probate court judges.

[~~(s) The presiding judge shall certify to the county judge in the county in which the assigned judge served:~~

[~~(1) the expenses approved under Subsection (r); and~~

[~~(2) a determination of the assigned judge's salary.~~]

(s) The presiding judge may appoint any special or standing committees of statutory probate court judges necessary or desirable for court management and administration.

(t) [~~The county in which the assigned judge served shall pay out of the general fund of the county:~~

[~~(1) expenses certified under Subsection (s) to the assigned judge; and~~

[~~(2) the salary certified under Subsection (s) to the county in which the assigned judge serves, or, if the assigned judge is a former or retired judge, to the assigned judge.~~

[~~(u) In addition to all compensation and expenses authorized by this section and other law, a judge who is assigned to a court outside the county of the judge's residence is entitled to receive $25 for each day or fraction of a day served. The county in which the judge served shall pay the additional compensation from the county's general fund on certification by the presiding judge.~~

[~~(v) When required to attend an annual or special meeting prescribed by this section, a judge is entitled to receive, in addition to all other compensation allowed by law, actual and necessary travel expenses incurred going to and returning from the place of the meeting and actual and necessary expenses while attending the meeting. On certification by the presiding judge, the judge's county of residence shall pay the expenses from the county's general fund.~~

[~~(w) The presiding judge may perform the acts necessary to carry out the provisions of this section and to improve the management of the statutory probate courts and the administration of justice.~~

[~~(x) Chapter 74 and Subchapter I, Chapter 75, do not apply to the assignment under this section of statutory probate court judges.~~

[~~(y)~~] To be eligible for assignment under this section a former or retired judge of a statutory probate court must:

(1) not have been removed from office; and

(2) certify under oath to the presiding judge, on a form prescribed by the state board of regional judges, that the judge did not resign from office after having received notice that formal proceedings by the State Commission on Judicial Conduct had been instituted as provided in Section 33.022 and before the final disposition of the proceedings.

(u) [~~(y)~~] In addition to the eligibility requirements under Subsection (t) [~~(x)~~], to be eligible for assignment under this section in the judge's county of residence, a former or retired judge of a statutory probate court must certify to the presiding judge a willingness not to:

(1) appear and plead as an attorney in any court in the judge's county of residence for a period of two years; and

(2) accept appointment as a guardian ad litem, guardian of the estate of an incapacitated person, or guardian of the person of an incapacitated person in any court in the judge's county of residence for a period of two years.

SECTION 9.0025. Section 25.0023(a), Government Code, is amended to correct a cross-reference to read as follows:

(a) The commissioners court shall set the annual salary of each judge of a statutory probate court at an amount that is at least equal to the total annual salary received by a district judge in the county. A district judge's or statutory probate court judge's total annual salary includes contributions and supplements paid by the state or a county, other than contributions received as compensation under Section 25.0022(e) [~~25.0022(c)~~].

SECTION 9.003. Section 25.2293(b), Government Code, as

amended by Chapter 677, Acts of the 77th Legislature, Regular Session, 2001, and Sections 25.0862(c), (d), and (e), Government Code, as amended by Chapter 904, Acts of the 77th Legislature, Regular Session, 2001, are repealed to conform to Chapter 635, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 9.004. Section 403.302(e), Government Code, is amended to correct a reference to read as follows:

(e) The total dollar amount deducted in each year as required by Subsection (d)(4) [~~(d)(3)~~] in a reinvestment zone created after January 1, 1999, may not exceed the captured appraised value estimated for that year as required by Section 311.011(c)(8), Tax Code, in the reinvestment zone financing plan approved under Section 311.011(d), Tax Code, before September 1, 1999. The number of years for which the total dollar amount may be deducted under Subsection (d)(4) [~~(d)(3)~~] shall for any zone, including those created on or before January 1, 1999, be limited to the duration of the zone as specified as required by Section 311.011(c)(9), Tax Code, in the reinvestment zone financing plan approved under Section 311.011(d), Tax Code, before September 1, 1999. The total dollar amount deducted under Subsection (d)(4) [~~(d)(3)~~] for any zone, including those created on or before January 1, 1999, may not be increased by any reinvestment zone financing plan amendments that occur after August 31, 1999. The total dollar amount deducted under Subsection (d)(4) [~~(d)(3)~~] for any zone, including those created on or before January 1, 1999, may not be increased by a change made after August 31, 1999, in the portion of the tax increment retained by the school district.

SECTION 9.0045. Section 411.112, Government Code, is amended to correct a cross-reference to read as follows:

Sec. 411.112. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION. The Commission on Law Enforcement Officer Standards and Education is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a license under Chapter 1701, Occupations Code [~~415~~]; or

(2) the holder of a license under that chapter.

SECTION 9.005. (a) Subtitle E, Title 4, Government Code, is amended to codify Article 9102, Revised Statutes, by adding Chapter 469 to read as follows:

CHAPTER 469. ELIMINATION OF ARCHITECTURAL BARRIERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 469.001. SCOPE OF CHAPTER; PUBLIC POLICY. (a) The intent of this chapter is to ensure that each building and facility subject to this chapter is accessible to and functional for persons with disabilities without causing the loss of function, space, or facilities.

(b) This chapter relates to nonambulatory and semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(c) This chapter is intended to further the policy of this state to encourage and promote the rehabilitation of persons with disabilities and to eliminate, to the extent possible, unnecessary

barriers encountered by persons with disabilities whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted.

Sec. 469.002. DEFINITIONS. In this chapter:

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

(2) "Commission" means the Texas Commission of Licensing and Regulation.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(5) "Engineer" means a person licensed as an engineer under Chapter 1001, Occupations Code.

(6) "Executive director" means the executive director of the department.

(7) "Interior designer" means a person registered as an interior designer under Chapter 1053, Occupations Code.

(8) "Landscape architect" means a person registered as a landscape architect under Chapter 1052, Occupations Code.

Sec. 469.003. APPLICABILITY OF STANDARDS. (a) The standards adopted under this chapter apply to:

(1) a building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state;

(2) a building or facility described by this subsection or Subsection (b) that is constructed on a temporary or emergency basis;

(3) a building leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972;

(4) a privately funded building or facility that is defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after January 1, 1992; and

(5) a privately funded building or facility that is defined as a "commercial facility" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after September 1, 1993.

(b) To the extent there is not a conflict with federal law and it is not beyond the state's regulatory power, the standards adopted under this chapter apply to a building or facility constructed in this state or leased or rented for use by the state using federal money.

(c) The standards adopted under this chapter do not apply to a place used primarily for religious rituals within a building or facility of a religious organization.

[Sections 469.004-469.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION AND ENFORCEMENT

Sec. 469.051. ADMINISTRATION AND ENFORCEMENT; ASSISTANCE

OF OTHER AGENCIES. (a) The commission shall administer and enforce this chapter. The appropriate state rehabilitation agencies and the Governor's Committee on People with Disabilities shall assist the commission in the administration and enforcement of this chapter.

(b) In enforcing this chapter, the commission is entitled to the assistance of all appropriate elective or appointive state officials.

(c) The commission has all necessary powers to require compliance with the rules adopted under this chapter.

Sec. 469.052. ADOPTION OF STANDARDS AND SPECIFICATIONS; RULEMAKING. (a) The commission shall adopt standards, specifications, and other rules under this chapter that are consistent with standards, specifications, and other rules adopted under federal law.

(b) The standards and specifications adopted by the commission under this chapter must be consistent in effect with the standards and specifications adopted by the American National Standards Institute or that entity's federally recognized successor in function.

(c) The department shall publish the standards and specifications in a readily accessible form for use by interested parties.

Sec. 469.053. ADVISORY COMMITTEE; REVIEW OF AND COMMENT ON RULES. (a) The commission shall appoint an advisory committee for the architectural barriers program. The committee shall consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The

committee shall consist of at least eight members. A majority of the members of the committee must be persons with disabilities.

(b) A committee member serves at the will of the commission.

(c) A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(d) The committee shall elect a committee member as presiding officer.

(e) The committee shall meet at least twice each calendar year at the call of the presiding officer or the commissioner.

(f) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission and commissioner.

(g) The commission must submit all proposed changes to any rule or procedure that relates to the architectural barriers program to the committee for review and comment before adopting or implementing the new or amended rule or procedure.

Sec. 469.054. FEES IN GENERAL. (a) The commission shall adopt fees in accordance with Section 51.202, Occupations Code, for performing the commission's functions under this chapter.

(b) The owner of a building or facility is responsible for paying a fee charged by the commission for performing a function under this chapter related to the building or facility.

(c) The commission may charge a fee for:

(1) the review of the plans or specifications of a building or facility;

(2) the inspection of a building or facility; and

(3) the processing of an application for a variance from accessibility standards for a building or facility.

Sec. 469.055. CONTRACT TO PERFORM REVIEW AND INSPECTION. The commission may contract with other state agencies and political subdivisions to perform the commission's review and inspection functions.

Sec. 469.056. INTERAGENCY CONTRACTS. A state agency that extends direct services to persons with disabilities may enter into an interagency contract with the department to provide additional funding required to ensure that the service objectives and responsibilities of the agency are achieved through the administration of this chapter.

Sec. 469.057. DUTY TO INFORM ABOUT LAW. (a) The department periodically shall inform professional organizations and others, including persons with disabilities, architects, engineers, and other building professionals, of this chapter and its application.

(b) Information about the architectural barriers program disseminated by the department must include:

(1) the type of buildings and leases subject to this chapter;

(2) the procedures for submitting plans and specifications for review;

(3) complaint procedures; and

(4) the address and telephone number of the department's program under this chapter.

(c) The department may enter into cooperative agreements to

integrate information about the architectural barriers program with information produced or distributed by other public entities or by private entities.

Sec. 469.058. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty under Subchapter F, Chapter 51, Occupations Code, on a building owner for a violation of this chapter or a rule adopted under this chapter.

(b) Each day that a violation is not corrected is a separate violation.

(c) Before the commission may impose an administrative penalty for a violation described by Subsection (a), the commission must notify a person responsible for the building and allow the person 90 days to bring the building into compliance. The commission may extend the 90-day period if circumstances justify the extension.

[Sections 469.059-469.100 reserved for expansion]

SUBCHAPTER C. REVIEW AND APPROVAL REQUIRED FOR CERTAIN PLANS AND SPECIFICATIONS

Sec. 469.101. SUBMISSION FOR REVIEW AND APPROVAL REQUIRED. All plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to the department for review and approval if:

(1) the building or facility is subject to this chapter; and

(2) the estimated construction cost is at least $50,000.

Sec. 469.102. PROCEDURE FOR SUBMITTING PLANS AND

SPECIFICATIONS. (a) The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required under Section 469.101.

(b) The person shall submit the plans and specifications not later than the fifth day after the date the person issues the plans and specifications. If plans and specifications are issued on more than one date, the person shall submit the plans and specifications not later than the fifth day after each date the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday, or legal holiday is not included.

(c) The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the department. On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under this chapter.

(d) A public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject to Section 469.101 unless the official verifies that the building or facility has been registered with the department as provided by rule.

Sec. 469.103. MODIFICATION OF APPROVED PLANS AND SPECIFICATIONS. Approved plans and specifications to which any substantial modification is made shall be resubmitted to the department for review and approval.

Sec. 469.104. FAILURE TO SUBMIT PLANS AND SPECIFICATIONS. The commission shall report to the Texas Board of Architectural Examiners, the Texas Board of Professional Engineers, or another appropriate licensing authority the failure of any architect, interior designer, landscape architect, or engineer to submit or resubmit in a timely manner plans and specifications to the department as required by this subchapter.

Sec. 469.105. INSPECTION OF BUILDING OR FACILITY. (a) The owner of a building or facility described by Section 469.101 is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the commission under this chapter not later than the first anniversary of the date the construction or substantial renovation or modification of the building or facility is completed.

(b) The inspection must be performed by:

(1) the department;

(2) an entity with which the commission contracts under Section 469.055; or

(3) a person who holds a certificate of registration under Subchapter E.

Sec. 469.106. BUILDINGS AND FACILITIES USED TO PROVIDE DIRECT SERVICES TO PERSONS WITH MOBILITY IMPAIRMENTS; STATE LEASES. (a) Notwithstanding any other provision of this chapter, the

commission shall require complete compliance with the standards and specifications adopted by the commission under this chapter that apply specifically to a building or facility occupied by a state agency involved in extending direct services to persons with mobility impairments. Those standards and specifications also apply to a building or facility occupied by the Texas Rehabilitation Commission.

(b) The department and the Texas Building and Procurement Commission shall ensure compliance with the standards and specifications described by Subsection (a) for a building or facility described by Subsection (a) and leased for an annual amount of more than $12,000 or built by or for the state.

(c) Before a building or facility to be leased by the state for an annual amount of more than $12,000 is occupied in whole or in part by the state, a person described by Section 469.105(b) must perform an on-site inspection of the building or facility to determine whether it complies with all accessibility standards and specifications adopted under this chapter.

(d) If an inspection under Subsection (c) determines that a building or facility does not comply with all applicable standards and specifications, the leasing agency or the Texas Building and Procurement Commission, as applicable, shall cancel the lease unless the lessor brings the building or facility into compliance not later than:

(1) the 60th day after the date the person performing the inspection delivers the results of the inspection to the lessor or the lessor's agent; or

(2) a later date established by the commission if circumstances justify a later date.

Sec. 469.107. REVIEW OF PLANS AND SPECIFICATIONS FOR STRUCTURES NOT SUBJECT TO CHAPTER. The commission may:

(1) review plans and specifications and make inspections of a structure not otherwise subject to this chapter; and

(2) issue a certification that a structure not otherwise subject to this chapter is free of architectural barriers and in compliance with this chapter.

[Sections 469.108-469.150 reserved for expansion]

SUBCHAPTER D. WAIVER OR MODIFICATION OF ACCESSIBILITY STANDARDS

Sec. 469.151. WAIVER OR MODIFICATION PERMITTED. (a) The commission may waive or modify accessibility standards adopted under this chapter if:

(1) the commission considers the application of the standards to be irrelevant to the nature, use, or function of a building or facility subject to this chapter; or

(2) the owner of the building or facility for which a request for a waiver or modification is made, or the owner's designated agent, presents proof to the commission that compliance with a specific standard is impractical.

(b) If a request is made for waiver or modification of an accessibility standard with respect to a building described by Section 469.003(a)(3) or a building or facility leased or rented for use by the state through the use of federal money, the owner of

the building or facility, or the owner's designated agent, must present to the commission the proof required by Subsection (a)(2).

Sec. 469.152. WAIVER OR MODIFICATION PROHIBITED. The commission may not waive or modify a standard or specification if:

(1) the waiver or modification would significantly impair the acquisition of goods and services by persons with disabilities or substantially reduce the potential for employment of persons with disabilities;

(2) the commission knows that the waiver or modification would result in a violation of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and its subsequent amendments; or

(3) the proof presented to the commission under Section 469.151(a)(2) is not adequate.

Sec. 469.153. MAINTENANCE OF CERTAIN INFORMATION. All evidence supporting a waiver or modification determination by the commission is a matter of public record and shall be made part of the file system maintained by the department.

[Sections 469.154-469.200 reserved for expansion]

SUBCHAPTER E. REGISTRATION TO PERFORM REVIEWS OR INSPECTIONS

Sec. 469.201. CERTIFICATE OF REGISTRATION REQUIRED. (a) A person may not perform a review or inspection function of the commission on behalf of the owner of a building or facility unless the person holds a certificate of registration issued under this subchapter.

(b) This section does not apply to an employee of:

(1) the department; or

(2) an entity with which the commission contracts under Section 469.055.

Sec. 469.202. FEES RELATED TO CERTIFICATE OF REGISTRATION. The commission may charge a fee for:

(1) an application for a certificate of registration;

(2) an examination for a certificate of registration;

(3) an educational course required for eligibility for a certificate of registration;

(4) issuance of an original certificate of registration;

(5) a continuing education course required to renew a certificate of registration; and

(6) renewal of a certificate of registration.

Sec. 469.203. APPLICATION AND ELIGIBILITY. (a) An applicant for a certificate of registration must file with the commission an application on a form prescribed by the executive director.

(b) To be eligible for a certificate of registration, an applicant must satisfy any requirements adopted by the executive director by rule, including education and examination requirements.

(c) The executive director may recognize, prepare, or administer educational courses required for obtaining a certificate of registration.

Sec. 469.204. EXAMINATION. (a) The executive director may administer separate examinations for applicants for certificates

of registration to perform review functions, inspection functions, or both review and inspection functions.

(b) The executive director shall notify each examinee of the results of the examination not later than the 30th day after the examination date.

Sec. 469.205. ISSUANCE OF CERTIFICATE. (a) The executive director shall issue an appropriate certificate of registration to an applicant who meets the requirements for a certificate.

(b) The executive director may issue a certificate of registration to perform review functions of the commission, inspection functions of the commission, or both review and inspection functions.

Sec. 469.206. CERTIFICATE TERM. The executive director by rule shall specify the term of a certificate of registration.

Sec. 469.207. CONTINUING EDUCATION. (a) The executive director by rule may require certificate holders to attend continuing education courses specified by the executive director.

(b) The executive director may recognize, prepare, or administer continuing education courses.

Sec. 469.208. PERFORMANCE OF REVIEWS AND INSPECTIONS. (a) A certificate holder shall perform a review or inspection function of the commission in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the executive director under this chapter.

(b) A certificate holder may not engage in false or misleading advertising in connection with the performance of review or inspection functions of the commission.

(b) Article 9102, Revised Statutes, is repealed.

SECTION 9.006. (a) Section 487.051, Government Code, is amended to conform to Section 1, Chapter 435, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 487.051. POWERS AND DUTIES. The office shall:

(1) develop a rural policy for the state in consultation with local leaders representing all facets of rural community life, academic and industry experts, and state elected and appointed officials with interests in rural communities;

(2) work with other state agencies and officials to improve the results and the cost-effectiveness of state programs affecting rural communities through coordination of efforts;

(3) develop programs to improve the leadership capacity of rural community leaders;

(4) monitor developments that have a substantial effect on rural Texas communities, especially actions of state government, and compile an annual report describing and evaluating the condition of rural communities;

(5) administer the federal community development block grant nonentitlement program;

(6) administer programs supporting rural health care as provided by Subchapters D-H;

(7) perform research to determine the most beneficial and cost-effective ways to improve the welfare of rural

communities;

(8) ensure that the office qualifies as the state's office of rural health for the purpose of receiving grants from the Office of Rural Health Policy of the United States Department of Health and Human Services under 42 U.S.C. Section 254r; [~~and~~]

(9) manage the state's Medicare rural hospital flexibility program under 42 U.S.C. Section 1395i-4; and

(10) seek state and federal money available for economic development in rural areas for programs under this chapter.

(b) Section 106.026(b), Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Section 487.056(b), Government Code, and Section 487.056, Government Code, is amended to read as follows:

Sec. 487.056. REPORT TO LEGISLATURE. (a) Not later than January 1 of each odd-numbered year, the office shall submit a biennial report to the legislature regarding the activities of the office, the activities of the Rural Foundation, and any findings and recommendations relating to rural issues.

(b) The office [~~center~~] shall obtain information from each county about indigent health care provided in the county and information from each university, medical school, rural community, or rural health care provider that has performed a study relating to rural health care during the biennium. The office [~~center~~] shall include the information obtained under this subsection in the office's [~~center's~~] report to the legislature.

(c) Subchapter H, Chapter 106, Health and Safety Code, as

added by Chapter 831, Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Subchapter K, Chapter 487, Government Code, and amended to read as follows:

SUBCHAPTER K [~~H~~]. COMMUNITY HEALTHCARE AWARENESS AND MENTORING PROGRAM FOR STUDENTS

Sec. 487.451 [~~106.251~~]. DEFINITIONS. In this subchapter:

(1) "Health care professional" means:

(A) an advanced nurse practitioner;

(B) a dentist;

(C) a dental hygienist;

(D) a laboratory technician;

(E) a licensed vocational nurse;

(F) a licensed professional counselor;

(G) a medical radiological technologist;

(H) an occupational therapist;

(I) a pharmacist;

(J) a physical therapist;

(K) a physician;

(L) a physician assistant;

(M) a psychologist;

(N) a registered nurse;

(O) a social worker;

(P) a speech-language pathologist;

(Q) a veterinarian;

(R) a chiropractor; and

(S) another appropriate health care professional identified by the executive committee.

(2) "Program" means the community healthcare awareness and mentoring program for students established under this subchapter.

(3) "Underserved urban area" means an urban area of this state with a medically underserved population, as determined in accordance with criteria adopted by the board by rule, considering relevant demographic, geographic, and environmental factors.

Sec. 487.452 [~~106.252~~]. COMMUNITY HEALTHCARE AWARENESS AND MENTORING PROGRAM FOR STUDENTS. (a) The executive committee shall establish a community healthcare awareness and mentoring program for students to:

(1) identify high school students in rural and underserved urban areas who are interested in serving those areas as health care professionals;

(2) identify health care professionals in rural and underserved urban areas to act as positive role models, mentors, or reference resources for the interested high school students;

(3) introduce interested high school students to the spectrum of professional health care careers through activities such as health care camps and shadowing of health care professionals;

(4) encourage a continued interest in service as health care professionals in rural and underserved urban areas by providing mentors and community resources for students participating in training or educational programs to become health care professionals; and

(5) provide continuing community-based support for students during the period the students are attending training or educational programs to become health care professionals, including summer job opportunities and opportunities to mentor high school students in the community.

(b) In connection with the program, the office [~~center~~] shall establish and maintain an updated medical resource library that contains information relating to medical careers. The office [~~center~~] shall make the library available to school counselors, students, and parents of students.

Sec. 487.453 [~~106.253~~]. ADMINISTRATION. (a) The office [~~center~~] shall administer or contract for the administration of the program.

(b) The office [~~center~~] may solicit and accept gifts, grants, donations, and contributions to support the program.

(c) The office [~~center~~] may administer the program in cooperation with other public and private entities.

(d) The office [~~center~~] shall coordinate the program with similar programs, including programs relating to workforce development, scholarships for education, and employment of students, that are administered by other agencies, such as the Texas Workforce Commission and local workforce development boards.

Sec. 487.454 [~~106.254~~]. GRANTS; ELIGIBILITY. (a) Subject to available funds, the executive committee shall develop and implement, as a component of the program, a grant program to support employment opportunities in rural and underserved urban areas in this state for students participating in training or educational

programs to become health care professionals.

(b) In awarding grants under the program, the executive committee shall give first priority to grants to training or educational programs that provide internships to students.

(c) To be eligible to receive a grant under the grant program, a person must:

(1) apply for the grant on a form adopted by the executive committee;

(2) be enrolled or intend to be enrolled in a training or educational program to become a health care professional;

(3) commit to practice or work, after licensure as a health care professional, for at least one year as a health care professional in a rural or underserved urban area in this state; and

(4) comply fully with any practice or requirements associated with any scholarship, loan, or other similar benefit received by the student.

(d) As a condition of receiving a grant under the program the student must agree to repay the amount of the grant, plus a penalty in an amount established by rule of the executive committee not to exceed two times the amount of the grant, if the student becomes licensed as a health care professional and fails to practice or work for at least one year as a health care professional in a rural or underserved urban area in this state.

(d) Subchapter H, Chapter 106, Health and Safety Code, as added by Chapter 1112, Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Subchapter L, Chapter 487, Government Code, and amended to read as follows:

SUBCHAPTER L [~~H~~]. RURAL PHYSICIAN RECRUITMENT PROGRAM

Sec. 487.501 [~~106.251~~]. DEFINITIONS. In this subchapter:

(1) "Rural community" means a rural area as defined by the office [~~center~~].

(2) "Medical school" has the meaning assigned by Section 61.501, Education Code.

Sec. 487.502 [~~106.252~~]. GIFTS AND GRANTS. The office [~~center~~] may accept gifts, grants, and donations to support the rural physician recruitment program.

Sec. 487.503 [~~106.253~~]. RURAL PHYSICIAN RECRUITMENT PROGRAM. (a) The office [~~center~~] shall establish a process in consultation with the Texas Higher Education Coordinating Board for selecting a Texas medical school to recruit students from rural communities and encourage them to return to rural communities to practice medicine.

(b) The Texas medical school selected by the office [~~center~~] shall:

(1) encourage high school and college students from rural communities to pursue a career in medicine;

(2) develop a screening process to identify rural students most likely to pursue a career in medicine;

(3) establish a rural medicine curriculum;

(4) establish a mentoring program for rural students;

(5) provide rural students with information about financial aid resources available for postsecondary education; and

(6) establish a rural practice incentive program.

(e) Subchapter H, Chapter 106, Health and Safety Code, as

added by Chapter 435, Acts of the 77th Legislature, Regular Session, 2001, is redesignated as Subchapter M, Chapter 487, Government Code, and amended to read as follows:

SUBCHAPTER M [~~H~~]. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

Sec. 487.551 [~~106.301~~]. DEFINITIONS. In this subchapter:

(1) "Health professional" means a person other than a physician who holds a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to practice in a health care profession.

(2) "Medically underserved community" means a community that:

(A) is located in a county with a population of 50,000 or less;

(B) has been designated under state or federal law as:

(i) a health professional shortage area; or

(ii) a medically underserved area; or

(C) has been designated as a medically underserved community by the office [~~center~~].

Sec. 487.552 [~~106.302~~]. ADVISORY PANEL. The office [~~center~~] shall appoint an advisory panel to assist in the office's [~~center's~~] duties under this subchapter. The advisory panel must consist of at least:

(1) one representative from the Texas Higher Education Coordinating Board;

(2) one representative from the institutions of higher education having degree programs for the health professions participating in the programs under this subchapter;

(3) one representative from a hospital in a medically underserved community;

(4) one physician practicing in a medically underserved community;

(5) one health professional, other than a physician, practicing in a medically underserved community; and

(6) one public representative who resides in a medically underserved community.

Sec. 487.553 [~~106.303~~]. LOAN REIMBURSEMENT PROGRAM. The executive committee shall establish a program in the office [~~center~~] to assist communities in recruiting health professionals to practice in medically underserved communities by providing loan reimbursement for health professionals who serve in those communities.

Sec. 487.554 [~~106.304~~]. STIPEND PROGRAM. (a) The executive committee shall establish a program in the office [~~center~~] to assist communities in recruiting health professionals to practice in medically underserved communities by providing a stipend to health professionals who agree to serve in those communities.

(b) A stipend awarded under this section shall be paid in periodic installments.

(c) A health professional who participates in the program established under this section must establish an office and residency in the medically underserved area before receiving any

portion of the stipend.

Sec. 487.555 [~~106.305~~]. CONTRACT REQUIRED. (a) A health professional may receive assistance under this subchapter only if the health professional signs a contract agreeing to provide health care services in a medically underserved community.

(b) A student in a degree program preparing to become a health professional may contract with the office [~~center~~] for the loan reimbursement program under Section 487.553 [~~106.303~~] before obtaining the license required to become a health professional.

(c) The office [~~center~~] may contract with a health professional for part-time services under the stipend program established under Section 487.554 [~~106.304~~].

(d) A health professional who participates in any loan reimbursement program is not eligible for a stipend under Section 487.554 [~~106.304~~].

(e) A contract under this section must provide that a health professional who does not provide the required services to the community or provides those services for less than the required time is personally liable to the state for:

(1) the total amount of assistance the health professional received from the office [~~center~~] and the medically underserved community;

(2) interest on the amount under Subdivision (1) at a rate set by the executive committee;

(3) the state's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees; and

(4) a penalty as established by the executive

committee by rule to help ensure compliance with the contract.

(f) Amounts recovered under Subsection (e) shall be deposited in the permanent endowment fund for the rural communities health care investment program under Section 487.558 [~~106.308~~].

Sec. 487.556 [~~106.306~~]. POWERS AND DUTIES OF OFFICE [~~CENTER~~]. (a) The executive committee shall adopt rules necessary for the administration of this subchapter, including guidelines for:

(1) developing contracts under which loan reimbursement or stipend recipients provide services to qualifying communities;

(2) identifying the duties of the state, state agency, loan reimbursement or stipend recipient, and medically underserved community under the loan reimbursement or stipend contract;

(3) determining a rate of interest to be charged under Section 487.555(e)(2) [~~106.305(e)(2)~~];

(4) ensuring that a loan reimbursement or stipend recipient provides access to health services to participants in government-funded health benefits programs in qualifying communities;

(5) encouraging the use of telecommunications or telemedicine, as appropriate;

(6) prioritizing the provision of loan reimbursements and stipends to health professionals who are not eligible for any other state loan forgiveness, loan repayment, or stipend program;

(7) prioritizing the provision of loan reimbursements and stipends to health professionals who are graduates of health

professional degree programs in this state;

(8) encouraging a medically underserved community served by a loan reimbursement or stipend recipient to contribute to the cost of the loan reimbursement or stipend when making a contribution is feasible; and

(9) requiring a medically underserved community served by a loan reimbursement or stipend recipient to assist the office [~~center~~] in contracting with the loan reimbursement or stipend recipient who will serve that community.

(b) The executive committee by rule may designate areas of the state as medically underserved communities.

(c) The executive committee shall make reasonable efforts to contract with health professionals from a variety of different health professions.

Sec. 487.557 [~~106.307~~]. USE OF TELECOMMUNICATION AND TELEMEDICINE. A health professional who participates in a program under this subchapter may not use telecommunication technology, including telemedicine, as the sole or primary method of providing services and may not use telecommunication technology as a substitute for providing health care services in person. A health professional who participates in a program under this subchapter may use telecommunication technology only to supplement or enhance the health care services provided by the health professional.

Sec. 487.558 [~~106.308~~]. PERMANENT ENDOWMENT FUND. (a) The permanent endowment fund for the rural communities health care investment program is a special fund in the treasury outside the general revenue fund.

(b) The fund is composed of:

(1) money transferred to the fund at the direction of the legislature;

(2) gifts and grants contributed to the fund;

(3) the returns received from investment of money in the fund; and

(4) amounts recovered under Section 487.555(e) [~~106.305(e)~~].

Sec. 487.559 [~~106.309~~]. ADMINISTRATION AND USE OF FUND. (a) The office [~~center~~] may administer the permanent endowment fund for the rural communities health care investment program. If the office [~~center~~] elects not to administer the fund, the comptroller shall administer the fund.

(b) The administrator of the fund shall invest the fund in a manner intended to preserve the purchasing power of the fund's assets and the fund's annual distributions. The administrator may acquire, exchange, sell, supervise, manage, or retain, through procedures and subject to restrictions the administrator considers appropriate, any kind of investment of the fund's assets that prudent investors, exercising reasonable care, skill, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the fund then prevailing, taking into consideration the investment of all the assets of the fund rather than a single investment.

(c) The comptroller or the office [~~center~~] may solicit and accept gifts and grants to the fund.

(d) Annual distributions for the fund shall be determined by

the investment and distribution policy adopted by the administrator of the fund for the fund's assets.

(e) Except as provided by Subsection (f), money in the fund may not be used for any purpose.

(f) The amount available for distribution from the fund, including any gift or grant, may be appropriated only for providing stipends and loan reimbursement under the programs authorized by this subchapter and to pay the expenses of managing the fund. The expenditure of a gift or grant is subject to any limitation or requirement placed on the gift or grant by the donor or granting entity.

(g) Sections 403.095 and 404.071, Government Code, do not apply to the fund. Section 404.094(d), Government Code, applies to the fund.

Sec. 487.560 [~~106.310~~]. REPORTING REQUIREMENT. The office [~~center~~] shall provide a report on the permanent endowment fund for the rural communities health care investment program to the Legislative Budget Board not later than November 1 of each year. The report must include the total amount of money the office [~~center~~] received from the fund, the purpose for which the money was used, and any additional information that may be requested by the Legislative Budget Board.

(f) Section 38.011(j), Education Code, as added by Chapter 1418, Acts of the 76th Legislature, Regular Session, 1999, as amended by Chapter 1424, Acts of the 77th Legislature, Regular Session, 2001, and as amended and redesignated as Section 38.060(a), Education Code, by Chapter 1420, Acts of the 77th

Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) This section applies only to a school-based health center serving an area that:

(1) is located in a county with a population not greater than 50,000; or

(2) has been designated under state or federal law as:

(A) a health professional shortage area;

(B) a medically underserved area; or

(C) a medically underserved community by the Office of Rural Community Affairs.

(g) Section 61.0899, Education Code, is amended to read as follows:

Sec. 61.0899. ASSISTANCE IN CERTAIN RURAL HEALTH CARE LOAN REIMBURSEMENT AND STIPEND PROGRAMS. The board shall, in cooperation with the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] and the office's [~~center's~~] advisory panel established under Section 487.552 [~~106.302~~], Government [~~Health and Safety~~] Code, ensure that the board seeks to obtain the maximum amount of funds from any source, including federal funds, to support programs to provide student loan reimbursement or stipends for graduates of degree programs in this state who practice or agree to practice in a medically underserved community.

(h) Section 110.001, Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 110.001. CREATION OF FOUNDATION. (a) The Office of

Rural Community Affairs [~~Center for Rural Health Initiatives~~] shall establish the Rural Foundation as a nonprofit corporation that complies with the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), except as otherwise provided by this chapter, and qualifies as an organization exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) The Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] shall ensure that the Rural Foundation operates independently of any state agency or political subdivision of the state.

(i) Section 110.002(c), Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) The Rural Foundation shall develop and implement policies and procedures that clearly separate the responsibilities and activities of the foundation from the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~].

(j) Section 110.003(a), Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The Rural Foundation is governed by a board of five directors appointed by the executive committee of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] from individuals recommended by the executive director of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~].

(k) Section 110.005(c), Health and Safety Code, as added by

Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(c) If the executive director of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of directors of the Rural Foundation of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board of directors, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(l) Section 110.010, Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 110.010. MEMORANDUM OF UNDERSTANDING. The Rural Foundation and the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] shall enter into a memorandum of understanding that:

(1) requires the board of directors and staff of the foundation to report to the executive director and executive committee of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~];

(2) allows the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] to provide staff functions to the foundation;

(3) allows the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] to expend funds on the foundation; and

(4) outlines the financial contributions to be made to the foundation from funds obtained from grants and other sources.

(m) Section 110.011(a), Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

(a) The Rural Foundation shall maintain financial records and reports independently from those of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~].

(n) Section 110.012, Health and Safety Code, as added by Chapter 1221, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 110.012. REPORT TO OFFICE OF RURAL COMMUNITY AFFAIRS [~~CENTER FOR RURAL HEALTH INITIATIVES~~]. Not later than the 60th day after the last day of the fiscal year, the Rural Foundation shall submit to the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~] a report itemizing all income and expenditures and describing all activities of the foundation during the preceding fiscal year.

(o) Section 155.1025(a), Occupations Code, is amended to read as follows:

(a) The board shall adopt rules for expediting any application for a license under this subtitle made by a person who is licensed to practice medicine in another state or country and who submits an affidavit with the application stating that:

(1) the applicant intends to practice in a rural community, as determined by the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~]; or

(2) the applicant intends to:

(A) accept employment with an entity located in a medically underserved area or health professional shortage area, designated by the United States Department of Health and Human Services, and affiliated with or participating in a public university-sponsored graduate medical education program;

(B) serve on the faculty of the public university-sponsored graduate medical education program; and

(C) engage in the practice of medicine and teaching in a specialty field of medicine that is necessary to obtain or maintain the accreditation of the public university-sponsored graduate medical education program by the Accreditation Council for Graduate Medical Education.

(p) The following provisions are repealed:

(1) Section 106.025(a), Health and Safety Code, as amended by Section 1, Chapter 435, Acts of the 77th Legislature, Regular Session, 2001;

(2) Section 106.029, Health and Safety Code, as added by Section 1, Chapter 1113, Acts of the 77th Legislature, Regular Session, 2001; and

(3) Section 106.043(b), Health and Safety Code, as amended by Section 10, Chapter 874, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 9.007. Section 501.011, Government Code, is

repealed to conform to Section 24.02, Chapter 876, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 9.008. (a) Chapter 511, Government Code, is amended to conform to Section 1, Chapter 20, Acts of the 71st Legislature, Regular Session, 1989, by adding Section 511.0097 to read as follows:

Sec. 511.0097. FIRE SPRINKLER HEAD INSPECTION. (a) On the request of a sheriff, the commission shall inspect a facility to determine whether there are areas in the facility in which fire sprinkler heads should not be placed as a fire prevention measure. In making a decision under this section, the commission shall consider:

(1) the numbers and types of inmates having access to the area;

(2) the likelihood that an inmate will attempt to vandalize the fire sprinkler system or commit suicide by hanging from a sprinkler head; and

(3) the suitability of other types of fire prevention and smoke dispersal devices available for use in the area.

(b) If the commission determines that fire sprinkler heads should not be placed in a particular area within a facility, neither a county fire marshal nor a municipal officer charged with enforcing ordinances related to fire safety may require the sheriff to install sprinkler heads in that area.

(b) Section 1, Chapter 20, Acts of the 71st Legislature, Regular Session, 1989, is repealed.

SECTION 9.009. Section 531.001(4), Government Code, as

amended by Chapters 53, 957, and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(4) "Health and human services agencies" includes the:

(A) Interagency Council on Early Childhood Intervention;

(B) Texas Department on Aging;

(C) Texas Commission on Alcohol and Drug Abuse;

(D) Texas Commission for the Blind;

(E) Texas Commission for the Deaf and Hard of Hearing;

(F) Texas Department of Health;

(G) Texas Department of Human Services;

(H) Texas Department of Mental Health and Mental Retardation;

(I) Texas Rehabilitation Commission;

(J) Department of Protective and Regulatory Services; and

(K) Texas Health Care Information Council.

SECTION 9.010. Section 531.151(2), Government Code, is amended to correct a reference to read as follows:

(2) "Community resource coordination group" means a coordination group established under the memorandum of understanding adopted under Section 531.055 [~~264.003, Family Code~~].

SECTION 9.011. Section 531.0245(b)(2), Government Code, is amended to correct a reference to read as follows:

(2) "Permanency planning" has the meaning assigned by

Section 531.151 [~~242.801, Health and Safety Code~~].

SECTION 9.012. Section 551.001(3), Government Code, as amended by Chapters 633 and 1004, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law;

(I) a local workforce development board created under Section 2308.253; [~~and~~]

(J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(K) [~~(J)~~] a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or

wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

SECTION 9.013. Section 552.136, Government Code, as added by Chapter 545, Acts of the 77th Legislature, Regular Session, 2001, is repealed as duplicative of Section 552.137, Government Code.

SECTION 9.014. Section 552.003(1), Government Code, as amended by Chapters 633 and 1004, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(1) "Governmental body":

(A) means:

(i) a board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;

(ii) a county commissioners court in the state;

(iii) a municipal governing body in the state;

(iv) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(v) a school district board of trustees;

(vi) a county board of school trustees;

(vii) a county board of education;

(viii) the governing board of a special

district;

(ix) the governing body of a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;

(x) [~~(ix)~~] a local workforce development board created under Section 2308.253;

[~~(x) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and~~]

(xi) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(xii) the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds; and

(B) does not include the judiciary.

SECTION 9.015. Section 602.002, Government Code, as amended by Chapters 514 and 986, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 602.002. OATH MADE IN TEXAS. An oath made in this state may be administered and a certificate of the fact given by:

(1) a judge or a clerk of a municipal court, in a matter pertaining to a duty of the court;

(2) a judge, retired judge, senior judge, clerk, or commissioner of a court of record;

(3) a justice of the peace or a clerk of a justice court;

(4) a notary public;

(5) a member of a board or commission created by a law of this state, in a matter pertaining to a duty of the board or commission;

(6) a person employed by the Texas Ethics Commission who has a duty related to a report required by Title 15, Election Code, in a matter pertaining to that duty;

(7) a county tax assessor-collector or an employee of the county tax assessor-collector if the oath relates to a document that is required or authorized to be filed in the office of the county tax assessor-collector;

(8) the secretary of state;

(9) an employee of a personal bond office if the oath is required or authorized by Article 17.04, Code of Criminal Procedure;

(10) the lieutenant governor;

(11) the speaker of the house of representatives;

(12) the governor;

(13) a legislator or retired legislator;

(14) the attorney general;

(15) the secretary or clerk of a municipality in a matter pertaining to the official business of the municipality; or

(16) [~~(15)~~] a peace officer described by Article 2.12,

Code of Criminal Procedure, if:

(A) the oath is administered when the officer is engaged in the performance of the officer's duties; and

(B) the administration of the oath relates to the officer's duties.

SECTION 9.016. Section 822.201(b), Government Code, as amended by Chapters 118, 834, and 1301, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986, if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance,

dependent care assistance programs, or group legal services plans;

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e);

(5) the benefit replacement pay a person earns under Subchapter H, Chapter 659, as added by Chapter 417, Acts of the 74th Legislature, 1995, except as provided by Subsection (c);

(6) stipends paid to teachers in accordance with Section 21.410, 21.411, or 21.412, Education Code;

(7) amounts by which the member's salary is reduced or that are deducted from the member's salary as authorized by Subchapter J, Chapter 659; and

(8) a merit salary increase made under Section 51.962, Education Code.

SECTION 9.017. Section 824.602(a), Government Code, as amended by Chapters 567 and 1229, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) Subject to Section 825.506, the retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer and, if the retiree is a disability retiree, the employment has not exceeded a total of 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month;

(3) in one or more positions on as much as a full-time basis, if the work occurs in not more than six months of a school year that begins after the retiree's effective date of retirement;

(4) in a position, other than as a substitute, on no more than a one-half time basis for no more than 90 days in the school year, if the retiree is a disability retiree;

(5) in a position as a classroom teacher on as much as a full-time basis, if the retiree has retired under Section 824.202(a), is certified under Subchapter B, Chapter 21, Education Code, to teach the subjects assigned, is teaching in an acute shortage area as determined by the board of trustees of a school district as provided by Subsection (m), and has been separated from service with all public schools for at least 12 months; [~~or~~]

(6) in a position as a principal, including as an assistant principal, on as much as a full-time basis, if the retiree has retired under Section 824.202(a) without reduction for retirement at an early age, is certified under Subchapter B, Chapter 21, Education Code, to serve as a principal, and has been separated from service with all public schools for at least 12 months; or[~~.~~]

(7) [~~(6)~~] as a bus driver for a school district on as much as a full-time basis, if the retiree has retired under Section 824.202(a).

SECTION 9.018. Section 1372.0321, Government Code, as added by Chapters 1367 and 1420, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 1372.0321. PRIORITIES FOR RESERVATIONS AMONG ISSUERS

OF QUALIFIED RESIDENTIAL RENTAL PROJECT ISSUES. (a) In granting reservations to issuers of qualified residential rental project issues, the board shall:

(1) give first priority to:

(A) projects in which 100 percent of the residential units in the projects are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 50 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(B) on or after June 1, projects that are located in counties, metropolitan statistical areas, or primary metropolitan statistical areas with area median family incomes at or below the statewide median family income established by the United States Department of Housing and Urban Development;

(2) give second priority to projects in which 100 percent of the residential units in the projects are under the restriction that the maximum allowable rents are an amount equal to 30 percent of 60 percent of the area median family income minus an allowance for utility costs authorized under the federal low-income housing tax credit program; and

(3) give third priority to any other qualified residential rental project.

(b) The board may not reserve a portion of the state ceiling for a first or second priority project described by Subsection (a) unless the board receives evidence that an application has been filed with the Texas Department of Housing and Community Affairs

for the low-income housing tax credit that is available for multifamily transactions that are at least 51 percent financed by tax-exempt private activity bonds.

SECTION 9.0185. The heading of Subchapter D, Chapter 1508, Government Code, is amended to read as follows:

SUBCHAPTER D. BONDS FOR PARKS AND RECREATIONAL FACILITIES IN MUNICIPALITIES WITH POPULATION OF 1.9 [~~1.2~~] MILLION OR MORE

SECTION 9.019. Section 2054.003, Government Code, as amended by Chapters 1272 and 1422, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to correct a reference to read as follows:

Sec. 2054.003. DEFINITIONS. In this chapter:

(1) "Application" means a separately identifiable and interrelated set of information resources technologies that allows a state agency to manipulate information resources to support specifically defined objectives.

(2) "Board" means the governing board of the Department of Information Resources.

(3) "Data processing" means information technology equipment and related services designed for the automated storage, manipulation, and retrieval of data by electronic or mechanical means. The term includes:

(A) central processing units, front-end processing units, miniprocessors, microprocessors, and related peripheral equipment such as data storage devices, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other

than memory typewriters, and equipment and systems for computer networks;

(B) all related services, including feasibility studies, systems design, software development, and time-sharing services, provided by state employees or others; and

(C) the programs and routines used to employ and control the capabilities of data processing hardware, including operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(4) "Department" means the Department of Information Resources.

(5) "Electronic government project" means the use of information technology to improve the access to and delivery of a government service, including a project that uses the Internet as a primary tool for the delivery of a government service or performance of a governmental function.

(6) "Executive director" means the executive director of the Department of Information Resources.

(7) "Information resources" means the procedures, equipment, and software that are employed, designed, built, operated, and maintained to collect, record, process, store, retrieve, display, and transmit information, and associated personnel including consultants and contractors.

(8) "Information resources technologies" means data processing and telecommunications hardware, software, services, supplies, personnel, facility resources, maintenance, and

training.

(9) "Local government" means a county, municipality, special district, school district, junior college district, or other political subdivision of the state.

(10) "Major information resources project" means:

(A) any information resources technology project identified in a state agency's biennial operating plan whose development costs exceed $1 million and that:

(i) requires one year or longer to reach operations status;

(ii) involves more than one state agency; or

(iii) substantially alters work methods of state agency personnel or the delivery of services to clients; and

(B) any information resources technology project designated by the legislature in the General Appropriations Act as a major information resources project.

(11) "Program management office" means the Electronic Government Program Management Office created by the department under Chapter 2055 to manage projects.

(12) "Project" means a program to provide information resources technologies support to functions within or among elements of a state agency, that ideally is characterized by well-defined parameters, specific objectives, common benefits, planned activities, a scheduled completion date, and an established budget with a specified source of funding.

(13) "State agency" means a department, commission,

board, office, council, authority, or other agency in the executive or judicial branch of state government that is created by the constitution or a statute of this state, including a university system or institution of higher education as defined by Section 61.003, Education Code.

(14) "Telecommunications" means any transmission, emission, or reception of signs, signals, writings, images, or sounds of intelligence of any nature by wire, radio, optical, or other electromagnetic systems. The term includes all facilities and equipment performing those functions that are owned, leased, or used by state agencies and branches of state government.

(15) "TexasOnline" means the electronic government project or its successor project implemented under Subchapter I [~~Section 2054.062 or its successor statute~~].

SECTION 9.0195. (a) This section amends Chapter 2165, Government Code, to more accurately reflect the law from which the chapter was derived.

(b) Section 2165.001, Government Code, is amended to read as follows:

Sec. 2165.001. CUSTODIANSHIP OF STATE PROPERTY. (a) The commission:

(1) has charge and control of all public [~~state~~] buildings, grounds, and property;

(2) is the custodian of all state personal property; and

(3) is responsible for the proper care and protection of state property from damage, intrusion, or improper use.

(b) The commission may:

(1) allocate space in a public [~~state~~] building to the departments of state government for uses authorized by law; and

(2) make repairs to a public [~~state~~] building necessary to accommodate uses of the space in the building.

(c) Section 2165.002, Government Code, is amended to read as follows:

Sec. 2165.002. EXCEPTIONS TO COMMISSION CHARGE AND CONTROL. The provisions of Section 2165.001 relating to charge and control of public [~~state~~] buildings and grounds do not apply to buildings and grounds of:

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

(2) a state agency to which control has been specifically committed by law; and

(3) a state agency:

(A) that has demonstrated ability and competence to maintain and control its buildings and grounds; and

(B) to which the commission delegates that authority.

(d) Section 2165.051(a), Government Code, is amended to read as follows:

(a) The commission shall frequently and at regular intervals inspect all public [~~state~~] buildings and property to remain constantly informed of the condition of the buildings and property.

(e) Section 2165.054, Government Code, is amended to read as

follows:

Sec. 2165.054. PLANS OF PUBLIC [~~STATE~~] BUILDINGS. The commission shall prepare and keep in its offices a copy of the plans of each public [~~state~~] building under its charge, and plans of each building's improvements, showing the exact location of all electrical wiring and all water, gas, and sewage pipes.

SECTION 9.020. (a) Section 2175.001(1), Government Code, as amended by Chapters 1004 and 1422, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(1) "Assistance organization" means:

(A) a nonprofit organization that provides educational, health, or human services or assistance to homeless individuals;

(B) a nonprofit food bank that solicits, warehouses, and redistributes edible but unmarketable food to an agency that feeds needy families and individuals;

(C) Texas Partners of the Americas, a registered agency with the Advisory Committee on Voluntary Foreign Aid, with the approval of the Partners of the Alliance office of the Agency for International Development;

(D) a group, including a faith-based group, that enters into a financial or nonfinancial agreement with a health or human services agency to provide services to that agency's clients;

(E) a local workforce development board created under Section 2308.253;

(F) a nonprofit organization approved by the Supreme Court of Texas that provides free legal services for

low-income households in civil matters; and

(G) the Texas Boll Weevil Eradication Foundation, Inc., or an entity designated by the commissioner of agriculture as the foundation's successor entity under Section 74.1011, Agriculture Code.

(b) Subchapter C, Chapter 2175, Government Code, as amended by Chapters 816, 1272, and 1422, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

SUBCHAPTER C. DIRECT TRANSFER OR OTHER DISPOSITION OF SURPLUS OR SALVAGE PROPERTY BY STATE AGENCY

Sec. 2175.121. APPLICABILITY. This subchapter applies only to surplus or salvage property to which Subchapter D does not apply.

Sec. 2175.122. STATE AGENCY NOTICE TO COMMISSION AND COMPTROLLER. A state agency that determines it has surplus or salvage property shall inform the commission and the comptroller of the property's kind, number, location, condition, original cost or value, and date of acquisition.

Sec. 2175.123. DETERMINING METHOD OF DISPOSAL. (a) Based on the condition of the property, a state agency shall determine whether the property is:

(1) surplus property that should be offered for transfer under Section 2175.125 or sold to the public; or

(2) salvage property.

(b) The state agency shall inform the commission and the comptroller of its determination.

Sec. 2175.124. COMMISSION NOTICE TO OTHER ENTITIES. After a determination that a state agency has surplus property, the

commission shall inform other state agencies, political subdivisions, and assistance organizations of the comptroller's website that lists surplus property that is available for sale.

Sec. 2175.1245. ADVERTISING ON COMPTROLLER WEBSITE. Not later than the second day after the date the comptroller receives notice from a state agency that the agency has surplus property, the comptroller shall advertise the property's kind, number, location, and condition on the comptroller's website.

Sec. 2175.125. DIRECT TRANSFER. During the 10 business days after the date the property is posted on the comptroller's website, a state agency, political subdivision, or assistance organization may coordinate directly with the reporting state agency for a transfer of the property at a price established by the reporting agency.

Sec. 2175.126. NOTICE OF TRANSFER TO COMPTROLLER; ADJUSTMENT OF APPROPRIATIONS AND PROPERTY ACCOUNTING RECORDS; REMOVAL FROM WEBSITE. (a) If property is transferred to a state agency, the participating agencies shall report the transaction to the comptroller.

(b) On receiving notice under this section, the comptroller shall, if necessary:

(1) debit and credit the proper appropriations; and

(2) adjust state property accounting records.

(c) Not later than the second day after the date the comptroller receives notice under Subsection (a), the comptroller shall remove the property from the list of surplus property for sale on the comptroller's website.

Sec. 2175.127. PRIORITY FOR TRANSFER TO STATE AGENCY. During the 10 business days after the date the property is posted on the comptroller's website, a transfer to a state agency has priority over any other transfer under rules adopted by the commission.

Sec. 2175.128. DISPOSITION OF DATA PROCESSING EQUIPMENT. (a) If a disposition of a state agency's surplus or salvage data processing equipment is not made under Section 2175.125 or 2175.184, the state agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The state agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

(b) If a disposition of the surplus or salvage data processing equipment of a state eleemosynary institution or an institution or agency of higher education is not made under other law, the institution or agency shall transfer the equipment to a school district or open-enrollment charter school in this state under Subchapter C, Chapter 32, Education Code, or to the Texas Department of Criminal Justice. The institution or agency may not collect a fee or other reimbursement from the district, the school, or the Texas Department of Criminal Justice for the surplus or salvage data processing equipment.

Sec. 2175.129. DISPOSITION BY COMPETITIVE BIDDING, AUCTION, OR DIRECT SALE. (a) If a disposition of a state agency's

surplus property is not made under Section 2175.125, the commission shall:

(1) sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site; or

(2) delegate to the state agency authority to sell the property by competitive bid, auction, or direct sale to the public, including a sale using an Internet auction site.

(b) The commission or a state agency to which authority is delegated under Subsection (a)(2) or under Section 2175.065 shall determine which method of sale shall be used based on the method that is most advantageous to the state under the circumstances. The commission shall adopt rules establishing guidelines for making that determination.

(c) In using an Internet auction site to sell surplus property under this section, the commission or state agency shall post the property on the site for at least 10 days.

Sec. 2175.130. DISPOSITION BY DIRECT SALE TO PUBLIC. (a) If the commission or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065 determines that selling the property by competitive bid or auction, including a sale using an Internet auction site, would not maximize the resale value of the property to the state, the commission or agency may sell surplus or salvage property directly to the public.

(b) The commission, in cooperation with the state agency that declared the property as surplus, or a state agency to which authority is delegated under Section 2175.129(a)(2) or 2175.065

shall set a fixed price for the property.

Sec. 2175.131. PURCHASER'S FEE. (a) The commission or a state agency disposing of property by a method other than direct transfer under this subchapter shall collect a fee from the purchaser.

(b) The commission or state agency shall set the fee at an amount that is:

(1) sufficient to recover costs associated with the sale; and

(2) at least two percent but not more than 12 percent of sale proceeds.

Sec. 2175.132. ADVERTISEMENT OF SALE. If the value of an item or a lot of property to be sold is estimated to be more than $5,000, the commission or the state agency authorized to sell the property shall advertise the sale at least once in at least one newspaper of general circulation in the vicinity in which the property is located.

Sec. 2175.133. REPORTING SALE; PROPERTY ACCOUNTING ADJUSTMENT. (a) On the sale by the commission of surplus or salvage property, the commission shall report the property sold and the sale price to the state agency that declared the property as surplus or salvage.

(b) A state agency for which surplus or salvage property is sold or that sells surplus or salvage property under authority of the commission shall report the sale and amount of sale proceeds to the comptroller.

(c) If property reported under this section is on the state

property accounting system, the comptroller shall remove the property from the property accounting records.

Sec. 2175.134. PROCEEDS OF SALE. (a) Proceeds from the sale of surplus or salvage property, less the cost of advertising the sale, the cost of selling the surplus or salvage property, including the cost of auctioneer services, and the amount of the fee collected under Section 2175.131, shall be deposited to the credit of the appropriate appropriation item of the state agency for which the sale was made.

(b) The portion of sale proceeds equal to the cost of advertising the sale and the cost of selling the surplus or salvage property, including the cost of auctioneer services, shall be deposited in the state treasury to the credit of the appropriation item of the commission or other state agency from which the costs were paid.

Sec. 2175.135. PURCHASER'S TITLE. A purchaser of surplus property at a sale conducted under Section 2175.129 or 2175.130 obtains good title to the property if the purchaser has in good faith complied with:

(1) the conditions of the sale; and

(2) applicable commission rules.

(c) The heading of Subchapter D, Chapter 2175, Government Code, as amended by Chapter 816, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

SUBCHAPTER E [~~D~~]. DESTRUCTION OF SURPLUS OR SALVAGE PROPERTY

(d) The heading of Subchapter E, Chapter 2175, Government Code, as amended by Chapter 816, Acts of the 77th Legislature,

Regular Session, 2001, is amended to read as follows:

SUBCHAPTER F [~~E~~]. EXCEPTIONS

(e) The heading of Subchapter F, Chapter 2175, Government Code, as amended by Chapter 816, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

SUBCHAPTER G [~~F~~]. FEDERAL SURPLUS PROPERTY

(f) Section 32.102(a), Education Code, is amended to correct a cross-reference to read as follows:

(a) As provided by this subchapter, a school district or open-enrollment charter school may transfer to a student enrolled in the district or school:

(1) any data processing equipment donated to the district or school, including equipment donated by:

(A) a private donor; or

(B) a state eleemosynary institution or a state agency under Section 2175.128 [~~2175.126~~], Government Code;

(2) any equipment purchased by the district or school, to the extent consistent with Section 32.105; and

(3) any surplus or salvage equipment owned by the district or school.

(g) Section 403.271(a), Government Code, is amended to correct a cross-reference to read as follows:

(a) This subchapter applies to:

(1) all personal property belonging to the state; and

(2) real and personal property acquired by or otherwise under the jurisdiction of the state under 40 U.S.C. Section 483c, 484(j), or 484(k), and Subchapter G [~~F~~], Chapter

2175.

(h) Section 2155.084(c), Government Code, is amended to correct a cross-reference to read as follows:

(c) In negotiating purchases of goods from the federal government under this section or under Subchapter G [~~F~~], Chapter 2175, the commission or the governing body of the institution of higher education may waive the requirement of a bidder's bond and performance bond that otherwise would be required.

(i) Section 2175.302, Government Code, is amended to correct a cross-reference to read as follows:

Sec. 2175.302. EXCEPTION FOR ELEEMOSYNARY INSTITUTIONS. Except as provided by Section 2175.128(b) [~~2175.126(b)~~], this chapter does not apply to the disposition of surplus or salvage property by a state eleemosynary institution.

SECTION 9.021. Section 2260.007, Government Code, as added by Chapters 1158, 1272, and 1422, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 2260.007. LEGISLATIVE AUTHORITY RETAINED; INTERPRETATION OF CHAPTER. (a) Notwithstanding Section 2260.005, the legislature retains the authority to deny or grant a waiver of immunity to suit against a unit of state government by statute, resolution, or any other means the legislature may determine appropriate.

(b) This chapter does not and may not be interpreted to:

(1) divest the legislature of the authority to grant permission to sue a unit of state government on the terms, conditions, and procedures that the legislature may specify in the

measure granting the permission;

(2) require that the legislature, in granting or denying permission to sue a unit of state government, comply with this chapter; or

(3) limit in any way the effect of a legislative grant of permission to sue a unit of state government unless the grant itself provides that this chapter may have that effect.

SECTION 9.022. (a) Chapter 3101, Government Code, is amended to codify Article 6139k, Revised Statutes, as added by Chapter 31, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 3101.012 to read as follows:

Sec. 3101.012. TEJANO MUSIC HALL OF FAME. The Tejano Music Hall of Fame Museum in Alice is the official Texas Tejano Music Hall of Fame.

(b) Article 6139k, Revised Statutes, as added by Chapter 31, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 9.023. (a) Subtitle A, Title 11, Government Code, is amended to codify Article 6144i, Revised Statutes, by adding Chapter 3103 to read as follows:

CHAPTER 3103. STATE OF TEXAS ANNIVERSARY REMEMBRANCE DAY MEDAL

Sec. 3103.001. DEFINITIONS. In this chapter:

(1) "Committee" means the State of Texas Anniversary Remembrance Day Medal Committee.

(2) "Medal" means the State of Texas Anniversary Remembrance Day Medal.

Sec. 3103.002. CRITERIA FOR AWARDING MEDAL. The medal shall be awarded to a resident of this state who:

(1) in an exemplary fashion, has displayed a commitment to the pioneer service principles of duty, honor, faith, and devotion to country and family; and

(2) through public service, has made outstanding contributions in pioneering the development, growth, and progress of this state.

Sec. 3103.003. AWARDS COMMITTEE. (a) The committee consists of seven members appointed by the governor with the advice and consent of the senate.

(b) Committee members serve staggered six-year terms, with the terms of two or three members expiring on January 31 of each odd-numbered year.

(c) A vacancy on the committee shall be filled for the unexpired term in the same manner as other appointments to the committee.

(d) The governor shall appoint the presiding officer to serve in that capacity for one year.

(e) Members of the committee serve without pay.

Sec. 3103.004. RECOMMENDATIONS FOR MEDAL. (a) A person may submit to the committee a letter recommending for the medal a person in public service if the person submitting the letter:

(1) has personal knowledge of outstanding contributions the recommended person has made in pioneering the development, growth, and progress of this state; and

(2) believes that those contributions merit awarding the medal.

(b) The letter of recommendation:

(1) must describe the outstanding contributions on which the recommendation is based; and

(2) may include statements, affidavits, records, photographs, or other material to support and amplify stated facts.

Sec. 3103.005. AWARDING MEDAL. (a) The committee shall review and may approve the recommendations submitted under Section 3103.004.

(b) The committee may award not more than five medals in a calendar year, except as provided by Section 3103.006 and except that, in exceptional circumstances, the legislature by concurrent resolution may authorize the governor to award one or more additional medals.

Sec. 3103.006. AWARDING MEDAL FOR PRIOR SERVICE. The committee may award not more than 10 medals for achievement attained or service provided before September 1, 2001.

Sec. 3103.007. PRESENTATION OF MEDAL. The governor shall present the medal to a recipient in an appropriate ceremony.

Sec. 3103.008. DESIGN AND MANUFACTURE. (a) The medal must display the bust of James Pinckney Henderson with the words "State of Texas Anniversary Remembrance Day Medal" engraved in a circle.

(b) The governor shall approve the design and authorize the casting of the medal in any manner considered appropriate.

(c) The medal shall be suspended from a ribbon of red, white, and blue and worn around the recipient's neck.

Sec. 3103.009. FUNDING. The STAR Day Foundation shall provide for funding the medal through pledges, gifts, donations, or endowments from private sources on the foundation's behalf.

(b) Article 6144i, Revised Statutes, is repealed.

SECTION 9.024. (a) Subtitle A, Title 11, Government Code, is amended to codify Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, by adding Chapter 3104 to read as follows:

CHAPTER 3104. POET LAUREATE, STATE MUSICIAN, AND STATE ARTISTS

Sec. 3104.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on the Arts.

(2) "Committee" means the Texas Poet Laureate, State Musician, and State Artist Committee.

Sec. 3104.002. DESIGNATING POET LAUREATE, STATE MUSICIAN, AND STATE ARTISTS. (a) The committee shall designate:

(1) a Texas poet laureate;

(2) a Texas state musician;

(3) a Texas state artist for two-dimensional media; and

(4) a Texas state artist for three-dimensional media.

(b) The committee shall choose the poet laureate, state musician, and state artists from a list of persons submitted by the commission.

Sec. 3104.003. COMMITTEE. (a) The committee consists of seven members as follows:

(1) one member appointed by the governor;

(2) three members appointed by the lieutenant governor; and

(3) three members appointed by the speaker of the house of representatives.

(b) One member appointed by the speaker of the house of representatives must be the chair of the house committee that has primary jurisdiction over arts and cultural matters. That member serves on the committee as an additional duty of the chairmanship.

(c) A member of the committee who is not a member of the legislature serves a two-year term that expires on October 1 of each odd-numbered year.

(d) The committee shall select a presiding officer from among its members.

Sec. 3104.004. RECOMMENDATIONS FROM COMMISSION. (a) The commission shall solicit nominations from the arts and cultural community for the poet laureate, state musician, and state artists. The commission shall use the commission's Texas Cultural & Arts Network, the media, public meetings, newsletters, the Writer's League of Texas, and other appropriate methods to distribute information about the nomination process.

(b) The commission may receive submissions from poets, musicians, and artists who have been nominated.

(c) The commission may assemble a group of artists, musicians, writers, scholars, and other appropriate experts in the fields of literature, music, and visual arts to:

(1) review the submissions from the nominated poets, musicians, and artists; and

(2) provide advice and recommendations to the commission on who should be considered for designation as poet

laureate, state musician, and state artists.

(d) For each category specified under Section 3104.002(a), the commission shall submit to the committee a list of not more than 10 persons who are worthy of being designated for that category.

Sec. 3104.005. DESIGNATION CEREMONY. The governor and members of the committee shall honor the persons designated as poet laureate, state musician, and state artists in a ceremony at the Capitol.

Sec. 3104.006. DURATION OF DESIGNATION. A person designated as the poet laureate, the state musician, or a state artist retains the designation for one year from the date of the designation ceremony.

Sec. 3104.007. PAY AND EMOLUMENTS PROHIBITED. A person designated as the poet laureate, the state musician, or a state artist does not receive any pay or emolument based on that designation.

(b) Article 6139k, Revised Statutes, as added by Chapter 1412, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

ARTICLE 10. CHANGES RELATING TO HEALTH AND SAFETY CODE

SECTION 10.001. (a) Section 105.006, Health and Safety Code, is amended to conform to Chapter 872, Acts of the 72nd Legislature, Regular Session, 1991, to read as follows:

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

for, any report.

(b) Chapter 872, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 10.002. Section 242.071, Health and Safety Code, as amended by Chapters 619 and 1284, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 242.071. AMELIORATION OF VIOLATION. (a) In lieu of demanding payment of an administrative penalty assessed under Section 242.066, the commissioner may, in accordance with this section, allow the person to use, under the supervision of the department, any portion of the penalty to ameliorate the violation or to improve services, other than administrative services, in the institution affected by the violation.

(b) The department shall offer amelioration to a person for a charged violation if the department determines that the violation does not constitute immediate jeopardy to the health and safety of an institution resident.

(c) The department may not offer amelioration to a person if:

(1) the person has been charged with a violation which is subject to correction under Section 242.0665; or

(2) the department determines that the charged violation constitutes immediate jeopardy to the health and safety of an institution resident.

(d) The department shall offer amelioration to a person under this section not later than the 10th day after the date the person receives from the department a final notification of

assessment of administrative penalty that is sent to the person after an informal dispute resolution process but before an administrative hearing under Section 242.068.

(e) A person to whom amelioration has been offered must file a plan for amelioration not later than the 45th day after the date the person receives the offer of amelioration from the department. In submitting the plan, the person must agree to waive the person's right to an administrative hearing under Section 242.068 if the department approves the plan.

(f) At a minimum, a plan for amelioration must:

(1) propose changes to the management or operation of the institution that will improve services to or quality of care of residents of the institution;

(2) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents of the institution;

(3) establish clear goals to be achieved through the proposed changes;

(4) establish a timeline for implementing the proposed changes; and

(5) identify specific actions necessary to implement the proposed changes.

(g) A plan for amelioration may include proposed changes to:

(1) improve staff recruitment and retention;

(2) offer or improve dental services for residents; and

(3) improve the overall quality of life for residents.

(h) The department may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter or the rules adopted under this chapter.

(i) The department shall approve or deny an amelioration plan not later than the 45th day after the date the department receives the plan. On approval of a person's plan, the department shall deny a pending request for a hearing submitted by the person under Section 242.067(d).

(j) The department may not offer amelioration to a person:

(1) more than three times in a two-year period; or

(2) more than one time in a two-year period for the same or similar violation.

(k) In this section, "immediate jeopardy to health and safety" means a situation in which immediate corrective action is necessary because the institution's noncompliance with one or more requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in the institution.

SECTION 10.003. Section 242.0975(c), Health and Safety Code, as added by Chapters 723 and 1248, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(c) The department shall set the fee on the basis of the number of beds in assisted living facilities required to pay the fee and in an amount necessary to provide not more than $500,000 in the assisted living facility trust fund.

SECTION 10.004. Section 242.501(a), Health and Safety Code, as amended by Chapters 919 and 1224, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The department by rule shall adopt a statement of the rights of a resident. The statement must be consistent with Chapter 102, Human Resources Code, but shall reflect the unique circumstances of a resident at an institution. At a minimum, the statement of the rights of a resident must address the resident's constitutional, civil, and legal rights and the resident's right:

(1) to be free from abuse and exploitation;

(2) to safe, decent, and clean conditions;

(3) to be treated with courtesy, consideration, and respect;

(4) to not be subjected to discrimination based on age, race, religion, sex, nationality, or disability and to practice the resident's own religious beliefs;

(5) to place in the resident's room an electronic monitoring device that is owned and operated by the resident or provided by the resident's guardian or legal representative;

(6) to privacy, including privacy during visits and telephone calls;

(7) to complain about the institution and to organize or participate in any program that presents residents' concerns to the administrator of the institution;

(8) to have information about the resident in the possession of the institution maintained as confidential;

(9) to retain the services of a physician the resident

chooses, at the resident's own expense or through a health care plan, and to have a physician explain to the resident, in language that the resident understands, the resident's complete medical condition, the recommended treatment, and the expected results of the treatment, including reasonably expected effects, side effects, and risks associated with psychoactive medications;

(10) to participate in developing a plan of care, to refuse treatment, and to refuse to participate in experimental research;

(11) to a written statement or admission agreement describing the services provided by the institution and the related charges;

(12) to manage the resident's own finances or to delegate that responsibility to another person;

(13) to access money and property that the resident has deposited with the institution and to an accounting of the resident's money and property that are deposited with the institution and of all financial transactions made with or on behalf of the resident;

(14) to keep and use personal property, secure from theft or loss;

(15) to not be relocated within the institution, except in accordance with standards adopted by the department under Section 242.403;

(16) to receive visitors;

(17) to receive unopened mail and to receive assistance in reading or writing correspondence;

(18) to participate in activities inside and outside the institution;

(19) to wear the resident's own clothes;

(20) to discharge himself or herself from the institution unless the resident is an adjudicated mental incompetent;

(21) to not be discharged from the institution except as provided in the standards adopted by the department under Section 242.403; [~~and~~]

(22) to be free from any physical or chemical restraints imposed for the purposes of discipline or convenience, and not required to treat the resident's medical symptoms; and

(23) [~~(22)~~] to receive information about prescribed psychoactive medication from the person prescribing the medication or that person's designee, to have any psychoactive medications prescribed and administered in a responsible manner, as mandated by Section 242.505, and to refuse to consent to the prescription of psychoactive medications.

SECTION 10.005. Section 242.801, Health and Safety Code, as amended by Chapter 114, Acts of the 77th Legislature, Regular Session, 2001, is repealed to conform to the repeal of Subchapter O, Chapter 242, Health and Safety Code, by Chapter 590, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10.006. Section 366.076, Health and Safety Code, as amended by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is repealed as duplicative of Section 37.006(b), Water Code.

SECTION 10.007. Section 371.043(b), Health and Safety Code, is repealed to conform to the repeal of Section 371.043 by Chapter 1072, Acts of the 75th Legislature, Regular Session, 1997.

SECTION 10.008. (a) Section 382.037, Health and Safety Code, as amended and renumbered as Section 382.202 of the Health and Safety Code by Chapter 1075, Acts of the 77th Legislature, Regular Session, 2001, and as amended by Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is reenacted as Section 382.202, Health and Safety Code, and amended to read as follows:

Sec. 382.202. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM. (a) The commission by resolution may request the Public Safety Commission to establish a vehicle emissions inspection and maintenance program under Subchapter F, Chapter 548, Transportation Code, in accordance with this section and rules adopted under this section. The commission by rule may establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) and its subsequent amendments.

(b) The commission by rule may require emissions-related inspection and maintenance of land vehicles, including testing exhaust emissions, examining emission control devices and systems, verifying compliance with applicable standards, and other requirements as provided by federal law or regulation.

(c) If the program is established under this section, the commission:

(1) shall adopt vehicle emissions inspection and maintenance requirements for certain areas as required by federal law or regulation; and

(2) shall adopt vehicle emissions inspection and maintenance requirements for counties not subject to a specific federal requirement in response to a formal request by resolutions adopted by the county and the most populous municipality within the county according to the most recent federal decennial census.

(d) On adoption of a resolution by the commission and after proper notice, the Department of Public Safety of the State of Texas shall implement a system that requires, as a condition of obtaining a safety inspection certificate issued under Subchapter C, Chapter 548, Transportation Code, in a county that is included in a vehicle emissions inspection and maintenance program under Subchapter F of that chapter, that the vehicle, unless the vehicle is not covered by the system, be annually or biennially inspected under the vehicle emissions inspection and maintenance program as required by the state's air quality state implementation plan. The Department of Public Safety shall implement such a system when it is required by any provision of federal or state law, including any provision of the state's air quality state implementation plan.

(e) The commission may assess fees for vehicle emissions-related inspections performed at inspection or reinspection facilities authorized and licensed by the commission in amounts reasonably necessary to recover the costs of developing, administering, evaluating, and enforcing the vehicle emissions inspection and maintenance program. If the program relies on

privately operated or contractor-operated inspection or reinspection stations, an appropriate portion of the fee as determined by commission rule may be retained by the station owner, contractor, or operator to recover the cost of performing the inspections and provide for a reasonable margin of profit. Any portion of the fee collected by the commission is a Clean Air Act fee under Section 382.0622.

(f) The commission:

(1) shall, no less frequently than biennially, review the fee established under Subsection (e); and

(2) may use part of the fee collected under Subsection (e) to provide incentives, including financial incentives, for participation in the testing network to ensure availability of an adequate number of testing stations.

(g) The commission shall:

(1) use part of the fee collected under Subsection (e) to fund low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209; and

(2) to the extent practicable, distribute available funding created under Subsection (e) to participating counties in reasonable proportion to the amount of fees collected under Subsection (e) in those counties or in the regions in which those counties are located.

(h) Regardless of whether different tests are used for different vehicles as determined under Section 382.205, the commission may:

(1) set fees assessed under Subsection (e) at the same rate for each vehicle in a county or region; and

(2) set different fees for different counties or regions.

(i) The commission shall examine the efficacy of annually inspecting diesel vehicles for compliance with applicable federal emission standards, compliance with an opacity or other emissions-related standard established by commission rule, or both and shall implement that inspection program if the commission determines the program would minimize emissions. For purposes of this subsection, a diesel engine not used in a vehicle registered for use on public highways is not a diesel vehicle.

(j) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (o) unless the fuel is specifically authorized by the legislature.

(k) The commission by rule may establish classes of vehicles that are exempt from vehicle emissions inspections and by rule may establish procedures to allow and review petitions for the exemption of individual vehicles, according to criteria established by commission rule. Rules adopted by the commission under this subsection must be consistent with federal law. The commission by rule may establish fees to recover the costs of administering this subsection. Fees collected under this

subsection shall be deposited to the credit of the clean air account, an account in the general revenue fund, and may be used only for the purposes of this section.

(l) Except as provided by this subsection, a person who sells or transfers ownership of a motor vehicle for which a vehicle emissions inspection certificate has been issued is not liable for the cost of emission control system repairs that are required for the vehicle subsequently to receive an emissions inspection certificate. This subsection does not apply to repairs that are required because emission control equipment or devices on the vehicle were removed or tampered with before the sale or transfer of the vehicle.

(m) The commission may conduct audits to determine compliance with this section.

(n) The commission may suspend the emissions inspection program as it applies to pre-1996 vehicles in an affected county if:

(1) the department certifies that the number of pre-1996 vehicles in the county subject to the program is 20 percent or less of the number of those vehicles that were in the county on September 1, 2001; and

(2) an alternative testing methodology that meets or exceeds United States Environmental Protection Agency requirements is available.

(o) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(p) The commission may consider, as an alternative method of compliance with Subsection (o), fuels to achieve equivalent emissions reductions.

(b) Section 382.019(a), Health and Safety Code, is amended to correct a cross-reference to read as follows:

(a) Except as provided by Section 382.202(j) [~~382.037(g)~~], or another provision of this chapter, the commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(c) Section 382.208(a), Health and Safety Code, is amended to correct a cross-reference to read as follows:

(a) Except as provided by Section 382.202(j) [~~382.037(g)~~] or another provision of this chapter, the commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

(d) Section 548.405(i), Transportation Code, is amended to correct a cross-reference to read as follows:

(i) The department shall develop, by September 1, 2002, a penalty schedule consisting of suspensions and revocations based on the severity and frequency of offenses committed in the emissions testing of motor vehicles under Section 382.202 [~~Chapter 382.037~~], Health and Safety Code, and Chapter 548, Subchapter F, of this code [~~Transportation Code~~].

SECTION 10.009. Section 775.013(a), Health and Safety Code, as amended by Chapters 886 and 1333, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The petition prescribed by Section 775.011 or 775.012 must show:

(1) that the district is to be created and is to operate under Article III, Section 48-e, Texas Constitution;

(2) the name of the proposed district;

(3) the proposed district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) the services that the proposed district will provide;

(5) that the creation of the proposed district complies with Sections 775.020 and 775.0205; [~~and~~]

(6) the mailing address of each petitioner; and

(7) [~~(6)~~] the name of each municipality whose consent must be obtained under Section 775.014.

SECTION 10.010. Chapter 916, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4477-1a, Vernon's Texas Civil Statutes), is repealed to conform to the former repeal of that law by Chapter 16, Acts of the 72nd Legislature, Regular Session, 1991.

SECTION 10.011. Section 10, Chapter 372, Acts of the 71st Legislature, Regular Session, 1989, is repealed as an executed temporary provision.

ARTICLE 10A. INSURANCE CODE UPDATE

PART 1. CHANGES RELATING TO TITLE 2, INSURANCE CODE

SECTION 10A.001. Section 36.152(d), Insurance Code, is

amended to conform more closely to the source law from which it was derived to read as follows:

(d) The [~~Subject to Section 36.102(d), the~~] commissioner must personally sign and issue the subpoena.

SECTION 10A.002. Section 38.254, Insurance Code, is amended by adding a section heading to read as follows:

Sec. 38.254. UTILIZATION AND COST DATA TO COMMISSIONER.

PART 2. CHANGES RELATING TO TITLE 6, INSURANCE CODE

SECTION 10A.201. Section 802.003, Insurance Code, is amended to more accurately reflect the source law from which it was derived to read as follows:

Sec. 802.003. FILING DATE OF ANNUAL STATEMENT DELIVERED BY POSTAL SERVICE. Except as otherwise specifically provided, for an annual statement that is required to be filed in the offices of the commissioner and that is delivered by the United States Postal Service to the offices of the commissioner after the date on which the annual statement is required to be filed, the date of filing is the date of:

(1) [~~the date of~~] the postal service postmark stamped on the cover in which the document is mailed; or

(2) any other evidence of mailing authorized by the postal service reflected on the cover in which the document is mailed.

SECTION 10A.202. (a) Section 823.154(c), Insurance Code, is amended to conform to Section 1, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) A statement filed under this section must be filed not

later than the 60th day before the proposed effective date of the acquisition or change of control and is subject to public inspection at the office of the commissioner.

(b) Section 1, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.203. (a) Section 823.157, Insurance Code, is amended to conform to Section 2, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 823.157. APPROVAL OF ACQUISITION OF CONTROL. (a) The commissioner shall approve or deny an acquisition or change of control for which a statement is filed under Section 823.154 not later than the 60th day after the date the statement required by that section is filed. The 60-day period may be waived by the person filing the statement and the domestic insurer. On the request of either the person filing the statement or the domestic insurer, the commissioner shall hold [~~unless, after~~] a hearing on a denial.

(b) In considering whether to approve or deny, the commissioner shall consider whether [~~finds that~~]:

(1) immediately on the acquisition or change of control the domestic insurer would not be able to satisfy the requirements for the issuance of a new certificate of authority to write the line or lines of insurance for which the insurer holds a certificate of authority;

(2) the effect of the acquisition or change of control would be substantially to lessen competition in a line or subclassification lines of insurance in this state or tend to create a monopoly in a line or subclassification lines of insurance

in this state;

(3) the financial condition of the acquiring person may jeopardize the financial stability of the domestic insurer or prejudice the interest of the domestic insurer's policyholders;

(4) the acquiring person has a plan or proposal to liquidate the domestic insurer or cause the insurer to declare dividends or make distributions, sell any of its assets, consolidate or merge with any person, make a material change in its business or corporate structure or management, or enter into a material agreement, arrangement, or transaction of any kind with any person, and that the plan or proposal is unfair, prejudicial, hazardous, or unreasonable to the insurer's policyholders and not in the public interest;

(5) due to a lack of competence, trustworthiness, experience, and integrity of the persons who would control the operation of the domestic insurer, the [~~merger or~~] acquisition or change of control would not be in the interest of the insurer's policyholders and the public; or

(6) the [~~merger or~~] acquisition or change of control would violate the law of this or another state or the United States.

(b) Section 823.158, Insurance Code, is repealed to conform to Section 2, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 823.159(a), Insurance Code, is amended to conform to Section 2, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A hearing under Section 823.152, 823.157, or 823.160

shall be held not later than the 60th [~~45th~~] day after the date of the denial [~~the statement is filed under Section 823.154~~].

(d) Section 823.159(d), Insurance Code, is amended to more closely conform to the source law from which it was derived to read as follows:

(d) The acquiring person has the burden of providing sufficient competent evidence for the commissioner to make the findings required under Section 823.157 [~~823.158~~].

(e) Section 2, Chapter 241, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.204. (a) Section 843.002(24), Insurance Code, is amended to conform to Section 4, Chapter 719, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, [~~or~~] registered optician, or acupuncturist; or

(ii) a pharmacy, hospital, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a

physician-hospital organization.

(b) Section 4, Chapter 719, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.205. Section 843.002, Insurance Code, is amended to conform to Sections 1 and 6, Chapter 550, Acts of the 77th Legislature, Regular Session, 2001, by adding Subdivisions (30) and (31) to read as follows:

(30) "Delegated entity" means an entity, other than a health maintenance organization authorized to engage in business under this chapter, that by itself, or through subcontracts with one or more entities, undertakes to arrange for or provide medical care or health care to an enrollee in exchange for a predetermined payment on a prospective basis and that accepts responsibility for performing on behalf of the health maintenance organization a function regulated by this chapter or Chapter 20A. The term does not include:

(A) an individual physician; or

(B) a group of employed physicians, practicing medicine under one federal tax identification number, whose total claims paid to providers not employed by the group constitute less than 20 percent of the group's total collected revenue computed on a calendar year basis.

(31) "Limited provider network" means a subnetwork within a health maintenance organization delivery network in which contractual relationships exist between physicians, certain providers, independent physician associations, or physician groups that limits an enrollee's access to physicians and providers to

those physicians and providers in the subnetwork.

SECTION 10A.206. (a) Section 843.201, Insurance Code, is amended to conform to Section 2, Chapter 550, Acts of the 77th Legislature, Regular Session, 2001, by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A health maintenance organization shall provide an accurate written description of health care plan terms, including an explanation of, and a description of the restrictions or limitations related to, a limited provider network or delegated entities [~~network~~] within a health care plan, to allow a current or prospective group contract holder or current or prospective enrollee to make comparisons and informed decisions before selecting among health care plans. The written description must:

(1) be in a readable and understandable format prescribed by the commissioner; and

(2) include:

(A) a telephone number a person may call to obtain more information; and

(B) a current list of physicians and providers, including a delineation of any limited provider network or delegated entity [~~network~~].

(c) If an enrollee designates a primary care physician who practices in a limited provider network or delegated entity, not later than the 30th day after the date of the enrollee's enrollment, the health maintenance organization shall provide the information required under this section to the enrollee with the enrollee's identification card or in a mailing separate from other

information.

(b) Section 2, Chapter 550, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.207. (a) Sections 843.260(a), (b), and (d), Insurance Code, are amended to conform to Section 3, Chapter 550, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A health maintenance organization shall maintain a complaint and appeal log regarding each complaint. The log must identify those complaints relating to limited provider networks and delegated entities.

(b) A health maintenance organization shall maintain a record of and documentation on each complaint, complaint proceeding, and action taken on each [~~a~~] complaint, including a complaint relating to a limited provider network or delegated entity, until the third anniversary of the date the complaint was received.

(d) The department, during any investigation of a health maintenance organization, may review documentation maintained under Subsection (b), including original documentation, regarding a complaint and action taken on the complaint.

(b) Section 3, Chapter 550, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.208. (a) Subchapter I, Chapter 843, Insurance Code, is amended to conform to Section 14(o), Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), as added by Section 8, Chapter 812, Acts of the

77th Legislature, Regular Session, 2001, by adding Section 843.3045 to read as follows:

Sec. 843.3045. NURSE FIRST ASSISTANT. A health maintenance organization may not refuse to contract with a nurse first assistant, as defined by Section 301.1525, Occupations Code, to be included in the provider's network or refuse to reimburse the nurse first assistant for a covered service that a physician has requested the nurse first assistant to perform.

(b) Section 14(o), Texas Health Maintenance Organization Act (Article 20A.14, Vernon's Texas Insurance Code), as added by Section 8, Chapter 812, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.209. (a) Subchapter I, Chapter 843, Insurance Code, is amended to conform to Section 18D, Texas Health Maintenance Organization Act (Article 20A.18D, Vernon's Texas Insurance Code), as added by Section 2, Chapter 993, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 843.320 to read as follows:

Sec. 843.320. USE OF HOSPITALIST. (a) In this section, "hospitalist" means a physician who:

(1) serves as physician of record at a hospital for a hospitalized patient of another physician; and

(2) returns the care of the patient to that other physician at the end of the patient's hospitalization.

(b) A contract between a health maintenance organization and a physician may not require the physician to use a hospitalist for a hospitalized patient.

(b) Section 18D, Texas Health Maintenance Organization Act (Article 20A.18D, Vernon's Texas Insurance Code), as added by Section 2, Chapter 993, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.210. Section 843.342(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) In addition to any other penalty or remedy authorized by this code <u>or another insurance law of this state</u>, a health maintenance organization that violates Section 843.338 or 843.340 is subject to an administrative penalty under Chapter 84. The administrative penalty imposed under that chapter may not exceed $1,000 for each day the claim remains unpaid in violation of Section 843.338 or 843.340.

SECTION 10A.211. (a) Section 845.002, Insurance Code, is amended to conform to Section 2, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 845.002. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the system.

(2) "Enrollee" means an individual <u>who:</u>

<u>(A) resides in a rural area; and</u>

<u>(B) is</u> entitled to receive health care services through a health care plan <u>sponsored by,</u> arranged for<u>,</u> or provided by the system.

(3) "Health care services" has the meaning assigned by Section 843.002.

(4) "Health care provider" means a physician, facility, practitioner, or other person or organization who, under a license or grant of authority issued by this state, provides care or supplies to individuals under a health benefit plan. The term does not include a hospital provider.

(5) "Hospital provider" means a county hospital, county hospital authority, hospital district, municipal hospital, or municipal hospital authority.

(6) [~~(5)~~] "Local health care provider" means:

(A) a person licensed, registered, or certified as a health care practitioner in this state who resides or practices in a rural area in which the person provides health care services; or

(B) a general or specialty hospital that is not a hospital provider under this chapter.

(7) [~~(6)~~] "Participating hospital provider" means a hospital provider that participates in the system.

(8) [~~(7)~~] "Person" means an individual, professional association, professional corporation, partnership, limited liability corporation, limited liability partnership, or nonprofit corporation, including a nonprofit corporation certified under Section 162.001, Occupations Code.

(9) [~~(8)~~] "Rural area" means:

(A) a county with a population of 50,000 or less;

(B) an area that is not delineated as an urbanized area by the United States Bureau of the Census; or

(C) any other area designated as rural by a rule

adopted by the commissioner, subject to Section 845.003.

(10) [~~(9)~~] "System" means the statewide rural health care system established under this chapter.

(11) [~~(10)~~] "Territorial jurisdiction" means the geographical area in which a participating hospital provider is obligated by law to provide health care services.

(b) Section 845.003, Insurance Code, is amended to conform to Section 2, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 845.003. RURAL AREA DESIGNATION. In determining whether to designate an area as a rural area under this chapter, the commissioner shall consider any area that is delineated as an urbanized area by the United States Bureau of the Census and:

(1) is contiguous with and not more than 10 miles away from a rural area described by Section 845.002(9)(A) [~~845.002(8)(A)~~] or (B);

(2) is sparsely populated, compared to areas within a 10-mile radius that are delineated as urbanized areas by the United States Bureau of the Census;

(3) has not increased in population in any single calendar year in the seven years before the commissioner makes the designation; and

(4) in which emergency or primary care services:

(A) are limited or unavailable in accordance with network access standards imposed by the commissioner [~~under Chapters 20A and 843~~]; and

(B) would be made materially more accessible by

allowing access to care in a contiguous area that is otherwise eligible to participate in the system.

(c) Section 2, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.212. (a) Sections 845.051 and 845.053, Insurance Code, are amended to conform to Sections 3, 4, and 8, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 845.051. STATEWIDE RURAL HEALTH CARE SYSTEM. The commissioner shall designate a single organization as the statewide rural health care system. The system is authorized to sponsor, [~~to~~] arrange for the provision of, or provide health care services to enrollees in programs in rural areas. The programs are not subject to:

(1) a law requiring the coverage or the offer of coverage for services by a particular health care provider under:

(A) Chapter 62, Health and Safety Code;

(B) Chapter 32, Human Resources Code;

(C) a state-, county-, or local government-sponsored indigent care initiative; or

(D) a federal Medicare Plus Choice program; or

(2) Article 3.51-6 under a state-, county-, or local government-sponsored uninsured or indigent care initiative [~~who reside in rural areas~~].

Sec. 845.053. REQUIREMENTS APPLICABLE TO CERTAIN PLANS [~~APPLICATION OF TEXAS HEALTH MAINTENANCE ORGANIZATION ACT~~]. (a) Except as [~~otherwise~~] provided by Subsection (b) [~~this section~~], if

the system seeks to sponsor, arrange for the provision of, or provide [~~arranges for or provides~~] health care services to enrollees in exchange for a predetermined payment per enrollee on a prepaid basis, the system must comply with:

(1) all requirements under this code imposed on health plans, including health maintenance organizations; and

(2) any additional requirements the commissioner determines are necessary to ensure enrollee access to health care providers and health care services [~~obtain a certificate of authority under Chapter 843 and meet each requirement imposed by that chapter~~].

(b) The system is not required to comply with requirements described by Subdivision (a)(1) [~~commissioner by rule may provide exceptions to the application to the system of provisions of Chapter 20A or 843~~] that relate to mileage, distance, [~~and~~] network adequacy, and scope of coverage that the commissioner determines are not applicable to the system.

[~~(c) The system may fulfill the reserve requirements under Chapter 843 by purchasing reinsurance from insurance companies approved for that purpose by the commissioner.~~]

(b) Sections 3, 4, and 8, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 10A.213. (a) Sections 845.101(b), (c), and (d), Insurance Code, are amended to conform to Section 5, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The participating hospital providers shall elect, by a

majority vote of the governing bodies of the participating hospital providers, six members [~~who represent the participating hospital providers~~].

(c) Twelve members shall be appointed according to the system's bylaws, including [~~The governor shall appoint~~]:

(1) six members who reside in the territorial jurisdictions of the participating hospital providers, including:

(A) two members who represent employers;

(B) two members who represent [~~are~~] local government officials; and

(C) two members who represent [~~are~~] consumers of health care services; and

(2) six members who are licensed physicians who reside and practice in the territorial jurisdictions of the participating hospital providers, including at least three members who perform the general practice of medicine as their professional practice.

(d) Appointments [~~The governor shall make appointments~~] to the board under Subsection (c) shall be made in a manner that provides representation for the territorial jurisdictions of all participating hospital providers.

(b) Section 5, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.214. (a) Section 845.108(a), Insurance Code, is amended to conform to Section 6, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The board may, by majority vote:

(1) contract for administrative, management, or

support services; [~~or~~]

(2) hire an executive director; [~~,~~]

(3) contract with a consultant, an attorney, or other professional; [~~,~~] or

(4) retain other staff as necessary to perform the duties of the system.

(b) Section 6, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.215. (a) Subchapter D, Chapter 845, Insurance Code, is amended by adding Section 845.155 to conform to Section 7, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 845.155. USE OF SYSTEM AS PILOT PROGRAM, DEMONSTRATION PROJECT, OR STUDY. The commissioner of health and human services may use the system for:

(1) a voluntary pilot or demonstration program that:

(A) evaluates the use of an insured model for beneficiaries of a medical assistance program in a rural area not currently included in an existing Medicaid managed care pilot program area; and

(B) incorporates the principles of prevention and disease management; and

(2) a study of the use of promotoras as defined by Section 48.001, Health and Safety Code.

(b) Section 7, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.216. (a) Chapter 845, Insurance Code, is

amended by adding Subchapter E to more accurately reflect the source law from which it was derived and to conform to Section 1, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER E. GOALS OF SYSTEM

Sec. 845.201. RURAL HEALTH CARE DELIVERY SYSTEM. (a) The system is designed to protect and enhance the rural health care delivery system by:

(1) establishing a statewide rural health care network;

(2) supporting funding to rural communities;

(3) enabling administrative simplification for the benefit of rural providers that participate in various health care plans; and

(4) ensuring the inclusion of consumer-oriented attributes considered important to a successful health care organization.

(b) The attributes described by Subsection (a)(4) include:

(1) consideration of patient rights;

(2) preservation of patient rights;

(3) preservation of the provider-patient relationship;

(4) emphasis on prevention and wellness;

(5) an appropriate credentialing and peer review program; and

(6) emphasis on quality improvement and disease management.

Sec. 845.202. PATIENT RIGHTS POLICIES. It is intended that the system incorporate patient-focused considerations that include:

(1) open communication;

(2) informed consent;

(3) protection of confidentiality and privacy;

(4) full disclosure of program policies and procedures to patients and providers;

(5) coverage of emergency care;

(6) disclosure of compensation arrangements with providers; and

(7) efficient appeal of coverage decisions.

Sec. 845.203. PATIENT-PHYSICIAN RELATIONSHIP. It is intended that the system preserve significant traditional and ethical relationships between a patient and the patient's health care provider by ensuring that:

(1) medical management does not intrude on the delivery of quality patient care;

(2) the process of making health care decisions remains a matter between a patient and the patient's health care provider; and

(3) nothing in the system will place a health care provider in an adverse relationship with a patient.

Sec. 845.204. PUBLIC HEALTH AND PREVENTION. It is intended that the system use incentives to promote healthy communities and individuals by using a public health model that focuses on health promotion, illness prevention, patient self-care education, and

incentives that encourage positive health behavior.

Sec. 845.205. CREDENTIALS AND PEER REVIEW. To ensure that enrollees will receive quality health care, it is intended that the system focus on processes for obtaining credentials and performing peer review that take into consideration the unique nature of rural communities and that track processes required under federal and state law. It is intended that local physicians and hospitals retain responsibility for these processes. These processes are not intended to exclude otherwise qualified practitioners from participating in the system.

Sec. 845.206. QUALITY IMPROVEMENT AND MANAGEMENT. It is intended that the system use standard guidelines established by the National Committee on Quality Assurance and other recognized accrediting organizations to:

(1) ensure that the program achieves the objectives of providing quality patient care; and

(2) emphasize establishing benchmarks to measure program outcomes that will be made available to the public through proper reporting procedures.

(b) Chapter 845, Insurance Code, is amended to conform to the addition of Subchapter E to that chapter by this section by amending Sections 845.004 and 845.104, Insurance Code, to read as follows:

Sec. 845.004. RULES. The commissioner shall adopt rules as necessary to implement this subchapter and Subchapters B, C, and D [~~chapter~~].

Sec. 845.104. BOARD DUTIES. The board shall:

(1) administer the system;

(2) adopt policies and procedures for the system that are consistent with the purposes of this subchapter and Subchapters A, B, and D [~~chapter~~]; and

(3) adopt rules for the holding of regular and special meetings.

(c) Section 1, Chapter 759, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.217. (a) Section 846.258(b), Insurance Code, is amended to conform to Section 6, Chapter 1027, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) Coverage of a newborn child of a participating employee under this section ends on the 32nd day after the date of the child's birth unless:

(1) [~~dependent~~] children are eligible for coverage under the multiple employer welfare arrangement's plan document; and

(2) not later than the 31st day after the date of birth, the arrangement receives:

(A) notice of the birth; and

(B) any required additional premium.

(b) Section 846.259(a), Insurance Code, is amended to conform to Section 6, Chapter 1027, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) This section applies only if [~~dependent~~] children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document.

(c) Subchapter F, Chapter 846, Insurance Code, is amended to conform to Section 6, Chapter 1027, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 846.260 to read as follows:

Sec. 846.260. LIMITING AGE APPLICABLE TO UNMARRIED CHILD. If children are eligible for coverage under the terms of a multiple employer welfare arrangement's plan document, any limiting age applicable to an unmarried child of an enrollee is 25 years of age.

(d) Section 6, Chapter 1027, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.218. Section 862.053(a), Insurance Code, is amended to more closely conform to the source law from which it was derived to read as follows:

(a) A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such [~~the~~] policy. This subsection does not apply to personal property.

SECTION 10A.219. (a) Section 884.310, Insurance Code, is amended to conform to Section 7.11, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 884.310. AGENT. Each agent of a stipulated premium company must be licensed under Subchapter A, Chapter 21 [~~Article 21.07~~].

(b) Section 7.11, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.220. (a) Section 885.351, Insurance Code, is amended to conform to Section 7.05, Chapter 703, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 885.351. AGENTS. (a) A fraternal benefit society may appoint an agent licensed by the department under Article 21.07-1 [~~Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code),~~] to sell benefits listed under Section 885.301(a) to society members.

(b) Except as provided by Section 885.352, a [~~A~~] person may not solicit or procure benefit contracts for a fraternal benefit society unless the person is licensed as a general life, accident, and health [~~an~~] agent under Article 21.07-1 [~~Chapter 213, Acts of the 54th Legislature, Regular Session, 1955 (Article 21.07-1, Vernon's Texas Insurance Code)~~].

(c) The licensing and regulation of agents for fraternal benefit societies is subject to Subchapter A, Chapter 21, and other laws regulating those agents.

(b) Section 885.352(c), Insurance Code, is amended to conform to Section 7.05, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) A person to whom this section applies may not solicit or procure on behalf of a fraternal benefit society an interest-sensitive life insurance contract that exceeds $35,000 of coverage on an individual life unless the person holds the designation of fraternal insurance [~~benefit~~] counselor.

(c) Section 7.05, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.221. (a) Section 911.251, Insurance Code, is amended to conform to Section 7.06, Chapter 703, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 911.251. LICENSING AND APPOINTMENT OF CERTAIN AGENTS. (a) An individual or firm may not solicit, write, sign, execute, or deliver insurance policies, bind insurance risks, collect premiums, or otherwise act on behalf of a farm mutual insurance company in the capacity of an insurance [~~a local recording~~] agent in the solicitation or sale of crop insurance unless the individual or firm holds a license issued under Subchapter A, Chapter 21 [~~is licensed under Article 21.14~~].

(b) A farm mutual insurance company may not appoint and act through an agent [~~who qualifies for a license as an agricultural insurance agent~~] under Article 21.14-2.

(b) Section 7.06, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.222. (a) Section 912.251, Insurance Code, is amended to conform to Section 7.07, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 912.251. LICENSING AND APPOINTMENT OF AGENTS. An agent [~~or solicitor~~] for a county mutual insurance company must be licensed and appointed as provided by Subchapter A, Chapter 21 [~~Article 21.07 or 21.14~~].

(b) Section 7.07, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.223. Sections 912.252 and 912.253, Insurance Code, are repealed to conform to the repeal of the source law from which they were derived, Section 15, Article 17.25, Insurance Code, by Section 8.01(2), Chapter 703, Acts of the 77th Legislature,

Regular Session, 2001.

SECTION 10A.224. (a) Subchapter A, Chapter 961, Insurance Code, is amended to conform to the enactment of Article 23.23A, Insurance Code, by Section 7.12, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 961.005 to read as follows:

Sec. 961.005. AGENTS. The licensing and regulation of an agent authorized to solicit prepaid legal services contracts for a nonprofit legal services corporation is subject to Subchapter A, Chapter 21.

(b) Article 23.23A, Insurance Code, as added by Section 7.12, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.225. Subchapter H, Chapter 961, Insurance Code, is repealed to conform to the repeal of Article 23.23, Insurance Code, the source law from which it was derived, by Section 8.01(19), Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10A.226. (a) Section 981.009, Insurance Code, is amended to conform to Section 6.05, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 981.009. RULES. The commissioner may adopt rules to implement [~~enforce~~] this chapter or satisfy requirements under federal law or regulations.

(b) Section 981.218, Insurance Code, is amended to conform to Section 6.05, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 981.218. DEPARTMENT MONITORING OF SURPLUS LINES

AGENTS. The commissioner [~~department~~] shall monitor the activities of surplus lines agents as necessary to protect the public interest.

(c) Section 6.05, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.227. (a) Section 981.203, Insurance Code, is amended to conform to Sections 6.01, 6.04, 6.06, and 6.07, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 981.203. QUALIFICATIONS FOR SURPLUS LINES LICENSE[~~; LICENSE TERM~~]. (a) The department may issue a surplus lines license to an applicant who the department determines complies with Subsection (b) and is:

(1) an individual [~~agent resident in this state~~] who:

(A) has passed an examination under Article 21.01-1 and department rules; and

(B) holds a current license as:

(i) a general property and casualty agent [~~is~~] authorized under Article 21.14; or

(ii) [~~(B) is~~] a managing general agent; or

(2) a corporation, limited liability company, or partnership that:

(A) has at least one officer or director or at least one active partner who has passed the required surplus lines license examination;

(B) holds a current license as:

(i) a general property and casualty agent

authorized under Article 21.14; or

(ii) a managing general agent; and

(C) conducts insurance activities under this chapter only through an individual licensed under this section [~~a nonresident insurance agent authorized under Article 21.11 who is granted a surplus lines license for the limited purpose of acting on behalf of a purchasing group operating in this state in the placement of liability insurance for a risk located in this state~~].

(b) The agent must:

(1) pay an application fee as determined by the department [~~set by the commissioner in an amount not to exceed $50~~];

(2) submit a properly completed license application [~~on a form approved by the commissioner~~]; and

(3) [~~pass an examination under Section 981.205; and~~

[~~(4)~~] provide proof of financial responsibility under Section 981.206.

[~~(c) Unless the commissioner adopts a system for staggered renewal of licenses under Article 21.01-2:~~

[~~(1) a surplus lines license, other than an initial license, is valid for a two-year term that expires on December 31; and~~

[~~(2) the term of an initial license expires on December 31 of the year following the year in which the license is issued.~~]

(b) Subchapter E, Chapter 981, Insurance Code, is amended to conform to Section 6.08, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 981.221 to read as

follows:

Sec. 981.221. SUSPENSION OR REVOCATION OF LICENSE. If a license holder does not maintain the qualifications necessary to obtain the license, the department may revoke or suspend the license or deny the renewal of that license in accordance with Article 21.01-2.

(c) Subchapter E, Chapter 981, Insurance Code, is amended to conform to Section 6.07, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 981.222 to read as follows:

Sec. 981.222. APPLICABILITY OF OTHER LAW. In addition to the requirements of this chapter, the administration and regulation of a surplus lines agent's license is governed by Subchapter A, Chapter 21, except that Article 21.07 does not apply to a license issued under this subchapter.

(d) Section 981.205, Insurance Code, is repealed to conform to the repeal of Sections 4(b)(3) and (h), Article 1.14-2, Insurance Code, the source law from which Section 981.205 was derived, by Sections 6.06 and 8.01(1), Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

(e) Section 981.208, Insurance Code, is repealed to conform to Sections 6.07 and 6.08, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

(f) Sections 6.01, 6.04, 6.06, 6.07, and 6.08, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 10A.228. (a) Section 981.206, Insurance Code, is amended to conform to Section 6.02, Chapter 703, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 981.206. FINANCIAL RESPONSIBILITY. A surplus lines agent must provide proof to the department of[~~:~~

[~~(1)~~] financial responsibility [~~solvency and a demonstrated capacity regarding responsibility to insureds under surplus lines insurance policies; or~~

[~~(2) an adequate bond and surety~~] regarding transactions with insureds under surplus lines insurance policies, as required [~~provided~~] by reasonable rules of the commissioner.

(b) Section 6.02, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.229. Section 981.207, Insurance Code, is repealed to conform to the repeal of Section 4(f), Article 1.14-2, Insurance Code, the source law from which Section 981.207 was derived, by Section 8.01(1), Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10A.230. Section 981.209, Insurance Code, is repealed to conform to the repeal of Section 4(g), Article 1.14-2, Insurance Code, the source law from which Section 981.209 was derived, by Section 8.01(1), Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10A.231. (a) Section 981.215(a), Insurance Code, is amended to conform to Section 6.09, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A surplus lines agent shall maintain [~~keep in the agent's office in this state~~] a complete record of each surplus lines contract obtained by the agent, including any of the

following, if applicable:

(1) a copy of the daily report;

(2) the amount of the insurance and risks insured against;

(3) a brief general description of the property insured and the location of that property;

(4) the gross premium charged;

(5) the return premium paid;

(6) the rate of premium charged on the different items of property;

(7) the contract terms, including the effective date;

(8) the insured's name and post office address;

(9) the insurer's name and home office address;

(10) the amount collected from the insured; and

(11) any other information required by the department [~~commissioner~~].

(b) Section 6.09, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.232. (a) Section 981.220(b), Insurance Code, is amended to conform to Section 6.03, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A surplus lines license granted to a managing general agent who is not also licensed under Article 21.14 is limited to the acceptance of business originating through a licensed general property and casualty [~~local recording~~] agent. The license does not authorize the agent to engage in business directly with the insurance applicant.

(b) Section 6.03, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.233. (a) Section 984.002, Insurance Code, is amended to conform to Section 7.04, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 984.002. AUTHORIZED AGENT REQUIRED. [~~(a)~~] A Mexican casualty insurance company may engage in the business of insurance in this state only through an agent [~~a resident agent in this state who:~~

[~~(1) has the company's written authorization to engage in the business of insurance for the company; and~~

[~~(2) is~~] licensed by the department under Article 21.09 or 21.14.

[~~(b) The agent's license must specifically authorize the agent to write for Mexican casualty insurance companies insurance coverage authorized by this chapter.~~]

(b) Section 7.04, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

PART 3. CHANGES RELATING TO TITLE 7, INSURANCE CODE

SECTION 10A.301. (a) Section 1108.053, Insurance Code, is amended to conform to Section 75, Chapter 1023, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1108.053. EXCEPTIONS TO EXEMPTIONS. The exemptions provided by Section 1108.051 do not apply to:

(1) a premium payment made in fraud of a creditor, subject to the applicable statute of limitations for recovering the payment; [~~or~~]

(2) a debt of the insured or beneficiary secured by a pledge of the insurance policy or the proceeds of the policy; or

(3) a child support lien or levy under Chapter 157, Family Code.

(b) Section 75, Chapter 1023, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.302. Section 1111.052, Insurance Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 1111.052. AUTHORITY TO PAY ACCELERATED TERM LIFE BENEFITS. An insurer may pay an accelerated benefit under an individual or group term life insurance policy or certificate if:

(1) the insurer has received a written medical opinion, satisfactory to the insurer, that the insured has:

(A) a terminal illness;

(B) a long-term care illness; or

(C) an illness or physical condition that is likely to cause permanent disability or premature death, including:

(i) acquired immune deficiency syndrome (AIDS);

(ii) a malignant tumor;

(iii) a condition that requires an organ transplant; or

(iv) a coronary artery disease that results in acute infarction [~~infraction~~] or requires surgery; and

(2) the amount of the accelerated benefit is deducted from:

(A) the amount of the death benefit payable under the policy or certificate; and

(B) any amount the insured would otherwise be entitled to convert to an individual contract.

SECTION 10A.303. (a) The heading for Subchapter D, Chapter 1152, Insurance Code, is amended to conform to Section 7.02, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER D. VARIABLE CONTRACT AGENTS [~~AGENT'S LICENSE~~]

(b) Section 1152.151, Insurance Code, is amended to conform to Section 7.02, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1152.151. [~~VARIABLE CONTRACT~~] AGENT'S LICENSE REQUIRED[~~; CRITERIA FOR ISSUANCE~~]. (a) A person may not sell or offer for sale in this state a variable contract, or act to negotiate, make, or consummate a variable contract for another, unless the department has licensed the person under Article 21.07-1 as a general life, accident, and health [~~variable contract~~] agent.

(b) The licensing and regulation of a person acting as a variable contract agent is subject to the same provisions applicable to the licensing and regulation of other agents under Subchapter A, Chapter 21 [~~department may not issue the license unless the department is satisfied, after examination, that the person is qualified to act as a variable contract agent because of the person's training, knowledge, ability, and character~~].

(c) Sections 1152.152, 1152.153, 1152.154, 1152.155, 1152.156, 1152.157, 1152.158, 1152.159, and 1152.160, Insurance

Code, are repealed to conform to Section 7.02, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001.

(d) Section 7.02, Chapter 703, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.304. (a) Sections 1153.103 and 1153.104, Insurance Code, are amended to conform to Section 2, Chapter 1318, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1153.103. PRESUMPTIVE PREMIUM RATE. (a) After notice and a hearing, the commissioner by rule may adopt [~~promulgate~~] a presumptive premium rate for various classes of business and terms of coverage. An insurer that does not file a different rate under Section 1153.105 or 1153.106 shall file the presumptive rate adopted by the commissioner.

(b) Except as provided by this chapter, any hearing conducted or order adopting a presumptive rate under this subchapter shall be held [~~The commissioner shall hold a hearing required under Subsection (a)~~] in accordance with the rulemaking [~~contested case~~] provisions of Chapter 2001, Government Code.

(c) In the commissioner's order adopting a presumptive rate, the commissioner shall set forth findings and conclusions on all material issues presented at the hearing.

(d) In determining the presumptive premium rate, the commissioner shall consider any relevant data, including reasonable acquisition costs, loss ratios, administrative expenses, reserves, loss settlement expenses, the type or class of business, the duration of various credit transactions, and

reasonable and adequate profits to the insurers.

(e) [~~(d)~~] In determining the presumptive premium rate, the commissioner may not set or limit the amount of compensation actually paid by a company to an agent but may request from an insurer or agent any relevant data relating to the presumptive premium rate, including information relating to compensation paid for the sale of credit insurance, expenses, losses, and profits. An insurer or agent shall provide the requested information to the commissioner in a timely manner.

(f) [~~(e)~~] The commissioner may not adopt [~~promulgate~~] a presumptive premium rate that is unjust, unreasonable, inadequate, confiscatory, or excessive to the insureds, the insurers, or the agents.

[~~(f) It is a rebuttable presumption that the presumptive premium rate is just, reasonable, adequate, and not excessive.~~]

Sec. 1153.104. APPEAL OF PRESUMPTIVE RATE. Any person who is aggrieved by any action of the commissioner taken in the setting of a presumptive rate may [~~appeal the action, in accordance with Subchapter D, Chapter 36~~], not later than the 30th day after the date the commissioner adopts a presumptive rate order, file a petition for judicial review in a district court in Travis County [~~took the action~~]. Judicial review under this section is governed by Subchapter B, Chapter 2001, Government Code.

(b) Subchapter C, Chapter 1153, Insurance Code, is amended to conform to Section 2, Chapter 1318, Acts of the 77th Legislature, Regular Session, 2001, by adding Sections 1153.105, 1153.106, and 1153.107 to read as follows:

Sec. 1153.105. RATE WITHIN CERTAIN PERCENTAGES OF PRESUMPTIVE RATE. (a) An insurer electing to deviate from the presumptive rate shall file with the commissioner the insurer's proposed rate for credit life and credit accident and health insurance.

(b) On filing the rate with the commissioner, the insurer may use the filed rate until the insurer elects to file a different rate.

(c) Except as provided by Section 1153.106, an insurer may not use a rate that is more than 30 percent higher or more than 30 percent lower than the presumptive rate.

(d) Except as provided by this subchapter, a rate that complies with this section is valid and in compliance with the requirements of this subchapter and other applicable law.

Sec. 1153.106. RATE OUTSIDE CERTAIN PERCENTAGES OF PRESUMPTIVE RATE. (a) An insurer may file with the commissioner a proposed rate for credit life and credit accident and health insurance that is more than 30 percent higher or more than 30 percent lower than the presumptive rate adopted by the commissioner under this subchapter.

(b) The commissioner may disapprove a rate filed under this section on the ground that the rate is not actuarially justified.

(c) A rate filed under this section is considered approved and the insurer may use the rate if the rate is not disapproved by the commissioner before the 60th day after the date the insurer filed the rate.

(d) A hearing under this section is a contested case hearing

conducted under Chapter 2001, Government Code. Judicial review of any action of the commissioner under this section is governed by Subchapter D, Chapter 36.

Sec. 1153.107. RATE STANDARD. (a) A rate filed under this subchapter is not excessive unless the rate is unreasonably high for the coverage provided and a reasonable degree of competition does not exist with respect to the classification to which the rate is applicable.

(b) A rate filed under this subchapter is not inadequate unless the rate is insufficient to sustain projected losses and expenses or the rate substantially impairs, or is likely to substantially impair, competition with respect to the sale of the product.

PART 4. CHANGES RELATING TO SUBTITLE H, TITLE 8, INSURANCE CODE

SECTION 10A.401. (a) Section 1551.004(a), Insurance Code, is amended to conform to Section 27, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) In this chapter, "dependent" with respect to an individual eligible to participate in the group benefits program under Section 1551.101 or 1551.102 means the individual's:

(1) spouse;

(2) unmarried child younger than 25 years of age;

(3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:

(A) the child is mentally retarded or physically incapacitated to the extent that the child is dependent on the

individual for care or support, as determined by the board of trustees;

(B) the child's coverage under this chapter has not lapsed; and

(C) the child is at least 25 years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 25th birthday; and

(4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments.

(b) Section 1551.102(a), Insurance Code, is amended to conform to Section 27, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An individual who has at least 10 [~~three~~] years of service for which the individual was eligible to participate in the group benefits program under Section 1551.101 or who has at least five years of membership and five years of military service credited in the Employees Retirement System of Texas and who retires in a manner described by this section is eligible to participate as an annuitant in the group benefits program.

(c) Section 27, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.402. Section 1551.007, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1551.007. DEFINITION OF CARRIER. In this chapter, "carrier" means:

(1) an insurance company that is authorized by the department under this code or another insurance law of this state to provide any of the types of insurance coverages, benefits, or services provided for in this chapter and that:

(A) has a surplus of $1 million;

(B) has a successful operating history; and

(C) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter;

(2) a corporation operating under Chapter 842 or 843 that provides any of the types of coverage, benefits, or services provided for in this chapter and that:

(A) has a successful operating history; and

(B) has had successful experience, as determined by the department, in providing and servicing any of the types of group coverage provided for in this chapter; or

(3) any combination of carriers described by Subdivisions (1) and (2) on terms the board of trustees prescribes.

SECTION 10A.403. (a) Subchapter A, Chapter 1551, Insurance Code, is amended to conform to Section 32, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1551.014 to read as follows:

Sec. 1551.014. EXCLUSIVE REMEDIES. The remedies provided under this chapter are the exclusive remedies available to an employee, participant, annuitant, or dependent.

(b) Section 32, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.404. (a) Section 1551.063(e), Insurance Code, is amended to conform to Section 31, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(e) The records of a participant may become part of the public record of an administrative or judicial proceeding related to a contested case under this chapter unless the records are closed to public access by a protective order issued under applicable law. <u>If a participant's records have become part of the public record of a proceeding and the records are not the subject of a protective order, the participant is considered to have waived the privacy of the participant's records.</u>

(b) Subchapter B, Chapter 1551, Insurance Code, is amended to conform to Section 31, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1551.065 to read as follows:

<u>Sec. 1551.065. DISCLOSURE OF SOCIAL SECURITY NUMBER. The board of trustees may require an individual to disclose the individual's social security number as the board considers necessary to properly administer this chapter and any coverage, service, or benefit authorized by this chapter or as otherwise required by state or federal law.</u>

(c) Section 31, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.405. (a) Subchapter B, Chapter 1551, Insurance Code, is amended to conform to Section 34, Chapter 1231, Acts of the

77th Legislature, Regular Session, 2001, by adding Section 1551.066 to read as follows:

Sec. 1551.066. INFORMATION RELATING TO MISCONDUCT. (a) This section applies to:

(1) the Employees Retirement System of Texas;

(2) a carrier or other insurance company or health maintenance organization;

(3) an administering firm or other insurance support organization that provides information or services to the group benefits program or the Employees Retirement System of Texas;

(4) an agent or third-party administrator authorized under this chapter or licensed under this code;

(5) a regulatory authority or department; and

(6) a board member, executive director, employee, auditor, or actuary of an entity described by this section.

(b) A person may collect from, furnish to, or exchange with another person information, including medical records or other confidential information, to the extent the person considers necessary to detect or to impose a sanction for a criminal act, a misrepresentation, or nondisclosure that is related to an attempt to obtain coverage, payment, reimbursement, or a benefit under this chapter.

(c) A person who acts under Subsection (b) is immune from suit and criminal or civil liability unless the person acts with malice or intent to defraud.

(b) Section 34, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.406. (a) Section 1551.055, Insurance Code, is amended to conform to Section 28, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1551.055. GENERAL POWERS OF BOARD OF TRUSTEES REGARDING COVERAGE PLANS. The board of trustees may:

(1) prepare specifications for a coverage provided under this chapter;

(2) prescribe the time and conditions under which an employee, annuitant, or dependent [~~individual~~] is eligible for a coverage provided under this chapter;

(3) determine the methods and procedures of claims administration;

(4) determine the amount of payroll deductions and reductions applicable to employees and annuitants and establish procedures to implement those deductions and reductions;

(5) establish procedures for the board of trustees to decide contested cases arising from a coverage provided under this chapter;

(6) study, on an ongoing basis, the operation of all coverages provided under this chapter, including gross and net costs, administration costs, benefits, utilization of benefits, and claims administration;

(7) administer the employees life, accident, and health insurance and benefits fund;

(8) provide the beginning and ending dates of coverages of participants under all benefit plans;

(9) develop basic group coverage plans applicable to

all individuals eligible to participate in the group benefits program under Sections 1551.101 and 1551.102;

(10) provide for optional group coverage plans in addition to the basic group coverage plans;

(11) provide, as the board of trustees determines is appropriate, either additional statewide optional coverage plans or individual agency coverage plans;

(12) develop health benefit plans that permit access to high-quality, cost-effective health care;

(13) design, implement, and monitor health benefit plan features intended to discourage excessive utilization, promote efficiency, and contain costs;

(14) develop and refine, on an ongoing basis, a health benefit strategy consistent with evolving benefit delivery systems; [~~and~~]

(15) develop a funding strategy that efficiently uses employer contributions to achieve the purposes of this chapter and that is reasonable and ensures participants a fair choice among health benefit plans as provided by Section 1551.302; and

(16) appoint an advisory committee for the group benefits program under the terms provided by Section 815.509, Government Code.

(b) Section 28, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.407. (a) Section 1551.205, Insurance Code, is amended to conform to Section 30, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1551.205. LIMITATIONS. The board of trustees may not contract for or provide a coverage plan that:

(1) excludes or limits coverage or services for acquired immune deficiency syndrome, as defined by the Centers for Disease Control and Prevention of the United States Public Health Service, or human immunodeficiency virus infection; or

(2) provides coverage for serious mental illness that is less extensive than the minimum coverage [~~provided~~] for serious mental [~~any physical~~] illness required by Section 3, Article 3.51-14.

(b) Section 30, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.408. (a) Section 1551.206, Insurance Code, is amended to conform to Section 35, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, by adding Subsection (e) to read as follows:

(e) The board of trustees may adopt rules for the use of a debit card or other similar technology for claims administration under this section.

(b) Section 35, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.409. (a) The heading of Subchapter H, Chapter 1551, Insurance Code, is amended to conform to Section 33, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER H. SANCTIONS [~~EXPULSION~~] AND ADJUDICATION OF CLAIMS

(b) Section 1551.351, Insurance Code, is amended to conform

to Section 33, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1551.351. ADMINISTRATIVE PROCESS AND SANCTIONS FOR PROGRAM VIOLATIONS [~~EXPULSION~~]. (a) The Employees Retirement System of Texas may impose one or more sanctions described by this section against any employee, [~~After notice and hearing as provided by this section, the board of trustees may expel from participation in the group benefits program a~~] participant, annuitant, or dependent who:

(1) submits a materially false [~~fraudulent~~] claim or application for coverage under a group coverage plan offered under the group benefits program; [~~or~~]

(2) defrauds or attempts to defraud a group coverage plan offered under the group benefits program;

(3) obtains or induces the extension of coverage under any program provided under this chapter by a materially negligent or intentional misrepresentation, a failure to disclose material information, or fraud; or

(4) induces the extension of coverage under any program provided under this chapter by supplying false information on an application for coverage or in related documentation or in any communication.

(b) On receipt of a complaint or on its own motion, if the Employees Retirement System of Texas determines that an employee, participant, annuitant, or dependent has engaged in conduct [~~board of trustees may call and hold a hearing to determine whether a participant acted in a manner~~] described by Subsection (a), the

retirement system may:

(1) expel from the program the employee, participant, annuitant, or dependent;

(2) impose limitations on the person's participation in the program;

(3) rescind any coverage obtained or extended as a result of the conduct under Subsection (a);

(4) deny a claim arising from coverage; or

(5) require the person to reimburse the employees life, accident, and health insurance and benefits fund for any benefit obtained as a result of the conduct.

(c) An expulsion under Subsection (b) may be permanent or for a specified period. A rescission of coverage under Subsection (b) may be from the date of inception of the coverage or from the date of the prohibited conduct.

(d) A person may appeal a determination made under Subsection (a) or (b) only to the board of trustees. A proceeding under this subsection [~~section~~] is a contested case under Chapter 2001, Government Code. This subchapter applies to an appeal to the board of trustees under this subsection. The appellant has the burden of proof and any sanction imposed is stayed during an appeal under this subsection. If a person fails to make a timely appeal, any sanction relates back to the date of the Employees Retirement System of Texas' determination. An appeal of a decision of the board of trustees under this subsection is under the substantial evidence rule. [~~(d) At the conclusion of the hearing, if the board of trustees determines that the participant acted in a manner~~

~~described by Subsection (a), the board shall expel the participant from participation in the group benefits program.~~]

(e) An employee, [~~A~~] participant, annuitant, or dependent expelled from the group benefits program may not participate in a coverage plan offered by the program for the [~~a~~] period determined by the Employees Retirement System of Texas [~~board of trustees, not to exceed five years, beginning on the date the expulsion takes effect~~].

[~~(f) An appeal of a determination by the board of trustees under this section is under the substantial evidence rule.~~]

(c) Section 33, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.410. Section 1551.353, Insurance Code, is repealed to conform to the repeal of the source law from which it was derived, Section 4B(a-1), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), by Section 44(5), Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10A.411. (a) Section 1551.356, Insurance Code, is amended to conform to Section 29, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1551.356. STANDING. A person has standing to appeal a determination of the executive director under this subchapter only if the person is:

(1) an employee, participant, annuitant, or covered dependent [~~individual~~] participating in the group benefits program; or

(2) after the death of an employee, [~~a~~] participant, annuitant, or covered dependent, the person's [~~participant's~~] estate, personal representative, heir at law, or designated beneficiary.

(b) Section 29, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.412. (a) Subchapter J, Chapter 1551, Insurance Code, is repealed to conform to the repeal of the source law from which it was derived, Section 18, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), by Section 44(6), Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1551.201(b), Insurance Code, is amended to conform to Section 44(6), Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The group coverage plans may, in the board of trustees' discretion, include:

(1) life coverage;

(2) accidental death and dismemberment coverage;

(3) health benefit coverage, including coverage for:

(A) hospital care and benefits;

(B) surgical care and treatment;

(C) medical care and treatment;

(D) dental care;

(E) obstetrical benefits;

(F) prescribed drugs, medicines, and prosthetic devices; and

(G) supplemental benefits, supplies, and services in accordance with this chapter;

(4) coverage providing protection against either long-term or short-term loss of salary; and

(5) any other group coverage that the board of trustees, in consultation with the [~~group benefits~~] advisory committee [~~created under Subchapter J~~], considers advisable.

SECTION 10A.413. (a) Section 1575.001, Insurance Code, is amended to conform to Section 3.02, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1575.001. SHORT TITLE. This chapter may be cited as the Texas Public School Retired Employees Group Benefits Act.

(b) Section 3.02, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.414. (a) Section 1575.002, Insurance Code, is amended by repealing Subdivision (2) and amending Subdivisions (1), (3), (4), and (7) to conform to Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

(1) "Active employee" means an employee as defined by Section 821.001, Government Code, who:

(A) is a member of the Teacher Retirement System of Texas [~~system~~]; and

(B) is not entitled to coverage under a plan provided under Chapter 1551 or 1601.

(3) "Carrier" means an insurance company or hospital

service corporation authorized by the department under this code or another insurance law of this state to provide any of the insurance coverages, benefits, or services provided by this chapter.

(4) "Fund" means the retired [~~Texas public~~] school employees group insurance fund.

(7) "Trustee" [~~"System"~~] means the Teacher Retirement System of Texas.

(b) Section 1575.003(1), Insurance Code, is amended to conform to Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the subdivision was derived to read as follows:

(1) "Dependent" means:

(A) the spouse of a retiree [~~or active employee~~];

(B) an unmarried child of a retiree[~~, active employee,~~] or deceased active member [~~employee~~] if the child is younger than 25 years of age, including:

(i) an adopted child;

(ii) a foster child, stepchild, or other child who is in a regular parent-child relationship; or

(iii) a recognized natural child;

(C) a retiree's [~~or active employee's~~] recognized natural child, adopted child, foster child, stepchild, or other child who[~~, without regard to the age of the child, if the child~~] is in a regular parent-child relationship and who[~~,~~] lives with or has his or her [~~the child's~~] care provided by the retiree[~~, active employee,~~] or surviving spouse on a regular basis regardless of the

child's age, if the child[~~, and~~] is mentally retarded or physically incapacitated to an extent that the child is dependent on the retiree[~~, active employee,~~] or surviving spouse for care or support, as determined by the trustee [~~board of trustees~~]; or

(D) a deceased active member's [~~employee's~~] recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship, without regard to the age of the child, if, while the active member [~~employee~~] was alive, the child:

(i) lived with or had the child's care provided by the active member [~~employee~~] on a regular basis; and

(ii) was mentally retarded or physically incapacitated to an extent that the child was dependent on the active member [~~employee~~] or surviving spouse for care or support, as determined by the trustee [~~board of trustees~~].

(c) Sections 1575.003(2) and (3), Insurance Code, are amended to conform more closely to the source law from which the subdivisions were derived to read as follows:

(2) "Surviving dependent child" means:

(A) the dependent child of a deceased retiree who has survived the deceased retiree and the deceased retiree's spouse; or

(B) the dependent child of a deceased active member [~~employee~~] who has survived the deceased member [~~employee~~] and the deceased member's [~~employee's~~] spouse if the deceased member [~~employee~~]:

(i) had contributions made to the group

program at the last place of employment of the deceased member [~~employee~~] in public education in this state;

(ii) had 10 or more years of service credit in the Teacher Retirement System of Texas [~~system~~]; and

(iii) died on or after September 1, 1986.

(3) "Surviving spouse" means:

(A) the surviving spouse of a deceased retiree; or

(B) the surviving spouse of a deceased active member [~~employee~~]:

(i) for whom contributions have been made to the group program at the last place of employment of the deceased member [~~employee~~] in public education in this state;

(ii) who had 10 or more years of service credit in the Teacher Retirement System of Texas [~~system~~]; and

(iii) who died on or after September 1, 1986.

(d) Section 3.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.415. Section 1575.004, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.004. DEFINITION OF RETIREE. In this chapter, "retiree" means:

(1) an individual who:

(A) has taken a service retirement under the Teacher Retirement System of Texas [~~system~~] with at least 10 years

of service credit in the system for actual service in public schools in this state; and

(B) is not eligible for coverage under a plan provided under Chapter 1551 or 1601; or

(2) an individual who:

(A) has taken a disability retirement under the Teacher Retirement System of Texas [~~system~~]; and

(B) is entitled to receive monthly benefits from the Teacher Retirement System of Texas [~~system~~].

SECTION 10A.416. (a) Section 1575.005, Insurance Code, is amended to conform to Section 3.07, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.005. ISSUANCE OF CERTIFICATE OF COVERAGE. At the time and in the circumstances specified by the trustee [~~board of trustees~~], a carrier shall issue to each retiree, surviving spouse, or surviving dependent child[~~, or active employee of a participating school district~~] covered under this chapter a certificate of coverage that:

(1) states the benefits to which the person is entitled;

(2) states to whom the benefits are payable;

(3) states to whom a claim must be submitted; and

(4) summarizes the provisions of the coverage principally affecting the person.

(b) Section 3.07, Chapter 1187, Acts of the 77th

Legislature, Regular Session, 2001, is repealed.

SECTION 10A.417. Section 1575.006(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) The items listed in Subsection (a) may not be assigned except for direct payment to benefit providers as authorized by the trustee [~~board of trustees~~] by contract, rule, or otherwise.

SECTION 10A.418. (a) Section 1575.008, Insurance Code, is repealed to conform to the repeal of Section 21, Article 3.50-4, Insurance Code, the source law from which that section was derived, by Section 3.20, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

(b) Subchapter R, Chapter 1575, Insurance Code, is repealed to conform to the repeal of Sections 7A and 20, Article 3.50-4, Insurance Code, the source law from which that subchapter was derived, by Section 3.20, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 10A.419. Section 1575.051, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.051. ADMINISTRATION OF GROUP PROGRAM. The trustee [~~board of trustees~~] shall take the actions it considers necessary to devise, implement, and administer the group program.

SECTION 10A.420. (a) Section 1575.052, Insurance Code, is amended to conform to Section 3.05, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as

follows:

Sec. 1575.052. AUTHORITY TO ADOPT RULES AND PROCEDURES; OTHER AUTHORITY. (a) The trustee [~~board of trustees~~] may adopt rules, plans, procedures, and orders reasonably necessary to implement this chapter, including:

(1) minimum benefit and financing standards for group coverage for retirees, dependents, surviving spouses, and surviving dependent children[~~, and active employees of participating school districts~~];

(2) basic and optional group coverage for retirees, dependents, surviving spouses, and surviving dependent children[~~, and active employees of participating school districts~~];

(3) procedures for contributions and deductions;

(4) periods for enrollment and selection of optional coverage and procedures for enrolling and exercising options under the group program;

(5) procedures for claims administration;

(6) procedures to administer the fund; and

(7) a timetable for:

(A) developing minimum benefit and financial standards for group coverage;

(B) establishing group plans; and

(C) taking bids and awarding contracts for group plans.

(b) The trustee [~~board of trustees~~] may:

(1) study the operation of all group coverage provided under this chapter; and

(2) contract for advice and counsel in implementing and administering the group program with an independent and experienced group insurance consultant or actuary [~~who does not receive a commission from any insurance company~~].

(b) Section 3.05, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.421. Sections 1575.053, 1575.054, and 1575.055, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.053. PERSONNEL. (a) The trustee [~~board of trustees~~] may employ persons to assist the trustee [~~board~~] in implementing this chapter.

(b) The trustee [~~board of trustees~~] shall prescribe the duties and compensation of each employee [~~of the board~~].

Sec. 1575.054. BUDGET. Expenses incurred in developing and administering the group program shall be paid as provided by a budget adopted by the trustee [~~board of trustees~~].

Sec. 1575.055. DEPARTMENT ASSISTANCE. The department shall, as requested by the trustee [~~board of trustees~~], assist the trustee [~~board~~] in implementing and administering this chapter.

SECTION 10A.422. (a) Subchapter B, Chapter 1575, Insurance Code, is amended to conform to Section 3A, Article 3.50-4, Insurance Code, as added by Section 3.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1575.056 to read as follows:

Sec. 1575.056. TRANSFER OF RECORDS RELATING TO ACTIVE EMPLOYEE PROGRAM. The trustee shall transfer from the program all

records relating to active employees participating in the program established under Chapter 1579 not later than the date on which the program established under Chapter 1579 is implemented.

(b) Section 3A, Article 3.50-4, Insurance Code, as added by Section 3.01, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.423. Sections 1575.101, 1575.102, 1575.103, and 1575.104, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.101. SYSTEM AS GROUP PLAN HOLDER. The Teacher Retirement System of Texas [~~system~~] is the group plan holder of a plan established under this chapter.

Sec. 1575.102. SELF-INSURED PLANS. The trustee [~~board of trustees~~] may self-insure any plan established under this chapter.

Sec. 1575.103. PLANS MAY VARY ACCORDING TO MEDICARE COVERAGE. For retirees and surviving spouses who are covered by Medicare, the trustee [~~board of trustees~~] may provide one or more plans that are different from the plans provided for retirees and surviving spouses who are not covered by Medicare.

Sec. 1575.104. TERMS OF CONTRACT. A contract for group coverage awarded by the trustee [~~board of trustees~~] must meet the minimum benefit and financial standards adopted by the trustee [~~board~~].

SECTION 10A.424. (a) Section 1575.106, Insurance Code, is amended to conform to Section 3.06, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1575.106. COMPETITIVE BIDDING REQUIREMENTS; RULE. (a) A contract to provide group benefits under this chapter may be awarded only through competitive bidding under rules adopted by the trustee [~~board of trustees~~].

(b) [~~The rules:~~

[~~(1) must require that a prospective bidder provide, for each area consisting of a county and all adjacent counties, information on the number and types of qualified providers willing to participate in the plan for which the bid is made; and~~

[~~(2) may provide criteria for determining whether a provider is qualified.~~

[~~(c) The board of trustees may not require a bidder to demonstrate a minimum standard of provider participation.~~

[~~(d)~~] The trustee [~~board of trustees~~] shall submit for competitive bidding at least every six years each contract for coverage under this chapter.

(b) Section 1575.107, Insurance Code, is amended to conform to Section 3.06, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.107. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract to provide group benefits under this chapter, the trustee [~~board of trustees~~] is not required to select the lowest bid and[~~:~~

[~~(1) shall consider information obtained under Section 1575.106; and~~

[~~(2)~~] may consider any relevant criteria, including

the bidder's:

(1) [~~(A)~~] ability to service contracts;

(2) [~~(B)~~] past experiences; and

(3) [~~(C)~~] financial stability.

(b) If the trustee [~~board of trustees~~] awards a contract to a bidder whose bid deviates from that advertised, the trustee [~~board~~] shall record the deviation and fully justify the reason for the deviation in the minutes of the next [~~board~~] meeting of the trustee.

(c) Section 3.06, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.425. Sections 1575.108, 1575.109, and 1575.151, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.108. USE OF PRIVATE ENTITIES. The trustee [~~board of trustees~~] may engage a private entity to collect contributions from or to settle claims in connection with a plan established by the trustee [~~board~~] under this chapter.

Sec. 1575.109. USE OF HEALTH CARE PROVIDER. To provide benefits to participants in the group program, the trustee [~~board of trustees~~] may contract directly with a health care provider, including a health maintenance organization, a preferred provider organization, a carrier, an administrator, and any other qualified vendor.

Sec. 1575.151. TYPES OF COVERAGES. The trustee [~~board of trustees~~] may include in a plan any coverage it considers advisable, including:

(1) life insurance;

(2) accidental death and dismemberment coverage;

(3) coverage for:

(A) hospital care and benefits;

(B) surgical care and treatment;

(C) medical care and treatment;

(D) dental care;

(E) eye care;

(F) obstetrical benefits;

(G) long-term care;

(H) prescribed drugs, medicines, and prosthetic devices; and

(I) supplemental benefits, supplies, and services in accordance with this chapter; and

(4) protection against loss of salary.

SECTION 10A.426. (a) Section 1575.153, Insurance Code, is amended to conform to Section 3.10, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.153. AUTOMATIC BASIC COVERAGE. A retiree [~~or active employee of a participating school district~~] who applies for coverage during an enrollment period may not be denied coverage in a basic plan provided under this chapter unless the trustee [~~board of trustees~~] finds under Subchapter K that the individual defrauded or attempted to defraud the group program.

(b) Section 3.10, Chapter 1187, Acts of the 77th

Legislature, Regular Session, 2001, is repealed.

SECTION 10A.427. Sections 1575.154 and 1575.155, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.154. ENROLLMENT IN BASIC PLAN BY RETIREES REQUIRED. A retiree must be enrolled in a basic plan offered under the group program unless:

(1) the retiree rejects enrollment in the group program in writing on a form provided by the trustee [~~board of trustees~~]; or

(2) the trustee [~~board of trustees~~] finds under Subchapter K that the retiree defrauded or attempted to defraud the group program.

Sec. 1575.155. COVERAGE FOR DEPENDENTS OF RETIREE. (a) A retiree participating in the group program is entitled to secure for the retiree's dependents group coverage provided for the retiree under this chapter, as determined by the trustee [~~board of trustees~~].

(b) The additional contribution payments for the dependent coverage shall be deducted from the annuity payments to the retiree in the manner and form determined by the trustee [~~board of trustees~~].

SECTION 10A.428. Section 1575.156(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) A surviving spouse must provide payment of applicable contributions in the manner established by Section 1575.205 and by

the trustee [~~board of trustees~~].

SECTION 10A.429. Section 1575.157(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) The applicable contributions must be provided in the manner established by Section 1575.205 and by the trustee [~~board of trustees~~].

SECTION 10A.430. Section 1575.158(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) The trustee [~~board of trustees~~] may, in addition to providing a basic plan, contract for and make available an optional group health benefit plan for retirees, dependents, surviving spouses, or surviving dependent children.

SECTION 10A.431. (a) Section 1575.160, Insurance Code, is amended to conform to Section 3.09, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.160. GROUP LIFE OR ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE: PAYMENT OF CLAIM. The amount of group life insurance or group accidental death and dismemberment insurance covering a retiree, [~~active employee,~~] dependent, surviving spouse, or surviving dependent child on the date of death shall be paid, on the establishment of a valid claim, only to:

(1) the beneficiary designated by the person in a signed and witnessed document received before death in the office

of the trustee [~~system~~]; or

(2) a person in the order prescribed by Section 824.103(b), Government Code, if a beneficiary is not properly designated or a beneficiary does not exist.

(b) Section 3.09, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.432. Section 1575.201, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.201. ADDITIONAL STATE CONTRIBUTIONS. The state through the trustee [~~system~~] shall contribute from money in the fund the total cost of the basic plan covering each participating retiree.

SECTION 10A.433. Sections 1575.203(b) and (c), Insurance Code, are amended to conform more closely to the source law from which the subsections were derived to read as follows:

(b) The employer of an active employee shall monthly:

(1) deduct the employee's contribution from the employee's salary and remit the contribution to the trustee [~~system~~] in the manner required by the trustee [~~board of trustees~~]; or

(2) assume and pay the total contributions due from its active employees.

(c) Contributions to the fund deducted from the salary of an active employee are included in annual compensation for purposes of the Teacher Retirement System of Texas [~~system~~].

SECTION 10A.434. Section 1575.205, Insurance Code, is

amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.205. PARTICIPANT CONTRIBUTION FOR OPTIONAL PLAN. (a) A retiree, surviving spouse, or surviving dependent child who elects an optional plan shall pay a monthly contribution to cover the cost of the plan. The trustee [~~board of trustees~~] shall adopt rules for the collection of additional contributions.

(b) As a condition of electing coverage under an optional plan, a retiree or surviving spouse must, in writing, authorize the trustee [~~board of trustees~~] to deduct the amount of the contribution from the person's monthly annuity payment.

(c) The trustee [~~board of trustees~~] may spend a part of the money received for the group program to offset a part of the costs for optional coverage paid by retirees if the expenditure does not reduce the period the group program is projected to remain financially solvent by more than one year in a biennium.

SECTION 10A.435. (a) Section 1575.207, Insurance Code, is amended to conform to Section 24, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.207. INTEREST ASSESSED ON LATE PAYMENT OF DEPOSITS BY EMPLOYING SCHOOL DISTRICTS. (a) An employing school district that does not remit to the trustee [~~board of trustees~~] all contributions required by this subchapter before the seventh [~~11th~~] day after the last day of the month shall pay to the fund:

(1) the contributions; and

(2) interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(b) On request, the trustee may grant a waiver of the deadline imposed by this section based on an employing district's financial or technological resources.

(b) Section 24, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.436. Sections 1575.208 and 1575.209, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.208. CERTIFICATION OF AMOUNT NECESSARY TO PAY STATE CONTRIBUTIONS. Not later than October 31 preceding each regular session of the legislature, the trustee [~~board of trustees~~] shall certify the amount necessary to pay the state contributions to the fund to:

(1) the Legislative Budget Board; and

(2) the budget division of the governor's office.

Sec. 1575.209. CERTIFICATION OF AMOUNT OF STATE CONTRIBUTIONS. Not later than August 31 of each year, the trustee [~~board of trustees~~] shall certify to the comptroller the estimated amount of state contributions to be received by the fund for the next fiscal year under the appropriations authorized by this chapter.

SECTION 10A.437. Section 1575.210(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) Contributions allocated and appropriated under this

subchapter for a state fiscal year shall be:

(1) paid from the general revenue fund in equal monthly installments;

(2) based on the estimated amount certified by the trustee [~~board of trustees~~] to the comptroller for that year; and

(3) subject to any express limitations specified in the Act making the appropriation.

SECTION 10A.438. Sections 1575.252, 1575.253, 1575.254, and 1575.255, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.252. APPLICATION BY EMPLOYER FOR MONEY TO PAY STATE CONTRIBUTIONS. An employer who applies for money provided by the United States or a privately sponsored source shall:

(1) if any of the money will pay part or all of an active employee's salary, also apply for any legally available money to pay state contributions required by Subchapter E; and

(2) immediately send any money received for state contributions as a result of the application to the trustee [~~system~~] for deposit in the general revenue fund.

Sec. 1575.253. MONTHLY CERTIFICATION. An employer shall monthly certify to the trustee [~~board of trustees~~] in a form prescribed by the trustee [~~board~~]:

(1) the total amount of salary paid from federal funds and private grants; and

(2) the total amount of state contributions provided by the funds and grants.

Sec. 1575.254. MONTHLY MAINTENANCE OF INFORMATION. An employer shall monthly maintain:

(1) the name of each employee whose salary is paid wholly or partly from a grant;

(2) the source of the grant;

(3) the amount of the employee's salary paid from the grant;

(4) the amount of the money provided by the grant for state contributions for the employee; and

(5) any other information the trustee [~~board of trustees~~] determines is necessary to enforce this subchapter.

Sec. 1575.255. PROOF OF COMPLIANCE. The trustee [~~board of trustees~~] may:

(1) require an employer to report an application for federal or private money;

(2) require evidence that the application includes a request for funds available to pay state contributions for active employees; and

(3) examine the records of an employer to determine compliance with this subchapter and rules adopted under this subchapter.

SECTION 10A.439. Section 1575.257(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) The trustee [~~board of trustees~~] shall report an alleged noncompliance with this subchapter to the attorney general, the Legislative Budget Board, the comptroller, and the governor.

SECTION 10A.440. (a) Section 1575.301, Insurance Code, is amended to conform to Section 3.11, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.301. FUND; ADMINISTRATION. (a) The retired [~~Texas public~~] school employees group insurance fund is a trust fund with the comptroller, who is custodian of the fund.

(b) The trustee [~~board of trustees~~] shall administer the fund.

(b) The heading to Subchapter G, Chapter 1575, Insurance Code, is amended to conform to Section 3.11, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER G. RETIRED [~~TEXAS PUBLIC~~] SCHOOL EMPLOYEES GROUP INSURANCE FUND

(c) Section 3.11, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.441. Sections 1575.303, 1575.304, 1575.305, and 1575.306, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.303. PAYMENTS FROM FUND. (a) The following shall, without state fiscal year limitation, be paid from the fund:

(1) the appropriate premiums to a carrier providing group coverage under a plan under this chapter;

(2) claims for benefits under the group coverage; and

(3) money spent by the trustee [~~board of trustees~~] to

administer the group program.

(b) The appropriate portion of the contributions to the fund to provide for incurred but unreported claim reserves and contingency reserves, as determined by the trustee [~~board of trustees~~], shall be retained in the fund.

Sec. 1575.304. TRANSFER OF CERTAIN CONTRIBUTIONS. The trustee [~~board of trustees~~] shall transfer into the fund the amounts deducted from annuities for contributions.

Sec. 1575.305. INVESTMENT OF FUND. The trustee [~~board of trustees~~] may invest money in the fund in the manner provided by Subchapter D, Chapter 825, Government Code, for assets of the Teacher Retirement System of Texas [~~system~~].

Sec. 1575.306. EMPLOYEE CONTRIBUTIONS PROPERTY OF FUND ON RECEIPT; NO REFUND. A contribution from an active employee:

(1) is the property of the fund on receipt by the trustee [~~system~~]; and

(2) may not be refunded to the active employee under any circumstances, including termination of employment.

SECTION 10A.442. Sections 1575.351(1) and (3), Insurance Code, are amended to conform more closely to the source law from which the subdivisions were derived to read as follows:

(1) "Credentialing committee" means a credentialing committee created by the trustee [~~board of trustees~~] under Section 1575.354.

(3) "Network" means the coordinated care network implemented and administered [~~established~~] by the trustee [~~board of trustees~~] under this subchapter.

SECTION 10A.443. Sections 1575.352, 1575.353, and 1575.354, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.352. IMPLEMENTATION AND ADMINISTRATION. The trustee [~~board of trustees~~] may implement and administer a coordinated care network for the group program.

Sec. 1575.353. CONTRACTS WITH HEALTH CARE PROVIDERS AND OTHERS. As the trustee [~~board of trustees~~] determines is necessary to implement and administer the network, the trustee [~~board~~] may contract with a health care provider or other individuals or entities.

Sec. 1575.354. CREDENTIALING COMMITTEES. The trustee [~~board of trustees~~] may establish credentialing committees to evaluate the qualifications of health care providers to participate in the network.

SECTION 10A.444. Section 1575.355(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) The following are not liable for damages arising from an act or omission of a health care provider participating in the network:

(1) the trustee [~~system~~] and its officers and employees, including the board of trustees of the trustee;

(2) the group program;

(3) the fund; and

(4) a member of an advisory committee to the trustee [~~board of trustees~~].

SECTION 10A.445. Section 1575.356, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.356. IMMUNITY FROM LIABILITY ARISING FROM EVALUATION OF QUALIFICATIONS OR CARE. The following are not liable for damages arising from an act, including a statement, determination, report of an act, or recommendation, committed without malice in the course of the evaluation of the qualifications of a health care provider or of the patient care provided by a health care provider participating in the network:

(1) the trustee [~~system~~] and its officers and employees, including the board of trustees;

(2) the group program;

(3) the fund;

(4) a member of an advisory committee to the trustee [~~board of trustees~~]; and

(5) a member of a credentialing committee.

SECTION 10A.446. Section 1575.363(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) Any of the following persons named as a defendant in any civil action filed as a result of participation in the credentialing process may use, including in the person's own defense, otherwise confidential information obtained for legitimate internal business and professional purposes:

(1) the trustee [~~system~~] and its officers and employees, including the board of trustees;

(2) a credentialing committee;

(3) a person participating in a credentialing review;

(4) a health care provider;

(5) the group program; and

(6) a member of an advisory committee.

SECTION 10A.447. Section 1575.402(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) The Retirees Advisory Committee is composed of the following nine members appointed by the trustee [~~board of trustees~~]:

(1) one member who is an active school administrator;

(2) one member who is a retired school administrator;

(3) two members who are active teachers;

(4) three members who are retired teachers;

(5) one member who is an active member of the auxiliary personnel of a school district; and

(6) one member who is a retired member of the auxiliary personnel of a school district.

SECTION 10A.448. Section 1575.404, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1575.404. VACANCY. The trustee [~~board of trustees~~] shall fill a vacancy on the committee by appointing a person who meets the qualifications applicable to the vacated position.

SECTION 10A.449. Section 1575.405(a), Insurance Code, is amended to conform more closely to the source law from which it was

derived to read as follows:

(a) The committee shall meet:

(1) at least twice each year; and

(2) at the call of the trustee [~~board of trustees~~].

SECTION 10A.450. Sections 1575.406 and 1575.407, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.406. DUTIES. The committee shall:

(1) hold public hearings on group coverage;

(2) recommend to the trustee [~~board of trustees~~] minimum standards and features of a plan under the group program that the committee considers appropriate; and

(3) recommend to the trustee [~~board of trustees~~] desirable changes in rules and legislation affecting the group program.

Sec. 1575.407. PROCEDURAL RULES. The trustee [~~board of trustees~~] shall adopt procedural rules for the committee to follow in implementing its powers and duties under this subchapter.

SECTION 10A.451. Sections 1575.451(b), (c), and (d), Insurance Code, are amended to conform more closely to the source law from which the subsections were derived to read as follows:

(b) Group coverage purchased under this chapter must provide for an accounting to the trustee [~~board of trustees~~] by each carrier providing the coverage.

(c) The accounting must be submitted:

(1) not later than the 90th day after the last day of each plan year; and

(2) on a form approved by the trustee [~~board of trustees~~].

(d) Each carrier shall prepare any other report that the trustee [~~board of trustees~~] considers necessary.

SECTION 10A.452. Sections 1575.452, 1575.453, and 1575.454, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.452. ANNUAL REPORT. Not later than the 180th day after the last day of each state fiscal year, the trustee [~~board of trustees~~] shall submit a written report to the department concerning the group coverages provided to and the benefits and services being received by individuals covered under this chapter.

Sec. 1575.453. STUDY AND REPORT BY TRUSTEE [~~BOARD OF TRUSTEES~~]. (a) The trustee [~~board of trustees~~] shall study the operation and administration of this chapter, including:

(1) conducting surveys and preparing reports on financing group coverages and health benefit plans available to participants; and

(2) studying the experience and projected cost of coverage.

(b) The trustee [~~board of trustees~~] shall report to the legislature at each regular session on the operation and administration of this chapter.

Sec. 1575.454. REPORTS BY AND EXAMINATION OF CARRIER. Each contract entered into under this chapter between the trustee [~~board of trustees~~] and a carrier must require the carrier to:

(1) furnish to the trustee [~~board~~] in a timely manner

reasonable reports that the trustee [~~board~~] determines are necessary to implement this chapter; and

(2) permit the trustee [~~board~~] and the state auditor to examine records of the carrier as necessary to implement this chapter.

SECTION 10A.453. (a) Section 1575.456, Insurance Code, is amended to conform to Section 3.13, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to the source law from which the section was derived to read as follows:

Sec. 1575.456. CONFIDENTIALITY OF RECORDS. (a) Section 825.507, Government Code, concerning confidentiality and disclosure of records applies to [~~information in~~] records in the custody of the Teacher Retirement System of Texas or in the custody of an administrator, carrier, agent, attorney, consultant, or governmental body acting in cooperation with or on behalf of the system relating to a retiree, active employee, annuitant, or beneficiary under the group program.

(b) The Teacher Retirement System of Texas [~~system~~] may disclose to a health or benefit provider information in the records of an individual that the system determines is necessary to administer the group program.

(b) Section 3.13, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.454. (a) Section 1575.501, Insurance Code, is amended to conform to Section 3.12, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, and to conform more closely to

the source law from which the section was derived to read as follows:

Sec. 1575.501. EXPULSION FOR FRAUD. After notice and hearing as provided by this subchapter, the trustee [~~board of trustees~~] may expel from participation in the group program a retiree, [~~active employee,~~] dependent, surviving spouse, or surviving dependent child who:

(1) submits a fraudulent claim or application for coverage under the group program; or

(2) defrauds or attempts to defraud a health benefit plan offered under the group program.

(b) Section 3.12, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.455. Sections 1575.502, 1575.504, 1575.505, and 1575.506, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1575.502. HEARING. On receipt of a complaint or on its own motion, the trustee [~~board of trustees~~] may call and hold a hearing to determine whether an individual has acted in the manner described by Section 1575.501.

Sec. 1575.504. EXPULSION AT CONCLUSION OF HEARING. At the conclusion of the hearing under Section 1575.502, if the trustee [~~board of trustees~~] determines that the individual acted in the manner described by Section 1575.501, the trustee [~~board~~] shall expel the individual from participation in the group program.

Sec. 1575.505. EFFECT OF EXPULSION. An individual expelled

from participation in the group program may not be covered by a health benefit plan offered under the group program for a period determined by the trustee [~~board of trustees~~], not to exceed five years, beginning on the date the expulsion takes effect.

Sec. 1575.506. APPEAL. An appeal of a determination by the trustee [~~board of trustees~~] under this subchapter is under the substantial evidence rule.

SECTION 10A.456. Sections 3.04, 3.08, 3.14, and 3.15, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 10A.457. Section 1576.001(2), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(2) "Trustee" [~~"Board of trustees"~~] means [~~the board of trustees of~~] the Teacher Retirement System of Texas.

SECTION 10A.458. Sections 1576.002, 1576.003, and 1576.006, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1576.002. ESTABLISHMENT OF PROGRAM. (a) The trustee [~~board of trustees~~] may establish a group long-term care insurance program to provide long-term care insurance coverage for:

(1) an active employee or retiree;

(2) the spouse of an active employee or retiree, including a surviving spouse;

(3) a parent or grandparent of an active employee or retiree; and

(4) a parent of the spouse of an employee or retiree,

including a parent of a surviving spouse.

(b) The trustee [~~board of trustees~~] may not implement a group long-term care insurance program unless any cost or administrative burden associated with the development of, implementation of, or communications about the program is incidental.

Sec. 1576.003. ADMINISTERING FIRM. The trustee [~~board of trustees~~] may select an administering firm to administer the group long-term care insurance program under contract with the trustee [~~board~~].

Sec. 1576.006. RULES. The trustee [~~board of trustees~~] may adopt rules as necessary to implement this chapter, including rules specifying the coverage to be offered under the group long-term care insurance program.

SECTION 10A.459. (a) Chapter 1576, Insurance Code, is amended to conform to Section 25, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1576.007 to read as follows:

Sec. 1576.007. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized under this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

(b) Section 25, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.460. Sections 1577.001 and 1577.002, Insurance Code, are amended to conform more closely to the source law from

which the sections were derived to read as follows:

Sec. 1577.001. DEFINITIONS. In this chapter:

(1) "Trustee" [~~"Board of trustees"~~] means the [~~board of trustees of the~~] Teacher Retirement System of Texas.

(2) "Employee" means an individual who:

(A) is a participating member of the Teacher Retirement System of Texas [~~system~~]; and

(B) does not participate in a group insurance program provided under Chapter 1551 or 1601.

(3) "Retiree" means:

(A) an individual who:

(i) has taken a service retirement under the system with at least 10 years of service credit in the Teacher Retirement System of Texas [~~system~~] for service in public schools in this state; and

(ii) is not eligible to participate in a group insurance program provided under Chapter 1551 or 1601; or

(B) an individual who:

(i) has taken a disability retirement under the system and is entitled to receive an annuity from the Teacher Retirement System of Texas [~~system~~] based on the individual's service; and

(ii) is not eligible to participate in a group insurance program provided under Chapter 1551 or 1601.

[~~(4) "System" means the Teacher Retirement System of Texas.~~]

Sec. 1577.002. RULES. The trustee [~~board of trustees~~] may

adopt rules necessary to administer this chapter.

SECTION 10A.461. (a) Subchapter A, Chapter 1577, Insurance Code, is amended to conform to Section 26, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1577.003 to read as follows:

Sec. 1577.003. EXEMPTION FROM STATE TAXES AND FEES. A premium or contribution on a policy, insurance contract, or agreement authorized under this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

(b) Section 26, Chapter 1229, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 10A.462. Section 1577.051, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1577.051. OPTIONAL PERMANENT LIFE INSURANCE. The trustee [~~board of trustees~~] shall offer employees and retirees optional permanent life insurance coverage.

SECTION 10A.463. Section 1577.052(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) The trustee [~~board of trustees~~] shall offer employees and retirees optional long-term care insurance coverage.

SECTION 10A.464. Sections 1577.053, 1577.054, 1577.055, 1577.101, Insurance Code, are amended to conform more closely to the source law from which the sections were derived to read as follows:

Sec. 1577.053. OPTIONAL DISABILITY INSURANCE. The trustee [~~board of trustees~~] shall offer employees optional insurance coverage against short-term or long-term loss of salary because of disability.

Sec. 1577.054. AVAILABILITY OF COVERAGE. The trustee [~~board of trustees~~] shall offer the insurance coverages provided under this chapter to:

(1) employees through their employers; and

(2) retirees through the trustee's [~~board's~~] administration of the Teacher Retirement System of Texas [~~system~~].

Sec. 1577.055. OPEN ENROLLMENT PERIODS. Insurance coverages provided under this chapter shall be made available periodically during open enrollment periods as determined by the trustee [~~board of trustees~~].

Sec. 1577.101. CONTRACTS TO PROVIDE COVERAGES. The trustee [~~board of trustees~~] shall contract with one or more carriers authorized to provide the applicable type of insurance to provide each type of coverage required by Subchapter B.

SECTION 10A.465. Section 1577.102(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) A contract to provide benefits under this chapter may be awarded only through competitive bidding under rules adopted by the trustee [~~board of trustees~~].

SECTION 10A.466. Section 1577.103, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1577.103. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract under this chapter, the trustee [~~board of trustees~~] is not required to select the lowest bid and may consider any relevant criteria, including a bidder's:

(1) ability to service contracts;

(2) past experiences; and

(3) financial stability.

(b) If the trustee [~~board of trustees~~] awards a contract to a bidder whose bid deviates from that advertised, the trustee [~~board~~] shall record the deviation and fully justify the reason for the deviation in the minutes of the next [~~board~~] meeting of the trustee.

SECTION 10A.467. Section 1577.104(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) The trustee [~~board of trustees~~] shall adopt rules for the selection of contractors under this chapter.

SECTION 10A.468. Section 1577.152(a), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(a) An employee participating in a plan of insurance coverage provided under this chapter shall pay premiums by payroll deduction remitted by the employee's employer at the times and in the manner determined by the trustee [~~board of trustees~~].

SECTION 10A.469. Section 1577.202(b), Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

(b) The trustee [~~board of trustees~~] shall administer the fund on behalf of the participants in the plans of insurance coverage provided under this chapter.

SECTION 10A.470. Section 1577.205, Insurance Code, is amended to conform more closely to the source law from which it was derived to read as follows:

Sec. 1577.205. INVESTMENT OF FUND. The trustee [~~board of trustees~~] may invest the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

SECTION 10A.471. (a) Subtitle H, Title 8, Insurance Code, is amended to conform to the enactment of Articles 3.50-7, 3.50-8, and 3.50-9, Insurance Code, by Sections 1.01, 1.02, and 1.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, by adding Chapters 1579, 1580, and 1581 to read as follows:

CHAPTER 1579. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP HEALTH COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1579.001. SHORT TITLE. This chapter may be cited as the Texas School Employees Uniform Group Health Coverage Act.

Sec. 1579.002. GENERAL DEFINITIONS. In this chapter:

(1) "Administering firm" means any entity designated by the trustee to administer any coverages, services, benefits, or requirements under this chapter and the trustee's rules adopted under this chapter.

(2) "Trustee" means the Teacher Retirement System of Texas.

(3) "Charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code.

(4) "Health coverage plan" means any group policy or contract, hospital service agreement, health maintenance organization agreement, preferred provider arrangement, or any similar group arrangement or any combination of those policies, contracts, agreements, or arrangements that provides for, pays for, or reimburses expenses for health care services.

(5) "Participating entity" means an entity participating in the uniform group coverage program established under this chapter. The term includes:

(A) a school district;

(B) another educational district whose employees are members of the Teacher Retirement System of Texas;

(C) a regional education service center; and

(D) a charter school that meets the requirements of Section 1579.154.

(6) "Program" means the uniform group coverage program established under this chapter.

(7) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

Sec. 1579.003. DEFINITION OF EMPLOYEE. In this chapter, "employee" means a participating member of the Teacher Retirement System of Texas who is employed by a participating entity and who is not receiving coverage from a program under Chapter 1551, 1575, or 1601. The term does not include an individual performing personal services as an independent contractor.

Sec. 1579.004. DEFINITION OF DEPENDENT. In this chapter,

"dependent" means:

(1) a spouse of a full-time employee or part-time employee;

(2) an unmarried child of a full-time or part-time employee if the child is younger than 25 years of age, including:

(A) an adopted child;

(B) a foster child, stepchild, or other child who is in a regular parent-child relationship; and

(C) a recognized natural child;

(3) a full-time or part-time employee's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or has his or her care provided by the employee or the surviving spouse on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to an extent that the child is dependent on the employee or surviving spouse for care or support, as determined by the board of trustees; and

(4) notwithstanding any other provision of this code, any other dependent of a full-time or part-time employee specified by rules adopted by the board of trustees.

[Sections 1579.005-1579.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATION

Sec. 1579.051. ADMINISTRATION OF GROUP PROGRAM. The Teacher Retirement System of Texas, as trustee, shall implement and administer the uniform group coverage program described by this chapter.

Sec. 1579.052. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY. (a) The trustee may adopt rules relating to the program as considered necessary by the trustee.

(b) The trustee may adopt rules to administer the program, including rules relating to adjudication of claims and expelling participants from the program for cause.

(c) The trustee may contract with an independent and experienced group insurance consultant or actuary for advice and counsel in implementing and administering the program.

(d) The trustee may enter into interagency contracts with any agency of the state, including the Employees Retirement System of Texas and the department, for the purpose of assistance in implementing the program.

Sec. 1579.053. PERSONNEL. The trustee may hire and compensate employees as necessary to implement the program.

Sec. 1579.054. COMPETITIVE BIDDING REQUIREMENTS; RULES. A contract to provide group health coverage under this chapter may be awarded only through competitive bidding under rules adopted by the trustee.

Sec. 1579.055. CONTRACT AWARD; CONSIDERATIONS. (a) In awarding a contract to provide group benefits under this chapter, the trustee is not required to select the lowest bid and may consider also any relevant criteria, including the bidder's:

(1) ability to service contracts;

(2) past experiences; and

(3) financial stability.

(b) If the trustee awards a contract to a bidder whose bid

deviates from that advertised, the trustee shall record the deviation and fully justify the reason for the deviation in the minutes of the next board meeting.

[Sections 1579.056-1579.100 reserved for expansion]

SUBCHAPTER C. COVERAGES

Sec. 1579.101. PLANS OF GROUP COVERAGES. (a) The trustee by rule shall establish plans of group coverages for employees participating in the program and their dependents.

(b) The plans must include at least two tiers of group coverage, with coverage at different levels in each tier, ranging from the catastrophic care coverage plan to the primary care coverage plan. Each tier must contain a health coverage plan.

(c) The trustee by rule shall define the requirements of each coverage plan and tier of coverage.

(d) Comparable coverage plans of each tier of coverage established must be offered to employees of all participating entities.

Sec. 1579.102. CATASTROPHIC CARE COVERAGE PLAN. The coverage provided under the catastrophic care coverage plan shall be prescribed by the trustee by rule and must provide coverage at least as extensive as the coverage provided under the TRS-Care 2 plan operated under Chapter 1575.

Sec. 1579.103. PRIMARY CARE COVERAGE PLAN. The coverage provided under the primary care coverage plan must be comparable in scope and, to the greatest extent possible, in cost to the coverage provided under Chapter 1551.

Sec. 1579.104. OPTIONAL COVERAGES. The trustee may offer

optional coverages to employees participating in the program. The trustee by rule may define the types of optional coverages offered under this section.

Sec. 1579.105. PREEXISTING CONDITION LIMITATION. During the initial period of eligibility, coverage provided under the program may not be made subject to a preexisting condition limitation.

[Sections 1579.106-1579.150 reserved for expansion]

SUBCHAPTER D. PARTICIPATING ENTITIES

Sec. 1579.151. REQUIRED PARTICIPATION OF SCHOOL DISTRICTS WITH 500 OR FEWER EMPLOYEES. (a) Each school district with 500 or fewer employees and each regional education service center is required to participate in the program.

(b) Notwithstanding Subsection (a), a school district otherwise subject to Subsection (a) that, on January 1, 2001, was individually self-funded for the provision of health coverage to its employees may elect not to participate in the program.

(c) An educational district described by Section 1579.002(5)(B) that, on January 1, 2001, had 500 or fewer employees may elect not to participate in the program.

(d) Notwithstanding Subsection (a), a school district otherwise subject to Subsection (a) that is a party to a contract for the provision of insurance coverage to the employees of the district that is in effect on September 1, 2002, is not required to participate in the program until the expiration of the contract period. A school district subject to this subsection shall notify the trustee in the manner prescribed by the trustee. This

subsection expires March 1, 2004.

Sec. 1579.152. PARTICIPATION OF OTHER SCHOOL DISTRICTS. Effective September 1, 2005, a school district with more than 500 employees may elect to participate in the program. A school district that elects to participate under this section shall apply for participation in the manner prescribed by the trustee by rule.

Sec. 1579.1525. PARTICIPATION OF OTHER SCHOOL DISTRICTS BEFORE SEPTEMBER 1, 2005. Notwithstanding Section 1579.152, a school district with more than 500 employees may elect to participate in the program before September 1, 2005, if the trustee determines that participation by districts in that category would be administratively feasible and cost-effective. This section expires September 1, 2005.

Sec. 1579.153. PARTICIPATION BY CERTAIN RISK POOLS. (a) In determining the number of employees of a school district for purposes of Sections 1579.151 and 1579.152, school districts that, on January 1, 2001, were members of a risk pool established under the authority of Chapter 172, Local Government Code, as provided by Section 22.004, Education Code, may elect to be treated as a single unit. A school district shall elect whether to be considered as a member of a risk pool under this section by notifying the trustee not later than September 1, 2001.

(b) A risk pool in existence on January 1, 2001, that, as of that date, provided group health coverage to 500 or fewer school district employees may elect to participate in the program.

(c) A school district with 500 or fewer employees that is a member of a risk pool described by Subsection (a) that provides

group health coverage to more than 500 school district employees must elect, not later than September 1, 2001, whether to be treated as a school district with 500 or fewer employees or as part of a unit with more than 500 employees. The school district must notify the trustee of the election, in the manner prescribed by the trustee, not later than September 1, 2001.

(d) For purposes of this section, participation in the program by school districts covered by a risk pool is limited to school districts covered by the risk pool as of January 1, 2001.

Sec. 1579.154. PARTICIPATION BY CHARTER SCHOOLS; ELIGIBILITY. (a) A charter school is eligible to participate in the program if the school agrees:

(1) that all records of the school relating to participation in the program are open to inspection by the trustee, the administering firm, the commissioner of education, or a designee of any of those entities; and

(2) to have the school's accounts relating to participation in the program annually audited by a certified public accountant at the school's expense.

(b) A charter school must notify the trustee of the school's intent to participate in the program in the manner and within the time required by rules adopted by the trustee.

[Sections 1579.155-1579.200 reserved for expansion]

SUBCHAPTER E. PARTICIPATION BY EMPLOYEE

Sec. 1579.201. DEFINITION. In this subchapter, "full-time employee" and "part-time employee" have the meanings assigned by rules adopted by the trustee.

Sec. 1579.202. ELIGIBLE EMPLOYEES. (a) Except as provided by Section 1579.204, participation in the program is limited to employees of participating entities who are full-time employees and to part-time employees who are participating members in the Teacher Retirement System of Texas.

(b) An employee described by Subsection (a) who applies for coverage during an open enrollment period prescribed by the trustee is automatically covered by the catastrophic care coverage plan unless the employee:

(1) specifically waives coverage under this chapter;

(2) selects a higher tier coverage plan; or

(3) is expelled from the program.

Sec. 1579.203. SELECTION OF COVERAGE. (a) A participating employee may select coverage in any coverage plan offered by the trustee.

(b) The employee is not required to continue participation in the coverage plan initially selected and may select a higher or lower tier coverage plan than the plan initially selected by the employee in the manner provided by rules adopted by the trustee.

(c) If the combined contributions received from the state and the employing participating entity under Subchapter F exceed the cost of a coverage plan selected by the employee, the employee may use the excess amount of contributions to obtain coverage under a higher tier coverage plan or to pay all or part of the cost of coverage for the employee's dependents.

(d) A married couple, both of whom are eligible for coverage under the program, may pool the amount of contributions to which the

couple are entitled under the program to obtain coverage for themselves and dependent coverage.

Sec. 1579.204. CERTAIN PART-TIME EMPLOYEES. A part-time employee of a participating entity who is not a participating member in the Teacher Retirement System of Texas is eligible to participate in the program only if the employee pays all of the premiums and other costs associated with the health coverage plan selected by the employee.

Sec. 1579.205. PAYMENT BY PARTICIPATING ENTITY. Notwithstanding Section 1579.204, a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

[Sections 1579.206-1579.250 reserved for expansion]

SUBCHAPTER F. CONTRIBUTIONS

Sec. 1579.251. STATE ASSISTANCE. (a) The state shall assist employees of participating school districts and charter schools in the purchase of group health coverage under this chapter by providing for each covered employee the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act. The state contribution shall be distributed through the school finance formulas under Chapters 41 and 42, Education Code, and used by school districts and charter schools as provided by Sections 42.2514 and 42.260, Education Code.

(b) The state shall assist employees of participating regional education service centers and educational districts described by Section 1579.002(5)(B) in the purchase of group health

coverage under this chapter by providing to the employing service center or educational district, for each covered employee, the amount of $900 each state fiscal year or a greater amount as provided by the General Appropriations Act.

Sec. 1579.252. CONTRIBUTION BY PARTICIPATING ENTITIES. A participating entity shall make contributions for the program as provided by Chapter 1581.

Sec. 1579.253. CONTRIBUTION BY EMPLOYEE. (a) An employee covered by the program shall pay that portion of the cost of coverage selected by the employee that exceeds the amount of the state contribution under Section 1579.251 and the participating entity contribution under Section 1579.252.

(b) The employee may pay the employee's contribution under this subsection from the amount distributed to the employee under Chapter 1580.

(c) Notwithstanding Subsection (a), a participating entity may pay any portion of what otherwise would be the employee share of premiums and other costs associated with the coverage selected by the employee.

[Sections 1579.254-1579.300 reserved for expansion]

SUBCHAPTER G. TEXAS SCHOOL EMPLOYEES UNIFORM GROUP COVERAGE TRUST FUND

Sec. 1579.301. FUND; ADMINISTRATION. The Texas school employees uniform group coverage trust fund is a trust fund with the comptroller.

Sec. 1579.302. COMPOSITION OF FUND. The fund is composed of:

(1) all contributions made to the fund under this chapter from employees, participating entities, and the state;

(2) contributions made by employees or participating entities for optional coverages;

(3) investment income;

(4) any additional amounts appropriated by the legislature for contingency reserves, administrative expenses, or other expenses; and

(5) any other money required or authorized to be paid into the fund.

Sec. 1579.303. PAYMENTS FROM FUND. The trustee may use amounts in the fund only to provide group coverages under this chapter and to pay the expenses of administering the program.

Sec. 1579.304. INVESTMENT OF FUND. The trustee may invest assets of the fund in the manner provided by Section 67(a)(3), Article XVI, Texas Constitution.

CHAPTER 1580. ACTIVE EMPLOYEE HEALTH COVERAGE OR COMPENSATION SUPPLEMENTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1580.001. DEFINITIONS. In this chapter:

(1) "Cafeteria plan" means a plan as defined and authorized by Section 125, Internal Revenue Code of 1986, and its subsequent amendments.

(2) "Employee" means a participating member of the Teacher Retirement System of Texas who:

(A) is employed by a school district, other educational district whose employees are members of the Teacher

Retirement System of Texas, participating charter school, or regional education service center; and

(B) is not a retiree covered under the program established under Chapter 1575.

(3) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the program established under Chapter 1579.

(4) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

(5) "Trustee" means the Teacher Retirement System of Texas.

Sec. 1580.002. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY. (a) The trustee may adopt rules to implement this chapter.

(b) The trustee may enter into interagency contracts with any agency of this state for the purpose of assistance in implementing this chapter.

[Sections 1580.003-1580.050 reserved for expansion]

SUBCHAPTER B. DISTRIBUTION OF STATE FUNDS BY TRUSTEE

Sec. 1580.051. DISTRIBUTION BY TRUSTEE. Each year, the trustee shall deliver to each school district, including a school district that is ineligible for state aid under Chapter 42, Education Code, each other educational district that is a member of the Teacher Retirement System of Texas, each participating charter school, and each regional education service center state funds in an amount, as determined by the trustee, equal to the product of the

number of active employees employed by the district, school, or service center multiplied by $1,000 or a greater amount as provided by the General Appropriations Act for purposes of this chapter.

Sec. 1580.052. EQUAL INSTALLMENTS. The trustee shall distribute funds under this chapter in equal monthly installments.

Sec. 1580.053. FUNDS HELD IN TRUST. All funds received by a school district, other educational district, participating charter school, or regional education service center under this chapter are held in trust for the benefit of the active employees on whose behalf the district, school, or service center received the funds.

Sec. 1580.054. RECOVERY OF DISTRIBUTIONS. The trustee is entitled to recover from a school district, other educational district, participating charter school, or regional education service center any amount distributed under this chapter to which the district, school, or service center was not entitled.

Sec. 1580.055. DETERMINATION OF TRUSTEE FINAL. A determination by the trustee under this subchapter is final and may not be appealed.

[Sections 1580.056-1580.100 reserved for expansion]

SUBCHAPTER C. EMPLOYEE ELECTION

Sec. 1580.101. EMPLOYEE COVERED BY CAFETERIA PLAN. (a) If an active employee is covered by a cafeteria plan of a school district, other educational district, participating charter school, or regional education service center, the state contribution under this chapter shall be deposited in the cafeteria plan, and the employee may elect among the options provided by the cafeteria plan.

(b) A cafeteria plan receiving state contributions under this chapter may include a medical savings account option and must include, at a minimum, the following options:

(1) a health care reimbursement account;

(2) a benefit or coverage other than that provided under Chapter 1579, or any employee coverage or dependent coverage available under Chapter 1579 but not otherwise fully funded by the state or the employer contributions, any of which must be a "qualified benefit" under Section 125, Internal Revenue Code of 1986, and its subsequent amendments;

(3) an option for the employee to receive the state contribution as supplemental compensation; or

(4) an option to divide the state contribution among two or more of the other options provided under this subsection.

Sec. 1580.102. EMPLOYEE NOT COVERED BY CAFETERIA PLAN. If an active employee is not covered by a cafeteria plan of a school district, other educational district, participating charter school, or regional education service center, the state contribution under this chapter shall be paid to the active employee as supplemental compensation.

Sec. 1580.103. SUPPLEMENTAL COMPENSATION. Supplemental compensation under this subchapter must be in addition to the rate of compensation that:

(1) the school district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year; or

(2) the district, school, or service center would have

paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

Sec. 1580.104. TIME FOR ELECTION. For each state fiscal year, an election under this subchapter must be made before the later of:

(1) August 1 of the preceding state fiscal year; or

(2) the 31st day after the date the employee is hired.

Sec. 1580.105. WRITTEN EXPLANATION; ELECTION FORM. (a) The trustee shall prescribe and distribute to each school district, other educational district, participating charter school, and regional education service center:

(1) a model explanation written in English and Spanish of the options active employees may elect under this section and the effect of electing each option; and

(2) an election form to be completed by active employees.

(b) Each state fiscal year, a school district, other educational district, participating charter school, or regional education service center shall prepare and distribute to each active employee a written explanation in English and Spanish, as appropriate, of the options the employee may elect under this section. The explanation must be based on the model explanation prepared by the trustee under Subsection (a) and must reflect all available health coverage options available to the employee. The explanation must be distributed to an employee before the later of:

(1) July 1 of the preceding state fiscal year; or

(2) the fifth day after the date the employee is hired.

(c) The written explanation under Subsection (b) must be accompanied by a copy of the election form prescribed under Subsection (a)(2).

Sec. 1580.106. RETURN OF UNENCUMBERED FUNDS. Any unencumbered funds that are returned to the school district from accounts established under Section 1580.101 may be used only to provide employee compensation, benefits, or both.

[Sections 1580.107-1580.150 reserved for expansion]

SUBCHAPTER D. MEDICAL SAVINGS ACCOUNT

Sec. 1580.151. DEFINITION. In this subchapter, "qualified health care expense" means an expense paid by an employee for medical care, as defined by Section 213(d), Internal Revenue Code of 1986, and its subsequent amendments, for the employee or the employee's dependents, as defined by Section 152, Internal Revenue Code of 1986, and its subsequent amendments.

Sec. 1580.152. RULES. The trustee, by rule, shall specify the requirements for a medical savings account established under this chapter.

Sec. 1580.153. QUALIFICATION OF ACCOUNT. (a) The trustee shall request in writing a ruling or opinion from the Internal Revenue Service as to whether the medical savings accounts established under this chapter and the state rules governing those accounts qualify the accounts for appropriate federal tax exemptions.

(b) Based on the response of the Internal Revenue Service under Subsection (a), the trustee shall:

(1) modify the rules, plans, and procedures adopted under this section as necessary to ensure the qualification of those accounts for appropriate federal tax exemptions; and

(2) certify the information regarding federal tax qualifications to the comptroller.

Sec. 1580.154. EMPLOYEE ELECTION. An employee who elects under Section 1580.101 to have state funds distributed under this chapter placed in a medical savings account may use the money in that account only for a qualified health care expense.

CHAPTER 1581. EMPLOYER EXPENDITURES FOR SCHOOL EMPLOYEE HEALTH COVERAGE PLANS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1581.001. DEFINITIONS. In this chapter:

(1) "Participating employee" means an employee of a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center who participates in a group health coverage plan provided by or through the district, school, or service center.

(2) "Participating charter school" means an open-enrollment charter school established under Subchapter D, Chapter 12, Education Code, that participates in the uniform group coverage program established under Chapter 1579.

(3) "Regional education service center" means a regional education service center established under Chapter 8, Education Code.

[Sections 1581.002-1581.050 reserved for expansion]

SUBCHAPTER B. MAINTENANCE OF EFFORT; MINIMUM EFFORT

Sec. 1581.051. MAINTENANCE OF EFFORT FOR 2000-2001 SCHOOL YEAR. (a) Subject to Sections 1581.052 and 1581.053, and except as provided by Section 1581.054, a school district, other educational district whose employees are members of the Teacher Retirement System of Texas, participating charter school, or regional education service center that, for the 2000-2001 school year, paid amounts to share with employees the cost of coverage under a group health coverage plan shall, for each fiscal year, use to provide health coverage an amount for each participating employee at least equal to the amount computed as provided by this section.

(b) The school district, other educational district, participating charter school, or regional education service center shall divide the amount that the district, school, or service center paid during the 2000-2001 school year for the prior group health coverage plan by the total number of full-time employees of the district, school, or service center in the 2000-2001 school year and multiply the result by the number of full-time employees of the district, school, or service center in the fiscal year for which the computation is made. If, for the 2000-2001 school year, a school district, other educational district, participating charter school, or regional education service center provided group health coverage to its employees through a self-funded insurance plan, the amount the district, school, or service center paid during that school year for the plan includes only the amount of regular contributions made by the district, school, or service center to the plan.

(c) Amounts used as required by this section shall be deposited, as applicable, in a fund described by Section 1581.052(b).

Sec. 1581.052. REQUIRED MINIMUM EFFORT. (a) A school district, other educational district, participating charter school, or regional education service center shall, for each fiscal year, use to provide health coverage an amount equal to the number of participating employees of the district, school, or service center multiplied by $1,800.

(b) Amounts used as required by this section shall be deposited, as applicable, in:

(1) the Texas school employees uniform group coverage trust fund established under Subchapter G, Chapter 1579; or

(2) another fund established for the payment of employee health coverage that meets requirements for those funds prescribed by the Texas Education Agency.

Sec. 1581.053. USE OF STATE FUNDS. (a) To comply with Section 1581.052, a school district or participating charter school may use state funds received under Chapter 42, Education Code, other than funds that may be used under that chapter only for a specific purpose.

(b) Notwithstanding Subsection (a), amounts a district or school is required to use to pay contributions under a group health coverage plan for district or school employees under Section 42.2514 or 42.260, Education Code, other than amounts described by Section 42.260(c)(2)(B), are not used in computing whether the district or school complies with Section 1581.052.

Sec. 1581.054. EXCESS OF MAINTENANCE OF EFFORT. If the amount a school district, other educational district, or participating charter school is required to use to provide health coverage under Section 1581.051 for a fiscal year exceeds the amount necessary for the district or school to comply with Section 1581.052(a) for that year, the district or school may use the excess only to provide employee compensation at a rate greater than the rate of compensation that the district or school paid an employee in the 2000-2001 school year, benefits, or both.

[Sections 1581.055-1581.100 reserved for expansion]

SUBCHAPTER C. STATE ASSISTANCE FOR MEETING MINIMUM EFFORT

Sec. 1581.101. STATE FISCAL YEARS AFTER AUGUST 31, 2001. For any state fiscal year beginning with the fiscal year ending August 31, 2003, except as provided by Section 1581.102, a school district that imposes maintenance and operations taxes at the maximum rate permitted under Section 45.003(d), Education Code, is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section

42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

Sec. 1581.1015. CERTAIN FISCAL YEARS. (a) For the state fiscal year beginning September 1, 2002, a school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $1,800; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(b) For the state fiscal year beginning September 1, 2003, a school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $1,500; and

(2) if the following amount is less than the amount

specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(c) For the state fiscal year beginning September 1, 2004, a school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $1,200; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(d) For the state fiscal year beginning September 1, 2005, a

school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $900; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(e) For the state fiscal year beginning September 1, 2006, a school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $600; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section

42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(f) For the state fiscal year beginning September 1, 2007, a school district or participating charter school is entitled to state funds in an amount equal to the difference, if any, between:

(1) an amount equal to the number of participating employees of the district or school multiplied by $300; and

(2) if the following amount is less than the amount specified by Subdivision (1), the sum of:

(A) the amount the district or school is required to use to provide health coverage under Section 1581.051 for that fiscal year; and

(B) the difference, if any, between:

(i) the amount determined under Section 42.2514(b)(2), Education Code; and

(ii) the amount determined under Section 42.2514(b)(1), Education Code, if that amount is less than the amount specified by Subparagraph (i).

(g) A school district that receives state funds under Section 1581.101 for a state fiscal year is not entitled to state funds under Subsection (a), (b), (c), (d), (e), or (f).

(h) This section expires September 1, 2008.

Sec. 1581.102. MAXIMUM AMOUNT OF STATE FUNDS. For any state fiscal year, the amount of state funds a school district receives under Section 1581.101 may not exceed the amount of state funds the

district received under this subchapter for the year preceding the year in which the district first receives funds under Section 1581.101.

Sec. 1581.103. DISTRIBUTION OF FUNDS. (a) The Teacher Retirement System of Texas shall distribute state funds to school districts and participating charter schools under this subchapter in equal monthly installments. State funds received under this subchapter shall be deposited in a fund described by Section 1581.052(b).

(b) The Texas Education Agency shall provide to the retirement system information necessary for the retirement system to determine a district's or school's eligibility for state funds under this subchapter. The Teacher Retirement System of Texas may enter into interagency contracts with any agency of this state for the purpose of assistance in distributing funds under this chapter.

Sec. 1581.104. RECOVERY OF DISTRIBUTIONS. The Teacher Retirement System of Texas is entitled to recover from a school district or participating charter school any amount distributed under this subchapter to which the district or school was not entitled.

Sec. 1581.105. DETERMINATION OF TEACHER RETIREMENT SYSTEM OF TEXAS FINAL. A determination by the Teacher Retirement System of Texas under this subchapter is final and may not be appealed.

[Sections 1581.106-1581.700 reserved for expansion]

SUBCHAPTER O. ADDITIONAL SUPPORT FOR CERTAIN SCHOOL DISTRICTS

Sec. 1581.701. APPLICABILITY OF SUBCHAPTER. This

subchapter applies only to a school district that:

(1) pays taxes under Section 3111(a), Internal Revenue Code of 1986, and its subsequent amendments, for employees covered by the social security retirement program; and

(2) covered all employees under that program before January 1, 2001.

Sec. 1581.702. ADDITIONAL SUPPORT. The state shall provide additional support for a school district to which this section applies in an amount computed by multiplying the total amount of supplemental compensation received by district employees under Chapter 1580 by 0.062.

Sec. 1581.703. AUTHORITY TO ADOPT RULES. The Teacher Retirement System of Texas may adopt rules as necessary to implement this subchapter.

Sec. 1581.704. EXPIRATION. This subchapter expires September 1, 2008.

(b) Articles 3.50-7, 3.50-8, and 3.50-9, Insurance Code, as added by Sections 1.01, 1.02, and 1.03, Chapter 1187, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

PART 5. CHANGES RELATING TO REFERENCES TO THE INSURANCE CODE

SECTION 10A.501. Subchapter F, Chapter 38, Insurance Code, as added by Chapter 1284, Acts of the 77th Legislature, Regular Session, 2001, is relettered as Subchapter G, Chapter 38, Insurance Code, and Sections 38.251 and 38.252, Insurance Code, as added by that Act, are renumbered as Sections 38.301 and 38.302, respectively.

SECTION 10A.502. Section 13.303, Agriculture Code, is

amended to read as follows:

Sec. 13.303. GENERAL REQUIREMENTS FOR LICENSE ISSUANCE OR RENEWAL. Before a license is issued or renewed by the department under this subchapter:

(1) the person applying for the license or renewal of the license shall provide the department proof of completion of a department-approved academic, trade, or professional course of instruction required by the department's rules;

(2) the person shall file with the department an insurance policy or other proof of insurance evidencing that the applicant has a completed operations liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance [~~State Board of Insurance~~] in an amount set by the department and based on the type of licensed activities to be provided; and

(3) the department, to verify compliance with trade practices, rules of the department, and this chapter, may conduct an inspection of the applicant's:

(A) facilities;

(B) inspecting and testing equipment and procedures;

(C) repair and calibration equipment and procedures; and

(D) transportation equipment.

SECTION 10A.503. Section 13.353, Agriculture Code, is

amended to read as follows:

Sec. 13.353. GENERAL REQUIREMENTS FOR LICENSE ISSUANCE OR RENEWAL. Before a license is issued or renewed by the department under this subchapter:

(1) the person applying for the license or renewal of the license shall provide the department proof of completion of a department-approved academic, trade, or professional course of instruction required by the department's rules;

(2) the person shall file with the department an insurance policy or other proof of insurance evidencing that the applicant has a completed operations liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance [~~State Board of Insurance~~] in an amount set by the department and based on the type of licensed activities to be provided; and

(3) the department, to verify compliance with trade practices, rules of the department, and this chapter, may conduct an inspection of the applicant's:

(A) facilities;

(B) inspecting and testing equipment and procedures;

(C) repair and calibration equipment and procedures; and

(D) transportation equipment.

SECTION 10A.504. Section 13.402, Agriculture Code, is

amended to read as follows:

Sec. 13.402. GENERAL REQUIREMENTS FOR LICENSE ISSUANCE OR RENEWAL. Before a license is issued or renewed by the department under this subchapter:

(1) the person applying for the license or renewal of the license shall provide the department proof of completion of a department-approved academic, trade, or professional course of instruction required by the department's rules;

(2) the person shall file with the department an insurance policy or other proof of insurance evidencing that the applicant has a completed operations liability insurance policy issued by an insurance company authorized to do business in this state or by a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance in an amount set by the department and based on the type of licensed activities to be provided; and

(3) the department, to verify compliance with trade practices, rules of the department, and this chapter, may conduct an inspection of the applicant's:

(A) facilities;

(B) inspecting and testing equipment and procedures;

(C) repair and calibration equipment and procedures; and

(D) transportation equipment.

SECTION 10A.505. Section 14.041(a), Agriculture Code, is amended to read as follows:

(a) Except as provided by Subsection (c), an applicant for a license must file or have on file with the department a certificate of insurance evidencing that:

(1) the applicant has an effective policy of insurance issued by an insurance company authorized to do business in this state or, with the approval of the department, by an eligible surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance under that chapter [~~article~~]; and

(2) the policy insures, in the name of the applicant, all grain that is or may be in the public grain warehouse for its full market value against loss by or due to water or other fluid, malicious mischief, vandalism, theft, intentional waste or destruction, smoke, fire, internal explosion, lightning, hail, windstorm, hurricane, or tornado.

SECTION 10A.506. Section 36.03, Business & Commerce Code, is amended to read as follows:

Sec. 36.03. EXCLUSION OF INSURANCE COMPANIES. The provisions of this chapter shall not apply to any insurance company as described [~~defined~~] in Subchapter A, Chapter 805, [~~Article 1.29 of the~~] Insurance Code, which is authorized to do business in this state except as such code shall specifically provide.

SECTION 10A.507. Section 84.007(e), Civil Practice and Remedies Code, is amended to read as follows:

(e) Sections 84.005 and 84.006 of this chapter do not apply to a health care provider as defined in the Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas

Civil Statutes), unless the provider is a federally funded migrant or community health center under the Public Health Service Act (42 U.S.C.A. Sections 254(b) and (c)) or is a nonprofit health maintenance organization created and operated by a community center under Section 534.101, Health and Safety Code, or unless the provider usually provides discounted services at or below costs based on the ability of the beneficiary to pay. Acceptance of Medicare or Medicaid payments will not disqualify a health care provider under this section. In no event shall Sections 84.005 and 84.006 of this chapter apply to a general hospital or special hospital as defined in Chapter 241, Health and Safety Code, or a facility or institution licensed under Subtitle C, Title 7, Health and Safety Code, or Chapter 242, Health and Safety Code, or to any health maintenance organization created and operating under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], except for a nonprofit health maintenance organization created under Section 534.101, Health and Safety Code.

SECTION 10A.508. Section 88.001(7), Civil Practice and Remedies Code, is amended to read as follows:

(7) "Health maintenance organization" means an organization licensed under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~].

SECTION 10A.509. Section 88.003(a), Civil Practice and Remedies Code, is amended to read as follows:

(a) A person may not maintain a cause of action under this

chapter against a health insurance carrier, health maintenance organization, or other managed care entity that is required to comply with or otherwise complies with the utilization review requirements of Article 21.58A, Insurance Code, or Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], unless the affected insured or enrollee or the insured's or enrollee's representative:

(1) has exhausted the appeals and review applicable under the utilization review requirements; or

(2) before instituting the action:

(A) gives written notice of the claim as provided by Subsection (b); and

(B) agrees to submit the claim to a review by an independent review organization under Article 21.58A, Insurance Code, as required by Subsections (c) and (d).

SECTION 10A.510. Section 19.009(g), Education Code, is amended to read as follows:

(g) The employees of the district are eligible for workers' compensation benefits under Chapter 501, Labor Code, and for [~~uniform~~] group [~~insurance~~] benefits under Chapter 1551, Insurance Code [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~].

SECTION 10A.511. Sections 22.004(b), (e), (f), and (g), Education Code, are amended to read as follows:

(b) A district that does not participate in the program described by Subsection (a) shall make available to its employees group health coverage provided by a risk pool established by one or

more school districts under Chapter 172, Local Government Code, or under a policy of insurance or group contract issued by an insurer, a company subject to Chapter 842 [~~20~~], Insurance Code, or a health maintenance organization under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~]. The coverage must meet the substantive coverage requirements of Article 3.51-6, Insurance Code, and any other law applicable to group health insurance policies or contracts issued in this state. The coverage must include major medical treatment but may exclude experimental procedures. In this subsection, "major medical treatment" means a medical, surgical, or diagnostic procedure for illness or injury. The coverage may include managed care or preventive care and must be comparable to the basic health coverage provided under Chapter 1551, Insurance Code [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~]. The board of trustees of the Teacher Retirement System of Texas shall adopt rules to determine whether a school district's group health coverage is comparable to the basic health coverage specified by this subsection. The rules must provide for consideration of the following factors concerning the district's coverage in determining whether the district's coverage is comparable to the basic health coverage specified by this subsection:

(1) the deductible amount for service provided inside and outside of the network;

(2) the coinsurance percentages for service provided inside and outside of the network;

(3) the maximum amount of coinsurance payments a covered person is required to pay;

(4) the amount of the copayment for an office visit;

(5) the schedule of benefits and the scope of coverage;

(6) the lifetime maximum benefit amount; and

(7) verification that the coverage is issued by a provider licensed to do business in this state by the Texas Department of Insurance or is provided by a risk pool authorized under Chapter 172, Local Government Code, or that a district is capable of covering the assumed liabilities in the case of coverage provided through district self-insurance.

(e) Based on the criteria prescribed by Subsection (b), the executive director of the Teacher Retirement System of Texas shall, for each district that does not participate in the program described by Subsection (a), certify whether a district's coverage is comparable to the basic health coverage provided under Chapter 1551, Insurance Code [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~]. If the executive director of the Teacher Retirement System of Texas determines that the group health coverage offered by a district is not comparable, the executive director shall report that information to the district and to the Legislative Budget Board. The executive director shall submit a report to the legislature not later than September 1 of each even-numbered year describing the status of each district's group health coverage program based on the information contained in the report required by Subsection (d)

and the certification required by this subsection.

(f) A school district that does not participate in the program described by Subsection (a) may not contract with an insurer, a company subject to Chapter 842 [~~20~~], Insurance Code, or a health maintenance organization to issue a policy or contract under this section, or with any person to assist the school district in obtaining or managing the policy or contract unless, before the contract is entered into, the insurer, company, organization, or person provides the district with an audited financial statement showing the financial condition of the insurer, company, organization, or person.

(g) An insurer, a company subject to Chapter 842 [~~20~~], Insurance Code, or a health maintenance organization that issues a policy or contract under this section and any person that assists the school district in obtaining or managing the policy or contract for compensation shall provide an annual audited financial statement to the school district showing the financial condition of the insurer, company, organization, or person.

SECTION 10A.512. Section 348.208(c), Finance Code, as added by Chapter 1559, Acts of the 76th Legislature, Regular Session, 1999, is amended to read as follows:

(c) Notwithstanding any other law, service contracts sold by a retail seller of a motor vehicle to a retail buyer are not subject to Chapter 101 [~~1.14-1~~], Insurance Code.

SECTION 10A.513. Section 403.327, Government Code, is amended to read as follows:

Sec. 403.327. INDEMNITY REQUIREMENT. For each film to be

produced with the proceeds from a loan approved to be guaranteed under the program, the producer of the film shall provide an indemnity against loss in an amount equal to the full amount of the loan guarantee. The indemnity must be issued to the comptroller as the beneficiary of the indemnity by:

(1) an insurance company, surety company, or financial institution that:

(A) is licensed and authorized to do business in this state; and

(B) is approved by the comptroller; or

(2) an eligible surplus lines insurer that:

(A) meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner under that chapter [~~article~~]; and

(B) is approved by the comptroller.

SECTION 10A.514. Section 501.146(b), Government Code, is amended to read as follows:

(b) To implement the managed health care plan, The University of Texas Medical Branch at Galveston and the Texas Tech University Health Sciences Center, for employees who are entitled to retain salary and benefits applicable to employees of the Texas Department of Criminal Justice under Section 9.01, Chapter 238, Acts of the 73rd Legislature, Regular Session, 1993, may administer, offer, and report through their payroll systems participation by those employees in the Texas employees [~~uniform~~] group [~~insurance~~] benefits program and the Employees Retirement System of Texas.

SECTION 10A.515. Sections 533.004(a) and (e), Government Code, are amended to read as follows:

(a) In providing health care services through Medicaid managed care to recipients in a health care service region, the commission shall contract with a managed care organization in that region that is licensed under Chapter 843, Insurance Code, [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~] to provide health care in that region and that is:

(1) wholly owned and operated by a hospital district in that region;

(2) created by a nonprofit corporation that:

(A) has a contract, agreement, or other arrangement with a hospital district in that region or with a municipality in that region that owns a hospital licensed under Chapter 241, Health and Safety Code, and has an obligation to provide health care to indigent patients; and

(B) under the contract, agreement, or other arrangement, assumes the obligation to provide health care to indigent patients and leases, manages, or operates a hospital facility owned by the hospital district or municipality; or

(3) created by a nonprofit corporation that has a contract, agreement, or other arrangement with a hospital district in that region under which the nonprofit corporation acts as an agent of the district and assumes the district's obligation to arrange for services under the Medicaid expansion for children as authorized by Chapter 444, Acts of the 74th Legislature, Regular

Session, 1995.

(e) In providing health care services through Medicaid managed care to recipients in a health care service region, with the exception of the Harris service area for the STAR Medicaid managed care program, as defined by the commission as of September 1, 1999, the commission shall also contract with a managed care organization in that region that holds a certificate of authority as a health maintenance organization under Chapter 843, Insurance Code [~~Section 5, Texas Health Maintenance Organization Act (Article 20A.05, Vernon's Texas Insurance Code)~~], and that:

(1) is certified under Section 162.001, Occupations Code;

(2) is created by The University of Texas Medical Branch at Galveston; and

(3) has obtained a certificate of authority as a health maintenance organization to serve one or more counties in that region from the Texas Department of Insurance before September 2, 1999.

SECTION 10A.516. Sections 533.013(b) and (c), Government Code, are amended to read as follows:

(b) In determining the maximum premium payment rates paid to a managed care organization that is licensed under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], the commission shall consider and adjust for the regional variation in costs of services under the traditional fee-for-service component of the state Medicaid program, utilization patterns, and other factors that

influence the potential for cost savings. For a service area with a service area factor of .93 or less, or another appropriate service area factor, as determined by the commission, the commission may not discount premium payment rates in an amount that is more than the amount necessary to meet federal budget neutrality requirements for projected fee-for-service costs unless:

(1) a historical review of managed care financial results among managed care organizations in the service area served by the organization demonstrates that additional savings are warranted;

(2) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown a significant overutilization by recipients of certain services covered by the premium payment rates in comparison to utilization patterns throughout the rest of the state; or

(3) a review of Medicaid fee-for-service delivery in the service area served by the organization has historically shown an above-market cost for services for which there is substantial evidence that Medicaid managed care delivery will reduce the cost of those services.

(c) The premium payment rates paid to a managed care organization that is licensed under Chapter 843, Insurance Code, [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~] shall be established by a competitive bid process but may not exceed the maximum premium payment rates established by the commission under Subsection (b).

SECTION 10A.517. Section 615.045(a), Government Code, is

amended to read as follows:

(a) Records of individuals listed by Section 615.003 and of survivors eligible for benefits under this chapter that are in the custody of the Employees Retirement System of Texas or of a carrier or [~~,~~] administering firm as defined by Section 1551.007 or 1551.003, Insurance Code, as applicable [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~], or of another [~~other~~] governmental agency acting with or on behalf of the retirement system are confidential, not subject to public disclosure, and exempt from the public information provisions of Chapter 552, except as otherwise provided by this section.

SECTION 10A.518. Section 615.073(a), Government Code, is amended to read as follows:

(a) An eligible surviving spouse of a deceased individual listed in Section 615.071 who was employed by the state is entitled to purchase continued health insurance benefits under Chapter 1551, Insurance Code [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~], as provided by this subchapter.

SECTION 10A.519. Section 661.004(b), Government Code, is amended to read as follows:

(b) The board of trustees [~~trustee~~] of the state employee [~~uniform~~] group [~~insurance~~] benefits program established under Chapter 1551, Insurance Code [~~the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~], shall:

(1) classify, for the purposes of this subchapter, those injuries and illnesses that are catastrophic; and

(2) provide a written statement of the classification to the governing body of each state agency.

SECTION 10A.520. Section 814.1042(c), Government Code, is amended to read as follows:

(c) Service described by this section may not be used in determining eligibility for participation under Chapter 1551, Insurance Code [~~in the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code)~~].

SECTION 10A.521. Section 823.302(b), Government Code, is amended to read as follows:

(b) A member eligible to establish military service credit is one who has at least five years of service credit in the retirement system for actual service in public schools, except that a member meeting this condition does not qualify for insurance coverage under Chapter 1575, Insurance Code, [~~the Texas Public School Employees Group Insurance Act (Article 3.50-4, Insurance Code)~~] until the member has 10 or more years of membership service credit.

SECTION 10A.522. Section 824.803(a), Government Code, is amended to read as follows:

(a) A person participating in the plan remains a member of the retirement system during the period of participation, unless the member terminates membership under Section 822.003, but the member may not, during participation, accrue additional service credit. The member shall make employee contributions to the

retirement system, and the state and the member's employing district, if applicable, shall make contributions for the member's service performed during the member's participation in the plan. Member contributions made during the period of participation in the plan are not eligible for withdrawal by the participant and are deposited in the retired reserve account. The member and the state retain the obligation to contribute under Sections 1575.202 and 1575.203, Insurance Code [~~Section 16, Texas Public School Employees Group Insurance Act (Article 3.50-4, Insurance Code)~~], during the member's participation in this plan.

SECTION 10A.523. Sections 108.002(9) and (11), Health and Safety Code, are amended to read as follows:

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844 [~~Article 21.52F~~], Insurance Code.

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code [~~2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code)~~].

SECTION 10A.524. Section 161.024, Health and Safety Code, is amended to read as follows:

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION. This subchapter does not apply to a function of a health maintenance organization other than medical peer review and

quality assurance conducted under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], the rules adopted under that chapter [~~Act~~], or other applicable state and federal statutes and rules.

SECTION 10A.525. Section 161.031(a), Health and Safety Code, is amended to read as follows:

(a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

(1) a hospital;

(2) a medical organization;

(3) a university medical school or health science center;

(4) a health maintenance organization licensed under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;

(5) an extended care facility;

(6) a hospital district; or

(7) a hospital authority.

SECTION 10A.526. Section 241.1015(g), Health and Safety Code, is amended to read as follows:

(g) In this section, "health care plan" has the meaning assigned by Section 843.002, Insurance Code [~~2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code)~~], and "hospital medical directors" means

physicians who have been employed by or are under contract with a hospital to manage a clinical department or departments of the hospital.

SECTION 10A.527. Section 242.0372(c), Health and Safety Code, as effective September 1, 2003, is amended to read as follows:

(c) The insurance coverage maintained by an institution under this section must:

(1) provide coverage annually in the minimum amount of $1 million per occurrence and $3 million aggregate, except as provided by Subsection (d);

(2) be written on a claims-made basis;

(3) be issued by:

(A) an admitted insurer authorized to write professional liability insurance in this state;

(B) the Texas Medical Liability Insurance Underwriting Association established under Article 21.49-3, Insurance Code; or

(C) an eligible surplus lines insurer in accordance with Chapter 981 [~~Article 1.14-2~~], Insurance Code; and

(4) be in a form acceptable to the department.

SECTION 10A.528. Section 281.0517(a)(2), Health and Safety Code, is amended to read as follows:

(2) "Provider" means a physician or a provider as defined under Section 843.002, Insurance Code [~~2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code)~~].

SECTION 10A.529. Section 281.0517(d), Health and Safety

Code, is amended to read as follows:

(d) An integrated health care system that recites in its articles of incorporation that it is created under this section is:

(1) subject to:

(A) Chapter 551, Government Code;

(B) Chapter 552, Government Code;

(C) Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~];

(D) Chapter 844 [~~Article 21.52F~~], Insurance Code; and

(E) Chapter 262, Local Government Code; and

(2) a unit of local government for the purposes of Chapter 101, Civil Practice and Remedies Code.

SECTION 10A.530. Section 534.101(b), Health and Safety Code, is amended to read as follows:

(b) Before a nonprofit corporation organized or operating under Subsection (a) accepts or enters into any capitated or other at-risk payment arrangement for services designated in a plan approved by the department under Subchapter A, the nonprofit corporation must obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization pursuant to Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~].

SECTION 10A.531. Section 534.102, Health and Safety Code, is amended to read as follows:

Sec. 534.102. LAWS AND RULES. A nonprofit corporation created or operated under this subchapter that obtains and holds a valid certificate of authority as a health maintenance organization may exercise the powers and authority and is subject to the conditions and limitations provided by this subchapter, Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), and rules of the Texas Department of Insurance.

SECTION 10A.532. Section 534.103, Health and Safety Code, is amended to read as follows:

Sec. 534.103. APPLICATION OF LAWS AND RULES. A health maintenance organization created and operating under this subchapter is governed as, and is subject to the same laws and rules of the Texas Department of Insurance as, any other health maintenance organization of the same type. The commissioner of insurance may adopt rules as necessary to accept funding sources other than the sources specified by Section 843.405, Insurance Code [~~13, Texas Health Maintenance Organization Act (Article 20A.13, Vernon's Texas Insurance Code)~~], from a nonprofit health maintenance organization created and operating under this subchapter, to meet the minimum surplus requirements of that section.

SECTION 10A.533. Section 534.104(b), Health and Safety Code, is amended to read as follows:

(b) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under

Chapter 162, Occupations Code, to provide services on a risk-sharing or capitated basis as permitted under Chapter 844 [~~Article 21.52F~~], Insurance Code.

SECTION 10A.534. Section 22.023(b), Human Resources Code, is amended to read as follows:

(b) Subject to the limitations in Subsection (c) of this section, the department may purchase and pay the premiums for a conversion policy or other health insurance coverage for a person who is diagnosed as having AIDS, HIV, or other terminal or chronic illness and whose income level is less than 200 percent of the federal poverty level, based on the federal Office of Management and Budget poverty index in effect at the time coverage is provided, even though a person may be eligible for benefits under Chapter 32 of this code. Health insurance coverage for which premiums may be paid under this section includes coverage purchased from an insurance company authorized to do business in this state, a group hospital services corporation operating under Chapter 842 [~~20~~], Insurance Code, a health maintenance organization operating under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], or an insurance pool created by the federal or state government or a political subdivision of the state.

SECTION 10A.535. Section 301.104, Labor Code, is amended to read as follows:

Sec. 301.104. ELIGIBILITY. A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

(1) the wages paid or incurred by the person are for services of an employee who is:

(A) a resident of this state; and

(B) a recipient of:

(i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or

(ii) medical assistance in accordance with Chapter 32, Human Resources Code;

(2) the person satisfies the certification requirements under Section 301.105; and

(3) the person provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~];

(B) a health benefit plan approved by the commissioner of insurance;

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or

(D) a medical savings account authorized under the Health Insurance Portability and Accountability Act of 1996 (26 U.S.C. Section 220).

SECTION 10A.536. Section 408.0222(n), Labor Code, is amended to read as follows:

(n) Except for emergency care, or as otherwise provided by this section, an employee who elects to participate in a regional network shall receive medical treatment, including referrals, from health care providers within the regional network. An employee or an employee's treating doctor may use a health care provider outside of the regional network with the approval of the regional network for good cause consistent with the regional network contract. If medically necessary services are not available through regional network health care providers, the regional network must, on the request of a regional network health care provider, within a reasonable time allow a referral to a nonregional network health care provider and shall fully reimburse the nonregional network physician or provider at the rate provided by the commission fee guidelines or an agreed rate. For purposes of this subsection, "emergency care" has the meaning assigned by Section 843.002, Insurance Code [~~2(g), Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code)~~].

SECTION 10A.537. Section 157.006(b), Local Government Code, is amended to read as follows:

(b) Health insurance coverage for which premiums may be paid under this section includes coverage purchased from an insurance company authorized to do business in this state, a group hospital services corporation operating under Chapter 842 [~~20~~], Insurance Code, a health maintenance organization operating under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~], or an insurance pool created by the federal or state government or a political

subdivision of the state.

SECTION 10A.538. Section 113.097(a), Natural Resources Code, is amended to read as follows:

(a) The commission shall not issue a license authorizing activities under Section 113.082 of this code or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state as evidenced by a certificate of authority having been issued to the carrier by the Texas Department [~~State Board~~] of Insurance or, if the applicant is unable to obtain coverage from such a carrier, provides, on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance [~~State Board of Insurance~~] under that chapter [~~article~~].

SECTION 10A.539. Section 131.143(a), Natural Resources Code, is amended to read as follows:

(a) After a permit application is approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in this state or, if the applicant is unable to obtain coverage from an insurance carrier authorized to do business in this state, file, with the commission's approval, such a certificate of insurance from a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance

Code, and rules adopted by the commissioner of insurance [~~State Board of Insurance~~] under that chapter [~~article~~].

SECTION 10A.540. Section 161.364, Natural Resources Code, is amended to read as follows:

Sec. 161.364. PROVISIONS OF INSURANCE. In addition to the provisions of Subchapters A-P, Chapter 1131 [~~Article 3.50~~], Insurance Code, as amended, the master contract or agreement shall provide that the life insurance coverage will be offered by the insurer to all persons without physical examination and that no person may be denied coverage because he is disabled at the time of application for the coverage.

SECTION 10A.541. Section 35.01(4), Penal Code, is amended to read as follows:

(4) "Insurer" means a person who engages in the business of insurance in this state, including:

(A) an insurer that is not authorized to do business in this state;

(B) a health maintenance organization;

(C) a group hospital service corporation regulated under Chapter 842 [~~20~~], Insurance Code; and

(D) any person who self-insures and provides health care benefits to the person's employees.

SECTION 10A.542. Section 102.005, Occupations Code, is amended to read as follows:

Sec. 102.005. APPLICABILITY TO CERTAIN ENTITIES. Section 102.001 does not apply to:

(1) a licensed insurer;

(2) a governmental entity, including:

(A) an intergovernmental risk pool established under Chapter 172, Local Government Code; and

(B) a system [~~an "institution"~~] as defined by Section 1601.003, Insurance Code [~~in the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code)~~];

(3) a group hospital service corporation; or

(4) a health maintenance organization that reimburses, provides, offers to provide, or administers hospital, medical, dental, or other health-related benefits under a health benefits plan for which it is the payor.

SECTION 10A.543. Section 160.055, Occupations Code, is amended to read as follows:

Sec. 160.055. SANCTIONS FOR FAILURE TO REPORT. The commissioner may impose sanctions authorized by Chapter 82 [~~Section 7, Article 1.10~~], Insurance Code, on an insurer who fails to report information as required by this subchapter.

SECTION 10A.544. Section 202.353(j), Occupations Code, is amended to read as follows:

(j) The commissioner of insurance may impose the sanctions authorized by Chapter 82 [~~Section 7, Article 1.10~~], Insurance Code, against an insurer subject to this section who fails to report as prescribed by this section.

SECTION 10A.545. Section 1702.002(9), Occupations Code, is amended to read as follows:

(9) "Insurance agent" means:

(A) a person licensed under Article [~~1.14-2 or~~] 21.14 or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; or

(C) a person authorized to represent an insurance fund or pool created by a local government under Chapter 791, Government Code.

SECTION 10A.546. Section 1702.124(a), Occupations Code, is amended to read as follows:

(a) The commission may not issue a license unless the applicant files with the commission:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the commission and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981 [~~Article 1.14-2~~], Insurance Code, through a licensed Texas surplus lines agent resident in this state.

SECTION 10A.547. Section 1704.160(h), Occupations Code, is amended to read as follows:

(h) The certificate of authority to do business in this state issued under Section 861.102 [~~Article 8.20~~], Insurance Code, to an applicant that is a corporation is conclusive evidence of:

(1) the sufficiency of the applicant's security; and

(2) the applicant's solvency and credits.

SECTION 10A.548. Section 2151.101(a), Occupations Code, is amended to read as follows:

(a) A person may not operate an amusement ride unless the

person:

(1) has had the amusement ride inspected at least once a year by an insurer or a person with whom the insurer has contracted;

(2) obtains a written certificate from the insurer or person with whom the insurer has contracted stating that the amusement ride:

(A) has been inspected;

(B) meets the standards for insurance coverage; and

(C) is covered by the insurance required by Subdivision (3);

(3) has an insurance policy currently in effect written by an insurance company authorized to do business in this state or by a surplus lines insurer, as defined by Chapter 981 [~~Article 1.14-2~~], Insurance Code, or has an independently procured policy subject to Chapter 101 [~~Article 1.14-1~~], Insurance Code, insuring the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than:

(A) $100,000 per occurrence with a $300,000 annual aggregate for Class A amusement rides; and

(B) $1,000,000 per occurrence for Class B amusement rides;

(4) files with the commissioner, as required by this chapter, the inspection certificate and the insurance policy or a photocopy of the certificate or policy authorized by the

commissioner; and

(5) files with each sponsor, lessor, landowner, or other person responsible for the amusement ride being offered for use by the public a photocopy of the inspection certificate and the insurance policy required by this subsection.

SECTION 10A.549. Section 2154.001(10), Occupations Code, is amended to read as follows:

(10) "Insurance agent" means:

(A) a person, firm, or corporation licensed under Article [~~1.14-2 or~~] 21.14 or Chapter 981, Insurance Code;

(B) a salaried, state, or special agent; and

(C) a person authorized to represent an insurance fund or pool created by a city, county, or other political subdivision of the state under Chapter 791, Government Code.

SECTION 10A.550. Section 2154.205(d), Occupations Code, is amended to read as follows:

(d) A certificate of insurance for surplus lines coverage obtained under Chapter 981 [~~Article 1.14-2~~], Insurance Code, through a licensed Texas surplus lines agent resident in this state may be filed with the commissioner as evidence of coverage required by this section.

SECTION 10A.551. Section 142.009(b), Property Code, is amended to read as follows:

(b) In approving an insurance company under Subsection (a)(3), the court may consider whether the company:

(1) holds an industry rating equivalent to at least two of the following rating organizations:

(A) A. M. Best Company: A++ or A+;

(B) Duff & Phelps Credit Rating Company Insurance Company Claims Paying Ability Rating: AA-, AA, AA+, or AAA;

(C) Moody's Investors Service Claims Paying Ability Rating: Aa3, Aa2, Aa1, or aaa; or

(D) Standard & Poor's Corporation Insurer Claims-Paying Ability Rating: AA-, AA, AA+, or AAA;

(2) is an affiliate, as that term is described by Section 823.003 [~~defined by Article 21.49-1~~], Insurance Code, of a liability insurance carrier involved in the suit for which the structured settlement is created; or

(3) is connected in any way to a person obligated to fund the structured settlement.

SECTION 10A.552. Section 171.751(6), Tax Code, as effective until December 31, 2009, is amended to read as follows:

(6) "Group health benefit plan" means:

(A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code [~~the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code)~~];

(B) a health benefit plan approved by the commissioner of insurance; or

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.

SECTION 10A.553. Section 502.355(c), Transportation Code,

is amended to read as follows:

(c) A person may obtain a permit under this section by:

(1) applying to the department on a form prescribed by the department;

(2) paying a fee equal to 1/12 the registration fee prescribed by this chapter for the vehicle;

(3) furnishing satisfactory evidence that the motor vehicle is insured under an insurance policy that complies with Section 601.072 and that is written by:

(A) an insurance company or surety company authorized to write motor vehicle liability insurance in this state; or

(B) with the department's approval, a surplus lines insurer that meets the requirements of Chapter 981 [~~Article 1.14-2~~], Insurance Code, and rules adopted by the commissioner of insurance under that chapter [~~article~~], if the applicant is unable to obtain insurance from an insurer described by Paragraph (A); and

(4) furnishing evidence that the vehicle has been inspected as required under Chapter 548.

SECTION 10A.554. Section 643.106(a), Transportation Code, is amended to read as follows:

(a) Notwithstanding any provision of any law or regulation, a motor carrier that is required to register under Subchapter B and whose primary business is transportation for compensation or hire between two or more municipalities shall protect its employees by obtaining:

(1) workers' compensation insurance coverage as

defined under Subtitle A, Title 5, Labor Code; or

(2) accidental insurance coverage approved by the department from:

(A) a reliable insurance company authorized to write accidental insurance policies in this state; or

(B) a surplus lines insurer under Chapter 981 [~~Article 1.14-2~~], Insurance Code.

SECTION 10A.555. Section 643.153(f), Transportation Code, is amended to read as follows:

(f) The unauthorized practice of the insurance business under Chapter 101 [~~Article 1.14-1~~], Insurance Code, does not include the offer of insurance by a household goods motor carrier, or its agent, that transports goods for up to the full value of a customer's property transported or stored, if the offer is authorized by a rule adopted under Subsection (b).

ARTICLE 11. CHANGES RELATING TO LABOR CODE

SECTION 11.001. (a) Sections 21.401(3)-(5), Labor Code, are amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing [~~development of~~] a

disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the [~~that~~] genetic information is obtained regarding the [~~that~~] individual.

(4) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an [~~that~~] individual.

(5) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes [~~to identify by analysis of~~] the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition [~~variations, compositions~~], or alteration [~~alterations~~] that is [~~are~~] associated with the individual's having a statistically increased risk of:

(i) developing [~~to develop~~] a clinically recognized disease, disorder, or syndrome; or

(ii) being [~~to be~~] a carrier of [~~such~~] a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or

alteration in a specific individual.

(b) The heading to Section 21.403, Labor Code, is amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

Sec. 21.403. CONFIDENTIALITY OF GENETIC INFORMATION [~~CONFIDENTIAL; EXCEPTIONS~~].

(c) Section 21.403(a), Labor Code, is amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

(a) Except as provided by Section 21.4031 [~~Subsections (c) and (d)~~], genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic [~~that~~] information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that [~~genetic~~] information [~~about an individual~~] unless the disclosure is specifically authorized [~~by the individual~~] as provided by Section 21.4032 [~~Subsection (b)~~].

(c) This section [~~subsection~~] applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

(d) Sections 21.403(c) and (d), Labor Code, are redesignated as Section 21.4031 and amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

Sec. 21.4031. EXCEPTIONS TO CONFIDENTIALITY. (a) [~~(c)~~] Subject to Subchapter G, Chapter 411, Government Code, genetic information [~~relating to an individual~~] may be disclosed without an

[~~the~~] authorization required under Section 21.4032 [~~Subsection (b)~~] if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized under a state or federal law [~~to establish paternity~~];

(4) made to provide [~~furnish~~] genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for [~~the purpose of~~] medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic [~~(d) In addition to the exceptions under Subsection (c), genetic~~] information [~~relating to an individual~~] may be disclosed without an [~~the~~] authorization [~~required~~] under Section 21.4032 [~~Subsection (b)~~] if:

(1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific

[~~particular~~] individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

(e) Section 21.403(b), Labor Code, is redesignated as Section 21.4032 and amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

Sec. 21.4032. AUTHORIZED DISCLOSURE. [~~(b)~~] An individual or the legal representative of an individual may authorize [~~the~~] disclosure of genetic information relating to the [~~that~~] individual by [~~through~~] a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

(f) Section 21.404, Labor Code, is amended to conform to changes made to similar language in Chapter 58, Occupations Code, to read as follows:

Sec. 21.404. DISCLOSURE OF [~~RIGHT TO KNOW~~] TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the [~~that~~] test. On the written request by [~~of~~] the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) [~~to~~] a physician designated by the individual.

(g) Section 21.405, Labor Code, is amended to conform to changes made to similar language in Chapter 58, Occupations Code,

to read as follows:

Sec. 21.405. DESTRUCTION OF [~~RETENTION OF~~] SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual [~~taken~~] for a genetic test [~~from an individual~~] shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual [~~tested~~] authorizes retention of the sample for [~~purposes of~~] medical treatment or scientific research;

(3) the [~~for a~~] sample was obtained for research that is cleared by an institutional review board and retention of[~~,~~] the sample is:

(A) [~~retained~~] under a requirement [~~the requirements that~~] the institutional review board imposes on a specific research project; or

(B) [~~as~~] authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or [~~by~~] a laboratory approved by that department [~~under Section 33.011, Health and Safety Code~~].

SECTION 11.002. Section 201.067, Labor Code, as amended by Chapters 518 and 996, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 201.067. REHABILITATIVE SERVICE; WORK RELIEF;

EXCEPTION FOR SERVICES PERFORMED BY CERTAIN BLIND INDIVIDUALS. (a) In this subtitle, "employment" does not include service performed by an individual who:

(1) receives rehabilitative work or paying work in the employ of a facility that:

(A) is conducted to carry out a program of rehabilitation for individuals whose earning capacity is impaired by:

(i) age;

(ii) physical impairment, other than blindness; or

(iii) mental deficiency or injury; or

(B) provides paying work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(2) is blind while the individual is in training at a sheltered workshop operated by a charitable organization under a rehabilitation program that includes:

(A) an individual plan for employment as required by 29 U.S.C. Section 722, as amended;

(B) a timeline for completion of the training; and

(C) a planned employment outcome; or

(3) receives work relief or work training as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, a political subdivision of a state, or an Indian tribe.

(b) Notwithstanding Subsection (a), in this subtitle "employment" includes service performed by an individual who is blind and who, after training, is working for a sheltered workshop operated by a charitable organization:

(1) temporarily while awaiting placement in a position of employment in the competitive labor market; or

(2) permanently because the individual is unable to compete in the competitive labor market.

SECTION 11.003. Section 19(b)(4), Texas Unemployment Compensation Act (Article 5221b-17, Vernon's Texas Civil Statutes), as amended by Chapter 122, Acts of the 73rd Legislature, Regular Session, 1993, is repealed to conform to codification of that Act by Chapter 269, Acts of the 73rd Legislature, Regular Session, 1993.

ARTICLE 12. CHANGES RELATING TO LOCAL GOVERNMENT CODE

SECTION 12.001. Section 43.851, Local Government Code, is amended to correct a reference to read as follows:

Sec. 43.851. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Affected county" means Jasper County, Newton County, or Orange County.

(2) "Affected municipality" means a municipality the boundaries of which are located in whole or in part in an affected county.

(3) "Extraterritorial jurisdiction" means extraterritorial jurisdiction of a municipality as determined under Chapter 42.

(4) "Mauriceville boundary" means the circumference

of a circle, the center of which is the intersection of the rights-of-way of Texas State Highway 62 and Texas State Highway 12, and the radius of which is 2 1/2 miles.

(5) "Mauriceville community" means the area in the affected counties consisting of the unincorporated community known as Mauriceville.

(6) "Municipal annexation plan" means an annexation plan adopted or amended by an affected municipality under Section 43.052.

SECTION 12.002. Section 43.856, Local Government Code, is amended to correct a reference to read as follows:

Sec. 43.856. EXPIRATION DATE. This subchapter [~~chapter~~] expires at midnight on December 31, 2030.

SECTION 12.003. Section 252.021(a), Local Government Code, as amended by Chapters 115, 436, and 1409, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) Before a municipality may enter into a contract that requires an expenditure of more than $25,000 from one or more municipal funds, the municipality must:

(1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals; [~~or~~]

(2) use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply with a method described by Subchapter H, Chapter 271.

SECTION 12.004. Section 262.023, Local Government Code, as amended by Chapters 436, 1063, and 1409, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 262.023. COMPETITIVE REQUIREMENTS FOR CERTAIN PURCHASES. (a) Before a county may purchase one or more items under a contract that will require an expenditure exceeding $25,000, the commissioners court of the county must:

(1) comply with the competitive bidding or competitive proposal procedures prescribed by this subchapter;

(2) [~~or~~] use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing; or

(3) comply [~~or~~] with a method described by Subchapter H, Chapter 271. [~~All competitive bids or competitive proposals must be sealed.~~]

(b) The requirements established by Subsection (a) apply to contracts for which payment will be made from current funds or bond funds or through time warrants. Contracts for which payments will be made through certificates of obligation are governed by The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271). Contracts for which payment will be made through anticipation notes are subject to the competitive bidding provisions of The Certificate of Obligation Act of 1971 (Subchapter C, Chapter 271) in the same manner as certificates of obligation.

(c) In applying the requirements established by Subsection (a), all separate, sequential, or component purchases of items ordered or purchased, with the intent of avoiding the requirements

of this subchapter, from the same supplier by the same county officer, department, or institution are treated as if they are part of a single purchase and of a single contract. In applying this provision to the purchase of office supplies, separate purchases of supplies by an individual department are not considered to be part of a single purchase and single contract by the county if a specific intent to avoid the requirements of this subchapter is not present.

SECTION 12.005. Section 302.005, Local Government Code, as amended by Chapters 573 and 1319, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) A contract under this chapter may be let in accordance with the procedures established for professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) [~~(d)~~] Prior to entering into a contract under this section, the governing body must require that the cost savings projected by an offeror be reviewed by a licensed [~~professional~~] engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract or the offeror. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply [~~Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies~~] to work performed under the contract.

SECTION 12.006. Section 334.2515, Local Government Code, as amended by Chapters 660 and 1044, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 334.2515. APPLICATION. Except as provided by Section 334.2516, this subchapter does not apply to the financing of a venue project that is:

(1) an area or facility that is part of a municipal parks and recreation system as described by Section 334.001(4)(D); or

(2) a project described by Section 334.001(4)(E), except for projects described in Section 334.001(4)(A).

SECTION 12.007. (a) Sections 396.061 and 396.062, Local Government Code, are amended to conform to Chapter 1312, Acts of the 76th Legislature, Regular Session, 1999, to read as follows:

Sec. 396.061. DEFINITIONS. In this subchapter:

(1) "Authority" means the Red River Redevelopment Authority.

(2) "Board" means the board of directors of the authority.

(3) "County" means Bowie County.

(4) "Eligible municipality" includes only the cities of Texarkana, New Boston, Hooks, Nash, Wake Village, Leary, Redwater, Maud, [~~and~~] DeKalb, and Red Lick.

(5) "Property" means land, improvements, and personal property described in Section 396.0621.

Sec. 396.062. ESTABLISHMENT. (a) The creation, establishment, and organization of the authority are validated,

ratified, approved, and confirmed. The [~~is established as a political subdivision with~~] boundaries of the authority are the same as the boundaries of the real property described in Section 396.0621. The boundaries of the authority may be expanded from time to time as additional real property, if any, is conveyed to the authority by the United States of America [~~396.064(1), if each eligible municipality and the county:~~

[~~(1) adopts resolutions authorizing the authority's establishment; and~~

[~~(2) appoints members to the board as provided by Section 396.063~~].

(b) The authority is a governmental agency, a body politic and corporate, and a political subdivision of this state.

(c) For all purposes, including the application of Chapter 101, Civil Practice and Remedies Code, the authority is a unit of government and the operations of the authority are considered to be essential governmental functions and not proprietary functions.

(d) The authority is subject to Chapters 551 and 552, Government Code.

(e) The authority is a duly constituted authority authorized to issue revenue bonds in accordance with Sections 54.502 and 54.503, Water Code, for the purposes of the authority.

(f) The authority is subject to the regulatory authority of the state or any agencies of the state to the same extent as a municipal corporation.

(b) Subchapter C, Chapter 396, Local Government Code, is amended to conform to Chapter 1312, Acts of the 76th Legislature,

Regular Session, 1999, by adding Section 396.0621 to read as follows:

Sec. 396.0621. AUTHORITY TERRITORY. The initial property comprising the authority is the tract of real property located in Bowie County, Texas, as conveyed, or to be conveyed, in one or more parcels, by the United States of America to the authority, described as follows:

LAND DESCRIPTION - 765.5 Acres

A tract of land situated in the Charles Collom Survey, Abstract No. 108, Jonathan Collom Survey, Abstract No. 109, C. M. Akin Survey, Abstract No. 2, J. H. Smelser Survey, Abstract No. 722, John M. Smith Survey, Abstract No. 819, and the John Paxton Survey, Abstract No. 461, Bowie County, Texas, and being all of a one tract of land, Tract No. 503 as described in Warranty Deed to the United States of America as recorded in Volume 192, Page 92 (Tract No. 2) of the Deed Records of Bowie County, Texas, and being a portion of nine tracts of land, Tract No. 504 as described in Judgement on Declaration of Taking No. 1 as recorded in Volume 184, Page 148 of the Deed Records of Bowie County, Texas, Tract No. 501 as described in Warranty Deed to the United States of America as recorded in Volume 188, Page 342 of the Deed Records of Bowie County, Texas, Tract No. 502 as described in Warranty Deed to the United States of America as recorded in Volume 190, Page 372 of the Deed Records of Bowie County, Texas, Tract No. 537 as described in Warranty Deed to the United States of America as recorded in Volume 190, Page 372 of the Deed Records of Bowie County, Texas, Tract No. 503 as described in Warranty Deed to the United States of America as recorded in

Volume 192, Page 92 (Tract No. 1) of the Deed Records of Bowie County, Texas, Tract No. 531 as described in Warranty Deed to the United States of America as recorded in Volume 186, Page 121 of the Deed Records of Bowie County, Texas, and Tract No. 529 as described in Judgement on Declaration of Taking No. 1 as recorded in Volume 184, Page 148 of the Deed Records of Bowie County, Texas, Tract No. 527 as described in Warranty Deed to the United States of America as recorded in Volume 190, Page 116 of the Deed Records of Bowie County, Texas, and Tract No. 526 as described in Judgement on Declaration of Taking No. 4 as recorded in Volume 192, Page 135 of the Deed Records of Bowie County, Texas, and being more particularly described as follows:

COMMENCING at a PK nail set in concrete fence post base at the intersection of the southerly right-of-way line of the Texas Pacific Railroad with the east line of the said Charles Collom Survey and being the northeast corner of the Red River Army Depot as reference in the completion report for the Red River Ordinance Depot, dated November 30, 1942, from which a one inch brass rod stamped "R.R.O.D. #2, 1942" found in a four inch by four inch concrete base bears South 19 degrees 26 minutes 24 seconds West a distance of 7.21 feet;

THENCE, South 86 degrees 22 minutes 15 seconds West along the southerly right-of-way line of the Texas & Pacific Railroad a distance of 3,664.42 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap at the POINT OF BEGINNING, said POINT OF BEGINNING also being North 00 degrees 18 minutes 22 seconds West 2,827.78 feet and North 86 degrees 21 minutes 50 seconds East

1,017.50 feet from the Southeast Corner of the Jonathan Collum Headright Survey, A-108;

THENCE, South 03 degrees 53 minutes 26 seconds East and along a chain link fence a distance of 457.13 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap, said rod being southwesterly of the centerline of a spur railroad track a perpendicular distance of 10.00 feet and being the beginning of a non-tangent curve to the right;

THENCE, in a southerly direction parallel with and 10.00 foot from said spur tract and along said curve to the right through a central angle of 22 degrees 08 minutes 35 seconds and having a radius of 643.04 feet and an arc length of 248.52 feet, being subtended by a chord of South 14 degrees 45 minutes 12 seconds East a distance of 246.97 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap at the end of said curve;

THENCE, South 04 degrees 00 minutes 36 seconds East parallel with and 10.00 foot from said spur track a distance of 232.21 feet to a five-eighths inch iron rod set with "Huitt-Zollars" caps;

THENCE, South 86 degrees 32 minutes 05 seconds West a distance of 49.86 feet to a chain link fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 48 degrees 34 minutes 56 seconds West a distance of 14.17 feet;

THENCE, with said chain link fence the following bearings and distances: South 03 degrees 41 minutes 59 seconds East a distance of 1,285.86 feet to a fence corner post from which a Mag nail set bears North 48 degrees 36 minutes 24 seconds West a distance of 14.17 feet; South 86 degrees 29 minutes 10 seconds West a distance

of 387.63 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 19 degrees 35 minutes 50 seconds West a distance of 10.87 feet; North 47 degrees 17 minutes 25 seconds West a distance of 199.70 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 63 degrees 55 minutes 37 seconds East a distance of 10.73 feet; North 04 degrees 51 minutes 15 seconds West a distance of 243.22 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 40 degrees 36 minutes 11 seconds East a distance of 14.03 feet; South 86 degrees 03 minutes 42 seconds West a distance of 51.40 feet to a gate post from which a PK nail set bears North 06 degrees 09 minutes 13 seconds West a distance of 10.01 feet;

THENCE, South 81 degrees 37 minutes 54 seconds West along said fence and an extension thereof a distance of 425.22 feet to a fence corner post from which a cut cross set bears North 04 degrees 53 minutes 09 seconds West a distance of 10.02 feet;

THENCE, South 88 degrees 35 minutes 51 seconds West along a chain link fence a distance of 237.60 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 02 degrees 40 minutes 08 seconds West a distance of 10.00 feet;

THENCE, South 86 degrees 03 minutes 56 seconds West continuing along said fence a distance of 867.95 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap in fence line from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 10 degrees 33 minutes 59 seconds West a distance of 10.07 feet;

THENCE, South 72 degrees 48 minutes 06 seconds West and along a

chain link fence a distance of 485.28 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 07 degrees 09 minutes 32 seconds West a distance of 10.16 feet;

THENCE, North 87 degrees 07 minutes 08 seconds West along said chain link fence a distance of 128.15 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 04 degrees 11 minutes 40 seconds East a distance of 10.00 feet;

THENCE, North 84 degrees 29 minutes 27 seconds West along said fence a distance of 196.24 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 05 degrees 24 minutes 10 seconds East a distance of 10.00 feet;

THENCE, departing said fence North 84 degrees 42 minutes 09 seconds West a distance of 390.24 feet to a gate post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 05 degrees 27 minutes 21 seconds East a distance of 10.00 feet;

THENCE, North 84 degrees 23 minutes 06 seconds West along a chain link fence a distance of 210.73 feet to a five eighths inch iron rod set with "Huitt-Zollars" cap in fence line from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 25 degrees 53 minutes 04 seconds West a distance of 11.73 feet;

THENCE, South 32 degrees 36 minutes 57 seconds West and along a chain link fence a distance of 184.63 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 75 degrees 49 minutes 06 seconds West a distance of 10.54 feet;

THENCE, along said chain link fence the following bearings and

distances: South 04 degrees 15 minutes 19 seconds East a distance of 620.46 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears South 85 degrees 55 minutes 26 seconds West a distance of 10.00 feet; South 03 degrees 54 minutes 00 seconds East a distance of 1,558.07 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 48 degrees 46 minutes 22 seconds West a distance of 14.17 feet; South 86 degrees 21 minutes 13 seconds West a distance of 2,707.77 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 03 degrees 40 minutes 03 seconds West a distance of 10.00 feet; South 86 degrees 18 minutes 46 seconds West a distance of 1,512.49 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 43 degrees 40 minutes 37 seconds East a distance of 14.76 feet; North 01 degree 02 minutes 38 seconds East a distance of 952.37 feet to a five eighths inch iron rod set with "Huitt-Zollars" cap in fence line from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 20 degrees 55 minutes 59 seconds East a distance of 29.39 feet;

THENCE, North 43 degrees 37 minutes 50 seconds West and along a barbed wire fence a distance of 1,644.70 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 68 degrees 38 minutes 36 seconds East a distance of 10.81 feet;

THENCE, North 01 degree 43 minutes 49 seconds East a distance of 45.19 feet to a point for corner on an extension of an east-west

barbed wire fence, from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 46 degrees 00 minutes 47 seconds East a distance of 14.24 feet;

THENCE, North 89 degrees 22 minutes 15 seconds West and along a barbed wire fence a distance of 888.96 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 00 degrees 28 minutes 32 seconds East a distance of 10.00 feet;

THENCE, along said barbed wire fence the following bearings and distances: North 89 degrees 40 minutes 40 seconds West a distance of 1,235.50 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 00 degrees 44 minutes 29 seconds East a distance of 10.00 feet; North 88 degrees 50 minutes 21 seconds West a distance of 800.02 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 00 degrees 48 minutes 04 seconds East a distance of 10.00 feet; North 89 degrees 33 minutes 32 seconds West a distance of 389.35 feet to a fence post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 00 degrees 12 minutes 54 seconds East a distance of 10.00 feet; South 89 degrees 59 minutes 20 seconds West a distance of 396.21 feet to a fence corner post from which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 46 degrees 59 minutes 42 seconds East a distance of 14.66 feet;

THENCE, North 04 degrees 00 minutes 07 seconds East along said barbed wire fence and an extension thereof a distance of 970.05 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap from

which a five-eighths inch iron rod set with "Huitt-Zollars" cap bears North 88 degrees 27 minutes 49 seconds East a distance of 10.04 feet;

THENCE, North 06 degrees 43 minutes 48 seconds West and along a barbed wire fence and extension thereof a distance of 673.70 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap on the south right-of-way line of the Texas & Pacific Railroad;

THENCE, North 86 degrees 18 minutes 33 seconds East along the south right-of-way line of the Texas & Pacific Railroad a distance of 4,094.41 feet to a five-eighths inch iron rod set with "Huitt-Zollars" cap;

THENCE, North 86 degrees 22 minutes 15 seconds East continuing along the south right-of-way line of the Texas & Pacific Railroad a distance of 8,298.52 feet to the POINT OF BEGINNING and CONTAINING 765.5 acres of land, more or less.

(c) Sections 396.063, 396.064, and 396.065, Local Government Code, are amended to conform to Chapter 1312, Acts of the 76th Legislature, Regular Session, 1999, to read as follows:

Sec. 396.063. BOARD. (a) The board consists of 15 members and is responsible for the management, operation, and control of the authority.

(b) The board is composed of the following members:

(1) two members appointed by the county judge of the county;

(2) one member appointed by the commissioners court of the county;

(3) three members appointed by the mayor of Texarkana;

(4) one member appointed by the mayor of New Boston;

(5) one member appointed by the mayor of Hooks;

(6) one member appointed by the mayor of Nash;

(7) one member appointed by the mayor of Wake Village;

(8) one member appointed by the mayor of Leary;

(9) one member appointed by the mayor of Redwater;

(10) one member appointed by the mayor of Maud;

(11) one member appointed by the mayor of DeKalb; and

(12) one [~~at-large~~] member appointed [~~elected~~] by the mayor of Red Lick [~~appointed members~~].

(c) A vacancy on the board is filled in the same manner as the original appointment. Each board member serves for a term of two years.

(d) A board member who is also an elected official serves for a term coinciding with the term of the elected office.

(e) The board by rule or resolution may provide for the appointment of members of the board in alternate years and may determine the number and manner of deciding which members shall be appointed in odd-numbered years and which shall be appointed in even-numbered years.

(f) The board shall elect from its membership a president and a vice president. The vice president shall preside in the absence of the president.

(g) [~~(f)~~] The board shall adopt rules to govern its proceedings.

(h) [~~(g)~~] The board may employ persons to carry out the powers and duties of the authority.

(i) [~~(h)~~] A board member may be recalled at any time by the appointing official.

(j) A board member is not entitled to compensation for service on the board but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a board member.

(k) A position on the board may not be construed to be a civil office of emolument for any purpose, including those purposes described in Section 40, Article XVI, Texas Constitution. Elected officials of the county and cities may serve on the board without penalty or forfeiture of office. In the event of any conflict between this section and any provision of statutory or common law that would in any way prevent the elected officials from serving on the board, the provisions of this section shall prevail and be given effect. A conflict of interest, under either statutory or common law, for any board member regarding a particular matter to come before the board, is governed by Chapter 171, Local Government Code.

Sec. 396.064. PURPOSE. (a) The authority is created to:

(1) accept title on approval by and in coordination with the governor from the United States to all or any portion of the property [~~situated~~] within, adjacent to, or related to the property described in Section 396.0621. The property shall consist of any property, whether real, personal, or mixed, and any rights, whether tangible or intangible, assets, benefits, or improvements related to the existence, development, operation, or maintenance of the property [~~Red River Army Depot, as legally described by the~~

~~United States Army Corps of Engineers, Fort Worth District~~], now or in the future, [~~life~~] of the authority;

(2) promote the location and development of new businesses, [~~and~~] industries, and commercial activities within or related to [~~on~~] the property [~~described in Subdivision (1)~~]; and

(3) undertake a project determined by the board to be necessary or incidental to the industrial, commercial, or business development, redevelopment, maintenance, and expansion of new or existing businesses on and for the property described in Section 396.0621 [~~Subdivision (1)~~], including the acquisition, construction, operation, maintenance, repair, rehabilitation, replacement, improvement, extension, expansion, and [~~or~~] enhancement of any of that property, including:

(A) roads, bridges, and rights-of-way;

(B) housing;

(C) property;

(D) police, fire, medical, cultural, educational, and research services, equipment, institutions, and resources;

(E) other community support services;

(F) flood control, water, wastewater treatment, natural gas, electricity, solid waste disposal, steam generation, communications, and other utility facilities and services; [~~and~~]

(G) other infrastructure improvements; and

(H) any other services or facilities acquired by the authority from the United States of America.

(b) The creation of the authority is necessary to promote,

develop, encourage, and maintain employment, commerce, economic development, and the public welfare and to conserve the natural resources of the state and is essential to accomplish the purposes of Sections 49-d, 52, and 52-a, Article III, and Section 59, Article XVI, Texas Constitution, in an area previously established and developed by the United States government for military support purposes and no longer to be similarly maintained for those purposes by the federal government.

Sec. 396.065. POWERS OF AUTHORITY. (a) Except as provided by Subsection (c) [~~(b)~~], the authority may exercise[~~, on approval by and in coordination with the governor,~~] all powers, functions, authority, rights, and duties necessary or appropriate to carry out projects described by Section 396.064(a)(3) and the purposes of this subchapter, including the power to:

(1) sue and be sued, and plead and be impleaded, in its own name;

(2) adopt an official seal, and alter the seal when advisable;

(3) adopt, [~~and~~] enforce, and from time to time amend [~~bylaws and~~] rules for the conduct of its affairs that are not inconsistent with this subchapter;

(4) acquire, hold, own, pledge, and dispose of its revenues, income, receipts, funds, and money from every source and to select its depository;

(5) acquire, own, rent, lease, accept, hold, or dispose of any or all property, or any interest in property, including rights or easements, in performing its duties and

exercising its powers under this subchapter, by purchase, exchange, gift, assignment, [~~condemnation,~~] sale, lease, or otherwise, and to hold, manage, operate, or improve the property;

(6) sell, assign, lease, encumber, mortgage, or otherwise dispose of any or all property, or any interest in property, and release or relinquish any right, title, claim, lien, interest, easement, or demand, however acquired;

(7) perform an activity authorized by Subdivision (6) by public or private sale, with or without public bidding, notwithstanding any other law;

(8) lease or rent any lands [~~within the property~~] and buildings, structures, or facilities [~~located on the property~~] from or to any person or municipality or other public agency or political subdivision to carry out the purposes of this subchapter;

(9) request and accept any appropriations, grants, allocations, subsidies, guaranties, aid, contributions, services, labor, materials, gifts, or donations from the federal government, the state, any public agency or political subdivision, or any other source;

(10) operate and maintain an office and appoint and determine the duties, tenure, qualifications, and compensation of officers, employees, agents, professional advisors and counselors, including financial consultants, accountants, attorneys, architects, engineers, appraisers, and financing experts, as considered necessary or advisable by the board;

(11) borrow money and issue bonds, payable solely from all or any portion of any revenues of the authority, by resolution

or order of the board and without the necessity of an election;

(12) fix, revise, charge, and collect rents, rates, fees, and charges regarding the property [~~for its facilities~~] and any services provided by the authority;

(13) exercise the powers granted to municipalities under Chapters 373 and 380 for the development of housing and expansion of economic development and commercial activity;

(14) exercise the powers granted to general-law districts under Chapter 49, Water Code, and to municipal utility districts under Chapter 54, Water Code;

(15) exercise the powers granted to road utility districts under Chapter 441, Transportation Code; [~~and~~]

(16) exercise the powers granted to municipalities and counties under Subchapter C, Chapter 271;

(17) exercise those powers granted to municipalities in Chapter 402 for the provision of municipal utilities;

(18) contract and be contracted with, in the authority's own name, any person or entity in the performance of any of the authority's powers or duties, to carry out projects described by Section 396.064(a)(3), or to effectuate the purposes of this subchapter, for a period of years, on the terms and conditions and by competitive bidding or by negotiated contract, all as deemed by the board to be appropriate, desirable, and in the best interests of the authority and the accomplishment of the purposes of this subchapter; and

(19) to acquire, hold, own, sell, assign, lease, encumber, mortgage, or otherwise dispose of any real, personal, or

mixed property located outside the perimeter of the property described in Section 396.0621 if that other property enhances or facilitates the development, redevelopment, maintenance, or expansion of new and existing businesses, industry, or commercial activity on the property.

(b) To the extent the general laws may be inconsistent or in conflict with this subchapter, the provisions of this subchapter shall prevail. It is further the intent of the legislature that the authority shall have all the power and authority necessary to fully qualify and gain the benefits of all laws that are in any way helpful in carrying out the purposes for which the authority is created, and the provisions of those laws of which the authority may lawfully avail itself are adopted by this reference and made applicable to the authority to the extent they do not conflict with this subchapter.

(c) The authority may not use the power of eminent domain.

(d) Section 396.067(a), Local Government Code, is amended to conform to Chapter 1312, Acts of the 76th Legislature, Regular Session, 1999, to read as follows:

(a) The authority may be dissolved by the board on approval of each eligible municipality and the county after all debts or obligations have been satisfied or retired. It is the intent of the legislature that the authority be dissolved, with the approval of the cities and county governing bodies, after conveyance and sale of all of the property [~~with the approval of the governing bodies of the county and eligible municipalities~~].

(e) Section 396.068, Local Government Code, is amended to

conform to Chapter 1312, Acts of the 76th Legislature, Regular Session, 1999, by adding Subsection (b) to read as follows:

(b) Bowie County may transfer to the authority by deed, bill of sale, or otherwise, all assets, including personal and real property, accumulated or acquired from, or with funds provided by, the United States Department of the Army or this state for the development, redevelopment, maintenance, or expansion of the property, together with any unexpended funds made available for those purposes by the United States Department of the Army or this state. The transfer of assets shall be made without the requirement of public notice or bidding. Except as otherwise provided by law, this subsection does not authorize the transfer of public funds of Bowie County other than the funds described by this subsection.

(f) Chapter 1312, Acts of the 76th Legislature, Regular Session, 1999, is repealed.

ARTICLE 13. CHANGES RELATING TO NATURAL RESOURCES CODE

SECTION 13.001. (a) Chapter 32, Natural Resources Code, is amended to codify Chapter 11, Acts of the 68th Legislature, Regular Session, 1983, by adding Subchapter G to read as follows:

SUBCHAPTER G. TRADE OF LAND

Sec. 32.251. AUTHORITY OF BOARD, IN CONJUNCTION WITH LAND OFFICE, TO TRADE LAND. The board, in conjunction with the land office, may trade fee and lesser interests in land dedicated to the permanent school fund for fee and lesser interests in land not dedicated to that fund if the board and the commissioner determine that the trade is in the best public interest of the people of this state.

Sec. 32.252. AUTHORITY OF STATE AGENCY OR POLITICAL SUBDIVISION TO SELL OR EXCHANGE REAL PROPERTY. (a) A state agency or political subdivision may directly sell or exchange real property belonging to the state agency or political subdivision with the board for land dedicated to the permanent school fund if the exchange is for fair market value.

(b) Section 272.001, Local Government Code, does not apply to an exchange under this section.

Sec. 32.253. PURPOSE OF TRADE. Land dedicated to the permanent school fund may be traded to:

(1) aggregate sufficient acreage of contiguous land to create a manageable unit;

(2) acquire land having unique biological, geological, cultural, or recreational value; or

(3) create a buffer zone for the enhancement of already existing public land, facilities, or amenities.

Sec. 32.254. LAND TO BE TRADED FOR LAND OF AT LEAST EQUAL VALUE. (a) A trade of land dedicated to the permanent school fund may be made only on an appraised value basis. The appraisal must be made by appraisers of the land office, and the board must concur in the appraisal. The appraisal is conclusive proof of the value of the land.

(b) A trade of land dedicated to the permanent school fund may be made only for land of at least equal value.

Sec. 32.255. DEED REQUIRED. (a) A trade of land dedicated to the permanent school fund may be made only by a deed signed jointly by the commissioner and the governor.

(b) The governor's failure to sign the deed is a veto of the proposed trade.

Sec. 32.256. DEDICATION OF ACQUIRED LAND TO FUND. Land acquired by the board by trade under this subchapter is dedicated to the permanent school fund.

Sec. 32.257. SUBSURFACE MINERAL RIGHTS. (a) If this state retains the subsurface mineral rights to the oil, gas, and other minerals in permanent school fund land traded under this subchapter, an unrestricted right of ingress to and egress from the land by this state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which the rights are retained by this state.

(b) This state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights are leased in permanent school fund land in which this state owns the surface title and the subsurface mineral rights.

(c) A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section.

(d) Notwithstanding anything to the contrary in this subchapter, the board, to complete a trade of equal value, may convey the surface estate and reserve the oil, gas, and other minerals, with the surface owner acting as agent for the state under:

(1) Subchapter F, Chapter 52, in leasing the land for oil and gas and receiving one-half the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages; or

(2) Subchapter C, Chapter 53, in leasing the land for sulphur, coal, lignite, uranium, or potash and receiving 40 percent of the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages.

Sec. 32.258. REPORT TO LEGISLATURE. (a) The board shall report to the legislature a trade of land dedicated to the permanent school fund. The board shall report the trade at:

(1) the first regular session of the legislature occurring after the trade if the legislature is not meeting in regular session at the time the trade is made; or

(2) the regular session of the legislature occurring at the time of the trade if the legislature is meeting in regular session at the time the trade is made.

(b) The report must state the facts that warranted the trade.

(b) The following laws are repealed:

(1) Chapter 590, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5421c-13, Vernon's Texas Civil Statutes); and

(2) Chapter 11, Acts of the 68th Legislature, Regular Session, 1983.

SECTION 13.002. (a) Section 51.086(b), Natural Resources Code, is amended to conform to Section 8, Chapter 965, Acts of the

68th Legislature, Regular Session, 1983, to read as follows:

(b) On a contract for sale of escheated permanent school land, the initial payment must be in cash and may not be less than one-tenth of the purchase price. The purchaser shall pay the balance of the purchase price in nine equal annual installments and shall pay interest on the deferred amount at the rate set by the board [~~of six percent a year~~].

(b) Section 52.011, Natural Resources Code, is amended to conform to Section 8, Chapter 965, Acts of the 68th Legislature, Regular Session, 1983, to read as follows:

Sec. 52.011. AREA SUBJECT TO LEASE. Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) all unsold surveyed and unsurveyed public school land; and

(4) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

(c) Section 53.151, Natural Resources Code, is amended to conform to Section 8, Chapter 965, Acts of the 68th Legislature, Regular Session, 1983, to read as follows:

Sec. 53.151. LEASE OF CERTAIN AREAS. Under the provisions of this subchapter, the board may lease to any person for the

production of coal, lignite, sulphur, salt, and potash:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) rivers and channels that belong to the state;

(4) all unsold surveyed and unsurveyed public school land; and

(5) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

(d) Subchapter A, Chapter 71, Property Code, is amended to conform to Section 8, Chapter 965, Acts of the 68th Legislature, Regular Session, 1983, by adding Section 71.007 to read as follows:

Sec. 71.007. IDENTIFICATION OF REAL PROPERTY SUBJECT TO ESCHEAT. The tax assessor-collector of each county shall:

(1) take all steps necessary to identify real property that may be subject to escheat; and

(2) notify the commissioner of the General Land Office and the attorney general so that they may take appropriate action.

(e) Section 8, Chapter 965, Acts of the 68th Legislature, Regular Session, 1983, is repealed.

SECTION 13.003. (a) Sections 62.093, 62.099, 62.131, and 62.133, Natural Resources Code, are amended to conform to Section 1, Chapter 487, Acts of the 65th Legislature, Regular Session, 1977, to read as follows:

Sec. 62.093. PARK AUTHORITY. The board may manage,

operate, maintain, equip, improve, and finance:

(1) an existing public park placed under its jurisdiction by the commissioners court; or

(2) [~~and may improve, manage, operate, maintain, equip, and finance~~] additional parks acquired by gift or otherwise but not acquired by the exercise of the power of eminent domain.

Sec. 62.099. ADVERTISING. The board may publish brochures and otherwise advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board.

Sec. 62.131. AUTHORITY TO ISSUE REVENUE BONDS. For the purpose of acquiring, developing, improving, and enlarging public recreational areas [~~parks~~] and facilities, the board may issue revenue bonds payable solely from:

(1) the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board; or

(2) any other source of funds the board may wish to dedicate for that purpose.

Sec. 62.133. SALE OF BONDS. The board shall sell the bonds on the best terms obtainable [~~but not for less than par and accrued interest~~].

(b) Section 1, Chapter 487, Acts of the 65th Legislature, Regular Session, 1977, is repealed.

SECTION 13.004. Chapter 793, Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(47f), Vernon's Texas Civil Statutes), relating to the Texas Energy Coordination Council, is

repealed to conform to the abolition of that agency under Chapter 325, Government Code (Texas Sunset Act).

ARTICLE 14. CHANGES RELATING TO OCCUPATIONS CODE

SECTION 14.001. (a) Title 2, Occupations Code, is amended to codify Article 9032, Revised Statutes, by adding Chapter 58 to read as follows:

CHAPTER 58. USE OF GENETIC INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "Family health history" means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.

(4) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.

(5) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) "Licensing authority" means a state agency or political subdivision that issues an occupational license.

(7) "Occupational license" means a license, certificate, registration, permit, or other form of authorization required by law or rule that must be obtained by an individual to engage in a particular business or occupation.

(8) "Political subdivision" means a municipality, county, or special district or authority. The term includes a school district.

(9) "RNA" means ribonucleic acid.

(10) "State agency" means a department, board, bureau, commission, committee, division, office, council, or agency in the executive or judicial branch of state government.

[Sections 58.002-58.050 reserved for expansion]

SUBCHAPTER B. USE AND RETENTION OF GENETIC INFORMATION

Sec. 58.051. CERTAIN USES OF GENETIC INFORMATION PROHIBITED. A licensing authority may not deny an application for an occupational license, suspend, revoke, or refuse to renew an occupational license, or take any other disciplinary action against a license holder based on the refusal of the license applicant or license holder to:

(1) submit to a genetic test;

(2) submit a family health history;

(3) disclose whether the applicant or holder has submitted to a genetic test; or

(4) disclose the results of any genetic test to which the applicant or holder has submitted.

Sec. 58.052. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual authorizes retention of the sample

for medical treatment or scientific research;

(3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:

(A) under a requirement the institutional review board imposes on a specific research project; or

(B) authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

[Sections 58.053-58.100 reserved for expansion]

SUBCHAPTER C. DISCLOSURE OF GENETIC INFORMATION; CONFIDENTIALITY; EXCEPTIONS

Sec. 58.101. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On written request by the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

Sec. 58.102. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 58.103, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an

individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 58.104.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

Sec. 58.103. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization under Section 58.104 if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized under a state or federal law;

(4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 58.104 if:

(1) the disclosure is for information from a research

study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Sec. 58.104. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

(b) Article 9032, Revised Statutes, is repealed.

SECTION 14.002. (a) Subtitle A, Title 3, Occupations Code, is amended to codify Article 4495c, Revised Statutes, by adding Chapter 107 to read as follows:

CHAPTER 107. INTRACTABLE PAIN TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 107.001. SHORT TITLE. This chapter may be cited as the Intractable Pain Treatment Act.

Sec. 107.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Medical

Examiners.

(2) "Intractable pain" means a state of pain for which:

(A) the cause of the pain cannot be removed or otherwise treated; and

(B) in the generally accepted course of medical practice, relief or cure of the cause of the pain:

(i) is not possible; or

(ii) has not been found after reasonable efforts.

(3) "Physician" means a physician licensed by the board.

Sec. 107.003. NONAPPLICABILITY OF CHAPTER TO CERTAIN CHEMICALLY DEPENDENT PERSONS. Except as provided by Subchapter C, this chapter does not apply to a person being treated by a physician for chemical dependency because of the person's use of a dangerous drug or controlled substance.

[Sections 107.004-107.050 reserved for expansion]

SUBCHAPTER B. PRESCRIPTION AND ADMINISTRATION OF DANGEROUS DRUGS AND CONTROLLED SUBSTANCES

Sec. 107.051. AUTHORITY TO PRESCRIBE OR ADMINISTER DANGEROUS DRUG OR CONTROLLED SUBSTANCE. Notwithstanding any other law, a physician may prescribe or administer a dangerous drug or controlled substance to a person in the course of the physician's treatment of the person for intractable pain.

Sec. 107.052. LIMITATIONS ON PRESCRIPTION OR ADMINISTRATION OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. This

chapter does not authorize a physician to prescribe or administer to a person a dangerous drug or controlled substance:

(1) for a purpose that is not a legitimate medical purpose as defined by the board; and

(2) if the physician knows or should know the person is using drugs for a nontherapeutic purpose.

Sec. 107.053. LIMITATION ON AUTHORITY OF HOSPITAL OR OTHER HEALTH CARE FACILITY REGARDING USE OF DANGEROUS DRUG OR CONTROLLED SUBSTANCE. A hospital or other health care facility may not prohibit or restrict the use of a dangerous drug or controlled substance prescribed or administered by a physician who holds staff privileges at the hospital or facility for a person diagnosed and treated by a physician for intractable pain.

[Sections 107.054-107.100 reserved for expansion]

SUBCHAPTER C. TREATMENT OF CERTAIN PATIENTS

Sec. 107.101. PATIENT. In this subchapter, "patient" includes a person who:

(1) is currently abusing a dangerous drug or controlled substance;

(2) is not currently abusing such a drug or substance but has a history of such abuse; or

(3) lives in an environment that poses a risk for misuse or diversion to illegitimate use of such a drug or substance.

Sec. 107.102. AUTHORITY TO TREAT. This chapter authorizes a physician to treat a patient with an acute or chronic painful medical condition with a dangerous drug or controlled substance to relieve the patient's pain using appropriate doses, for an

appropriate length of time, and for as long as the pain persists.

Sec. 107.103. DUTY TO MONITOR PATIENT. A physician who treats a patient under this subchapter shall monitor the patient to ensure that a prescribed dangerous drug or controlled substance is used only for the treatment of the patient's painful medical condition.

Sec. 107.104. DOCUMENTATION AND CONSULTATION REQUIRED. To ensure that a prescribed dangerous drug or controlled substance is not diverted to another use and to ensure the appropriateness of the treatment of the patient's targeted symptoms, the physician shall:

(1) specifically document:

(A) the understanding between the physician and patient about the patient's prescribed treatment;

(B) the name of the drug or substance prescribed;

(C) the dosage and method of taking the prescribed drug or substance;

(D) the number of dose units prescribed; and

(E) the frequency of prescribing and dispensing the drug or substance; and

(2) consult with a psychologist, psychiatrist, expert in the treatment of addictions, or other health care professional, as appropriate.

[Sections 107.105-107.150 reserved for expansion]

SUBCHAPTER D. DISCIPLINARY ACTION

Sec. 107.151. DISCIPLINARY ACTION PROHIBITED. A physician is not subject to disciplinary action by the board for prescribing or administering a dangerous drug or controlled substance in the

course of treatment of a person for intractable pain.

Sec. 107.152. AUTHORITY OF BOARD TO REVOKE OR SUSPEND LICENSE. (a) This chapter does not affect the authority of the board to revoke or suspend the license of a physician who:

(1) prescribes, administers, or dispenses a drug or treatment:

(A) for a purpose that is not a legitimate medical purpose as defined by the board; and

(B) that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed;

(2) fails to keep a complete and accurate record of the purchase and disposal of:

(A) a drug listed in Chapter 481, Health and Safety Code; or

(B) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.);

(3) writes a false or fictitious prescription for:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(4) prescribes, administers, or dispenses in a manner

inconsistent with public health and welfare:

(A) a dangerous drug as defined by Chapter 483, Health and Safety Code;

(B) a controlled substance listed in a schedule under Chapter 481, Health and Safety Code; or

(C) a controlled substance scheduled in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(b) For purposes of Subsection (a)(2), the physician's records must include a record of:

(1) the date of purchase;

(2) the sale or disposal of the drug or substance by the physician;

(3) the name and address of the person receiving the drug or substance; and

(4) the reason for the disposal or dispensing of the drug or substance to the person.

(b) Article 4495c, Revised Statutes, is repealed.

SECTION 14.003. (a) Subtitle A, Title 3, Occupations Code, is amended to codify Article 4506a, Revised Statutes, by adding Chapter 108 to read as follows:

CHAPTER 108. LICENSE SUSPENSION OR REVOCATION REQUIRED FOR CERTAIN DRUG FELONY CONVICTIONS

Sec. 108.001. DEFINITION. In this chapter, "board" means the Texas State Board of Medical Examiners.

Sec. 108.002. LICENSE SUSPENSION ON CONVICTION; REVOCATION. (a) The board shall suspend a license issued by the

board if it is determined at an administrative hearing that the license holder has been convicted of a felony under Chapter 481 or 483, Health and Safety Code, or Section 485.032 of that code.

(b) A hearing under Subsection (a) shall be conducted under Chapter 2001, Government Code.

(c) The board shall revoke the license of a person whose license is suspended under Subsection (a) on the person's final conviction.

Sec. 108.003. LICENSE REINSTATEMENT OR REISSUANCE. (a) The board may not reinstate or reissue a license suspended or revoked under Section 108.002 unless an express determination is made that the reinstatement or reissuance of the license is in the best interests of the public and the person whose license was suspended or revoked.

(b) The board must base its determination under Subsection (a) on substantial evidence contained in an investigative report.

(b) Article 4506a, Revised Statutes, is repealed.

SECTION 14.004. (a) Subtitle A, Title 3, Occupations Code, is amended to codify Article 4512g-1, Revised Statutes, by adding Chapter 109 to read as follows:

CHAPTER 109. RELEASE OF SEX OFFENDER TREATMENT INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Administration of criminal justice" and "criminal justice agency" have the meanings assigned by Article 60.01, Code of Criminal Procedure.

(2) "Local law enforcement authority" has the meaning

assigned by Article 62.01, Code of Criminal Procedure.

(3) "Sex offender" has the meaning assigned by Section 9(m), Article 42.12, Code of Criminal Procedure.

Sec. 109.002. PURPOSE OF RELEASING INFORMATION. A person who is authorized by this chapter to release or obtain information may do so only for the administration of criminal justice.

Sec. 109.003. IMMUNITY FROM DAMAGES. A person who releases or obtains information as authorized by this chapter is not liable for damages arising from the release of the information.

[Sections 109.004-109.050 reserved for expansion]

SUBCHAPTER B. RELEASE OF TREATMENT INFORMATION

Sec. 109.051. RELEASE BY PERSONS PROVIDING MENTAL HEALTH OR MEDICAL SERVICES. (a) Information concerning the treatment of a sex offender may be released by a person who:

(1) is licensed or certified in this state to provide mental health or medical services, including a:

(A) physician;

(B) psychiatrist;

(C) psychologist;

(D) licensed professional counselor;

(E) licensed marriage and family therapist; or

(F) social worker; and

(2) while licensed or certified, provides or provided mental health or medical services for the rehabilitation of sex offenders.

(b) Notwithstanding Subtitle B, Title 3, of this code or Chapter 611, Health and Safety Code, a person described by

Subsection (a) may release information concerning the treatment of a sex offender to:

(1) another person described by Subsection (a);

(2) a criminal justice agency; or

(3) a local law enforcement authority.

Sec. 109.052. RELEASE BY CRIMINAL JUSTICE AGENCY. A criminal justice agency may release information concerning the treatment of a sex offender to:

(1) another criminal justice agency;

(2) a local law enforcement authority; or

(3) a person described by Section 109.051(a).

Sec. 109.053. RELEASE BY LOCAL LAW ENFORCEMENT AUTHORITY. A local law enforcement authority may release information concerning the treatment of a sex offender to:

(1) another local law enforcement authority;

(2) a criminal justice agency; or

(3) a person described by Section 109.051(a).

(b) Article 4512g-1, Revised Statutes, is repealed.

SECTION 14.005. (a) Subtitle A, Title 3, Occupations Code, is amended to codify Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), by adding Chapter 110 to read as follows:

CHAPTER 110. COUNCIL ON SEX OFFENDER TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 110.001. DEFINITIONS. In this chapter:

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

(2) "Council" means the Council on Sex Offender

Treatment.

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

(4) "Registry" means a database maintained by the council that contains the names of persons who:

(A) have met the council's criteria for the treatment of sex offenders; and

(B) provide mental health or medical services for the rehabilitation of sex offenders.

(5) "Rehabilitation service" means a mental health treatment or medical intervention program designed to treat or remedy a sex offender's mental or medical problem that may relate or contribute to the sex offender's criminal or paraphiliac problem.

(6) "Sex offender" means a person who:

(A) is convicted of committing or adjudicated to have committed a sex crime under state or federal law;

(B) is awarded deferred adjudication for a sex crime under state or federal law;

(C) admits to having violated state or federal law with regard to sexual conduct; or

(D) experiences or evidences a paraphiliac disorder as defined by the Revised Diagnostic and Statistical Manual, including any subsequent revision of that manual.

(7) "Sex offender treatment provider" means a person, licensed or certified to practice in this state, including a physician, psychiatrist, psychologist, licensed professional counselor, licensed marriage and family therapist, or social worker, who provides mental health or medical services for

rehabilitation of sex offenders.

[Sections 110.002-110.050 reserved for expansion]

SUBCHAPTER B. COUNCIL ON SEX OFFENDER TREATMENT

Sec. 110.051. COUNCIL; MEMBERSHIP. (a) The council is within the department.

(b) The council consists of six part-time members, appointed by the governor with the advice and consent of the senate as follows:

(1) two representatives of the public; and

(2) four members each of whom meets the requirements for registration as a sex offender treatment provider.

(c) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 110.052. PUBLIC MEMBERSHIP ELIGIBILITY. A person is not eligible for appointment as a public member if:

(1) the person meets the requirements for registration as a sex offender treatment provider; or

(2) the person or the person's spouse:

(A) is registered, certified, or licensed by an occupational regulatory agency in the field of sex offender treatment;

(B) is employed by or participates in the management of a business entity or other organization regulated by the council or receiving funds from the council;

(C) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other

organization regulated by the council or receiving funds from the council; or

(D) uses or receives a substantial amount of tangible goods, services, or funds from the council, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

Sec. 110.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) An officer, employee, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of sex offender treatment may not be a member of the council and may not be an employee of the council who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.

(d) A person may not serve as a member of the council or act as the general counsel to the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Sec. 110.054. TERMS. Members of the council serve staggered six-year terms. The terms of two members expire on February 1 of each odd-numbered year.

Sec. 110.055. PRESIDING OFFICER. The governor shall designate a member of the council as the presiding officer of the council to serve in that capacity at the pleasure of the governor.

Sec. 110.056. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the council that a member:

(1) does not have at the time of appointment the qualifications required by Sections 110.051(b) and 110.052;

(2) does not maintain during service on the council the qualifications required by Sections 110.051(b) and 110.052;

(3) does not complete the training program as required by Section 110.059;

(4) violates a prohibition established by Section 110.053;

(5) cannot because of illness or disability discharge the member's duties for a substantial part of the member's term; or

(6) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the council.

(b) The validity of an action of the council is not affected by the fact the action is taken when a ground for removal of a council member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the council of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the council, who shall notify the governor and the attorney general that a potential ground exists.

Sec. 110.057. MEETINGS. (a) The council shall meet at least four times each year.

(b) The council may hold additional meetings at the call of the presiding officer or as provided by council rule.

Sec. 110.058. COMPENSATION; REIMBURSEMENT. (a) A council member may not receive compensation for performing the duties of the council.

(b) A council member is entitled to reimbursement for travel and other necessary expenses incurred in performing official duties at the rate provided in the General Appropriations Act for state employees.

Sec. 110.059. TRAINING. (a) To be eligible to take office as a member of the council, a person appointed to the council must complete at least one course of a training program that complies with this section. If the person has not completed the training

course at the time of the appointment, the person must complete the training program not later than six months after the date of appointment.

(b) The training program must provide information to a person regarding:

(1) the enabling legislation that created the council;

(2) the programs operated by the council;

(3) the role and functions of the council;

(4) the rules of the council, with an emphasis on the rules relating to disciplinary and investigatory authority;

(5) the current budget for the council;

(6) the results of the most recent formal audit of the council;

(7) the requirements of Chapters 551, 552, and 2001, Government Code;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the council or the Texas Ethics Commission.

(c) A person appointed to the council is entitled to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act, as if the person were a member of the council.

[Sections 110.060-110.100 reserved for expansion]

SUBCHAPTER C. EXECUTIVE DIRECTOR AND STAFF

Sec. 110.101. EXECUTIVE DIRECTOR. The commissioner of public health shall employ an executive director, chosen with the

advice and consent of the council, who is the executive head of the council and performs its administrative duties.

Sec. 110.102. STAFF. The executive director shall employ staff necessary to administer the council's duties.

Sec. 110.103. DIVISION OF RESPONSIBILITIES. The council shall develop and implement policies that clearly separate the policymaking responsibilities of the council and the management responsibilities of the executive director and the staff of the council.

Sec. 110.104. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide, as often as necessary, to council members and employees information regarding their:

(1) qualifications for office or employment under this chapter; and

(2) responsibilities under applicable laws relating to standards of conduct for state officers or employees.

[Sections 110.105-110.150 reserved for expansion]

SUBCHAPTER D. COUNCIL POWERS AND DUTIES

Sec. 110.151. TREATMENT FOR SEX OFFENDERS. The council shall:

(1) develop treatment strategies for sex offenders by evaluating in-state and out-of-state programs for sex offender treatment;

(2) set standards for treatment of sex offenders that must be met by sex offender treatment providers to be eligible for inclusion in the council's registry; and

(3) recommend to licensing and regulatory boards and to the directors of current programs methods of improving programs to meet council standards.

Sec. 110.152. REGISTRY AND REGISTRATION REQUIREMENTS. The council shall:

(1) maintain a registry; and

(2) develop and implement by rule:

(A) registration requirements; and

(B) procedures for sex offender treatment providers in the registry.

Sec. 110.153. COLLECTION AND DISSEMINATION OF INFORMATION. The council shall collect and disseminate information about available sex offender treatment programs to:

(1) judicial officers;

(2) community supervision or parole workers;

(3) appropriate state and municipal agencies; and

(4) the public.

Sec. 110.154. DISTRIBUTION OF MONEY. The council shall distribute money appropriated to the council by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs.

Sec. 110.155. AGENCY ASSISTANCE. The council shall advise and assist agencies in coordinating procedures to provide treatment services. The treatment services may include community-based programs.

Sec. 110.156. ADJUDICATION INFORMATION. (a) The council

shall establish a uniform method of obtaining adjudication information. The uniform method must require that:

(1) a complete set of fingerprints, the complete name of the person being investigated, or other information necessary to conduct a criminal history background check be submitted to the Department of Public Safety or another law enforcement agency; and

(2) if fingerprints are submitted, the fingerprints be submitted to the Federal Bureau of Investigation for further information if a relevant disqualifying record or other substantive information is not obtained from a state or local law enforcement agency.

(b) A law enforcement agency may provide to the council information about the conviction or deferred adjudication of a person being investigated only if the information:

(1) is relevant to the person's current or proposed registration; and

(2) was collected in accordance with this section.

(c) The council is not entitled to adjudication information that is not relevant. Adjudication information is relevant only if it relates to a conviction or deferred adjudication for:

(1) a sexual offense;

(2) murder, assault, battery, or any other offense involving personal injury or threat to another person; or

(3) a felony not listed in Subdivision (1) or (2).

(d) All adjudication information received by the council is privileged information and for the exclusive use of the council. The information may be released or otherwise disclosed to any other

person or agency only:

(1) on court order; or

(2) with the consent of the person being investigated.

(e) The council by rule shall establish a method to collect and destroy adjudication information after the council makes a decision on the eligibility of the person for registration who is the subject of the information. The council shall destroy the adjudication information not later than the first anniversary of the date of the council's decision on the person's eligibility for registration.

Sec. 110.157. CONTINUING EDUCATION PROGRAMS. The council shall design and conduct continuing education programs for sex offender treatment providers.

Sec. 110.158. RULEMAKING. The council may adopt rules consistent with this chapter. In adopting rules, the council shall:

(1) consider the rules and procedures of the board and the department; and

(2) adopt procedural rules consistent with similar existing rules and procedures of the board or the department.

Sec. 110.159. COLLECTION OF FEES. (a) The council shall:

(1) charge and collect reasonable fees in amounts necessary to cover the costs of administering this chapter; and

(2) send all fees collected under this section to the department.

(b) Fees charged and collected by the council under this section may include:

(1) sex offender treatment provider registration and

renewal fees;

(2) training fees;

(3) publication fees; and

(4) fees for providing continuing education and other services to sex offender treatment providers.

Sec. 110.160. BIENNIAL REPORT. (a) The council shall file biennially a report with the governor, lieutenant governor, and speaker of the house of representatives about the activities of the council. The council shall include in the report:

(1) any recommendation made under Section 110.151; and

(2) any other recommendation the council considers appropriate.

Sec. 110.161. PUBLICATION OF REGISTRY. (a) The council shall prepare annually a list of registered sex offender treatment providers.

(b) The council by rule shall establish procedures for developing and distributing the list of registered sex offender treatment providers.

(c) The council, on request, shall make the list of registered sex offender treatment providers available on payment of a reasonable fee in an amount sufficient to cover the costs of printing and distribution.

Sec. 110.162. CONFIDENTIALITY REQUIRED. The council and the staff and consultants employed by the council shall keep confidential any record relating to the identity, examination, diagnosis, prognosis, or treatment of a sex offender.

Sec. 110.163. GRANTS AND DONATIONS. The council may apply

for and accept on behalf of the state a grant or donation from any source to be used by the council to perform its duties.

[Sections 110.164-110.200 reserved for expansion]

SUBCHAPTER E. INTERAGENCY ADVISORY COMMITTEE

Sec. 110.201. INTERAGENCY ADVISORY COMMITTEE. The interagency advisory committee shall advise the council on administering the council's duties under this chapter.

Sec. 110.202. ADVISORY COMMITTEE MEMBERSHIP. (a) The executive head of each of the following agencies or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) Texas Department of Criminal Justice;

(2) Texas Juvenile Probation Commission;

(3) Texas Department of Mental Health and Mental Retardation;

(4) Texas Youth Commission;

(5) Sam Houston State University;

(6) Department of Protective and Regulatory Services; and

(7) Texas Council of Community Mental Health and Mental Retardation Centers.

(b) The director of each of the following divisions of a state agency or that person's designated representative shall serve as a member of the interagency advisory committee:

(1) the criminal justice division of the governor's office; and

(2) the sexual assault prevention and crisis services

division of the office of the attorney general.

(c) The council may appoint additional members to the interagency advisory committee as the council determines is necessary. An additional member appointed by the council must be a representative of a public or private nonprofit entity that has a demonstrated interest in improving the treatment of sex offenders.

(d) If the executive head of a state agency or the director of a division designates a representative as a member of the interagency advisory committee, the representative must be, at the time of the designation and during the time of service on the committee, an officer or employee of the agency or division.

Sec. 110.203. MEETINGS. The interagency advisory committee shall meet at the call of its presiding officer or at the request of the council.

Sec. 110.204. AGENCY COOPERATION. Each state agency or division of an agency represented on the interagency advisory committee shall cooperate with the council at the request of the council.

[Sections 110.205-110.250 reserved for expansion]

SUBCHAPTER F. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 110.251. PUBLIC INTEREST INFORMATION. (a) The council shall prepare information of public interest describing the functions of the council and the procedures by which complaints are filed with and resolved by the council.

(b) The council shall make the information available to the public and appropriate state agencies.

Sec. 110.252. PUBLIC PARTICIPATION. (a) The council shall develop and implement policies that provide the public with a reasonable opportunity to appear before the council and to speak on any issue under the council's jurisdiction.

(b) The executive director shall prepare and maintain a written plan describing how a person who does not speak English may be provided reasonable access to the council's programs and services.

Sec. 110.253. COMPLAINTS. The council by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council. The council may provide for that notice:

(1) on each registration form, application, or written contract for services of a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of each person regulated under this chapter; or

(3) in a bill for service provided by a person regulated under this chapter.

Sec. 110.254. RECORD OF COMPLAINTS. (a) The council shall keep an information file about each written complaint filed with the council that the council has authority to resolve. The information file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to

the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for a complaint for which the council took no action, an explanation of the reason the complaint was closed without action.

(b) The council shall provide to a person filing a complaint and to each person who is the subject of the complaint a copy of the council's policies and procedures relating to complaint investigation and resolution.

(c) The council, at least quarterly and until final disposition of a complaint, shall notify the person filing the complaint and each person who is the subject of the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Sec. 110.255. COMPLAINT INVESTIGATION; SUBPOENAS. (a) In an investigation of a complaint filed with the council, the council may request that the commissioner of public health or the commissioner's designee approve the issuance of a subpoena. If the request is approved, the council may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in this state. The council may delegate the authority granted under this subsection to the executive director of the council.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the

council, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or the county in which a hearing conducted by the council may be held.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may punish a person who fails to obey the court order.

(e) The council shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the council may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103, Government Code.

Sec. 110.256. CONFIDENTIALITY. (a) Except as provided by Subsection (b), all information and materials subpoenaed or compiled by the council in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the council or its employees or agents involved in the complaint and investigation.

(b) The information described by Subsection (a) may be disclosed to:

(1) persons involved with the council in a complaint and investigation;

(2) professional sex offender treatment provider licensing or disciplinary boards in other jurisdictions;

(3) peer assistance programs approved by the board under Chapter 467, Health and Safety Code;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) The filing of formal charges by the council against a person under this chapter, the nature of those charges, the council's disciplinary proceedings, and final disciplinary actions, including warnings and reprimands, by the council are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

[Sections 110.257-110.300 reserved for expansion]

SUBCHAPTER G. SEX OFFENDER TREATMENT PROVIDER REGISTRY

Sec. 110.301. USE OF TITLE; REGISTRATION REQUIRED. A person may not claim to be a sex offender treatment provider or use the title "sex offender treatment provider" unless the person is listed in the registry.

Sec. 110.302. ELIGIBILITY FOR REGISTRATION. The council by rule shall develop procedures and eligibility requirements for inclusion in the registry, including, if appropriate, requirements related to clinical practice experience and assessment, continuing education, and supervision.

Sec. 110.303. REGISTRATION OF OUT-OF-STATE APPLICANTS. The council may waive any prerequisite to registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a valid registration from another state that has registration requirements

substantially equivalent to those of this state.

Sec. 110.304. CONVICTION OR DEFERRED ADJUDICATION INFORMATION. The council may receive from a law enforcement agency information about the conviction or deferred adjudication of a person who has applied for registration or renewal of registration.

Sec. 110.305. REGISTRATION EXPIRATION. (a) The council by rule may adopt a system under which registrations expire on various dates during the year.

(b) For the year in which the registration expiration date is changed, registration fees shall be prorated on a monthly basis so that each person pays only that portion of the registration fee allocable to the number of months during which the registration is valid.

(c) On renewal of a registration on the new expiration date, the total registration renewal fee is payable.

Sec. 110.306. REGISTRATION RENEWAL REQUIRED. A person whose registration has expired may not engage in activities that require registration until the registration is renewed.

Sec. 110.307. PROCEDURE FOR RENEWAL. (a) Not later than the 30th day before the expiration date of a person's registration, the council shall send written notice of the registration expiration to the person at the person's last known address according to the records of the council.

(b) A person who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required registration fee to the council before the registration expiration date.

(c) A person who is otherwise eligible to renew a registration and whose registration has been expired for:

(1) 90 days or less, may renew the registration by paying to the council a fee equal to one and one-half times the required renewal fee; and

(2) longer than 90 days but less than one year, may renew the registration by paying to the council a fee equal to two times the required renewal fee.

(d) Except as provided by Section 110.308, a person whose registration has been expired for one year or longer may not renew the registration. The person may obtain a new registration by submitting to reexamination and complying with the requirements and procedures for obtaining an original registration.

Sec. 110.308. RENEWAL OF EXPIRED REGISTRATION BY OUT-OF-STATE PRACTITIONER. A person whose registration has been expired for one year or longer may renew the registration without complying with the requirements of Section 110.307(d) by paying to the council a fee equal to two times the required renewal fee if the person:

(1) was registered in this state;

(2) moved to another state; and

(3) has been registered and in practice in the other state for two years preceding the date of application for renewal.

Sec. 110.309. DENIAL OF REGISTRATION. The council may deny an application for registration if:

(1) the council determines that a previous criminal conviction or deferred adjudication indicates the applicant is not

qualified or suitable; or

(2) the applicant fails to provide the information described by Section 110.156(a)(1).

[Sections 110.310-110.350 reserved for expansion]

SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 110.351. DISCIPLINARY POWERS OF COUNCIL. The council shall revoke, suspend, or refuse to renew a registration, place on probation a person whose registration has been suspended, or reprimand a person who is listed in the registry if the person violates this chapter or a rule of the council.

Sec. 110.352. PROBATION. If the suspension of a person's registration is probated, the council may require the person to:

(1) report regularly to the council on matters that are the basis of the probation;

(2) limit the person's practice to the areas prescribed by the council; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the council in those areas that are the basis of the probation.

Sec. 110.353. DISCIPLINARY HEARING. (a) If the council proposes to revoke, suspend, or refuse to renew a person's registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.

(b) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(c) Rules of practice adopted by the council under Section 2001.004, Government Code, applicable to the proceedings for a

disciplinary action may not conflict with rules adopted by the State Office of Administrative Hearings.

[Sections 110.354-110.400 reserved for expansion]

SUBCHAPTER I. CRIMINAL PENALTIES

Sec. 110.401. OFFENSE: MISUSE OF TITLE. (a) A person commits an offense if the person violates Section 110.301.

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

Sec. 110.402. OFFENSE: RELEASE OF ADJUDICATION INFORMATION. (a) A person commits an offense if the person releases or discloses in violation of Section 110.156 adjudication information received by the council.

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

(b) Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes), is repealed.

SECTION 14.006. (a) Section 901.301(a), Occupations Code, as amended by Chapters 381 and 1497, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) The board shall conduct or contract with another person to conduct uniform CPA examinations administered under this chapter.

(b) Section 901.304(a), Occupations Code, as amended by Chapters 381 and 1497, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) For each examination or reexamination, the board by rule shall apportion an amount of the total examination fee among the parts of the examination that an applicant is eligible to take on a

particular examination date. For each examination or reexamination, the board shall collect a fee set by board rule not to exceed the cost of administering the examination.

(c) Section 901.307, Occupations Code, as amended by Chapters 381 and 1497, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 901.307. GRADING EXAMINATION. (a) The board by rule shall:

(1) adopt a method for grading the examination; and

(2) establish the criteria for passing the examination.

(b) Rules adopted under this section must, to the extent possible, be uniform with those of other states.

SECTION 14.007. Section 1701.253, Occupations Code, is amended for grammatical purposes and relettered to eliminate duplicate citations to read as follows:

Sec. 1701.253. SCHOOL CURRICULUM. (a) The commission shall establish minimum curriculum requirements for preparatory and advanced courses and programs for schools subject to approval under Section 1701.251(c)(1).

(b) In establishing requirements under this section, the commission shall require courses and programs to provide training in:

(1) the investigation and documentation of cases that involve:

(A) child abuse or neglect;

(B) family violence; and

(C) sexual assault;

(2) issues concerning sex offender characteristics; and

(3) crime victims' rights under Chapter 56, Code of Criminal Procedure, and Chapter 57, Family Code, and the duty of law enforcement agencies to ensure that a victim is afforded those rights.

(c) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on civil rights, racial sensitivity, and cultural diversity for persons licensed under this chapter.

(d) Training in documentation of cases required by Subsection (b) shall include instruction in:

(1) making a written account of the extent of injuries sustained by the victim of an alleged offense;

(2) recording by photograph or videotape the area in which an alleged offense occurred and the victim's injuries; and

(3) recognizing and recording a victim's statement that may be admissible as evidence in a proceeding concerning the matter about which the statement was made.

(e) As part of the minimum curriculum requirements relating to the vehicle and traffic laws of this state, the commission shall require an education and training program on laws relating to the operation of motorcycles and to the wearing of protective headgear by motorcycle operators and passengers. In addition, the commission shall require education and training on motorcycle operator profiling awareness and sensitivity training.

(f) [~~(e)~~] Training for officers and recruits in investigation of cases required by Subsection (b)(1)(B) shall include instruction in preventing dual arrest whenever possible and conducting a thorough investigation to determine which person is the predominant aggressor when allegations of family violence from two or more opposing persons are received arising from the same incident.

(g) [~~(e)~~] As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

(h) [~~(e)~~] As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 14.008. Section 1701.402, Occupations Code, is amended to correct references and relettered to eliminate duplicate citations to read as follows:

Sec. 1701.402. PROFICIENCY CERTIFICATES. (a) The

commission shall issue certificates that recognize proficiency based on law enforcement training, education, and experience. For this purpose the commission shall use the employment records of the employing agency.

(b) As a requirement for a basic proficiency certificate, the commission shall require completion of local courses or programs of instruction on federal and state statutes that relate to employment issues affecting peace officers and county jailers, including:

(1) civil service;

(2) compensation, including overtime compensation, and vacation time;

(3) personnel files and other employee records;

(4) management-employee relations in law enforcement organizations;

(5) work-related injuries;

(6) complaints and investigations of employee misconduct; and

(7) disciplinary actions and the appeal of disciplinary actions.

(c) An employing agency is responsible for providing the training required by this section.

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on asset forfeiture established by the commission under Section 1701.253(g) [~~1701.253(e)~~].

(e) [~~(d)~~] As a requirement for an intermediate proficiency

certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(h) [~~1701.253(e)~~].

SECTION 14.009. Section 1701.356, Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 1701.356. CERTAIN OFFICERS: REACTIVATION AND CONTINUING EDUCATION NOT REQUIRED. (a) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023, Government Code, may not be required to undergo training under Section 1701.352(b).

(b) An honorably retired commissioned officer of the Department of Public Safety who is a special ranger under Section 411.023, Government Code, or a retired state employee and who holds a permanent license issued before January 1981 and that was current on January 1, 1995:

(1) has the same rights and privileges as any other peace officer of this state;

(2) holds, notwithstanding Section 1701.316, an active license unless the license is revoked, suspended, or probated by the commission for a violation of this chapter; and

(3) is not subject to Section 1701.351.

SECTION 14.010. Section 1802.001(5), Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

(5) "Auctioneer" means an individual who sells or offers to sell property at auction, with or without receiving

valuable consideration, as a bid caller.

SECTION 14.011. Section 10(c), Article 9103, Revised Statutes, is repealed to conform to the repeal of Article 9103 by Chapter 268, Acts of the 74th Legislature, Regular Session, 1995.

ARTICLE 14A. OCCUPATIONS CODE UPDATE

PART 1. CHANGES RELATING TO SUBTITLE A, TITLE 6, OCCUPATIONS CODE

SECTION 14A.001. (a) Section 1001.003(c), Occupations Code, is amended to conform to Section 2, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The practice of engineering includes:

(1) consultation, investigation, evaluation, analysis, planning, engineering for program management, providing an expert engineering opinion or testimony, engineering for testing or evaluating materials for construction or other engineering use, and mapping;

(2) design, conceptual design, or conceptual design coordination of engineering works or systems;

(3) development or optimization of plans and specifications for engineering works or systems;

(4) planning the use or alteration of land or water or the design or analysis of works or systems for the use or alteration of land or water;

(5) [~~teaching an advanced engineering subject;~~

[~~(6)~~] responsible charge of engineering teaching or the teaching of engineering;

(6) [~~(7)~~] performing an engineering survey or study;

(7) [~~(8)~~] engineering for construction, alteration, or repair of real property;

(8) [~~(9)~~] engineering for preparation of an operating or maintenance manual;

(9) [~~(10)~~] engineering for review of the construction or installation of engineered works to monitor compliance with drawings or specifications;

(10) [~~(11)~~] a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature; or

(11) [~~(12)~~] any other professional service necessary for the planning, progress, or completion of an engineering service.

(b) Section 2, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.002. (a) Subchapter B, Chapter 1001, Occupations Code, is amended to conform to Section 1, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, by adding Section 1001.065 to read as follows:

Sec. 1001.065. EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(b) An employee of an institution of higher education or a

private or independent institution of higher education who is performing research or instructional work within the scope of the person's employment by the institution is exempt from the licensing requirements of this chapter.

(b) Section 1, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.003. (a) Section 1001.302(c), Occupations Code, is amended to conform to Section 3, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) For purposes of determining an applicant's qualifications under Subsection (a)(3), the board may not consider as active practice in engineering work:

(1) [~~may consider the responsible charge of~~] engineering teaching [~~as responsible charge of engineering work~~]; [~~and~~]

(2) [~~may not consider as active practice in engineering work:~~

[~~(A)~~] the mere execution, as a contractor, of work designed by an engineer; or

(3) [~~(B)~~] the supervision, as a foreman or superintendent, of the construction of work designed by an engineer.

(b) Section 3, Chapter 1502, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.004. (a) Subtitle A, Title 6, Occupations Code, is amended to codify Subchapters A-K, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), by adding Chapter

1002 to read as follows:

CHAPTER 1002. GEOSCIENTISTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1002.001. SHORT TITLE. This chapter may be cited as the Texas Geoscience Practice Act.

Sec. 1002.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Professional Geoscientists.

(2) "Certified geoscientist" means a geoscientist who has been certified in a discipline of geoscience by a professional organization, society, or association that maintains a certification program.

(3) "Geoscience" means the science of the earth and its origin and history, the investigation of the earth's environment and its constituent soils, rocks, minerals, fossil fuels, solids, and fluids, and the study of the natural and introduced agents, forces, and processes that cause changes in and on the earth.

(4) "Geoscientist" means a person qualified to engage in the public practice of geoscience because of the person's knowledge, acquired through education and practical experience, of geoscience, mathematics, and the supporting physical, chemical, mineralogical, morphological, and life sciences.

(5) "Licensed geoscientist" means a person who holds a license issued by the board under this chapter.

(6) "Practice for the public":

(A) means providing professional geoscientific

services:

(i) for a governmental entity in this state;

(ii) to comply with a rule established by this state or a political subdivision of this state; or

(iii) for the public or a firm or corporation in this state if the practitioner assumes the ultimate liability for the work product; and

(B) does not include services provided for the express use of a firm or corporation by an employee or consultant if the firm or corporation assumes the ultimate liability for the work product.

(7) "Public practice of geoscience" means the practice for the public of geoscientific services or work, including consulting, investigating, evaluating, analyzing, planning, mapping, and inspecting geoscientific work and the responsible supervision of those tasks.

(8) "Responsible charge" means the independent control and direction of geoscientific work or the supervision of geoscientific work by the use of initiative, skill, and independent judgment.

Sec. 1002.003. APPLICATION OF SUNSET ACT. The Texas Board of Professional Geoscientists 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, 2013.

Sec. 1002.004. APPLICATION OF CHAPTER. (a) In this

section:

(1) "Driller" has the meaning assigned by Section 1901.001.

(2) "Engineer" has the meaning assigned by Section 1001.002.

(3) "Installer" has the meaning assigned by Section 1902.001.

(4) "Licensed driller" means a person who holds a license issued by the state under Chapter 1902.

(5) "Licensed installer" means a person who holds a license issued under Chapter 1902.

(6) "Practice of engineering" has the meaning assigned by Section 1001.003.

(7) "Professional surveying" has the meaning assigned by Section 1071.002.

(b) This chapter does not authorize the practice of professional surveying by a licensed geoscientist. This chapter does not apply to a qualified and registered surveyor who confines the surveyor's practice to acts of surveying allowed under Chapter 1071.

(c) This chapter does not authorize the practice of engineering by a licensed geoscientist.

(d) This chapter does not require an engineer, or a person acting under the supervision of an engineer, who performs service or work that is both engineering and geoscience to be licensed as a geoscientist or to work under the supervision of a licensed geoscientist.

(e) A recommendation, design, analysis, redesign, or review and evaluation, the supervision, or a summary analysis of an engineered structure or work, the performance of which requires engineering education, training, and experience in the application of special knowledge of mathematical, physical, and engineering sciences, is engineering and is subject to Chapter 1001.

(f) This chapter does not permit a licensed geoscientist to perform an engineering analysis supporting an engineering design unless the action is under the supervision of an engineer.

(g) This chapter does not permit a licensed geoscientist to provide construction quality control and evaluation, to perform materials engineering and testing, or to design, develop, or perform engineering review and evaluation of engineering plans and engineering specifications for an engineered structure or work unless the action is under the supervision of an engineer.

(h) With regard to an environmental and pollution remediation project, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the project by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of a component of the project consisting of an engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(i) With regard to a geoscientific investigation of geological conditions affecting an engineered structure, work, or

process, this chapter:

(1) permits the characterization, study, appraisal, investigation, analysis, and geoscientific review and evaluation of and the making of recommendations regarding the geoscientific components of the engineered structure, work, or process by a licensed geoscientist; and

(2) does not permit the design, development, or performance of engineering review and evaluation of the engineered structure, work, or process or a related constructed improvement by a licensed geoscientist.

(j) The board and the Texas Board of Professional Engineers by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 1001 or a rule adopted under that chapter.

(k) This chapter does not authorize a licensed geoscientist to act as or offer to perform services as a driller or installer. This chapter does not apply to a licensed driller or licensed installer who confines the driller's or installer's activities to activities regulated under Chapter 1901 or 1902, respectively.

(l) The board and the executive director of the Texas Department of Licensing and Regulation by rule, memorandum of understanding, or other appropriate procedure or document shall jointly resolve any conflict between this chapter or a rule adopted under this chapter and Chapter 51, 1901, or 1902 or a rule adopted under one of those chapters.

[Sections 1002.005-1002.050 reserved for expansion]

SUBCHAPTER B. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

Sec. 1002.051. BOARD MEMBERSHIP. (a) The Texas Board of Professional Geoscientists shall administer this chapter.

(b) The board is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Six members of the board must be licensed geoscientists.

(d) Three members of the board must be members of the public.

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

Sec. 1002.052. MEMBER ELIGIBILITY. (a) A member of the board must:

(1) be a citizen of the United States;

(2) have been a resident of this state for at least the three years preceding appointment; and

(3) be at least 25 years of age.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by an occupational regulatory agency in a discipline of geoscience;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 1002.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "society or trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used in Section 13, Fair Labor Standards Act of 1938 (29 U.S.C. Section 213), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a society or trade association in a discipline of geoscience; or

(2) the person's spouse is an officer, manager, or paid consultant of a society or trade association in a discipline of geoscience.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 1002.054. TERMS. (a) Members of the board serve

staggered six-year terms, with the terms of three members expiring February 1 of each odd-numbered year.

(b) A member of the board may not serve more than two consecutive full terms.

Sec. 1002.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board that a member:

(1) is no longer qualified for appointment to the board;

(2) engages in misconduct, is determined to be incompetent, neglects the member's official duties, or engages in malfeasance;

(3) commits a violation of this chapter resulting in disciplinary action or a felony; or

(4) fails without excuse to attend at least half of the regularly scheduled meetings held in a calendar year while the member is a member of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a

potential ground for removal exists.

Sec. 1002.056. REIMBURSEMENT FOR TRAVEL EXPENSES. A member of the board is entitled to reimbursement for the travel expenses incurred by the member while conducting the business of the board, as provided by the General Appropriations Act.

Sec. 1002.057. OFFICERS. (a) The board shall elect biennially from its own membership a presiding officer, assistant presiding officer, and secretary-treasurer. A member may not hold one of those positions for more than two consecutive two-year periods. A member serves in the position at the will of the board and may be removed from the position by a two-thirds majority vote of the board.

(b) The board may appoint an assistant secretary and other assistants who are not members of the board to assist the board and exercise its authority in carrying out the board's powers and duties.

Sec. 1002.058. OFFICE. The board shall maintain its office in Austin.

Sec. 1002.059. MEETINGS. The board shall hold at least two regular meetings in each calendar year. A special meeting may be held at a time permitted by board rule.

Sec. 1002.060. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with

information regarding:

(1) the legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigative authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

[Sections 1002.061-1002.100 reserved for expansion]

SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 1002.101. EXECUTIVE DIRECTOR. The board shall appoint an executive director, who shall be responsible for managing the day-to-day affairs of the board, including:

(1) arranging for and supervising the necessary support, secretarial, and clerical services;

(2) obtaining space for holding examinations, meetings, and conferences;

(3) printing or purchasing examinations;

(4) printing and mailing forms, information, and licenses;

(5) sending notices, collecting fees, and issuing receipts;

(6) conducting the correspondence of the board, including replying to routine requests for information;

(7) maintaining the minutes and records of the board;

(8) keeping records of receipts and disbursements; and

(9) providing necessary investigative services.

Sec. 1002.102. RECEIPTS AND DISBURSEMENTS. The executive director shall receive, administer, and account for all money received under this chapter and shall transfer the money to the comptroller.

Sec. 1002.103. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 1002.104. QUALIFICATIONS AND STANDARDS OF CONDUCT

INFORMATION. The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 1002.105. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement of employees within the board. The program must require intra-agency posting of all positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on documented employee performance. All decisions regarding merit pay for a board employee must be based on that system.

Sec. 1002.106. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of

personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must be:

(1) updated annually;

(2) reviewed by the Commission on Human Rights for compliance with Subsection (b)(1); and

(3) filed with the governor.

[Sections 1002.107-1002.150 reserved for expansion]

SUBCHAPTER D. BOARD POWERS AND DUTIES

Sec. 1002.151. GENERAL RULEMAKING AUTHORITY. The board shall adopt and enforce rules consistent with this chapter and necessary for the performance of its duties.

Sec. 1002.152. FEES. The board may set reasonable and necessary fees to be charged applicants and license holders under this chapter, including fees for application, examination, licensure, and renewal of a license. The board shall base a fee for examination in a discipline of geoscience on the costs associated with preparing, administering, and grading that examination.

Sec. 1002.153. CODE OF PROFESSIONAL CONDUCT. (a) The board by rule shall adopt a code of professional conduct that is binding on all license holders under this chapter.

(b) The board may enforce the code by imposing sanctions as provided by this chapter.

Sec. 1002.154. ENFORCEMENT; REFERRAL OF COMPLAINTS AND INVESTIGATIONS. (a) The board shall enforce this chapter. Any member of the board may present to a prosecuting officer a complaint relating to a violation of this chapter. The board through its members, officers, counsel, or agents may assist in the trial of a case involving the violation of this chapter, subject to the control of the prosecuting officer.

(b) Notwithstanding Subsection (a), the board shall refer a complaint or investigation involving the unlicensed practice of geoscience by a person who is licensed as an engineer, surveyor, driller, installer, or member of another similar profession to the agency that issued the license to the person.

(c) The board may administer oaths and affirmations and issue subpoenas to compel the attendance of witnesses and the production of evidence.

(d) The attorney general shall act as legal advisor to the board and shall provide legal assistance as necessary in enforcing this chapter.

Sec. 1002.155. RECOGNITION OF USE OF DESIGNATIONS. (a) The board by rule may recognize the use of the designations used by a professional organization, society, or association that maintains a certification program in a discipline of geoscience if:

(1) the requirements for that certification are acceptable to the board;

(2) the full name or recognized abbreviation of the organization, society, or association granting the certification is stated following or in conjunction with the use of the

designation or abbreviation; and

(3) the designation or abbreviation is not used in a manner that is misleading or that creates an impression that the person is licensed to practice geoscience for the public unless the person is licensed under this chapter.

(b) The board by rule shall recognize the title "geological engineer," "geotechnical engineer," "hydraulic engineer," or "agricultural engineer" or another legitimate engineering title as a legitimate engineering title separate from geoscience, the use of which requires licensure as an engineer.

Sec. 1002.156. ESTABLISHMENT OF DISCIPLINES. The board by rule shall establish the disciplines of geoscience in which a person may be licensed and the requirements for eligibility for a license in each discipline.

Sec. 1002.157. AGREEMENTS TO DEVELOP UNIFORM STANDARDS. The board may enter into agreements with licensing or registration boards in other states and other appropriate organizations, societies, associations, and agencies to develop uniform standards for:

(1) the licensing or registration of geoscientists;

(2) accrediting educational programs;

(3) establishing reciprocal and temporary licenses;

(4) developing regional or national examinations;

(5) evaluating applicants; or

(6) other purposes consistent with this chapter.

Sec. 1002.158. AUTHORITY TO INCUR ADMINISTRATIVE EXPENSES. In administering this chapter, the board may:

(1) appoint committees;

(2) employ personnel, contractors, and consultants;

(3) lease or purchase furnishings, equipment, and supplies;

(4) lease office space; and

(5) incur other similar expenses.

Sec. 1002.159. ROSTER OF LICENSE HOLDERS. (a) The board shall maintain a roster stating the name, discipline of geoscience, and place of business of each licensed geoscientist.

(b) The board shall maintain copies of the roster and shall provide a copy on request to a state agency, a county or municipal clerk or building official, or a license holder. The board may charge a license holder a reasonable fee set by the board for providing the copy.

(c) The board shall provide a copy of the roster to another person on written request, subject to payment of a reasonable fee set by the board.

Sec. 1002.160. LIST OF GOVERNMENTAL ENTITIES WITH COMPARABLE REQUIREMENTS AND WITH WHICH RECIPROCITY AGREEMENTS EXIST. The board shall maintain a list of each state or foreign country in which the requirements and qualifications for licensure or registration are comparable to those established in this state and with which a reciprocity agreement exists.

[Sections 1002.161-1002.200 reserved for expansion]

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

Sec. 1002.201. PUBLIC INTEREST INFORMATION. The board shall:

(1) prepare information of public interest describing:

(A) the regulatory functions of the board; and

(B) the board's procedures by which complaints are filed with and resolved by the board; and

(2) make the information available to the public and appropriate state agencies.

Sec. 1002.202. COMPLAINTS. (a) A person may file a complaint alleging a violation of this chapter or a rule adopted under this chapter.

(b) A complaint must be:

(1) in writing;

(2) sworn to by the person making the complaint; and

(3) filed with the secretary-treasurer.

Sec. 1002.203. RECORDS OF COMPLAINTS. (a) The board shall maintain a file on each complaint filed with the board. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint was received by the board;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Sec. 1002.204. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(b) The board shall investigate all complaints brought to its attention and may employ investigators, expert witnesses, and hearing officers, appoint advisory committees, and conduct hearings to determine whether disciplinary or other action should be taken.

Sec. 1002.205. PUBLIC PARTICIPATION. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

[Sections 1002.206-1002.250 reserved for expansion]

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 1002.251. LICENSE REQUIRED. (a) Unless exempted by this chapter, a person may not engage in the public practice of geoscience unless the person holds a license issued under this chapter.

(b) Unless the person is licensed under this chapter, a person may not:

(1) use the term "Licensed Professional Geoscientist" or the initials "P.G." as part of a professional, business, or commercial identification or title; or

(2) otherwise represent to the public that the person is qualified to:

(A) practice as a geoscientist; or

(B) engage in the public practice of geoscience.

(c) A person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by municipal or county ordinance, state or federal law, state agency rule, or federal regulation that incorporates or is based on a geoscientific study or geoscientific data unless the person is licensed under this chapter.

Sec. 1002.252. EXEMPTIONS. The following activities do not require a license under this chapter:

(1) geoscientific work performed by an employee or a subordinate of a license holder under this chapter if the work does not include the responsible charge of geoscientific work and is performed under the direct supervision of a licensed geoscientist who is responsible for the work;

(2) geoscientific work performed by an officer or employee of the United States practicing solely as such an officer or employee;

(3) geoscientific work performed exclusively in exploring for and developing oil, gas, or other energy resources, base metals, or precious or nonprecious minerals, including sand, gravel, or aggregate, if the work is done in and for the benefit of

private industry;

(4) geoscientific research conducted through an academic institution, local, state, or federal governmental agency, nonprofit research institution, or for-profit organization, including submission of a report on the research to a public agency, unless the work is covered by Section 1002.251(c);

(5) teaching geoscience or a related physical or natural science;

(6) work customarily performed by a cartographer, technician, or physical or natural scientist, including a geologist, geophysicist, soil scientist, chemist, archaeologist, geographer, or oceanographer, if the work does not include the public practice of geoscience;

(7) work performed by an archaeologist, geoscientist, or other person conducting a stratigraphic or historical geological investigation for archaeological purposes;

(8) testifying or preparing and presenting an exhibit or document for the sole purpose of being placed in evidence before an administrative or judicial tribunal or hearing if the testimony, exhibit, or document does not imply that the person is licensed under this chapter;

(9) the evaluation by a state agency, as defined by Section 2001.003, Government Code, or by a hearing examiner of an exhibit or document offered or placed in evidence before an administrative tribunal; or

(10) the determination of the suitability of a site for a specific on-site sewage disposal system by a person who has

successfully completed site evaluation training approved by the Texas Commission on Environmental Quality and is:

(A) registered by the commission as:

(i) an installer, if the commission recognizes only one level of installer; or

(ii) the highest level of installer recognized by the commission, if the commission recognizes more than one level of installer;

(B) a designated representative; or

(C) a registered professional sanitarian.

Sec. 1002.253. LICENSE APPLICATION. (a) An applicant for a license under this chapter, including an applicant for a temporary or reciprocal license, must apply on a form prescribed by the board that is signed and sworn to by the applicant before a notary public.

(b) The application must include:

(1) information concerning the applicant's education;

(2) a detailed summary of the applicant's relevant work experience; and

(3) a signed statement that the applicant has read and will comply with the code of professional conduct adopted under this chapter.

(c) The application must be accompanied by:

(1) not fewer than five reference letters, of which not fewer than three are from geoscientists, or other professionals acceptable to the board, who have personal knowledge of the applicant's relevant work experience; and

(2) the appropriate application fee.

Sec. 1002.254. EXAMINATIONS. (a) The board may prepare, administer, and grade oral and written examinations required or permitted under this chapter.

(b) The board may adopt or recognize, in whole or in part, an examination prepared, administered, or graded by another organization, on a regional or national basis, that the board determines appropriate to measure the qualifications of an applicant for a license under this chapter if:

(1) the examination questions, the correct answers, and the applicant's completed examination are available to the board; and

(2) the board retains the authority to determine a passing grade for a license in this state.

Sec. 1002.255. LICENSE ELIGIBILITY. (a) To be eligible for a license under this chapter, an applicant must:

(1) be of good moral and ethical character as attested to by letters of reference submitted in behalf of the applicant or as otherwise determined by the board;

(2) have:

(A) graduated from a course of study in a discipline of geoscience satisfactory to the board that consists of at least four years of study and includes at least 30 semester hours or 45 quarter hours of credit in geoscience, of which at least 20 semester hours or 30 quarter hours of credit must be in upper-level college courses in that discipline; or

(B) satisfactorily completed other equivalent educational requirements as determined by the board;

(3) have a documented record of at least five years of qualifying work experience, as provided by Section 1002.256, that demonstrates that the applicant is qualified to assume responsible charge of geoscientific work;

(4) pass an examination required by the board covering the fundamentals and practice of the appropriate discipline of geoscience; and

(5) meet any other requirements established by the board.

(b) The board may accept qualifying work experience in lieu of the education required by Subsection (a)(2).

Sec. 1002.256. QUALIFYING WORK EXPERIENCE. (a) The board shall apply the following standards in evaluating the work experience of an applicant for a license under Section 1002.255:

(1) each year of work experience acceptable to the board constitutes one year of qualifying work experience if the experience was acquired under the direct supervision of:

(A) a geoscientist who is licensed in this state or in another state under requirements for licensure or registration that are comparable to those in this chapter;

(B) a geoscientist who meets the educational and work experience requirements for licensure but is not required to be licensed under this chapter; or

(C) another professional acceptable to the board;

(2) each year of work experience acceptable to the board and acquired before September 1, 2003, constitutes one year

of qualifying work experience if the experience:

(A) was acquired under the direct supervision of:

(i) a geoscientist who meets the educational and work experience requirements for a license under this chapter;

(ii) a geoscientist who is licensed or registered under comparable requirements in another state; or

(iii) another professional acceptable to the board; or

(B) would constitute the responsible charge of professional geoscientific work as determined by the board; and

(3) each year of full-time graduate study in a discipline of geoscience that is acceptable to the board constitutes one year of qualifying work experience.

(b) The board may accept research in or the teaching of a discipline of geoscience at the college or university level as qualifying work experience if the research or teaching, in the judgment of the board, is comparable to work experience obtained in the practice of geoscience.

(c) For purposes of Subsection (a)(3), the board may not accept more than two years of full-time graduate study in a discipline of geoscience as qualifying work experience.

Sec. 1002.257. RECIPROCAL LICENSE. (a) The board by rule may authorize the licensing of a person who has not met the examination requirement of Section 1002.255(a)(4) if the person is licensed or registered to practice a discipline of geoscience under the law of another state or a foreign country.

(b) The board may issue a license to an applicant who provides proof of licensure or registration under requirements that the board determines to be substantially similar to those established by this chapter and who pays the required fees.

Sec. 1002.258. TEMPORARY LICENSE. (a) The board may issue a temporary license to a person who:

(1) is not a resident of this state and does not have an established place of business in this state but who seeks to engage in the public practice of geoscience in this state for a temporary period; or

(2) applies for a reciprocal license and seeks to engage in the public practice of geoscience pending a determination on the application for the reciprocal license.

(b) An applicant for a temporary license must:

(1) apply to the board for a temporary license, provide proof of licensure or registration in another state or a foreign country and pay the required fees;

(2) agree to comply with the signature requirements of Section 1002.263(b) and to affix the person's seal from the jurisdiction in which the person is licensed or registered on all work completed while practicing under the temporary license; and

(3) file the required information and reports and comply with other requirements established by the board concerning the person's temporary practice.

(c) A temporary license issued under Subsection (a)(1) expires on the 90th day after the date of issuance. A temporary license issued under Subsection (a)(2) expires on the date the

reciprocal license is issued or denied.

Sec. 1002.259. WAIVER OF REQUIREMENTS. (a) Except for the payment of required fees, the board may waive any of the requirements for licensure by a two-thirds vote of the entire board if the applicant makes a written request and shows good cause and the board determines that the applicant is otherwise qualified for a license.

(b) Each requirement waived under this section and the basis for the waiver must be recorded in the applicant's record and in the proceedings of the board.

Sec. 1002.260. CONFIDENTIALITY OF CERTAIN INFORMATION. A statement made by a person who provides a reference for an applicant for a license under this chapter or provides any information compiled by or submitted to the board relating to an applicant is privileged and confidential and may be used only by the board or an employee or agent of the board who is directly involved in the application or licensure process. Confidential information under this section is not subject to discovery, subpoena, or other disclosure in any proceeding.

Sec. 1002.261. ISSUANCE OF LICENSE. (a) The board shall issue a license to an applicant who meets the requirements of this chapter on payment of the applicable license fee.

(b) The license must:

(1) show the full name of the license holder;

(2) have a serial number;

(3) state the license holder's discipline of geoscience; and

(4) be signed by an appropriate officer of the board under the board's seal.

(c) The issuance by the board of a license is prima facie evidence that during the term of the license the license holder is entitled to all the rights and privileges of a licensed geoscientist.

(d) A licensed geoscientist may engage in the practice of any discipline of geoscience regardless of the discipline of geoscience stated on the person's license.

Sec. 1002.262. LICENSE DURATION; EXPIRATION. (a) A license is valid for a period not to exceed three years and expires according to a schedule established by board rule.

(b) On expiration, a license is invalid and may not be renewed except as provided by this chapter.

Sec. 1002.263. SEAL. (a) On issuance of a license, the license holder must obtain a seal of a design established by the board bearing:

(1) the license holder's name;

(2) the license number;

(3) the words "Licensed Professional Geoscientist"; and

(4) the license holder's discipline of geoscience.

(b) A geoscientific report, document, or other record, as defined by the board, that is offered to the public and prepared or issued by or under the supervision of a licensed geoscientist must, in accordance with rules adopted by the board, include the full name, signature, and license number of the license holder who

prepared the report, document, or other record or under whose supervision it was prepared and bear an impression of the license holder's seal.

Sec. 1002.264. REPLACEMENT OF LOST, DESTROYED, OR MUTILATED LICENSE. The board shall issue a new license to replace a license that has been lost, destroyed, or mutilated, subject to the rules and fees adopted by the board.

[Sections 1002.265-1002.300 reserved for expansion]

SUBCHAPTER G. LICENSE RENEWAL

Sec. 1002.301. LICENSE RENEWAL. (a) Not later than the 60th day before the date the license expires, the board shall notify a license holder of:

(1) the date the license expires; and

(2) the amount of the fee required for renewal.

(b) The board shall renew the license of a license holder who before the date the license expires or within a period not to exceed 60 days after the expiration date:

(1) submits the required renewal application and fee and a penalty for late renewal, if required; and

(2) meets the requirements for renewal established by the board.

(c) The board by rule may establish conditions and fees for the reissuance of a license that has lapsed, expired, or been suspended or revoked.

Sec. 1002.302. CONTINUING PROFESSIONAL EDUCATION. As a condition for renewal of a license, the board may require each license holder to participate in continuing professional education

on a periodic or other basis.

[Sections 1002.303-1002.350 reserved for expansion]

SUBCHAPTER H. PUBLIC PRACTICE OF GEOSCIENCE

Sec. 1002.351. PUBLIC PRACTICE OF GEOSCIENCE BY FIRM OR CORPORATION. (a) A firm or corporation may engage in the public practice of geoscience only if:

(1) the geoscientific work is performed by, or under the supervision of, a licensed geoscientist who is in responsible charge of the work and who signs and seals all geoscientific reports, documents, and other records as required by this chapter; or

(2) the principal business of the firm or corporation is the public practice of geoscience as determined by board rule and a principal of the firm or an officer or director of the corporation is a licensed geoscientist and has overall supervision and control of the geoscientific work performed in this state.

(b) The board may adopt rules relating to the public practice of geoscience by a firm or corporation. Rules adopted under this section must recognize that this chapter does not apply to an engineer or engineering firm that performs service or work that is both engineering and geoscience. A firm that engages in the practice of both engineering and geoscience is exempt from any firm registration requirements created under this subsection.

(c) Except as provided by this section, an individual, firm, or corporation may not represent to the public that the individual, firm, or corporation is a licensed geoscientist or able to perform geoscientific services or prepare a geoscientific report,

document, or other record that requires the signature and seal of a license holder under Section 1002.263(b).

[Sections 1002.352-1002.400 reserved for expansion]

SUBCHAPTER I. LICENSE DENIAL AND DISCIPLINARY PROCEDURES

Sec. 1002.401. DENIAL OF LICENSE. (a) The board may deny a license:

(1) to an applicant who fails to satisfy a requirement of this chapter; or

(2) on a determination by the board that there is probable cause to believe that an applicant has violated:

(A) this chapter;

(B) a provision of this chapter to which a license holder would be subject; or

(C) a comparable provision in the licensing or registration law of another state.

(b) The board may not issue a license pending the disposition of a complaint alleging a violation in this or another state if the board has notice of the alleged violation.

(c) The board shall notify an applicant who is denied a license of the reason for denial in writing not later than the 30th day after the date of the board's decision. Not later than the 30th day after the date of receipt of the notice, the applicant may make a written request for a hearing. In the absence of a request for a hearing, the board's action is final.

Sec. 1002.402. GROUNDS FOR DISCIPLINARY ACTION. The board may impose appropriate sanctions for:

(1) the practice of fraud or deceit in obtaining a

license as a geoscientist;

(2) incompetence, misconduct, fraud, gross negligence, or repeated incidents of negligence in the public practice of geoscience;

(3) conviction of a license holder of a crime involving moral turpitude or a felony;

(4) the imposition of an administrative or civil penalty or a criminal fine, or imprisonment or probation instead of a fine, for a misdemeanor relating to or arising out of the public practice of geoscience;

(5) the issuance of a cease and desist order or a similar sanction relating to or arising out of the public practice of geoscience;

(6) using the seal of another license holder or using or allowing the use of the license holder's seal on geoscientific work not performed by or under the supervision of the license holder;

(7) aiding or abetting a person in a violation of this chapter;

(8) the revocation or suspension of a license, the denial of renewal of a license, or other disciplinary action taken by a state agency, board of registration, or similar licensing agency for geoscientists or a profession or occupation related to the public practice of geoscience;

(9) practicing or offering to practice geoscience or representing to the public that the person or the person's firm or corporation is licensed or qualified to practice geoscience if the

person is not licensed under this chapter or the person's firm or corporation does not employ a licensed geoscientist as required under this chapter; or

(10) violating this chapter, a rule adopted under this chapter, including the code of professional conduct, or a comparable provision of the laws or rules regulating the practice of geoscience in another state or country.

Sec. 1002.403. DISCIPLINARY ACTIONS. (a) The board may take the following disciplinary actions:

(1) refuse to issue or renew a license;

(2) permanently revoke a license;

(3) suspend a license for a specified time, not to exceed three years, to take effect immediately notwithstanding an appeal if the board determines that the license holder's continued practice constitutes an imminent danger to the public health, safety, or welfare;

(4) issue a public or private reprimand to an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(5) impose limitations, conditions, or restrictions on the practice of an applicant, a license holder, or an individual, firm, or corporation practicing geoscience under this chapter;

(6) require that a license holder participate in a peer review program under rules adopted by the board;

(7) require that a license holder obtain remedial education and training prescribed by the board;

(8) impose probation on a license holder requiring

regular reporting to the board;

(9) require restitution, in whole or in part, of compensation or fees earned by a license holder, individual, firm, or corporation practicing geoscience under this chapter;

(10) impose an appropriate administrative penalty as provided by Subchapter J for a violation of this chapter or a rule adopted under this chapter on a license holder or a person who is not licensed and is not exempt from licensure under this chapter; or

(11) issue a cease and desist order.

(b) The board may not impose a sanction for a ground described by Section 1002.402(8) that exceeds in severity or duration the sanction on which the board's action is based.

Sec. 1002.404. RIGHT TO HEARING. A person is entitled to a hearing before the board may suspend or revoke the person's license.

Sec. 1002.405. REINSTATEMENT. (a) On application, the board may reinstate a license to engage in the public practice of geoscience to a person whose license has been revoked if a majority of the entire board votes in favor of the reinstatement.

(b) As a condition for reinstatement, the board may:

(1) review the applicant's qualifications and experience;

(2) require continuing professional education;

(3) conduct a reexamination on a periodic or other basis; or

(4) require other evidence of the competence of the applicant.

[Sections 1002.406-1002.450 reserved for expansion]

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 1002.451. IMPOSITION OF PENALTY. The board may impose an administrative penalty against a person licensed under this chapter or any other person who violates this chapter or a rule adopted or order issued under this chapter.

Sec. 1002.452. AMOUNT OF PENALTY. (a) The board may include in the amount of the administrative penalty the actual costs of investigating and prosecuting the violation.

(b) The amount of the penalty may not exceed $100 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of any prohibited acts; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts or resistance to efforts to correct the violation; and

(6) any other matter that justice may require.

Sec. 1002.453. ADMINISTRATIVE PROCEDURE. (a) The board shall adopt rules of procedure for the imposition of an

administrative penalty.

(b) Rules adopted under this section must conform to the requirements of Chapter 2001, Government Code.

(c) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Sec. 1002.454. OPTIONS FOLLOWING FINAL ORDER: PAY OR APPEAL. (a) Not later than the 30th day after the date the board's order becomes final, the person shall:

(1) pay the administrative penalty;

(2) pay the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both; or

(3) without paying the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty that is effective until judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the

penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) On receipt of a copy of an affidavit under Subsection (b)(2), the executive director may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files the affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 1002.455. COLLECTION OF PENALTY. If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Sec. 1002.456. JUDICIAL REVIEW. The order of the board is subject to judicial review.

Sec. 1002.457. REMITTANCE OF PENALTY AND INTEREST. (a) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

(b) If after judicial review the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond if the penalty is not imposed or order the release of the bond after the person pays the penalty if the person posted a supersedeas bond.

(c) Interest accrues under Subsection (b)(1) at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

[Sections 1002.458-1002.500 reserved for expansion]

SUBCHAPTER K. OTHER ENFORCEMENT PROVISIONS

Sec. 1002.501. INJUNCTION. The board may seek an injunction against a violation of this chapter or a rule adopted under this chapter.

(b) Subchapters A-K, Texas Geoscience Practice Act (Article 3271b, Vernon's Texas Civil Statutes), are repealed.

PART 2. CHANGES RELATING TO SUBTITLE B, TITLE 6, OCCUPATIONS CODE

SECTION 14A.051. Subchapter A, Chapter 1051, Occupations Code, is amended to more closely conform to the law from which it was derived by adding Section 1051.0015 to read as follows:

Sec. 1051.0015. PURPOSE OF REGISTRATION REQUIREMENT. The purpose of Section 1051.301(a) is to:

(1) safeguard life, health, property, and the public welfare; and

(2) protect the public against the irresponsible practice of architecture.

SECTION 14A.052. (a) Section 1051.204(b), Occupations Code, is amended to conform to Section 4, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The board shall set the required renewal fee for:

(1) a resident of this state in an amount that is equal to the sum of:

(A) the amount determined by the board as reasonable and necessary to cover administrative costs; and

(B) an amount, not to exceed $10, determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section 1051.206; and

(2) [~~plus $10. The required renewal fee for~~] nonresidents [~~shall be~~] in an amount determined by the board.

(b) Section 4, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.053. (a) Section 1051.206, Occupations Code, is amended by amending Subsections (a), (b), and (d) and adding Subsections (e) and (f) to conform to Sections 1 and 11, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The board shall provide for the awarding of [~~administer~~] scholarships to applicants for examination under this chapter in a manner the board determines best serves the public purpose of:

(1) promoting the professional needs of the state;

(2) increasing the number of highly trained and educated architects available to serve the residents of the state;

(3) improving the state's business environment and encouraging economic development; and

(4) identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture.

(b) In determining what best serves the public purpose of the scholarships as described by Subsection (a), the board shall consider at least:

(1) the financial need of each person who applies for a scholarship under this section; and

(2) the importance of distributing the scholarships among applicants who are graduates of the various universities or colleges of architecture in this state.

(d) The board shall deposit the examination fee scholarship portion of [~~Scholarships under this section are funded by the $10 added to~~] each renewal fee under Section 1051.204(b) or 1051.355(b) to the credit of the scholarship fund for architectural examination applicants. The scholarship fund for architectural examination applicants is an account in the general revenue fund that may be appropriated only to the board to:

(1) provide scholarships to applicants for examination under this chapter; and

(2) pay the administrative costs associated with the examination fee scholarship program.

(e) Interest earned on the scholarship fund for architectural examination applicants shall be credited to the fund.

At the end of each state fiscal year, any unexpended balance in the scholarship fund shall remain in the fund.

(f) Not [~~The board may not use~~] more than 15 percent of the amount appropriated to the board for scholarships under this section may be used to pay the scholarship program's administrative costs. The board may contract with the Texas Higher Education Coordinating Board or a private entity to administer the examination fee scholarship program established under this section [~~of administering the scholarships~~].

(b) Section 1, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.054. (a) Section 1051.355(b), Occupations Code, is amended to conform to Section 3, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A person whose certificate of registration is on inactive status must pay an annual [~~a~~] renewal fee [~~of $10~~] on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount equal to the sum of:

(1) the amount determined by the board as reasonable and necessary to cover the costs of administering this section; and

(2) the additional amount required under Section 1051.204(b)(1)(B) for the examination fee scholarship program.

(b) Section 3, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.055. (a) Section 1051.402, Occupations Code, is amended to conform to Section 2, Chapter 861, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 1051.402. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1051.401 for:

(1) a violation of this chapter or a board rule adopted under this chapter;

(2) a failure to provide or to timely provide [~~plans and specifications~~] to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department [~~as required by Article 9102, Revised Statutes~~];

(3) a cause for which the board may refuse to issue a certificate of registration;

(4) gross incompetency;

(5) recklessness in the construction or alteration of a building by an architect designing, planning, or observing the construction or alteration; or

(6) dishonest practice by the holder of a certificate of registration.

(b) Section 2, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.056. (a) Section 1052.001(3), Occupations Code, is amended to conform to Section 1, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(3) "Landscape architecture":

(A) means the art and science of landscape analysis, landscape planning, and landscape design;

(B) includes the performance of professional

services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(i) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(ii) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(iii) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(a) the preparation, review, and analysis of master and site plans for landscape use and development;

(b) the analysis of environmental, physical, and social considerations related to land use;

(c) the preparation of drawings, construction documents, and specifications; and

(d) construction observation;

(iv) design coordination and review of technical submissions, plans, and construction documents prepared by persons working under the direction of the landscape architect;

(v) the preparation of feasibility studies, statements of probable construction costs, and reports and site

selection for landscape development and preservation;

(vi) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(vii) the analysis and design of:

(a) site landscape grading and drainage;

(b) systems for landscape erosion and sediment control; and

(c) pedestrian walkway systems;

(viii) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(ix) the collaboration of landscape architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(x) field observation of landscape site construction, revegetation, and maintenance; and

(C) does not include:

(i) traffic, roadway, or pavement engineering;

(ii) the design of utilities;

(iii) the engineering or study of hydrologic management of stormwater systems or floodplains;

(iv) the making of final plats; or

(v) a service or function within the practice of engineering, architecture, or public surveying as defined by Chapter 1001, 1051, or 1071 [~~a professional service performed in connection with the development of a land area to the extent that the principal purpose of the service is to arrange and modify the natural scenery for aesthetic effect while considering the intended use of the land~~].

(b) Section 1052.001(5), Occupations Code, is repealed to conform to Section 1, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 1, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.057. (a) Section 1052.002, Occupations Code, is repealed to conform to Section 2, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1052.003, Occupations Code, is amended to conform to Section 2, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1052.003. PRACTICE OF LANDSCAPE ARCHITECTURE [~~EXEMPTIONS~~]. (a) A person may not engage in the practice of landscape architecture unless the person holds a certificate of registration under this chapter or [~~is exempt from registration under this chapter if~~] the person:

(1) holds a license or permit issued by the Department of Agriculture, if that license or permit authorizes the person to engage in the business of selling nursery stock in this state;

(2) is a building designer;

(3) is a landscape contractor;

(4) is a landscape designer;

(5) is a golf course designer or planner involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of the service is golf course design or planning;

(6) makes a plan, drawing, or specification for personal use, if the plan, drawing, or specification is for property that is owned by that person;

(7) makes a plan, drawing, or specification for a single-family residence;

(8) makes a plan, drawing, or specification for a multifamily residential project that is not an assisted living facility as defined by Section 247.002, Health and Safety Code;

(9) makes a plan, drawing, or specification for residential housing owned and operated by an institution of higher education as defined by Section 61.003, Education Code;

(10) is engaged in the location, arrangement, and design of any tangible objects and features that are incidental and necessary to landscape development, preservation, and aesthetic and functional enhancement, if that engagement is for:

(A) the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture; or

(B) the making of land surveys for official approval or recording;

(11) is licensed in this state to practice:

(A) architecture;

(B) engineering; or

(C) land surveying;

(12) is primarily engaged in the business of park and recreation planning and involved in services such as consultation, investigation, reconnaissance, research, design, preparation of drawings and specifications, and supervision, if the dominant purpose of those services is park and recreation design and planning;

(13) is primarily engaged in maintaining an existing landscape;

(14) makes a plan, drawing, or specification for property primarily used for farm, ranch, agriculture, wildlife management, or habitat restoration purposes; or

(15) is a volunteer acting under the direction of a governmental entity for a public purpose [~~is:~~

[~~(1) an agriculturist;~~

[~~(2) an agronomist;~~

[~~(3) a forester;~~

[~~(4) a garden or lawn caretaker;~~

[~~(5) a gardener or contract gardener;~~

[~~(6) a grader or cultivator of land;~~

[~~(7) a horticulturist;~~

[~~(8) a nurseryman; or~~

[~~(9) a person preparing plans for property owned by the person~~].

(b) A person described by Subsection (a) may not use the term "landscape architect," "landscape architectural," or "landscape architecture," or any similar term, to describe the person or the services the person provides [~~architect" in a sign, card, listing, or advertisement or otherwise represent the person to be a landscape architect~~] unless the person holds a certificate of registration under [~~complies with~~] this chapter.

(c) Section 1052.151, Occupations Code, is amended to conform to Sections 2 and 3, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1052.151. REGISTRATION REQUIRED. (a) A person may not engage in the practice of landscape architecture unless the person holds a certificate of registration under this chapter.

(b) A person may not represent the person to be a landscape architect unless the person holds a certificate of registration [~~as a landscape architect issued by the board~~] or is exempt from registration under this chapter.

(d) Subchapter D, Chapter 1052, Occupations Code, is amended by adding Section 1052.1515 to conform to Section 2, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1052.1515. ACCEPTANCE OF ASSIGNMENTS. A landscape architect may not accept an assignment to engage in the practice of landscape architecture unless:

(1) the landscape architect is qualified by education, examination, or experience to adequately and competently perform the assignment; or

(2) if the landscape architect is not qualified to perform part of the assignment, that part of the assignment is to be performed by persons who are qualified.

(e) Sections 2 and 3, Chapter 1099, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.058. (a) Section 1052.053, Occupations Code, is amended to conform to Section 7, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1052.053. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING. (a) Except as provided by Subsection (b), the [~~The~~] board may not adopt a rule restricting advertising or competitive bidding by a person registered under this chapter except to prohibit a false, misleading, or deceptive practice by the person.

(b) The board shall adopt rules to prevent a person regulated by the board from submitting a competitive bid to, or soliciting a competitive bid on behalf of, a governmental entity that is prohibited by Subchapter A, Chapter 2254, Government Code, from making a selection or awarding a contract on the basis of competitive bids.

(b) Section 7, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.059. (a) Section 1052.204(b), Occupations Code, is amended to conform to Section 5, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A person whose certificate of registration is on inactive status shall [~~is not required to~~] pay an annual [~~a~~] renewal

fee on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount determined by the board as reasonable and necessary to cover the costs of administering this section.

(b) Section 5, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.060. (a) Section 1052.252, Occupations Code, is amended to conform to Section 6, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1052.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1052.251 for:

(1) violating this chapter or a board rule adopted under this chapter;

(2) using fraud or deceit in obtaining a certificate of registration;

(3) giving false or forged evidence to the board or a member of the board in obtaining or assisting another person to obtain a certificate of registration;

(4) using or attempting to use as the person's own the certificate of registration of another person;

(5) holding the person out to the public as an engineer or using the term "engineer," "engineered," "professional engineer," or "P.E." or any other term tending to create the impression that the person is authorized to practice engineering or another profession unless the person is licensed under Chapter 1001 or another licensing law of this state, as applicable;

(6) holding the person out to the public as a surveyor

or using the term "surveyor," "surveyed," or "registered professional land surveyor" or any other term tending to create the impression that the person is authorized to practice surveying or another profession unless the person is licensed under Chapter 1071 or another licensing law of this state, as applicable; [~~or~~]

(7) committing an act of gross negligence, incompetency, or misconduct in the practice of landscape architecture; or

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department.

(b) Section 6, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.061. (a) Section 1053.204(b), Occupations Code, is amended to conform to Section 8, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A person whose certificate of registration is on inactive status shall [~~is not required to~~] pay an annual [~~a~~] renewal fee on a date and in a manner prescribed by board rule. The board shall prescribe the renewal fee under this subsection in an amount determined by the board as reasonable and necessary to cover the costs of administering this section.

(b) Section 8, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.062. (a) Section 1053.252, Occupations Code, is amended to conform to Section 9, Chapter 861, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 1053.252. GROUNDS FOR DISCIPLINARY ACTION. A person is subject to disciplinary action under Section 1053.251 for:

(1) violating this chapter or a board rule adopted under this chapter;

(2) being convicted of a felony or of a misdemeanor involving moral turpitude;

(3) using fraud or deceit in obtaining or attempting to obtain a certificate of registration;

(4) performing professional duties in a grossly negligent manner;

(5) practicing in a manner detrimental to the public health, safety, or welfare;

(6) advertising in a manner that tends to deceive or defraud the public; [~~or~~]

(7) aiding or abetting any person not registered under this chapter in violating this chapter; or

(8) failing to provide or to timely provide to the Texas Department of Licensing and Regulation any document designated by Chapter 469, Government Code, as a document the person is required to provide to the department.

(b) Section 9, Chapter 861, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

PART 3. CHANGES RELATING TO SUBTITLE C, TITLE 6, OCCUPATIONS CODE

SECTION 14A.101. (a) Section 1071.258, Occupations Code, is amended to conform to Section 1, Chapter 594, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 1071.258. REEXAMINATION; FEE. An applicant who fails an examination may apply to take a subsequent examination [~~not earlier than six months after the date of the failed examination~~] by filing an updated application and paying an additional examination fee not to exceed $100.

(b) Section 1, Chapter 594, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

PART 4. CHANGES RELATING TO SUBTITLE A, TITLE 7, OCCUPATIONS CODE

SECTION 14A.151. Section 1101.002(1), Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

(1) "Broker":

(A) means a person who, in exchange for a commission or other valuable consideration or with the expectation of receiving a commission or other valuable consideration, performs for another person one of the following acts:

(i) sells, exchanges, purchases, or leases real estate;

(ii) offers to sell, exchange, purchase, or lease real estate;

(iii) negotiates or attempts to negotiate the listing, sale, exchange, purchase, or lease of real estate;

(iv) lists or offers, attempts, or agrees to list real estate for sale, lease, or exchange;

(v) appraises or offers, attempts, or

agrees to appraise real estate;

(vi) auctions or offers, attempts, or agrees to auction real estate;

(vii) deals in options on real estate, including buying, selling, or offering to buy or sell options on real estate;

(viii) aids or offers or attempts to aid in locating or obtaining real estate for purchase or lease;

(ix) procures or assists in procuring a prospect to effect the sale, exchange, or lease of real estate; or

(x) procures or assists in procuring property to effect the sale, exchange, or lease of real estate; and

(B) includes a person who:

(i) is employed by or for an owner of real estate to sell any portion of the real estate; or

(ii) engages in the business of charging an advance fee or contracting to collect a fee under a contract that requires the person primarily to promote the sale of real estate by:

(a) listing the real estate in a publication primarily used for listing real estate; or

(b) referring information about the real estate to brokers.

SECTION 14A.152. (a) Section 1101.003(c), Occupations Code, is amended to conform to Section 2, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The commission by rule may prescribe:

(1) the content of the core real estate courses listed

in Subsection (a); and

(2) the title and content of additional core real estate courses.

(b) Section 1101.356(a), Occupations Code, is amended to conform to Section 2, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for a broker license must provide to the commission satisfactory evidence that the applicant:

(1) has had at least two years of active experience in this state as a license holder during the 36 months preceding the date the application is filed; and

(2) has successfully completed at least 60 semester hours, or equivalent classroom hours, of postsecondary education, including:

(A) at least 18 semester hours or equivalent classroom hours of core real estate courses; and

(B) at least 42 hours of core real estate courses or related [~~postsecondary education~~] courses accepted by the commission.

(c) Section 1101.358(a), Occupations Code, is amended to conform to Section 2, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for a salesperson license must provide to the commission satisfactory evidence that the applicant has completed at least 12 semester hours, or equivalent classroom hours, of postsecondary education, including:

(1) at least four hours of core real estate courses on

principles of real estate;

(2) at least two hours of each of the following core real estate courses:

(A) [~~principles of real estate;~~

[~~(B)~~] agency law; and

(B) [~~(C)~~] contract law; and

(3) [~~(2)~~] at least four [~~six~~] hours of core real estate courses or related courses.

(d) Sections 1101.454(a)-(c), Occupations Code, are amended to conform to Section 2, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant applying for the first renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 14 semester hours, or equivalent classroom hours, of postsecondary education, including 10 [~~eight~~] hours of core real estate courses.

(b) An applicant applying for the second renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 16 semester hours, or equivalent classroom hours, of postsecondary education, including 12 [~~10~~] hours of core real estate courses.

(c) An applicant applying for the third renewal of a salesperson license must provide to the commission satisfactory evidence of completion of at least 18 semester hours, or equivalent classroom hours, of postsecondary education, including 14 [~~12~~] hours of core real estate courses.

(e) Section 2, Chapter 997, Acts of the 77th Legislature,

Regular Session, 2001, is repealed.

SECTION 14A.153. Section 1101.004, Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 1101.004. ACTING AS BROKER OR SALESPERSON. A person acts as a broker or salesperson under this chapter if the person, with the expectation of receiving valuable consideration, directly or indirectly performs or offers, attempts, or agrees to perform for another person any act described by Section 1101.002(1), as a part of a transaction or as an entire transaction.

SECTION 14A.154. (a) Subchapter A, Chapter 1101, Occupations Code, is amended by adding Section 1101.0055 to conform to Section 6, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.0055. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. A service contract that a license holder enters into for services governed by this chapter is not a good or service governed by Chapter 39, Business & Commerce Code.

(b) Section 1101.204(b), Occupations Code, is amended to conform to Section 6, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The commission shall investigate the actions and records of a license holder if:

(1) a person [~~consumer or service recipient~~] submits a signed, written complaint; and

(2) the complaint and any evidence presented with the

complaint provide reasonable cause for an investigation.

(c) Section 1101.652, Occupations Code, is amended to conform to Section 6, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE. (a) The commission may suspend or revoke a license issued under this chapter <u>or take other disciplinary action authorized by this chapter</u> if the license holder:

(1) enters a plea of guilty or nolo contendere to or is convicted of a felony in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, without regard to an order granting community supervision that suspends the imposition of the sentence;

(2) procures or attempts to procure a license under this chapter for the license holder or a salesperson by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for a license;

(3) engages in misrepresentation, dishonesty, or fraud when selling, buying, trading, or leasing real property in the license holder's own name;

(4) fails to honor, within a reasonable time, a check issued to the commission after the commission has sent by certified mail a request for payment to the license holder's last known business address according to commission records;

(5) fails or refuses to produce on request, for inspection by the commission or a commission representative, a document, book, or record that is in the license holder's

possession and relates to a real estate transaction conducted by the license holder;

(6) fails to provide, within a reasonable time, information requested by the commission that relates to a formal or informal complaint to the commission that would indicate a violation of this chapter;

(7) fails to surrender to the owner, without just cause, a document or instrument that is requested by the owner and that is in the license holder's possession;

(8) fails to use a contract form required by the commission under Section 1101.155; or

(9) disregards or violates this chapter.

(b) The commission may suspend or revoke a license issued under this chapter <u>or take other disciplinary action authorized by this chapter</u> if the license holder, while acting as a broker or salesperson:

(1) acts negligently or incompetently;

(2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;

(3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;

(4) fails to disclose to a potential buyer a defect described by Subdivision (3) that is known to the license holder;

(5) makes a false promise that is likely to influence a

person to enter into an agreement when the license holder is unable or does not intend to keep the promise;

(6) pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or salesperson, through advertising, or otherwise;

(7) fails to make clear to all parties to a real estate transaction the party for whom the license holder is acting;

(8) receives compensation from more than one party to a real estate transaction without the full knowledge and consent of all parties to the transaction;

(9) fails within a reasonable time to properly account for or remit money that is received by the license holder and that belongs to another person;

(10) commingles money that belongs to another person with the license holder's own money;

(11) pays a commission or a fee to or divides a commission or a fee with a person other than a license holder or a real estate broker or salesperson licensed in another state for compensation for services as a real estate agent;

(12) fails to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the license holder agrees to perform services for which a license is required under this chapter;

(13) accepts, receives, or charges an undisclosed commission, rebate, or direct profit on an expenditure made for a principal;

(14) solicits, sells, or offers for sale real property by means of a lottery;

(15) solicits, sells, or offers for sale real property by means of a deceptive practice;

(16) acts in a dual capacity as broker and undisclosed principal in a real estate transaction;

(17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;

(18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;

(19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;

(20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;

(21) induces or attempts to induce a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract;

(22) negotiates or attempts to negotiate the sale, exchange, or lease of real property with an owner, landlord, buyer, or tenant with knowledge that that person is a party to an outstanding written contract that grants exclusive agency to another broker in connection with the transaction;

(23) publishes or causes to be published an

advertisement, including an advertisement by newspaper, radio, television, the Internet, or display, that misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent;

(24) withholds from or inserts into a statement of account or invoice a statement that the license holder knows makes the statement of account or invoice inaccurate in a material way;

(25) publishes or circulates an unjustified or unwarranted threat of a legal proceeding or other action;

(26) establishes an association by employment or otherwise with a person other than a license holder if the person is expected or required to act as a license holder;

(27) aids, abets, or conspires with another person to circumvent this chapter;

(28) fails or refuses to provide, on request, a copy of a document relating to a real estate transaction to a person who signed the document;

(29) fails to advise a buyer in writing before the closing of a real estate transaction that the buyer should:

(A) have the abstract covering the real estate that is the subject of the contract examined by an attorney chosen by the buyer; or

(B) be provided with or obtain a title insurance policy;

(30) fails to deposit, within a reasonable time, money the license holder receives as escrow agent in a real estate

transaction:

(A) in trust with a title company authorized to do business in this state; or

(B) in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(31) disburses money deposited in a custodial, trust, or escrow account, as provided in Subdivision (30), before the completion or termination of the real estate transaction;

(32) discriminates against an owner, potential buyer, landlord, or potential tenant on the basis of race, color, religion, sex, national origin, or ancestry, including directing a prospective buyer or tenant interested in equivalent properties to a different area based on the race, color, religion, sex, national origin, or ancestry of the potential owner or tenant; or

(33) disregards or violates this chapter.

(d) Section 6, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.155. (a) Section 1101.006, Occupations Code, is amended to conform to Section 3.03, Chapter 1481, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter and Chapter 1102 expire September 1, 2007 [~~2003~~].

(b) Section 3.03, Chapter 1481, Acts of the 77th

Legislature, Regular Session, 2001, is repealed.

SECTION 14A.156. (a) Section 1101.152(a), Occupations Code, is amended to conform to Section 5, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The commission shall charge and collect the following fees:

(1) for filing an original application for a broker license, not more than $100;

(2) for annual renewal of a broker license, not more than $100;

(3) for filing an original application for a salesperson license, not more than $50;

(4) for annual renewal of a salesperson license, not more than $50;

(5) for annual registration, $80;

(6) for an application for a license examination, not more than $100 [~~$50~~];

(7) for filing a request for a branch office license, not more than $20;

(8) for filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker, not more than $20;

(9) for filing a request to replace a lost or destroyed license or certificate of registration, not more than $20;

(10) for filing an application for approval of an education program under Subchapter G, not more than $400;

(11) for annual operation of an education program

under Subchapter G, not more than $200;

(12) for transcript evaluation, $20 [~~$15~~];

(13) for preparing a license or registration history, not more than $10; and

(14) for filing an application for a moral character determination, not more than $50.

(b) Section 5, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.157. (a) Section 1101.204(g), Occupations Code, is amended to conform to Section 7, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(g) The commission may authorize a commission employee to file a signed, written complaint against a person licensed under this chapter or Chapter 1102 and to conduct an investigation if:

(1) a judgment against the person has been paid from the real estate recovery trust account under this chapter or the real estate inspection recovery fund under Chapter 1102;

(2) the person is convicted of a criminal offense that may constitute grounds for the suspension or revocation of the person's license; [~~or~~]

(3) the person fails to honor a check issued to the commission;

(4) the person fails to complete required continuing education within the period prescribed by commission rules adopted under Section 1101.457; or

(5) the person fails to provide, within a reasonable time, information requested by the commission in connection with an

application to renew a license.

(b) Section 7, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.158. (a) Section 1101.352, Occupations Code, is amended to conform to Section 1, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.352. LICENSE APPLICATION. (a) Each applicant for a broker or salesperson license must submit an application on a form prescribed by the commission.

(b) [~~A broker who intends to associate with an applicant for a salesperson license must join the applicant in filing the application.~~

[~~(c)~~] Each applicant for a broker or salesperson license must disclose in the license application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony; or

(2) been convicted of a felony and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal.

(c) [~~(d)~~] The disclosure under Subsection (b) [~~(c)~~] must be provided even if an order has granted community supervision suspending the imposition of the sentence.

(b) Section 1101.363, Occupations Code, is amended by adding a new Subsection (b) and relettering existing Subsection (b) as Subsection (c) to conform to Section 1, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The commission may issue an inactive salesperson

license to a person who applies for a salesperson license and satisfies all requirements for the license. The person may not act as a salesperson unless the person is sponsored by a licensed broker who has notified the commission and paid the fee for issuance of an active license to the salesperson as required by Section 1101.367(b).

(c) A license remains in effect for the period prescribed by the commission if the license holder complies with this chapter and pays the appropriate renewal fees.

(c) Section 1101.367, Occupations Code, is amended to conform to Section 1, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.367. INACTIVE LICENSE: SALESPERSON. (a) [~~The commission may place on inactive status the license of a person who was previously licensed as a salesperson if the person applies for inactive status on a form prescribed by the commission not later than the first anniversary of the expiration date of the license. An application under this subsection does not require the participation of a broker.~~

[~~(b)~~] When the association of a salesperson with the salesperson's sponsoring broker terminates, the broker shall immediately return the salesperson license to the commission. A salesperson license returned under this subsection is inactive.

(b) [~~(c)~~] The commission may remove a salesperson license from inactive status under Subsection (a) [~~(b)~~] if, before the expiration date of the salesperson license, a licensed broker files a request with the commission advising the commission that the

broker assumes sponsorship of the salesperson, accompanied by the appropriate fee.

(c) [~~(d)~~] As a condition of returning to active status, an inactive salesperson whose license is not subject to the annual education requirements of Section 1101.454 must provide to the commission proof of attending at least 15 hours of continuing education as specified by Section 1101.455 during the two years preceding the date the application to return to active status is filed.

(d) Section 1, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.159. (a) Section 1101.455(c), Occupations Code, is amended to conform to Section 3, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The commission by rule may:

(1) prescribe the title, content, and duration of continuing education courses that a license holder must attend to renew a license; and

(2) approve as a substitute for the classroom attendance required by Subsection (b):

(A) [~~(1)~~] relevant educational experience; and

(B) [~~(2)~~] correspondence courses.

(b) Section 3, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.160. (a) Section 1101.603, Occupations Code, is amended by amending Subsection (c), adding a new Subsection (d), relettering existing Subsection (d) as Subsection (e) and amending

that subsection, and adding Subsection (f) to conform to Sections 4 and 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The commission shall deposit to the credit of the trust account:

(1) fees collected under Subsections (a) and (b); and

(2) an administrative penalty collected under Subchapter O for a violation by a person licensed as a broker or salesperson.

(d) An administrative penalty collected under Subchapter O for a violation by a person who is not licensed under this chapter or Chapter 1102 shall be deposited to the credit of the trust account or the real estate inspection recovery fund, as determined by the commission.

(e) On a determination by the commission at any time that [~~If~~] the balance in the trust account [~~on December 31 of a year~~] is less than $1 million, each license holder at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of $10 or a pro rata share of the amount necessary to obtain a balance in the trust account of $1.7 million. The commission shall deposit the additional fee to the credit of the trust account.

(f) To ensure the availability of a sufficient amount to pay anticipated claims on the trust account, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

(b) Section 1101.607, Occupations Code, is amended to

conform to Section 4, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.607. ISSUES AT HEARING. At the hearing on the application for payment from the trust account, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the personal representative of the spouse; or

(B) a license or certificate holder who is seeking to recover compensation, including a commission, in the real estate transaction that is the subject of the application for payment;

(3) [~~that the person has obtained a judgment described by Section 1101.606 that is not subject to a stay or discharge in bankruptcy;~~

[~~(4) the amount of the judgment and the amount owing on the judgment on the date of the application;~~

[~~(5)~~] that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) [~~(6)~~] the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) [~~(7)~~] the balance remaining due on the judgment after application of the amount under Subdivision (4) [~~(6)~~].

(c) Section 1101.701, Occupations Code, is amended to conform to Section 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. The commission may impose an administrative penalty on a person [~~licensed under this chapter~~] who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(d) Subchapter O, Chapter 1101, Occupations Code, is amended by adding Section 1101.7015 to conform to Section 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1101.7015. DELEGATION OF ADMINISTRATOR'S AUTHORITY. The commission may authorize the administrator to delegate to another commission employee the administrator's authority to act under this subchapter.

(e) Section 1101.702(a), Occupations Code, is amended to conform to Section 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The amount of an administrative penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty if the commission determines that the person charged:

(1) engaged in an activity for which a broker or salesperson license is required without holding a license; and

(2) was not licensed by the commission as a broker or salesperson at any time in the four years preceding the date of the violation.

(f) Section 1101.705, Occupations Code, is amended by adding Subsection (e) to conform to Section 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(e) The commission may authorize the hearings examiner to conduct the hearing and enter a final decision.

(g) Section 1102.403, Occupations Code, is amended to conform to Section 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1102.403. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person [~~an inspector~~] who violates this chapter or a rule adopted or order issued by the commission under this chapter or Chapter 1101.

(b) An administrative penalty collected under this section for a violation by an inspector shall be deposited to the credit of the real estate inspection recovery fund. A penalty collected under this section for a violation by a person who is not licensed under this chapter or Chapter 1101 shall be deposited to the credit of the real estate recovery trust account or the real estate inspection recovery fund, as determined by the commission.

(h) Sections 4 and 9, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.161. (a) Section 1101.757(b), Occupations Code, is amended to conform to Section 15, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor.

(b) Section 15, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.162. (a) Section 1101.758(b), Occupations Code, is amended to conform to Section 8, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) An [~~Except as provided by Subsection (c), (d), or (e), an~~] offense under this section is a Class A misdemeanor [~~punishable by:~~

[~~(1) a fine of not less than $100 or more than $500;~~

[~~(2) confinement in the county jail for not more than one year; or~~

[~~(3) both the fine and confinement~~].

(b) Sections 1101.758(c)-(e), Occupations Code, are repealed to conform to Section 8, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 8, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.163. (a) Section 1102.203, Occupations Code, is amended to conform to Section 10, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1102.203. RENEWAL OF LICENSE [~~CERTAIN LICENSES~~]. (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license.

(b) [~~If the person's license has been expired for 90 days or less, the person may renew the license by paying to the commission the required renewal fee and a fee that is equal to half the amount~~

~~of the examination fee for the license.~~

[~~(c) If the person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the commission all unpaid renewal fees and a fee that is equal to the amount of the examination fee for the license.~~

[~~(d)~~] If the person's license expires [~~has been expired for one year or more~~], the person may not renew the license. The person may obtain a new license by submitting to reexamination, if required, and complying with the requirements and procedures for obtaining an original license.

(b) Section 1102.204, Occupations Code, is repealed to conform to Section 10, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 10, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.164. (a) Section 1102.205(b), Occupations Code, is amended to conform to Section 12, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) As a prerequisite for renewal of a real estate inspector license or professional inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least the following number of classroom hours of core real estate inspection courses during the year preceding the renewal:

(1) eight [~~four~~] hours for a real estate inspector license renewal; or

(2) 16 [~~eight~~] hours for a professional inspector

license renewal.

(b) Section 12, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.165. (a) Section 1102.251, Occupations Code, is amended to conform to Section 11, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1102.251. AMOUNT OF FEES. The commission shall charge and collect reasonable and necessary fees to cover the cost of administering this chapter as follows:

(1) for filing an original application for an apprentice inspector license, not more than $75;

(2) for filing an original application for a real estate inspector license, not more than $125;

(3) for filing an original application for a professional inspector license, not more than $150;

(4) for renewal of an apprentice inspector license, not more than $125;

(5) for renewal of a real estate inspector license, not more than $175;

(6) for renewal of a professional inspector license, not more than $200;

(7) for a license examination, not more than $100; [~~and~~]

(8) for a request to change a place of business or to replace a lost or destroyed license, not more than $20<u>; and</u>

<u>(9) for filing a request for issuance of a license because of a change of name, return to active status, or change in</u>

sponsoring professional inspector, not more than $20.

(b) Section 11, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.166. (a) Section 1102.352, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to conform to Section 14, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) If the balance in the fund at any time [~~on December 31 of a year~~] is less than $300,000, each inspector at the next license renewal must pay, in addition to the renewal fee, a fee that is equal to the lesser of $75 or a pro rata share of the amount necessary to obtain a balance in the fund of $450,000. The commission shall deposit the additional fee to the credit of the fund.

(c) To ensure the availability of a sufficient amount to pay anticipated claims on the fund, the commission by rule may provide for the collection of assessments at different times and under conditions other than those specified by this chapter.

(b) Section 1102.356, Occupations Code, is amended to conform to Section 14, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1102.356. ISSUES AT HEARING. At the hearing on the application for payment from the fund, the aggrieved person must show:

(1) that the judgment is based on facts allowing recovery under this subchapter;

(2) that the person is not:

(A) the spouse of the judgment debtor or the personal representative of the spouse; or

(B) an inspector;

(3) [~~that the person has obtained a judgment described by Section 1102.355 that is not subject to a stay or discharge in bankruptcy;~~

[~~(4) the amount of the judgment and the amount owing on the judgment on the date of the application;~~

[~~(5)~~] that, according to the best information available, the judgment debtor does not have sufficient attachable assets in this or another state to satisfy the judgment;

(4) [~~(6)~~] the amount that may be realized from the sale of assets liable to be sold or applied to satisfy the judgment; and

(5) [~~(7)~~] the balance remaining due on the judgment after application of the amount under Subdivision (4) [~~(6)~~].

(c) Sections 1102.359(a) and (b), Occupations Code, are amended to conform to Section 14, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Payments from the fund for claims, including attorney's fees, interest, and court costs, arising out of a single transaction may not exceed a total of $12,500 [~~$7,500~~], regardless of the number of claimants.

(b) Payments from the fund for claims based on judgments against a single inspector may not exceed a total of $30,000 [~~$15,000~~] until the inspector has reimbursed the fund for all amounts paid.

(d) Section 14, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.167. (a) Section 1102.407(b), Occupations Code, is amended to conform to Section 13, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) An offense under this section is a Class A [~~B~~] misdemeanor.

(b) Section 13, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

PART 5. CHANGES RELATING TO SUBTITLE B, TITLE 7, OCCUPATIONS CODE

SECTION 14A.201. (a) Section 1152.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1152.001, Occupations Code, is amended by adding Subdivision (3-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(3-a) "Executive director" means the executive director of the department.

SECTION 14A.202. The heading to Subchapter B, Chapter 1152, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER B. DUTIES OF EXECUTIVE DIRECTOR [~~COMMISSIONER~~] AND DEPARTMENT

SECTION 14A.203. Section 1152.051, Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1152.051. STANDARDS OF CONDUCT FOR REGISTRANTS. The executive director [~~commissioner~~] by rule shall establish standards of practice, conduct, and ethics for registrants.

SECTION 14A.204. Section 1152.104(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) If a vacancy occurs during a member's term, the executive director [~~commissioner~~] shall appoint to fill the unexpired part of the term a replacement who meets the qualifications of the vacated office.

SECTION 14A.205. Section 1152.108, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1152.108. COUNCIL POWERS. The council shall:

(1) recommend to the executive director [~~commissioner~~] standards of practice, conduct, and ethics for registrants to be adopted under this chapter;

(2) recommend to the commission amounts for the fees it may set under this chapter;

(3) recommend to the executive director [~~commissioner~~] contents for the senior property tax consultant registration examination and standards of acceptable performance;

(4) assist and advise the executive director [~~commissioner~~] in recognizing continuing education programs and educational courses for registrants; and

(5) advise the executive director [~~commissioner~~] in establishing educational requirements for initial applicants.

SECTION 14A.206. Sections 1152.154(a) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for registration must file an application with the department on a printed form prescribed by the executive director [~~commissioner~~].

(c) The department shall refund the registration fee if the executive director [~~commissioner~~] does not approve the application.

SECTION 14A.207. Section 1152.155(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) To be eligible for registration, an applicant must:

(1) be at least 18 years of age;

(2) hold a high school diploma or its equivalent;

(3) pay the fees required by the commission;

(4) have a place of business in this state or designate a resident of this state as the applicant's agent for service of process; and

(5) meet any additional qualifications required by

this chapter or by the executive director [~~commissioner~~] under this chapter or Chapter 51.

SECTION 14A.208. Sections 1152.156, 1152.159, 1152.160, and 1152.162, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1152.156. ELIGIBILITY TO REGISTER AS PROPERTY TAX CONSULTANT. (a) In addition to satisfying the requirements of Section 1152.155, an applicant for registration as a property tax consultant must:

(1) complete at least 15 classroom hours of educational courses approved by the executive director [~~commissioner~~], including at least four hours of instruction on laws and legal issues in this state related to property tax consulting services; or

(2) if the person is eligible for registration under Section 1152.155(b), submit to the commission evidence that the applicant has completed at least four classroom hours of educational programs or courses on the laws and legal issues in this state related to property tax consulting services.

(b) The executive director [~~commissioner~~] may give appropriate credit to an initial applicant for:

(1) educational courses on principles of law related to property tax consulting services completed by the applicant not more than two years before the date of application; and

(2) educational programs or courses completed by the applicant on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, or law as they relate to property tax consulting services.

Sec. 1152.159. CREDITS FOR SENIOR PROPERTY TAX CONSULTANT APPLICANTS. (a) The executive director [~~commissioner~~] shall grant credit to an applicant for registration as a senior property tax consultant as follows:

(1) two credits for each year the applicant completed at an institution of higher education that meets program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board, not to exceed six credits;

(2) four credits to an applicant who holds a bachelor's degree or equivalent from an institution of higher education described by Subdivision (1); and

(3) one credit for each year in excess of five years that the applicant's primary occupation involved the performance or supervision of property tax consulting services or property appraisal, assessment, or taxation, not to exceed 10 credits.

(b) The executive director [~~commissioner~~] may grant additional credits to an applicant for registration as a senior property tax consultant for:

(1) successful completion of educational programs or courses on:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; or

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services;

(2) completion of other educational programs or courses; or

(3) advanced or postgraduate educational achievement, occupational experience, professional licenses, or professional designations obtained from recognized associations, institutes, or organizations.

(c) The executive director [~~commissioner~~] may assign not less than one credit or more than five credits to a program or course described by Subsection (b)(1). In determining the amount of credit for the program or course, the executive director [~~commissioner~~] shall consider:

(1) the nature of the program or course;

(2) the number of actual instructional hours in the program or course;

(3) whether an examination is required for successful completion of the program or course; and

(4) other factors the executive director [~~commissioner~~] determines appropriate.

Sec. 1152.160. SENIOR PROPERTY TAX CONSULTANT REGISTRATION EXAMINATION. (a) The executive director [~~commissioner~~] shall:

(1) adopt an examination for registration as a senior

property tax consultant; and

(2) establish the standards for passing the examination.

(b) The department shall offer the examination at times and places designated by the executive director [~~commissioner~~].

(c) To be eligible to take the examination, an applicant must pay to the department an examination fee. The executive director [~~commissioner~~] by rule may establish conditions for refunding the examination fee to an applicant who does not take the examination.

(d) The examination must:

(1) test the applicant's knowledge of:

(A) property taxation;

(B) the property tax system;

(C) property tax administration;

(D) ethical standards; and

(E) general principles of appraisal, accounting, and law as they relate to property tax consulting services; and

(2) be graded according to rules adopted by the executive director [~~commissioner~~].

Sec. 1152.162. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The executive director [~~commissioner~~] shall act on an initial application for registration filed under Section 1152.154 not later than the 31st day after the date the department receives the application.

(b) The executive director [~~commissioner~~] shall issue to an applicant who qualifies for registration the appropriate

certificate of registration.

SECTION 14A.209. Section 1152.163(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may waive any registration requirement for an applicant who holds a certificate of registration or license issued by another state that has registration or licensing requirements that were, on the date of registration or licensing, substantially equal to those of this state.

SECTION 14A.210. Section 1152.202(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] shall issue to an eligible registrant a certificate of renewal of registration on the timely receipt of the required renewal fee. The certificate expires on the second anniversary of the date of issuance.

SECTION 14A.211. Sections 1152.203, 1152.204, and 1152.251, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1152.203. REQUIRED CONTINUING EDUCATION. The executive director [~~commissioner~~] by rule shall require that, to renew a registration, the registrant complete during the term of the registration at least 20 classroom hours of continuing

education courses recognized by the executive director [~~commissioner~~] at least six hours of which include instruction on laws and legal issues in this state related to property tax consulting services.

Sec. 1152.204. RECOGNITION OF EDUCATIONAL PROGRAMS AND COURSES. (a) The executive director [~~commissioner~~] by rule shall recognize appropriate continuing education programs for registrants.

(b) The executive director [~~commissioner~~] shall recognize a continuing education course, including a course on the legal issues and law related to property tax consulting services, that is:

(1) approved by the Texas Real Estate Commission or the Texas Appraiser Licensing and Certification Board; and

(2) completed by a registrant who also holds:

(A) an active real estate broker license or an active real estate salesperson license under Chapter 1101; or

(B) an active real estate appraiser license or certificate under Chapter 1103.

(c) The executive director [~~commissioner~~] may recognize an educational program or course:

(1) related to property tax consulting services; and

(2) offered or sponsored by a public provider or a recognized private provider, including:

(A) the comptroller;

(B) the State Bar of Texas;

(C) the Texas Real Estate Commission;

(D) an institution of higher education that meets

program and accreditation standards comparable to those for public institutions of higher education as determined by the Texas Higher Education Coordinating Board; or

(E) a nonprofit and voluntary trade association, institute, or organization:

(i) whose membership consists primarily of persons who represent property owners in property tax or transactional tax matters;

(ii) that has written experience and examination requirements for membership or for granting professional designation to its members; and

(iii) that subscribes to a code of professional conduct or ethics.

(d) The executive director [~~commissioner~~] may recognize a private provider of an educational program or course if the provider:

(1) applies to the department on a printed form prescribed by the executive director [~~commissioner~~]; and

(2) pays in the amounts set by the commission:

(A) a nonrefundable application fee; and

(B) an educational provider's fee.

(e) The department shall refund the educational provider's fee if the executive director [~~commissioner~~] does not recognize the provider's educational program or course.

Sec. 1152.251. DISCIPLINARY POWERS OF EXECUTIVE DIRECTOR [~~COMMISSIONER~~]. After a hearing, the executive director [~~commissioner~~] may deny a certificate of registration and may

impose an administrative sanction or penalty and seek injunctive relief and a civil penalty against a registrant as provided by Chapter 51 for:

(1) a violation of this chapter or a rule applicable to the registrant adopted by the executive director [~~commissioner~~] under this chapter;

(2) gross incompetency in the performance of property tax consulting services;

(3) dishonesty or fraud committed while performing property tax consulting services; or

(4) a violation of the standards of ethics adopted by the executive director [~~commissioner~~].

PART 6. CHANGES RELATING TO SUBTITLE C,

TITLE 7, OCCUPATIONS CODE

SECTION 14A.251. (a) Sections 1201.003(3), (7), and (8), Occupations Code, are amended to conform to Section 1.34, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(3) "Board" means the Manufactured Housing Board within the Texas Department of Housing and Community Affairs [~~governing board of the department~~].

(7) "Department" means the Texas Department of Housing and Community Affairs operating through its manufactured housing division.

(8) "Director" means the executive director of the manufactured housing division of the Texas Department of Housing and Community Affairs [~~department~~].

(b) Section 1.34, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.252. (a) Section 1201.102(d), Occupations Code, is amended to conform to Sections 1.36 and 1.46, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(d) A person who holds a real estate broker's or salesperson's license under Chapter 1101 may act as a broker or salesperson under this chapter without holding a license or filing a bond or other security as required by this chapter if negotiations for the sale, exchange, or lease-purchase of a manufactured home are conducted for a consumer [~~person~~] for whom the person is also acting [~~holder of the real estate license otherwise acts~~] as a real estate broker or salesperson under Chapter 1101 consistent with Section 1201.007.

(b) Section 1.36, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.253. (a) Section 1201.113, Occupations Code, is amended to conform to Section 1.37, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.113. CERTIFICATION AND [~~OR~~] CONTINUING EDUCATION PROGRAMS [~~PROGRAM~~]. (a) The department [~~director~~] may recognize, prepare, or administer a certification [~~or continuing education~~] program for persons regulated under this chapter. Participation in a certification program is voluntary.

(b) The board shall recognize, prepare, or administer a continuing education program for its license holders. A license

holder must participate in a continuing education program to the extent required by the board to retain the person's license.

(c) To prepare or administer a certification or continuing education program under this section, the board may contract with:

(1) a private, nonprofit organization that qualifies for an exemption from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt organization under Section 501(c)(3) of that code; or

(2) an educational institution.

(d) The department [~~director~~] shall issue an appropriate certificate to a person who[~~:~~

[~~(1)~~] completes a certification program[~~;~~] or

[~~(2)~~] participates in a continuing education program under this section.

[~~(c) Participation in a certification or continuing education program is voluntary.~~]

(b) Section 1.37, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.254. (a) Subchapter C, Chapter 1201, Occupations Code, is amended by amending Section 1201.114 and adding Sections 1201.115-1201.117 to conform to Section 1.35, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.114. LICENSE EXPIRATION [~~RENEWAL~~]. (a) A license is valid for one year and may be renewed as provided by the director. A person whose license has expired may not engage in activities that require a license until the license has been

renewed.

(b) The board by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 1201.115. NOTICE OF LICENSE EXPIRATION. Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the records of the department.

Sec. 1201.116. PROCEDURE FOR LICENSE RENEWAL. (a) The department shall renew a license if the department receives the renewal application and payment of the annual fee before the expiration date of the license.

(b) [~~(c)~~] If the department needs additional information for the renewal application or verification of continuing insurance or bond coverage, the license holder must provide the requested information or verification not later than the 20th day after the date of receipt of notice from the department.

(c) [~~(d)~~] The renewal license expires on the first anniversary of the date the license was renewed.

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee

that is equal to 1-1/2 times the normally required renewal fee.

(e) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(f) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

Sec. 1201.117. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. (a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without fulfilling the instruction requirements of Section 1201.104(a).

(b) The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

(b) Subchapter L, Chapter 1201, Occupations Code, is amended by adding Section 1201.554 to conform to Section 1.35, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.554. PROBATION. The department may place on probation a person whose license is suspended. If a license suspension is probated, the department may require the person to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the

department; or

(3) continue or review professional education until the person attains a degree of skill satisfactory to the department in those areas that are the basis of the probation.

(c) Section 1.35, Chapter 1367, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.255. (a) Subchapter D, Chapter 1201, Occupations Code, is amended by adding Section 1201.162 to conform to Section 4, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.162. DISCLOSURE BY RETAILER AND LENDER. (a) Before the completion of a credit application, the retailer or agent must provide to the consumer the following statement that is printed in at least 10-point type and not attached to or combined with any other written material:

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives.

"The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.' The Texas Department of Housing and Community Affairs regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

"If you plan to place a manufactured home on land that you own

1 or will buy, you should consider items such as:

2 "ZONING AND RESTRICTIVE COVENANTS. Some municipalities or
3 subdivisions may restrict placement of manufactured homes on
4 certain lots, may prohibit the placement of homes within a certain
5 distance from property lines, may require that homes be a certain
6 size, and may impose certain construction requirements. You may
7 need to obtain building permits and homeowner association approval
8 before you place a manufactured home on a certain lot. Contact the
9 local municipality, county, and subdivision manager to find out if
10 you can place the manufactured home of your choice on a certain lot.

11 "WATER. Not all lots have immediate access to water lines.
12 You may have to drill a well. Be sure that your lot has access to
13 water. If you must drill a well, contact several drillers for bids.
14 If water is provided by a municipality, utility district, water
15 district, or cooperative, you should inquire about the rates you
16 will have to pay.

17 "SEWER. If your lot is not serviced by a municipal sewer
18 system or utility district, you may have to install an on-site sewer
19 facility (commonly known as a septic system). There are a number of
20 concerns or restrictions that will determine if your lot is
21 adequate to support an on-site sewer facility. Check with the local
22 county or a private installer to determine the requirements that
23 apply to your lot and the cost to install such a system.

24 "HOMEOWNER ASSOCIATION FEES. Many subdivisions have
25 mandatory assessments and fees that lot owners must pay. Check with
26 the manager of the subdivision in which your lot is located to
27 determine if any fees apply to your lot.

"TAXES. In Texas, real property is taxed annually based on its market value. Attaching a manufactured home to a lot improves the lot's value and will increase the taxes assessed on the lot. You are liable for the payment of all ad valorem taxes assessed against your home by the municipality, county, school district, and other tax authorities (utility district, community college, etc.). As with other residential structures, the applicable tax rate will apply to the market value of the home. You should contact the local chief appraiser or the county tax assessor-collector for specific tax information. They will need to know the price you paid for, and the specific location of, the home. If the manufactured home is your principal place of residence, you should be able to claim a HOMESTEAD EXEMPTION. You should also make certain that the lot or land you are purchasing is not subject to any rollback tax liability because of the change in use of the property."

(b) A retailer may not transfer title to a manufactured home or otherwise sell, assign, or convey a manufactured home to a consumer unless the retailer delivers to the consumer a written document disclosing:

(1) the total purchase price of the manufactured home, as adjusted for:

(A) any agreed interest rate and any points or fees; and

(B) the length of time for any loan repayment; and

(2) regardless of whether the real property proposed as the site for the manufactured home has been sold through an

executory contract for conveyance, any responsibility of the consumer to:

(A) pay property taxes associated with the manufactured home;

(B) maintain private roads proximate to the manufactured home's location;

(C) maintain a contract for an on-site sewage disposal system;

(D) obtain property damage insurance; and

(E) obtain mortgage insurance.

(c) If the information is available, a person making a loan to a consumer to fund acquisition of a manufactured home shall also make the disclosures described by Subsection (b) before the consumer signs documents relating to the closing of the loan.

(d) A federally insured financial institution or lender approved or authorized by the United States Department of Housing and Urban Development as a mortgagee with direct endorsement underwriting authority that fully complies with federal Truth in Lending disclosures concerning the terms of a manufactured housing transaction is exempt from the disclosure provisions of this section.

(e) Failure to comply with the disclosure provisions of this section does not affect the validity of a conveyance or transfer of title of a manufactured home or otherwise impair a title or lien position.

(b) Section 4, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.256. (a) Section 1201.209, Occupations Code, is amended to conform to Section 1, Chapter 988, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.209. GROUNDS FOR REFUSAL TO ISSUE OR FOR SUSPENSION OR REVOCATION OF TITLE. The department may not refuse to issue a document of title and may not suspend or revoke a document of title unless:

(1) the application for issuance of the document of title contains a false or fraudulent statement, the applicant failed to provide information required by the director, or the applicant is not entitled to issuance of the document of title;

(2) the director has reason to believe that the manufactured home is stolen or unlawfully converted, or the issuance of a document of title would defraud the owner or a lienholder of the manufactured home;

(3) the director has reason to believe that the manufactured home is salvaged, and an application for a salvage title has not been filed;

(4) the required fee has not been paid;

(5) the state sales and use tax has not been paid in accordance with Chapter 158, Tax Code, and Section 1201.208; or

(6) a local tax lien <u>was</u> [~~has been~~] filed <u>before September 1, 2001,</u> and recorded under Section 32.015, Tax Code<u>, as that section existed on the date the lien was filed, and the lien has not been extinguished</u>.

(b) Section 1, Chapter 988, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.257. (a) Section 1201.217, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsections (d)-(f) to conform to Section 4, Chapter 899, and Section 2, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Except as provided by Section 1201.218, if a manufactured home is permanently attached or becomes an improvement to real property, the manufacturer's certificate or the original document of title shall [~~may~~] be surrendered to the department for cancellation. This requirement does not apply to an owner who is not issued a title under Section 2.001(e) or (f), Property Code.

(b) The legal description or the appropriate tract or parcel number of the real property must be given to the department when the certificate or document of title is surrendered. If a notice of attachment is to be filed, a copy of the notice must be submitted with the manufacturer's certificate or the original document of title surrendered for cancellation. The director may require the filing of other information.

(d) Before the department issues a certificate of attachment:

(1) a title insurer authorized to do business in this state that surrenders the manufacturer's certificate or the original document of title to the department must file a notice of improvement attachment in the real property records of the county in which the home is located; and

(2) a person who surrenders the manufacturer's certificate or the original document of title to the department may

file a notice of attachment in the real property records of the county in which the home is located.

(e) A notice under Subsection (d) must:

(1) state that:

(A) the manufacturer's certificate or the original document of title has been surrendered for cancellation; and

(B) a request has been made for the issuance of a certificate of attachment;

(2) include information sufficient to identify the home; and

(3) contain the legal description or the appropriate tract or parcel number of the real property on which the home is located.

(f) A notice under Subsection (d) is valid for all purposes until the certificate of attachment is issued and filed in the real property records of the appropriate county.

(b) Section 1201.220(a), Occupations Code, is amended to conform to Section 4, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The department shall provide to each county tax assessor-collector in this state a monthly [~~quarterly~~] report that, for each manufactured home installed in the county during the preceding month [~~calendar quarter~~] and for each manufactured home previously installed in the county for which a transfer of ownership was recorded by the issuance of a document of title during the preceding month [~~calendar quarter~~], lists:

(1) the name of the owner of the home;

(2) the name of the manufacturer of the home;

(3) the model designation of the home;

(4) the identification number of each section or module of the home; [~~and~~]

(5) the address or location where the home is installed; and

(6) the date of the installation of the home.

(c) Section 4, Chapter 899, and Section 2, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.258. (a) Subchapter E, Chapter 1201, Occupations Code, is amended by adding Section 1201.222 to conform to Section 3, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1201.222. CERTAIN MANUFACTURED HOMES CONSIDERED REAL PROPERTY. (a) A manufactured home that is permanently attached to real property is classified and taxed as real property if the real property to which the home is attached is titled in the name of the consumer under a deed or contract for sale. A manufactured home is considered permanently attached to real property if the home is secured to a foundation and connected to a utility, including a utility providing water, electric, natural gas, propane or butane gas, or wastewater service.

(b) The closing of a transaction for the acquisition of a manufactured home considered to be real property under this section must occur at the office of a federally insured financial institution, a title insurer, or an attorney at law. If the real

property is purchased under a contract of sale, the contract must be filed in the real property records of the county in which the home is installed.

(c) Installation of a manufactured home considered to be real property under this section must occur in a manner that satisfies the lending requirements of the Federal Housing Administration (FHA), Fannie Mae, or Freddie Mac for long-term mortgage loans or for FHA insurance. The installation of a new manufactured home must meet, in addition to applicable state standards, the manufacturer's specifications required to validate the manufacturer's warranty.

(d) A civil action to enjoin a violation of this section may be brought by:

(1) a purchaser in the county in which the violation occurs; or

(2) the county in which the violation occurs.

(e) A manufactured home permanently attached to real property before January 1, 2002, or placed in a manufactured home rental community as defined by Section 232.007, Local Government Code, is not subject to this section.

(f) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101.

(b) Section 3, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.259. (a) Section 1201.360(a), Occupations Code, is amended to conform to Section 2, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The seller of real property to which a new HUD-code manufactured home is permanently attached may give the initial purchaser a written warranty that combines the manufacturer's warranty and the retailer's warranty required by this subchapter if:

(1) the manufacturer's certificate under Section 1201.204 is surrendered for cancellation [~~canceled~~]; and

(2) a notice of attachment or certificate of attachment is filed in the real property [~~deed~~] records of the county.

(b) Section 2, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.260. (a) Section 1201.511, Occupations Code, is amended by adding Subsection (c) to conform to Section 1, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) A retailer, broker, or salesperson or a person acting on behalf of a retailer or broker may not receive or accept compensation or consideration of any kind from the seller of the real property or a person acting on the seller's behalf. No part of the down payment on the purchase of the manufactured home or any fees, points, or other charges or "buy-downs" may be paid from money from the seller of the real property or a person acting on the seller's behalf.

(b) Section 1, Chapter 1055, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.261. (a) Section 1201.606(b), Occupations

Code, is amended to conform to Section 3, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) An offense under this section is a Class A misdemeanor punishable by:

(1) a fine of not more than $4,000 [~~$2,000~~];

(2) confinement in county jail for a term of not more than one year; or

(3) both the fine and confinement.

(b) Section 3, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.262. Section 1, Chapter 899, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.263. (a) Section 1202.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1202.001, Occupations Code, is amended by adding Subdivision (4-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 14A.264. Sections 1202.055, 1202.101, and 1202.102, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1202.055. SECRETARY; PERSONNEL. The executive director [~~commissioner~~] shall:

(1) act as secretary of the council; and

(2) provide personnel from the department necessary to perform staff functions for the council.

Sec. 1202.101. RULES; ORDERS. (a) The executive director [~~commissioner~~] shall adopt rules and issue orders as necessary to:

(1) ensure compliance with the purposes of this chapter; and

(2) provide for uniform enforcement of this chapter.

(b) The executive director [~~commissioner~~] shall adopt rules as appropriate to implement the council's actions, decisions, interpretations, and instructions.

Sec. 1202.102. RULES PROVIDING FOR REGISTRATION AND REGULATION. The executive director [~~commissioner~~] by rule shall provide for registration and regulation of manufacturers or builders of industrialized housing or buildings.

SECTION 14A.265. Section 1202.103(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons regulated under this chapter.

SECTION 14A.266. Sections 1202.105(b) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] shall recommend

qualified third-party inspectors and design review agencies to the council.

(c) The executive director [~~commissioner~~] shall publish a list of all approved inspectors and design review agencies.

SECTION 14A.267. Section 1202.202(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) To ensure compliance with approved designs, plans, and specifications, the department shall inspect the construction of industrialized housing and buildings at the manufacturing facility. The executive director [~~commissioner~~] may designate approved third-party inspectors to perform the inspections subject to the rules of the executive director [~~commissioner~~].

SECTION 14A.268. Sections 1202.204 and 1202.205, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1202.204. RULES PROVIDING FOR DECALS OR INSIGNIA. The executive director [~~commissioner~~] by rule shall provide for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory construction codes.

Sec. 1202.205. RECIPROCITY. (a) The executive director [~~commissioner~~] by rule may authorize an inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of

the other state.

(b) The executive director [~~commissioner~~] by rule may authorize an inspection of industrialized housing or buildings constructed in this state for use in another state.

(c) The executive director [~~commissioner~~] shall enter into a reciprocity agreement with the equivalent regulatory agency of the other state as necessary to implement this section.

SECTION 14A.269. Section 1202.252(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A municipality that regulates the on-site construction or installation of industrialized housing and buildings may:

(1) require and review, for compliance with mandatory construction codes, a complete set of designs, plans, and specifications bearing the council's stamp of approval for each installation of industrialized housing or buildings in the municipality;

(2) require that all applicable local permits and licenses be obtained before construction begins on a building site;

(3) require, in accordance with executive director [~~commissioner~~] rules, that all modules or modular components bear an approved decal or insignia indicating inspection at the manufacturing facility; and

(4) establish procedures for the inspection of:

(A) the erection and installation of industrialized housing or buildings to be located in the

municipality, to ensure compliance with mandatory construction codes and executive director [~~commissioner~~] rules; and

(B) all foundation and other on-site construction, to ensure compliance with approved designs, plans, and specifications.

SECTION 14A.270. Section 1202.301(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A person may not construct, sell or offer to sell, lease or offer to lease, or transport over a street or highway of this state any industrialized housing or building, or modular section or component of a modular section, in violation of this chapter or a rule or order of the executive director [~~commissioner~~].

SECTION 14A.271. Section 1202.302, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1202.302. DENIAL OF CERTIFICATE; DISCIPLINARY ACTION. The executive director [~~commissioner~~] may deny, permanently revoke, or suspend for a definite period and specified location or geographic area a certificate of registration if the executive director [~~commissioner~~] finds that the applicant or registrant:

(1) provided false information on an application or other document filed with the department;

(2) failed to pay a fee or file a report required by the department for the administration or enforcement of this

chapter;

(3) engaged in a false, misleading, or deceptive act or practice as described by Subchapter E, Chapter 17, Business & Commerce Code; or

(4) violated:

(A) this chapter;

(B) a rule adopted or order issued by the executive director [~~commissioner~~] under this chapter; or

(C) a decision, action, or interpretation of the council.

SECTION 14A.272. Section 1202.351(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A person commits an offense if the person knowingly and wilfully violates this chapter or a published rule or order of the executive director [~~commissioner~~].

PART 7. CHANGES RELATING TO TITLE 8, OCCUPATIONS CODE

SECTION 14A.301. (a) Section 1301.002, Occupations Code, is amended to conform to Section 1, Chapter 504, and Section 1, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, and to more closely conform to the law from which it was derived to read as follows:

Sec. 1301.002. DEFINITIONS. In this chapter:

(1) "Board" means the Texas State Board of Plumbing Examiners.

(2) "Drain cleaner" means a person who:

(A) has completed at least 4,000 hours working under the supervision of a master plumber as a drain cleaner-restricted registrant;

(B) has fulfilled the requirements of and is registered with the board; and

(C) installs cleanouts and removes and resets p-traps to eliminate obstructions in building drains and sewers.

(3) "Drain cleaner-restricted registrant" means a person who:

(A) has worked as a plumber's apprentice under the supervision of a master plumber;

(B) has fulfilled the requirements of and is registered with the board; and

(C) clears obstructions in sewer and drain lines through any code-approved existing opening.

(4) "Journeyman plumber" means a person licensed under this chapter [~~other than a master plumber~~] who:

(A) has met the qualifications for registration as a plumber's apprentice or for licensing as a tradesman plumber-limited license holder;

(B) has completed at least 8,000 hours working under the supervision of a master plumber;

(C) installs, changes, repairs, services, or renovates plumbing or supervises any of those activities; and

(D) [~~(B)~~] has passed the required examination and fulfilled the other requirements of the board.

(5) [~~(3)~~] "Master plumber" means a person licensed

under this chapter who:

(A) is skilled in the planning and superintending of plumbing and in the practical installation, repair, and servicing of plumbing;

(B) secures permits for plumbing work;

(C) is knowledgeable about [~~familiar with~~] the codes, ordinances, or rules governing the [~~those~~] activities described by Paragraphs (A) and (B);

(D) [~~(C)~~] performs or supervises plumbing work; and

(E) [~~(D)~~] has passed the required examination and fulfilled the other requirements of the board.

(6) [~~(4)~~] "Plumber's apprentice" means a person other than a master plumber, [~~or a~~] journeyman plumber, or tradesman plumber-limited license holder who, as the person's principal occupation, learns about and assists in the installation of plumbing, is registered by the board, and works under the supervision of a master plumber and the direct supervision of a licensed plumber.

(7) [~~(5)~~] "Plumbing" means:

(A) a fixture, appurtenance, appliance, or piping, including a disposal system, used in or around a building in which a person lives or works or in which persons assemble, to:

(i) supply or recirculate water, other liquid, or gas; or

(ii) eliminate sewage for a personal or domestic purpose;

(B) a fixture, appurtenance, appliance, or piping used outside a building to connect the building to:

(i) a supply of water, other liquid, medical gases and vacuum, or other gas on the premises; or

(ii) the main in the street or alley or at the curb;

(C) a fixture, appurtenance, appliance, or piping, including a drain or waste pipe, used to carry wastewater or sewage from or within a building to:

(i) a sewer service lateral at the curb or in the street or alley; or

(ii) a disposal or septic terminal that holds private or domestic sewage; or

(D) the installation, repair, service, or maintenance of a fixture, appurtenance, appliance, or piping described by Paragraph (A), (B), or (C).

(8) [~~(6)~~] "Plumbing inspector" means a person who:

(A) is employed by a political subdivision, or contracts as an independent contractor with a political subdivision, to inspect plumbing in connection with health and safety laws, including ordinances, and plumbing and gas codes; and

(B) has passed the required examination and fulfilled the other requirements of the board.

(9) "Residential utilities installer" means a person who:

(A) has completed at least 2,000 hours working under the supervision of a master plumber as a plumber's

apprentice;

(B) has fulfilled the requirements of and is registered with the board; and

(C) constructs and installs yard water service piping for one-family or two-family dwellings and building sewers.

(10) "Tradesman plumber-limited license holder" means a person who:

(A) has completed at least 4,000 hours working under the direct supervision of a journeyman or master plumber as a plumber's apprentice;

(B) has passed the required examination and fulfilled the other requirements of the board;

(C) constructs and installs plumbing for one-family or two-family dwellings; and

(D) has not met or attempted to meet the qualifications for a journeyman plumber license.

(11) [~~(7)~~] "Water supply protection specialist" means a person who holds an endorsement issued by the board to engage in the inspection, in connection with health and safety laws, including ordinances, of:

(A) the plumbing of a public water system distribution facility; or

(B) customer-owned plumbing connected to the water distribution lines of a public water system.

(12) [~~(8)~~] "Water treatment" means a business conducted under contract that requires ability, experience, and skill in analyzing water to determine how to treat influent and

effluent water to change or purify the water or to add or remove minerals, chemicals, or bacteria. The term includes:

(A) installing and servicing fixed or portable water treatment equipment in a public or private water treatment system; or

(B) making connections necessary to install a water treatment system.

(b) Section 1, Chapter 504, and Section 1, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.302. (a) Section 1301.052, Occupations Code, is amended to conform to Section 2, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.052. WORK [~~INSIDE OR~~] OUTSIDE MUNICIPALITIES. A person is not required to be licensed under this chapter to perform plumbing on a property that is:

(1) located in a subdivision or on a tract of land that is not required to be platted under Section 232.0015, Local Government Code; or

(2) not connected to a public water system and is located outside a municipality[~~; or~~

[~~(2) inside a municipality with fewer than 5,000 inhabitants, unless an ordinance of the municipality requires the person to be licensed~~].

(b) Section 2, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.303. (a) Subchapter B, Chapter 1301, Occupations Code, is amended by amending Sections 1301.053 and

1301.055 and adding Section 1301.058 to conform to Section 2, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.053. WORK INCIDENTAL TO OTHER PROFESSIONS. (a) A person is not required to be licensed under this chapter to perform:

(1) plumbing incidental to and in connection with the business in which the person is employed or engaged if the person:

(A) is regularly employed as or acting as a maintenance person or maintenance engineer; and

(B) does not engage in plumbing for the public;

(2) construction, installation, or maintenance on the premises or equipment of a railroad if the person is an employee of the railroad who does not engage in plumbing for the public;

(3) plumbing if the person is engaged by a public service company to:

(A) lay, maintain, or operate its service mains or lines to the point of measurement; and

(B) install, change, adjust, repair, remove, or renovate appurtenances, equipment, or appliances;

(4) appliance installation and service work that involves connecting appliances to existing <u>openings with a code-approved appliance connector</u> [~~piping~~] if the person performs the work as an appliance dealer or an employee of an appliance dealer; or

(5) water treatment installations, exchanges, services, or repairs.

(b) Work described by this section is subject to inspection

and approval as provided by applicable state law or municipal ordinance.

Sec. 1301.055. LP GAS INSTALLERS. A person is not required to be licensed under this chapter to perform LPG system installation [~~plumbing~~] if the person performs the LPG system installation [~~plumbing~~] as an LP gas installer licensed under Subchapter D, Chapter 113, Natural Resources Code.

Sec. 1301.058. TESTING OF MEDICAL GAS AND VACUUM PIPING. A person is not required to be licensed under this chapter to verify medical gas and vacuum piping integrity and content.

(b) Section 2, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.304. (a) Section 1301.151(a), Occupations Code, is amended to conform to Section 4, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The Texas State Board of Plumbing Examiners consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) one member who has [~~with~~] at least 10 years' practical experience and is licensed as a master plumber;

(2) one member who has [~~with~~] at least five years' practical experience and is licensed as a journeyman plumber;

(3) one member who has [~~with~~] at least five years' practical experience and is licensed as a plumbing inspector;

(4) one member who is a plumbing contractor with at least five years' experience;

(5) one member who is a licensed [~~sanitary~~] engineer;

(6) two members who are building contractors with at least five years' contracting experience, one of whom is principally engaged in home building and one of whom is principally engaged in commercial building; and

(7) two members who represent the public.

(b) Section 4, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.305. (a) Section 1301.202(b), Occupations Code, is amended to conform to Section 5, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A plumbing examiner shall:

(1) examine the fitness and qualifications of a person applying to the board[~~:~~

[~~(A)~~] for a license as a master plumber, [~~or~~] journeyman plumber, tradesman plumber-limited license holder,[~~;~~] or

[~~(B) to serve as a~~] plumbing inspector; and

(2) promptly certify the result of the examination to the board.

(b) Subchapter E, Chapter 1301, Occupations Code, is amended by adding Section 1301.258 to conform to Section 5, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.258. ADVISORY COMMITTEES. The board may appoint advisory committees as it considers necessary. An advisory committee shall serve without compensation or reimbursement and is subject to Section 2110.008, Government Code.

(c) Subchapter G, Chapter 1301, Occupations Code, is amended by adding Section 1301.3575 to conform to Section 5, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.3575. REGISTRATION OF CERTAIN PERSONS. The board shall register a person who complies with this chapter as a drain cleaner, drain cleaner-restricted registrant, residential utilities installer, or plumber's apprentice.

(d) Section 1301.404, Occupations Code, is amended to conform to Sections 5 and 15, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.404. MANDATORY CONTINUING PROFESSIONAL EDUCATION. (a) The board shall recognize, approve, and administer continuing education programs for persons who hold licenses or endorsements under this chapter.

(b) A person who holds a license or endorsement [~~licensed~~] under this chapter must complete at least six hours of continuing professional education each [~~license~~] year the person holds the license or endorsement to renew the person's license or endorsement. Three of the six hours must be in the subjects of health protection, energy conservation, and water conservation.

(c) [~~(b)~~] The board by rule shall adopt the criteria for the continuing professional education.

(d) [~~(c)~~] A person may receive credit for participating in a continuing professional education program or course only if the program or course is provided:

(1) by an individual, business, or association

approved by the board; and

(2) according to criteria adopted by the board.

(e) [~~(d)~~] A person may complete the continuing professional education requirement of this section through a correspondence course as approved by the board [~~if the person lives in a county in which there is not a municipality with a population of more than 100,000~~].

(f) [~~(e)~~] The board by rule may exempt certain persons from the requirements of this section if the board determines that the exemption is in the public interest.

(e) Section 1301.405, Occupations Code, is repealed to conform to Section 5, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

(f) Sections 5 and 15, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.306. (a) Section 1301.255, Occupations Code, is amended to conform to Section 6, Chapter 504, and Section 3, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.255. ADOPTION OF PLUMBING CODES. (a) The board shall adopt the following plumbing codes, as those codes existed on May 31, 2001:

(1) the [~~Southern Standard Plumbing Code;~~

[~~(2) the~~] Uniform Plumbing Code, as published by the International Association of Plumbing and Mechanical Officials; and

(2) the International Plumbing Code, as published by

the International Code Council[~~; and~~

[~~(3) the National Standard Plumbing Code~~].

(b) The board by rule may adopt later editions of the plumbing codes listed in Subsection (a).

(c) Plumbing installed in an area not otherwise subject to regulation under this chapter by a person licensed under this chapter must be installed in accordance with a plumbing code adopted by the board under Subsection (a) or (b).

(d) In adopting a code [~~A municipality or an owner of a public water system may adopt standards~~] for the design, installation, and maintenance of a plumbing system under this section, a municipality or an owner of a public water system may amend any provisions of the code to conform to local concerns that [~~only if those standards~~] do not substantially vary from board rules or other rules of this state.

(e) Plumbing installed in compliance with a code adopted under Subsection (a), (b), or (d) must be inspected by a plumbing inspector. To perform the inspection, the political subdivision may contract with any plumbing inspector paid directly by the political subdivision.

(b) Section 6, Chapter 504, and Section 3, Chapter 791, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.307. (a) Section 1301.359, Occupations Code, is amended to conform to Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.359. STATEWIDE VALIDITY OF LICENSE, ENDORSEMENT, OR REGISTRATION; NONTRANSFERABILITY. (a) A license, endorsement,

or registration issued under this chapter is valid throughout this state.

(b) A license, endorsement, or registration issued under this chapter is not assignable or transferable.

(b) The heading to Subchapter H, Chapter 1301, Occupations Code, is amended to conform to Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER H. LICENSE, ENDORSEMENT, AND REGISTRATION EXPIRATION AND RENEWAL

(c) Sections 1301.401-1301.403, Occupations Code, are amended to conform to Sections 14 and 18, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.401. ANNUAL RENEWAL REQUIRED. (a) A license or registration under this chapter is valid for one year. On payment of the required fee, a license may be renewed annually [~~on or before February 1 or as provided by this section~~].

(b) The board by rule may adopt a system under which licenses, endorsements, and registrations expire on various dates during the year.

[~~(c) For the year in which the license expiration date is changed, renewal fees payable on February 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total renewal fee is payable.~~]

Sec. 1301.402. NOTICE OF LICENSE, ENDORSEMENT, OR REGISTRATION EXPIRATION. (a) Not later than the 31st day before

the expiration date of a person's license, endorsement, or registration, the board shall send written notice of the impending [~~license~~] expiration to the person at the person's last known address according to board records.

(b) The person shall notify the board not later than the 30th day after the date of receipt of the written notice of any change of name or address.

Sec. 1301.403. PROCEDURE FOR RENEWAL. (a) A person may renew an unexpired license, endorsement, or registration by paying the required renewal fee to the board before the expiration date of the license, endorsement, or registration.

(b) A person whose license or endorsement has been expired for 90 days or less may renew the license or endorsement by paying to the board the required renewal fee and a fee equal to half of the examination fee for the license or endorsement. A person whose registration has been expired for 90 days or less may renew the registration by paying to the board the required renewal fee and a fee equal to half of the registration fee.

(c) A person whose license or endorsement has been expired for more than 90 days but less than two years may renew the license or endorsement by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license or endorsement. A person whose registration has been expired for more than 90 days but less than two years may renew the registration by paying to the board all unpaid renewal fees and a fee that is equal to the registration fee.

(d) A person whose license, endorsement, or registration

has been expired for two years or more may not renew the license, endorsement, or registration. The person may obtain a new license, endorsement, or registration by submitting to reexamination for a license or endorsement and complying with the requirements and procedures for obtaining an original license, endorsement, or registration.

(d) Section 1301.257, Occupations Code, is repealed to conform to Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001.

(e) Section 14, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.308. (a) Section 1301.302, Occupations Code, is amended to conform to Section 9, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.302. CONTRACT INFORMATION. A written contract for plumbing [~~the~~] services to be performed by or under the direction of a plumber licensed under this chapter must contain the name, mailing address, and telephone number of the board.

(b) Section 9, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.309. (a) The heading to Subchapter G, Chapter 1301, Occupations Code, is amended to conform to Section 16, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER G. LICENSE, ENDORSEMENT, AND REGISTRATION REQUIREMENTS

(b) The heading to Section 1301.351, Occupations Code, is

amended to conform to Section 16, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.351. LICENSE, ENDORSEMENT, OR REGISTRATION REQUIRED.

(c) Section 1301.351(a), Occupations Code, is amended to conform to Section 16, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person may not engage in the business of plumbing unless:

(1) the person holds a license or endorsement or is registered [~~is licensed~~] under this chapter; or

(2) the person's work is supervised and controlled by a person licensed under this chapter.

(d) Section 1301.502, Occupations Code, is amended to conform to Section 16, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.502. CITATION. A field representative, water district plumbing inspector, or, within the jurisdiction of the municipality, municipal plumbing inspector shall [~~may~~] issue a citation to a person who engages in conduct described by Section 1301.508.

(e) Section 16, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.310. (a) Section 1301.352, Occupations Code, is amended to conform to Section 8, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.352. EXAMINATION REQUIRED. The board shall issue

a license or endorsement as a master plumber, journeyman plumber, [~~or~~] plumbing inspector, tradesman plumber-limited license holder, medical gas piping installation endorsement holder, or water supply protection specialist to a person who demonstrates the fitness, competence, and qualifications to receive the license or endorsement by passing a uniform, reasonable examination.

(b) Section 8, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.311. (a) Section 1301.354, Occupations Code, is amended to conform to Section 13, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.354. PLUMBER'S APPRENTICE [~~ELIGIBILITY FOR EXAMINATION~~]. (a) A person who desires to learn the trade of plumbing must register as a plumber's apprentice before assisting a person licensed under this chapter in the trade of plumbing.

(b) A person who has worked as a plumber's apprentice for a period established by law or board rule may apply for and take an examination for a license as a journeyman plumber or tradesman plumber-limited license holder.

(b) Section 13, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.312. (a) Section 1301.356, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsection (e) to conform to Section 11, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person may not install pipe used solely to transport gas for medical purposes or a vacuum used for medical purposes

unless the person:

(1) is licensed under this chapter as a master plumber or journeyman plumber; and

(2) holds an endorsement issued under this section.

(c) An endorsement under this section is valid for three years and may be renewed as provided by board rule [~~on or before February 1 or on another date that the board may set as it does under Section 1301.401 for a license. A person may renew an endorsement in the same manner that a license is renewed under Subchapter H~~].

(e) A plumbing inspector who meets the requirements of the board may inspect medical gas piping installations.

(b) Section 11, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.313. (a) Sections 1301.451-1301.453, Occupations Code, are amended to conform to Section 12, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.451. DISCIPLINARY POWERS OF BOARD. (a) On determining that a person who holds a license or endorsement or is registered [~~licensed~~] under this chapter engaged in conduct for which the person is subject to disciplinary action under Section 1301.452, the board shall:

(1) revoke or suspend the person's license, endorsement, or registration;

(2) probate suspension of the person's license, endorsement, or registration; or

(3) reprimand the person.

(b) A person whose license, endorsement, or registration has been revoked may not apply for a new license, endorsement, or registration before the first anniversary of the date of revocation.

Sec. 1301.452. GROUNDS FOR DISCIPLINARY ACTION. (a) A person is subject to disciplinary action under Section 1301.451 if the person violates this chapter or a board rule. A violation of this chapter includes:

(1) obtaining a license, endorsement, or registration through error or fraud;

(2) wilfully, negligently, or arbitrarily violating a municipal rule or ordinance that regulates sanitation, drainage, or plumbing;

(3) [~~knowingly~~] making a [~~substantial~~] misrepresentation of services provided or to be provided; or

(4) making a false promise with the intent to induce a person to contract for a service.

(b) Retesting procedures may be used to determine whether grounds exist for suspension or revocation of a license, endorsement, or registration due to incompetence or a wilful violation by a person licensed under this chapter.

Sec. 1301.453. HEARING. A person is entitled to a hearing before the board if the board proposes to:

(1) deny the person's application for a license, endorsement, or registration; or

(2) suspend or revoke the person's license, endorsement, or registration.

(b) Section 1301.508(a), Occupations Code, is amended to conform to Section 12, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person commits an offense if the person:

(1) [~~knowingly~~] violates this chapter or a rule adopted under this chapter;

(2) does [~~is~~] not hold a license or endorsement or is not registered [~~licensed~~] under this chapter and engages in an activity for which a license, endorsement, or registration is required; or

(3) employs a [~~an unlicensed~~] person who does not hold a license or endorsement or who is not registered to engage in an activity for which a license, endorsement, or registration is required under this chapter.

(c) Section 12, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.314. (a) Section 1301.503, Occupations Code, is amended to conform to Section 10, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.503. ENFORCEMENT BY PLUMBING INSPECTOR. Each [~~A~~] plumbing inspector shall [~~may~~] enforce this chapter.

(b) Section 10, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.315. (a) Subchapter G, Chapter 1301, Occupations Code, is amended by adding Section 1301.3576 to conform to Section 17, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.3576. CERTIFICATE OF INSURANCE FOR MASTER PLUMBER. When a person is issued a master plumber's license, the person must provide the board with a certificate of insurance that meets the requirements of Section 1301.552 before the person works as a master plumber.

(b) Section 1301.551, Occupations Code, is amended by amending Subsections (a) and (c) and adding Subsection (d) to conform to Section 17, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, and to more closely conform to the law from which it was derived to read as follows:

(a) A municipality with more than 5,000 inhabitants shall regulate by ordinance or bylaw the material, construction, alteration, and inspection of any pipe, faucet, tank, valve, water heater, or other fixture by or through which a supply of water, gas, or sewage is used or carried.

(c) A municipality that adopts an ordinance or bylaw under this section shall provide by ordinance or bylaw that a person must obtain a permit before the person performs plumbing, other than the repairing of leaks. The municipality may prescribe the terms on which the permit is issued.

(d) A plumbing inspection in a municipality that adopts an ordinance or bylaw under this section must be performed by a plumbing inspector.

(c) Subchapter K, Chapter 1301, Occupations Code, is amended by adding Section 1301.553 to conform to Section 17, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1301.553. PLUMBING INSPECTIONS IN MUNICIPALITY THAT OVERLAPS MUNICIPAL UTILITY DISTRICT. (a) If the boundaries of a municipality and a municipal utility district overlap, only the affected municipality may perform a plumbing inspection and collect a permit fee.

(b) The standard used in the plumbing inspection may not be less restrictive than the standard used by the municipal utility district.

(d) Section 17, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.316. Sections 3 and 7, Chapter 504, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.317. Subchapter L, Chapter 1301, Occupations Code, is repealed to conform to Section 25, Chapter 880, and Section 7.01, Chapter 965, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 14A.318. (a) Section 1302.002(5), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(5) "Air conditioning and refrigeration maintenance work" means all work, including repair work, required for the continued normal performance of an environmental air conditioning system, a process cooling or heating system, a commercial refrigeration system, or commercial refrigeration equipment. The term does not include:

(A) the total replacement of a system; or

(B) the installation or repair of a boiler or pressure vessel that must be installed in accordance with rules adopted by the executive director [~~commissioner~~] under Chapter 755, Health and Safety Code.

(b) Section 1302.002(8), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 1302.002, Occupations Code, is amended by adding Subdivision (11-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(11-a) "Executive director" means the executive director of the department.

(d) Section 1302.002(12), Occupations Code, is amended to conform to Section 1, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(12) "Mechanical integrity" means the condition of a product, a system, or equipment installed in accordance with its intended purpose and according to:

(A) standards at least as strict as the standards provided by:

(i) the Uniform Mechanical Code [~~published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or their successor organizations~~]; and [~~or~~]

(ii) the International [~~Standard~~] Mechanical Code [~~published by the Southern Building Code Congress~~

~~International, Inc., or its successor organization~~];

(B) all other applicable codes; and

(C) the manufacturer's specifications.

(e) Section 1, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.319. The heading to Subchapter C, Chapter 1302, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER C. EXECUTIVE DIRECTOR [~~COMMISSIONER~~] AND DEPARTMENT POWERS AND DUTIES

SECTION 14A.320. (a) Section 1302.101, Occupations Code, is amended to conform to Section 2, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, and to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.101. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR [~~COMMISSIONER~~]. (a) The executive director [~~commissioner~~] shall:

(1) adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards provided by:

(A) the Uniform Mechanical Code published [~~jointly~~] by [~~the International Conference of Building Officials and~~] the International Association of Plumbing and Mechanical Officials[~~, as that code exists at the time the rules are adopted~~]; and [~~or~~]

(B) the International [~~Standard~~] Mechanical Code published by the International Code Council [~~Southern Building Code Congress International, Inc., as that code exists at the time the rules are adopted~~];

(2) prescribe the design of an original and a renewal license; and

(3) maintain a record of the executive director's [~~commissioner's~~] proceedings under this chapter.

(b) The executive director [~~commissioner~~] may authorize disbursements necessary to implement this chapter, including disbursements for office expenses, equipment costs, and other necessary facilities.

(b) Section 2, Chapter 790, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.321. Sections 1302.102 and 1302.103, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.102. INSURANCE REQUIREMENTS. (a) The executive director [~~commissioner~~] shall set insurance requirements for a license holder under this chapter.

(b) The executive director [~~commissioner~~] may waive the insurance requirements for a license holder who does not engage in air conditioning and refrigeration contracting for the public.

Sec. 1302.103. RULES REGARDING USE AND DISPLAY OF LICENSE. The executive director [~~commissioner~~], with the advice of the advisory board, shall adopt rules relating to the use, display, and

advertisement of a license.

SECTION 14A.322. Section 1302.107(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for license holders.

SECTION 14A.323. Sections 1302.151, 1302.152, and 1302.203, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.151. CONSUMER INTEREST INFORMATION. (a) The executive director [~~commissioner~~] shall prepare information of consumer interest describing:

(1) the functions performed by the executive director [~~commissioner~~] under this chapter; and

(2) the rights of a consumer affected by this chapter.

(b) The information must describe the procedure by which a consumer complaint is filed with and resolved by the executive director [~~commissioner~~].

(c) The executive director [~~commissioner~~] shall make the information available to the public.

Sec. 1302.152. COMPLAINT INVESTIGATION. (a) The executive director [~~commissioner~~] shall investigate a consumer complaint filed with the executive director [~~commissioner~~].

(b) The executive director [~~commissioner~~] may take

appropriate action under Section 51.353 if the executive director [~~commissioner~~] determines after an investigation that a license holder violated this chapter or a rule adopted under this chapter.

Sec. 1302.203. EX OFFICIO MEMBERS. The executive director [~~commissioner~~] and the chief administrator of this chapter serve as ex officio, nonvoting members of the advisory board.

SECTION 14A.324. Section 1302.204(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The advisory board shall advise the executive director [~~commissioner~~] in adopting rules and in administering and enforcing this chapter.

SECTION 14A.325. Section 1302.253(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] shall issue a Class A or Class B air conditioning and refrigeration contractor license.

SECTION 14A.326. Sections 1302.256(a) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for a license must submit a verified application on a form prescribed by the executive director [~~commissioner~~].

(c) The application must be accompanied by:

(1) a statement containing evidence satisfactory to the executive director [~~commissioner~~] of the applicant's practical experience required by Section 1302.255(a)(2); and

(2) the examination fee.

SECTION 14A.327. Section 1302.257, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.257. EXAMINATIONS. (a) The executive director [~~commissioner~~] shall prescribe:

(1) a separate examination for each class of license; and

(2) within each class of license, a separate examination for:

(A) an environmental air conditioning endorsement; and

(B) a commercial refrigeration and process cooling or heating endorsement.

(b) The executive director [~~commissioner~~] shall prescribe the method and content of an examination administered under this chapter and shall set compliance requirements for the examination. To obtain an endorsement, an applicant must pass the examination for the endorsement.

(c) The examination shall be offered on a monthly basis or more frequently as determined by the executive director [~~commissioner~~].

(d) The examination shall be offered at locations within the state as determined by the executive director [~~commissioner~~]. The examination may be offered by computer at locations within the state as determined by the executive director [~~commissioner~~].

SECTION 14A.328. Sections 1302.258(a), (b), and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] shall notify each examinee of the results of an examination not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the executive director [~~commissioner~~] shall notify each examinee of the results of the examination not later than the 14th day after the date the executive director [~~commissioner~~] receives the results from the testing service.

(b) If the notice of the results of an examination graded or reviewed by a national testing service will be delayed for more than 90 days after the examination date, the executive director [~~commissioner~~] shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the executive director [~~commissioner~~] shall provide to the person an analysis of the person's performance on the examination.

SECTION 14A.329. Section 1302.259, Occupations Code, is amended to conform to the changes in terminology made by Chapter

836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.259. WAIVER OF LICENSE REQUIREMENT. The executive director [~~commissioner~~] may waive any license requirement for an applicant who holds a license issued by another state that has a reciprocity agreement with this state.

SECTION 14A.330. Section 1302.260(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) On payment of the license fee, the executive director [~~commissioner~~] shall issue an air conditioning and refrigeration contractor license to an applicant who:

(1) meets the requirements of this subchapter;

(2) provides evidence of insurance coverage required by the executive director [~~commissioner~~] in accordance with this chapter; and

(3) passes the applicable examination.

SECTION 14A.331. Section 1302.261, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1302.261. TEMPORARY LICENSE. The executive director [~~commissioner~~] by rule may provide for the issuance of a temporary air conditioning and refrigeration contracting license to an applicant who:

(1) submits to the executive director [~~commissioner~~]

an application on a form prescribed by the executive director [~~commissioner~~]; and

(2) pays the required fees.

SECTION 14A.332. Section 1302.303(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The municipality shall report a violation of the ordinance to the executive director [~~commissioner~~] not later than the 10th day after the date the municipality acts to enforce the ordinance.

SECTION 14A.333. Section 1302.354(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] by rule shall adopt requirements governing the registration and issuance of a certificate of registration.

SECTION 14A.334. Section 1302.355(c), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The executive director [~~commissioner~~] by rule shall establish requirements for evidence that satisfies this section.

SECTION 14A.335. Section 1302.451, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as

follows:

Sec. 1302.451. EMERGENCY AND CEASE AND DESIST ORDERS. (a) The executive director [~~commissioner~~] may issue an emergency order as necessary to enforce this chapter if the executive director [~~commissioner~~] determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director [~~commissioner~~] may issue the emergency order without notice and hearing or with any notice and hearing the executive director [~~commissioner~~] considers practicable under the circumstances. The executive director [~~commissioner~~] shall set the time and place for a hearing to affirm, modify, or set aside an emergency order that was issued without a hearing.

(c) The executive director [~~commissioner~~] may issue a cease and desist order.

SECTION 14A.336. (a) Subchapter A, Chapter 1303, Occupations Code, is amended by adding Section 1303.0035 to conform to Section 16, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1303.0035. NONAPPLICABILITY OF LAW GOVERNING CANCELLATION OF CERTAIN TRANSACTIONS. The sale of a residential service contract governed by this chapter is not a good or service governed by Chapter 39, Business & Commerce Code.

(b) Subchapter H, Chapter 1303, Occupations Code, is amended by adding Section 1303.3525 to conform to Section 16, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1303.3525. HEARING EXAMINER. (a) The commission may authorize a hearing examiner to conduct a hearing and enter a final decision in a proceeding under Section 1303.351.

(b) A final decision of a hearing examiner under this section is appealable to the commission as provided by commission rule.

(c) Section 16, Chapter 997, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.337. (a) Section 1304.002(3), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1304.002, Occupations Code, is amended by adding Subdivision (5-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(5-a) "Executive director" means the executive director of the department.

SECTION 14A.338. Sections 1304.007 and 1304.051, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1304.007. GENERAL INVESTIGATIVE POWER OF EXECUTIVE DIRECTOR [~~COMMISSIONER~~]. (a) The executive director [~~commissioner~~] may investigate a provider, administrator, or other person as necessary to enforce this chapter and protect service contract holders in this state.

(b) On request of the executive director [~~commissioner~~], a

provider shall make the records required by Section 1304.155 available to the executive director [~~commissioner~~] as necessary to enable the executive director [~~commissioner~~] to reasonably determine compliance with this chapter.

Sec. 1304.051. SERVICE CONTRACT PROVIDERS ADVISORY BOARD. (a) The Service Contract Providers Advisory Board consists of six members appointed by the executive director [~~commissioner~~] and one ex officio nonvoting member.

(b) Of the appointed members:

(1) two must be officers, directors, or employees of a provider of service contracts that have been approved by the executive director [~~commissioner~~];

(2) two must be officers, directors, or employees of a retail outlet or other entity in this state that provides to consumers service contracts approved by the executive director [~~commissioner~~] for sale to consumers;

(3) one must be an officer, director, or employee of an entity authorized by the Texas Department of Insurance to sell reimbursement insurance policies; and

(4) one must be a resident of this state who holds, as a consumer, a service contract that is in force in this state on the date of the member's appointment and was issued by a provider registered under this chapter.

(c) The executive director [~~commissioner~~] or the executive director's [~~commissioner's~~] designee serves as an ex officio nonvoting member of the advisory board.

SECTION 14A.339. Section 1304.052(a), Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The advisory board shall advise the executive director [~~commissioner~~] in adopting rules and in administering and enforcing this chapter.

SECTION 14A.340. Section 1304.053(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) If a vacancy occurs during an appointed member's term, the executive director [~~commissioner~~] shall fill the vacancy for the remainder of the unexpired term with a person who represents the same interests as the predecessor.

SECTION 14A.341. Sections 1304.054 and 1304.102, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1304.054. PRESIDING OFFICER. The executive director [~~commissioner~~] shall designate one member of the advisory board to serve as presiding officer.

Sec. 1304.102. APPLICATION FOR REGISTRATION. (a) An applicant for registration must submit an application to the executive director [~~commissioner~~].

(b) The application must:

(1) be in the form prescribed by the executive director [~~commissioner~~]; and

(2) include evidence satisfactory to the executive director [~~commissioner~~] of compliance with the applicable financial security requirements prescribed by Section 1304.151.

SECTION 14A.342. Section 1304.103(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] shall develop a tiered schedule of annual registration fees under which a provider's registration fee is based on the number of service contracts the provider sold in this state during the preceding 12-month period.

SECTION 14A.343. Section 1304.104, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1304.104. INFORMATION CONCERNING NUMBER OF SERVICE CONTRACTS SOLD. Information concerning the number of service contracts sold by a provider that is submitted under Section 1304.103:

(1) is a trade secret to which Section 552.110, Government Code, applies; and

(2) may be used only by the executive director [~~commissioner~~] and the department in developing the tiered fee schedule under Section 1304.103.

SECTION 14A.344. Sections 1304.151(a), (b), (c), and (e), Occupations Code, are amended to conform to the changes in

terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) To ensure the faithful performance of a provider's obligations to its service contract holders, each provider must:

(1) insure the provider's service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981 [~~Article 1.14-2~~], Insurance Code;

(2) maintain a funded reserve account covering the provider's obligations under its service contracts that are issued and outstanding in this state and place in trust with the executive director [~~commissioner~~] a financial security deposit consisting of:

(A) a surety bond issued by an authorized surety;

(B) securities of the type eligible for deposit by an authorized insurer in this state;

(C) a statutory deposit of cash or cash equivalents;

(D) a letter of credit issued by a qualified financial institution; or

(E) another form of security prescribed by rules adopted by the executive director [~~commissioner~~]; or

(3) maintain, or have a parent company that maintains, a net worth or stockholders' equity of at least $100 million.

(b) If the provider ensures its obligations under Subsection (a)(2), the amount maintained in the reserve account may

not be less than an amount equal to 40 percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid. The executive director [~~commissioner~~] may review and examine the reserve account. The amount of the security deposit may not be less than the greater of:

(1) $25,000; or

(2) an amount equal to five percent of the gross consideration the provider received from consumers from the sale of all service contracts issued and outstanding in this state, minus any claims paid.

(c) If the provider ensures its obligations under Subsection (a)(3), the provider must give to the executive director [~~commissioner~~] on request:

(1) a copy of the provider's or the provider's parent company's most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the preceding calendar year; or

(2) if the provider or the provider's parent company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements showing a net worth of the provider or its parent company of at least $100 million.

(e) The executive director [~~commissioner~~] may not require a provider to meet any additional financial security requirement.

SECTION 14A.345. Section 1304.152(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter

836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The insurer may not cancel the policy until the insurer delivers to the provider a written notice of cancellation that complies with the notice requirements prescribed by Articles 21.49-2A and 21.49-2B, Insurance Code, for cancellation of an insurance policy under those articles. The provider shall forward a copy of the cancellation notice to the executive director [~~commissioner~~] not later than the 15th business day after the date the notice is delivered to the provider. Cancellation of the policy does not reduce the insurer's responsibility for a service contract issued by the provider and insured under the policy before the date of the cancellation.

SECTION 14A.346. Sections 1304.155(b) and (d), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The records required by this section may be maintained in an electronic medium or through other recordkeeping technology. If a record is not in a hard copy, the provider must be able to reformat the record into a legible hard copy at the request of the executive director [~~commissioner~~].

(d) A provider that discontinues business in this state shall retain its records until the provider furnishes the executive director [~~commissioner~~] with proof satisfactory to the executive director [~~commissioner~~] that the provider has discharged all obligations to service contract holders in this state.

SECTION 14A.347. (a) Section 1304.201(a), Occupations Code, is amended to conform to Section 1, Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) On a finding that a ground for disciplinary action exists under this chapter, the commission [~~commissioner~~] may impose an administrative sanction, including an administrative penalty[~~,~~] as provided by Subchapter F, Chapter 51.

(b) Sections 1304.202 and 1304.204, Occupations Code, are amended to conform to Section 1, Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1304.202. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The department [~~commissioner~~] may institute an action under Section 51.352 for injunctive relief to restrain a violation or a threatened violation of this chapter or an order issued or rule adopted under this chapter.

(b) In addition to the injunctive relief provided by Subsection (a), the department [~~commissioner~~] may institute an action for a civil penalty as provided by Section 51.352. The amount of a civil penalty assessed under this section may not exceed:

(1) $2,500 for each violation; or

(2) $50,000 in the aggregate for all violations of a similar nature.

Sec. 1304.204. ADMINISTRATIVE PROCEDURE. Sections 51.305, 51.310, and 51.354 apply to disciplinary action taken under this chapter.

(c) Section 1, Chapter 836, Acts of the 77th Legislature,

Regular Session, 2001, is repealed.

PART 8. CHANGES RELATING TO TITLE 11, OCCUPATIONS CODE

SECTION 14A.351. (a) Section 1802.001(7), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1802.001, Occupations Code, is amended by adding Subdivision (8-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(8-a) "Executive director" means the executive director of the department.

SECTION 14A.352. Section 1802.002, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.002. APPLICABILITY. This chapter does not apply to:

(1) a sale conducted by order of a United States court under Title 11, United States Code;

(2) a sale conducted by an employee of the United States, this state, or a political subdivision of this state in the course and scope of employment;

(3) a sale conducted by a charitable or nonprofit organization, if the auctioneer receives no compensation;

(4) a sale conducted by an individual of the individual's property if the individual is not engaged in the business of selling property as an auctioneer on a recurring basis;

(5) a foreclosure sale of real property personally conducted by a trustee under a deed of trust;

(6) a foreclosure sale of personal property personally conducted by:

(A) a person who holds a security interest in the property, including a mortgage; or

(B) an employee or agent of a person described by Paragraph (A) acting in the course and scope of employment, if:

(i) the employee or agent is not otherwise engaged in the auction business; and

(ii) all property for sale in the auction is subject to a security agreement;

(7) a sale conducted by sealed bid;

(8) an auction conducted only for student training purposes as part of a course of study approved by the executive director [~~commissioner~~] for auctioneers;

(9) an auction conducted by a posted stockyard or market agency as defined by the federal Packers and Stockyards Act (7 U.S.C. Section 181 et seq.), as amended;

(10) an auction of livestock conducted by a nonprofit livestock trade association chartered in this state, if the auction involves only the sale of livestock owned by members of the trade association; or

(11) an auction conducted by a charitable or nonprofit organization chartered in this state, if the auction:

(A) is part of a fair that is organized under state, county, or municipal authority; and

(B) involves only the sale of property owned by the organization's members.

SECTION 14A.353. Section 1802.051(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person may not act as an auctioneer or associate auctioneer in an auction held in this state unless the person is an individual who holds a license issued by the executive director [~~commissioner~~] under this chapter.

SECTION 14A.354. Section 1802.054, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.054. APPLICATION FOR LICENSE. An applicant for a license must apply to the executive director [~~commissioner~~] on a form provided by the executive director [~~commissioner~~] that establishes the applicant's eligibility for the license. The application must be accompanied by:

(1) the required bond;

(2) the required license fee; and

(3) either:

(A) the permit number of a sales tax permit issued to the applicant by the comptroller under Subchapter F, Chapter 151, Tax Code; or

(B) proof of exemption from the tax permit requirement under Chapter 151, Tax Code.

SECTION 14A.355. Sections 1802.055(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An individual who establishes that the individual is eligible for an auctioneer's license may apply to the executive director [~~commissioner~~] to take the license examination. The application must be accompanied by the examination fee.

(b) On receipt of an examination application and fee, the executive director [~~commissioner~~] shall furnish the applicant with:

(1) study materials and references on which the examination will be based; and

(2) a schedule specifying the dates and places the examination will be offered.

SECTION 14A.356. Sections 1802.056(b) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The license examination shall be offered at least four times each year at locations designated by the executive director [~~commissioner~~].

(c) The executive director [~~commissioner~~] shall prepare:

(1) examinations for an auctioneer's license; and

(2) study and reference materials on which the examinations are based.

SECTION 14A.357. Section 1802.057, Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.057. EXAMINATION RESULTS. (a) The executive director [~~commissioner~~] shall notify each examinee of the results of the examination not later than the 30th day after the date of the examination. However, if an examination is graded or reviewed by a national testing service, the executive director [~~commissioner~~] shall notify each examinee of the results of the examination not later than the 14th day after the date the executive director [~~commissioner~~] receives the results from the testing service.

(b) If the notification of results of an examination graded or reviewed by a national testing service will be delayed longer than 90 days after the examination date, the executive director [~~commissioner~~] shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the examination, the executive director [~~commissioner~~] shall provide to the person an analysis of the person's performance on the examination.

SECTION 14A.358. Sections 1802.059(a), (b), and (d), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for an auctioneer's license who is not a resident of this state but is licensed as an auctioneer in another state must submit to the executive director [~~commissioner~~]:

(1) a license application;

(2) a certified copy of the auctioneer's license issued to the applicant by the state or political subdivision in which the applicant resides; and

(3) proof that the state or political subdivision in which the applicant is licensed has competency standards equivalent to or stricter than those of this state.

(b) The executive director [~~commissioner~~] shall accept the applicant's auctioneer's license submitted under Subsection (a)(2) as proof of the applicant's professional competence and waive the examination and training requirements of Section 1802.052 if the state or political subdivision that issued the nonresident a license extends similar recognition and courtesies to this state.

(d) A nonresident applicant must submit with the application a written irrevocable consent to service of process. The consent must be in the form and supported by additional information that the executive director [~~commissioner~~] by rule requires. The consent must:

(1) provide that an action relating to any transaction subject to this chapter may be commenced against the license holder in the proper court of any county of this state in which the cause of action may arise or in which the plaintiff may reside by service of process on the executive director [~~commissioner~~] as the license holder's agent; and

(2) include a statement stipulating and agreeing that service provided by this section is as valid and binding as if service had been made on the person according to the laws of this or

any other state.

SECTION 14A.359. Sections 1802.061 and 1802.101, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.061. CONTINUING EDUCATION. The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for license holders. Participation in the programs is voluntary.

Sec. 1802.101. AUCTIONEER EDUCATION ADVISORY BOARD. The advisory board shall advise the executive director [~~commissioner~~] on educational matters.

SECTION 14A.360. Sections 1802.102(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The advisory board consists of five members appointed as follows:

(1) three members who are licensed auctioneers appointed by the executive director [~~commissioner~~];

(2) the executive director of the Texas Department of Economic Development or the director's designee; and

(3) the commissioner of education or the commissioner's designee.

(b) In appointing advisory board members under Subsection (a)(1), the executive director [~~commissioner~~] may not appoint members who reside in contiguous senatorial districts.

SECTION 14A.361. Section 1802.103(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The members appointed under Section 1802.102(a)(1) serve two-year terms that expire on September 1. If a vacancy occurs during the term of such a member, the executive director [~~commissioner~~] shall appoint a replacement to serve for the remainder of the term.

SECTION 14A.362. Section 1802.109, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.109. AUCTIONEER EDUCATION PROGRAMS. (a) The advisory board shall:

(1) evaluate educational programs, seminars, and training projects; and

(2) make recommendations to the executive director [~~commissioner~~] on their usefulness and merit as continuing education tools.

(b) On the recommendation of the advisory board, the executive director [~~commissioner~~] may fund or underwrite specific classes, seminars, or events for the education and advancement of the auctioneering profession in this state.

SECTION 14A.363. Section 1802.152(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as

follows:

(a) The department is the manager of the fund and shall:

(1) administer the fund without appropriation;

(2) maintain books and records as required by the executive director [~~commissioner~~];

(3) appear at hearings or judicial proceedings; and

(4) invest and reinvest the fund's assets as instructed by the executive director [~~commissioner~~].

SECTION 14A.364. Section 1802.153(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) In addition to any other fees required by this chapter, an applicant entitled to receive a license under this chapter must pay a fee of $100 before the executive director [~~commissioner~~] issues the license.

SECTION 14A.365. Section 1802.155(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) If the fund contains insufficient assets to pay the consumer:

(1) the department shall record the time and date an order for payment to a consumer was received; and

(2) the executive director [~~commissioner~~] shall pay consumers for whom an order is recorded under Subdivision (1) as funds become available in the order of the recorded time and date of

the order.

SECTION 14A.366. Sections 1802.156 and 1802.201, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.156. EDUCATION EXPENDITURES PERMITTED. The executive director [~~commissioner~~] may use amounts in excess of $250,000 in the fund to:

(1) advance education and research in the auctioneering profession for the benefit of license holders and to improve and increase the efficiency of the industry;

(2) underwrite educational seminars, training centers, and other educational projects for the use and benefit of license holders;

(3) sponsor, contract, and underwrite other educational and research projects that advance the auctioneering profession in this state; and

(4) cooperate with associations of auctioneers and other groups for the education and advancement of the auctioneering profession in this state.

Sec. 1802.201. INVESTIGATION OF COMPLAINTS. The executive director [~~commissioner~~] may, on the executive director's [~~commissioner's~~] motion, and shall, on the written and verified complaint of a person aggrieved by the actions of an auctioneer in an auction, investigate an alleged violation of this chapter by a licensed or unlicensed auctioneer or an applicant.

SECTION 14A.367. Section 1802.202(b), Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] may not pay a claim against an auctioneer who was not licensed at the time of the transaction on which the claim is based.

SECTION 14A.368. Section 1802.203(c), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) After the hearing, the hearings examiner shall prepare a proposal for decision for the executive director [~~commissioner~~].

SECTION 14A.369. Section 1802.204, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.204. APPEAL. A party may appeal a decision of the executive director [~~commissioner~~] in the manner provided for a contested case under Chapter 2001, Government Code.

SECTION 14A.370. Sections 1802.205(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) If the department's determination under Section 1802.202 is not disputed by the auctioneer or the aggrieved party, the executive director [~~commissioner~~] shall pay the claim from the fund, subject to Section 1802.206.

(b) If a hearing is held on the department's determination, the executive director [~~commissioner~~] shall pay to the aggrieved party the amount of actual damages determined by the executive director [~~commissioner~~].

SECTION 14A.371. Section 1802.206(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may not pay a single aggrieved party more than $10,000.

SECTION 14A.372. Sections 1802.207 and 1802.208, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.207. REIMBURSEMENT; INTEREST. (a) If the executive director [~~commissioner~~] pays a claim against an auctioneer, the auctioneer shall:

(1) reimburse the fund immediately or agree in writing to reimburse the fund on a schedule to be determined by rule of the executive director [~~commissioner~~]; and

(2) immediately pay the aggrieved party any amount due to that party or agree in writing to pay the party on a schedule to be determined by rule of the executive director [~~commissioner~~].

(b) Payments made by an auctioneer to the fund or to an aggrieved party under this section include interest accruing at the rate of eight percent a year beginning on the date the executive director [~~commissioner~~] pays the claim.

Sec. 1802.208. SUBROGATION. If the executive director [~~commissioner~~] pays a claim against an auctioneer, the department is subrogated to all rights of the aggrieved party against the auctioneer to the extent of the amount paid to the aggrieved party.

SECTION 14A.373. Section 1802.209(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) This subchapter and Section 1802.252 do not limit the executive director's [~~commissioner's~~] authority to take disciplinary action against a license holder for a violation of this chapter or a rule adopted under this chapter.

SECTION 14A.374. Sections 1802.251 and 1802.252, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.251. DENIAL OF APPLICATION; SUSPENSION OR REVOCATION OF LICENSE. The executive director [~~commissioner~~] may deny an application for a license or suspend or revoke the license of any auctioneer for:

(1) violating this chapter or a rule adopted under this chapter;

(2) obtaining a license through false or fraudulent representation;

(3) making a substantial misrepresentation in an application for an auctioneer's license;

(4) engaging in a continued and flagrant course of

misrepresentation or making false promises through an agent, advertising, or otherwise;

(5) failing to account for or remit, within a reasonable time, money belonging to another that is in the auctioneer's possession and commingling funds of another with the auctioneer's funds or failing to keep the funds of another in an escrow or trust account;

(6) being convicted in a court of this state or another state of a criminal offense involving moral turpitude or a felony; or

(7) violating the Business & Commerce Code in conducting an auction.

Sec. 1802.252. REVOCATION FOR CLAIM ON FUND. (a) The executive director [~~commissioner~~] may revoke a license issued under this chapter if the executive director [~~commissioner~~] makes a payment from the fund as the result of an action of the license holder.

(b) The executive director [~~commissioner~~] may probate an order revoking a license.

(c) An auctioneer is not eligible for a new license until the auctioneer has repaid in full the amount paid from the fund on the auctioneer's account, including interest, unless:

(1) a hearing is held; and

(2) the executive director [~~commissioner~~] issues a new probated license.

SECTION 14A.375. Sections 1802.253(a) and (d), Occupations Code, are amended to conform to the changes in terminology made by

Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Before denying an application for a license or suspending or revoking a license, the executive director [~~commissioner~~] shall:

(1) set the matter for a hearing; and

(2) before the 30th day before the hearing date, notify the applicant or license holder in writing of:

(A) the charges alleged or the question to be determined at the hearing; and

(B) the date and location of the hearing.

(d) If the applicant or license holder who is the subject of the hearing is an associate auctioneer, the executive director [~~commissioner~~] shall provide written notice to the auctioneer who employs the associate auctioneer or who has agreed to employ the associate auctioneer by mailing the notice by certified mail to the auctioneer's last known mailing address.

SECTION 14A.376. Section 1802.254, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1802.254. APPEAL. An appeal by an applicant or license holder of the executive director's [~~commissioner's~~] determination under Section 1802.252 must be to a district court of Travis County or of the county in which the violation is alleged to have occurred.

SECTION 14A.377. Section 1802.303(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter

836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person commits an offense if the person violates a provision of this chapter or a rule adopted by the executive director [~~commissioner~~] under this chapter for which a penalty is not provided.

PART 9. CHANGES RELATING TO SUBTITLE A, TITLE 12, OCCUPATIONS CODE

SECTION 14A.401. (a) Section 1901.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1901.001, Occupations Code, is amended by adding Subdivision (7-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(7-a) "Executive director" means the executive director of the department.

SECTION 14A.402. Section 1901.051(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] shall issue licenses to applicants who qualify.

SECTION 14A.403. Section 1901.052, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.052. RULES. (a) The executive director [~~commissioner~~], with advice and comment from the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality, shall adopt rules as necessary to enforce this chapter, including rules governing:

(1) license applications;

(2) qualifications of applicants;

(3) standards of conduct for drillers, including standards for marking well drilling rigs and equipment; and

(4) procedures and practices before the department.

(b) The executive director [~~commissioner~~] may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

SECTION 14A.404. (a) Section 1901.108, Occupations Code, is amended to conform to Section 3, Chapter 778, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.108. [~~PER DIEM.~~] REIMBURSEMENT. [~~(a) A council member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the council.~~

[~~(b)~~] A council member may be reimbursed for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as prescribed by the General Appropriations Act.

(b) Section 3, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.405. Section 1901.109(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The council may propose rules for adoption by the executive director [~~commissioner~~] relating to the regulation of drillers registered under this chapter.

SECTION 14A.406. Section 1901.151, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.151. LICENSE REQUIRED. A person may not act or offer to act as a driller unless the person holds a license issued by the executive director [~~commissioner~~] under this chapter and rules adopted under this chapter.

SECTION 14A.407. (a) Section 1901.155, Occupations Code, is amended to conform to Section 2, Chapter 778, Acts of the 77th

Legislature, Regular Session, 2001, and to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.155. LICENSE EXPIRATION; RENEWAL. (a) A [~~Except as provided by Section 51.205(a), a~~] license issued under this chapter expires annually [~~August 31 of each year~~]. On or before the license expiration [~~that~~] date, a license holder must pay an annual renewal fee to the department.

(b) For a year in which a license expiration date is changed under Section 51.205(a), the executive director [~~commissioner~~] shall prorate license renewal fees payable on the former license expiration date [~~August 31~~]. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(b) Section 1901.156, Occupations Code, is repealed to conform to Section 2, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 2, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.408. Section 1901.162, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The executive director [~~commissioner~~] may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

SECTION 14A.409. Section 1901.251(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by and on forms prescribed by the executive director [~~commissioner~~]. The well log shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:

(1) the depth, thickness, and character of the strata penetrated;

(2) the location of water-bearing strata;

(3) the depth, size, and character of casing installed; and

(4) any other information required by rules adopted by the executive director [~~commissioner~~].

SECTION 14A.410. Section 1901.252(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] shall adopt rules specifying the manner for marking a rig.

SECTION 14A.411. Section 1901.253, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.253. COMPLETING WATER WELL. A driller shall complete a well under standards and procedures adopted by the executive director [~~commissioner~~].

SECTION 14A.412. Section 1901.254(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the executive director [~~commissioner~~].

SECTION 14A.413. Sections 1901.255(c) and (d), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the executive director [~~commissioner~~].

(d) A driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to the executive director [~~commissioner~~] not later than the 30th day after the date the well is plugged. The department shall furnish plugging report forms on request.

SECTION 14A.414. Section 1901.301, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as

follows:

Sec. 1901.301. GROUNDS FOR DISCIPLINARY ACTION. The executive director [~~commissioner~~] may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

(1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;

(2) the failure to keep, deliver, or send a well log as required by Section 1901.251;

(3) the failure to advise a person for whom a well is being drilled that:

(A) injurious water has been encountered;

(B) the water is a pollution hazard; and

(C) the well must be immediately plugged in an acceptable manner; or

(4) the failure to complete a well in accordance with standards and procedures adopted by the executive director [~~commissioner~~].

SECTION 14A.415. Section 1901.302, Occupations Code, is amended to conform to Section 5, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001, and to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.302. NOTICE AND HEARING. [~~(a)~~] Before revoking a license, placing a license holder on probation, or reprimanding a license holder, the executive director [~~commissioner~~] must:

(1) notify the license holder [~~in writing of the alleged violation~~]; and

(2) provide the license holder with an opportunity for a hearing.

[~~(b) The notice must be mailed by registered mail to the last known business address of the license holder.~~

[~~(c) The license holder, each person complaining against the license holder, and any other witness whose testimony is relied on to substantiate the charges made may be present at the hearing.~~

[~~(d) The license holder may present relevant oral or written evidence.~~]

SECTION 14A.416. (a) Section 1901.351, Occupations Code, is amended to conform to Section 4, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.351. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of an administrative penalty imposed under Subchapter F, Chapter 51, for a violation of this chapter or a rule adopted under this chapter may not exceed $2,500 for each violation.

(b) The commission shall set the amount of an administrative penalty. [~~In determining the amount of the penalty, the commission shall consider:~~

[~~(1) the person's history of previous violations; and~~

[~~(2) the seriousness of the violation.~~]

(b) Section 1901.352, Occupations Code, is repealed to conform to Section 4, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 4, Chapter 778, Acts of the 77th Legislature,

Regular Session, 2001, is repealed.

SECTION 14A.417. Section 1, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.418. Sections 1901.402 and 1901.403, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1901.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The executive director [~~commissioner~~] may bring an action to enjoin a person from violating this chapter.

(b) The executive director [~~commissioner~~] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Sec. 1901.403. VENUE. The executive director [~~commissioner~~] may bring an action in:

(1) Travis County; or

(2) the county in which:

(A) the offending activity occurred; or

(B) the person engaging in the activity resides.

SECTION 14A.419. Section 1901.404(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) At the request of the executive director [~~commissioner~~], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty,

or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 14A.420. Sections 1901.153, 1901.303, and 1901.304, Occupations Code, are repealed to conform to Section 5, Chapter 778, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 14A.421. (a) Section 1902.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 1902.001, Occupations Code, is amended by adding Subdivision (4-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 14A.422. Section 1902.051(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The executive director [~~commissioner~~] shall issue licenses to applicants who qualify.

SECTION 14A.423. Sections 1902.052 and 1902.151, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.052. RULES. (a) The executive director [~~commissioner~~] shall adopt rules as necessary to enforce this chapter.

(b) The executive director [~~commissioner~~] may not adopt a rule under this chapter that:

(1) regulates the installation or repair of well pumps and equipment by:

(A) a person on property the person owns or controls for the person's own use;

(B) an employee of a person described by Paragraph (A); or

(C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or

(2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

Sec. 1902.151. LICENSE REQUIRED. A person may not act or offer to act as an installer unless the person holds a license issued by the executive director [~~commissioner~~] under rules adopted under this chapter.

SECTION 14A.424. (a) Section 1902.155, Occupations Code, is amended to conform to Section 2, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, and to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.155. LICENSE EXPIRATION; RENEWAL. (a) A [~~Except as provided by Section 51.205(a), a~~] license issued under this chapter expires annually [~~August 31 of each year~~]. On or before the

license expiration [~~that~~] date, a license holder must pay an annual renewal fee to the department.

(b) For a year in which a license expiration date is changed under Section 51.205(a), the executive director [~~commissioner~~] shall prorate license renewal fees payable on the former license expiration date [~~August 31~~]. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(b) Section 1902.156, Occupations Code, is repealed to conform to Section 2, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 2, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.425. Sections 1902.162 and 1902.251, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.162. WAIVER FOR APPLICANT LICENSED IN ANOTHER STATE. The executive director [~~commissioner~~] may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

Sec. 1902.251. INSTALLING AND REPAIRING PUMPS. An installer shall install or repair pumps under standards and procedures adopted by the executive director [~~commissioner~~] with the advice of the council.

SECTION 14A.426. Section 1902.252(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter

836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) To avoid injury or pollution, the installer shall repair or properly complete the well under standards and procedures adopted by the executive director [~~commissioner~~].

SECTION 14A.427. Section 1902.301, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.301. GROUNDS FOR DISCIPLINARY ACTION. The executive director [~~commissioner~~] may revoke a license, place a license holder on probation, or reprimand a license holder under Section 51.353 for a violation of this chapter or a rule adopted under this chapter.

SECTION 14A.428. (a) Sections 1902.302 and 1902.303, Occupations Code, are repealed to conform to Section 3, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 3, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.429. (a) Section 1902.351, Occupations Code, is amended to conform to Section 4, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.351. AMOUNT OF PENALTY. (a) The amount of an administrative penalty imposed under Subchapter F, Chapter 51, for a violation of this chapter or a rule adopted under this chapter may not exceed $2,500 for each violation.

(b) The commission shall set the amount of an administrative

penalty. [~~In determining the amount of the penalty, the commission shall consider:~~

[~~(1) the person's history of previous violations; and~~

[~~(2) the seriousness of the violation.~~]

(b) Section 1902.352, Occupations Code, is repealed to conform to Section 4, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001.

(c) Section 4, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.430. Section 1, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.431. Sections 1902.402 and 1902.403, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1902.402. INJUNCTION AND OTHER ENFORCEMENT PROVISIONS. (a) The executive director [~~commissioner~~] may bring an action to enjoin a person from violating this chapter.

(b) The executive director [~~commissioner~~] may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

Sec. 1902.403. VENUE. The executive director [~~commissioner~~] may bring an action in:

(1) Travis County; or

(2) the county in which:

(A) the offending activity occurred; or

(B) the person engaging in the activity resides.

SECTION 14A.432. Section 1902.404(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) At the request of the executive director [~~commissioner~~], the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.

SECTION 14A.433. (a) Sections 1902.153 and 1902.304, Occupations Code, are repealed to conform to Section 5, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001.

(b) Subchapter C, Chapter 1902, Occupations Code, is repealed to conform to Section 5, Chapter 779, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 14A.434. (a) Section 1903.001, Occupations Code, is amended to conform to Sections 12 and 25, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas [~~Natural Resource Conservation~~] Commission on Environmental Quality.

(2) "Council" means the Irrigator [~~Texas Irrigators~~] Advisory Council.

(3) "Executive director" means the executive director of the commission.

(4) [~~"Installer" means a person who connects an~~

~~irrigation system to a private or public, raw or potable water supply system or any water supply.~~

[~~(5)~~] "Irrigation system" means an assembly of component parts permanently installed for the controlled distribution and conservation of water to irrigate landscape vegetation, reduce dust, or control erosion. The term does not include a system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code.

(5) [~~(6) "Irrigator" means a person who sells, designs, consults regarding, installs, maintains, alters, repairs, or services an irrigation system, including the connection of an irrigation system in and to a private or public, raw or potable water supply system or any water supply. The term does not include:~~

[~~(A) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of an irrigator; or~~

[~~(B) an owner of a business that regularly employs an irrigator who directly supervises the business's sale, design, consultation regarding, installation, maintenance, alteration, repair, or service of irrigation systems.~~

[~~(7)~~] "Person" means an individual.

(b) Section 12, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.435. (a) Section 1903.002, Occupations Code, is amended to conform to Sections 13 and 17, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.002. EXEMPTIONS. (a) In this section,

"property[~~:~~

[~~(1) "Irrigation system" does not include a system used on or by an agricultural operation as defined by Section 251.002, Agriculture Code.~~

[~~(2) "Property~~] owners' association" has the meaning assigned by Section 202.001, Property Code.

(b) The licensing [~~registration~~] requirements of this chapter do not apply to a person who is:

(1) licensed by the Texas State Board of Plumbing Examiners; or

(2) a licensed engineer, registered architect, or registered landscape architect to the extent the person's acts are incidental to the pursuit of the person's profession.

(c) The licensing [~~registration~~] requirements of this chapter do not apply to:

(1) irrigation or yard sprinkler work performed by a property owner in a building or on premises owned or occupied by the person as the person's home;

(2) irrigation or yard sprinkler repair work, other than extension of an existing irrigation or yard sprinkler system or installation of a replacement system, that is:

(A) performed by a maintenance person who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) incidental to and on premises owned by the business in which the person is regularly employed or engaged;

(3) irrigation or yard sprinkler work performed:

(A) by a regular employee of a railroad who does not act as an irrigator or engage in yard sprinkler construction or maintenance for the public; and

(B) on the premises or equipment of the railroad;

(4) irrigation or yard sprinkler work performed on public property by a person who is regularly employed by a political subdivision of this state;

(5) irrigation or yard sprinkler work performed by an agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, or grader or cultivator of land on land owned by the person;

(6) irrigation or yard sprinkler work performed by a member of a property owners' association on real property owned by the association or in common by the association's members if the irrigation or yard sprinkler system waters real property that:

(A) is less than one-half acre in size; and

(B) is used for aesthetic or recreational purposes;

(7) irrigation or yard sprinkler work performed by a person using [~~the use of~~] a garden hose, hose sprinkler, hose-end product, [~~soaker hose,~~] or agricultural irrigation system; [~~or~~]

(8) activities involving [~~the use of~~] a [~~portable or solid set or other type of~~] commercial agricultural irrigation system;

(9) a person who assists in the installation, maintenance, alteration, repair, or service of an irrigation system under the direct supervision of an individual described by

Subchapter F of this chapter who is licensed under Chapter 37, Water Code; or

(10) an owner of a business that employs an individual described by Subchapter F of this chapter who is licensed under Chapter 37, Water Code, to supervise the business's sale, design, consultation, installation, maintenance, alteration, repair, and service of irrigation systems.

(d) A person who is exempt from the licensing [~~registration~~] requirements of this chapter shall comply with the standards established by this chapter and the rules adopted under this chapter.

(b) The heading to Subchapter F, Chapter 1903, Occupations Code, is amended to conform to Section 17, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER F. LICENSING [~~REGISTRATION~~] REQUIREMENTS

(c) Sections 1903.251 and 1903.252, Occupations Code, are amended to conform to Sections 17 and 25, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.251. LICENSE [~~CERTIFICATE OF REGISTRATION~~] REQUIRED. A person must hold a license issued by the commission under Chapter 37, Water Code, if the person:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; or

(3) connects an irrigation system to a private or public, raw or potable water supply system or any water supply [~~may~~

~~not act as an irrigator or installer unless the person holds a certificate of registration under this chapter~~].

Sec. 1903.252. LICENSING [~~CERTIFICATION~~] OF LANDSCAPE ARCHITECT. The commission may not require a [~~A~~] person who on August 27, 1979, held a license as a landscape architect under Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), to pass an examination in order to be licensed [~~is entitled to be certified as an irrigator without complying with Section 1903.251~~].

(d) Sections 1903.253, 1903.254, and 1903.256, Occupations Code, are repealed to conform to Section 17, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001.

(e) Subchapter G, Chapter 1903, Occupations Code, is repealed to conform to Sections 17 and 25, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001.

(f) Sections 13 and 17, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.436. (a) Sections 1903.053(a) and (b), Occupations Code, are amended to conform to Section 16, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The commission shall adopt standards governing the connection of irrigation systems to any [~~a public or private~~] water supply [~~by an irrigator or installer~~].

(b) The commission may adopt standards for irrigation that include water conservation, irrigation system design and installation, and compliance with municipal codes [~~by an irrigator~~

~~or installer~~].

(b) Section 16, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.437. (a) The heading to Subchapter D, Chapter 1903, Occupations Code, is amended to conform to Section 14, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER D. IRRIGATOR [~~TEXAS IRRIGATORS~~] ADVISORY COUNCIL

(b) Section 14, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.438. (a) Section 1903.151(a), Occupations Code, is amended to conform to Section 15, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The Irrigator [~~Texas Irrigators~~] Advisory Council consists of nine members appointed by the commission as follows:

(1) six members who are irrigators, residents of this state, experienced in the irrigation business, and familiar with irrigation methods and techniques; and

(2) three public members.

(b) Section 1903.155, Occupations Code, is amended to conform to Section 15, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.155. PRESIDING OFFICER. The council shall elect a presiding officer [~~by a majority vote at the first meeting each fiscal year~~].

(c) Section 1903.157, Occupations Code, is amended to conform to Sections 15 and 25, Chapter 880, Acts of the 77th

Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.157. MEETINGS[~~; QUORUM~~]. [~~(a)~~] The council shall hold meetings at the call of the commission or presiding officer.

[~~(b) The council shall conduct meetings in compliance with Chapter 551, Government Code.~~

[~~(c) A majority of the council constitutes a quorum.~~]

(d) Subchapter D, Chapter 1903, Occupations Code, is amended by adding Section 1903.159 to conform to Section 15, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.159. COUNCIL DUTIES. The council shall provide advice to the commission and the commission's staff concerning matters relating to irrigation.

(e) Section 15, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.439. (a) Section 1903.255, Occupations Code, is amended to conform to Section 8.01, Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1903.255. RECIPROCAL LICENSING. [~~REGISTRATION. (a)~~] The commission may waive any prerequisite for obtaining a license for an applicant who [~~issue a certificate of registration to an applicant without requiring the applicant to pass an examination under Subchapter C if the applicant~~] is registered or licensed as an irrigator or installer by another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another

state to allow for licensing by reciprocity [~~in another state or country that:~~

[~~(1) has registration requirements that are at least substantially equivalent to the requirements of this state; and~~

[~~(2) provides reciprocity to irrigators or installers registered in this state~~].

[~~(b) An application for a certificate of registration under this section must be accompanied by a fee in an amount determined by the commission not to exceed:~~

[~~(1) $200 for an irrigator; or~~

[~~(2) $150 for an installer.~~]

(b) Section 8.01, Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.440. Section 8.02, Chapter 965, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.441. The following provisions of Chapter 1903, Occupations Code, are repealed to conform to Section 25, Chapter 880, Acts of the 77th Legislature, Regular Session, 2001:

(1) Sections 1903.051, 1903.052, 1903.054, 1903.055, 1903.056, 1903.153, 1903.154, and 1903.156; and

(2) Subchapters C, E, and H.

PART 10. CHANGES RELATING TO SUBTITLE B, TITLE 12, OCCUPATIONS CODE

SECTION 14A.451. (a) Section 1951.007, Occupations Code, is amended to conform to Section 3.04, Chapter 1481, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1951.007. APPLICATION OF SUNSET ACT. The Texas

Structural Pest Control 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, 2007 [~~2003~~].

(b) Section 3.04, Chapter 1481, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.452. (a) Section 1952.105(a), Occupations Code, is amended to conform to Section 2, Chapter 202, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A certificate of registration issued under this chapter expires on the first anniversary of the date of issuance and may be renewed annually on payment of the required renewal fee and on completion of the annual continuing education requirements prescribed by the board.

(b) Section 2, Chapter 202, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.453. (a) Subchapter C, Chapter 1952, Occupations Code, is amended by adding Section 1952.1051 to conform to Section 1, Chapter 202, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1952.1051. CONTINUING EDUCATION. The board by rule shall prescribe annual continuing education requirements for code enforcement officers and code enforcement officers in training that:

(1) establish the number of hours of continuing education required for renewal of a certificate of registration;

(2) establish an approved curriculum that includes

material regarding changes in applicable law; and

(3) provide that the approved curriculum may be taught by suitable public agencies and by private entities approved by the department.

(b) Section 1, Chapter 202, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.454. (a) Section 1954.060, Occupations Code, is amended by adding Subsection (c) to conform to Section 1, Chapter 674, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) The board may exempt a demolition or renovation project from the rules relating to demolition and renovation activities adopted under Subsection (a) if:

(1) the project has received an exemption from the United States Environmental Protection Agency exempting the project from federal regulations; or

(2) the board determines that:

(A) the project will use methods for the abatement or removal of asbestos that provide protection for the public health and safety at least equivalent to the protection provided by the procedures required under board rule for the abatement or removal of asbestos; and

(B) the project does not violate federal law.

(b) Section 1, Chapter 674, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.455. (a) Section 1954.104, Occupations Code, is amended to conform to Sections 1 and 2, Chapter 1391, Acts of the

77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1954.104. RESILIENT FLOOR-COVERING MATERIAL[~~; CIVIL PENALTY~~]. (a) For purposes of this section, "resilient floor-covering material" includes sheet vinyl flooring, resilient tile such as vinyl composition tile, asphalt tile, rubber tile, and associated adhesives.

(b) The licensing and registration requirements of this chapter do not apply to an activity that involves resilient floor-covering material if the removal of the material is performed consistently with:

(1) work practices published by the resilient floor-covering industry; or

(2) other methods determined by the commissioner to provide public health [~~comparable~~] protection from asbestos exposure.

(c) A person who removes resilient floor-covering material must have completed a training course on the work practices described by Subsection (b) for a minimum of [~~period not to exceed~~] eight hours.

[~~(d) A person who intentionally violates this section is liable for a civil penalty in an amount not to exceed $5,000.~~]

(b) Section 1, Chapter 1391, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.456. (a) Subchapter F, Chapter 1954, Occupations Code, is amended by adding Section 1954.259 to conform to Section 1, Chapter 37, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 1954.259. SURVEY REQUIRED. (a) In this section, "permit" means a license, certificate, approval, registration, consent, permit, or other form of authorization that a person is required by law, rule, regulation, order, or ordinance to obtain to perform an action, or to initiate, continue, or complete a project, for which the authorization is sought.

(b) A municipality that requires a person to obtain a permit before renovating or demolishing a public or commercial building may not issue the permit unless the applicant provides:

(1) evidence acceptable to the municipality that an asbestos survey, as required by this chapter, of all parts of the building affected by the planned renovation or demolition has been completed by a person licensed under this chapter to perform a survey; or

(2) a certification from a licensed engineer or registered architect, stating that:

(A) the engineer or architect has reviewed the material safety data sheets for the materials used in the original construction, the subsequent renovations or alterations of all parts of the building affected by the planned renovation or demolition, and any asbestos surveys of the building previously conducted in accordance with this chapter; and

(B) in the engineer's or architect's professional opinion, all parts of the building affected by the planned renovation or demolition do not contain asbestos.

(b) Section 1, Chapter 37, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

PART 11. CHANGES RELATING TO SUBTITLE B, TITLE 13, OCCUPATIONS CODE

SECTION 14A.501. (a) Section 2052.002(4), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 2052.002, Occupations Code, is amended by adding Subdivision (8-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(8-a) "Executive director" means the executive director of the department or the executive director's designated representative.

SECTION 14A.502. The heading to Subchapter B, Chapter 2052, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND EXECUTIVE DIRECTOR [~~COMMISSIONER~~]

SECTION 14A.503. Sections 2052.052 and 2052.053, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.052. RULES. (a) The executive director [~~commissioner~~] shall adopt reasonable and necessary rules to administer this chapter.

(b) The executive director [~~commissioner~~] may adopt rules:

(1) governing professional kickboxing contests and

exhibitions; and

(2) establishing reasonable qualifications for an applicant seeking a license from the department under this chapter.

Sec. 2052.053. INVESTIGATIVE AUTHORITY. (a) The executive director [~~commissioner~~] shall investigate allegations of activity that may violate this chapter.

(b) The executive director [~~commissioner~~] may enter, at a reasonable time, a place of business or an establishment in which activity alleged to violate this chapter may occur. The executive director [~~commissioner~~] is not required to give advance notice before entering.

SECTION 14A.504. Section 2052.054(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons licensed under this chapter.

SECTION 14A.505. Sections 2052.102 and 2052.103, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.102. BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for a boxing promoter's license under this chapter must apply on a form furnished by the executive director [~~commissioner~~].

(b) An application must be accompanied by:

(1) a license fee in an amount set by the commission; and

(2) a surety bond:

(A) subject to approval by the executive director [~~commissioner~~]; and

(B) conditioned on the applicant's payment of the tax imposed under Section 2052.151.

(c) The executive director [~~commissioner~~] shall establish the amount of the surety bond required under Subsection (b). The bond amount may not be less than $300.

Sec. 2052.103. ELIMINATION TOURNAMENT BOXING PROMOTER LICENSE APPLICATION REQUIREMENTS. (a) An applicant for an elimination tournament boxing promoter's license under this chapter must apply on a form furnished by the executive director [~~commissioner~~].

(b) An application must be accompanied by an application fee of not more than $1,000 and, if the applicant charges a fee for admission to the elimination tournament or awards a trophy, prize, including a prize of money, or other item of value of more than $50 to a contestant winning the elimination tournament:

(1) a $50,000 surety bond subject to approval by the executive director [~~commissioner~~] and conditioned on the applicant's payment of:

(A) the tax imposed under Section 2052.151; and

(B) a claim against the applicant as described by Section 2052.109(a)(3); and

(2) proof of not less than $10,000 accidental death or

injury insurance coverage for each contestant participating in the elimination tournament.

SECTION 14A.506. Section 2052.108(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An application for a license under Section 2052.107 must be made on a form furnished by the executive director [~~commissioner~~].

SECTION 14A.507. Sections 2052.110, 2052.111, and 2052.112, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.110. LICENSE AND BONDING EXCEPTIONS. The licensing and bonding requirements of this subchapter do not apply to:

(1) a boxing event in which the participants do not receive a money remuneration, purse, or prize for their performances or services if the event is promoted, conducted, or maintained by:

(A) an educational institution;

(B) a law enforcement organization;

(C) a Texas National Guard Unit; or

(D) an amateur athletic organization recognized by the executive director [~~commissioner~~];

(2) a nonprofit amateur athletic association chartered under the law of this state, including a membership club

affiliated with the association located within this state and recognized by the executive director [~~commissioner~~];

(3) an event conducted by a college, school, or university that is part of the institution's athletic program in which only students of different educational institutions participate; or

(4) an event in which only members of a troop, battery, company, or unit of the Texas National Guard or a law enforcement agency participate.

Sec. 2052.111. DENIAL OF APPLICATION. The executive director [~~commissioner~~] may deny an application for a license if:

(1) the applicant does not meet the qualifications for the license; or

(2) after conducting an investigation and a hearing, the executive director [~~commissioner~~] determines that the applicant has violated this chapter or a rule adopted under this chapter.

Sec. 2052.112. RECIPROCITY AGREEMENT. The executive director [~~commissioner~~] may waive a license requirement under this subchapter if the applicant holds a license issued by another state that has a reciprocity agreement with this state.

SECTION 14A.508. Section 2052.203(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The elimination tournament boxing promoter of a local, regional, or championship elimination tournament is not required to

require that each elimination tournament contestant wear headgear approved by the department if the promoter under department rules notifies the executive director [~~commissioner~~] of the decision not to use the approved headgear.

SECTION 14A.509. Section 2052.251, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.251. BOXING GLOVES. A boxing event contestant, other than an elimination tournament contestant under Subchapter E, shall wear eight-ounce boxing gloves, unless the executive director [~~commissioner~~] by rule requires or permits a contestant to wear heavier gloves.

SECTION 14A.510. Sections 2052.252(b) and (e), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The event may take place only if the executive director [~~commissioner~~] approves the event not later than seven days before the date the event begins.

(e) The event is subject to the supervision of the executive director [~~commissioner~~].

SECTION 14A.511. Sections 2052.301 and 2052.302, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.301. REVOCATION AND SUSPENSION OF LICENSE OR

PERMIT. The executive director [~~commissioner~~] may revoke or suspend the license or permit of a license or permit holder under this chapter for violating this chapter or a rule adopted under this chapter.

Sec. 2052.302. FORFEITURE OF PURSE. The executive director [~~commissioner~~] may order a boxer or manager to forfeit to this state a purse in an amount of not more than $1,000 for violating this chapter or a rule adopted under this chapter.

SECTION 14A.512. Sections 2052.304(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) A person may seek review of a decision or an order of the executive director [~~commissioner~~] under this chapter by filing a petition for review in a district court in Travis County not later than the 30th day after the date on which the decision or order of the executive director [~~commissioner~~] is final if the person is:

(1) a party to an administrative hearing in which the decision or order is issued; and

(2) aggrieved by the decision or order.

(b) The filing of a petition for review under Subsection (a) does not stay the effect of the decision or order of the executive director [~~commissioner~~] that is the subject of the petition. The executive director [~~commissioner~~] or the district court in which the petition for review is filed may order a stay on appropriate terms.

SECTION 14A.513. Section 2052.305, Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.305. SERVICE OF PROCESS. A petition for review filed under Section 2052.304 must be served on:

(1) the executive director [~~commissioner~~]; and

(2) all parties of record to a hearing before the executive director [~~commissioner~~] that relates to the matter for which the petition for review is filed.

SECTION 14A.514. Section 2052.306(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) On receipt of a petition for review served under Section 2052.305, the executive director [~~commissioner~~], not later than the date on which the answer to the petition must be filed or the date on which the record is made available to the executive director [~~commissioner~~], whichever date is later, shall certify to the district court in which the petition is filed the record of the proceedings to which the petition relates.

SECTION 14A.515. Sections 2052.307 and 2052.308, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2052.307. JUDICIAL REVIEW. (a) A district court reviewing a decision or an order of the executive director [~~commissioner~~] under this subchapter shall try the action without a

jury in the same manner as a civil action, except that evidence is not admissible unless the evidence was presented at the hearing or noticed in the record of the hearing before the executive director [~~commissioner~~]. The petitioner has the burden of proof in the action.

(b) The court may:

(1) affirm the decision or order of the executive director [~~commissioner~~]; or

(2) remand the matter to the executive director [~~commissioner~~] for further proceedings.

Sec. 2052.308. APPEAL. (a) The petitioner or executive director [~~commissioner~~] may appeal a final judgment of a court conducting a review under this subchapter in the same manner as a civil action.

(b) The executive director [~~commissioner~~] is not required to file an appeal bond.

PART 12. CHANGES RELATING TO SUBTITLE C, TITLE 13, OCCUPATIONS CODE

SECTION 14A.551. (a) Section 2105.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 2105.001, Occupations Code, is amended by adding Subdivision (3-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(3-a) "Executive director" means the executive director of the department.

SECTION 14A.552. Sections 2105.252(a) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) If it appears that a person is violating or threatening to violate this chapter, a department rule, or an order of the executive director [~~commissioner~~] related to this chapter, the executive director [~~commissioner~~] may bring an action for injunctive relief to restrain the person from engaging in or continuing the violation.

(c) The executive director [~~commissioner~~] may recover reasonable expenses, including court costs, attorney's fees, witness fees, and deposition expenses, incurred in obtaining injunctive relief under this section.

PART 13. CHANGES RELATING TO SUBTITLE A, TITLE 14, OCCUPATIONS CODE

SECTION 14A.601. (a) Sections 2301.002(6) and (16), Occupations Code, are amended to conform to Section 1, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(6) "Converter" means a person who before the retail sale of a motor vehicle:

(A) assembles, installs, or affixes a body, cab, or special equipment to a chassis; or

(B) substantially adds, subtracts from, or modifies a previously assembled or manufactured motor vehicle other than a motor home, ambulance, or fire-fighting vehicle.

(16) "Franchised dealer" means a person who:

(A) holds a franchised motor vehicle dealer's license [~~general distinguishing number~~] issued by the board under Chapter 503, Transportation Code; and

(B) is engaged in the business of buying, selling, or exchanging new motor vehicles and servicing or repairing motor vehicles under a manufacturer's warranty at an established and permanent place of business under a franchise in effect with a manufacturer or distributor.

(b) Section 1, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.602. Section 2301.002(23), Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

(23) "Motor vehicle" means:

(A) a fully self-propelled vehicle having two or more wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway;

(B) a fully self-propelled vehicle having two or more wheels that:

(i) has as its primary purpose the transport of a person or persons or property;

(ii) is not manufactured for use on public streets, roads, or highways; and

(iii) has been issued a certificate of title;

(C) an engine, transmission, or rear axle,

regardless of whether attached to a vehicle chassis, manufactured for installation in a vehicle that has:

(i) the transport of a person or persons, or property, on a public highway as its primary purpose; and

(ii) a gross vehicle weight rating of more than 16,000 pounds; or

(D) a towable recreational vehicle.

SECTION 14A.603. (a) Section 2301.052, Occupations Code, is amended by amending Subsection (c) and adding Subsection (e) to conform to Section 2, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) Except as provided by Subsection (d), a member's office is vacated if the member or a person related to the member within the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code:

(1) becomes a license holder under this chapter;

(2) acquires an interest in a business that manufactures, distributes, converts, leases, or sells motor vehicles; or

(3) becomes an [~~officer,~~] employee[~~,~~] or paid consultant of a trade association in the motor vehicle industry.

(e) Notwithstanding the other provisions of this section, a person is not ineligible to be appointed to or to serve on the board because the person or another person owns, directly or indirectly, shares of stock in a publicly traded company that manufactures or distributes motor vehicles, if the ownership interest is not substantial.

(b) Section 2, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.604. (a) Section 2301.059(b), Occupations Code, is amended to conform to Section 3, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) A member of the board appointed under Section 2301.051(b) [~~2301.051(b)(1)~~] may not vote on an issue involving a dispute in which a dealer and a manufacturer are parties.

(b) Section 3, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.605. (a) Section 2301.151(a), Occupations Code, is amended to conform to Section 5, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The board has the exclusive [~~general and~~] original [~~power and~~] jurisdiction to regulate those [~~all~~] aspects of the distribution, sale, or lease of motor vehicles that are governed by this chapter, including the original jurisdiction to determine its own jurisdiction.

(b) Section 5, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.606. (a) Section 2301.153(a), Occupations Code, is amended to conform to Section 6, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Notwithstanding any other provision of law, the board has all powers necessary, incidental, or convenient to perform a power or duty expressly granted under this chapter, including the power to:

(1) initiate and conduct proceedings, investigations, or hearings;

(2) administer oaths;

(3) receive evidence and pleadings;

(4) issue subpoenas to compel the attendance of any person;

(5) order the production of any tangible property, including papers, records, or other documents;

(6) make findings of fact on all factual issues arising out of a proceeding initiated under this chapter;

(7) specify and govern appearance, practice, and procedures before the board;

(8) adopt rules and issue conclusions of law and decisions, including declaratory decisions or orders;

(9) enter into contracts;

(10) execute instruments;

(11) retain counsel;

(12) use the services of the attorney general and institute and direct the conduct of legal proceedings in any forum;

(13) obtain other professional services as necessary and convenient;

(14) impose a sanction for contempt;

(15) assess and collect fees and costs, including attorney's fees;

(16) issue, suspend, or revoke licenses;

(17) prohibit and regulate acts and practices in connection with the distribution and sale of motor vehicles or

warranty performance obligations;

(18) issue cease and desist orders in the nature of temporary or permanent injunctions; [~~and~~]

(19) impose a civil penalty;

(20) enter an order requiring a person to:

(A) pay costs and expenses of a party in connection with an order entered under Section 2301.465;

(B) perform an act other than the payment of money; or

(C) refrain from performing an act; and

(21) enforce a board order.

(b) Section 6, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.607. (a) Subchapter D, Chapter 2301, Occupations Code, is amended by adding Section 2301.160 to conform to Section 16, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2301.160. TOLLING OF TIME LIMIT DURING MEDIATION. A time limit relating to a board proceeding that is imposed by this chapter on the board or on a dealer is tolled during the pendency of mediation required by this chapter or by a franchise agreement.

(b) Section 16, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.608. (a) Section 2301.202(b), Occupations Code, is amended to conform to Section 4, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) The board shall keep an information file about each

complaint filed with the board that the board has authority to resolve. The board shall keep the following information [~~file must contain a record~~] for each complaint filed by the board for the purpose of enforcing this chapter [~~of~~]:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) if the board does not take action on the complaint, an explanation of the reasons that action was not taken.

(b) Section 4, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.609. (a) Section 2301.252(b), Occupations Code, is amended to conform to Section 17, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) For purposes of this section:

(1) the make of a conversion, ambulance, or fire-fighting vehicle is that of the chassis manufacturer; and

(2) the make of a motor home is that of the motor home manufacturer.

(b) Section 17, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.610. (a) Subchapter F, Chapter 2301, Occupations Code, is amended by adding Section 2301.2575 to conform

to Section 10, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2301.2575. REQUEST FOR DEALER'S LICENSE APPLICATION CONFIDENTIAL. Notwithstanding any other law or rule, a request for an application for a dealer's license is confidential, is not an open record, and is not available for public inspection.

(b) Section 10, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.611. (a) Section 2301.259(c), Occupations Code, is amended to conform to Section 11, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) An application for a manufacturer's license must include a statement regarding the manufacturer's compliance with Subchapter I and Sections 2301.451-2301.476 [~~2301.451-2301.474~~].

(b) Section 11, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.612. (a) Section 2301.264(a), Occupations Code, is amended to conform to Section 12, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The annual fees for a license issued under this chapter are:

(1) $900 for a manufacturer or distributor, plus $20 for each dealer franchised by the manufacturer or distributor;

(2) for a franchised dealer:

(A) $175, if the dealer sold fewer than 201 new motor vehicles during the preceding calendar year;

(B) $275, if the dealer sold more than 200 but

fewer than 401 new motor vehicles during the preceding calendar year;

(C) $400, if the dealer sold more than 400 but fewer than 801 new motor vehicles during the preceding calendar year;

(D) $500, if the dealer sold more than 800 but fewer than 1,201 new motor vehicles during the preceding calendar year;

(E) $625, if the dealer sold more than 1,200 but fewer than 1,601 new motor vehicles during the preceding calendar year;

(F) $750, if the dealer sold more than 1,600 new motor vehicles during the preceding calendar year; and

(G) $100 for each location separate from the dealership at which the dealer does not offer motor vehicles for sale but performs warranty service work on vehicles the dealer is franchised and licensed to sell;

(3) $25 for an amendment to a [~~dealer~~] license;

(4) $100 for a representative;

(5) $375 for a converter;

(6) for a vehicle lessor:

(A) $175, if the lessor leased 200 or fewer motor vehicles during the preceding calendar year;

(B) $275, if the lessor leased more than 200 but fewer than 401 motor vehicles during the preceding calendar year;

(C) $400, if the lessor leased more than 400 but fewer than 801 motor vehicles during the preceding calendar year;

(D) $500, if the lessor leased more than 800 but fewer than 1,201 motor vehicles during the preceding calendar year;

(E) $625, if the lessor leased more than 1,200 but fewer than 1,601 motor vehicles during the preceding calendar year; and

(F) $750, if the lessor leased more than 1,600 motor vehicles during the preceding calendar year; [~~and~~]

(7) $375 for a vehicle lease facilitator; and

(8) $50 for a duplicate license.

(b) Section 12, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.613. (a) Subchapter F, Chapter 2301, Occupations Code, is amended by adding Section 2301.266 to conform to Section 9, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2301.266. DUPLICATE LICENSE. The board may:

(1) issue a duplicate license for any license the board issues;

(2) charge a fee for the issuance of a duplicate license; and

(3) adopt rules applicable to the issuance of a duplicate license.

(b) Section 9, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.614. Sections 2301.453(a) and (f), Occupations Code, are amended to more closely conform to the law from which they were derived to read as follows:

(a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not terminate or discontinue a franchise with a franchised dealer or directly or indirectly force or attempt to force a franchised dealer to relocate or discontinue a line-make or parts or products related to that line-make unless the manufacturer, distributor, or representative provides notice of the termination or discontinuance as required by Subsection (c) [~~this section~~] and:

(1) the manufacturer, distributor, or representative receives the dealer's informed written consent;

(2) the appropriate time for the dealer to file a protest under Subsection (e) [~~this section~~] has expired; or

(3) the board makes a determination of good cause under Subsection (g) [~~this section~~].

(f) After a timely protest is filed under Subsection (e), the board shall notify the party seeking the termination or discontinuance that:

(1) a timely protest has been filed;

(2) a hearing is required under this chapter; and

(3) the party may not terminate or discontinue the franchise until the board issues its final order or decision.

SECTION 14A.615. Section 2301.454, Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 2301.454. MODIFICATION OR REPLACEMENT OF FRANCHISE. (a) Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not modify or replace a

franchise if the modification or replacement would adversely affect to a substantial degree the dealer's sales, investment, or obligations to provide service to the public, unless [~~.~~

[~~(b) Subsection (a) does not apply to a modification or replacement of a franchise for which~~]:

(1) the manufacturer, distributor, or representative provides written notice by registered or certified mail to each affected dealer and the board of the modification or replacement; and

(2) if a protest is filed under this section, the board approves the modification or replacement.

(b) [~~(c)~~] The notice required by Subsection (a)(1) [~~(b)(1)~~] must:

(1) be given not later than the 60th day before the date of the modification or replacement; and

(2) contain on its first page a conspicuous statement that reads: "NOTICE TO DEALER: YOU MAY BE ENTITLED TO FILE A PROTEST WITH THE TEXAS MOTOR VEHICLE BOARD IN AUSTIN, TEXAS, AND HAVE A HEARING IN WHICH YOU MAY PROTEST THE PROPOSED MODIFICATION OR REPLACEMENT OF YOUR FRANCHISE UNDER THE TERMS OF CHAPTER 2301, OCCUPATIONS CODE, IF YOU OPPOSE THIS ACTION."

(c) [~~(d)~~] A franchised dealer may file a protest with the board of the modification or replacement not later than the latter of:

(1) the 60th day after the date of the receipt of the notice; or

(2) the time specified in the notice.

(d) [~~(c)~~] After a protest is filed, the board shall determine whether the manufacturer, distributor, or representative has established by a preponderance of the evidence that there is good cause for the proposed modification or replacement. The prior franchise continues in effect until the board resolves the protest.

SECTION 14A.616. Section 2301.460, Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 2301.460. WARRANTY, PREPARATION, OR DELIVERY AGREEMENT OBLIGATIONS. Notwithstanding the terms of any franchise, a manufacturer, distributor, or representative may not, after a complaint and a hearing, fail or refuse to perform an obligation placed on the manufacturer in connection with the preparation, delivery, and [~~or~~] warranty of a new motor vehicle as provided in the manufacturer's warranty, preparation, and [~~or~~] delivery agreements on file with the board.

SECTION 14A.617. Section 2301.461, Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

Sec. 2301.461. LIABILITY OF FRANCHISED DEALER. (a) Notwithstanding the terms of any franchise or any other law, a franchised dealer's preparation, delivery, and warranty obligations as filed with the board are the dealer's sole responsibility for product liability as between the dealer and a manufacturer or distributor.

(b) Notwithstanding the terms of any franchise or any other law, a [~~A~~] manufacturer or distributor shall reimburse the dealer

for any loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action, except for[~~.~~

[~~(c) Subsection (b) does not apply to~~] a loss caused by the dealer's:

(1) failure to comply with an obligation described by Subsection (a);

(2) negligence or intentional misconduct; or

(3) modification of a product without the authorization of the manufacturer or distributor.

[~~(d) To the extent of any conflict between this section and another law, this section prevails.~~]

SECTION 14A.618. Section 2301.462(b), Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

(b) Notwithstanding the terms of any franchise, a [~~A~~] manufacturer, distributor, or representative may refuse to honor a succession [~~under Subsection (a)~~] if, after notice and hearing, it is shown to the board that the result of the succession will be detrimental to the public interest and to the representation of the manufacturer or distributor.

SECTION 14A.619. Sections 2301.464(b) and (c), Occupations Code, are amended to more closely conform to the law from which they were derived to read as follows:

(b) An application under Subsection (a) to relocate a franchise must contain information reasonably necessary to enable a manufacturer or distributor to adequately evaluate the

application.

(c) If the applicant files a protest under Subsection (a)(2), the board shall hold a hearing. After the hearing, the board shall determine whether the manufacturer or distributor has established by a preponderance of the evidence that the grounds for the denial or withholding of approval of the relocation are reasonable.

SECTION 14A.620. (a) Section 2301.465(a)(2), Occupations Code, is amended to conform to Section 14, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(2) "Net discount value" is the net cost multiplied by the total mileage, exclusive of mileage placed on the motor vehicle before it was delivered to the dealer, divided by 100,000.

(b) Section 2301.465(b), Occupations Code, is amended to conform to Section 14, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) Notwithstanding the terms of any franchise, after the termination of a franchise, a manufacturer, distributor, or representative shall pay to a franchised dealer or any lienholder, in accordance with the interest of each, the following amounts:

(1) the dealer cost of each new motor vehicle in the dealer's inventory with mileage of 6,000 miles or less, exclusive of mileage placed on the vehicle before it was delivered to the dealer, reduced by the net discount value of each vehicle, except that if a vehicle cannot be reduced by the net discount value, the manufacturer or distributor shall pay the dealer the net cost of the vehicle;

(2) the dealer cost of each new, unused, undamaged, and unsold part or accessory that:

(A) is in the current parts catalogue and is still in the original, resalable merchandising package and in an unbroken lot, except in the case of sheet metal, a comparable substitute for the original package may be used; and

(B) was purchased by the dealer either directly from the manufacturer or distributor or from an outgoing authorized dealer as a part of the dealer's initial inventory;

(3) the fair market value of each undamaged sign owned by the dealer that bears a trademark or tradename used or claimed by the manufacturer, distributor, or representative and that was purchased from or at the request of the manufacturer, distributor, or representative;

(4) the fair market value of all special tools, data processing equipment, and automotive service equipment owned by the dealer that:

(A) were recommended in writing and designated as special tools and equipment;

(B) were purchased from or at the request of the manufacturer, distributor, or representative; and

(C) are in usable and good condition except for reasonable wear and tear; and

(5) the cost of transporting, handling, packing, storing, and loading any property subject to repurchase under this section.

(c) Section 14, Chapter 155, Acts of the 77th Legislature,

Regular Session, 2001, is repealed.

SECTION 14A.621. (a) Section 2301.476, Occupations Code, is amended by adding a new Subsection (f) and relettering existing Subsections (f) and (g) as Subsections (g) and (h) to conform to Section 15, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(f) For the purpose of determining compliance with Subsection (d)(2), the price of a dealership and the other terms and conditions of a contract for the sale of a dealership are reasonable if the purchaser is a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions.

(g) [~~(f)~~] For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has been historically underrepresented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

(1) has made a significant investment in the dealership, subject to loss;

(2) has an ownership interest in the dealership; and

(3) operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms.

(h) [~~(g)~~] A person who on June 7, 1995, held both a motor home manufacturer's license and a motor home dealer's license issued under this chapter may:

(1) continue to hold both licenses; and

(2) operate as both a manufacturer and dealer of motor homes but of no other type of vehicle.

(b) Section 15, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.622. (a) Section 2301.651(a), Occupations Code, is amended to conform to Section 13, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The board may deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder if the applicant or license holder:

(1) is unfit under standards described in this chapter or board rules;

(2) makes a material misrepresentation in any application or other information filed under this chapter or board rules;

(3) violates this chapter or a board rule or order;

(4) violates any law relating to the sale, distribution, financing, or insuring of motor vehicles;

(5) fails to maintain the qualifications for a license;

(6) wilfully defrauds a [~~retail~~] purchaser; or

(7) fails to fulfill a written agreement with a retail purchaser of a motor vehicle.

(b) Section 13, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.623. Section 2301.651(b), Occupations Code, is amended to more closely conform to the law from which it was derived to read as follows:

(b) The board may take action under Subsection (a) against an applicant or license holder for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity for the applicant or license holder that would be cause for denying, revoking, or suspending a [~~an individual's~~] license under this chapter.

SECTION 14A.624. (a) Subchapter O, Chapter 2301, Occupations Code, is amended by adding Section 2301.7025 to conform to Section 8, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2301.7025. LIMITATIONS PERIOD FOR CERTAIN CAUSES OF ACTION BY LICENSE HOLDERS. (a) This section does not apply to:

(1) an action with respect to which this chapter or rules of the board establish specific procedural time limits; or

(2) an action brought under Section 2301.204.

(b) Except as provided by this section, a license holder may not file an action with the board after the fourth anniversary of

the date the action accrues.

(c) The limitations period provided by Subsection (b) may be extended for not more than 180 days on a showing that the failure to commence an action in a timely manner was caused by reliance on a fraudulent statement or inducement made by a party to induce a party to refrain from bringing an action.

(b) Section 8, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.625. (a) Subchapter Q, Chapter 2301, Occupations Code, is amended by adding Section 2301.806 to conform to Section 7, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2301.806. BOARD EXEMPT FROM FILING FEE. Notwithstanding the other provisions of this chapter, the board is not required to pay a filing fee when filing a complaint or other enforcement action.

(b) Section 7, Chapter 155, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.626. (a) Section 2303.002, Occupations Code, is amended to conform to Section 1, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2303.002. DEFINITIONS. In this chapter:

(1) "Abandoned nuisance vehicle" means a motor vehicle that is:

(A) at least 10 years old; and

(B) of a condition only to be demolished, wrecked, or dismantled.

(2) "Commission" means the Texas Transportation Commission.

(3) [~~(2)~~] "Department" means the Texas Department of Transportation.

(4) [~~(3)~~] "Director" means the executive director of the department or a person designated by the executive director who is not below the rank of division or special office director.

(5) [~~(4)~~] "Owner of a vehicle" means a person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement; [~~or~~]

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder, holds an affidavit of repossession, and is entitled to repossess the vehicle.

(6) [~~(5)~~] "Principal" means an individual who:

(A) personally or constructively holds, including as the beneficiary of a trust:

(i) at least 10 percent of a corporation's outstanding stock; or

(ii) more than $25,000 of the fair market value of a business entity;

(B) has the controlling interest in a business entity;

(C) has a direct or indirect participating interest through shares, stock, or otherwise, regardless of whether voting rights are included, of more than 10 percent of the profits, proceeds, or capital gains of a business entity;

(D) is a member of the board of directors or other governing body of a business entity; or

(E) serves as an elected officer of a business entity.

(7) [~~(6)~~] "Vehicle" means:

(A) a motor vehicle for which the issuance of a certificate of title is required under Chapter 501, Transportation Code; or

(B) any other device designed to be self-propelled or transported on a public highway.

(8) [~~(7)~~] "Vehicle storage facility" means a garage, parking lot, or other facility that is:

(A) owned by a person other than a governmental entity; and

(B) used to store or park at least 10 vehicles each year.

(b) Section 1, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.627. (a) Section 2303.152, Occupations Code, is amended by adding Subsection (d) to conform to Section 2, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read

as follows:

(d) Only one notice is required to be published for an abandoned nuisance vehicle.

(b) Section 2303.153, Occupations Code, is amended to conform to Section 2, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2303.153. CONTENTS OF NOTICE. (a) A notice by mail provided under Section 2303.151 [~~or 2303.152~~] must include:

(1) the date the vehicle was accepted for storage;

(2) the first day for which a storage fee is assessed;

(3) the daily storage rate;

(4) the type and amount of any other charge to be paid when the vehicle is claimed;

(5) the full name, street address, and telephone number of the vehicle storage facility;

(6) the hours during which the owner may claim the vehicle; and

(7) the facility license number preceded by "Texas Department of Transportation Vehicle Storage Facility License Number."

(b) A notice by publication provided under Section 2303.152 must include:

(1) the vehicle description;

(2) the total charges;

(3) the full name, street address, and telephone number of the facility; and

(4) the department registration number.

(c) Notice by publication is not required to include any information other than that listed in Subsection (b).

(d) Notice by publication may include a list of more than one vehicle, watercraft, or outboard motor.

(c) Section 2303.154, Occupations Code, is amended by adding Subsection (c) to conform to Section 2, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(c) Notwithstanding Subsection (b), if publication is required for notice under this section, the notice must include:

(1) the information listed in Section 2303.153(b); and

(2) a statement that the failure of the owner or lienholder to claim the vehicle before the date of sale is:

(A) a waiver of all right, title, and interest in the vehicle; and

(B) a consent to the sale of the vehicle at a public sale.

(d) Subchapter D, Chapter 2303, Occupations Code, is amended by adding Section 2303.1545 to conform to Section 2, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2303.1545. DISPOSITION OF ABANDONED NUISANCE VEHICLE. (a) A vehicle storage facility that holds an abandoned nuisance vehicle is not required to send or publish a second notice and is entitled to dispose of the vehicle on the 30th day after the date the notice is mailed or published under Section 2303.151 or 2303.152.

(b) The facility may:

(1) notify the department that notices under Chapter 683, Transportation Code, have been provided and shall pay a fee of $10 to the department; or

(2) in the alternative, notify the appropriate law enforcement agency and pay a fee of $10 to that agency.

(c) A law enforcement agency described by Subsection (b)(2) may sign a document issued by the department.

(e) Section 2303.155, Occupations Code, is amended to conform to Sections 2 and 3, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2303.155. CHARGES RELATED TO STORAGE. (a) For the purposes of this section, "governmental vehicle storage facility" means a garage, parking lot, or other facility that is:

(A) owned by a governmental entity; and

(B) used to store or park at least 10 vehicles each year.

(b) The operator of a vehicle storage facility or governmental vehicle storage facility may charge the owner of a vehicle stored or parked at the facility:

(1) a notification fee set in a reasonable amount [~~not to exceed $25~~] for providing notice under this subchapter, including notice under Section 2303.154(c);

(2) an impoundment fee of $10 for any action that:

(A) is taken by or at the direction of the owner or operator of the facility; and

(B) is necessary to preserve, protect, or service a vehicle stored or parked at the facility; [~~and~~]

(3) a daily storage fee of:

(A) not less than $5 and not more than $15 for each day or part of a day the vehicle is stored at the facility if the vehicle is not longer than 25 feet; or

(B) $30 for each day or part of a day the vehicle is stored at the facility if the vehicle is longer than 25 feet; and

(4) any fee that is required to be submitted to a law enforcement agency, the agency's authorized agent, or a governmental entity.

(c) A notification fee under Subsection (b) may not exceed $32, except that if notice by publication is required by this chapter and the cost of publication exceeds 50 percent of the notification fee, the vehicle storage facility may recover the additional amount of the cost of publication from the vehicle owner or agent.

(d) For purposes of imposing a daily storage fee, a day is considered to begin at midnight and to end at the next following midnight. A daily storage fee may be charged regardless of whether the vehicle is stored for 24 hours of the day, except that a daily storage fee may not be charged for more than one day if the vehicle remains at the facility for less than 12 hours.

(e) [~~(d)~~] The operator of a vehicle storage facility or governmental vehicle storage facility may charge a daily storage fee under Subsection (b):

(1) for not more than five days before the date notice is mailed or published under this subchapter; and

(2) for each day the vehicle is in storage after the

date the notice is mailed or published until the vehicle is removed and all accrued charges are paid.

(f) [~~(e)~~] The operator of a vehicle storage facility or governmental vehicle storage facility may not charge an additional fee that is similar to a notification, impoundment, or administrative fee.

(g) [~~(f)~~] This section controls over any conflicting municipal ordinance or charter provision.

(f) Sections 2 and 3, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, are repealed.

SECTION 14A.628. (a) Section 2303.157, Occupations Code, is amended by amending Subsection (b) and adding Subsection (c) to conform to Section 4, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) An operator entitled to dispose of a vehicle under this section may sell the vehicle at a public sale without obtaining a release or discharge of any lien on the vehicle, regardless of whether notice was provided by mail or by publication under this chapter. The proceeds from the sale of the vehicle shall be applied to the charges incurred for the vehicle under Section 2303.155. The operator shall pay any excess proceeds to the person entitled to those proceeds.

(c) Notwithstanding Subsection (a), the operator of a vehicle storage facility may dispose of a vehicle for which notice was given under this subchapter as provided by this section if:

(1) the vehicle is an abandoned nuisance vehicle; and

(2) before the 30th day after the date the notice was

sent, the facility submits an application to the department for disposal of the vehicle.

(b) Section 4, Chapter 1452, Acts of the 77th Legislature, Regular Session, 2001, is repealed.

SECTION 14A.629. (a) Subtitle A, Title 14, Occupations Code, is amended to codify Article 9035, Revised Statutes, by adding Chapter 2306 to read as follows:

CHAPTER 2306. VEHICLE PROTECTION PRODUCT WARRANTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2306.001. SHORT TITLE. This chapter may be cited as the Vehicle Protection Product Regulatory Act.

Sec. 2306.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Consumer" means a person in this state who purchases or otherwise possesses a vehicle protection product.

(3) "Department" means the Texas Department of Licensing and Regulation.

(4) "Executive director" means the executive director of the department.

(5) "Person" means an individual or a partnership, company, corporation, association, or other group, however organized.

(6) "Reimbursement insurance policy" means a policy of insurance issued to a warrantor to:

(A) provide reimbursement to the warrantor under the terms of the insured vehicle protection product issued or sold

by the warrantor; and

(B) pay on behalf of the warrantor, in the event of the warrantor's nonperformance, all covered obligations incurred by the warrantor under the terms of the insured vehicle protection product issued or sold by the warrantor.

(7) "Seller" means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

(8) "Vehicle protection product" means a product or system, including a written warranty, that is:

(A) installed on or applied to a vehicle;

(B) designed to prevent loss or damage to a vehicle from a specific cause; and

(C) subject to the limitation of Section 2306.003.

(9) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

Sec. 2306.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a vehicle protection product under which, after installation or application of the vehicle protection product, if loss or damage results from the failure of the vehicle protection product to perform as represented in the warranty, the warrantor, to the extent agreed on as part of the warranty, is required to pay expenses to the consumer for the loss of or damage to the vehicle.

(b) Loss of or damage to the vehicle under Subsection (a) may also include unreimbursed incidental expenses that may be incurred by the warrantor, including expenses for a replacement

vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

Sec. 2306.004. EXEMPTIONS FROM CERTAIN OTHER LAWS. Marketing, selling, offering for sale, issuing, making, proposing to make, and administering a vehicle protection product are exempt from:

(1) Chapter 1304;

(2) the Insurance Code and other laws of this state regulating the business of insurance; and

(3) Chapter 722, Transportation Code.

Sec. 2306.005. EXEMPTIONS FROM CHAPTER. The following contracts and agreements are exempt from this chapter and are only subject to any other statute or law that specifically applies to them:

(1) warranties or guarantees, other than those provided as part of a vehicle protection product;

(2) service contracts regulated by Chapter 1304; and

(3) agreements issued by an automobile service club that holds a certificate of authority under Chapter 722, Transportation Code.

[Sections 2306.006-2306.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2306.051. POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director may adopt rules as necessary to implement this chapter.

(b) The executive director may conduct investigations of warrantors or other persons as reasonably necessary to enforce this

chapter and to protect consumers in this state.

Sec. 2306.052. FEES. (a) The department shall develop a tiered fee structure under which registration fees are assessed on warrantors based on the number of vehicle protection products sold within this state in the 12 months preceding the date of registration.

(b) The information submitted to the department under this section regarding the number of vehicle protection products sold by a warrantor may only be used by the department in determining the tiered fee structure. Information concerning the number of vehicle protection products sold by a warrantor submitted under this section is a trade secret and subject to Section 552.110, Government Code.

[Sections 2306.053-2306.100 reserved for expansion]

SUBCHAPTER C. ADVISORY BOARD

Sec. 2306.101. ADVISORY BOARD. (a) The Vehicle Protection Product Warrantor Advisory Board is an advisory body to the department.

(b) The advisory board consists of six members appointed by the executive director as follows:

(1) two members who are officers, directors, or employees of a warrantor who has been approved or expects to be approved by the department;

(2) two members who are officers, directors, or employees of a retail outlet or other entity located in this state that sells vehicle protection products and is approved or expected to be approved by the department; and

(3) two members who are residents of this state and, at the time of appointment, are consumers of vehicle protection products issued by warrantors registered or expected to be registered under this chapter.

(c) The executive director or the executive director's designee serves as an ex officio nonvoting member of the advisory board.

(d) Chapter 2110, Government Code, does not apply to the advisory board.

Sec. 2306.102. ADVISORY BOARD DUTIES. The advisory board shall advise:

(1) the executive director on adopting rules and enforcing and administering this chapter; and

(2) the commission on setting fees.

Sec. 2306.103. TERMS; VACANCY. (a) Members of the advisory board serve staggered six-year terms, with the terms of two members expiring on February 1 of each odd-numbered year. The executive director shall appoint the initial six board members to terms of six years or less in order to create staggered terms for the subsequent members of the advisory board.

(b) The executive director shall fill any vacancy on the advisory board by appointing an individual who meets the qualifications for the vacant advisory board position to serve the remainder of the unexpired term.

Sec. 2306.104. PRESIDING OFFICER. The executive director shall designate one member of the advisory board to serve as presiding officer.

Sec. 2306.105. MEETINGS. (a) The advisory board shall meet at least every six months and may meet at other times at the call of the presiding officer or executive director.

(b) The advisory board shall meet at a location in this state designated by the advisory board.

Sec. 2306.106. VOTE REQUIRED FOR ACTION. A decision of the advisory board is not effective unless it receives the affirmative vote of at least four members.

Sec. 2306.107. COMPENSATION; REIMBURSEMENT. (a) Advisory board members serve without compensation.

(b) A member of the advisory board appointed under Section 2306.101(b)(3) is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

[Sections 2306.108-2306.150 reserved for expansion]

SUBCHAPTER D. REGISTRATION

Sec. 2306.151. REGISTRATION REQUIRED. (a) A person may not operate as a warrantor or represent to the public that the person is a warrantor unless the person is registered with the department.

(b) A person who sells or solicits a vehicle protection product but who is not a warrantor is not required to register with the department as a warrantor.

(c) A seller is not a warrantor unless, in addition to acting as a seller, the person is named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer.

Sec. 2306.152. APPLICATION. Each applicant for registration must file an application on a form prescribed by the department that includes evidence satisfactory to the department of compliance with the financial security requirements adopted under Section 2306.202.

Sec. 2306.153. REGISTRATION FEE. Each registered warrantor must pay an annual registration fee, not to exceed $2,500, as set by the commission to cover the costs of administering this chapter.

Sec. 2306.154. RENEWAL OF REGISTRATION. The executive director shall adopt rules providing for the renewal of a warrantor's registration.

[Sections 2306.155-2306.200 reserved for expansion]

SUBCHAPTER E. PRACTICE BY WARRANTOR

Sec. 2306.201. GENERAL WARRANTOR OPERATION REQUIREMENTS. (a) A warrantor may appoint a designee to be responsible for any or all of the administration of vehicle protection products and for compliance with this chapter.

(b) A vehicle protection product may not be issued, sold, or offered for sale in this state unless at the time of sale the warrantor provides to the consumer:

(1) a copy of the vehicle protection product warranty; or

(2) a receipt for, or other written evidence of, the purchase of the vehicle protection product.

(c) A warrantor who complies with Subsection (b)(2) shall, within a reasonable time after the date of purchase, provide to the consumer a copy of the vehicle protection product warranty.

(d) A warrantor shall indemnify a seller who pays or is obligated to pay a consumer any money the warrantor is obligated to pay under the terms of the vehicle protection product warranty, including damages, attorney's fees, and costs.

Sec. 2306.202. FINANCIAL SECURITY REQUIREMENTS. (a) To ensure the adequate performance of a warrantor's obligations to a consumer, each warrantor must comply with financial security requirements by:

(1) insuring its vehicle protection products under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state or by a surplus lines insurer eligible to place coverage in this state under Chapter 981, Insurance Code; or

(2) providing any other form of comparable financial security approved by the executive director.

(b) The department may not require any other financial security requirements or financial standards for warrantors.

Sec. 2306.203. REIMBURSEMENT INSURANCE POLICY. (a) In order for a warrantor to comply with Section 2306.202(a)(1), the warrantor's insurance policy must state that:

(1) the insurer that issued the policy shall:

(A) reimburse or pay on behalf of the warrantor any covered amounts the warrantor is legally obligated to pay; or

(B) provide the service that the warrantor is legally obligated to perform according to the warrantor's obligations under the insured vehicle protection product issued or sold by the warrantor; and

(2) if the covered amounts are not paid or the covered service is not provided by the warrantor to a consumer before the 61st day after the date the consumer provides proof of loss, payment shall be made or the service shall be provided directly from the reimbursement insurer to the consumer.

(b) An insurer who issues a reimbursement insurance policy under this chapter may not cancel the policy until the insurer delivers to the warrantor a written notice of cancellation that complies with the notice requirements prescribed by Articles 21.49-2A and 21.49-2B, Insurance Code, for cancellation of an insurance policy under those articles. The warrantor shall forward a copy of the cancellation notice to the department not later than the 15th business day after the date the notice is delivered to the warrantor.

(c) The cancellation of a reimbursement insurance policy does not reduce the insurer's responsibility for vehicle protection products issued by the warrantor and insured under the policy before the date of the cancellation.

(d) For purposes of this section, a warrantor is considered to be the representative of the insurer who issues the reimbursement insurance policy for purposes of obligating the insurer to consumers in accordance with the vehicle protection product and this chapter.

Sec. 2306.204. WARRANTOR RECORDS. (a) Each warrantor shall maintain accurate accounts, books, and other records regarding transactions regulated under this chapter. The warrantor's records must include:

(1) a copy of the warranty for each unique form of vehicle protection product sold;

(2) the name and address of each consumer;

(3) a list of the locations where the warrantor's vehicle protection products are marketed, sold, or offered for sale; and

(4) files that contain at least the dates and descriptions of payments to consumers related to the vehicle protection product.

(b) On request of the executive director, a warrantor shall make the warrantor's records maintained under this section regarding vehicle protection products sold by the warrantor available to the department as necessary to enable the department to reasonably determine compliance with this chapter.

(c) The records required to be maintained under this section may be maintained in an electronic medium or through another recordkeeping technology. If a record is maintained in a format other than paper, the warrantor must be able to reformat the record into a legible paper copy at the request of the department.

(d) Except as provided by Subsection (e), each warrantor shall retain all records required under Subsection (a) until at least the first anniversary of the expiration date of the obligations under the vehicle protection product warranty.

(e) A warrantor who discontinues business in this state shall maintain the warrantor's records until the date the warrantor provides the department with proof satisfactory to the department that the warrantor has discharged all obligations to consumers in

this state.

(f) The executive director shall adopt rules governing how a warrantor shall protect nonpublic personal information provided by a consumer to the warrantor.

Sec. 2306.205. FORM OF VEHICLE PROTECTION PRODUCT WARRANTY AND REQUIRED DISCLOSURES. (a) Each vehicle protection product warranty marketed, sold, offered for sale, issued, made, proposed to be made, or administered in this state must be written, printed, or typed, in clear, understandable, and easy-to-read language and must disclose the applicable requirements set forth in this section.

(b) A vehicle protection product warranty insured under a reimbursement insurance policy must contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are insured under a reimbursement insurance policy."

(c) The vehicle protection product warranty must state the name and address of the insurer and state that if a covered service is not provided by the warrantor before the 61st day after the date the consumer provides proof of loss, the consumer may apply for reimbursement directly to the vehicle protection product's reimbursement insurer.

(d) A vehicle protection product warranty that is not insured under a reimbursement insurance policy must contain a statement substantially similar to the following:

"Obligations of the warrantor under this vehicle protection product are backed by the full faith and credit of the warrantor."

(e) Each vehicle protection product warranty must state the name, address, and telephone number of the warrantor. All warrantors shall report to the department before the 31st day after the date of any change in the information required to be provided in this subsection.

(f) Each vehicle protection product warranty must identify any administrator, if different from the warrantor, the vehicle protection product seller, and the consumer, if the name of the consumer has been provided by the consumer. The identities of those persons are not required to be preprinted on the warranty and may be added to the warranty at the time of sale.

(g) Each vehicle protection product warranty must state the product's purchase price, or the warrantor's suggested purchase price, and the terms under which the product is sold. The purchase price is not required to be preprinted on the vehicle protection product warranty and may be negotiated with the consumer at the time of sale.

(h) Each vehicle protection product warranty must:

(1) specify the products and services to be provided and any limitations, exceptions, or exclusions;

(2) specify any restrictions governing the transferability of the vehicle protection product;

(3) state the duties of the consumer, including any duty to protect against any further damage and any requirement to follow the warranty's instructions;

(4) state the name, mailing address, and telephone number of the department; and

(5) include a statement that unresolved complaints concerning a registered warrantor or questions concerning the regulation of a warrantor may be addressed to the department.

(i) The requirements of Subsections (h)(4) and (5) may be stamped on the vehicle protection product warranty.

Sec. 2306.206. CANCELLATION OF WARRANTY. (a) Each vehicle protection product warranty must state the terms, restrictions, or conditions, if any, governing cancellation of the warranty by the warrantor before the expiration date of the warranty. Cancellation may only occur under this section for:

(1) nonpayment by the consumer for the vehicle protection product;

(2) a material misrepresentation by the consumer to the seller or warrantor;

(3) fraud by the consumer; or

(4) a substantial breach of duties by the consumer relating to the warranty.

(b) A warrantor shall mail written notice of cancellation to the consumer at the last address of the consumer contained in the records of the warrantor before the fifth day preceding the effective date of the cancellation. The notice must state the effective date of the cancellation and the reason for the cancellation.

Sec. 2306.207. LIMITATIONS ON WARRANTOR'S NAME. (a) A warrantor may not use a name that:

(1) includes "casualty," "surety," "insurance," or "mutual" or any other word descriptive of the casualty, insurance,

or surety business; or

(2) is deceptively similar to the name or description of any insurer or surety corporation or to the name of any other warrantor.

(b) A warrantor may use the word "guaranty" or a similar word in the warrantor's name.

Sec. 2306.208. PROHIBITED ACTS. (a) A warrantor or a warrantor's representative may not, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty:

(1) make, permit, or cause to be made any false or misleading statement; or

(2) deliberately omit a material statement that would be considered misleading if omitted.

(b) A warrantor may not require as a condition of sale or financing that a retail purchaser of a motor vehicle purchase a vehicle protection product that is not installed on the motor vehicle at the time of sale.

[Sections 2306.209-2306.250 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT AND PENALTY PROVISIONS

Sec. 2306.251. SANCTIONS; ADMINISTRATIVE PENALTY. (a) On a determination that a ground for disciplinary action exists under this chapter, the executive director may impose appropriate administrative sanctions on a warrantor, including administrative penalties as provided by Subchapter F, Chapter 51.

(b) An administrative penalty imposed under this section may not exceed:

(1) $1,000 for each violation; or

(2) $10,000 in the aggregate for all violations of a similar nature.

Sec. 2306.252. INJUNCTION. The executive director may bring an action against a warrantor for injunctive relief under Section 51.352 for a threatened or existing violation of this chapter or of an order or rule adopted by the executive director under this chapter.

Sec. 2306.253. CIVIL PENALTY. (a) In addition to injunctive relief under Section 2306.252, the executive director may bring an action against a warrantor for a civil penalty as provided by Section 51.352.

(b) A civil penalty assessed under this section may not exceed:

(1) $1,000 for each violation; or

(2) $50,000 in the aggregate for all violations of a similar nature.

Sec. 2306.254. VIOLATIONS OF A SIMILAR NATURE. For purposes of Sections 2306.251 and 2306.253, violations are of a similar nature if the violations consist of the same or a similar course of conduct, action, or practice, regardless of the number of times the conduct, act, or practice determined to be a violation of this chapter occurred.

(b) Article 9035, Revised Statutes, is repealed.

PART 14. CHANGES RELATING TO SUBTITLE C, TITLE 14, OCCUPATIONS CODE

SECTION 14A.651. (a) Section 2401.001(1), Occupations

Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 2401.001, Occupations Code, is amended by adding Subdivision (2-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(2-a) "Executive director" means the executive director of the department.

SECTION 14A.652. The heading to Subchapter B, Chapter 2401, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION, EXECUTIVE DIRECTOR [~~COMMISSIONER~~], AND DEPARTMENT

SECTION 14A.653. Section 2401.051, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2401.051. RULES. The executive director [~~commissioner~~] shall adopt rules necessary to administer this chapter, including rules to establish requirements for the issuance, renewal, denial, suspension, and revocation of a certificate of registration.

SECTION 14A.654. Section 2401.102(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) An applicant for a certificate of registration must submit to the department:

(1) an application on a form prescribed by the executive director [~~commissioner~~]; and

(2) a nonrefundable registration fee.

SECTION 14A.655. Section 2401.104(b), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(b) To renew a certificate of registration, the holder of the certificate must submit to the department:

(1) an application for renewal on a form prescribed by the executive director [~~commissioner~~]; and

(2) a registration renewal fee.

SECTION 14A.656. Sections 2401.201 and 2401.203, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2401.201. DENIAL, SUSPENSION, OR REVOCATION FOR VIOLATION OF CHAPTER. The executive director [~~commissioner~~] may deny, suspend, or revoke a certificate of registration for a violation of this chapter or a rule adopted under this chapter.

Sec. 2401.203. SUSPENSION OR REVOCATION OF CERTIFICATE IN CONNECTION WITH CONVICTION OR DELINQUENT TAXES. The executive director [~~commissioner~~] may suspend or revoke the certificate of registration of a person other than an individual if:

(1) the department determines that, during the period

the person holds the certificate, an officer, director, member, or shareholder of the person or of a person who owns shares in the person is convicted of an offense described by Section 2401.103(a)(1); or

(2) the person owes delinquent taxes to a local, state, or federal taxing entity.

SECTION 14A.657. Section 2401.204(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may suspend a certificate of registration issued to a transportation service provider if:

(1) the department requires a person associated with the business of the transportation service provider to submit to an examination under Section 2401.052; and

(2) the person refuses to permit the examination or to respond to questioning under Section 2401.052(a)(2).

SECTION 14A.658. Sections 2401.205 and 2401.253, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2401.205. PROCEDURES FOR DISCIPLINARY ACTION. The denial, suspension, or revocation of a certificate of registration by the executive director [~~commissioner~~] and the appeal from that action are governed by the procedures for a contested case hearing under Chapter 2001, Government Code.

Sec. 2401.253. AUTHORITY TO INVESTIGATE AND FILE COMPLAINT. (a) The executive director [~~commissioner~~], with the assistance of the Texas Department of Public Safety, may investigate a violation of this chapter or a rule adopted under this chapter.

(b) The executive director [~~commissioner~~] or any law enforcement agency may file a complaint with:

(1) the district attorney of Travis County; or

(2) the prosecuting attorney of the county in which a violation is alleged to have occurred.

PART 15. CHANGES RELATING TO TITLE 15, OCCUPATIONS CODE

SECTION 14A.701. (a) Section 2501.001(2), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 2501.001, Occupations Code, is amended by adding Subdivision (4-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(4-a) "Executive director" means the executive director of the Texas Department of Licensing and Regulation.

SECTION 14A.702. Section 2501.053(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Not later than the 30th day before the date a personnel service begins operating in this state, the owner of the service must file notice with the executive director [~~commissioner~~].

SECTION 14A.703. Section 2501.055(a), Occupations Code, is

amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) On receipt of a notice filed under Section 2501.053, the executive director [~~commissioner~~] shall issue to the owner a certificate of authority to do business as a personnel service not later than the 15th day after the date the notice is filed if the owner:

(1) pays the filing fee required for the certificate; and

(2) complies with the requirements of Section 2501.054.

SECTION 14A.704. Section 2501.057, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2501.057. RENEWAL OF CERTIFICATE. The executive director [~~commissioner~~] shall issue a renewal of a certificate of authority on the receipt of:

(1) a renewal notice from the owner that contains the information required by Section 2501.053;

(2) a renewal fee; and

(3) security that complies with Section 2501.054.

SECTION 14A.705. Section 2501.058(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons regulated under this chapter.

SECTION 14A.706. The heading to Subchapter D, Chapter 2501, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

SUBCHAPTER D. ENFORCEMENT BY EXECUTIVE DIRECTOR [~~COMMISSIONER~~]

SECTION 14A.707. Sections 2501.151 and 2501.152, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2501.151. ENFORCEMENT. (a) The executive director [~~commissioner~~] shall enforce Section 2501.102 and may investigate a personnel service as necessary to enforce that section.

(b) The attorney general shall assist the executive director [~~commissioner~~] on request.

Sec. 2501.152. COMPLAINT AND INVESTIGATION. (a) A person by sworn affidavit may file with the executive director [~~commissioner~~] a complaint alleging a violation of Section 2501.102.

(b) On receipt of a complaint, the executive director [~~commissioner~~] shall investigate the alleged violation and may:

(1) inspect any records relevant to the complaint; and

(2) subpoena those records and any necessary witnesses.

SECTION 14A.708. Sections 2501.153(a) and (c), Occupations

Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) If the executive director [~~commissioner~~] determines as a result of an investigation that a violation of Section 2501.102 may have occurred, the executive director [~~commissioner~~] shall hold a hearing not later than the 45th day after the date the complaint was filed under Section 2501.152.

(c) The executive director [~~commissioner~~] shall render a decision on the alleged violation not later than the eighth day after the date the hearing is concluded.

SECTION 14A.709. Sections 2501.154 and 2501.155, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2501.154. SANCTIONS. (a) If, after a hearing, the executive director [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the executive director [~~commissioner~~] may, as appropriate:

(1) issue a warning to the personnel service; or

(2) suspend or revoke the certificate of authority issued to the personnel service.

(b) If, after a hearing, the executive director [~~commissioner~~] determines that a personnel service has violated Section 2501.102, the executive director [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the personnel service.

Sec. 2501.155. REISSUANCE OF CERTIFICATE AFTER REVOCATION. If the executive director [~~commissioner~~] revokes a certificate of authority of a personnel service under Section 2501.154, the personnel service and any owner of that personnel service may not apply for a new certificate until the third anniversary of the date the certificate was revoked.

SECTION 14A.710. Section 2501.253(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) In addition to the amount awarded to a complainant under Section 2501.154(b), the executive director [~~commissioner~~] may impose on the personnel service an administrative penalty equal to two times the amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

SECTION 14A.711. (a) Section 2502.001(3), Occupations Code, is repealed to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001.

(b) Section 2502.001, Occupations Code, is amended by adding Subdivision (4-a) to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(4-a) "Executive director" means the executive director of the department.

SECTION 14A.712. Sections 2502.052(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by

Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) To obtain a certificate of authority, an owner must:

(1) file with the executive director [~~commissioner~~] a sworn application accompanied by the required application fee; and

(2) file with the department security that complies with Section 2502.053.

(b) The application must be in the form prescribed by the executive director [~~commissioner~~] and include:

(1) the address of the principal location of the career counseling service;

(2) the assumed name, if any, under which the career counseling service will operate;

(3) the name and address of each owner; and

(4) a statement that the owner has read and is familiar with this chapter.

SECTION 14A.713. Section 2502.053(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) Before the executive director [~~commissioner~~] may issue a certificate of authority to an owner, the owner must file with the department a bond in the amount of $10,000 that is:

(1) executed by a surety company authorized to do business in this state;

(2) payable to the state; and

(3) conditioned on the faithful performance of the

owner's obligations under this chapter.

SECTION 14A.714. Sections 2502.054(a) and (b), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] shall issue a certificate of authority to do business as a career counseling service to an applicant who meets the requirements of this subchapter.

(b) The executive director [~~commissioner~~] shall process a certificate application not later than the 15th day after the date the application is filed.

SECTION 14A.715. Section 2502.056, Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2502.056. RULES. The executive director [~~commissioner~~] may adopt rules relating to the administration and enforcement of the certificate of authority program created under this subchapter.

SECTION 14A.716. Section 2502.057(a), Occupations Code, is amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) The executive director [~~commissioner~~] may recognize, prepare, or administer continuing education programs for persons regulated under this chapter.

SECTION 14A.717. Sections 2502.251 and 2502.252, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2502.251. ENFORCEMENT. (a) The executive director [~~commissioner~~] shall enforce this chapter and may investigate a career counseling service as necessary.

(b) The attorney general shall assist the executive director [~~commissioner~~] on request.

Sec. 2502.252. COMPLAINT AND INVESTIGATION. (a) A person by sworn affidavit may file with the executive director [~~commissioner~~] a complaint alleging a violation of this chapter.

(b) On receipt of the complaint, the executive director [~~commissioner~~] shall investigate the alleged violation and may:

(1) inspect any record relevant to the complaint; and

(2) subpoena the record and any necessary witness.

SECTION 14A.718. Sections 2502.253(a) and (c), Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

(a) If the executive director [~~commissioner~~] determines as a result of an investigation that a violation of this chapter may have occurred, the executive director [~~commissioner~~] shall hold a hearing not later than the 45th day after the date the complaint was filed under Section 2502.252.

(c) The executive director [~~commissioner~~] shall render a decision on the alleged violation not later than the eighth day

after the date the hearing is concluded.

SECTION 14A.719. Sections 2502.254, 2502.255, and 2502.301, Occupations Code, are amended to conform to the changes in terminology made by Chapter 836, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 2502.254. SANCTIONS. (a) If, after a hearing, the executive director [~~commissioner~~] determines that a career counseling service has violated this chapter, the executive director [~~commissioner~~] may, as appropriate:

(1) issue a warning to the service; or

(2) suspend or revoke the certificate of authority issued to the service.

(b) If, after a hearing, the executive director [~~commissioner~~] determines that a career counseling service has violated this chapter, the executive director [~~commissioner~~] may award the complainant an amount equal to the amount of the fee charged by the service.

Sec. 2502.255. REISSUANCE OF CERTIFICATE AFTER REVOCATION. If the executive director [~~commissioner~~] revokes the certificate of authority of a career counseling service under Section 2502.254, the service and any owner of that service may not apply for a new certificate until after the third anniversary of the date the certificate was revoked.

Sec. 2502.301. ADMINISTRATIVE PENALTY. In addition to the amount awarded to a complainant under Section 2502.254(b), the executive director [~~commissioner~~] may impose on the career counseling service an administrative penalty equal to two times the

amount awarded under that subsection. A penalty collected under this section shall be deposited in the state treasury.

PART 16. CROSS-REFERENCE AND OTHER CONFORMING CHANGES

SECTION 14A.751. Section 76.008, Agriculture Code, is amended to read as follows:

Sec. 76.008. EXEMPTION. Sections 76.007, 76.104-76.106, 76.108-76.117, 76.151(b), 76.151(c), 76.154(b), 76.155, 76.181, 76.182, 76.184, and 76.201(d)(1) do not apply to a person who is regulated by Chapter 1951, Occupations Code [~~the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes)~~].

SECTION 14A.752. Section 76.102(a), Agriculture Code, is amended to read as follows:

(a) The department shall license pesticide applicators involved in the following license use categories:

(1) agricultural pest control, including animal pest control;

(2) forest pest control;

(3) ornamental and turf pest control, except as provided by Chapter 1951, Occupations Code [~~the Texas Structural Pest Control Act, as amended (Article 135b-6, Vernon's Texas Civil Statutes)~~];

(4) seed treatments;

(5) right-of-way pest control;

(6) regulatory pest control;

(7) aquatic pest control;

(8) demonstration pest control; and

(9) other license use categories as necessary to comply with federal requirements. The department may not adopt license use categories that are designated by statute for regulation by another agency.

SECTION 14A.753. Section 2A.104(a), Business & Commerce Code, is amended to read as follows:

(a) A lease, although subject to this chapter, is also subject to any applicable:

(1) certificate of title statute of this state, including Chapter 501, Transportation Code, Chapter 31, Parks and Wildlife Code, and Subchapter E, Chapter 1201, Occupations Code [~~Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~];

(2) certificate of title statute of another jurisdiction (Section 2A.105); or

(3) consumer law of this state, both decisional and statutory, including, to the extent that they apply to a lease transaction, Chapters 17 and 35 of this code and Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.754. Section 9.311(a), Business & Commerce Code, is amended to read as follows:

(a) Except as otherwise provided in Subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining

priority over the rights of a lien creditor with respect to the property preempt Section 9.310(a);

(2) the following statutes of this state: Chapter 501, Transportation Code, relating to the certificates of title for motor vehicles; Subchapter B-1, Chapter 31, Parks and Wildlife Code, relating to the certificates of title for vessels and outboard motors; Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], relating to the documents of title for manufactured homes; or Subchapter A, Chapter 35, relating to utility security instruments; or

(3) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

SECTION 14A.755. Section 33.017, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 33.017. PRESERVATION OF EXISTING RIGHTS OF INDEMNITY. Nothing in this chapter shall be construed to affect any rights of indemnity granted to a seller eligible for indemnity by Chapter 82 of this code, Chapter 2301, Occupations Code, [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes),~~] or any other statute, nor shall it affect rights of indemnity granted by contract or at common law. To the extent of any conflict between this chapter and any right to indemnification granted by Section 82.002 of this code, Chapter 2301, Occupations

Code, [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes),~~] or any other statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

SECTION 14A.756. Sections 44.0315(1) and (3), Education Code, are amended to read as follows:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

(3) "Engineer" means an individual licensed [~~registered~~] as an [~~a professional~~] engineer under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.757. Sections 44.036(d) and (g), Education Code, are amended to read as follows:

(d) The district shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The district shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of

architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with the applicable law.

(g) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~]. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.758. Section 44.037(c), Education Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-agent, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The district's engineer or architect may not serve, alone or in combination with another person, as the

construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the district's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

SECTION 14A.759. Section 44.038(c), Education Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-at-risk, the district shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The district's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

SECTION 14A.760. Section 44.039(b), Education Code, is amended to read as follows:

(b) The district shall select or designate an engineer or architect to prepare construction documents for the project. The

selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the district, the district shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

SECTION 14A.761. Section 44.041(i), Education Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with applicable law.

SECTION 14A.762. Section 45.0031(c), Education Code, is amended to read as follows:

(c) A district may demonstrate the ability to comply with Subsection (a) by using a projected future taxable value of property in the district anticipated for the earlier of the tax year five years after the current tax year or the tax year in which the final payment is due for the bonds submitted to the attorney

general, combined with state assistance to which the district is entitled under Chapter 42 or 46 that may be lawfully used for the payment of bonds. The district must submit to the attorney general a certification of the district's projected taxable value of property that is prepared by a registered professional appraiser certified under Chapter 1151, Occupations Code, [~~The Property Taxation Professional Certification Act (Article 8885, Revised Statutes)~~] who has demonstrated professional experience in projecting taxable values of property or who can by contract obtain any necessary assistance from a person who has that experience. To demonstrate the professional experience required by this subsection, a registered professional appraiser must provide to the district written documentation relating to two previous projects for which the appraiser projected taxable values of property. Until the bonds submitted to the attorney general are approved or disapproved, the district must maintain the documentation and on request provide the documentation to the attorney general or comptroller. The certification of the district's projected taxable value of property must be signed by the district's superintendent. The attorney general must base a determination of whether the district has complied with Subsection (a) on a taxable value of property that is equal to 90 percent of the value certified under this subsection.

SECTION 14A.763. Sections 51.776(1) and (4), Education Code, are amended to read as follows:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code [~~478, Acts of the~~

~~45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

(4) "Engineer" means an individual licensed [~~registered~~] as an [~~a professional~~] engineer under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.764. Sections 51.780(d) and (h), Education Code, are amended to read as follows:

(d) The institution shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The institution shall also prepare the design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with the applicable law.

(h) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil~~

~~Statutes)~~]. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.765. Section 51.781(c), Education Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-agent, the board shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the institution, the board shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The institution's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the institution's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

SECTION 14A.766. Section 51.782(c), Education Code, is

amended to read as follows:

(c) Before or concurrently with selecting a construction manager-at-risk, the board shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the institution, the board shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The institution's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

SECTION 14A.767. Section 51.783(b), Education Code, is amended to read as follows:

(b) The board shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the institution, the board shall select the engineer or architect on the basis of demonstrated competence and

qualifications as provided by Section 2254.004, Government Code.

SECTION 14A.768. Section 51.784(i), Education Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with applicable law.

SECTION 14A.769. Section 61.0822, Education Code, is amended to read as follows:

Sec. 61.0822. CONTRACT WITH TEXAS BOARD OF ARCHITECTURAL EXAMINERS. The board may contract with the Texas Board of Architectural Examiners to administer the examination fee scholarship program established under Section 1051.206, Occupations Code [~~7A, Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.770. Section 132.002(a), Education Code, is amended to read as follows:

(a) The following schools or educational institutions are specifically exempt from this chapter and are not within the definition of "proprietary school":

(1) a school or educational institution supported by

taxation from either a local or state source;

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this state, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, are subject to this chapter as determined by the commission;

(3) a school or training program that offers instruction of purely avocational or recreational subjects as determined by the commission;

(4) a course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student;

(5) a course or courses of study or instruction sponsored by a recognized trade, business, or professional organization for the instruction of the members of the organization with a closed membership;

(6) private colleges or universities that award a recognized baccalaureate, or higher degree, and that maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or state source;

(7) a school or course that is otherwise regulated and approved under and pursuant to any other law or rulemaking process of this state or approved for continuing education credit by an

organization that accredits courses for the maintenance of a license, except as provided by Subsection (c);

(8) aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

(9) a school that offers intensive review of a student's acquired education, training, or experience to prepare the student for an examination, other than a high school equivalency examination, that the student by law may not take unless the student has completed or substantially completed a particular degree program, or that the student is required to take as a precondition for enrollment in or admission to a particular degree program;

(10) a private school offering primary or secondary education, which may include a kindergarten or prekindergarten program, and that satisfies the compulsory attendance requirements of Section 25.085 pursuant to Section 25.086(a)(1);

(11) a course or courses of instruction by bona fide electrical trade associations for the purpose of preparing students for electrical tests required for licensing and for the purpose of providing continuing education to students for the renewal of electrical licenses;

(12) a nonprofit arts organization that has as its primary purpose the provision of instruction in the dramatic arts and the communications media to persons younger than 19 years of age;

(13) a course or training program conducted by a nonprofit association of air conditioning and refrigeration

contractors approved by the Air Conditioning and Refrigeration Contractors Advisory Board to provide instruction for technical, business, or license examination preparation programs relating to air conditioning and refrigeration contracting, as that term is defined by Chapter 1302, Occupations Code [~~the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes)~~];

(14) a course of instruction by a plumbing trade association to prepare students for a plumbing test or program required for licensing, certification, or endorsement or to provide continuing education approved by the Texas State Board of Plumbing Examiners; and

(15) a course of instruction in the use of technological hardware or software if the course is offered to a purchaser of the hardware or software or to the purchaser's employee by a person who manufactures and sells, or develops and sells, the hardware or software, and if the seller is not primarily in the business of providing courses of instruction in the use of the hardware or software, as determined by the commission.

SECTION 14A.771. Section 156.204(a), Finance Code, is amended to read as follows:

(a) To be eligible to be licensed as a mortgage broker a person must:

(1) be an individual who is at least 18 years of age;

(2) be a citizen of the United States or a lawfully admitted alien;

(3) maintain a physical office in this state and

designate that office in the application;

(4) provide the commissioner with satisfactory evidence that the applicant satisfies one of the following:

(A) the person has received a bachelor's degree in an area relating to finance, banking, or business administration from an accredited college or university and has 18 months of experience in the mortgage or lending field as evidenced by documentary proof of full-time employment as a mortgage broker or loan officer with a mortgage broker or a person exempt under Section 156.202;

(B) the person is licensed in this state as:

(i) an active real estate broker under Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~];

(ii) an active attorney; or

(iii) a local recording agent or insurance solicitor or agent for a legal reserve life insurance company under Chapter 21, Insurance Code, or holds an equivalent license under Chapter 21, Insurance Code; or

(C) the person has three years of experience in the mortgage lending field as evidenced by documentary proof of full-time employment as a loan officer with a mortgage broker or a person exempt under Section 156.202;

(5) demonstrate evidence of compliance with the financial requirements of this chapter; and

(6) not have been convicted of a criminal offense that the commissioner determines directly relates to the occupation of a

mortgage broker under Chapter 53, Occupations Code.

SECTION 14A.772. Section 306.001(9), Finance Code, is amended to read as follows:

(9) "Qualified commercial loan":

(A) means:

(i) a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:

(a) $3 million or more if the commercial loan is secured by real property; or

(b) $250,000 or more if the commercial loan is not secured by real property and, if the aggregate value of the commercial loan is less than $500,000, the loan documents contain a written certification from the borrower that:

(1) the borrower has been advised by the lender to seek the advice of an attorney and an accountant in connection with the commercial loan; and

(2) the borrower has had the opportunity to seek the advice of an attorney and accountant of the borrower's choice in connection with the commercial loan; and

(ii) a renewal or extension of a commercial loan described by Paragraph (A), regardless of the principal amount of the loan at the time of the renewal or extension; and

(B) does not include a commercial loan made for the purpose of financing a business licensed by the Motor Vehicle Board of the Texas Department of Transportation under Section

2301.251(a), Occupations Code [~~4.01(a), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.773. Sections 347.002(a)(4) and (5), Finance Code, are amended to read as follows:

(4) "Creditor" means a:

(A) person who extends credit or arranges for the extension of credit in a credit transaction; or

(B) retailer or broker, as defined by Section 1201.003, Occupations Code [~~Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], who participates in arranging for the extension of credit in a credit transaction.

(5) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~]. The term includes furniture, appliances, drapes, carpets, wall coverings, and other items that are:

(A) attached to or contained in the structure; and

(B) included in the cash price and sold with the structure.

SECTION 14A.774. Section 348.123(b), Finance Code, is amended to read as follows:

(b) This section does not apply to:

(1) a lease;

(2) a retail installment transaction for a vehicle

that is to be used primarily for a purpose other than personal, family, or household use;

(3) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer;

(4) a transaction of a type that the commissioner determines does not require the protection for the buyer provided by this section; or

(5) a retail installment transaction in which:

(A) the seller is a franchised dealer licensed under Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~]; and

(B) the buyer is entitled, at the end of the term of the retail installment contract, to choose one of the following:

(i) sell the vehicle back to the holder according to a written agreement:

(a) entered into between the buyer and holder concurrently with or as a part of the transaction; and

(b) under which the buyer will be released from liability or obligation for the final scheduled payment under the contract on compliance with the agreement;

(ii) pay the final scheduled payment under the contract; or

(iii) if the buyer is not in default under the contract, refinance the final scheduled payment with the holder for repayment in not fewer than 24 equal monthly installments or on

other terms agreed to by the buyer and holder at the time of refinancing and at a rate of time price differential not to exceed the lesser of:

(a) a rate equal to the maximum rate authorized under this subchapter; or

(b) an annual percentage rate of five percent a year more than the annual percentage rate of the original contract.

SECTION 14A.775. Section 393.002(a), Finance Code, is amended to read as follows:

(a) This chapter does not apply to:

(1) a person:

(A) authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and

(B) subject to regulation and supervision by this state or the United States;

(2) a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);

(3) a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;

(4) a credit union doing business in this state;

(5) a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C.

Section 501(c)(3));

(6) a real estate broker or salesperson [~~salesman~~] licensed under Chapter 1101, Occupations Code, [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~] who is acting within the course and scope of that license;

(7) an individual licensed to practice law in this state who is acting within the course and scope of the individual's practice as an attorney;

(8) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(9) a consumer reporting agency;

(10) a person whose primary business is making loans secured by liens on real property; or

(11) a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license.

SECTION 14A.776. Section 83.001(b), Government Code, is amended to read as follows:

(b) This section does not apply to:

(1) an attorney licensed in this state;

(2) a licensed real estate broker or salesperson [~~salesman~~] performing the acts of a real estate broker pursuant to Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~]; or

(3) a person performing acts relating to a transaction for the lease, sale, or transfer of any mineral or mining interest

in real property.

SECTION 14A.777. Section 411.101, Government Code, is amended to read as follows:

Sec. 411.101. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS STRUCTURAL PEST CONTROL BOARD. The Texas Structural Pest Control Board is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1) an applicant for a structural pest control business license under Chapter 1951, Occupations Code [~~the Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes)~~];

(2) an applicant for a certified applicator's license under that chapter [~~Act~~]; or

(3) a holder of a structural pest control business license or a certified applicator's license under that chapter [~~Act~~].

SECTION 14A.778. Section 2166.001(6), Government Code, is amended to read as follows:

(6) "Design professional" means an individual registered as an architect under Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], or a person licensed [~~registered~~] as an [~~a professional~~] engineer under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~]:

(A) who provides professional architectural or

engineering services and has overall responsibility for the design of a building construction undertaking; and

(B) who:

(i) is employed on a salary basis; or

(ii) is in private practice and is retained for a specific project under a contract with the commission.

SECTION 14A.779. Section 2166.202(b), Government Code, is amended to properly reflect the name of the agency to which the section refers to read as follows:

(b) The commission, in consultation with the Texas Board of Architectural Examiners and the Texas [~~State~~] Board of [~~Registration for~~] Professional Engineers, shall adopt by rule criteria to evaluate the competence and qualifications of a prospective private design professional.

SECTION 14A.780. Sections 2166.2511(1) and (3), Government Code, are amended to read as follows:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

(3) "Engineer" means an individual licensed [~~registered~~] as an [~~a professional~~] engineer under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.781. Sections 2166.2531(d) and (h), Government Code, are amended to read as follows:

(d) The commission shall prepare a request for

qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The commission shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with the applicable law.

(h) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~]. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.782. Section 2166.2532(c), Government Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-at-risk, the commission shall select or designate an engineer or architect who shall prepare the construction documents

for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004. The commission's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk.

SECTION 14A.783. Section 2166.2533(b), Government Code, is amended to read as follows:

(b) The commission shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the commission, the commission shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004.

SECTION 14A.784. Section 2306.6002, Government Code, is amended to read as follows:

Sec. 2306.6002. REGULATION AND ENFORCEMENT. The department

shall administer and enforce Chapter 1201, Occupations Code, [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~] through the division. The Manufactured Housing Board and the division director shall exercise authority and responsibilities assigned to them under that chapter [~~Act~~].

SECTION 14A.785. Section 2306.6023(s), Government Code, is amended to read as follows:

(s) If it appears that a person is in violation of, or is threatening to violate, any provision of Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], or a rule or order related to the administration and enforcement of the manufactured housing program, the attorney general or the division director may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate. A civil action filed under this subsection shall be filed in district court in Travis County. The attorney general and the division director may recover reasonable expenses incurred in obtaining injunctive relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

SECTION 14A.786. Section 341.105(c), Health and Safety Code, is amended to read as follows:

(c) A person who holds a license under Chapter 1301, Occupations Code, [~~The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes)~~] is exempt from the requirements of

this subchapter.

SECTION 14A.787. Section 372.0035(f), Health and Safety Code, is amended to read as follows:

(f) If a person licensed under Chapter 1301, Occupations Code, [~~The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes)~~] violates this section, the Texas State Board of Plumbing Examiners may discipline the person under Subchapter I [~~Section 9~~] of that chapter [~~Act~~] as if a violation of this section were a violation of that chapter [~~Act~~].

SECTION 14A.788. Sections 201.072 and 406.094, Labor Code, are amended to read as follows:

Sec. 201.072. SERVICE AS REAL ESTATE BROKER. In this subtitle, "employment" does not include:

(1) service performed by an individual as a real estate broker or salesperson [~~salesman~~] if:

(A) the individual engages in activity described by the definition of "[~~real estate~~] broker" in Section 1101.002, Occupations Code [~~2, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~];

(B) the individual is licensed as a [~~real estate~~] broker or salesperson [~~salesman~~] by the Texas Real Estate Commission;

(C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(D) the service is performed under a written

contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesperson [~~salesman~~] if:

(A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and

(B) the service is performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes.

Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. (a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesperson [~~salesman~~] or broker who is:

(1) licensed under Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~]; and

(2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesperson [~~salesman~~] or broker. The coverage continues while the policy is in effect and the named salesperson [~~salesman~~] or broker is endorsed on the policy.

SECTION 14A.789. Section 234.001(1), Local Government Code,

is amended to read as follows:

(1) "Automotive wrecking and salvage yard" means a business, other than a business classified as a salvage pool operator under Chapter 2302, Occupations Code [~~Article 6687-1a, Revised Statutes~~], that stores three or more wrecked vehicles outdoors for the purpose of:

(A) selling the vehicles whole; or

(B) dismantling or otherwise wrecking the vehicles to remove parts for sale or for use in an automotive repair or rebuilding business.

SECTION 14A.790. Section 263.008, Local Government Code, is amended to read as follows:

Sec. 263.008. [~~REAL ESTATE~~] BROKER AGREEMENTS AND FEES FOR THE SALE OF REAL PROPERTY. (a) In this section, "[~~real estate~~] broker" means a person licensed as a [~~real estate~~] broker under Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~].

(b) The commissioners court of a county may contract with a [~~real estate~~] broker to sell a tract of real property that is owned by the county.

(c) The commissioners court of a county may pay a fee if a [~~real estate~~] broker produces a ready, willing, and able buyer to purchase a tract of real property.

(d) If a contract made under Subsection (b) requires a [~~real estate~~] broker to list the tract of real property for sale for at least 30 days with a multiple-listing service used by other [~~real estate~~] brokers in the county, the commissioners court on or after

the 30th day after the date the property is listed may sell the tract of real property to a ready, willing, and able buyer who is produced by any [~~real estate~~] broker using the multiple-listing service and who submits the highest cash offer.

(e) The commissioners court may sell a tract of real property under this section without complying with the requirements for conducting a public auction, including the requirements prescribed by Section 263.001.

SECTION 14A.791. Sections 271.111(1) and (6), Local Government Code, are amended to read as follows:

(1) "Architect" means an individual registered as an architect under Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

(6) "Engineer" means an individual licensed [~~registered~~] as an [~~a professional~~] engineer under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.792. Section 271.116(b), Local Government Code, is amended to read as follows:

(b) The governmental entity shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil~~

~~Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

SECTION 14A.793. Section 271.117(c), Local Government Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-agent, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service

agreement in accordance with applicable licensing laws.

SECTION 14A.794. Section 271.118(c), Local Government Code, is amended to read as follows:

(c) Before or concurrently with selecting a construction manager-at-risk, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with Chapter 1001 or 1051, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter.

SECTION 14A.795. Sections 271.119(c) and (f), Local Government Code, are amended to read as follows:

(c) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms

in submitting proposals for the project. The governmental entity shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with the applicable law.

(f) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~]. An architect shall have responsibility for compliance with the requirements of Chapter 1051, Occupations Code [~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.796. Section 271.120(i), Local Government Code, is amended to read as follows:

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of Chapter 1001, Occupations Code, [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~] or the practice of architecture within the meaning of Chapter 1051, Occupations Code

[~~478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes)~~], those services shall be provided in accordance with applicable law.

SECTION 14A.797. Sections 113.081(c), (d), and (e), Natural Resources Code, are amended to read as follows:

(c) A mobile home park operator will not be deemed to be a person engaged in business as provided in Section 113.082 of this code if such mobile home park operator obtains no possessory rights to LP-gas products, and utilizes only LP-gas licensees in the installation and maintenance of the LP-gas containers and system. For purposes of this subsection, the term "mobile home park operator" means an individual or business entity owning or operating a place, divided into sites, at which the primary business is the rental or leasing of the sites to persons for use in occupying mobile homes as dwellings. "Mobile home" has the meaning set out in Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

(d) The commission by rule may exempt from Section 113.082(a)(4) [~~113.082(D)~~] of this code journeymen or master plumbers licensed by the Texas State Board of Plumbing Examiners.

(e) The commission by rule may exempt from Section 113.082(a)(4) [~~113.082(D)~~] of this code a person licensed under Chapter 1302, Occupations Code [~~the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes)~~].

SECTION 14A.798. Section 113.087(o), Natural Resources

Code, is amended to read as follows:

(o) The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under Chapter 1302, Occupations Code [~~the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes)~~]; or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

SECTION 14A.799. Section 113.097(j), Natural Resources Code, is amended to read as follows:

(j) The commission by rule may exempt from the insurance requirements of this section or adopt a reasonable alternative to those requirements for:

(1) a master or journeyman plumber licensed by the Texas State Board of Plumbing Examiners; or

(2) a person licensed under Chapter 1302, Occupations Code [~~the Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes)~~].

SECTION 14A.800. Section 503.058, Occupations Code, is amended to read as follows:

Sec. 503.058. CERTIFIED CAREER COUNSELING. This chapter does not apply to a person who owns, operates, or is employed by a certified career counseling service regulated under Chapter 2502 [~~222, Acts of the 70th Legislature, Regular Session, 1987 (Article~~

~~5221a-8, Vernon's Texas Civil Statutes)~~].

SECTION 14A.801. Section 1702.324(b), Occupations Code, is amended to read as follows:

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor who sells equipment to a license holder that is used in the operations for which the person is required to be licensed;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a locksmith who:

(A) does not install or service detection devices;

(B) does not conduct investigations; and

(C) is not a security services contractor;

(5) a person who:

(A) is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; and

(B) does not perform any other service that requires a license under this chapter;

(6) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(7) a licensed [~~professional~~] engineer practicing engineering or directly supervising engineering practice under Chapter 1001 [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~], including forensic analysis, burglar alarm system engineering, and necessary data collection;

(8) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(9) a landman performing activities in the course and scope of the landman's business;

(10) an attorney while engaged in the practice of law;

(11) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition; or

(12) an admitted insurer, insurance adjuster, agent,

or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person.

SECTION 14A.802. Sections 2.001(c), (e), (f), (g), and (i), Property Code, are amended to read as follows:

(c) In this section, "consumer," "document of title," "first retail sale," "manufactured home," and "mobile home" have the meanings assigned by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

(e) The Texas Department of Housing and Community Affairs may not issue a document of title for a new and untitled manufactured home at the first retail sale of the home if the home is to be permanently installed by a retailer directly on real property titled in the name of the consumer under a deed or contract for sale. Before installation, the consumer must provide the retailer with a legible copy of the deed containing a legal description of the real property. The retailer is not required to determine the validity of the legal description of the real property. A title company or attorney at law conducting the closing of a transaction under Section 1201.222, Occupations Code [~~19A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], or the retailer or retailer's agent shall file in the public land records for the county in which the real property is located a notice of installation not later than the 30th working day after the date the installation is completed and shall forward the manufacturer's certificate of origin and a copy of the notice of installation to the Texas Department of Housing and

Community Affairs. The notice of installation serves as a completed cancellation application.

(f) For a manufactured home that is being resold by a financial institution or a retailer and that is to be permanently installed directly on real property titled in the name of the consumer under a deed or contract for sale, a title company or attorney at law conducting the closing of a transaction under Section 1201.222, Occupations Code [~~19A, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], or the retailer or retailer's agent shall file in the public land records for the county in which the real property is located a notice of installation not later than the 30th working day after the date the installation is completed and shall forward the document of title and a copy of the notice of installation to the Texas Department of Housing and Community Affairs. The notice of installation serves as a completed cancellation application.

(g) A notice of installation filed under this section must:

(1) be notarized;

(2) be on a form prescribed by the Texas Department of Housing and Community Affairs;

(3) contain a description of the manufactured home, including, as applicable, the home's make, model, dimensions, federal label number, state seal number, and identification or serial number;

(4) include a verification of the installation of the manufactured home as prescribed by Section 1201.222(c), Occupations Code [~~19A(c), Texas Manufactured Housing Standards Act~~

~~(Article 5221f, Vernon's Texas Civil Statutes)~~];

(5) include the wind zone designation of the county in which the manufactured home was installed, if known; and

(6) be signed by:

(A) the retailer, for a manufactured home described by Subsection (e); or

(B) the installer, for a manufactured home described by Subsection (f).

(i) This section does not require a retailer or retailer's agent to obtain a license under Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.803. Sections 62.003(1) and (6), Property Code, are amended to read as follows:

(1) "Broker" means a person who:

(A) is licensed as a [~~real estate~~] broker under Chapter 1101, Occupations Code, [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~] and is not acting as a residential rental locator as defined by Section 1101.002, Occupations Code [~~24, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~]; or

(B) is licensed or certified as a real estate appraiser under Chapter 1103, Occupations Code [~~the Texas Appraiser Licensing and Certification Act (Article 6573a.2, Vernon's Texas Civil Statutes)~~].

(6) "Real estate" has the meaning assigned by Section 1101.002, Occupations Code [~~2, The Real Estate License Act (Article~~

~~6573a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.804. Section 62.141(d), Property Code, is amended to read as follows:

(d) If the court finds that a broker is liable to an owner or tenant under Subsection (c), the court may award the owner or tenant:

(1) actual damages, including attorney's fees and court costs, incurred by the owner or tenant that are proximately caused by the broker's failure to execute, acknowledge, and return the subordination agreement or release the lien; and

(2) a civil penalty in an amount not to exceed three times the amount of the claimed commission if the court finds that the broker acted with gross negligence or acted in bad faith in violation of Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.805. Section 63.001, Property Code, is amended to read as follows:

Sec. 63.001. MANUFACTURED HOMES. In this chapter, "manufactured home" has the meaning assigned by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.806. Section 63.005(a), Property Code, is amended to read as follows:

(a) A manufactured home becomes a new improvement to the homestead of a family or of a single adult person upon the filing of the certificate of attachment as provided in Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act~~

~~(Article 5221f, Vernon's Texas Civil Statutes)~~]. As such, if the debt for the manufactured home was contracted for in writing, that debt is considered to be for work and materials used in constructing new improvements thereon and thus constitutes a valid lien on the homestead when the certificate of attachment is filed in the Official Public Records of Real Property in the county in which the land is located.

SECTION 14A.807. Section 70.001(g), Property Code, is amended to read as follows:

(g) A motor vehicle that is repossessed under this section shall be promptly delivered to the location where the repair was performed or a vehicle storage facility licensed under Chapter 2303, Occupations Code [~~the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes)~~]. The motor vehicle must remain at the repair location or a licensed vehicle storage facility at all times until the motor vehicle is lawfully returned to the motor vehicle's owner or a lienholder or is disposed of as provided by this subchapter.

SECTION 14A.808. Section 94.001(3), Property Code, is amended to read as follows:

(3) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], and for purposes of this chapter, a reference to a manufactured home includes a recreational vehicle.

SECTION 14A.809. Section 221.011(c), Property Code, is amended to read as follows:

(c) Any timeshare interest created under this section is an interest in real property [~~land~~] within the meaning of Section 1101.002(5), Occupations Code [~~Subdivision (1), Section 2, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~], but Sections 1101.351(a)(1) and (c), Occupations Code, do [~~Subsection (b), Section 1, The Real Estate License Act, does~~] not apply to the acts of an exchange company in exchanging timeshare periods under a timeshare program.

SECTION 14A.810. Section 301.041(a), Property Code, is amended to read as follows:

(a) Subchapter B does not apply to:

(1) the sale or rental of a single-family house sold or rented by the owner if:

(A) the owner does not:

(i) own more than three single-family houses at any one time; or

(ii) own any interest in, nor is there owned or reserved on the person's behalf, under any express or voluntary agreement, title to or any right to any part of the proceeds from the sale or rental of more than three single-family houses at any one time; and

(B) the house is sold or rented without:

(i) the use of the sales or rental facilities or services of a [~~real estate~~] broker, agent, or salesperson [~~salesman~~] licensed under Chapter 1101, Occupations Code [~~The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes)~~], or of an employee or agent of a licensed broker,

agent, or salesperson [~~salesman~~], or the facilities or services of the owner of a dwelling designed or intended for occupancy by five or more families; or

(ii) the publication, posting, or mailing of a notice, statement, or advertisement prohibited by Section 301.022; or

(2) the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

SECTION 14A.811. Sections 11.432(a) and (c), Tax Code, are amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of a document of title to the manufactured home issued by the Texas Department of Housing and Community Affairs [~~Licensing and Regulation~~] under Subchapter E, Chapter 1201, Occupations Code [~~Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~], showing that the individual applying for the exemption is the owner of the manufactured home or be accompanied by a verified copy of the purchase contract showing that the applicant is the purchaser of the manufactured home.

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [~~Subsection (s), Section 3, Texas Manufactured Housing Standards Act (Article 5221f,~~

~~Vernon's Texas Civil Statutes)~~]; however, the term does not apply to any manufactured home which has been attached to real estate and for which the document of title has been canceled pursuant to Section 1201.217 [~~Subsection (j) of Section 19~~] of that code [~~said Act~~].

SECTION 14A.812. Sections 23.127(a)(5), (7), and (10), Tax Code, are amended to read as follows:

(5) "HUD-code manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

(7) "Mobile home" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

(10) "Retailer" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.813. Section 32.014(c), Tax Code, is amended to read as follows:

(c) In this section, "manufactured home" has the meaning assigned by Section 1201.003, Occupations Code [~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.814. Section 32.015(b), Tax Code, is amended to read as follows:

(b) In this section, "department" and "manufactured home" have the meanings assigned by Section 1201.003, Occupations Code

[~~3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~]; however, the term "manufactured home" does not include a manufactured home that has been attached to real property and for which the document of title has been canceled under Section 1201.217 [~~19(1)~~] of that code [~~Act~~].

SECTION 14A.815. Section 151.0048(a), Tax Code, is amended to read as follows:

(a) Except as provided by Subsection (b), "real property service" means:

(1) landscaping;

(2) the care and maintenance of lawns, yards, or ornamental trees or other plants;

(3) the removal or collection of garbage, rubbish, or other solid waste other than:

(A) hazardous waste;

(B) industrial solid waste;

(C) waste material that results from an activity associated with the exploration, development, or production of oil, gas, geothermal resources, or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code;

(D) domestic sewage or an irrigation return flow, to the extent the sewage or return flow does not constitute garbage or rubbish; and

(E) industrial discharges subject to regulation by permit issued pursuant to Chapter 26, Water Code;

(4) building or grounds cleaning, janitorial, or

custodial services;

(5) a structural pest control service covered by Section 1951.003, Occupations Code [~~2, Texas Structural Pest Control Act (Article 135b-6, Vernon's Texas Civil Statutes)~~]; or

(6) the surveying of real property.

SECTION 14A.816. Section 152.002(d), Tax Code, is amended to read as follows:

(d) A person who holds a vehicle lessor license under Chapter 2301, Occupations Code, [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~] or is specifically not required to obtain a lessor license under Section 2301.254(a) [~~4.01(a)~~] of that code [~~Act~~] may deduct the fair market value of a replaced motor vehicle that has been leased for longer than 180 days and is titled to another person if:

(1) either person:

(A) holds a beneficial ownership interest in the other person of at least 80 percent; or

(B) acquires all of its vehicles exclusively from franchised dealers whose franchisor shares common ownership with the other person; and

(2) the replaced motor vehicle is offered for sale.

SECTION 14A.817. Section 152.0411(e), Tax Code, is amended to read as follows:

(e) This section applies only to a sale in which the seller is a motor vehicle dealer who holds a dealer license issued under Chapter 503, Transportation Code, or Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36),~~

~~Vernon's Texas Civil Statutes)~~].

SECTION 14A.818. Sections 158.002 and 158.054, Tax Code, are amended to read as follows:

Sec. 158.002. DEFINITIONS. In this chapter, "manufactured home," "manufacturer," "retailer," and "person" have the same meanings as they are given by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes)~~]. In addition, the term "manufactured home" also includes and means "industrialized housing" as defined by Chapter 1202, Occupations Code [~~Article 5221f-1, Revised Statutes~~].

Sec. 158.054. PERMITS. Every manufacturer engaged in business in this state shall file with the comptroller an application for a permit authorizing the manufacturer to sell, ship, or consign manufactured homes to persons in this state. The application must be on a form prescribed by the comptroller and contain the information that the comptroller requires. The application must be executed by the owner of a sole proprietorship, by an officer or partner of an association or partnership, or by an executive officer, or other person who is expressly authorized, of a corporation. A manufacturer may not be issued a permit unless the manufacturer is duly licensed [~~registered~~] and bonded under Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act, as amended (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.819. Section 201.931(2), Transportation Code, is amended to read as follows:

(2) "License" includes:

(A) a permit issued by the department that authorizes the operation of a vehicle and its load or a combination of vehicles and load exceeding size or weight limitations;

(B) a motor carrier registration issued under Chapter 643 [~~Article 6675c, Revised Statutes~~];

(C) a vehicle storage facility license issued under Chapter 2303, Occupations Code [~~Article 6687-9a, Revised Statutes~~];

(D) a license or permit for outdoor advertising issued under Chapter 391 or 394;

(E) a salvage [~~motor~~] vehicle dealer or [~~and~~] agent license issued under Chapter 2302, Occupations Code [~~Article 6687-1a, Revised Statutes~~];

(F) specially designated or specialized license plates issued under Subchapters E and F, Chapter 502; and

(G) an apportioned registration issued according to the International Registration Plan under Section 502.054.

SECTION 14A.820. Sections 223.151 and 391.127, Transportation Code, are amended to read as follows:

Sec. 223.151. APPLICABILITY. This subchapter:

(1) applies to services of a technical expert, including an archeologist, biologist, geologist, or historian, to conduct an environmental or cultural assessment required by state or federal law for a transportation project under the authority or jurisdiction of the department; and

(2) does not apply to services defined as engineering by the Texas [~~State~~] Board of [~~Registration for~~] Professional

Engineers under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes)~~].

Sec. 391.127. SALVAGE VEHICLE DEALER LICENSE. The commission may revoke or suspend a license issued under Chapter 2302, Occupations Code [~~Article 6687-1a, Revised Statutes~~], or place on probation a license holder whose license is suspended, if the license holder violates this chapter or a rule adopted under this chapter.

SECTION 14A.821. Section 501.002(10), Transportation Code, is amended to read as follows:

(10) "Manufactured housing" has the meaning assigned by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.822. Section 501.0234(a), Transportation Code, is amended to read as follows:

(a) A person who sells at the first or a subsequent sale a motor vehicle and who holds a general distinguishing number issued under Chapter 503 of this code or Chapter 2301, Occupations Code, [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~] shall:

(1) in the time and manner provided by law, apply, in the name of the purchaser of the vehicle, for the registration of the vehicle, if the vehicle is to be registered, and a certificate of title for the vehicle and file with the appropriate designated agent each document necessary to transfer title to or register the vehicle; and at the same time

(2) remit any required motor vehicle sales tax.

SECTION 14A.823. Section 501.0911(a)(15), Transportation Code, is amended to read as follows:

(15) "Salvage vehicle dealer" has the meaning assigned by Section 2302.001, Occupations Code [~~1.01, Article 6687-1a, Revised Statutes~~].

SECTION 14A.824. Section 501.0912(d), Transportation Code, is amended to read as follows:

(d) An insurance company may sell a late model salvage motor vehicle to which this section applies, or assign a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle, only to a salvage vehicle dealer, an out-of-state buyer, a buyer in a casual sale at auction, or a person described by Section 2302.003, Occupations Code [~~Subsection (g), Article 6687-2b, Revised Statutes~~]. If the vehicle is not a late model salvage motor vehicle or a nonrepairable motor vehicle, the insurance company is not required to surrender the regular certificate of title for the vehicle or to be issued a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title for the vehicle.

SECTION 14A.825. Section 501.0919, Transportation Code, is amended to read as follows:

Sec. 501.0919. SALE OF CERTAIN LATE MODEL SALVAGE MOTOR VEHICLES. The owner of a late model salvage motor vehicle that has been issued a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title may sell the vehicle only to a salvage vehicle dealer in this state, an

out-of-state buyer, a buyer in a casual sale at auction, or a person described by Section 2302.003, Occupations Code [~~Subsection (g), Article 6687-2b, Revised Statutes~~].

SECTION 14A.826. Sections 501.0931(a), (b), and (c), Transportation Code, are amended to read as follows:

(a) This subchapter does not apply to, and does not preclude or prohibit a sale to, purchase by, or other transaction by or with, a person described by Section 2302.003, Occupations Code [~~Subsection (g), Article 6687-2b, Revised Statutes~~], except as provided by Subsections (b) and (c).

(b) A person described by Section 2302.003, Occupations Code [~~Subsection (g), Article 6687-2b, Revised Statutes~~], shall submit to the department the certificate of title or equivalent document that the person receives in conjunction with the purchase of a motor vehicle not later than the 60th day after the date the person receives the certificate of title or equivalent document.

(c) This subchapter applies to a transaction with a person described by Section 2302.003, Occupations Code [~~Subsection (g), Article 6687-2b, Revised Statutes~~], in which a motor vehicle is sold or delivered to the person for the purpose of reuse or resale as a motor vehicle or as motor vehicle parts if the motor vehicle is so used.

SECTION 14A.827. Section 502.285, Transportation Code, is amended to read as follows:

Sec. 502.285. MANUFACTURED HOUSING. Manufactured housing, as defined by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas~~

~~Civil Statutes)~~], is not a vehicle subject to this chapter.

SECTION 14A.828. Sections 503.001(1), (3), and (7), Transportation Code, are amended to read as follows:

(1) "Board" has the meaning assigned by Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

(3) "Converter" has the meaning assigned by Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

(7) "Franchise" has the meaning assigned by Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.829. Section 503.0618(a), Transportation Code, is amended to read as follows:

(a) In this section, "converter" means a person who holds a converter's license issued under Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.830. Section 503.0625(a), Transportation Code, is amended to read as follows:

(a) In this section, "converter" means a person who holds a converter's license issued under Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.831. Section 503.064(a), Transportation Code, is amended to read as follows:

(a) Instead of registering a new vehicle that a manufacturer

intends to test on a public street or highway or to loan to a consumer for the purpose described by Section 2301.605, Occupations Code [~~6.07(d), Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~], the manufacturer may apply for, receive, and attach manufacturer's license plates to the vehicle.

SECTION 14A.832. Section 520.063, Transportation Code, is amended to read as follows:

Sec. 520.063. EXEMPTIONS. The following persons and their agents are exempt from the licensing and other requirements established by this subchapter:

(1) a franchised motor vehicle dealer or independent motor vehicle dealer who holds a general distinguishing number issued by the department under Chapter 503;

(2) a [~~motor~~] vehicle lessor holding a license issued by the Motor Vehicle Board under Chapter 2301, Occupations Code, [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~] or a trust or other entity that is specifically not required to obtain a lessor license under Section 2301.254(a) [~~4.01(a)~~] of that code [~~Act~~]; and

(3) a vehicle lease facilitator holding a license issued by the Motor Vehicle Board under Chapter 2301, Occupations Code [~~the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.833. Section 541.201(23), Transportation Code, is amended to read as follows:

(23) "Vehicle" means a device that can be used to

transport or draw persons or property on a highway. The term does not include:

(A) a device exclusively used on stationary rails or tracks; or

(B) manufactured housing as that term is defined by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.834. Section 548.3011(a), Transportation Code, is amended to read as follows:

(a) This section applies only to a vehicle:

(1) the most recent certificate of title for which or registration of which was issued in a county without a motor vehicle emissions inspection and maintenance program; and

(2) the ownership of which has changed and which has been the subject of a retail sale as defined by Section 2301.002, Occupations Code [~~1.03, Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes)~~].

SECTION 14A.835. Section 621.001(9), Transportation Code, is amended to read as follows:

(9) "Vehicle" means a mechanical device, other than a device moved by human power or used exclusively upon stationary rails or tracks, in, on, or by which a person or property can be transported on a public highway. The term includes a motor vehicle, commercial motor vehicle, truck-tractor, trailer, or semitrailer but does not include manufactured housing as defined by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~].

SECTION 14A.836. Section 623.091, Transportation Code, is amended to read as follows:

Sec. 623.091. DEFINITION. In this subchapter, "manufactured house" means "industrialized building" as defined by Chapter 1202, Occupations Code [~~Article 5221f-1, Revised Statutes~~], "industrialized housing" as defined by Chapter 1202, Occupations Code [~~Article 5221f-1, Revised Statutes~~], or "manufactured home" as defined by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~]. The term includes a temporary chassis system or returnable undercarriage used for the transportation of a manufactured house and a transportable section of a manufactured house that is transported on a chassis system or returnable undercarriage and that is constructed so that it cannot, without dismantling or destruction, be transported within the legal size limits for a motor vehicle.

SECTION 14A.837. Section 623.093(d), Transportation Code, is amended to read as follows:

(d) In this subsection, "consumer," "manufacturer," and "retailer" have the meanings assigned by Chapter 1201, Occupations Code [~~the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes)~~]. If the application is for a permit to transport a manufactured house from a location other than the location of the manufacturer or from the location of the retailer of the manufactured house pursuant to the original sale, exchange, or lease-purchase of the manufactured house to a consumer, the application for a permit must be accompanied by a written statement

from the chief appraiser of the appraisal district established for the county in which the manufactured house is located that states that no unpaid ad valorem taxes have been reported on the manufactured house due any taxing unit for which the appraisal district appraises property. If the manufactured house is not listed on the most recent appraisal roll of the appraisal district established for the county in which the manufactured house is located, the application for the permit must be accompanied by:

(1) evidence showing that the manufactured house was moved into the county after January 1 of the current year; or

(2) a certificate from the appraisal district established for the county in which the manufactured house is located that states that the owner of the manufactured house or another person has provided that appraisal district with information sufficient to list the manufactured house in the supplemental appraisal records of that appraisal district.

SECTION 14A.838. Section 643.202(a), Transportation Code, is amended to read as follows:

(a) The department shall appoint a rules advisory committee to advise the department on adoption of rules regarding:

(1) the application of this chapter to tow trucks; and

(2) the administration by the department of Chapter 2303, Occupations Code [~~the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes)~~].

SECTION 14A.839. Section 684.001(8), Transportation Code, is amended to read as follows:

(8) "Vehicle storage facility" means a facility

operated by a person licensed under Chapter 2303, Occupations Code [~~Article 6687-9a, Revised Statutes~~].

SECTION 14A.840. Section 685.001(1), Transportation Code, is amended to read as follows:

(1) "Vehicle storage facility" has the meaning assigned by Chapter 2303, Occupations Code [~~the Vehicle Storage Facility Act, Article 6687-9a, Revised Statutes~~].

SECTION 14A.841. Section 685.005(b), Transportation Code, is amended to read as follows:

(b) The operator of a vehicle storage facility that sends a notice under Subchapter D, Chapter 2303, Occupations Code [~~Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes)~~], shall include with that notice a notice of the person's rights under this chapter.

SECTION 14A.842. Section 5.2291(a), Water Code, is amended to read as follows:

(a) In this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under Chapter 1001, Occupations Code [~~The Texas Engineering Practice Act~~

~~(Article 3271a, Vernon's Texas Civil Statutes)~~].

SECTION 14A.843. Section 7.052(a), Water Code, is amended to read as follows:

(a) The amount of the penalty for a violation of Chapter [~~34, or~~] 37 of this code, [~~or~~] Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, may not exceed $2,500 a day for each violation.

SECTION 14A.844. Section 7.102, Water Code, is amended to read as follows:

Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter [~~34 or~~] 37 of this code, [~~or~~] Chapter 366, 371, or 372, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than $50 nor greater than $25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

SECTION 14A.845. Section 7.351(a), Water Code, is amended to read as follows:

(a) If it appears that a violation or threat of violation of

Chapter 16, 26, or 28[~~, or 34~~] of this code, [~~or~~] Chapter 361, 371, 372, or 382, Health and Safety Code, [~~or~~] a provision of Chapter 401, Health and Safety Code, under the commission's jurisdiction, or Chapter 1903, Occupations Code, or a rule adopted or an order or a permit issued under those chapters or provisions has occurred or is occurring in the jurisdiction of a local government, the local government or, in the case of a violation of Chapter 401, Health and Safety Code, a person affected as defined in that chapter, may institute a civil suit under Subchapter D in the same manner as the commission in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by this chapter against the person who committed, is committing, or is threatening to commit the violation.

SECTION 14A.846. Section 7.358, Water Code, is amended to read as follows:

Sec. 7.358. OTHER REQUIREMENTS. In the case of a violation of Chapter 1903, Occupations Code [~~34~~], the regulatory authority of any local government may require compliance with any reasonable inspection requirements or ordinances or regulations designed to protect the public water supply and pay any reasonable fees imposed by the local government relating to work performed within its jurisdiction.

SECTION 14A.847. Section 26.135(b), Water Code, is amended to read as follows:

(b) The commission shall continue to exercise the authority granted to it in Chapter 1901, Occupations Code [~~32 of this code~~].

SECTION 14A.848. Sections 37.002 and 37.003, Water Code, are

amended to read as follows:

Sec. 37.002. RULES. The commission shall adopt any rules necessary to:

(1) establish occupational licenses and registrations prescribed by Sections 26.0301, 26.3573, 26.452, and 26.456[~~, and 34.007~~] of this code, [~~and~~] Sections 341.033, 341.034, 361.027, and 366.071, Health and Safety Code, and Section 1903.251, Occupations Code;

(2) establish classes and terms of occupational licenses and registrations; and

(3) administer the provisions of this chapter and other laws governing occupational licenses and registrations under the commission's jurisdiction.

Sec. 37.003. LICENSE OR REGISTRATION REQUIRED. A person may not engage in a business, occupation, or profession described by Section 26.0301, 26.3573, 26.452, or 26.456[~~, or 34.007~~] of this code, [~~or~~] Section 341.033, 341.034, 361.027, 366.014, or 366.071, Health and Safety Code, or Section 1903.251, Occupations Code, unless the person holds the appropriate license or registration issued by the commission.

ARTICLE 14B. CHANGES RELATING TO PENAL CODE

SECTION 14B.001. Section 30.05(b)(3), Penal Code, is amended to correct a reference to read as follows:

(3) "Shelter center" has the meaning assigned by Section 51.002 [~~51.002(1)~~], Human Resources Code.

ARTICLE 15. CHANGES RELATING TO

TAX CODE

SECTION 15.001. (a) Section 11.43(b), Tax Code, is amended to correct a reference to read as follows:

(b) Except as provided by Subsection (c) and by Sections 11.184 and 11.437 [~~11.436~~], a person required to apply for an exemption must apply each year the person claims entitlement to the exemption.

(b) Section 22.01(e), Tax Code, is amended to correct a reference to read as follows:

(e) Notwithstanding Subsections (a) and (b), a person is not required to render for taxation cotton that:

(1) the person manages and controls as a fiduciary;

(2) is stored in a warehouse for which an exemption for cotton has been granted under Section 11.437 [~~11.436~~]; and

(3) the person intends to transport outside of the state within the time permitted by Article VIII, Section 1-j, of the Texas Constitution for cotton to qualify for an exemption under that section.

(c) Section 22.04(c), Tax Code, is amended to correct a reference to read as follows:

(c) This section does not apply to a warehouse for which an exemption for cotton has been granted under Section 11.437 [~~11.436~~].

SECTION 15.002. Section 33.06(a), Tax Code, as amended by Chapters 892 and 1430, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) An individual is entitled to defer or abate a suit to collect a delinquent tax if the individual:

(1) is 65 years of age or older or is disabled as defined by Section 11.13(m); and

(2) the tax was imposed against property that the individual owns and occupies as a residence homestead.

SECTION 15.003. Section 153.205, Tax Code, as amended by Chapters 1263 and 1444, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 153.205. STATEMENT FOR PURCHASE OF DIESEL FUEL TAX FREE. (a) The first sale or use of diesel fuel in this state is taxable, except that sales of dyed diesel fuel, or of undyed diesel fuel if the fuel will be used for an agricultural nonhighway purpose, may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an end user number or agricultural exemption number issued by the comptroller. A person who wants to use a signed statement to purchase dyed diesel fuel must apply to the comptroller for an end user number to be used in conjunction with a signed statement. A person who wants to use a signed statement to purchase dyed or undyed diesel fuel for an agricultural nonhighway purpose must apply to the comptroller for an agricultural exemption number to be used in conjunction with a signed statement. A supplier may not make a tax-free sale of any diesel fuel to a purchaser using a signed statement unless the purchaser has an end user number or agricultural exemption number issued by the comptroller under this section.

(b) A sale of dyed diesel fuel may be made without collecting the tax if the purchaser furnishes to a permitted

supplier a signed statement, including an end user number issued by the comptroller, that stipulates that:

(1) none of the diesel fuel purchased on the signed statement is of a type that may legally be used on the public highway;

(2) all of the dyed diesel fuel purchased on the signed statement will be consumed by the purchaser, or all of the diesel fuel will be consumed by the purchaser in oil or gas production, as applicable, and will not be resold; and

(3) none of the dyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public highways of this state.

(c) A sale of dyed or undyed diesel fuel for an agricultural nonhighway use may be made without collecting the tax if the purchaser furnishes to a permitted supplier a signed statement, including an agricultural exemption number issued by the comptroller, that stipulates that:

(1) all of the dyed and undyed diesel fuel purchased on the signed statement will be used exclusively in agricultural nonhighway equipment;

(2) all of the dyed and undyed diesel fuel purchased on the signed statement will be consumed by the purchaser and will not be resold; and

(3) none of the dyed or undyed diesel fuel purchased on the signed statement will be delivered or permitted to be delivered into the fuel supply tank of a motor vehicle operated on the public

highways of this state.

(d) A person may not make a tax-free purchase of any diesel fuel under this section using a signed statement:

(1) for the purchase of more than 7,400 gallons of dyed or undyed diesel fuel in a single transaction or delivery; or

(2) in a calendar month in which the person has previously purchased more than:

(A) 10,000 gallons of dyed diesel fuel from all sources;

(B) 25,000 gallons of dyed diesel fuel from all sources if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in oil or gas production; or

(C) 25,000 gallons of dyed or undyed diesel fuel from all sources if purchased for agricultural purposes by a person who furnishes to the permitted supplier, in conjunction with the signed statement, an agricultural exemption number issued by the comptroller.

(e) Any gallons purchased in excess of the limitations prescribed by Subsection (d) constitute a taxable purchase. The purchaser paying the tax on dyed or undyed diesel fuel in excess of the limitations prescribed by Subsection (d) may claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

(f) A supplier may not make a tax-free sale of any diesel fuel under this section to a purchaser using a signed statement:

(1) for the sale of more than 7,400 gallons of dyed or

undyed diesel fuel in a single transaction or delivery; or

(2) in a calendar month in which the supplier has previously sold more than:

(A) 10,000 gallons of dyed diesel fuel to the purchaser;

(B) 25,000 gallons of dyed diesel fuel to the purchaser if the purchaser stipulates in the signed statement that all of the fuel will be consumed by the purchaser in oil or gas production; or

(C) 25,000 gallons of dyed or undyed diesel fuel to the purchaser if the purchaser furnishes to the permitted supplier, in conjunction with the signed statement, an agricultural exemption number issued by the comptroller.

(g) Any gallons sold in excess of the limitations prescribed by Subsection (f) constitute a taxable sale. The purchaser paying the tax on dyed or undyed diesel fuel in excess of the limitations prescribed by Subsection (f) may claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

(h) The signed statement and end user number or agricultural exemption number from the purchaser as provided by this section relieves the permitted supplier from the burden of proof that the sale of dyed diesel fuel or of undyed diesel fuel for an agricultural nonhighway purpose was not taxable to the purchaser and remains in effect unless:

(1) the statement is revoked in writing by the purchaser or supplier; or

(2) the comptroller notifies the supplier in writing that the purchaser may no longer make tax-free purchases.

(i) A taxable use of any part of the dyed or undyed diesel fuel purchased under a signed statement shall, in addition to any criminal penalty, forfeit the right of the person to purchase dyed or undyed diesel fuel tax free for a period of one year from the date of the offense, and any tax, interest, and penalty found to be due through false or erroneous execution or continuance of a promissory statement by the purchaser, if assessed to the supplier, is a debt of the purchaser to the supplier until paid, and is recoverable at law in the same manner as the purchase price of the fuel. The person may, however, claim a refund of the tax paid on any dyed or undyed diesel fuel used for nonhighway purposes under Section 153.222.

ARTICLE 16. CHANGES RELATING TO TRANSPORTATION CODE

SECTION 16.001. (a) Subtitle A, Title 6, Transportation Code, is amended to codify Chapter 193, Acts of the 56th Legislature, Regular Session, 1959 (Article 6144e, Vernon's Texas Civil Statutes), by adding Chapter 204 to read as follows:

CHAPTER 204. TRAVEL INFORMATION

Sec. 204.001. INFORMATION FOR PUBLIC; MAPS. (a) To provide information relating to highway construction, repair, and maintenance and to advertise and attract traffic to the highways of this state, the department may prepare and publish for distribution, in the manner and form the department considers best, documents the department considers necessary and expedient to publicize and provide information concerning:

(1) the highways of this state;

(2) public parks, recreational areas, scenic areas, and other public places and objects of interest;

(3) distances;

(4) historical facts; and

(5) other matters of interest and value to the public and highway users.

(b) The department periodically may prepare a map showing:

(1) the highways of this state; and

(2) municipalities and other places of interest served by those highways.

(c) The department may distribute the documents and maps in the manner and to the extent the department considers will best serve the motoring public and highway users.

Sec. 204.002. CHARGE FOR MATERIALS. (a) The department shall provide a single copy of a document or map distributed under Section 204.001 without charge.

(b) The department by rule may:

(1) require payment for large quantities of the material; and

(2) authorize distribution without charge of multiple copies of the material if the distribution will maximize the department's resources available to advertise the highways of this state and promote travel to and within this state.

(c) Payment required under Subsection (b)(1) must be in an amount sufficient to recover the department's direct and indirect production costs. Money received by the department under this

section shall be deposited to the credit of the state highway fund and used by the department to produce travel material. Section 403.095, Government Code, does not apply to money deposited under this subsection.

(d) If this section conflicts with a license agreement entered into under Section 201.205, the license agreement prevails to the extent of that conflict.

Sec. 204.003. TRAVEL INFORMATION CENTERS. The department shall maintain and operate travel information centers at the principal gateways to this state to provide highway information, travel guidance, and descriptive material designed to assist the traveling public and stimulate travel to and within this state.

Sec. 204.004. PAYMENT OF COSTS. The department may pay from highway revenues the cost, including the administration and operation cost, of:

(1) developing, publishing, and distributing material; and

(2) maintaining and operating travel information centers.

Sec. 204.005. PURCHASE OF BROADCASTING AND PERIODICAL ADVERTISING. The department may purchase advertising space in a periodical of national circulation and time on a broadcasting facility from money appropriated from the general revenue fund and administered by the department for that specific purpose.

Sec. 204.006. CONTRACTS FOR ADVERTISING, MOVIES, AND PHOTOGRAPHS. (a) The department may enter into a contract with:

(1) a recognized and financially responsible

advertising agency that has at least five years' experience handling similar accounts for the contracting of space in newspapers and periodicals for the publication of advertising information, historical facts, statistics, and pictures that will be useful and informative to persons outside this state; and

(2) motion picture producers and other persons for making movies or taking photographs in this state and for the showing of those movies and photographs.

(b) The department may join with another agency of this state in publishing informational publicity material under this section.

Sec. 204.007. PRIVATE CONTRIBUTIONS. (a) The department may accept a contribution from a private source for a purpose under Sections 204.001-204.006.

(b) The department may deposit the contribution in one or more banks and use the contribution at its discretion according to the contributor's wishes.

Sec. 204.008. PRODUCTION, MARKETING, AND DISTRIBUTION CONTRACTS. (a) The department may contract with a private entity to produce, market, and distribute material published under Sections 204.001-204.006 on the terms, including terms providing cost savings, the department considers beneficial to this state.

(b) A contract may:

(1) include cooperative strategies the department considers to provide cost benefits; and

(2) provide for acceptance of paid advertising in the material if the quality and quantity of the material are

maintained.

Sec. 204.009. SALE OF PROMOTIONAL ITEMS. (a) The department may sell promotional items such as calendars, books, prints, caps, light clothing, or other items approved by the commission that advertise the resources of this state.

(b) All proceeds from the sale of the items shall be deposited to the credit of the state highway fund for the department's use in its travel and information operations.

(c) Section 403.095, Government Code, does not apply to money deposited under this section.

Sec. 204.010. TRAVEL MAGAZINE. (a) The department shall publish the official travel magazine of this state, "Texas Highways."

(b) The department shall set subscription rates and other charges for the magazine at a level that generates receipts approximately sufficient to cover the cost of producing and distributing the magazine.

Sec. 204.011. SUBSCRIBER OR PURCHASER INFORMATION. (a) Except as provided by this section or a rule adopted by the commission under this section, the department may not disclose to any person the name, address, telephone number, social security account number, driver's license number, bank account number, credit or debit card number, or charge account number of a person who:

(1) is or has been a subscriber to "Texas Highways"; or

(2) has purchased from the department a promotional item described by Section 204.009.

(b) Chapter 552, Government Code, does not apply to subscriber or purchaser information described by Subsection (a).

(c) The commission by rule shall establish policies relating to:

(1) the release of subscriber or purchaser information;

(2) the use by the department of subscriber and purchaser information; and

(3) the sale of a mailing list containing the names and addresses of subscribers or purchasers.

(d) The policies must:

(1) include a method by which a subscriber or purchaser may require the department to exclude information about the person from a mailing list that is sold; and

(2) provide that subscriber or purchaser information be disclosed to an agency of this state or the United States only if that agency certifies that the information is necessary for the performance of that agency's duties.

(e) The department is immune from civil or criminal liability if the department unintentionally violates this section or a rule adopted under this section.

(f) In this section, a reference to the department includes an officer, employee, or agent of the department.

(b) Chapter 193, Acts of the 56th Legislature, Regular Session, 1959 (Article 6144e, Vernon's Texas Civil Statutes), is repealed.

SECTION 16.002. Section 361.031, Transportation Code, as

amended by Chapters 920 and 1237, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 361.031. TEXAS TURNPIKE AUTHORITY. (a) The Texas Turnpike Authority is a division of the Texas Department of Transportation that has full authority to exercise all powers granted to it under this chapter. Powers granted to the department under this chapter and Chapter 362 to study, design, construct, operate, expand, enlarge, or extend a turnpike project as a part of the state highway system shall be exercised by the department acting by and through the authority.

(b) [~~The authority may perform, procure from other divisions of the department with the consent of the department, or procure from outside service providers any portion of the services the authority requires for:~~

[~~(1) right-of-way acquisition;~~

[~~(2) roadway finance, design, and construction;~~

[~~(3) environmental affairs;~~

[~~(4) legal services;~~

[~~(5) roadway maintenance;~~

[~~(6) toll revenue collection; or~~

[~~(7) traffic operations.~~

[~~(c) To perform its functions under this chapter, the authority may use the facilities and personnel of the department in the same manner as other divisions of the department.~~

[~~(d) If the comptroller assigns numbers to state agencies for accounting purposes, the comptroller shall assign a separate agency number to the authority.~~

[~~(e)~~] The exercise by the authority of the powers conferred by this chapter in the construction, operation, and maintenance of a turnpike project is:

(1) in all respects for the benefit of the people of this state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions and public safety; and

(2) an essential governmental function of the state.

[~~(f) The commission shall employ a director of the authority who serves as the authority's chief administrative officer. The director serves at the pleasure of the commission.~~]

SECTION 16.003. Section 521.003, Transportation Code, is amended to correct a reference to the Central Education Agency to read as follows:

Sec. 521.003. ENROLLMENT AND ATTENDANCE VERIFICATION. The Texas [~~Central~~] Education Agency shall design a standard form for use by public and private schools to verify a student's enrollment and attendance for purposes of this chapter. The form must be approved by the department.

SECTION 16.004. Sections 622.136 and 623.165, Transportation Code, as amended by Chapters 941 and 942, Acts of the 77th Legislature, Regular Session, 2001, are reenacted and amended to read as follows:

Sec. 622.136. PENALTY [~~PENALTIES~~]. [~~(b) Except as provided by Subsections (c) and (d), an offense under this section is a misdemeanor punishable:~~

[~~(1) by a fine not to exceed $200;~~

[~~(2) on conviction within one year after the date of a prior conviction under this section that was punishable under Subdivision (1), by a fine not to exceed $500, by confinement in the county jail for not more than 60 days, or by both the fine and confinement; or~~

[~~(3) on conviction within one year after the date of a prior conviction under this section that was punishable under Subdivision (2), by a fine not to exceed $1,000, by confinement in the county jail for not more than six months, or by both the fine and confinement.~~

[~~(d)~~] A person commits an offense if the person fails in violation of Section 622.134(d) to carry or present the copy of the bond filed with the department. An offense under this section [~~subsection~~] is a misdemeanor punishable by a fine not to exceed $200.

Sec. 623.165. PENALTY [~~PENALTIES~~]. [~~(b) Except as provided by Subsections (c) and (d), an offense under this section is a misdemeanor punishable:~~

[~~(1) by a fine of not more than $200;~~

[~~(2) on conviction within one year after the date of a prior conviction under this section that was punishable under Subdivision (1), by a fine of not more than $500, by confinement in the county jail for not more than 60 days, or by both the fine and the confinement; or~~

[~~(3) on conviction within one year after the date of a prior conviction under this section that was punishable under Subdivision (2) or this subdivision, by a fine of not more than~~

~~$1,000, by confinement in the county jail for not more than six months, or by both the fine and the confinement.~~

[~~(d)~~] A person commits an offense if the person fails in violation of Section 623.163(d) to carry or present the copy of the bond filed with the department. An offense under this section [~~subsection~~] is a misdemeanor punishable by a fine not to exceed $200.

ARTICLE 17. CHANGES RELATING TO UTILITIES CODE

SECTION 17.001. Section 56.021, Utilities Code, as amended by Chapters 651 and 1451, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The commission shall adopt and enforce rules requiring local exchange companies to establish a universal service fund to:

(1) assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas;

(2) reimburse the telecommunications carrier that provides the statewide telecommunications relay access service under Subchapter D;

(3) finance the specialized telecommunications assistance program established under Subchapter E;

(4) reimburse the department, the Texas Commission for the Deaf and Hard of Hearing, and the commission for costs incurred in implementing this chapter and Chapter 57;

(5) reimburse a telecommunications carrier providing

lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as amended;

(6) finance the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to telecommunications services, including outreach expenses the commission determines are reasonable and necessary; and

(7) reimburse a designated provider under Subchapter F.

SECTION 17.002. Section 57.047(a), Utilities Code, as amended by Chapters 959, 1220, and 1255, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The board may award a grant to a project or proposal that:

(1) provides equipment and infrastructure necessary for:

(A) distance learning;

(B) an information sharing program of a library;

(C) telemedicine medical services;

(D) telehealth services; or

(E) [~~(D)~~] a telepharmacy system;

(2) develops and implements the initial or prototypical delivery of a course or other distance learning material;

(3) trains teachers, faculty, librarians, or technicians in the use of distance learning or information sharing

materials and equipment;

(4) develops a curriculum or instructional material specially suited for telecommunications delivery;

(5) provides electronic information; or

(6) establishes or carries out an information sharing program.

SECTION 17.003. Section 57.0471, Utilities Code, as added by Chapters 661 and 959, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 57.0471. GRANTS TO CERTAIN HEALTH CARE FACILITIES. (a) A physician, health care professional, or health care facility providing telemedicine medical services or telehealth services and participating in a pilot program under Section 531.02171, Government Code, is eligible to receive a grant under Section 57.047.

(b) The physician, health care professional, or health care facility providing telemedicine medical services or telehealth services and participating in a pilot program under Section 531.02171, Government Code, is not eligible to receive private network services under Section 58.253(a), except with respect to a project that would have been eligible to be funded by the telecommunications infrastructure fund under this subchapter as it existed on January 1, 2001.

SECTION 17.004. (a) Section 251.004(b), Utilities Code, is amended to conform to Section 1, Chapter 1256, Acts of the 76th Legislature, Regular Session, 1999, to read as follows:

(b) Excavation by an employee of the Texas Department of

Transportation on a segment of the state highway system is not subject to this chapter if the excavation is[~~:~~

[~~(1) less than 24 inches in depth; and~~

[~~(2) no~~] more than 10 feet from the right-of-way line.

(b) Section 1, Chapter 1256, Acts of the 76th Legislature, Regular Session, 1999, is repealed.

ARTICLE 18. CHANGES RELATING

TO WATER CODE

SECTION 18.001. Section 7.303, Water Code, as amended by Chapters 376 and 880, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 7.303. GROUNDS FOR REVOCATION OR SUSPENSION OF LICENSE, CERTIFICATE, OR REGISTRATION. (a) This section applies to a license, certificate, or registration issued:

(1) by the commission under:

(A) Section 26.0301;

(B) Chapter [~~34 or~~] 37;

(C) Section 361.0861, 361.092, or 361.112, Health and Safety Code; [~~or~~]

(D) Chapter 366, 371, or 401, Health and Safety Code; <u>or</u>

<u>(E) Chapter 1903, Occupations Code;</u>

(2) by a county under Subchapter E, Chapter 361, Health and Safety Code; or

(3) under a rule adopted under any of those provisions.

(b) After notice and hearing, the commission may suspend or

revoke a license, certificate, or registration the commission or a county has issued, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration on any of the following grounds:

(1) having a record of environmental violations in the preceding five years;

(2) committing fraud or deceit in obtaining the license, certificate, or registration;

(3) demonstrating gross negligence, incompetency, or misconduct while acting as holder of a license, certificate, or registration;

(4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the holder of the license, certificate, or registration;

(5) failing to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(6) being indebted to the state for a fee, payment of a penalty, or a tax imposed by a statute within the commission's jurisdiction or a rule adopted under such a statute;

(7) with respect to a license or registration issued under Section 26.0301 or Chapter 37, violating a discharge permit of a sewage treatment plant, unless:

(A) the holder of the license or registration is

unable to properly operate the sewage treatment or collection facility due to the refusal of the permit holder to authorize necessary expenditures to operate the sewage treatment or collection facility properly; or

(B) failure of the sewage treatment or collection facility to comply with its discharge permit results from faulty design of the facility;

(8) with respect to a license or registration issued under Chapter 37 of this code or Chapter 366, Health and Safety Code, violating either chapter or a rule adopted under either chapter; or

(9) with respect to a license issued under Subchapter E, Chapter 361, Health and Safety Code, violating that chapter or another applicable law or a commission rule governing the processing, storage, or disposal of solid waste.

SECTION 18.002. Section 15.011(b), Water Code, as amended by Chapters 966 and 1234, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C, the storage acquisition fund created under Subchapter E, the research and planning fund created under Subchapter F, the hydrographic survey account created under Subchapter M, provided the hydrographic survey account transfer does not exceed $425,000, the aquatic vegetation management fund created under Subchapter N, the rural community water and wastewater loan fund created under

Subchapter O [~~of this chapter~~], [~~and~~] the colonia self-help account created under Subchapter P [~~of this chapter~~], and the rural water assistance fund created under Subchapter R [~~P~~].

SECTION 18.003. Section 15.102(b), Water Code, as amended by Chapters 966, 1234, and 1367, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) The loan fund may also be used by the board to provide:

(1) grants or loans for[~~: (1)~~] projects that include supplying water and wastewater services in economically distressed areas or nonborder colonias as provided by legislative appropriations, this chapter, and board rules, including projects involving retail distribution of those services; and

(2) grants for:

(A) [~~(2)~~] projects for which federal grant funds are placed in the loan fund;

(B) [~~(3)~~] projects, on specific legislative appropriation for those projects; or

(C) [~~(4)~~] desalination, brush control, weather modification, regionalization, and projects providing regional water quality enhancement services as defined by board rule, including regional conveyance systems.

SECTION 18.004. Section 15.603(a), Water Code, as amended by Chapters 966 and 1234, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(a) The revolving fund is held separately from other funds by the board outside the State Treasury to provide financial assistance to political subdivisions for construction of treatment

works and to persons for estuary management projects and for nonpoint source pollution control and abatement projects under Subsection (h).

SECTION 18.005. Section 26.0286(c), Water Code, as amended by Chapters 681 and 966, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(c) For the purposes of this section only, when adopting rules under Section 26.023 to set water quality standards for water in the state, the commission by rule shall designate a surface water body as a sole-source surface drinking water supply if that surface water body is identified as a public water supply in rules adopted by the commission under Section 26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections. At the same time, the commission shall designate as a protection zone any area within the watershed of a sole-source surface drinking water supply that is:

(1) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(2) within two miles of that part of a perennial stream that is:

(A) a tributary of a sole-source surface drinking water supply; and

(B) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(3) within two miles of that part of a stream that is a

sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake.

SECTION 18.006. Section 36.116, Water Code, as amended by Chapters 966 and 1164, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

Sec. 36.116. REGULATION OF SPACING AND PRODUCTION. (a) In order to minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, to control subsidence, to prevent interference between wells, to prevent degradation of water quality, or to prevent waste, a district by rule may regulate:

(1) the spacing of water wells by:

(A) requiring all water wells to be spaced a certain distance from property lines or adjoining wells;

(B) requiring wells with a certain production capacity, pump size, or other characteristic related to the construction or operation of and production from a well to be spaced a certain distance from property lines or adjoining wells; or

(C) imposing spacing requirements adopted by the board; and

(2) the production of groundwater by:

(A) setting production limits on wells;

(B) limiting the amount of water produced based on acreage or tract size;

(C) limiting the amount of water that may be produced from a defined number of acres assigned to an authorized well site;

(D) limiting the maximum amount of water that may

be produced on the basis of acre-feet per acre or gallons per minute per well site per acre; or

(E) any combination of the methods listed above in Paragraphs (A) through (D).

(b) In promulgating any rules limiting groundwater production, the district may preserve historic use before the effective date of the rules to the maximum extent practicable consistent with the district's comprehensive management plan under Section 36.1071.

(c) In regulating the production of groundwater based on tract size or acreage, a district may consider the service needs or service area of a retail water utility. For the purposes of this subsection, "retail water utility" shall have the meaning provided at Section 13.002.

SECTION 18.007. Section 49.054(d), Water Code, as amended by Chapter 1423, Acts of the 77th Legislature, Regular Session, 2001, is repealed to conform to Chapter 69, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 18.008. Section 49.057(a), Water Code, as amended by Chapters 69 and 1423, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) The board shall be responsible for the management of all the affairs of the district. The district shall employ or contract with all persons, firms, partnerships, corporations, or other entities, public or private, deemed necessary by the board for the conduct of the affairs of the district, including, but not limited to, engineers, attorneys, financial advisors, operators,

bookkeepers, tax assessors and collectors, auditors, and administrative staff.

SECTION 18.009. Section 49.218, Water Code, as amended by Chapters 71 and 1423, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 49.218. ACQUISITION OF PROPERTY. (a) A district or a water supply corporation may acquire land, an interest in land, materials, waste grounds, easements, rights-of-way, equipment, contract or permit rights or interests, and other property, real or personal, considered necessary for the purpose of accomplishing any one or more of the district's or water supply corporation's purposes provided in this code or in any other law.

(b) A district or water supply corporation shall have the right to acquire property by gift, grant, or purchase, and the right to acquire property shall include property considered necessary for the construction, improvement, extension, enlargement, operation, or maintenance of the plants, works, improvements, facilities, equipment, or appliances of a district or a water supply corporation.

(c) A district or water supply corporation may acquire either the fee simple title to or an easement on all land, both public and private, either inside or outside its boundaries and may acquire the title to or an easement on property other than land held in fee.

(d) A district or water supply corporation may require, as a condition for service, that an applicant for service grant to the district or water supply corporation a permanent recorded easement

that:

(1) is dedicated to the district or water supply corporation; and

(2) will provide a reasonable right of access and use to allow the district or water supply corporation to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve that applicant as well as the district's or water supply corporation's purposes in providing system-wide service.

(e) A district or water supply corporation may not, under Subsection (d), require an applicant to provide an easement for a service line for the sole benefit of another applicant.

(f) As a condition of service to a new subdivision, a district or water supply corporation may require a developer to provide permanent recorded easements to and throughout the subdivision sufficient to construct, install, maintain, replace, upgrade, inspect, or test any facility necessary to serve the subdivision's anticipated service demands when the subdivision is fully occupied.

(g) A district or water supply corporation may also lease property from others for its use on such terms and conditions as the board of the district or the board of directors of the water supply corporation may determine to be advantageous.

(h) Property acquired under this section, or any other law allowing the acquisition of property by a district or water supply corporation, and owned by a district or water supply corporation is not subject to assessments, charges, fees, or dues imposed by a nonprofit corporation under Chapter 204, Property Code.

SECTION 18.010. Section 51.149(a), Water Code, as added by Chapters 965 and 966, Acts of the 77th Legislature, Regular Session, 2001, is reenacted to read as follows:

(a) Notwithstanding Section 49.108(e), no approval other than that specified in Subsection (c) need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

ARTICLE 19. EFFECTIVE DATE

SECTION 19.001. This Act takes effect September 1, 2003.

S.B. No. 1322 By HARRIS

A BILL TO BE ENTITLED

AN ACT:

relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 77th Legislature to other Acts of that legislature.

MAR 12 2003 Filed with the Secretary of the Senate

MAR 19 2003 Read and referred to Committee on ADMINISTRATION

_____ Reported favorably _____

_____ Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

_____ Ordered not printed

_____ Laid before the Senate

_____ Senate and Constitutional Rules to permit consideration suspended by: { unanimous consent / ____ yeas, ____ nays

_____ Read second time, _____, and ordered engrossed by: { unanimous consent / a viva voce vote / ____ yeas, ____ nays

_____ Senate and Constitutional 3 Day Rule suspended by a vote of ____ yeas, ____ nays.

_____ Read third time, _____, and passed by: { A viva voce vote / ____ yeas, ____ nays

_____

SECRETARY OF THE SENATE

OTHER ACTION:

_____ Engrossed

_____ Sent to House

Engrossing Clerk _____

_____ Received from the Senate

_____ Read first time and referred to Committee on _____

_____ Reported ____favorably (as amended) (as substituted)

_____ Sent to Committee on (Calendars) (Local & Consent Calendars)

_____ Read second time (comm. subst.) (amended); passed to third reading (failed) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Constitutional rule requiring bills to be read on three several days suspended (failed to suspend) by a vote of ____ yeas, ____ nays, ____ present, not voting.

_____ Read third time (amended); finally passed (failed to pass) by a (non-record vote) (record vote of ____ yeas, ____ nays, ____ present, not voting)

_____ Returned to Senate.

_____

CHIEF CLERK OF THE HOUSE

_____ Returned from House without amendment.

_____ Returned from House with ____ amendments.

_____ Concurred in House amendments by a viva voce vote ____ yeas, ____ nays.

_____ Refused to concur in House amendments and requested the appointment of a Conference Committee to adjust the differences.

_____ Senate conferees instructed.

_____ Senate conferees appointed: _____, Chairman; _____

_____, _____, and _____

_____ House granted Senate request. House conferees appointed: _____ , Chairman;

_____ , _____ , _____ .

_____ Conference Committee Report read and filed with the Secretary of the Senate.

_____ Conference Committee Report adopted on the part of the House by: _____

{ a viva voce vote
{ _____ yeas, _____ nays

_____ Conference Committee Report adopted on the part of the Senate by:

{ a viva voce vote
{ _____ yeas, _____ nays

OTHER ACTION:

_____ Recommitted to Conference Committee

_____ Conferees discharged.

_____ Conference Committee Report failed of adoption by: _____

{ a viva voce vote
{ _____ yeas, _____ nays