

CHAPTER 678

H.B. No. 2136

AN ACT

relating to the adoption of a nonsubstantive revision of the statutes relating to health and safety, including conforming amendments, repeals, and penalties.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. ADOPTION OF CODE. The Health and Safety Code is adopted to read as follows:

HEALTH AND SAFETY CODE

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CHAPTER 1. GENERAL PROVISIONS

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**TITLE 1. GENERAL PROVISIONS**

**CHAPTER 1. GENERAL PROVISIONS**

**Sec. 1.001. PURPOSE OF CODE.** (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Chapter 923, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible. (New.)

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

**Sec. 1.003. INTERNAL REFERENCES.** In this code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears. (New.)

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## TITLE 2. HEALTH

## SUBTITLE A. TEXAS DEPARTMENT OF HEALTH

## CHAPTER 11. ORGANIZATION OF TEXAS DEPARTMENT OF HEALTH

Sec. 11.001. DEFINITIONS. In this title:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health. (V.A.C.S. Art. 4414b, Sec. 1.01.)

Sec. 11.002. PURPOSE OF BOARD AND DEPARTMENT. The Texas Board of Health and the Texas Department of Health are established to better protect and promote the health of the people of this state. (V.A.C.S. Art. 4414b, Sec. 1.02(a) (part).)

Sec. 11.003. APPLICATION OF SUNSET ACT. The board and the department are subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board and the department are abolished and this chapter expires September 1, 1997. (V.A.C.S. Art. 4414b, Sec. 1.03.)

Sec. 11.004. COMPOSITION OF DEPARTMENT. The department is composed of:

- (1) the commissioner;
- (2) an administrative staff;
- (3) the San Antonio State Chest Hospital; and
- (4) the South Texas Hospital. (V.A.C.S. Art. 4414b, Sec. 1.02(a) (part).)

Sec. 11.005. COMPOSITION OF BOARD. (a) The board is composed of the following 18 members appointed by the governor with the advice and consent of the senate:

- (1) six physicians licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years before appointment and one of whom specializes in the treatment of disabled children;
- (2) two hospital administrators with at least five years of experience in hospital administration in this state before appointment;
- (3) one dentist licensed under the laws of this state who has been engaged in the practice of dentistry in this state for at least five years before appointment;
- (4) one registered nurse licensed to practice professional nursing under the laws of this state who has been engaged in the practice of nursing in this state for at least five years before appointment;
- (5) one veterinarian licensed under the laws of this state who has been engaged in the practice of veterinary medicine in this state for at least five years before appointment;
- (6) one pharmacist licensed under the laws of this state who has been engaged in the practice of pharmacy in this state for at least five years before appointment;
- (7) one nursing home administrator licensed under the laws of this state who has been engaged as a nursing home administrator in this state for at least five years before appointment;
- (8) one optometrist licensed under the laws of this state who has been engaged in the practice of optometry in this state for at least five years before appointment;

(9) one professional engineer licensed under the laws of this state who holds a civil engineering degree from an accredited university or college and who has specialized in the practice of sanitary engineering in this state for at least five years before appointment;

(10) one doctor of chiropractic licensed under the laws of this state who has been engaged in the practice of chiropractic in this state for at least five years before appointment; and

(11) two public members who have none of the qualifications required of the other members.

(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees. (V.A.C.S. Art. 4414b, Secs. 1.04(a), (e).)

**Sec. 11.006. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT.** (a) 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 the field of health care;

(2) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the department.

(b) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the board.

(c) A person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in the field of health care may not be a board member or a board employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as 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. (V.A.C.S. Art. 4414b, Secs. 1.04(b), (c), (d).)

**Sec. 11.007. TERMS.** Board members serve for staggered six-year terms, with the terms of six members expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 4414b, Sec. 1.04(f).)

**Sec. 11.008. OFFICERS.** Not later than September 1 of each odd-numbered year, the governor shall designate one board member as chairman and one member as vice-chairman. (V.A.C.S. Art. 4414b, Sec. 1.04(g).)

**Sec. 11.009. REMOVAL OF BOARD MEMBERS.** (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 11.005(a);

(2) does not maintain during service on the board the qualifications required by Section 11.005(a);

(3) violates a prohibition established by Section 11.006(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote 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 commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 4414b, Secs. 1.04(n), (o), (p).)

Sec. 11.010. PER DIEM; REIMBURSEMENT FOR EXPENSES. A board member receives no fixed salary but is entitled to receive:

(1) \$50 per day for each day spent in attending board meetings; and

(2) reimbursement for travel expenses and other necessary expenses incurred in performing official duties. (V.A.C.S. Art. 4414b, Sec. 1.04(l).)

Sec. 11.011. MEETINGS. (a) The board shall meet in the city of Austin or in other places fixed by the board.

(b) The board shall meet on dates determined by the board and shall hold special meetings at the call of the chairman. The chairman shall give timely notice to each member of any special meeting.

(c) A meeting of a board committee shall be held in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4414b, Secs. 1.04(i), (j), (k).)

Sec. 11.012. COMMISSIONER. (a) The board shall employ the commissioner, who serves at the will of the board.

(b) The commissioner must be a person licensed to practice medicine in this state.

(c) The commissioner is the executive head of the department. The commissioner shall perform the duties assigned by the board and state law, subject to the provisions of this subtitle. (V.A.C.S. Art. 4414b, Secs. 1.05(a)(2); 1.06(a), (b), (c), (e).)

Sec. 11.013. SEPARATION OF AUTHORITY. (a) The board shall adopt policies and rules and shall govern the department.

(b) The board may delegate to the commissioner, or to the person acting as commissioner in the commissioner's absence, any power or duty imposed on the board by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules. The delegation must be written.

(c) The board shall:

(1) supervise the commissioner's administration and enforcement of the health laws of this state; and

(2) develop and implement policies that clearly separate the respective responsibilities of the board and the staff of the department. (V.A.C.S. Art. 4414b, Secs. 1.02(b); 1.05(b).)

Sec. 11.014. INVESTIGATION OF DEPARTMENT. The board shall investigate the conduct of the work of the department. For that purpose, the board shall have access at any time to all department books and records and may require an officer or employee of the department to furnish written or oral information. (V.A.C.S. Art. 4414b, Sec. 1.05(a)(3).)

Sec. 11.015. PERSONNEL. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program. The program shall require intra-agency postings of all nonentry level positions concurrently with any public posting. The commissioner may waive the posting requirements under circumstances outlined in department policies.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this subsection.

(c) The board shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.



(d) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the department work force that meets federal and state guidelines; and
- (3) procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must:

- (1) cover an annual period;
- (2) be updated at least annually; and
- (3) be filed with the governor.

(f) The governor shall deliver a biennial report to the legislature based on the information received under Subsection (e)(3). The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 4414b, Secs. 1.05(g); 1.06(f), (g), (h), (i).)

**Sec. 11.016. ADVISORY COMMITTEES.** (a) The board may appoint advisory committees to assist the board in performing its duties.

(b) The board shall appoint an advisory committee in a manner that provides for:

- (1) a balanced representation of persons with knowledge and interest in the committee's field of work;
- (2) the inclusion on the committee of at least two members, who represent the interests of the public; and
- (3) a balanced representation of the geographic regions of the state

(c) A person is not eligible for appointment or service as a public member of an advisory committee if the person or the person's spouse:

- (1) is licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by a health care facility, agency, or corporation, or by a corporation authorized to underwrite health care insurance;
- (3) governs or administers a health care facility, agency, or corporation; or
- (4) has, other than as a consumer, a financial interest in a health care facility, agency, or corporation.

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

- (1) \$50 for each advisory committee meeting attended by the member; and
- (2) the per diem and travel allowance authorized by the General Appropriations Act for state employees.

(e) The board shall specify each committee's purpose, powers, and duties, and shall require each committee to report to the board in the manner specified by the board concerning the committee's activities and the results of its work.

(f) The board shall establish procedures for receiving reports relating to the activities and accomplishments of an advisory committee established by statute to advise the board or department. The board may appoint additional members to those advisory committees and may establish additional duties of those committees as the board determines to be necessary.

(g) The board shall adopt rules to implement this section. (V.A.C.S. Art. 4414b, Sec. 1.08.)

Sec. 11.017. FINANCES. (a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(b) The state auditor shall audit the financial transactions of the board at least once each biennium. (V.A.C.S. Art. 4414b, Secs. 1.04(q); 1.05(d).)

Sec. 11.018. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) 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.

(b) The board shall prepare information of public interest describing the functions of the board and department and the board's and department's procedures by which complaints are filed with and resolved by the board and department. The department shall make the information available to the public and appropriate state agencies.

(c) The board by rule shall establish methods by which consumers and service recipients can be notified of the names, mailing addresses, and telephone numbers of the board and department for the purpose of directing complaints to the board and department. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated by the board or department;

(2) on a sign prominently displayed in the place of business of each person or entity regulated by the board or department; or

(3) in a bill for service provided by a person or entity regulated by the board or department.

(d) The department shall keep an information file about each complaint filed with the department relating to:

(1) a license holder or entity regulated by the department; or

(2) a service delivered by the department.

(e) If a written complaint is filed with the department relating to a license holder or entity regulated by the department or a service delivered by the department, the department, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation. (V.A.C.S. Art. 4414b, Secs. 1.05(e), (f), (h); 1.09.)

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**CHAPTER 12. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH**

**SUBCHAPTER A. POWERS AND DUTIES OF BOARD**

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

(b) The board shall:

(1) adopt rules for its procedure and for the performance of each duty imposed by law on the board, the department, or the commissioner and file a copy of those rules with the department; and

(2) examine, investigate, enter, and inspect any public place or public building as the board determines necessary for the discovery and suppression of disease and the enforcement of any health or sanitation law of this state.

(c) The board has all the powers, duties, and functions granted by law to:

(1) the Texas Board of Health;

(2) the state commissioner of health;

(3) the Texas Department of Health;

(4) the Texas Board of Health Resources; and

(5) the Texas Department of Health Resources. (V.A.C.S. Art. 4414b, Secs. 1.05(a) (part), (c).)

Sec. 12.002. BOARD INVESTIGATIONS. (a) A member of the board may administer oaths, summon witnesses, and compel the attendance of witnesses in any matter proper for board investigation, including the determination of nuisances and the investigation of:

(1) public water supplies;

(2) sanitary conditions;

(3) the existence of infection; or

(4) any matter that requires the board to exercise its discretionary powers and that is within the general scope of its authority under this subchapter.

(b) Each district court shall aid the board in its investigations and in compelling compliance with this subchapter. If a witness summoned by the board is disobedient or disrespectful to the board's lawful authority, the district court of the county in which the

witness is summoned to appear shall punish the witness in the manner provided for contempt of court. (V.A.C.S. Art. 4421.)

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

(b) The attorney general shall assign a special assistant to attend to the board's legal matters, and on the board's request shall furnish necessary assistance to the board relating to its legal requirements. (V.A.C.S. Art. 4446 (part).)

[Sections 12.004–12.010 reserved for expansion]

#### **SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT**

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

(b) The department may accept donations and contributions to be spent in the interest of public health and the enforcement of public health laws. (V.A.C.S. Art. 4414b, Sec. 1.07 (part).)

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

(b) In awarding the contracts or grants or selecting the providers, the department may not discriminate among licensed health care providers who can provide the services under the authority of their licenses. (V.A.C.S. Art. 4414b, Sec. 1.10.)

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

- (1) the licensing of drivers;
- (2) the enforcement of traffic safety laws, including differentiation between drivers who are ill or intoxicated; and
- (3) accident investigation, including examination for alcohol or drugs in the bodies of persons killed in traffic accidents.

(b) Based on the studies and investigations, the department periodically shall recommend to the Department of Public Safety appropriate policies, standards, and procedures relating to those medical aspects. (V.A.C.S. Art. 4447f.)

[Sections 12.014–12.020 reserved for expansion]

#### **SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER**

**Sec. 12.021. ADMINISTRATION AND ENFORCEMENT DUTIES.** The commissioner shall administer and enforce the health laws of this state under the board's supervision. (V.A.C.S. Art. 4414b, Sec. 1.06(d).)

[Sections 12.022–12.030 reserved for expansion]

#### **SUBCHAPTER D. FEES FOR PUBLIC HEALTH SERVICES**

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

- (1) personal health promotion, maintenance, and treatment services;
- (2) infectious disease control and prevention services;
- (3) environmental and consumer health protection services;

- (4) laboratory services;
- (5) health facility architectural plan review;
- (6) public health planning, information, and statistical services;
- (7) public health education and information services; and
- (8) administration services. (V.A.C.S. Art. 4414c, Sec. 1(3).)

**Sec. 12.032. FEES FOR PUBLIC HEALTH SERVICES.** (a) The board by rule may charge fees to a person who receives public health services from the department.

(b) The board by rule may require department contractors to charge fees for public health services provided by department contractors participating in the department's programs. A department contractor shall retain a fee collected under this subsection and shall use the fee in accordance with the contract provisions.

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

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

(e) The board may not deny public health services to a person because of the person's inability to pay for the services. (V.A.C.S. Art. 4414c, Secs. 2, 2A(d), 3(d).)

**Sec. 12.033. FEES FOR DISTRIBUTION AND ADMINISTRATION OF CERTAIN VACCINES AND SERA.** (a) The board by rule shall charge fees for the distribution and administration of vaccines and sera provided under:

- (1) Section 2.09, Education Code;
- (2) Section 42.043, Human Resources Code;
- (3) Chapter 826 (Rabies Control Act of 1981); and
- (4) Chapter 81 (Communicable Disease Prevention and Control Act).

(b) The board by rule may require a department contractor to charge fees for public health services provided by a contractor participating in a department program under the laws specified by Subsection (a).

(c) The board shall set the fees in amounts reasonable and necessary to defray the cost to the state of distributing and administering the vaccines and sera.

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

- (1) a public health emergency exists; and
- (2) the vaccine or serum is needed to meet the emergency. (V.A.C.S. Art. 4414c, Secs. 2A(a), (b), (c), (e).)

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

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

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

(d) If the board elects to require cash payments by program participants, the money received shall be deposited locally at the end of each day and retained by the department for not more than seven days. At the end of that time, the money shall be deposited in the state treasury. (V.A.C.S. Art. 4414c, Secs. 3(a), (b).)

**Sec. 12.035. PUBLIC HEALTH SERVICES FEE FUND.** (a) The department shall deposit all money collected for fees charged under Section 12.032(a) in the state treasury to the credit of the Texas Department of Health public health services fee fund.

(b) The department shall maintain proper accounting records to allocate the fund among the state and federal programs generating the fees and administrative costs incurred in collecting the fees. (V.A.C.S. Art. 4414c, Sec. 3(c) (part).)

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

- (1) personal insurance;
- (2) another person, for a personal injury caused by the other person's negligence or wrongdoing; or
- (3) any other source.

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

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

- (1) enforcement of the right would tend to defeat the purpose of the department's program; or
- (2) the administrative expense of the enforcement would be greater than the expected recovery.

(d) The board may adopt rules for the enforcement of the department's right of subrogation. (V.A.C.S. Art. 4414c, Sec. 4.)

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

(b) The board by rule shall prescribe the criteria for department action under this section. (V.A.C.S. Art. 4414c, Sec. 5 (part).)

Sec. 12.038. RULES. The board may adopt rules necessary to implement this subchapter. (V.A.C.S. Art. 4414c, Sec. 6.)

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

(b) This section does not restrict the determination or recomputing of a fee or charge in accordance with the prescribed basis for computing the fee or charge. (V.A.C.S. Art. 4414c, Sec. 7.)

[Sections 12.040–12.050 reserved for expansion]

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

Sec. 12.051. PROVISION OF FUNDS. The department may provide funds by grant or contract to a qualified person for the purchase of services, equipment, or supplies to be used to promote and maintain the public health. (V.A.C.S. Art. 4418f-1(a) (part).)

Sec. 12.052. REQUIREMENTS FOR EXPENDITURE OF CERTAIN FUNDS. (a) The expenditure of funds received by local units of government from the department is governed by the Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and the rules adopted under that Act.

(b) The expenditure of funds received by other state agencies from the department is governed by the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) and the rules adopted under that Act.

(c) The expenditure of funds received by any other qualified person from the department is governed by the grant or contract between the person and the department. (V.A.C.S. Arts. 4418f-1(b), (c), (d).)

**CHAPTER 13. HEALTH DEPARTMENT HOSPITALS AND  
RESPIRATORY FACILITIES**

**SUBCHAPTER A. CARE AND TREATMENT IN HEALTH  
DEPARTMENT HOSPITALS**

- Sec. 13.001. HOSPITAL STANDARDS; CERTIFICATION**
- Sec. 13.002. ADMISSION OF OTHER PATIENTS**
- Sec. 13.003. SERVICES AT SOUTH TEXAS HOSPITAL**
- Sec. 13.004. TREATMENT OF CERTAIN MENTALLY ILL OR MENTALLY RETARDED PERSONS**
- Sec. 13.005. CARE AND TREATMENT OF CERTAIN PATIENTS**
- Sec. 13.006. PURPOSE OF TUBERCULOSIS CONTROL PROGRAM**

[Sections 13.007–13.030 reserved for expansion]

**SUBCHAPTER B. TEXAS TUBERCULOSIS CODE**

- Sec. 13.031. SHORT TITLE**
- Sec. 13.032. PURPOSE**
- Sec. 13.033. DEFINITIONS**
- Sec. 13.034. BOARD DUTIES**
- Sec. 13.035. EMPLOYMENT OF HOSPITAL ADMINISTRATORS**
- Sec. 13.036. PATIENT ADMISSION; EXAMINATION CERTIFICATE**
- Sec. 13.037. DETERMINATION OF RESIDENCY**
- Sec. 13.038. CLASSIFICATION OF PATIENTS; LIEN**
- Sec. 13.039. COLLECTION OF STATE'S CLAIM**
- Sec. 13.040. EFFECT OF INDIGENT HEALTH CARE AND TREATMENT ACT**
- Sec. 13.041. RETURN OF CERTAIN NONRESIDENTS; RECIPROCAL AGREEMENTS**
- Sec. 13.042. DISCRIMINATION PROHIBITED**
- Sec. 13.043. GRATUITIES PROHIBITED**
- Sec. 13.044. PRIVATE ACCOMMODATIONS**
- Sec. 13.045. DONATION OF LAND BY COUNTY**

[Sections 13.046–13.070 reserved for expansion]

**SUBCHAPTER C. RESPIRATORY DISEASE PILOT PROGRAM**

- Sec. 13.071. PILOT PROGRAM**
- Sec. 13.072. PATIENT QUALIFICATIONS**
- Sec. 13.073. BOARD POWERS AND DUTIES**
- Sec. 13.074. LIMIT ON NUMBER OF PATIENTS**
- Sec. 13.075. PROGRAM FUNDING**
- Sec. 13.076. FEES**

**CHAPTER 13. HEALTH DEPARTMENT HOSPITALS AND  
RESPIRATORY FACILITIES**

**SUBCHAPTER A. CARE AND TREATMENT IN HEALTH  
DEPARTMENT HOSPITALS**

**Sec. 13.001. HOSPITAL STANDARDS; CERTIFICATION.** (a) The board by rule shall adopt standards relating to the safety of buildings and to the adequacy, in number and quality, of staff as necessary to assure a continuous plan of adequate medical, psychiatric, nursing, and social work services for patients cared for in state chest hospitals.

(b) The department shall approve state chest hospitals that meet its standards and shall certify its approval on request to the Texas Department of Human Services or the United States Department of Health and Human Services. (V.A.C.S. Art. 3183g (part).)

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

- (1) is eligible to receive patient services under a department program; and
- (2) will benefit from hospitalization.
- (b) Admission to a hospital as authorized under this section is subject to the availability of:
  - (1) appropriate space after the needs of eligible tuberculosis and chronic respiratory disease patients have been met; and
  - (2) trained medical personnel for the necessary medical care and treatment.
- (c) The board may adopt rules and enter into contracts as necessary to implement this section.
- (d) This section does not require the board or department to:
  - (1) admit a patient to a particular hospital;
  - (2) guarantee the availability of space at any hospital; or
  - (3) provide treatment for a particular medical need at any hospital. (V.A.C.S. Art. 3196a-1, Secs. (a), (b), (c), (d).)

Sec. 13.003. SERVICES AT SOUTH TEXAS HOSPITAL. (a) The primary purpose of the South Texas Hospital is to provide inpatient services to the residents of the Lower Rio Grande Valley.

- (b) The board may establish at the South Texas Hospital:
  - (1) cancer screening;
  - (2) diagnostic services;
  - (3) educational services;
  - (4) obstetrical services;
  - (5) gynecological services; and
  - (6) other inpatient health care services. (V.A.C.S. Art. 3196a-1, Sec. (e).)

Sec. 13.004. TREATMENT OF CERTAIN MENTALLY ILL OR MENTALLY RETARDED PERSONS. (a) The Texas Department of Mental Health and Mental Retardation may transfer a mentally ill or mentally retarded person who is infected with tuberculosis to the San Antonio State Chest Hospital.

- (b) The person may be transferred without that person's consent.
- (c) The cost of maintaining and treating the person at the San Antonio State Chest Hospital shall be paid from appropriations to that hospital. (V.A.C.S. Art. 3201a-1 (part).)

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

- (1) admitted to facilities under the board's jurisdiction; or
- (2) otherwise subject to the board's jurisdiction.
- (b) The board may contract with:
  - (1) municipal, county, or state hospitals;
  - (2) private physicians;
  - (3) licensed nursing homes and hospitals; and
  - (4) hospital districts.
- (c) The board may contract for diagnostic and other services available in a community or region as necessary to prevent further spread of tuberculosis.
- (d) A contract may not include the assignment of any lien accruing to the state.
- (e) The board may establish and operate outpatient clinics as necessary to provide follow-up treatment on discharged patients. A person who receives treatment as an outpatient is financially liable in the manner provided for inpatients. (V.A.C.S. Art. 4477-12, Sec. 2 (part).)



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

- (1) case-finding;
- (2) inpatient and outpatient treatment; and
- (3) the eventual eradication of tuberculosis. (V.A.C.S. Art. 3201a-3, Sec. 6 (part).)

[Sections 13.007–13.030 reserved for expansion]

**SUBCHAPTER B. TEXAS TUBERCULOSIS CODE**

**Sec. 13.031. SHORT TITLE.** This subchapter may be cited as the Texas Tuberculosis Code. (V.A.C.S. Art. 4477-11, Sec. 1.)

**Sec. 13.032. PURPOSE.** The purpose of this subchapter is to:

- (1) enable persons with tuberculosis to obtain needed care;
- (2) provide care and treatment for those persons; and
- (3) facilitate their hospitalization. (V.A.C.S. Art. 4477-11, Sec. 2.)

**Sec. 13.033. DEFINITIONS.** In this subchapter:

- (1) "Legally responsible person" means a parent, guardian, or spouse, or any person whom the laws of this state hold responsible for debts incurred as a result of the hospitalization or treatment of a patient.
- (2) "Local health authority" means a practicing physician who acts as:
  - (A) a municipal or county health authority;
  - (B) a director of a local health department or public health district; or
  - (C) a regional director of a public health region.
- (3) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.
- (4) "Political subdivision" includes a county, municipality, or hospital district.
- (5) "State chest hospital" means the San Antonio State Chest Hospital and the South Texas Hospital.
- (6) "Tuberculosis patient" means a person who has any form of tuberculosis in any part of the body. (V.A.C.S. Art. 4477-11, Sec. 3 (part).)

**Sec. 13.034. BOARD DUTIES.** (a) The board shall adopt rules and bylaws relating to:

- (1) the management of state chest hospitals;
- (2) the duties of officers and employees of those hospitals; and
- (3) the enforcement of necessary discipline and restraint of patients.

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

(c) The board may:

- (1) prescribe the form and content of applications, certificates, records, and reports provided for under this subchapter;
- (2) require reports from the administrator of a state chest hospital relating to the admission, examination, diagnosis, release, or discharge of a patient;
- (3) visit each hospital regularly to review admitting procedures and the care and treatment of all new patients admitted since the last visit;
- (4) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient; and
- (5) adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

(d) The board may delegate a power or duty of the board to an employee. The delegation does not relieve the board from its responsibility. (V.A.C.S. Art. 4477-11, Secs. 12(b), (c) (part), (d), (e) (part).)

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

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

(c) The hospital administrator may delegate a power or duty of the administrator to an employee. The delegation does not relieve the hospital administrator from the responsibility. (V.A.C.S. Art. 4414b, Sec. 1.02(c); Art. 4477-11, Sec. 12(e) (part).)

Sec. 13.036. PATIENT ADMISSION; EXAMINATION CERTIFICATE. (a) A resident of this state who has tuberculosis may be admitted to a state chest hospital.

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

(c) An application for admission to a state chest hospital shall be accompanied by a certificate issued by a physician stating that the physician has thoroughly examined the applicant and that the applicant has tuberculosis.

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

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

(f) If the applicant has a communicable disease other than tuberculosis, the hospital administrator may delay the admission until the other disease is no longer contagious. (V.A.C.S. Art. 4477-11, Secs. 8 (part), 11, 12(a).)

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

- (1) is physically present and living voluntarily in this state;
- (2) intends to make a home in this state; and
- (3) is not in this state temporarily.

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

- (1) the possession of documentation, such as a Texas driver's license, motor vehicle registration, or voter registration certificate;
- (2) the presence of personal effects at a specific abode in this state; or
- (3) employment in this state. (V.A.C.S. Art. 4477-11, Sec. 3(j).)

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

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

- (1) does not possess property of any kind;
- (2) has no person who is legally responsible for the patient's support; and
- (3) is unable to reimburse the state.

(c) A nonindigent public patient is a person who possesses property out of which the state may be reimbursed, or who has a person who is legally responsible for the patient's support.

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

(e) The state's claim for nonindigent support and maintenance constitutes a lien against the property of the patient or the legally responsible person who is financially able to contribute. (V.A.C.S. Art. 4477-11, Sec. 9 (part).)

Sec. 13.039. COLLECTION OF STATE'S CLAIM. (a) A state claim for patient support and maintenance may be collected through an action brought against the patient or the

person legally responsible for the patient. The action shall be brought in the county from which the patient was sent and shall be brought in the name of the state by the county or district attorney of that county or by the attorney general.

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

(c) On receipt of the request, the attorney shall bring and conduct the suit and is entitled to a commission of 10 percent of the amount collected. All money collected under this section, less the amount of the commission, shall be paid by the attorney to the hospital administrator, who shall receive the amount and give a receipt. (V.A.C.S. Art. 4477-11, Sec. 9 (part).)

**Sec. 13.040. EFFECT OF INDIGENT HEALTH CARE AND TREATMENT ACT.** If an indigent or nonindigent public patient is eligible for health care assistance from a county hospital or public hospital under Chapter 61 (Indigent Health Care and Treatment Act), the state is entitled to reimbursement from that hospital for the treatment and support of the patient to the extent prescribed by that chapter. (V.A.C.S. Art. 4477-11, Sec. 9 (part).)

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

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

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

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

(c) The board may enter into reciprocal agreements with the proper agencies of other states to facilitate the return to the states of their residence of nonresident patients admitted to state chest hospitals in other states. (V.A.C.S. Art. 4477-11, Secs. 12(f), (g).)

**Sec. 13.042. DISCRIMINATION PROHIBITED.** (a) A state chest hospital may not discriminate against a patient.

(b) Each patient is entitled to equal facilities, attention, and treatment. However, a state chest hospital may provide different care and treatment of patients because of differences in the condition of the individual patients. (V.A.C.S. Art. 4477-11, Sec. 14(a).)

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

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

(c) The board shall strictly enforce this section. (V.A.C.S. Art. 4477-11, Sec. 14(b).)

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

(1) members of the charitable organization;

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

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

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

(c) The state may not incur any expense in the erection, furnishing, and maintenance of the accommodations. The charitable organization that enters a patient under this section may be required to pay the pro rata part of the maintenance costs of that patient that is

found to be just and equitable, pending the next legislative appropriation for the maintenance of state chest hospitals. Any part of the accommodations not used by persons described by Subsection (a) may be used, at the discretion of the hospital administrator, by other patients in the hospital without charge to the state.

(d) The officers or a board or committee of the charitable organization and the board must enter into a written agreement relating to the location, construction, style, and character, and terms of existence of buildings, and other questions arising in connection with the grant of permission to erect and maintain private accommodations. The written agreement must be recorded in the minutes of the board.

(e) Except for the preferential right to occupy vacant accommodations erected by the person's charitable organization, a person described by Subsection (a) shall be classified in the same manner as other state chest hospital patients and shall be admitted, maintained, cared for, and treated in those hospitals in the same manner and under the same conditions and rules that apply to other patients. (V.A.C.S. Art. 4477-11, Sec. 15.)

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

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

(c) This section does not authorize the commissioners court of a county to convey land donated or granted for educational purposes to the county in any manner other than that directed by law. (V.A.C.S. Art. 4477-11, Sec. 17.)

[Sections 13.046-13.070 reserved for expansion]

#### SUBCHAPTER C. RESPIRATORY DISEASE PILOT PROGRAM

Sec. 13.071. PILOT PROGRAM. (a) In addition to treating tuberculosis, the South Texas Hospital and the San Antonio State Chest Hospital may operate a pilot program to treat persons afflicted with other chronic respiratory diseases.

(b) Services provided under the pilot program may not interfere with the primary objectives of the tuberculosis control program. (V.A.C.S. Art. 3201a-3, Secs. 1, 6 (part).)

Sec. 13.072. PATIENT QUALIFICATIONS. The pilot program is restricted to persons who have a type of chronic pulmonary disease for which there is some hope of improvement and rehabilitation, and who:

(1) are indigent and residents of this state; or

(2) are able to pay for treatment but are unable to obtain treatment at any other public or private institution. (V.A.C.S. Art. 3201a-3, Sec. 2(b).)

Sec. 13.073. BOARD POWERS AND DUTIES. (a) The board by rule may provide necessary requirements for program admission and procedures for persons admitted for treatment under the pilot program.

(b) The board may adopt plans and policies for using the pilot program in connection with programs administered by other state agencies, institutions, or facilities, including research, treatment, study, and training. (V.A.C.S. Art. 3201a-3, Secs. 5, 7.)

Sec. 13.074. LIMIT ON NUMBER OF PATIENTS. (a) The South Texas Hospital and the San Antonio State Chest Hospital may treat not more than 25 patients at any one time under the pilot program unless the treatment of a greater number of patients does not conflict with the primary objectives of the tuberculosis control program.

(b) During a biennium that the pilot program is operating, the board may use for the operation of the chest hospitals funds appropriated for the inpatient cost of treating tuberculosis if the actual overall daily patient population is less than the average daily patient population projected in the appropriation. (V.A.C.S. Art. 3201a-3, Secs. 2(a), 4.)

Sec. 13.075. PROGRAM FUNDING. (a) The board may accept and administer gifts and grants of money to implement this chapter and that are received from:

- (1) the federal government;
- (2) an individual;
- (3) a corporation;
- (4) a trust;
- (5) a federal or state vocational rehabilitation program; or
- (6) a foundation.

(b) The board shall use funds appropriated by the legislature for the pilot program to operate the program. (V.A.C.S. Art. 3201a-3, Sec. 3.)

Sec. 13.076. FEES. Fees and charges collected by a state chest hospital for physicians' services shall be used only for recruiting and retaining medical staff and supplementing their salaries. (V.A.C.S. Art. 3201a-3, Sec. 6A (part).)

[Chapters 14-30 reserved for expansion]

**SUBTITLE B. TEXAS DEPARTMENT OF HEALTH PROGRAMS**

**CHAPTER 31. PRIMARY HEALTH CARE**

- Sec. 31.001. SHORT TITLE
- Sec. 31.002. DEFINITIONS
- Sec. 31.003. PRIMARY HEALTH CARE SERVICES PROGRAM
- Sec. 31.004. ADMINISTRATION
- Sec. 31.005. PROVISION OF PROGRAM SERVICES BY DEPARTMENT
- Sec. 31.006. SERVICE PROVIDERS
- Sec. 31.007. APPLICATION FOR SERVICES
- Sec. 31.008. ELIGIBILITY FOR SERVICES
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**SUBTITLE B. TEXAS DEPARTMENT OF HEALTH PROGRAMS**

**CHAPTER 31. PRIMARY HEALTH CARE**

Sec. 31.001. SHORT TITLE. This chapter may be cited as the Texas Primary Health Care Services Act. (V.A.C.S. Art. 4438d, Sec. 1.)

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

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

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

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

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

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

(C) the Veterans Administration;

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

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

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

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

(4) "Primary health care services" includes:

(A) diagnosis and treatment;

(B) emergency services;

(C) family planning services;

(D) preventive health services, including immunizations;

(E) health education;

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

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

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

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

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

(b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state. (V.A.C.S. Art. 4438d, Sec. 2(a) (part), (b).)

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

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

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

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

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

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

(e) The board shall adopt rules under Subsection (c) relating to the types of services provided according to the set of service priorities established under this subsection. Initial service priorities shall focus on the funding of, provision of, and access to:

- (1) diagnosis and treatment;
- (2) emergency services;
- (3) family planning services;
- (4) preventive health services, including immunizations;
- (5) health education; and
- (6) laboratory, X-ray, nuclear medicine, or other appropriate diagnostic services.

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

(g) The board should require that the services provided under this chapter be reserved to the greatest extent possible for low-income individuals who are not eligible for similar services through any other publicly funded program. (V.A.C.S. Art. 4438d, Secs. 4(a)-(c); 5(a) (part); 15(a) (part).)

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

(b) With the advice and assistance of the commissioner and the department, the board by rule shall:

- (1) establish the administrative structure of the program;
- (2) establish a plan of areawide administration to provide authorized services;
- (3) designate, if possible, local public and private resources as providers; and
- (4) prevent duplication by coordinating authorized primary health care services with existing federal, state, and local programs.

(c) The department shall prescribe the design and content of all necessary forms used in the program. (V.A.C.S. Art. 4438d, Secs. 5(a) (part), (b) (part); 7 (part); 15(a) (part), (b) (part).)

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

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

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

- (1) initially determine the proposed need for services in the service area;
- (2) notify existing private and public providers and other resources in the service area of the department's initial determination of need and the services the department proposes to provide directly to eligible individuals;
- (3) provide existing private and public providers and other resources in the service area a reasonable opportunity to comment on the department's initial determination of need and the availability and ability of existing private or public providers or other resources in the service area to satisfy the need;
- (4) provide existing private and public providers and other resources in the service area a reasonable opportunity to obtain approval as providers under the program; and

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

(d) The department shall maintain a continuing review of the services it provides directly to the eligible individuals who participate in the program. At least annually, the department shall review and determine the continued need for the services it provides directly in each service area, in accordance with the methods and procedures used to make the initial determination as prescribed by this section.

(e) If after a review the board determines that a private or public provider or other resource is available to provide services and has been approved as a provider, the department shall, immediately after approving the provider, eliminate, reduce, or modify the scope and type of services the department provides directly to the extent the private or public provider or other resource is available and able to provide the service. (V.A.C.S. Art. 4438d, Secs. 4(d); 5(a) (part); 7 (part); 15(c).)

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

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

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

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

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

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

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

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 12-20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to conflict resolution procedures adopted under this section.

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

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

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

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

(2) expires according to its terms. (V.A.C.S. Art. 4438d, Secs. 5(a) (part); 7 (part); 13.)

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

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

(c) The application form must be accompanied by:

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

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



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

(e) The department shall determine or cause to be determined the eligibility date in accordance with board rules. The date may not be later than the date on which the individual submits a properly completed application form and all supporting documents required by this chapter or board rules. (V.A.C.S. Art. 4438d, Secs. 5(a) (part); 8(a), (b), (d).)

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

(b) Except as modified by other rules adopted under this chapter, the board by rule shall provide that to be eligible to receive services, the individual must be a resident of this state. (V.A.C.S. Art. 4438d, Secs. 5(a) (part); 8(c); 9(a).)

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

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

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

(d) Sections 12–20, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), do not apply to the granting, denial, modification, suspension, or termination of services. The department shall conduct hearings in accordance with the board's due process hearing rules.

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

(f) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the board to establish service priorities. (V.A.C.S. Art. 4438d, Secs. 7 (part); 12.)

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

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

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

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

(e) The commissioner may waive enforcement of Subsections (b)-(d) of this section as prescribed by board rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules. (V.A.C.S. Art. 4438d, Secs. 9(b), 10.)

**Sec. 31.011. RECOVERY OF COSTS.** (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the depart-

ment as required by Section 31.010 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the services to the date on which the department is reimbursed. (V.A.C.S. Art. 4438d, Sec. 11.)

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

(b) The board shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services. (V.A.C.S. Art. 4438d, Secs. 6(b), 7 (part).)

Sec. 31.013. FUNDING. (a) Except as provided by this chapter or by other law, the board may seek, receive, and spend funds received through an appropriation, grant, donation, or reimbursement from any public or private source to administer this chapter.

(b) The department is not required to provide primary health care services unless funds are appropriated to the department to administer this chapter. (V.A.C.S. Art. 4438d, Secs. 3, 6(a).)

Sec. 31.014. CONTRACTS. The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers. (V.A.C.S. Art. 4438d, Sec. 7 (part).)

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

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

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

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

- (1) the number of individuals receiving care under this chapter;
- (2) the total cost of the program, including a delineation of the total administrative costs and the total cost for each service authorized under Section 31.003(e);
- (3) the average cost per recipient of services;
- (4) the number of individuals who received services in each public health region; and
- (5) any other information required by the board.

(e) In computing the number of individuals to be reported under Subsection (d)(1), the department shall ensure that no individual is counted more than once. (V.A.C.S. Art. 4438d, Sec. 16.)

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

- (1) quantifiable indicators of effort and success;
- (2) identification of priority client population and the minimum types of services necessary for that population;
- (3) a description of the appropriate use of providers, including the role of providers, and considering the type, location, and specialization of the providers;
- (4) criteria for phasing out unnecessary services;

- (5) a comprehensive assessment of needs and inventory of resources; and
- (6) coordination of administration and service delivery with federal, state, and local public and private programs that provide similar services.
- (b) The department shall revise the plan by January 1 of each even-numbered year.
- (c) The department shall develop a short-range plan that is derived from the long-range plan and that identifies and projects the costs relating to implementing the short-range plan.
- (d) As part of the department's budget preparation process, the department shall biennially assess its achievement of the goals identified in each plan. The department's biennial budget shall be made according to the results of the assessment and the short-range plan. The department shall make its requests for new program funding and for continued funding according to demonstrated need.

(e) The department shall use the information collected under Section 31.015 to develop the long-range and short-range plans. (V.A.C.S. Art. 4438d, Sec. 17.)

**Sec. 31.017. ADVISORY COMMITTEES.** (a) With the advice and assistance of the commissioner and the department, the board by rule shall establish any necessary areawide advisory committees as provided by this section to advise and assist the department in planning and administering the program.

- (b) The board may appoint a statewide advisory committee to the program.
- (c) Appointments to an advisory committee shall be made without regard to the race, creed, handicap, sex, religion, age, or national origin of the appointee. Appointments to the statewide advisory committee shall be made with consideration of the geographical area represented by the appointee.
- (d) The statewide advisory committee is composed of:
  - (1) one physician licensed to practice medicine in this state who is in private practice specializing in primary medical care;
  - (2) one dentist licensed to practice in this state who has a private dental practice;
  - (3) one director of a local health department or a public health district;
  - (4) one administrator of a federally funded community health center;
  - (5) two administrators of hospitals in this state, at least one of which is a member of the Texas Association of Public Hospitals;
  - (6) one representative of The University of Texas School of Public Health;
  - (7) one representative of the health insurance industry;
  - (8) one professional nurse registered by the Board of Nurse Examiners; and
  - (9) three members of the public.
- (e) A person is not eligible for appointment as a public member if the person or the person's spouse:
  - (1) is licensed by an occupational regulatory agency in the health care field;
  - (2) is employed by a health care facility, corporation, or agency, or by a corporation authorized to underwrite health care insurance;
  - (3) governs or administers a health care facility, corporation, or agency; or
  - (4) has a financial interest, other than a consumer's interest, in a health care facility, corporation, or agency.
- (f) Statewide advisory committee members serve for staggered six-year terms, with the terms of four members expiring August 31 of each odd-numbered year.
- (g) A vacancy on the statewide advisory committee is filled by the board in the same manner as other appointments to the advisory committee.
- (h) A member of the statewide advisory committee is entitled to reimbursement for expenses incurred in performing duties under this chapter. The reimbursement may not exceed the amounts specified in the General Appropriations Act for travel and per diem allowances for state employees.

(i) The board shall adopt rules to govern the operations of the statewide and areawide advisory committees. (V.A.C.S. Art. 4438d, Secs. 5(b) (part); 14; 15(b) (part).)

## CHAPTER 32. MATERNAL AND INFANT HEALTH IMPROVEMENT

- Sec. 32.001. SHORT TITLE
- Sec. 32.002. DEFINITIONS
- Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT SERVICES PROGRAM
- Sec. 32.004. PROGRAM SERVICES
- Sec. 32.005. ABORTION SERVICES RESTRICTED
- Sec. 32.006. ADMINISTRATION
- Sec. 32.007. PROVISION OF PROGRAM SERVICES BY DEPARTMENT
- Sec. 32.008. SERVICE PROVIDERS
- Sec. 32.009. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES
- Sec. 32.010. ELIGIBILITY FOR SERVICES
- Sec. 32.011. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES
- Sec. 32.012. FINANCIAL ELIGIBILITY; OTHER BENEFITS
- Sec. 32.013. RECOVERY OF COSTS
- Sec. 32.014. FEES
- Sec. 32.015. FUNDING
- Sec. 32.016. CONTRACTS
- Sec. 32.017. RECORDS AND REVIEW
- Sec. 32.018. PROGRAM PLANS
- Sec. 32.019. MEMORANDUM OF UNDERSTANDING

## CHAPTER 32. MATERNAL AND INFANT HEALTH IMPROVEMENT

Sec. 32.001. SHORT TITLE. This chapter may be cited as the Maternal and Infant Health Improvement Act. (V.A.C.S. Art. 4447y, Sec. 1.)

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

- (1) "Adolescent" means an individual younger than 18 years of age.
- (2) "Ancillary services" means services necessary to obtain timely, effective, and appropriate maternal and infant health improvement services, and includes prescription drugs, medical social services, transportation, health promotion services, and laboratory services.
- (3) "Facility" includes a hospital, ambulatory surgical center, public health clinic, birthing center, outpatient clinic, or community health center.
- (4) "Infant" means an individual 12 months of age or younger.
- (5) "Intrapartum care" means maternal and infant health improvement services and ancillary services appropriate for a woman, fetus, or infant during childbirth.
- (6) "Maternal and infant health improvement services" means services necessary to prevent or reduce the occurrence of maternal, fetal, and infant deaths, low birth-weight infants, handicapping conditions, unplanned adolescent pregnancies, and births without appropriate intrapartum care, and includes preventive, health, medical, assessment, nursing, and facility care services.
- (7) "Medical assistance program" means the program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code.
- (8) "Other benefit" means a benefit, other than a benefit provided under this chapter, to which an individual is entitled for payment of the costs of maternal and infant health improvement services, ancillary services, educational services, or transportation services, including benefits available from:
  - (A) an insurance policy, group health plan, or prepaid medical care plan;
  - (B) Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.);
  - (C) the Veterans Administration;

- (D) the Civilian Health and Medical Program of the Uniformed Services;
  - (E) workers' compensation or any other compulsory employers' insurance program;
  - (F) a public program created by federal or state law, other than Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.), or by an ordinance or rule of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or
  - (G) a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.
  - (9) "Perinatal care" means maternal and infant health improvement services and ancillary services that are appropriate for a pregnant woman and the fetus during the period beginning on the 20th complete week of gestation and ending on the infant's 28th completed day of life.
  - (10) "Prenatal care" means maternal and infant health improvement services and ancillary services that are appropriate for a pregnant woman and the fetus during the period beginning on the date of conception and ending on the commencement of labor.
  - (11) "Program" means the maternal and infant health improvement services program authorized by this chapter.
  - (12) "Provider" means a person who, through a grant or a contract with the department or through other means approved by the department, provides maternal and infant health improvement services and ancillary services that are purchased by the department for the purposes of this chapter.
  - (13) "Support" means the contribution of money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care.
  - (b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter, or is in conflict with the definition and conditions of practice governing a provider who is required to be licensed, registered, certified, identified, or otherwise sanctioned under the laws of this state. (V.A.C.S. Art. 4447y, Secs. 2(a)(1)-(2), (6)-(12), (14)-(17); (b).)
- Sec. 32.003. MATERNAL AND INFANT HEALTH IMPROVEMENT SERVICES PROGRAM.** (a) The board may establish a maternal and infant health improvement services program in the department to provide comprehensive maternal and infant health improvement services and ancillary services to eligible women and infants.
- (b) If the program is established, the board shall adopt rules relating to:
    - (1) the type, amount, and duration of services to be provided under this chapter; and
    - (2) the determination by the department of the services needed in each service area.
  - (c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services provided, geographic areas covered, or classes of individuals eligible for services.
  - (d) The board shall adopt the rules according to a statewide determination of the need for services.
  - (e) In structuring the program and adopting rules, the department and board shall attempt to maximize the amount of federal matching funds available for maternal and infant health improvement services while continuing to serve targeted populations.
  - (f) If necessary, the board by rule may coordinate services and other parts of the program with the medical assistance program. However, the board may not adopt rules relating to the services under either program that would:
    - (1) cause the program established under this chapter not to conform with federal law to the extent that federal matching funds would not be available; or

(2) affect the status of the Texas Department of Human Services as the single state agency to administer the medical assistance program. (V.A.C.S. Art. 4447y, Secs. 4(a), (b); 5(a) (part), (b).)

Sec. 32.004. PROGRAM SERVICES. (a) Except as limited by Section 32.003, the department shall develop an integrated framework for the equitable provision of services throughout the state and shall use existing public and private health, transportation, and education resources.

(b) To prevent duplication of services, the board and the department should coordinate the services authorized by this chapter with existing federal, state, and local programs.

(c) The board and the department are encouraged to:

(1) design and use a plan of areawide administration for providing the authorized services;

(2) seek and receive advice and other assistance from areawide advisory committees in planning and conducting the program; and

(3) use local public and private resources as providers of services.

(d) The program may provide the following services to eligible individuals:

(1) maternal and infant health improvement services, including:

(A) comprehensive prenatal and perinatal care;

(B) obstetrical consultation services;

(C) preventive, health, medical, and facility intrapartum care;

(D) neonatal intensive care;

(E) follow-up services for eligible infants; and

(F) emergency medical transportation necessary to secure appropriate perinatal care;

(2) ancillary services;

(3) health education and promotion services, including:

(A) organized continuing education for health care workers, emphasizing perinatal education;

(B) public health education to provide information relating to the importance and availability of perinatal care; and

(C) nutrition education;

(4) a special program of preventive, health, medical, and facility care and health education services for adolescents that concentrates on adolescent pregnancy and pregnancy prevention; and

(5) a special program of pregnancy prevention services for women receiving benefits for two or more pregnancies, including the availability of family planning services provided by the medical assistance program, unless the provision of those services would cause the program established under this chapter to be out of compliance with federal law so that federal matching funds would not be available to the state. (V.A.C.S. Art. 4447y, Secs. 4(c), (d); 15(a), (b).)

Sec. 32.005. ABORTION SERVICES RESTRICTED. Notwithstanding any other provision of this chapter, funds administered under this chapter may not be used to provide abortion services unless the mother's life is in danger. (V.A.C.S. Art. 4447y, Sec. 4(f).)

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

(b) The department shall prescribe the design and content of all necessary forms used in the program. (V.A.C.S. Art. 4447y, Secs. 5(a) (part), 7 (part).)

Sec. 32.007. PROVISION OF PROGRAM SERVICES BY DEPARTMENT. (a) The board shall adopt rules relating to the department's determination of whether program services are to be provided through a network of approved providers, directly by the

department, or by a combination of the department and approved providers as prescribed by this section.

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

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

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

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

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

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

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

(d) The department shall maintain a continuing review of the services it provides directly to the eligible women and infants who participate in the program. At least annually, the department shall review and determine the continued need for the services it provides directly in each service area, in accordance with the methods and procedures used to make the initial determination as prescribed by this section.

(e) If after a review the board determines that a private or public provider or other resource is available to provide services and has been approved as a provider, the department shall, immediately after approving the provider, eliminate, reduce, or modify the scope and type of services the department provides directly to the extent the private or public provider or other resource is available and able to provide the service. (V.A.C.S. Art. 4447y, Secs. 4(e), 5(a) (part), 7 (part), 15(c).)

**Sec. 32.008. SERVICE PROVIDERS.** (a) The board shall adopt rules relating to:

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

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

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

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

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

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

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 12–20, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), do not apply to conflict resolution procedures adopted under this section.

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

(h) The department may not terminate a grant or contract while a due process hearing is pending under this section. The department may withhold payments while the hearing

is pending, but shall pay the withheld payments and resume grant or contract payments if the final determination is in favor of the provider.

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

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

(2) expires according to its terms. (V.A.C.S. Art. 4447y, Secs. 5(a) (part), 7 (part), 13.)

Sec. 32.009. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES. (a) The board shall adopt rules relating to application procedures for admission to the program.

(b) An applicant must be referred to the program by a physician, facility, public health clinic, community health center, certified nurse midwife, lay midwife, medical social worker, or other source acceptable to the board.

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

(d) The application form must be accompanied by:

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

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

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

(f) The department shall determine or cause to be determined the eligibility date in accordance with board rules. The date may not be later than the date on which the individual submits a properly completed application form and all supporting documents required by this chapter or by board rules. (V.A.C.S. Art. 4447y, Secs. 5(a) (part), 8(a), (b), (c), (e).)

Sec. 32.010. ELIGIBILITY FOR SERVICES. (a) The board shall adopt rules relating to eligibility criteria for an individual to receive services under the program, including health, medical, and financial criteria. The department shall determine or cause to be determined an applicant's eligibility in accordance with this chapter and board rules.

(b) Except as necessary to coordinate the program with the medical assistance program, and except as modified by other rules adopted under this chapter, the board by rule shall provide that to be eligible to receive services:

(1) the individual must be a resident of this state;

(2) at least one licensed physician must certify to the department that the individual meets the board's health or medical criteria; and

(3) the certifying physician must have a reasonable expectation that the services provided by the program will prevent or reduce the probability of:

(A) maternal, fetal, or infant death;

(B) the complications of pregnancy, including handicapping conditions of infants that are associated with the complications of pregnancy; or

(C) adolescent pregnancy. (V.A.C.S. Art. 4447y, Secs. 5(a) (part), 8(d); 9(a), (b).)

Sec. 32.011. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may, for cause, deny an application for services after notice to the applicant and an opportunity for a hearing.

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

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



(d) Sections 12–20, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), do not apply to the granting, denial, modification, suspension, or termination of services. The department shall conduct hearings in accordance with the board's due process hearing rules.

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

(f) The notice and hearing required by this section do not apply if the department restricts program services to conform to budgetary limitations that require the board to establish service priorities. (V.A.C.S. Art. 4447y, Secs. 7 (part), 12.)

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

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

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

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

(e) The commissioner may waive enforcement of Subsections (b)–(d) of this section as prescribed by board rules in certain individually considered cases in which enforcement will deny services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules. (V.A.C.S. Art. 4447y, Secs. 9(c), 10.)

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

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the services to the date on which the department is reimbursed. (V.A.C.S. Art. 4447y, Sec. 11.)

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

(b) The board shall adopt standards and procedures to develop and implement a schedule of allowable charges for program services. (V.A.C.S. Art. 4447y, Secs. 6(b); 7 (part).)

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

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

(c) The department is not required to provide maternal and infant health improvement services unless funds are appropriated to the department or to the Texas Department of Human Services to administer this chapter. (V.A.C.S. Art. 4447y, Secs. 3, 6(a), 19.)

Sec. 32.016. **CONTRACTS.** The department shall enter into contracts and agreements or award grants necessary to facilitate the efficient and economical provision of services under this chapter, including contracts and grants for the purchase of services, equipment, and supplies from approved providers. (V.A.C.S. Art. 4447y, Sec. 7 (part).)

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

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

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

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

- (1) the number of individuals receiving care under this chapter;
- (2) the total cost of the program, including a delineation of the total administrative costs and the total cost for each service authorized under Section 32.004(d);
- (3) the average cost per recipient of services;
- (4) the number of individuals who received services in each public health region; and
- (5) any other information required by the board.

(e) In computing the number of individuals to be reported under Subsection (d)(1), the department shall ensure that no individual is counted more than once. (V.A.C.S. Art. 4447y, Sec. 16.)

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

- (1) quantifiable indicators of effort and success;
- (2) identification of priority client population and the minimum types of services necessary for that population;
- (3) a description of the appropriate use of providers, including the role of providers and considering the type, location, and specialization of the providers;
- (4) criteria for phasing out unnecessary services;
- (5) a comprehensive assessment of needs and inventory of resources; and
- (6) coordination of administration and service provision with federal, state, and local public and private programs that provide similar services.

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

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

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

(e) The department shall use the information collected under Section 32.017 to develop the long-range and short-range plans. (V.A.C.S. Art. 4447y, Sec. 17.)

Sec. 32.019. **MEMORANDUM OF UNDERSTANDING.** (a) The department and the Texas Department of Human Services shall adopt a memorandum of understanding relating to:

- (1) each department's role in providing maternal and infant health services;
- (2) coordination of services provided by each department to low-income children or low-income pregnant women; and

- (3) ways to maximize federal matching funds.
- (b) Not later than the last month of each fiscal year, the department and the Texas Department of Human Services shall review and revise the memorandum.
- (c) Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum. (V.A.C.S. Art. 4447y, Sec. 18.)

**CHAPTER 33. PHENYLKETONURIA AND OTHER HERITABLE DISEASES**

- Sec. 33.001. DETECTION AND TREATMENT PROGRAM ESTABLISHED**
- Sec. 33.002. TEST REQUIREMENT**
- Sec. 33.003. APPROVAL OF LABORATORIES**
- Sec. 33.004. DIAGNOSIS AND PROCEDURE**
- Sec. 33.005. COOPERATION OF PHYSICIANS AND HOSPITALS**

**CHAPTER 33. PHENYLKETONURIA AND OTHER HERITABLE DISEASES**

**Sec. 33.001. DETECTION AND TREATMENT PROGRAM ESTABLISHED.** (a) The department shall carry out a program to combat mental retardation in children with phenylketonuria or other heritable diseases.

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

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

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

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

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

(d) Other boards, agencies, departments, and political subdivisions of the state capable of assisting the department in carrying out the program may cooperate with the department and are encouraged to furnish their services and facilities to aid the program. (V.A.C.S. Art. 4447e, Secs. 1, 3.)

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

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

(c) The tests required by this section must be performed by:

(1) the diagnostic laboratory established by the department under Section 33.001; or

(2) a laboratory approved by the department under Section 33.003.

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

(e) A physician, technician, or other person administering the tests required by this chapter is not liable or responsible because of the failure or refusal of a guardian or parent to consent to the tests provided for by this chapter. (V.A.C.S. Art. 4447e, Secs. 2(a), 2A(c).)

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

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

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

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

(e) The board may adopt rules prescribing procedures and standards for the conduct of the laboratory approval program. (V.A.C.S. Art. 4447e, Secs. 2A(a), (b), (d), (e).)

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

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

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

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

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

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

(1) offer, to the extent needed, their services and facilities to the family and attending physician; and

(2) provide for, in cooperation with an attending physician, the dietary and other related needs of the affected children if necessary or desirable. (V.A.C.S. Art. 4447e, Secs. 2(b), (c).)

Sec. 33.005. COOPERATION OF PHYSICIANS AND HOSPITALS. The department may invite all physicians and hospitals in the state that provide maternity and newborn infant care to cooperate and participate in any program established by the department under this chapter. (V.A.C.S. Art. 4447e, Sec. 4.)

#### CHAPTER 34. HYPOTHYROIDISM

Sec. 34.001. DETECTION PROGRAM ESTABLISHED

Sec. 34.002. TEST REQUIREMENT

Sec. 34.003. APPROVAL OF LABORATORIES

Sec. 34.004. DIAGNOSIS AND PROCEDURE

Sec. 34.005. COOPERATION OF PHYSICIANS AND HOSPITALS

Sec. 34.006. GIFTS

#### CHAPTER 34. HYPOTHYROIDISM

Sec. 34.001. DETECTION PROGRAM ESTABLISHED. (a) A program to detect hypothyroidism in newborn infants is in the department.

(b) The department shall establish a diagnostic laboratory to conduct screenings and other procedures necessary to develop and carry out tests for the early detection of hypothyroidism.

(c) The board may adopt rules necessary to carry out the program established by this chapter.

(d) Other boards, agencies, and political subdivisions of the state capable of assisting the department in carrying out a program established under this chapter are encouraged to furnish their services and facilities to aid the program. (V.A.C.S. Art. 4447e-1, Secs. 1, 2, 8.)

Sec. 34.002. TEST REQUIREMENT. (a) The physician attending a newborn infant or the person attending the delivery of a newborn infant who is not attended by a physician shall subject the infant to a test approved by the department for hypothyroidism.

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

(c) The test required by this section must be performed at:

(1) the diagnostic laboratory established by the department under Section 34.001; or

(2) a laboratory approved by the department under Section 34.003.

(d) A test may not be administered to a newborn infant whose guardian or parents object on the ground that the test conflicts with their religious tenets or practices.

(e) A physician, technician, or other person administering a test for hypothyroidism is not liable or responsible because of the failure or refusal of a parent or guardian to give permission for a test provided in the screening program under this chapter. (V.A.C.S. Art. 4447e-1, Secs. 3, 4(c), 5.)

**Sec. 34.003. APPROVAL OF LABORATORIES.** (a) The department may develop a program to approve each laboratory that performs the test required by this chapter.

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

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

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

(e) The board may adopt rules prescribing procedures and standards for the conduct of the laboratory approval program. (V.A.C.S. Art. 4447e-1, Secs. 4(a), (b), (d), (e).)

**Sec. 34.004. DIAGNOSIS AND PROCEDURE.** (a) If, because of an analysis of a dried blood specimen submitted under Section 34.002, the department reasonably suspects that a newborn infant may have hypothyroidism, the department shall notify the following that the results of the analysis are abnormal and further testing is necessary:

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

(2) the person attending the delivery of the newborn infant who was not attended by a physician, or the parents of the newborn infant.

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

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

(d) On confirmation of a positive test, and if funds, services, and facilities are available, the department and other boards, agencies, and political subdivisions in the state cooperating in the program may offer their services and facilities to the family and attending physician. (V.A.C.S. Art. 4447e-1, Secs. 6, 7.)

**Sec. 34.005. COOPERATION OF PHYSICIANS AND HOSPITALS.** The department may invite the cooperation of all physicians and hospitals in the state that provide maternity and newborn infant care to participate in any program established under this chapter. (V.A.C.S. Art. 4447e-1, Sec. 9.)

**Sec. 34.006. GIFTS.** The department may receive gifts on behalf of the program established under this chapter. (V.A.C.S. Art. 4447e-1, Sec. 10.)

## **CHAPTER 35. CHRONICALLY ILL AND DISABLED CHILDREN'S SERVICES**

**Sec. 35.001. SHORT TITLE**

**Sec. 35.002. DEFINITIONS**

**Sec. 35.003. CHRONICALLY ILL AND DISABLED CHILDREN'S SERVICES PROGRAM**

**Sec. 35.004. SERVICE PROVIDERS**

**Sec. 35.005. ELIGIBILITY FOR SERVICES**

- Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES  
Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS  
Sec. 35.008. RECOVERY OF COSTS  
Sec. 35.009. FEES  
Sec. 35.011. CONTRACTS  
Sec. 35.012. RECORDS  
Sec. 35.013. LIMITATIONS ON AUTHORITY

## CHAPTER 35. CHRONICALLY ILL AND DISABLED CHILDREN'S SERVICES

Sec. 35.001. SHORT TITLE. This chapter may be cited as the Chronically Ill and Disabled Children's Services Act. (V.A.C.S. Art. 4419c, Sec. 1.)

Sec. 35.002. DEFINITIONS. In this chapter:

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

(2) "Case management services" includes coordinating medical services, marshaling available assistance, serving as a liaison between the child and the child's family and caregivers, institutional services, insurance services, and other services needed to improve the well-being of the child and the child's family.

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

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

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

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

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

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

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

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

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

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

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

(C) the Veterans Administration;

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

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

(F) a public program created by federal or state law or the ordinances or rules of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital,

a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

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

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

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

(10) "Provider" means a person who delivers services purchased by the department for the purposes of this chapter.

(11) "Rehabilitation services" means the process of the physical restoration of a body function destroyed or impaired by congenital defect, disease, or injury, and includes:

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

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

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

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

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

(14) "Support" means to contribute money or services necessary for a person's maintenance, including food, clothing, shelter, transportation, and health care. (V.A. C.S. Art. 4419c, Secs. 2(a)(1), (3), (5)-(12), (14), (15) (part), (16); 3(a) (part).)

**Sec. 35.003. CHRONICALLY ILL AND DISABLED CHILDREN'S SERVICES PROGRAM.** (a) The program is in the department to provide services to eligible chronically ill and disabled children. The program shall provide:

(1) early identification of chronically ill and disabled children;

(2) diagnosis and evaluation of chronically ill and disabled children;

(3) rehabilitation services to chronically ill and disabled children;

(4) development and improvement of standards and services for chronically ill and disabled children; and

(5) case management services.

(b) The board by rule shall:

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

(2) specify the diseases and conditions covered by the program; and

(3) permit the payment of insurance premiums for eligible children.

(c) If budgetary limitations exist, the board by rule shall establish a system of priorities relating to the types of services or the classes of persons eligible for the services.

(d) The program may provide:

(1) transportation and subsistence for an eligible chronically ill and disabled child and the child's parent, managing conservator, guardian, or other adult caretaker approved by the program to obtain services provided by the program; and

(2) the following services to eligible chronically ill and disabled children who die in an approved facility outside the child's municipality of residence while receiving program services for a condition covered by the program:

(A) the transportation of the child's remains, and the transportation of a parent or other person accompanying the remains, from the facility to the place of burial in this state that is designated by the parent or other person legally responsible for interment;

(B) the expense of embalming, if required for transportation;

(C) the cost of a coffin purchased at a minimum price, if a coffin is required for transportation; and

(D) any other necessary expenses directly related to the care and return of the child's remains to the place of burial in this state.

(e) The department may:

(1) develop methods to improve the efficiency and effectiveness of the program;

(2) conduct pilot studies; and

(3) provide services only for conditions specified by this chapter or by the board.

(f) The program is separate from the financial or medical assistance program established by Chapters 31 and 32, Human Resources Code. (V.A.C.S. Art. 4419c, Secs. 2(a)(15) (part); 3(a) (part), (b), (c); 8(a) (part), (b) (part).)

Sec. 35.004. SERVICE PROVIDERS. (a) The board shall adopt substantive and procedural rules for the selection of providers to participate in the program, including rules for the selection of specialty centers and rules requiring that providers accept program payments as payment in full for services provided.

(b) The board shall approve physicians, dentists, facilities, specialty centers, and other providers to participate in the program according to the criteria and following the procedures prescribed by the board.

(c) The department may pay only for services delivered by an approved provider, except in an emergency.

(d) Except as specified in the program rules, a recipient of services may select any provider approved by the board. If the recipient is a minor, the person legally authorized to consent to the treatment may select the provider.

(e) The board shall adopt substantive and procedural rules for the modification, suspension, or termination of the approval of a provider.

(f) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 13 through 20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to conflict resolution procedures adopted under this section.

(g) The department may not terminate the approval of a provider while a hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.

(h) Subsection (f) does not apply if a contract:

(1) is canceled by the department because services are restricted to conform to budgetary limitations and service priorities are adopted by the board regarding types of services to be provided; or

(2) expires according to its terms.

(i) The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible child. A publicly supported medical school facility receiving payment under this chapter shall deposit the payment in local funds. (V.A.C.S. Art. 4419c, Secs. 7A; 8(a) (part), (b) (part), (c); 11.)

Sec. 35.005. ELIGIBILITY FOR SERVICES. (a) The board by rule shall:

(1) define medical, financial, and other criteria for eligibility to receive services; and

(2) establish a system for verifying eligibility information submitted by an applicant for or recipient of services.



(b) A child is not eligible to receive rehabilitation services unless:

- (1) the child is a resident of this state;
- (2) at least one physician or dentist certifies to the department that the physician or dentist has examined the child and finds the child to be a chronically ill and disabled child whose disability meets the medical criteria established by the board;
- (3) the certifying physician or dentist has reason to expect that services will improve the child's condition or will extend the child's ability to function independently;
- (4) the department determines that the persons who have any legal obligation to provide services for the child are unable to pay for the entire cost of the services; and
- (5) the child meets all other eligibility criteria established by board rules.

(c) A child is not eligible to receive services, other than rehabilitation services, unless the child:

- (1) is a resident of this state; and
- (2) meets all other eligibility criteria established by board rules. (V.A.C.S. Art. 4419c, Secs. 4(a), (b); 8(a) (part).)

**Sec. 35.006. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES.** (a) The board shall adopt substantive and procedural rules for the denial of applications and the modification, suspension, or termination of services.

(b) The department may deny services to an applicant and modify, suspend, or terminate services to a recipient after:

- (1) notice to the child or the person who is legally obligated to support the child;
- (2) a preliminary program review; and
- (3) an opportunity for a fair hearing.

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

(d) The department shall conduct hearings under this section in accordance with the board's due process hearing rules. Sections 18 through 20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to the granting, denial, modification, suspension, or termination of services.

(e) This section does not apply if the department restricts services to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be provided. (V.A.C.S. Art. 4419c, Secs. 7, 8(a) (part).)

**Sec. 35.007. FINANCIAL ELIGIBILITY; OTHER BENEFITS.** (a) The board shall require a child receiving services, or the person who has a legal obligation to support the child, to pay for or reimburse the department for that part of the cost of the services that the child or person is financially able to pay.

(b) A child is not eligible to receive services under this chapter to the extent that the child or a person with a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services. The board may waive this subsection if its enforcement will deny services to a class of children because of conflicting state and federal laws or rules and regulations.

(c) When the application is made under this chapter or at any time before, during, or after the receipt of services, an applicant for or recipient of services shall inform the department of any other benefit to which the child or any person who has a legal obligation to support the child may be entitled.

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

(e) The department may collect the cost of services provided under this chapter directly from Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), any personal insurance, a health maintenance organization, or any other third party who has a legal obligation to pay other benefits. (V.A.C.S. Art. 4419c, Secs. 4(c); 5(a), (b), (c).)

Sec. 35.008. RECOVERY OF COSTS. (a) The department may recover the cost of services provided under this chapter from a person who does not pay or reimburse the department as required by Section 35.007 or from any third party who has a legal obligation to pay other benefits.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed. (V.A.C.S. Art. 4419c, Sec. 6.)

Sec. 35.009. FEES. The board may adopt reasonable procedures and standards for the determination of fees and charges for program services. (V.A.C.S. Art. 4419c, Sec. 8(b) (part).)

Sec. 35.010. FUNDING. The department may receive and spend:

(1) gifts made for the purposes of this chapter; and

(2) funds appropriated or granted by the state or federal government to provide services for children. (V.A.C.S. Art. 4419c, Sec. 8(b) (part).)

Sec. 35.011. CONTRACTS. The department may enter into contracts and agreements necessary to carry out this chapter, including interagency agreements to provide for the efficient and uninterrupted provision of necessary services to children who are eligible to receive services from two or more public programs. (V.A.C.S. Art. 4419c, Sec. 8(b) (part).)

Sec. 35.012. RECORDS. (a) The department may take a census, make surveys, and establish permanent records of chronically ill and disabled children.

(b) The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for chronically ill and disabled children. Those items are not state-owned personal property and are exempt from the personal property inventory requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(c) The state auditor shall verify in the records of the department the purchase of the items described by Subsection (b). (V.A.C.S. Art. 4419c, Secs. 8(b) (part), 9.)

Sec. 35.013. LIMITATIONS ON AUTHORITY. (a) This chapter does not limit the authority of a parent, managing conservator, or guardian over a minor.

(b) This chapter does not entitle an employee, agent, or representative of the department or other official agent to enter a home over the objection of a child or, if the child is a minor, over the objection of the child's parent, managing conservator, or guardian. (V.A.C.S. Art. 4419c, Sec. 10.)

#### CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS

Sec. 36.001. SHORT TITLE

Sec. 36.002. PURPOSE

Sec. 36.003. DEFINITIONS

Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS

Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS

Sec. 36.006. RECORDS; REPORTS

Sec. 36.007. PROVISION OF REMEDIAL SERVICES

Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES

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Sec. 36.012. RESEARCH; REPORT TO LEGISLATURE

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**Sec. 36.015. INTERAGENCY COMMITTEE ON SPECIAL SENSES AND COMMUNICATION DISORDERS**

**CHAPTER 36. SPECIAL SENSES AND COMMUNICATION DISORDERS**

**Sec. 36.001. SHORT TITLE.** This chapter may be cited as the Special Senses and Communication Disorders Act. (V.A.C.S. Art. 4419g, Sec. 1.)

**Sec. 36.002. PURPOSE.** (a) The purpose of this chapter is to establish a program to identify, at as early an age as possible, those individuals from birth through 20 years of age who have special senses and communication disorders and who need remedial vision, hearing, speech, and language services. Early detection and remediation of those disorders provide the individuals with the opportunity to reach academic and social status through adequate educational planning and training.

(b) This chapter shall be implemented in accordance with the provisions of professional license laws that pertain to professional examinations and remedial services for individuals with special senses and communication disorders. (V.A.C.S. Art. 4419g, Secs. 2, 12.)

**Sec. 36.003. DEFINITIONS.** In this chapter:

(1) "Communication disorder" means an abnormality of functioning related to the ability to express and receive ideas.

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

(A) benefits received under a personal insurance contract;

(B) payments received from another person for personal injury caused by the other person's negligence or wrongdoing; and

(C) payments received from any other source.

(3) "Preschool" means an educational or child-care institution that admits children who are three years of age or older but younger than five years of age.

(4) "Professional examination" means a diagnostic evaluation performed by an appropriately licensed professional or, if the professional is not required to be licensed under the laws of this state, by a certified or sanctioned individual whose area of expertise addresses the diagnostic needs of an individual identified as having a possible special senses or communication disorder.

(5) "Provider" means a person who provides remedial services to individuals who have special senses and communication disorders, and includes a physician, audiologist, speech pathologist, optometrist, psychologist, hospital, clinic, rehabilitation center, university, or medical school.

(6) "Remedial services" means professional examinations and prescribed remediation, including prosthetic devices, for individuals with special senses or communication disorders.

(7) "School" means an educational institution that admits children who are five years of age or older but younger than 21 years of age.

(8) "Screening" means a test or battery of tests administered to rapidly determine the need for a professional examination.

(9) "Special senses" means the faculties by which the conditions or properties of things are perceived, and includes vision and hearing. (V.A.C.S. Art. 4419g, Secs. 3 (part), 6(a).)

**Sec. 36.004. SCREENING PROGRAM FOR SPECIAL SENSES AND COMMUNICATION DISORDERS.** (a) The board by rule shall require screening of individuals who attend public or private preschools or schools to detect vision and hearing disorders and any other special senses or communication disorders specified by the board. In developing the rules, the board may consider the number of individuals to be screened and the availability of:

(1) personnel qualified to administer the required screening;

- (2) appropriate screening equipment; and
  - (3) state and local funds for screening activities.
  - (b) The rules must include procedures necessary to administer screening activities.
  - (c) The board shall adopt a schedule for implementing the screening requirements and shall give priority to the age groups that may derive the greatest educational and social benefits from early identification of special senses and communication disorders.
  - (d) The rules must provide for acceptance of results of screening conducted by a licensed professional, regardless of whether that professional is under contract with the department, if:
    - (1) the professional's legally defined scope of practice includes the area for which the screening is conducted; and
    - (2) the professional uses acceptable procedures for the screening.
  - (e) The department may coordinate the special senses and communication disorders screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not fragmented and duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.
  - (f) The department may provide screening personnel, equipment, and services only if the screening requirements cannot otherwise be met.
  - (g) The department shall monitor the quality of screening activities provided under this chapter.
  - (h) This section does not prohibit a volunteer from participating in the department's screening programs. (V.A.C.S. Art. 4419g, Secs. 4(a), (g); 7(a) (part), (c), (f).)
- Sec. 36.005. COMPLIANCE WITH SCREENING REQUIREMENTS. (a) An individual required to be screened shall undergo approved screening for vision and hearing disorders and any other special senses and communication disorders specified by the board. The individual shall comply with the requirements as soon as possible after the individual's admission to a preschool or school and within the period set by the board. The individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, may substitute professional examinations for the screening.
- (b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, must submit to the admitting officer of the preschool or school on or before the day of admission an affidavit stating the objections to screening.
- (c) The chief administrator of each preschool or school shall ensure that each individual admitted to the preschool or school complies with the screening requirements set by the board or submits an affidavit of exemption. (V.A.C.S. Art. 4419g, Secs. 4(b), (c), (d).)
- Sec. 36.006. RECORDS; REPORTS. (a) The chief administrator of each preschool or school shall maintain, on a form prescribed by the department, screening records for each individual in attendance, and the records are open for inspection by the department or the local health department.
- (b) The department may, directly or through local health departments, enter a preschool or school and inspect records maintained by the preschool or school relating to screening for special senses and communication disorders.
- (c) An individual's screening records may be transferred among preschools and schools without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian.
- (d) Each preschool or school shall submit to the department an annual report on the screening status of the individuals in attendance during the reporting year and shall include in the report any other information required by the board. The report must be on

a form prescribed by the department and must be submitted according to the board's rules. (V.A.C.S. Art. 4419g, Secs. 4(e), (f); 7(d).)

**Sec. 36.007. PROVISION OF REMEDIAL SERVICES.** (a) The department may provide remedial services directly or through approved providers to eligible individuals who have certain special senses and communication disorders and who are not eligible for special education services that remediate those disorders and that are administered by the Central Education Agency through the public schools.

(b) The board by rule shall:

(1) describe the type, amount, and duration of remedial services that the department provides;

(2) establish medical, financial, and other criteria to be applied by the department in determining an individual's eligibility for the services;

(3) establish criteria for the selection by the department of providers of remedial services; and

(4) establish procedures necessary to provide remedial services.

(c) The board may establish a schedule to determine financial eligibility.

(d) The department may not require remedial services without the consent of the individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian. (V.A.C.S. Art. 4419g, Secs. 5(a), (b) (part); 7(a) (part), (i).)

**Sec. 36.008. INDIVIDUALS ELIGIBLE FOR REMEDIAL SERVICES.** (a) An individual is not eligible to receive the remedial services authorized by this chapter to the extent that the individual or the parent, managing conservator, or other person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the services.

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

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

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

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

(d) The department may modify, suspend, or terminate the eligibility of an applicant for or recipient of remedial services after notice to the affected individual and an opportunity for a fair hearing that is conducted in accordance with the informal hearing rules adopted by the board.

(e) The board by rule shall provide criteria for actions taken under this section. (V.A.C.S. Art. 4419g, Secs. 6(b), (c), (f).)

**Sec. 36.009. REIMBURSEMENT.** (a) The board may require an individual or, if the individual is a minor, the minor's parent, managing conservator, or guardian, to pay or reimburse the department for a part of the cost of the remedial services provided.

(b) The recipient or the parent, managing conservator, or other person with a legal obligation to support an individual who has received remedial services from the department that are covered by some other benefit shall, when the other benefit is received, reimburse the department for the cost of services provided. (V.A.C.S. Art. 4419g, Secs. 5(b) (part), 6(d).)

**Sec. 36.010. RECOVERY OF COSTS.** (a) The department is entitled to recover an expenditure for services provided under this chapter from:

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

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

(b) The commissioner may request the attorney general to bring suit in the appropriate court of Travis County on behalf of the department. A suit brought under this section need not be ancillary or dependent on any other action.

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

(d) The board by rule shall provide criteria for actions taken under this section. (V.A.C.S. Art. 4419g, Secs. 6(e), (f) (part).)

**Sec. 36.011. QUALIFICATIONS OF PERSONS PROVIDING SCREENING AND REMEDIAL SERVICES.** (a) The department may require that persons who administer special senses and communication disorders screening complete an approved training program, and the department may train those persons and approve training programs.

(b) A person who provides speech and language screening services authorized by this chapter must be:

- (1) appropriately licensed; or
- (2) trained and monitored by a person who is appropriately licensed.

(c) A person who is not an appropriately licensed professional may not conduct hearing screening authorized by this chapter other than screening of hearing sensitivity. The person shall refer an individual who is unable to respond reliably to that screening to an appropriately licensed professional.

(d) A person who provides a professional examination or remedial services authorized by this chapter for speech, language, or hearing disorders must be appropriately licensed. (V.A.C.S. Art. 4419g, Secs. 7(b), 8.)

**Sec. 36.012. RESEARCH; REPORT TO LEGISLATURE.** (a) The department may conduct research and compile statistics on the provision of remedial services to individuals with special senses and communication disorders and on the availability of those services in the state.

(b) The department shall compile and publish a report for the legislature on or before February 1 of each year describing the conduct of the screening and remedial services programs and their impact on public health. (V.A.C.S. Art. 4419g, Secs. 7(g), (j).)

**Sec. 36.013. FUNDING.** The department may accept appropriations, donations, and reimbursements, including donations of prosthetic devices, and may apply those items to the purposes of this chapter. (V.A.C.S. Art. 4419g, Sec. 7(h).)

**Sec. 36.014. CONTRACTS.** The department may enter into contracts and agreements necessary to administer this chapter, including contracts for the purchase of remedial services. (V.A.C.S. Art. 4419g, Sec. 7(e).)

**Sec. 36.015. INTERAGENCY COMMITTEE ON SPECIAL SENSES AND COMMUNICATION DISORDERS.** (a) The interagency committee on special senses and communication disorders shall assist the department in coordinating among participating agencies the special senses and communication disorders screening program and the remedial services program.

(b) The committee is composed of nine members. The chief administrative officer of each of the following agencies shall appoint one member to the committee:

- (1) Central Education Agency;
- (2) Texas Commission for the Blind;
- (3) Texas Commission for the Deaf;
- (4) Texas Department of Community Affairs;
- (5) Texas Department of Health;
- (6) Texas Department of Human Services;
- (7) Texas Department of Mental Health and Mental Retardation;
- (8) Texas School for the Blind; and
- (9) Texas School for the Deaf.

(c) A member of the committee is entitled to be reimbursed by the appointing agency for expenses incurred in performing the duties required under this chapter. The reimbursement may not exceed the amounts specified by the General Appropriations Act for transportation and per diem allowances for state employees.

(d) The committee shall adopt written procedures for the conduct of its duties and may elect officers as it finds necessary.

(e) The committee shall meet at least once each calendar year in Austin and at other times and locations as the committee finds necessary. (V.A.C.S. Art. 4419g, Sec. 9.)

**CHAPTER 37. ABNORMAL SPINAL CURVATURE IN CHILDREN**

**Sec. 37.001. SCREENING PROGRAM FOR ABNORMAL SPINAL CURVATURE**

**Sec. 37.002. COMPLIANCE WITH SCREENING REQUIREMENTS**

**Sec. 37.003. REPORTS**

**Sec. 37.004. QUALIFICATIONS OF PERSONS PROVIDING SCREENING**

**Sec. 37.005. FUNDING**

**Sec. 37.006. CONTRACTS**

**CHAPTER 37. ABNORMAL SPINAL CURVATURE IN CHILDREN**

**Sec. 37.001. SCREENING PROGRAM FOR ABNORMAL SPINAL CURVATURE.** (a) The department, in cooperation with the Central Education Agency, shall establish a program to detect abnormal spinal curvature in children.

(b) The board, in cooperation with the Central Education Agency, shall adopt rules for the mandatory spinal screening of children in grades 6 and 9 attending public or private schools. The department shall coordinate the spinal screening program with any other screening program conducted by the department on those children.

(c) The board shall adopt substantive and procedural rules necessary to administer screening activities.

(d) A rule adopted by the board under this chapter may not require any expenditure by a school, other than an incidental expense required for certification training for nonhealth practitioners and for notification requirements under Section 37.003.

(e) The department may coordinate the spinal screening activities of school districts, private schools, state agencies, volunteer organizations, and other entities so that the efforts of each entity are complementary and not duplicative. The department may provide technical assistance to those entities in developing screening programs and may provide educational and other material to assist local screening activities.

(f) The department shall monitor the quality of screening activities provided under this chapter. (V.A.C.S. Art. 4477–70, Secs. 2(a), (c), (g), (h); 3(a), (c), (e).)

**Sec. 37.002. COMPLIANCE WITH SCREENING REQUIREMENTS.** (a) Each individual required by board rule to be screened shall undergo approved screening for abnormal spinal curvature. The individual's parent, managing conservator, or guardian may substitute professional examinations for the screening.

(b) An individual is exempt from screening if screening conflicts with the tenets and practices of a recognized church or religious denomination of which the individual is an adherent or a member. To qualify for the exemption, the individual's parent, managing conservator, or guardian must submit to the chief administrator on or before the day of the screening procedure an affidavit stating the objections to screening.

(c) The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements set by the board or submits an affidavit of exemption. (V.A.C.S. Art. 4477–70, Secs. 2(d), (e), (f).)

**Sec. 37.003. REPORTS.** (a) If the screening performed under this chapter indicates that an individual may have abnormal spinal curvature, the individual performing the screening shall fill out a report on a form prescribed by the department.

(b) The chief administrator of the school shall retain one copy of the report and shall mail one copy to the parent, managing conservator, or guardian of the individual screened. (V.A.C.S. Art. 4477-70, Sec. 5.)

**Sec. 37.004. QUALIFICATIONS OF PERSONS PROVIDING SCREENING.** (a) The department may train persons who administer the spinal screening procedure and may approve training programs.

(b) A person who provides screening services authorized by this chapter must be:

(1) appropriately licensed or certified as a health practitioner; or

(2) certified as having completed an approved training program in screening for abnormal spinal curvature.

(c) A person who provides a professional examination authorized by this chapter for abnormal spinal curvature must be appropriately licensed or certified as a health practitioner.

(d) It is the intent of the legislature that the department provide certification training for nonhealth practitioners through Central Education Agency regional centers. (V.A.C.S. Art. 4477-70, Secs. 2(b), 3(b), 4.)

**Sec. 37.005. FUNDING.** The department may accept appropriations, donations, and reimbursements and may apply those items to the purposes of this chapter. (V.A.C.S. Art. 4477-70, Sec. 3(f).)

**Sec. 37.006. CONTRACTS.** The department may enter into contracts and agreements necessary to administer this chapter. (V.A.C.S. Art. 4477-70, Sec. 3(d).)

#### **CHAPTER 38. PEDICULOSIS OF MINORS**

**Sec. 38.001. PROGRAM ESTABLISHED**

**Sec. 38.002. TREATMENT OF MINOR WHO HAS PEDICULOSIS**

#### **CHAPTER 38. PEDICULOSIS OF MINORS**

**Sec. 38.001. PROGRAM ESTABLISHED.** (a) The department shall establish and develop a state program for the control and eradication of pediculosis of minors.

(b) The program may include procedures for detection of pediculosis and instructions for treatment. (V.A.C.S. Art. 4447k, Sec. 1.)

**Sec. 38.002. TREATMENT OF MINOR WHO HAS PEDICULOSIS.** For the purpose of treating a minor who has pediculosis, the parent or guardian of the minor shall:

(1) follow the instructions of the department; or

(2) place the minor under the care of a licensed physician. (V.A.C.S. Art. 4447k, Sec. 2.)

#### **CHAPTER 39. CHILDREN'S OUTREACH HEART PROGRAM**

**Sec. 39.001. DEFINITION**

**Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM**

**Sec. 39.003. RULES**

**Sec. 39.004. FEES**

**Sec. 39.005. FUNDING**

**Sec. 39.006. CONTRACTS**

#### **CHAPTER 39. CHILDREN'S OUTREACH HEART PROGRAM**

**Sec. 39.001. DEFINITION.** In this chapter, "heart disease or defect" means an abnormality or disease of the heart or major blood vessel near the heart. (V.A.C.S. Art. 4419h, Sec. 1(3).)

**Sec. 39.002. CHILDREN'S OUTREACH HEART PROGRAM.** The department, with approval of the board, may establish a children's outreach heart program to provide:



(1) prediagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and

(2) training to local physicians and public health nurses in screening and diagnostic procedures for heart disease or defect. (V.A.C.S. Art. 4419h, Sec. 2.)

Sec. 39.003. **RULES.** The board shall adopt rules it considers necessary to define the scope of the children's outreach heart program and the medical and financial standards for eligibility. (V.A.C.S. Art. 4419h, Sec. 3.)

Sec. 39.004. **FEES.** Recipients of services or training provided by the program may be charged a fee for services or training according to rules adopted by the board. (V.A.C.S. Art. 4419h, Sec. 6.)

Sec. 39.005. **FUNDING.** The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the children's outreach heart program. (V.A.C.S. Art. 4419h, Sec. 5.)

Sec. 39.006. **CONTRACTS.** The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this chapter, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States. (V.A.C.S. Art. 4419h, Sec. 4.)

#### **CHAPTER 40. EPILEPSY**

Sec. 40.001. **DEFINITION**

Sec. 40.002. **EPILEPSY PROGRAM**

Sec. 40.003. **RULES**

Sec. 40.004. **ADMINISTRATION**

Sec. 40.005. **FEES**

Sec. 40.006. **FUNDING**

Sec. 40.007. **CONTRACTS**

#### **CHAPTER 40. EPILEPSY**

Sec. 40.001. **DEFINITION.** In this chapter, "epilepsy" means a variable symptom complex characterized by recurrent paroxysmal attacks of unconsciousness or impaired consciousness, usually with a succession of clonic or tonic muscular spasms or other abnormal behavior. (V.A.C.S. Art. 4477-50, Sec. 1(4).)

Sec. 40.002. **EPILEPSY PROGRAM.** (a) The department, with approval of the board, may establish an epilepsy program to provide diagnostic services, treatment, and support services to eligible persons who have epilepsy.

(b) The commissioner may appoint an epilepsy advisory board to assist the department in developing the epilepsy program. (V.A.C.S. Art. 4477-50, Secs. 2, 7.)

Sec. 40.003. **RULES.** The board may adopt rules it considers necessary to define the scope of the epilepsy program and the medical and financial standards for eligibility. (V.A.C.S. Art. 4477-50, Sec. 3.)

Sec. 40.004. **ADMINISTRATION.** (a) The commissioner, with the approval of the board, may appoint an administrator to carry out the epilepsy program.

(b) The administrator shall report to and be under the direction of the commissioner. (V.A.C.S. Art. 4477-50, Sec. 4.)

Sec. 40.005. **FEES.** Program patients may be charged a fee for services according to rules adopted by the board. (V.A.C.S. Art. 4477-50, Sec. 8.)

Sec. 40.006. **FUNDING.** The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purposes of the epilepsy program. (V.A.C.S. Art. 4477-50, Sec. 6.)

Sec. 40.007. **CONTRACTS.** The department may enter into contracts or other agreements it considers necessary to facilitate the provision of services under this chapter,

including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States. (V.A.C.S. Art. 4477-50, Sec. 5.)

## CHAPTER 41. HEMOPHILIA

- Sec. 41.001. DEFINITIONS
- Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM
- Sec. 41.003. ADMINISTRATION
- Sec. 41.004. FINANCIAL ELIGIBILITY
- Sec. 41.005. REIMBURSEMENT
- Sec. 41.006. RECOVERY OF COSTS
- Sec. 41.007. FUNDING

## CHAPTER 41. HEMOPHILIA

Sec. 41.001. DEFINITIONS. In this chapter:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) "Other benefit" means a benefit, other than a benefit under this chapter, to which a person is entitled for payment of the costs of blood, blood derivatives and concentrates, and other substances provided under this chapter, including benefits available from:

- (A) an insurance policy, group health plan, or prepaid medical or dental care plan;
- (B) Title XVIII or Title XIX of the Social Security Act (42 U.S.C. Section 1395 et seq. or Section 1396 et seq.);
- (C) the Veterans Administration;
- (D) the Civilian Health and Medical Program of the Uniformed Services;
- (E) workers' compensation or any compulsory employers' insurance program;
- (F) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or
- (G) a cause of action for medical or dental expenses to a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter. (V.A.C.S. Art. 4477-30, Secs. 1(1); 6(b).)

Sec. 41.002. HEMOPHILIA ASSISTANCE PROGRAM. (a) The hemophilia assistance program is in the department to assist persons who have hemophilia and who require continuing treatment with blood, blood derivatives, or manufactured pharmaceutical products, but who are unable to pay the entire cost of the treatment.

(b) The department shall establish standards of eligibility for assistance under this chapter in accordance with Section 41.004.

(c) The department shall provide, through approved providers, financial assistance for medically eligible persons in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home. (V.A.C.S. Art. 4477-30, Sec. 2.)

Sec. 41.003. ADMINISTRATION. (a) The commissioner may employ or appoint an administrator who shall carry out the hemophilia assistance program and report to the commissioner.

(b) The administrator may employ two persons to help carry out the program. (V.A. C.S. Art. 4477-30, Secs. 1(4); 3.)

**Sec. 41.004. FINANCIAL ELIGIBILITY.** (a) A person is not eligible to receive services provided by this chapter:

(1) to the extent that another person with a legal obligation to provide for the person's care and treatment is financially able to pay for all or part of the services provided by this chapter; or

(2) to the extent that the person or a person with a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When the application is made under this chapter or when the services are received, the person applying for or receiving services shall inform the department of any other benefit to which the person or any other person with a legal obligation to support the person may be entitled. (V.A.C.S. Art. 4477-30, Secs. 6(a) (part), (c), (d).)

**Sec. 41.005. REIMBURSEMENT.** (a) The department shall require a person receiving services under this chapter who is financially able to bear part of the expense, or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear part of the expense, to pay for or reimburse the department for that part of the cost of the services provided to the person by the department.

(b) A person who has received services that are covered by some other benefit, or any other person with a legal obligation to support that person, shall reimburse the department to the extent of the services provided when the other benefit is received. (V.A.C.S. Art. 4477-30, Secs. 6(a) (part), (e).)

**Sec. 41.006. RECOVERY OF COSTS.** (a) The department may recover the cost of services provided under this chapter from a person who does not reimburse the department as required by Section 41.005 or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed. (V.A.C.S. Art. 4477-30, Sec. 6 (f).)

**Sec. 41.007. FUNDING.** (a) The department may accept gifts and grants from individuals, private or public organizations, or federal or local funds to support the hemophilia assistance program.

(b) The department shall investigate any potential sources of funding from federal grants or programs. (V.A.C.S. Art. 4477-30, Sec. 4.)

## **CHAPTER 42. KIDNEY HEALTH CARE**

**Sec. 42.001. SHORT TITLE; PURPOSE**

**Sec. 42.002. DEFINITIONS**

**Sec. 42.003. KIDNEY HEALTH CARE DIVISION**

**Sec. 42.004. SERVICES**

**Sec. 42.005. FACILITIES**

**Sec. 42.006. SELECTION OF SERVICE PROVIDERS**

**Sec. 42.007. ELIGIBILITY FOR SERVICES**

**Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES**

**Sec. 42.009. REIMBURSEMENT**

**Sec. 42.010. RECOVERY OF COSTS**

**Sec. 42.011. FUNDING**

**Sec. 42.012. CONTRACTS**

**Sec. 42.013. COOPERATION**

**Sec. 42.014. SCIENTIFIC INVESTIGATIONS**

**Sec. 42.015. EDUCATIONAL PROGRAMS**

**Sec. 42.016. REPORTS**

Sec. 42.017. INSURANCE PREMIUMS  
Sec. 42.018. FREEDOM OF SELECTION

## CHAPTER 42. KIDNEY HEALTH CARE

Sec. 42.001. SHORT TITLE; PURPOSE. (a) This chapter may be cited as the Texas Kidney Health Care Act.

(b) The state finds that one of the most serious and tragic problems facing the public health and welfare is the death each year from chronic kidney disease of hundreds of persons in this state, when the present state of medical art and technology could return many of those individuals to a socially productive life. Patients may die for lack of personal financial resources to pay for the expensive equipment and care necessary for survival. The state therefore recognizes a responsibility to allow its citizens to remain healthy without being pauperized and a responsibility to use the resources and organization of the state to gather and disseminate information on the prevention and treatment of chronic kidney disease.

(c) A comprehensive program to combat kidney disease must be implemented through the combined and correlated efforts of individuals, state and local governments, persons in the field of medicine, universities, and nonprofit organizations. The program provided by this chapter is designed to direct the use of resources and to coordinate the efforts of the state in this vital matter of public health. (V.A.C.S. Art. 4477-20, Secs. 1, 2.)

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Division" means the kidney health care division.

(2) "Other benefit" means a benefit, other than one provided under this chapter, to which a person is entitled for payment of the costs of medical care and treatment, services, pharmaceuticals, transportation, and supplies, including benefits available from:

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

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

(C) the Veterans Administration;

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

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

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

(G) a cause of action for medical expenses brought by an applicant for or recipient of services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter. (V.A.C.S. Art. 4477-20, Sec. 9.1(3); New.)

Sec. 42.003. KIDNEY HEALTH CARE DIVISION. (a) The kidney health care division is in the department to carry out this chapter. The board shall administer the division.

(b) The division may assist in the development and expansion of programs for the care and treatment of persons with chronic kidney disease, including dialysis and other lifesaving medical procedures and techniques.

(c) The board may adopt rules necessary to carry out this chapter and to provide adequate kidney care and treatment for citizens of this state. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

Sec. 42.004. SERVICES. (a) The division shall provide kidney care services directly or through public or private resources to persons determined by the board to be eligible for services authorized under this chapter.

(b) The division may cooperate with other departments, agencies, political subdivisions, and public and private institutions to provide the services authorized by this chapter to

eligible persons, to study the public health and welfare needs involved, and to plan, establish, develop, and provide programs or facilities and services that are necessary or desirable, including any that are jointly administered with state agencies.

(c) The division may conduct research and compile statistics relating to the provision of kidney care services and the need for the services by disabled or handicapped persons.

(d) The division may contract with schools, hospitals, corporations, agencies, and individuals, including doctors, nurses, and technicians, for training, physical restoration, transportation, and other services necessary to treat and care for persons with kidney disease. (V.A.C.S. Art. 4477-20, Sec. 4 (part).)

**Sec. 42.005. FACILITIES.** (a) The board may establish and maintain standards for the accreditation of all facilities designed or intended to deliver care or treatment for persons with chronic kidney disease.

(b) The division may conduct surveys of existing facilities in this state that diagnose, evaluate, and treat patients with kidney disease and may prepare and submit its findings and a specific program of action.

(c) The division may evaluate the need to create local or regional facilities and to establish a major kidney research center.

(d) The division may:

(1) establish or construct rehabilitation facilities and workshops;

(2) make grants to public agencies and make contracts or other arrangements with public and other nonprofit agencies, organizations, or institutions for the establishment of workshops and rehabilitation facilities; and

(3) operate facilities to carry out this chapter.

(e) The board may provide for the establishment, supervision, management, and control of kidney care facilities. (V.A.C.S. Art. 4477-20, Secs. 3 (part), 4 (part).)

**Sec. 42.006. SELECTION OF SERVICE PROVIDERS.** (a) The department shall select providers to furnish kidney health care services under the program according to the criteria and procedures adopted by the board.

(b) The board shall provide a hearing procedure for the resolution of conflicts between the department and a provider. Sections 13 through 20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to conflict resolution procedures adopted under this section.

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

(d) Subsections (b) and (c) do not apply if a contract:

(1) is canceled because program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible individuals; or

(2) expires according to its terms. (V.A.C.S. Art. 4477-20, Sec. 9.3.)

**Sec. 42.007. ELIGIBILITY FOR SERVICES.** The board may determine the terms, conditions, and standards, including medical and financial standards, for the eligibility of persons with chronic kidney disease to receive the aid, care, or treatment provided under this chapter. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

**Sec. 42.008. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES.** (a) After notice and an opportunity for a hearing, the department for cause may deny the application of or modify, suspend, or terminate services to an applicant for or recipient of services.

(b) The program rules adopted by the board must contain the criteria for the department's action under this section.

(c) Sections 13 through 20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to the granting, denial, modifica-

tion, suspension, or termination of services provided under this chapter. Hearings under this section must be conducted in accordance with the board's hearing rules.

(d) This section does not apply if program services are restricted to conform to budgetary limitations that require the board to adopt service priorities regarding types of services to be furnished or classes of eligible persons. (V.A.C.S. Art. 4477-20, Sec. 9.2.)

Sec. 42.009. REIMBURSEMENT. (a) An applicant or recipient is not eligible to receive services provided by this chapter to the extent that the applicant or recipient, or another person with a legal obligation to support the applicant or recipient, is eligible for some other benefit that would pay for all or part of the services provided by this chapter.

(b) When an application is made under this chapter or at any time while a person is eligible and receiving services under this chapter, the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, shall inform the department of any other benefit to which the applicant or recipient, or the person with a legal obligation to support the applicant or recipient, may be entitled.

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

(d) The board may waive the provisions of Subsection (a) in certain individually considered cases when the enforcement of that provision will deny services to a class of end stage renal disease patients because of conflicting state or federal laws or rules. (V.A.C.S. Art. 4477-20, Secs. 9.1(1), (2), (4).)

Sec. 42.010. RECOVERY OF COSTS. (a) The department may recover the costs of services provided under this chapter from a person who does not reimburse the department as required by Section 42.009(c), or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed. (V.A.C.S. Art. 4477-20, Sec. 9.1(5).)

Sec. 42.011. FUNDING. (a) The division may receive and use gifts to carry out this chapter.

(b) The board may comply with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportions possible to carry out this chapter.

(c) The state treasurer may receive all money appropriated by congress and allotted to this state for carrying out this chapter or agreements or plans authorized by this chapter. (V.A.C.S. Art. 4477-20, Secs. 6, 7, 8 (part).)

Sec. 42.012. CONTRACTS. (a) The division may enter into contracts and agreements with persons, colleges, universities, associations, corporations, municipalities, and other units of government as necessary to carry out this chapter.

(b) A contract may provide for payment by the state, within the limits of funds available, for material, equipment, or services. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

Sec. 42.013. COOPERATION. (a) The division may cooperate with private or public agencies to facilitate the availability of adequate care for all citizens with chronic kidney disease.

(b) The board shall make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this chapter or of any federal statute or rule relating to the prevention, care, or treatment of kidney disease or the care, treatment, or rehabilitation of persons with kidney disease. The board may adopt rules and methods of administration found by the federal government to be necessary for the proper and efficient operation of the agreements, arrangements, or plans.

(c) The division may enter into reciprocal agreements with other states. (V.A.C.S. Art. 4477-20, Secs. 3 (part), 4 (part), 5.)

**Sec. 42.014. SCIENTIFIC INVESTIGATIONS.** (a) The division may develop and administer scientific investigations into the cause, prevention, methods of treatment, and cure of kidney disease, including research into kidney transplantation.

(b) The division may develop techniques for an effective method of mass testing to detect kidney disease and urinary tract infections. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

**Sec. 42.015. EDUCATIONAL PROGRAMS.** (a) The division may institute, carry on, and supervise educational programs for the public and health providers, including physicians, hospitals, and public health departments, concerning chronic kidney disease, including prevention and methods of care and treatment.

(b) The division may use existing public or private programs or groups for the educational programs. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

**Sec. 42.016. REPORTS.** The board shall report to the governor and the legislature not later than February 1 of each year concerning its findings, progress, and activities under this chapter and the state's total need in the field of kidney health care. (V.A.C.S. Art. 4477-20, Sec. 3 (part).)

**Sec. 42.017. INSURANCE PREMIUMS.** The board may provide for payment of the premiums required to maintain coverage under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) for certain classes of persons with end stage renal disease, in individually considered instances according to criteria established by board rules. (V.A.C.S. Art. 4477-20, Sec. 4 (part).)

**Sec. 42.018. FREEDOM OF SELECTION.** The freedom of an eligible person to select a treating physician, a treatment facility, or a treatment modality is not limited by Section 42.009 if the physician, facility, or modality is approved by the board as required by this chapter. (V.A.C.S. Art. 4477-20, Sec. 9.1(6).)

#### **CHAPTER 43. ORAL HEALTH IMPROVEMENT**

**Sec. 43.001. SHORT TITLE**

**Sec. 43.002. LIBERAL CONSTRUCTION**

**Sec. 43.003. DEFINITIONS**

**Sec. 43.004. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM**

**Sec. 43.005. ADMINISTRATION**

**Sec. 43.006. SERVICE PROVIDERS**

**Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES**

**Sec. 43.008. ELIGIBILITY FOR SERVICES**

**Sec. 43.009. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES**

**Sec. 43.010. FINANCIAL ELIGIBILITY; OTHER BENEFITS**

**Sec. 43.011. RECOVERY OF COSTS**

**Sec. 43.012. FEES**

**Sec. 43.013. FUNDS**

**Sec. 43.014. CONTRACTS**

**Sec. 43.015. ADVISORY COMMITTEE**

#### **CHAPTER 43. ORAL HEALTH IMPROVEMENT**

**Sec. 43.001. SHORT TITLE.** This chapter may be cited as the Texas Oral Health Improvement Act. (V.A.C.S. Art. 4418g-2, Sec. 1.)

**Sec. 43.002. LIBERAL CONSTRUCTION.** It is the intent of the legislature that this chapter be construed liberally so that eligible individuals may receive appropriate and adequate oral health services in a timely manner. (V.A.C.S. Art. 4418g-2, Sec. 2(b).)

**Sec. 43.003. DEFINITIONS.** (a) In this chapter:

(1) "Dentist" means an individual licensed by the State Board of Dental Examiners to practice dentistry in this state.

(2) "Oral health services" means:

(A) preventive or treatment services affecting the structures of the mouth, including the hard and soft tissues such as teeth, jaws, gums, vestibule, tongue, cheeks, lips, floor and roof of the mouth, and adjacent masticatory structures; and

(B) oral health education and promotion activities.

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

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

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

(C) the Veterans Administration;

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

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

(F) a public program created by federal law, state law, or the ordinances or rules of a municipality or other political subdivision of the state; or

(G) a cause of action for the expenses of dental or oral health treatment services, or a settlement or judgment based on the cause of action, if the expenses are related to the need for treatment services provided under this chapter.

(4) "Provider" means a person who, through a contract with the department, furnishes oral health treatment services that are purchased by the department for the purposes of this chapter.

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

(b) The board by rule may define a word or term not defined by Subsection (a) as necessary to administer this chapter. The board may not define a word or term so that the word or term is inconsistent or in conflict with the purposes of this chapter. (V.A.C.S. Art. 4418g-2, Secs. 3(a) (part), (b).)

Sec. 43.004. ORAL HEALTH IMPROVEMENT SERVICES PROGRAM. (a) The oral health improvement services program is in the department to provide comprehensive oral health services to eligible individuals.

(b) The board shall adopt rules to govern the program, to prescribe the type, amount, and duration of oral health services to be provided, and, if necessary to conform to budgetary limitations, to prescribe a system of program priorities regarding the types of services to be furnished, the geographic areas to be covered, or the classes of individuals eligible for services.

(c) Except as limited by Subsection (b), the department shall develop an integrated framework for the equitable provision of oral health services throughout the state or designated geographic areas, using existing public and private health care resources when possible.

(d) The program may consist of all or any combination of the following:

(1) treatment services for eligible individuals, including:

(A) emergency care for relief of pain and infection, including extractions and basic restorative services to prevent premature loss of teeth;

(B) periodontal therapy for the prevention and treatment of periodontal disease;

(C) endodontics to maintain aesthetics and occlusion;

(D) orthodontic care only in cases of severely handicapping malocclusion; and

(E) oral surgery and prosthetics in cases in which health is impaired;

(2) a program of oral disease prevention, including:

(A) the fluoridation of community water supplies;

(B) fluoride mouth rinse programs in schools;



- (C) the promotion and implementation of sealants programs; and
- (D) the development of appropriate means for prevention of oral disease, including the continued use of recognized methods of primary, secondary, and tertiary prevention;
- (3) oral health education and promotion, including:
  - (A) public health education to promote the prevention of oral disease through self-help methods, including the initiation and expansion of preschool, school age, and adult education programs;
  - (B) organized continuing health education training programs for health care providers; and
  - (C) preventive health education information for the public; and
- (4) facilitation of access to oral health services, including:
  - (A) the improvement of the existing oral health services delivery system for the provision of services to low-income residents;
  - (B) outreach activities to inform the public of the type and availability of oral health services to increase the accessibility of oral health care for low-income residents; and
  - (C) assistance and cooperation in promoting better distribution of dentists and other oral health professionals throughout the state.
- (e) The department may provide services only as prescribed by board rules.
- (f) The services listed in Subsection (d) may be furnished either directly by the department or through a network of approved providers. (V.A.C.S. Art. 4418g-2, Secs. 2(a); 4; 11(a) (part), (e) (part).)

**Sec. 43.005. ADMINISTRATION.** (a) The department shall:

- (1) administer the program of oral health services established by the board; and
- (2) adopt the design and content of all forms necessary for the program.
- (b) The department may conduct field research, collect data, and prepare statistical and other reports relating to the need for and the availability of oral health services. (V.A.C.S. Art. 4418g-2, Secs. 11(d) (part), (e) (part).)

**Sec. 43.006. SERVICE PROVIDERS.** (a) The board may adopt substantive and procedural rules relating to:

- (1) the selection of dentists, physicians, facilities, and other providers to furnish program services, including criteria for the emergency selection of providers; and
- (2) the denial, modification, suspension, or termination of a provider's program participation.
- (b) The department shall approve providers to participate in the program according to the criteria, rules, and procedures adopted by the board.
- (c) The department may pay only for program services furnished by approved providers, except in an emergency.
- (d) The board shall provide a due process hearing procedure for the resolution of conflicts between the department and a provider. Sections 13-20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to conflict resolution procedures adopted under this section.
- (e) The department shall render the final administrative decision in a due process hearing to modify, suspend, or terminate the approval of a provider.
- (f) The department may not terminate a contract while a due process hearing is pending under this section. The department may withhold payments while the hearing is pending, but shall pay the withheld payments and resume contract payments if the final determination is favorable to the provider.
- (g) Subsections (d)-(f) do not apply if a contract:

- (1) is canceled by the department because of the exhaustion of funds;

(2) expires according to its terms; or

(3) is canceled because program services are restricted to conform to budgetary limitations as prescribed by Section 43.004(b). (V.A.C.S. Art. 4418g-2, Secs. 10; 11(a) (part), (d) (part), (e) (part).)

**Sec. 43.007. INDIVIDUAL REFERRAL AND APPLICATION FOR SERVICES.** (a) The board may adopt substantive and procedural rules to govern the application for admission to the program and the receipt of treatment services, including the dental, financial, and other criteria for eligibility to receive treatment services.

(b) An applicant for treatment services must be referred to the program by a person who knows the individual's economic condition, such as a school administrator or school nurse, social worker, municipal or county official, dentist, physician, public health clinic, community health center, hospital, or any other source acceptable to the board.

(c) An applicant for treatment services must complete or cause to be completed an application form prescribed by the department.

(d) The application form must include or be accompanied by:

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

(2) a statement from the referring person that the treatment services are necessary to prevent or reduce the probability of pain, infection, or disease; and

(3) any other assurances from the applicant or any other documentary evidence required by the board to support the applicant's eligibility. (V.A.C.S. Art. 4418g-2, Secs. 5, 11(a) (part).)

**Sec. 43.008. ELIGIBILITY FOR SERVICES.** (a) The department shall determine an individual's eligibility for treatment services according to this chapter and the program rules.

(b) An individual is not eligible to receive treatment services provided under this chapter unless:

(1) the individual is a resident of this state;

(2) the department has determined that neither the individual nor a person with a legal obligation to support the individual is financially able to pay for all or part of the treatment services provided by this chapter;

(3) the individual complies with any other requirements stated in the program rules; and

(4) at least one licensed dentist or licensed physician has certified to the department that the dentist or physician has examined the individual and has found that:

(A) the individual meets the board's dental criteria; and

(B) the dentist or physician has reason to expect that the treatment services provided by or through the department will prevent or reduce the probability of the individual's experiencing pain, infection, or disease.

(c) Except as permitted by program rules, the department may not provide treatment services before an individual's eligibility date assigned by the department or authorize payment for treatment services furnished by a provider before that date. (V.A.C.S. Art. 4418g-2, Secs. 6(a), (b), (c).)

**Sec. 43.009. DENIAL, MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES.** (a) The department may, for cause, deny an application for treatment services or modify, suspend, or terminate a recipient's treatment services after notice to the applicant or recipient and the opportunity for a due process hearing.

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

(c) Sections 13-20, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), do not apply to the granting, denial, modification,

suspension, or termination of treatment services. The department shall conduct hearings in accordance with the board's due process hearing rules.

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

(e) This section does not apply if oral health services are restricted to conform to budgetary limitations as prescribed by Section 43.004(b). (V.A.C.S. Art. 4418g-2, Secs. 9, 11(d) (part).)

**Sec. 43.010. FINANCIAL ELIGIBILITY; OTHER BENEFITS.** (a) The department shall require an individual receiving treatment services under this chapter or a person with a legal obligation to support the individual to pay for or reimburse the department for that part of the cost of the treatment services that the individual or person is financially able to pay.

(b) An individual is not eligible to receive treatment services under this chapter to the extent that the individual or a person with a legal obligation to support the individual is eligible for some other benefit that would pay for all or part of the treatment services.

(c) When the application is made under this chapter or at any time during eligibility and the receipt of treatment services, the applicant for or recipient of treatment services shall inform the department of any other benefit to which the individual or a person with a legal obligation to support the individual may be entitled.

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

(e) The commissioner may waive the enforcement of Subsection (b) as prescribed by board rules in certain individually considered cases in which enforcement will deny treatment services to a class of otherwise eligible individuals because of conflicting federal, state, or local laws or rules. (V.A.C.S. Art. 4418g-2, Secs. 6(d), 7.)

**Sec. 43.011. RECOVERY OF COSTS.** (a) The department may recover the cost of treatment services provided under this chapter from a person who does not pay or reimburse the department as required by this chapter or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given.

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

(c) In a judgment in favor of the department, the court may award attorney's fees, court costs, and interest accruing from the date on which the department provides the service to the date on which the department is reimbursed. (V.A.C.S. Art. 4418g-2, Sec. 8.)

**Sec. 43.012. FEES.** The board may charge fees for the oral health services provided directly by the department or through approved providers in accordance with Subchapter D, Chapter 12. (V.A.C.S. Art. 4418g-2, Sec. 11(c).)

**Sec. 43.013. FUNDS.** (a) Subject to limitations or conditions prescribed by the legislature, the board may seek, receive, and spend funds received from any public or private source for the purposes of this chapter.

(b) The department is not required to provide oral health services unless funds are appropriated to the department for that express purpose. (V.A.C.S. Art. 4418g-2, Secs. 11(b), 13.)

**Sec. 43.014. CONTRACTS.** The department may enter into contracts and agreements necessary to facilitate the efficient and economical provision of oral health services under this chapter, including contracts for the purchase of services, equipment, and supplies from qualified providers. (V.A.C.S. Art. 4418g-2, Sec. 11(e) (part).)

**Sec. 43.015. ADVISORY COMMITTEE.** (a) The board may appoint a technical advisory committee to assist the program in areas requiring professional dental and medical expertise.

(b) Appointees to the advisory committee must be practitioners licensed to practice in this state by either the State Board of Dental Examiners or the Texas State Board of Medical Examiners.

(c) Appointments must be made without regard to the race, creed, sex, religion, or national origin of the appointee. (V.A.C.S. Art. 4418g-2, Sec. 12.)

[Chapters 44-60 reserved for expansion]

**SUBTITLE C. INDIGENT HEALTH CARE****CHAPTER 61. INDIGENT HEALTH CARE AND TREATMENT ACT****SUBCHAPTER A. GENERAL PROVISIONS**

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- Sec. 61.064. TRANSFER OF A PUBLIC HOSPITAL

[Sections 61.065–61.080 reserved for expansion]

**SUBCHAPTER D. INDIGENT HEALTH CARE ASSISTANCE FUND**

- Sec. 61.081. INDIGENT HEALTH CARE ASSISTANCE FUND

**SUBTITLE C. INDIGENT HEALTH CARE**

**CHAPTER 61. INDIGENT HEALTH CARE AND TREATMENT ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 61.001. **SHORT TITLE.** This chapter may be cited as the Indigent Health Care and Treatment Act. (V.A.C.S. Art. 4438f, Sec. 1.01.)

Sec. 61.002. **DEFINITIONS.** In this chapter:

(1) "AFDC" means the Aid to Families with Dependent Children program administered by the Texas Department of Human Services under Chapter 31, Human Resources Code.

(2) "Department" means the Texas Department of Human Services.

(3) "Eligible county resident" means an eligible resident of a county who does not reside in the service area of a public hospital or hospital district.

(4) "Eligible resident" means a person who meets the income and resources requirements established by this chapter or by the governmental entity, public hospital, or hospital district in whose jurisdiction the person resides.

(5) "Emergency services" has the meaning assigned by Chapter 773.

(6) "General revenue levy" means:

(A) the property taxes imposed by a county that are not dedicated to the construction and maintenance of farm-to-market roads or to flood control under Article VIII, Section 1-a, of the Texas Constitution or that are not dedicated to the further maintenance of the public roads under Article VIII, Section 9, of the Texas Constitution; and

(B) the sales and use tax revenue to be received by the county during the calendar year in which the state fiscal year begins under Chapter 323, Tax Code, as determined under Section 26.041(d), Tax Code.

(7) "Governmental entity" includes a county, municipality, or other political subdivision of the state, but does not include a hospital district or hospital authority.

(8) "Hospital district" means a hospital district created under the authority of Article IX, Sections 4–11, of the Texas Constitution.

(9) "Mandated provider" means a person who provides health care services, is selected by a county, public hospital, or hospital district, and agrees to provide health care services to eligible residents.

(10) "Medicaid" means the medical assistance program administered by the Texas Department of Human Services under Chapter 32, Human Resources Code.

(11) "Public hospital" means a hospital owned, operated, or leased by a governmental entity.

(12) "Service area" means the geographic region in which a governmental entity, public hospital, or hospital district has a legal obligation to provide health care services. (V.A.C.S. Art. 4438f, Sec. 1.02.)

Sec. 61.003. RESIDENCE. (a) For purposes of this chapter, a person is presumed to be a resident of the governmental entity in which the person's home or fixed place of habitation to which the person intends to return after a temporary absence is located. However, if a person's home or fixed place of habitation is located in a hospital district, the person is presumed to be a resident of that hospital district.

(b) If a person does not have a residence, the person is a resident of the governmental entity or hospital district in which the person intends to reside.

(c) Intent to reside may be evidenced by any relevant information, including:

(1) mail addressed to the person or to the person's spouse or children if the spouse or children live with the person;

(2) voting records;

(3) automobile registration;

(4) Texas driver's license or other official identification;

(5) enrollment of children in a public or private school; or

(6) payment of property tax.

(d) A person is not considered a resident of a governmental entity or hospital district if the person attempted to establish residence solely to obtain health care assistance.

(e) The burden of proving intent to reside is on the person requesting assistance.

(f) For purposes of this chapter, a person who is an inmate or resident of a state school or institution operated by the Texas Department of Corrections, Texas Department of Mental Health and Mental Retardation, Texas Youth Commission, Texas School for the Blind, Texas School for the Deaf, or any other state agency or who is an inmate, patient, or resident of a school or institution operated by a federal agency is not considered a resident of a hospital district or of any governmental entity except the state or federal government. (V.A.C.S. Art. 4438f, Sec. 1.03.)

Sec. 61.004. RESIDENCE DISPUTE. (a) If a provider of assistance and a governmental entity or hospital district cannot agree on a person's residence, the provider or the governmental entity or hospital district may submit the matter to the department.

(b) The provider of assistance and the governmental entity or hospital district shall submit all relevant information to the department.

(c) If the department determines that another governmental entity or hospital district may be involved in the dispute, the department shall notify the governmental entity or hospital district and allow the governmental entity or hospital district to respond.

(d) From the information submitted, the department shall determine the person's residence and shall notify each governmental entity or hospital district and the provider of assistance of the decision and the reasons for the decision.

(e) If a governmental entity, hospital district, or provider of assistance does not agree with the department's decision, the governmental entity, hospital district, or provider of assistance may file an appeal with the department. The appeal must be filed not later than the 30th day after the date on which the governmental entity, hospital district, or provider of assistance receives notice of the decision.

(f) The department shall issue a final decision not later than the 21st day after the date on which the appeal is filed.

(g) A governmental entity, hospital district, or provider of assistance may appeal the final order of the department under the Administrative Procedure and Texas Register Act

(Article 6252-13a, Vernon's Texas Civil Statutes), using the substantial evidence rule on appeal.

(h) Service may not be denied pending an administrative or judicial review of residence. (V.A.C.S. Art. 4438f, Sec. 1.04.)

**Sec. 61.005. CONTRIBUTION TOWARD COST OF ASSISTANCE.** (a) A county, public hospital, or hospital district may request an eligible resident receiving health care assistance under this chapter to contribute a nominal amount toward the cost of the assistance.

(b) The county, public hospital, or hospital district may not deny or reduce assistance to an eligible resident who cannot or refuses to contribute. (V.A.C.S. Art. 4438f, Sec. 1.05.)

**Sec. 61.006. STANDARDS AND PROCEDURES.** (a) The department shall establish eligibility standards and application, documentation, and verification procedures for counties to use in determining eligibility under this chapter. The standards and procedures must be consistent with the standards and procedures used by the department to determine eligibility in the AFDC-Medicaid program. The department shall also define the services and establish the payment standards for the categories of services listed in Section 61.028(a) in accordance with department rules relating to the AFDC-Medicaid program.

(b) The department may simplify the AFDC-Medicaid standards and procedures used by the department as necessary to provide efficient county administration. In establishing simplified standards and procedures for county administration, the department may not adopt a standard or procedure that is more restrictive than the AFDC-Medicaid standards or procedures.

(c) The department shall ensure that each person who meets the basic income and resources requirements for AFDC payments but who is categorically ineligible for AFDC will be eligible for assistance under Subchapter B. The department by rule shall also provide that a person who receives or is eligible to receive AFDC, SSI, or Medicaid benefits is not eligible for assistance under Subchapter B even if the person has exhausted a part or all of that person's AFDC, SSI, or Medicaid benefits.

(d) The department shall notify each county and public hospital of any change to AFDC or Medicaid guidelines that affect the provision of services under this chapter and shall amend the rules adopted under this chapter to reflect the changes made in the AFDC or Medicaid programs. (V.A.C.S. Art. 4438f, Secs. 1.06(a), (b), (g).)

**Sec. 61.007. INFORMATION PROVIDED BY APPLICANT.** The department by rule shall require each applicant to provide at least the following information:

- (1) the applicant's full name and address;
- (2) the applicant's social security number, if available;
- (3) the number of persons in the applicant's household, excluding persons receiving AFDC, SSI, or Medicaid benefits;
- (4) the applicant's county of residence;
- (5) the existence of insurance coverage or other hospital or health care benefits for which the applicant is eligible;
- (6) any transfer of title to real property that the applicant has made in the preceding 24 months;
- (7) the applicant's annual household income, excluding the income of any household member receiving AFDC, SSI, or Medicaid benefits; and
- (8) the amount of the applicant's liquid assets and the equity value of the applicant's car and real property. (V.A.C.S. Art. 4438f, Sec. 1.06(c).)

**Sec. 61.008. ELIGIBILITY RULES.** (a) The department by rule shall provide that in determining eligibility:

- (1) a county may not consider the value of the applicant's homestead;
- (2) a county must consider the equity value of a car that is in excess of the amount exempted under department guidelines as a resource;

(3) a county must subtract the work-related and child care expense allowance allowed under department guidelines;

(4) a county must consider as a resource real property other than a homestead and, except as provided by Subsection (b), must count that property in determining eligibility; and

(5) if an applicant transferred title to real property for less than market value to become eligible for assistance under this chapter, the county may not credit toward eligibility for state assistance an expenditure for that applicant made during a two-year period beginning on the date on which the property is transferred.

(b) A county may disregard the applicant's real property if the applicant agrees to an enforceable obligation to reimburse the county for all or part of the benefits received under this chapter. The county and the applicant may negotiate the terms of the obligation. (V.A.C.S. Art. 4438f, Secs. 1.06(d)-(f).)

Sec. 61.009. DUTIES OF TEXAS DEPARTMENT OF HEALTH. (a) The Texas Department of Health shall establish uniform reporting requirements for governmental entities that own, operate, or lease public hospitals providing assistance under this chapter and for counties.

(b) The reports must include information relating to:

(1) expenditures for and nature of hospital and health care provided to eligible residents;

(2) eligibility standards and procedures established by counties and governmental entities that own, operate, or lease public hospitals; and

(3) relevant characteristics of eligible residents. (V.A.C.S. Art. 4438f, Sec. 1.07.)

Sec. 61.010. DEDICATED TAX REVENUES. If the governing body of a governmental entity adopts a property tax rate that exceeds the rate calculated under Section 26.04, Tax Code, by more than eight percent, and if a portion of the tax rate was designated to provide revenue for indigent health care services required by this chapter, the revenue produced by the portion of the tax rate designated for that purpose may be spent only to provide indigent health care services. (V.A.C.S. Art. 4438f, Secs. 4.04, 12.04.)

[Sections 61.011-61.020 reserved for expansion]

#### SUBCHAPTER B. COUNTY RESPONSIBILITY FOR PERSONS NOT RESIDING IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.021. APPLICATION OF SUBCHAPTER. This subchapter applies to health care services and assistance provided to a person who does not reside in the service area of a public hospital or hospital district. (V.A.C.S. Art. 4438f, Sec. 2.01.)

Sec. 61.022. COUNTY OBLIGATION. (a) A county shall provide health care assistance as prescribed by this subchapter to each of its eligible county residents.

(b) The county is the payor of last resort and shall provide assistance only if other adequate public or private sources of payment are not available. (V.A.C.S. Art. 4438f, Sec. 2.02.)

Sec. 61.023. GENERAL ELIGIBILITY PROVISIONS. (a) A person is eligible for assistance under this subchapter if:

(1) the person does not reside in the service area of a public hospital or hospital district;

(2) the person meets the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; and

(3) no other adequate source of payment exists.

(b) A county may use a less restrictive standard of eligibility for residents than prescribed by Subsection (a).



(c) A county may contract with the department to perform eligibility determination services. (V.A.C.S. Art. 4438f, Secs. 1.06(h) (part); 2.03(a), (b) (part), (c).)

**Sec. 61.024. COUNTY APPLICATION PROCEDURE.** (a) A county shall adopt an application procedure.

(b) The county may use the application, documentation, and verification procedures established by the department under Sections 61.006 and 61.007 or may use a less restrictive application, documentation, or verification procedure.

(c) Not later than the beginning of a state fiscal year, the county shall specify the procedure it will use during that fiscal year to verify eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the application procedure.

(d) The county shall furnish an applicant with written application forms.

(e) On request of an applicant, the county shall assist the applicant in filling out forms and completing the application process. The county shall inform an applicant of the availability of assistance.

(f) The county shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(g) The county shall explain to the applicant that if the application is approved, the applicant must report to the county any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The county shall explain the possible penalties for failure to report a change.

(h) The county shall review each application and shall accept or deny the application not later than the 14th day after the date on which the county receives the completed application.

(i) The county shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(j) The county shall provide an applicant written notification of the county's decision. If the county denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(k) The county shall maintain the records relating to an application at least until the end of the third complete state fiscal year following the date on which the application is submitted.

(l) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility. (V.A.C.S. Art. 4438f, Secs. 1.06(h) (part); 2.04(a), (b) (part), (c)-(l).)

**Sec. 61.025. COUNTY AGREEMENT WITH MUNICIPALITY.** (a) This section applies to a municipality that has a population of less than 15,000, that owns, operates, or leases a hospital, and that has made a transfer agreement before August 31, 1989, by the adoption of an ordinance, resolution, or order by the commissioners court and the governing body of the municipality.

(b) The transfer agreement may transfer partial responsibility to the county under which the municipal hospital continues to provide health care services to eligible residents of the municipality, but the county agrees to assume the hospital's responsibility to reimburse other providers who provide:

(1) mandatory inpatient or outpatient services to eligible residents that the municipal hospital cannot provide; or

(2) emergency services to eligible residents.

(c) The hospital is a public hospital for the purposes of this chapter, but it does not have a responsibility to provide reimbursement for services it cannot provide or for emergency services provided in another facility.

(d) Expenditures made by the county under Subsection (b) may be credited toward eligibility for state assistance under this subchapter if the person who received the health care services meets the eligibility standards established under Sections 61.006 and 61.008

and would have been eligible for assistance under the county program if the person had not resided in a public hospital's service area.

(e) The agreement to transfer partial responsibility to a county under this section must take effect on a September 1 that occurs not later than two years after the date on which the county and municipality agree to the transfer. A county and municipality may not revoke or amend an agreement made under this section.

(f) The county, the hospital, and any other entity in the county that provides services under this chapter shall adopt coordinated application and eligibility verification procedures. In establishing the coordinated procedures, the county and other entities shall focus on facilitating the efficient and timely referral of residents to the proper entity in the county. In addition, the procedures must comply with the requirements of Sections 61.024 and 61.053. Expenditures made by a county in establishing the coordinated procedures prescribed by this section may not be credited toward eligibility for state assistance under this subchapter. (V.A.C.S. Art. 4438f, Secs. 2.011(a)-(e).)

Sec. 61.026. REVIEW OF ELIGIBILITY. A county shall review at least once every six months the eligibility of a resident for whom an application for assistance has been granted and who has received assistance under this chapter. (V.A.C.S. Art. 4438f, Sec. 2.05.)

Sec. 61.027. CHANGE IN ELIGIBILITY STATUS. (a) An eligible resident must report any change in income or resources that might affect the resident's eligibility. The report must be made not later than the 14th day after the date on which the change occurs.

(b) If an eligible resident fails to report a change in income or resources as prescribed by this section and the change has made the resident ineligible for assistance under the standards adopted by the county, the resident is liable for any benefits received while ineligible. This section does not affect a person's criminal liability under any relevant statute. (V.A.C.S. Art. 4438f, Sec. 2.06.)

Sec. 61.028. MANDATORY HEALTH CARE SERVICES. (a) A county shall, in accordance with department rules adopted under Section 61.006, provide:

- (1) inpatient and outpatient hospital services;
- (2) rural health clinics;
- (3) laboratory and X-ray services;
- (4) family planning services;
- (5) physician services;
- (6) payment for not more than three prescription drugs a month; and
- (7) skilled nursing facility services, regardless of the patient's age.

(b) The county may provide additional health care services, but may not credit the assistance toward eligibility for state assistance. (V.A.C.S. Art. 4438f, Sec. 3.01.)

Sec. 61.029. PROVISION OF HEALTH CARE SERVICES. (a) A county may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The county may affiliate with other governmental entities or with a public hospital or hospital district to provide regional administration and delivery of health care services. (V.A.C.S. Art. 4438f, Sec. 3.02.)

Sec. 61.030. MANDATED PROVIDER. A county may select one or more providers of health care services. The county may require eligible county residents to obtain care from a mandated provider except:

- (1) in an emergency;
- (2) when medically inappropriate; or
- (3) when care is not available. (V.A.C.S. Art. 4438f, Sec. 3.03.)

Sec. 61.031. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES. (a) A county may require any provider, including a mandated provider, to obtain approval

from the county before providing nonemergency health care services to an eligible county resident.

(b) If the county does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects may be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that health care services have been or will be provided to the patient. The notice shall be made:

(1) by telephone as soon as possible after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the third working day after the date on which the provider determines the patient's county of residence.

(c) If the provider knows that the patient's county of residence has selected a mandated provider or if, after contacting the patient's county of residence, that county requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the patient's county of residence receives sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence. (V.A.C.S. Art. 4438f, Sec. 3.04.)

**Sec. 61.032. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES.** (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the patient's county of residence that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone as soon as possible after the provider determines the patient's county of residence; and

(2) by mail postmarked not later than the third working day after the date on which the provider determines the patient's county of residence.

(b) The provider shall attempt to determine the patient's county of residence when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the county of which the patient is presumed to be a resident in determining if the patient is an eligible resident of that county.

(d) Not later than the 14th day after the date on which the patient's county of residence receives notification and sufficient information to determine eligibility, the county shall determine if the patient is eligible for assistance from that county. If the county does not determine the patient's eligibility within that period, the patient is considered to be eligible. The county shall notify the provider of its decision.

(e) If the county and the provider disagree on the patient's residence, the county or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the patient's county of residence. (V.A.C.S. Art. 4438f, Sec. 3.05.)

**Sec. 61.033. PAYMENT FOR SERVICES.** (a) To the extent prescribed by this chapter, a county is liable for health care services provided under this subchapter by any provider, including a public hospital or hospital district, to an eligible county resident. A county is not liable for payment for health care services provided:

(1) by any provider, including a public hospital or hospital district, to a resident of that county who resides in the service area of a public hospital or hospital district; or

(2) to an eligible resident of that county who does not reside within the service area of a public hospital or hospital district by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) To the extent prescribed by this chapter, if another source of payment does not adequately cover a health care service a county provides to an eligible county resident, the county shall pay for or provide the health care service for which other payment is not available. (V.A.C.S. Art. 4438f, Sec. 4.01.)

Sec. 61.034. PAYMENT STANDARDS FOR MANDATORY HEALTH CARE SERVICES. (a) A county is not liable for the cost of a mandatory health care service that is in excess of the payment standards for that service established by the department under Section 61.006.

(b) A county may contract with a provider of assistance to provide a health care service at a rate below the payment standard set by the department. (V.A.C.S. Art. 4438f, Sec. 4.02.)

Sec. 61.035. LIMITATION OF COUNTY LIABILITY. The maximum county liability for each state fiscal year for health care services provided by all assistance providers, including a hospital and a skilled nursing facility, to each eligible county resident is:

(1) \$30,000; or

(2) the payment of 30 days of hospitalization or treatment in a skilled nursing facility, or both, or \$30,000, whichever occurs first, if the county provides hospital or skilled nursing facility services to the resident. (V.A.C.S. Art. 4438f, Sec. 4.03.)

Sec. 61.036. DETERMINATION OF ELIGIBILITY FOR PURPOSES OF STATE ASSISTANCE. (a) A county may not credit an expenditure made to assist an eligible county resident toward eligibility for state assistance under this subchapter unless the county complies with the department's application, documentation, and verification procedures.

(b) A county may not credit an expenditure for an applicant toward eligibility for state assistance if the applicant does not meet the department's eligibility standards. (V.A.C.S. Art. 4438f, Secs. 1.06(h) (part); 2.03(b) (part); 2.04(b) (part); 5.01.)

Sec. 61.037. COUNTY ELIGIBILITY FOR STATE ASSISTANCE. (a) The department may distribute funds as provided by this subchapter to eligible counties to assist the counties in providing mandatory health care services to their eligible county residents.

(b) Except as provided by Subsection (c) or (d), to be eligible for state assistance, a county must:

(1) spend in a state fiscal year at least 10 percent of the county general revenue levy for that year to provide mandatory health care services to its eligible county residents who qualify for assistance under Section 61.006; and

(2) notify the department, not later than the seventh day after the date on which the county reaches the expenditure level, that the county has spent at least eight percent of the applicable county general revenue levy for that year to provide mandatory health care services to its eligible county residents who qualify for assistance under Section 61.006.

(c) If a county and a health care provider signed a contract on or before January 1, 1985, under which the provider agrees to furnish a certain level of health care services to indigent persons, the value of services furnished in a state fiscal year under the contract is included as part of the computation of a county expenditure under this section if the value of services does not exceed the payment rate established by the department under Section 61.006.

(d) If a hospital district is located in part but not all of a county, that county's appraisal district shall determine the taxable value of the property located inside the county but outside the hospital district. In determining eligibility for state assistance, that county

shall consider only the county general revenue levy resulting from the property located outside the hospital district. A county is eligible for state assistance if:

- (1) the county spends in a state fiscal year at least 10 percent of the county general revenue levy for that year resulting from the property located outside the hospital district to provide mandatory health care services to its eligible county residents who qualify for assistance under Section 61.006; and
  - (2) the county complies with the other requirements of this subchapter.
- (e) If a county anticipates that it will reach the 10 percent expenditure level, the county must notify the department as soon as possible before the anticipated date on which the county will reach the level.
- (f) The county must give the department all necessary information so that the department can determine if the county meets the requirements of Subsection (b) or (d).
- (g) In determining eligibility for state assistance during the state fiscal years beginning on September 1, 1987, 1988, or 1989, the county shall subtract from its general revenue levy for that year the amount of revenue that in the preceding year was dedicated to provide mandatory indigent health care services. During the 1987, 1988, or 1989 state fiscal year, a county is eligible for state assistance if the county spends, as prescribed by this chapter, an amount equal to at least 10 percent of the amount computed by subtracting from the county general revenue levy for that year the amount that in the preceding year was dedicated to provide mandatory indigent health care services. This subsection expires September 1, 1990. (V.A.C.S. Art. 4438f, Secs. 5.02(a)-(e), (i).)

**Sec. 61.038. DISTRIBUTION OF ASSISTANCE FUNDS.** (a) If the department determines that a county is eligible for assistance, the department shall distribute funds appropriated to the department from the indigent health care assistance fund or any other available fund to the county to assist the county in providing mandatory health care services to its eligible county residents who qualify for assistance under Section 61.006.

(b) State funds provided under this section to a county must be equal to at least 80 percent of the actual payment for mandatory health care services for the county's eligible residents during the remainder of the state fiscal year after the 10 percent expenditure level is reached. (V.A.C.S. Art. 4438f, Secs. 5.02(f), (g).)

**Sec. 61.039. FAILURE TO PROVIDE STATE ASSISTANCE.** If the department fails to provide assistance to an eligible county as prescribed by Section 61.038, the county is not liable for payments for health care services provided to its eligible county residents after the county reaches the 10 percent expenditure level. (V.A.C.S. Art. 4438f, Sec. 5.02(h).)

**Sec. 61.040. TAX INFORMATION.** (a) The State Property Tax Board shall give the department information relating to the taxable value of property taxable by each county and each county's applicable general revenue tax levy for the relevant period.

(b) The comptroller shall give the department information relating to the amount of sales and use tax revenue received by each county for the relevant period. (V.A.C.S. Art. 4438f, Sec. 5.03.)

**Sec. 61.041. COUNTY REPORTING.** (a) The department shall establish reporting requirements for a county seeking state assistance and establish procedures necessary to determine if the county is eligible for state assistance.

(b) The department shall establish requirements relating to:

(1) documentation required to verify the eligibility of residents to whom the county provides assistance; and

(2) county expenditures for mandatory health care services.

(c) The department may audit county records to determine if the county is eligible for state assistance. (V.A.C.S. Art. 4438f, Sec. 5.04.)

[Sections 61.042–61.050 reserved for expansion]

## SUBCHAPTER C. PERSONS WHO RESIDE IN AN AREA SERVED BY A PUBLIC HOSPITAL OR HOSPITAL DISTRICT

Sec. 61.051. APPLICATION OF SUBCHAPTER. This subchapter applies to health care services and assistance provided to a person who resides in the service area of a public hospital or hospital district. (V.A.C.S. Art. 4438f, Sec. 10.01.)

Sec. 61.052. GENERAL ELIGIBILITY PROVISIONS. (a) A public hospital shall provide health care assistance to each eligible resident in its service area who meets:

(1) the basic income and resources requirements established by the department under Sections 61.006 and 61.008 and in effect when the assistance is requested; or

(2) a less restrictive income and resources standard adopted by the hospital serving the area in which the person resides.

(b) If a public hospital used an income and resources standard during the operating year that ended before January 1, 1985, that was less restrictive than the income and resources requirements established by the department under Section 61.006, the hospital shall adopt that standard to determine eligibility under this subchapter.

(c) If a public hospital did not use an income and resources standard during the operating year that ended before January 1, 1985, but had a Hill-Burton obligation during part of that year, the hospital shall adopt the standard the hospital used to meet the Hill-Burton obligation to determine eligibility under this subchapter.

(d) A public hospital established after September 1, 1985, shall provide health care services to each resident who meets the income and resources requirements established by the department under Sections 61.006 and 61.008, or the hospital may adopt a less restrictive income and resources standard. The hospital may adopt a less restrictive income and resources standard at any time.

(e) If because of a change in the income and resources requirements established by the department under Sections 61.006 and 61.008 the standard adopted by a public hospital becomes stricter than the requirements established by the department, the hospital shall change its standard to at least comply with the requirements established by the department.

(f) A public hospital may contract with the department to perform eligibility determination services. (V.A.C.S. Art. 4438f, Secs. 10.02(a) (part), (b)-(g).)

Sec. 61.053. APPLICATION PROCEDURE. (a) A public hospital or hospital district shall adopt an application procedure.

(b) Not later than the beginning of a public hospital's or hospital district's operating year, the hospital or district shall specify the procedure it will use during the operating year to determine eligibility and the documentation required to support a request for assistance and shall make a reasonable effort to notify the public of the procedure.

(c) The public hospital or hospital district shall furnish an applicant with written application forms.

(d) On request of an applicant, the public hospital or hospital district shall assist an applicant in filling out forms and completing the application process. The hospital or district shall inform an applicant of the availability of assistance.

(e) The public hospital or hospital district shall require an applicant to sign a written statement in which the applicant swears to the truth of the information supplied.

(f) The public hospital or hospital district shall explain to the applicant that if the application is approved, the applicant must report to the hospital or district any change in income or resources that might affect the applicant's eligibility. The report must be made not later than the 14th day after the date on which the change occurs. The hospital or district shall explain the possible penalties for failure to report a change.

(g) The public hospital or hospital district shall review each application and shall accept or deny the application not later than the 14th day after the date on which the hospital or district receives the completed application.

(h) The public hospital or hospital district shall provide a procedure for reviewing applications and for allowing an applicant to appeal a denial of assistance.

(i) The public hospital or hospital district shall provide an applicant written notification of the hospital's or district's decision. If the hospital or district denies assistance, the written notification shall include the reason for the denial and an explanation of the procedure for appealing the denial.

(j) The public hospital or hospital district shall maintain the records relating to an application for at least three years after the date on which the application is submitted.

(k) If an applicant is denied assistance, the applicant may resubmit an application at any time circumstances justify a redetermination of eligibility. (V.A.C.S. Art. 4438f, Sec. 10.03.)

**Sec. 61.054. MANDATORY HEALTH CARE SERVICES PROVIDED BY A PUBLIC HOSPITAL.** (a) A public hospital shall provide the inpatient and outpatient hospital services a county is required to provide under Section 61.028(a)(1).

(b) If a public hospital provided additional health care services to eligible residents during the operating year that ended before January 1, 1985, the hospital shall continue to provide those services.

(c) A public hospital may provide additional health care services. (V.A.C.S. Art. 4438f, Secs. 11.01(a)-(c).)

**Sec. 61.055. SERVICES PROVIDED BY HOSPITAL DISTRICTS.** A hospital district shall provide the health care services required under the Texas Constitution and the statute creating the district. (V.A.C.S. Art. 4438f, Sec. 11.02.)

**Sec. 61.056. PROVISION OF HEALTH CARE SERVICES.** (a) A public hospital or hospital district may arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents.

(b) The public hospital or hospital district may affiliate with other public hospitals or hospital districts or with a governmental entity to provide regional administration and delivery of health care services. (V.A.C.S. Art. 4438f, Sec. 11.03.)

**Sec. 61.057. MANDATED PROVIDER.** A public hospital may select one or more providers of health care services. A public hospital may require eligible residents to obtain care from a mandated provider except:

- (1) in an emergency;
- (2) when medically inappropriate; or
- (3) when care is not available. (V.A.C.S. Art. 4438f, Sec. 11.04.)

**Sec. 61.058. NOTIFICATION OF PROVISION OF NONEMERGENCY SERVICES.** (a) A public hospital may require any provider, including a mandated provider, to obtain approval from the hospital before providing nonemergency health care services to an eligible resident in the hospital's service area.

(b) If the public hospital does not require prior approval and a provider delivers or will deliver nonemergency health care services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that health care services have been or will be provided to the patient. The notice shall be made:

- (1) by telephone as soon as possible after the provider determines that the patient resides in the hospital's service area; and
- (2) by mail postmarked not later than the third working day after the date on which the provider determines that the patient resides in the hospital's service area.

(c) If the provider knows that the public hospital serving the area in which the patient resides has selected a mandated provider or if, after contacting the hospital, the hospital requests that the patient be transferred to a mandated provider, the provider shall transfer the patient to the mandated provider unless it is medically inappropriate to do so.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If a provider delivers nonemergency health care services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides. (V.A.C.S. Art. 4438f, Secs. 11.05(a)-(g).)

Sec. 61.059. NOTIFICATION OF PROVISION OF EMERGENCY SERVICES. (a) If a nonmandated provider delivers emergency services to a patient who the provider suspects might be eligible for assistance under this subchapter, the provider shall notify the hospital that emergency services have been or will be provided to the patient. The notice shall be made:

(1) by telephone as soon as possible after the provider determines that the patient resides in the hospital's service area; and

(2) by mail postmarked not later than the third working day after the date on which the provider determines that the patient resides in the hospital's service area.

(b) The provider shall attempt to determine if the patient resides in a public hospital's service area when the patient first receives services.

(c) The provider, the patient, and the patient's family shall cooperate with the public hospital in determining if the patient is an eligible resident of the hospital's service area.

(d) Not later than the 14th day after the date on which the public hospital receives sufficient information to determine eligibility, the hospital shall determine if the patient is eligible for assistance from the hospital. If the hospital does not determine the patient's eligibility within that period, the patient is considered to be eligible. The hospital shall notify the provider of its decision.

(e) If the public hospital and the provider disagree on the patient's residence, the hospital or the provider may submit the matter to the department as provided by Section 61.004.

(f) If a provider delivers emergency services to a patient who is eligible for assistance under this subchapter and fails to comply with this section, the provider is not eligible for payment for the services from the public hospital serving the area in which the patient resides.

(g) If emergency services are customarily available at a facility operated by a public hospital, that hospital is not liable for emergency services furnished to an eligible resident by another provider in the area the hospital has a legal obligation to serve. (V.A.C.S. Art. 4438f, Secs. 11.06(a)-(j).)

Sec. 61.060. PAYMENT FOR SERVICES. (a) To the extent prescribed by this chapter, a public hospital is liable for health care services provided under this subchapter by any provider, including another public hospital, to an eligible resident in the hospital's service area. A public hospital is not liable for payment for health care services provided to:

(1) a person who does not reside in the hospital's service area; or

(2) an eligible resident of the hospital's service area by a hospital having a Hill-Burton or state-mandated obligation to provide free services and considered to be in noncompliance with the requirements of the Hill-Burton or state-mandated obligation.

(b) A hospital district is liable for health care services as provided by the Texas Constitution and the statute creating the district.

(c) A public hospital is the payor of last resort under this subchapter and is not liable for payment or assistance to an eligible resident in the hospital's service area if any other public or private source of payment is available.

(d) If another source of payment does not adequately cover a health care service a public hospital provides to an eligible resident of the hospital's service area, the hospital



shall pay for or provide the health care service for which other payment is not available. (V.A.C.S. Art. 4438f, Sec. 12.01.)

Sec. 61.061. **PAYMENT RATES AND LIMITS.** The payment rates and limits prescribed by Sections 61.034 and 61.035 that relate to county services apply to inpatient and outpatient hospital services a public hospital is required to provide if:

(1) the hospital cannot provide the services or emergency services that are required; and

(2) the services are provided by an entity other than the hospital. (V.A.C.S. Art. 4438f, Sec. 12.02(a).)

Sec. 61.062. **RESPONSIBILITY OF GOVERNMENTAL ENTITY.** A governmental entity that owns, operates, or leases a public hospital shall provide sufficient funding to the hospital to provide mandatory health care assistance. (V.A.C.S. Art. 4438f, Secs. 10.02(a) (part), 12.03.)

Sec. 61.063. **PROCEDURE TO CHANGE ELIGIBILITY STANDARDS OR SERVICES PROVIDED.** (a) A public hospital may not change its eligibility standards to make the standards more restrictive and may not reduce the health care services it offers unless it complies with the requirements of this section.

(b) Not later than the 90th day before the date on which a change would take effect, the public hospital must publish notice of the proposed change in a newspaper of general circulation in the hospital's service area and set a date for a public hearing on the change. The published notice must include the date, time, and place of the public meeting. The notice is in addition to the notice required by the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).

(c) Not later than the 30th day before the date on which the change would take effect, the public hospital must conduct a public meeting to discuss the change. The meeting must be held at a convenient time in a convenient location in the hospital's service area. Members of the public may testify at the meeting.

(d) If, based on the public testimony and on other relevant information, the governing body of the hospital finds that the change would not have a detrimental effect on access to health care for the residents the hospital serves, the hospital may adopt the change. That finding must be formally adopted. (V.A.C.S. Art. 4438f, Sec. 13.02.)

Sec. 61.064. **TRANSFER OF A PUBLIC HOSPITAL.** (a) A governmental entity that owns, operates, or leases a public hospital and that closes, sells, or leases the hospital:

(1) has the obligation to provide mandatory health care assistance under this chapter;

(2) shall adopt the eligibility standards that the hospital was or would have been required to adopt; and

(3) shall provide the same services the hospital was or would have been required to provide under this chapter on the date of the closing, sale, or lease.

(b) If the governmental entity owned, operated, or leased the public hospital before January 1, 1985, and sold or leased the hospital on or after that date but before September 1, 1986, the obligation retained is the obligation the hospital would have had on September 1, 1986.

(c) Notwithstanding Subsections (a) and (b), if a hospital district that owns, operates, or leases a public hospital dissolves, the district has no responsibility under this chapter. If on or before dissolution the district sold or transferred its hospital to another governmental entity, that governmental entity assumes the district's responsibility to provide health care services in accordance with this subchapter. If the district did not sell or transfer the hospital to another governmental entity, the county shall provide health care services to the residents of the district's service area in accordance with Subchapter B.

(d) This section does not apply to a governmental entity that sold or leased a public hospital to a hospital district or a hospital authority on or after January 1, 1985, but before September 1, 1986. If a governmental entity sold or leased a hospital as provided by this subsection, the hospital ceased being a public hospital for the purposes of this

chapter on the date it was sold or leased, and neither the governmental entity nor the hospital district or hospital authority has any responsibility under this chapter. (V.A.C.S. Art. 4438f, Sec. 14.01 (as amended by Chapters 442 and 457, Acts 70th Leg., R.S., 1987).)

[Sections 61.065–61.080 reserved for expansion]

#### SUBCHAPTER D. INDIGENT HEALTH CARE ASSISTANCE FUND

Sec. 61.081. INDIGENT HEALTH CARE ASSISTANCE FUND. (a) The indigent health care assistance fund is in the state treasury.

(b) The indigent health care assistance fund may be appropriated only for:

- (1) paying money to a county under Section 61.038;
- (2) providing health care assistance to indigents by public hospitals and hospital districts to be allocated as provided by law and for reimbursing providers who furnish a disproportionate amount of health care assistance to indigents;
- (3) providing health care assistance through any program of medical or health care assistance administered by the department, including social security programs for children, handicapped or disabled persons, and the aged;
- (4) providing maternal and infant health improvement services and perinatal services for low income individuals under Chapter 32 (Maternal and Infant Health Improvement Act) or under any other law providing for those health care services;
- (5) providing primary health care services for low income individuals under Chapter 31 (Texas Primary Health Care Services Act) or under any other law providing for those health care services;
- (6) preventing and treating cancer and providing medical care for cancer victims;
- (7) coordinating, implementing, and administering health care programs for low income or indigent individuals; and
- (8) providing any other health care assistance, preventive health, or nutrition program for low income or indigent individuals authorized by law. (V.A.C.S. Art. 4438f, Secs. 31.01, 31.02.)

[Chapters 62–80 reserved for expansion]

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**SUBTITLE D. PREVENTION, CONTROL, AND REPORTS OF DISEASES**

**CHAPTER 81. COMMUNICABLE DISEASES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 81.001. **SHORT TITLE.** This chapter may be cited as the Communicable Disease Prevention and Control Act. (V.A.C.S. Art. 4419b-1, Sec. 1.01.)

Sec. 81.002. **RESPONSIBILITY OF STATE AND PUBLIC.** The state has a duty to protect the public health. Each person shall act responsibly to prevent and control communicable disease. (V.A.C.S. Art. 4419b-1, Sec. 1.02 (part).)

Sec. 81.003. **DEFINITIONS.** In this chapter:

(1) "Communicable disease" means an illness that occurs through the transmission of an infectious agent or its toxic products from a reservoir to a susceptible host, either directly, as from an infected person or animal, or indirectly through an intermediate plant or animal host, a vector, or the inanimate environment.

(2) "Health authority" means a physician appointed as such under Chapter 121 (Local Public Health Reorganization Act).

(3) "Health professional" means an individual whose:

(A) vocation or profession is directly or indirectly related to the maintenance of the health of another individual or of an animal; and

(B) duties require a specified amount of formal education and may require a special examination, certificate or license, or membership in a regional or national association.

(4) "Local health department" means a department created under Chapter 121 (Local Public Health Reorganization Act).

(5) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(6) "Public health district" means a district created under Chapter 121 (Local Public Health Reorganization Act).

(7) "Regional director" means a physician appointed as such under Chapter 121 (Local Public Health Reorganization Act).

(8) "Reportable disease" includes only a disease or condition included in the list of reportable diseases.

(9) "Resident of this state" means a person who:

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

(B) is not in the state for temporary purposes; and

(C) intends to make a home in this state, which may be demonstrated by the presence of personal effects at a specific abode in the state; employment in the state; possession of a Texas driver's license, motor vehicle registration, voter registration, or other similar documentation; or other pertinent evidence.

(10) "School authority" means:

(A) the superintendent of a public school system or the superintendent's designee; or

(B) the principal or other chief administrative officer of a private school.

(11) "Sexually transmitted disease" means an infection, with or without symptoms or clinical manifestations, that may be transmitted from one person to another during, or as a result of, sexual relations between two persons and that may:

(A) produce a disease in, or otherwise impair the health of, either person; or

(B) cause an infection or disease in a fetus in utero or a newborn. (V.A.C.S. Art. 4419b-1, Sec. 1.04 (part).)

Sec. 81.004. ADMINISTRATION OF CHAPTER. (a) The commissioner is responsible for the general statewide administration of this chapter.

(b) The board may adopt rules necessary for the effective administration and implementation of this chapter.

(c) A designee of the board may exercise a power granted to or perform a duty imposed on the board under this chapter except as otherwise required by law. (V.A.C.S. Art. 4419b-1, Secs. 2.01; 2.02(a), (d).)

Sec. 81.005. CONTRACTS. The department may enter into contracts or agreements with persons as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services. (V.A.C.S. Art. 4419b-1, Sec. 2.03(a).)

Sec. 81.006. FUNDS. The department may seek, receive, and spend appropriations, grants, fees, or donations for the purpose of identifying, reporting, preventing, or controlling communicable diseases or conditions determined to be injurious or to be a threat to the public health subject to any limitations or conditions prescribed by the legislature. (V.A.C.S. Art. 4419b-1, Sec. 2.03(b).)

Sec. 81.007. LIMITATION ON LIABILITY. A private individual performing duties in compliance with orders or instructions of the department or a health authority issued under this chapter is not liable for the death of or injury to a person or for damage to property, except in a case of wilful misconduct or gross negligence. (V.A.C.S. Art. 4419b-1, Sec. 5.02.)

Sec. 81.008. COMMUNICABLE DISEASE IN ANIMALS; EXCHANGE OF INFORMATION. The Texas Animal Health Commission and the Texas A&M University Veterinary Diagnostic Laboratory shall each adopt by rule a memorandum of understanding with the department to exchange information on communicable diseases in animals. (V.A.C.S. Art. 4419b-1, Sec. 3.01(e).)

Sec. 81.009. EXEMPTION FROM MEDICAL TREATMENT. (a) This chapter does not authorize or require the medical treatment of an individual who chooses treatment by prayer or spiritual means as part of the tenets and practices of a recognized church of which the individual is an adherent or member. However, the individual may be isolated or quarantined in an appropriate facility and shall obey the rules, orders, and instructions of the department or health authority while in isolation or quarantine.

(b) An exemption from medical treatment under this section does not apply during an emergency or an area quarantine or after the issuance by the governor of an executive order or a proclamation under Chapter 418, Government Code (Texas Disaster Act of 1975). (V.A.C.S. Art. 4419b-1, Sec. 5.03.)

[Sections 81.010–81.020 reserved for expansion]

## SUBCHAPTER B. PREVENTION

Sec. 81.021. BOARD'S DUTY. The board shall exercise its power in matters relating to protecting the public health to prevent the introduction of disease into the state. (V.A.C.S. Art. 4419b-1, Sec. 2.02(c) (part).)

Sec. 81.022. HEALTH EDUCATION. (a) The department may conduct a program of health education for the prevention and control of communicable disease.

(b) The department may contract for presentations to increase the public awareness of individual actions needed to prevent and control communicable disease. The types of

presentations include mass media productions, outdoor display advertising, newspaper advertising, literature, bulletins, pamphlets, posters, and audiovisual displays.

(c) The department shall recommend a public school health curriculum to the State Board of Education. (V.A.C.S. Art. 4419b-1, Secs. 3.01(a), (b), (c).)

Sec. 81.023. IMMUNIZATION. (a) The board shall develop immunization requirements for children.

(b) The board shall cooperate with the Texas Board of Human Services in formulating and implementing the immunization requirements for children admitted to child-care facilities.

(c) The board shall cooperate with the State Board of Education in formulating and implementing immunization requirements for students admitted to public or private primary or secondary schools. (V.A.C.S. Art. 4419b-1, Sec. 3.01(d).)

Sec. 81.024. REPORTS BY BOARD. The board shall provide regular reports of the incidence, prevalence, and medical and economic effects of each disease that the board determines is a threatening risk to the public health. A disease may be a risk because of its indirect complications. (V.A.C.S. Art. 4419b-1, Sec. 2.02(b).)

[Sections 81.025-81.040 reserved for expansion]

#### **SUBCHAPTER C. REPORTS AND REPORTABLE DISEASES**

Sec. 81.041. REPORTABLE DISEASES. (a) The board shall identify each communicable disease or health condition that shall be reported under this chapter.

(b) The board shall classify each reportable disease according to its nature and the severity of its effect on the public health.

(c) The board shall maintain and revise as necessary the list of reportable diseases.

(d) The board may establish registries for reportable diseases and other communicable diseases and health conditions. The provision to the department of information relating to a communicable disease or health condition that is not classified as reportable is voluntary only.

(e) Acquired immune deficiency syndrome and human immunodeficiency virus infection are reportable diseases under this chapter for which the board shall require reports. (V.A.C.S. Art. 4419b-1, Sec. 3.02.)

Sec. 81.042. PERSONS REQUIRED TO REPORT. (a) A report under Subsection (b), (c), or (d) shall be made to the local health authority or, if there is no local health authority, the regional director.

(b) A dentist or veterinarian licensed to practice in this state or a physician shall report, after the first professional encounter, a patient or animal examined that has or is suspected of having a reportable disease.

(c) A local school authority shall report a child attending school who is suspected of having a reportable disease. The board by rule shall establish procedures to determine if a child should be suspected and reported and to exclude the child from school pending appropriate medical diagnosis or recovery.

(d) A person in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of a specimen derived from a human body yields microscopical, cultural, serological, or other evidence of a reportable disease shall report the findings, in accordance with this section and procedures adopted by the board, in the jurisdiction in which:

(1) the physician's office is located, if the laboratory examination was requested by a physician; or

(2) the laboratory is located, if the laboratory examination was not requested by a physician.

(e) The following persons shall report to the local health authority or the department a suspected case of a reportable disease and all information known concerning the person

who has or is suspected of having the disease if a report is not made as required by Subsections (a)-(d):

- (1) a professional registered nurse;
- (2) an administrator or director of a public or private temporary or permanent child-care facility;
- (3) an administrator or director of a nursing home, personal care home, maternity home, adult respite care center, or adult day-care center;
- (4) an administrator of a home health agency;
- (5) an administrator or health official of a public or private institution of higher education;
- (6) an owner or manager of a restaurant, dairy, or other food handling or processing establishment or outlet;
- (7) a superintendent, manager, or health official of a public or private camp, home, or institution;
- (8) a parent, guardian, or householder;
- (9) a health professional; or
- (10) an administrator or health official of a penal or correctional institution. (V.A.C.S. Art. 4419b-1, Sec. 3.03.)

Sec. 81.043. RECORDS AND REPORTS OF HEALTH AUTHORITY AND REGIONAL DIRECTOR. (a) Each health authority or regional director shall keep a record of each case of a reportable disease that is reported to the authority or director.

(b) A health authority or regional director shall report reportable diseases to the department's central office at least as frequently as the interval set by board rule. (V.A.C.S. Art. 4419b-1, Secs. 3.04(a), (b).)

Sec. 81.044. REPORTING PROCEDURES. (a) The board shall prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, or by other means.

(b) The board may require the reports to contain any information relating to a case that is necessary for the purposes of this chapter, including:

- (1) the patient's name, address, age, sex, race, and occupation;
- (2) the date of onset of the disease or condition;
- (3) the probable source of infection; and
- (4) the name of the attending physician or dentist.

(c) The commissioner may authorize an alternate routing of information in particular cases if the commissioner determines that the reporting procedure would cause the information to be unduly delayed. (V.A.C.S. Art. 4419b-1, Sec. 3.04(c).)

Sec. 81.045. REPORTS OF DEATH. (a) A physician who attends a person during the person's last illness shall immediately notify the health authority of the jurisdiction in which the person's death is pronounced or the department if the physician knows or suspects that the person died of a reportable disease or other communicable disease that the physician believes may be a threat to the public health.

(b) An attending physician or health authority, with consent of the survivors, may request an autopsy if the physician or health authority needs further information concerning the cause of death in order to protect the public health. The health authority shall order the autopsy to determine the cause of death if there are no survivors or the survivors withhold consent to the autopsy. The autopsy results shall be reported to the department.

(c) A justice of the peace acting as coroner or a county medical examiner in the course of an inquest under Chapter 49, Code of Criminal Procedure, who finds that a person's cause of death was a reportable disease or other communicable disease that the coroner or medical examiner believes may be a threat to the public health shall immediately notify



the health authority of the jurisdiction in which the finding is made or the department. (V.A.C.S. Art. 4419b-1, Sec. 3.05.)

**Sec. 81.046. CONFIDENTIALITY.** (a) Reports, records, and information furnished to a health authority or the department that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be released or made public on subpoena or otherwise except as provided by Subsections (c) and (d).

(c) Medical or epidemiological information may be released:

(1) for statistical purposes if released in a manner that prevents the identification of any person;

(2) with the consent of each person identified in the information;

(3) to medical personnel, appropriate state agencies, or county and district courts to comply with this chapter and related rules relating to the control and treatment of communicable diseases and health conditions;

(4) to appropriate federal agencies, such as the Centers for Disease Control of the United States Public Health Service, but the information must be limited to the name, address, sex, race, and occupation of the patient, the date of disease onset, the probable source of infection, and other requested information relating to the case or suspected case of a communicable disease or health condition; or

(5) to medical personnel to the extent necessary in a medical emergency to protect the health or life of the person identified in the information.

(d) In a case of sexually transmitted disease involving a minor under 13 years of age, information may not be released, except that the child's name, age, and address and the name of the disease may be released to appropriate agents as required by Chapter 34, Family Code. If that information is required in a court proceeding involving child abuse, the information shall be disclosed in camera.

(e) A state or public health district officer or employee, local health department officer or employee, or health authority may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of, or reports or information about, a person examined or treated for a reportable disease by the public health district, local health department, or health authority without that person's consent. (V.A.C.S. Art. 4419b-1, Sec. 3.06.)

**Sec. 81.047. EPIDEMIOLOGICAL REPORTS.** Subject to the confidentiality requirements of this chapter, the department shall require epidemiological reports of disease outbreaks and of individual cases of disease suspected or known to be of importance to the public health. The department shall evaluate the reports to determine the trends involved and the nature and magnitude of the hazards. (V.A.C.S. Art. 4419b-1, Sec. 2.03(c).)

**Sec. 81.048. NOTIFICATION OF EMERGENCY PERSONNEL, PEACE OFFICERS, AND FIRE FIGHTERS.** (a) The board shall:

(1) designate certain reportable diseases for notification under this section; and

(2) define the conditions that constitute possible exposure to those diseases.

(b) Notice of a positive test result for a reportable disease designated under Subsection (a) shall be given to an emergency medical service personnel, peace officer, or fire fighter as provided by this section if:

(1) the emergency medical service personnel, peace officer, or fire fighter delivered a person to a hospital as defined by Section 1.03, Medical Liability and Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas Civil Statutes);

(2) the hospital has knowledge that the person has a reportable disease and has medical reason to believe that the person had the disease when the person was admitted to the hospital; and

(3) the emergency medical service personnel, peace officer, or fire fighter was exposed to the reportable disease during the course of duty.

(c) Notice of the possible exposure shall be given:

(1) by the hospital to the local health authority;

(2) by the local health authority to the director of the appropriate department of the entity that employs the emergency medical service personnel, peace officer, or fire fighter; and

(3) by the director to the employee affected.

(d) A person notified of a possible exposure under this section shall maintain the confidentiality of the information as provided by this chapter.

(e) A person is not liable for good faith compliance with this section.

(f) This section does not create a duty for a hospital to perform a test that is not necessary for the medical management of the person delivered to the hospital. (V.A.C.S. Art. 4419b-1, Sec. 3.08.)

Sec. 81.049. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly fails to report a reportable disease or health condition under this subchapter.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4419b-1, Sec. 6.10.)

[Sections 81.050–81.060 reserved for expansion]

#### SUBCHAPTER D. INVESTIGATION AND INSPECTION

Sec. 81.061. INVESTIGATION. (a) The department shall investigate the causes of communicable disease and methods of prevention.

(b) The department may require special investigations of specified cases of disease to evaluate the status in this state of epidemic, endemic, or sporadic diseases. Each health authority shall provide information on request according to the department's written instructions.

(c) The department may investigate the existence of communicable disease in the state to determine the nature and extent of the disease and to formulate and evaluate the control measures used to protect the public health. A person shall provide records and other information to the department on request according to the department's written instructions. (V.A.C.S. Art. 4419b-1, Secs. 3.07(a), (b), (e) (part).)

Sec. 81.062. WITNESSES; DOCUMENTS. (a) For the purpose of an investigation under Section 81.061(c), the department may administer oaths, summon witnesses, and compel the attendance of a witness or the production of a document. The department may request the assistance of a county or district court to compel the attendance of a summoned witness or the production of a requested document at a hearing.

(b) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to appear at a hearing or proceeding under this section conducted outside the witness's or deponent's county of residence is entitled to a travel and per diem allowance. The board by rule shall set the allowance in an amount not to exceed the travel and per diem allowance authorized for state employees traveling in this state on official business. (V.A.C.S. Art. 4419b-1, Sec. 3.07(e) (part).)

Sec. 81.063. SAMPLES. (a) A person authorized to conduct an investigation under this subchapter may take samples of materials present on the premises, including soil, water, air, unprocessed or processed foodstuffs, manufactured clothing, pharmaceuticals, and household goods.

(b) A person who takes a sample under this section shall offer a corresponding sample to the person in control of the premises for independent analysis.

(c) A person who takes a sample under this section may reimburse or offer to reimburse the owner for the materials taken. The reimbursement may not exceed the actual monetary loss to the owner. (V.A.C.S. Art. 4419b-1, Sec. 3.07(d).)

Sec. 81.064. **INSPECTION.** (a) The commissioner, the commissioner's designee, a health authority, or a health authority's designee may enter at reasonable times and inspect within reasonable limits a public place in the performance of that person's duty to prevent or control the entry into or spread in this state of communicable disease by enforcing this chapter or the rules of the board adopted under this chapter.

(b) In this section, "a public place" means all or any portion of an area, building or other structure, or conveyance that is not used for private residential purposes, regardless of ownership. (V.A.C.S. Art. 4419b-1, Sec. 3.07(c).)

Sec. 81.065. **RIGHT OF ENTRY.** For an investigation or inspection, the commissioner, an employee of the department, or a health authority has the right of entry on land or in a building, vehicle, watercraft, or aircraft and the right of access to an individual, animal, or object that is in isolation, detention, restriction, or quarantine instituted by the commissioner, an employee of the department, or a health authority or instituted voluntarily on instructions of a private physician. (V.A.C.S. Art. 4419b-1, Sec. 3.07(f).)

Sec. 81.066. **CONCEALING COMMUNICABLE DISEASE OR EXPOSURE TO COMMUNICABLE DISEASE; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly conceals or attempts to conceal from the board, a health authority, or a peace officer, during the course of an investigation under this chapter, the fact that:

(1) the person has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health; or

(2) a minor child or incompetent adult of whom the person is a parent, managing conservator, or guardian has, has been exposed to, or is the carrier of a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4419b-1, Sec. 6.01.)

Sec. 81.067. **CONCEALING, REMOVING, OR DISPOSING OF AN INFECTED OR CONTAMINATED ANIMAL, OBJECT, VEHICLE, WATERCRAFT, OR AIRCRAFT; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly conceals, removes, or disposes of an infected or contaminated animal, object, vehicle, watercraft, or aircraft that is the subject of an investigation under this chapter by the board, a health authority, or a peace officer.

(b) An offense under this Section is a Class B misdemeanor. (V.A.C.S. Art. 4419b-1, Sec. 6.02.)

Sec. 81.068. **REFUSING ENTRY; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly refuses or attempts to refuse entry to the board, a health authority, or a peace officer on presentation of a valid search warrant to investigate, inspect, or take samples on premises controlled by the person or by an agent of the person acting on the person's instruction.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 4419b-1, Sec. 6.03.)

[Sections 81.069–81.080 reserved for expansion]

#### **SUBCHAPTER E. CONTROL**

Sec. 81.081. **BOARD'S DUTY.** The board shall impose control measures to prevent the spread of disease in the exercise of its power to protect the public health. (V.A.C.S. Art. 4419b-1, Sec. 2.02(c) (part).)

Sec. 81.082. **ADMINISTRATION OF CONTROL MEASURES.** (a) A health authority has supervisory authority and control over the administration of communicable disease control measures in the health authority's jurisdiction unless specifically preempted by the board. Control measures imposed by a health authority must be consistent with, and at least as stringent as, the control measure standards in rules adopted by the board.

(b) A communicable disease control measure imposed by a health authority in the health authority's jurisdiction may be amended, revised, or revoked by the board if the board finds that the modification is necessary or desirable in the administration of a regional or statewide public health program or policy. A control measure imposed by the department may not be modified or discontinued until the department authorizes the action.

(c) The control measures may be imposed on an individual, animal, place, or object, as appropriate.

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

- (1) immunization;
- (2) detention;
- (3) restriction;
- (4) disinfection;
- (5) decontamination;
- (6) isolation;
- (7) quarantine;
- (8) disinfestation;
- (9) chemoprophylaxis; and
- (10) preventive therapy. (V.A.C.S. Art. 4419b-1, Sec. 4.01.)

Sec. 81.083. APPLICATION OF CONTROL MEASURES TO INDIVIDUAL. (a) Any person, including a physician, who examines or treats an individual who has a communicable disease shall instruct the individual about:

- (1) measures for preventing reinfection and spread of the disease; and
- (2) the necessity for treatment until the individual is cured or free from the infection.

(b) If the department or a health authority has reasonable cause to believe that an individual is ill with, has been exposed to, or is the carrier of a communicable disease, the department or health authority may order the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, to implement control measures that are reasonable and necessary to prevent the introduction, transmission, and spread of the disease in this state.

(c) An order under this section must be in writing and be delivered personally or by registered or certified mail to the individual or to the individual's parent, legal guardian, or managing conservator if the individual is a minor.

(d) An order under this section is effective until the individual is no longer infected with a communicable disease or, in the case of a suspected disease, expiration of the longest usual incubation period for the disease.

(e) An individual may be subject to court orders under Subchapter G if:

(1) the individual, or the individual's parent, legal guardian, or managing conservator if the individual is a minor, does not comply with the written orders of the department or a health authority under this section; and

(2) the individual is infected or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health.

(f) An individual who is the subject of court orders under Subchapter G shall pay the expense of the required medical care and treatment except as provided by Subsections (g)-(i).

(g) A county or hospital district shall pay the medical expenses of a resident of the county or hospital district who is:

- (1) indigent and without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program or facility.

(h) The state may pay the medical expenses of a nonresident individual who is:

(1) indigent and without the financial means to pay for part or all of the required medical care and treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, county, or municipal medical assistance program.

(i) The provider of the medical care and treatment under Subsection (h) shall certify the reasonable amount of the required medical care to the comptroller. The comptroller shall issue a warrant to the provider of the medical care and treatment for the certified amount.

(j) The department may:

(1) return a nonresident individual involuntarily hospitalized in this state to the program agency in the state in which the individual resides; and

(2) enter into reciprocal agreements with the proper agencies of other states to facilitate the return of individuals involuntarily hospitalized in this state. (V.A.C.S. Art. 4419b-1, Sec. 4.02.)

**Sec. 81.084. APPLICATION OF CONTROL MEASURES TO PROPERTY.** (a) If the department or a health authority has reasonable cause to believe that property in its jurisdiction is or may be infected or contaminated with a communicable disease, the department or health authority may place the property in quarantine for the period necessary for a medical examination or technical analysis of samples taken from the property to determine if the property is infected or contaminated. The department or health authority may tag an object for identification with a notice of possible infection or contamination.

(b) The department or health authority shall send notice of its action by registered or certified mail to the person who owns or controls the property. If the property is land or a structure or an animal or other property on the land, the department or health authority shall also post the notice on the land and on the courthouse door.

(c) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the property is found not to be infected or contaminated. The department or health authority by written order may require the person who owns or controls the property to impose control measures that are technically feasible to disinfect or decontaminate the property if the property is found to be infected or contaminated.

(d) The department or health authority shall remove the quarantine and return control of the property to the person who owns or controls it if the control measures are effective. If the control measures are ineffective or if there is not a technically feasible control measure available for use, the department or health authority may continue the quarantine and order the person who owns or controls the property:

(1) to destroy the property, other than land, in a manner that disinfects or decontaminates the property to prevent the spread of infection or contamination;

(2) if the property is land, to securely fence the perimeter of the land or any part of the land that is infected or contaminated; or

(3) to securely seal off an infected or contaminated structure or other property on land to prevent entry into the infected or contaminated area until the quarantine is removed by the board or health authority.

(e) The department or health authority may petition the county or district court of the county in which the property is located for orders necessary for public health if:

(1) a person fails or refuses to comply with the orders of the department or health authority as required by this section; and

(2) the department or health authority has reason to believe that the property is or may be infected or contaminated with a communicable disease that presents an immediate threat to the public health.

(f) After the filing of a petition, the court may grant injunctive relief for the health and safety of the public.

(g) The person who owns or controls the property shall pay all expenses of implementing control measures, court costs, storage, and other justifiable expenses. The court may require the person who owns or controls the property to execute a bond in an amount set by the court to ensure the performance of any control measures, restoration, or destruction ordered by the court. If the property is an object, the bond may not exceed the value of the object in a noninfected or noncontaminated state. The bond shall be returned to the person when the department or health authority informs the court that the property is no longer infected or contaminated or that the property has been destroyed.

(h) If the court finds that the property is not infected or contaminated, it shall order the department or health authority to:

- (1) remove the quarantine;
- (2) if the property is an object, remove the quarantine tags; and
- (3) release the property to the person who owns or controls it.

(i) The department or health authority, as appropriate, shall charge the person who owns or controls the property for the cost of any control measures performed by the department's or health authority's employees. The department shall deposit the payments received to the credit of the general revenue fund to be used for the administration of this chapter. A health authority shall distribute payments received to each county, municipality, or other jurisdiction in an amount proportional to the jurisdiction's contribution to the quarantine and control expense.

(j) In this section, "property" means:

- (1) an object;
- (2) a parcel of land; or
- (3) a structure, animal, or other property on a parcel of land. (V.A.C.S. Art. 4419b-1, Secs. 4.03, 4.04.)

**Sec. 81.085. AREA QUARANTINE; CRIMINAL PENALTY.** (a) If an outbreak of communicable disease occurs in this state, the commissioner or one or more health authorities may impose an area quarantine coextensive with the area affected. A health authority may impose the quarantine only within the boundaries of the health authority's jurisdiction.

(b) A health authority may not impose an area quarantine until the authority consults with and obtains the approval of the commissioner and of the governing body of each county and municipality in the health authority's jurisdiction that has territory in the affected area.

(c) Absent preemptive action by the board under this chapter or by the governor under Chapter 418, Government Code (Texas Disaster Act of 1975), a health authority may impose in a quarantine area under the authority's jurisdiction additional disease control measures that the health authority considers necessary and most appropriate to arrest, control, and eradicate the threat to the public health.

(d) If an affected area includes territory in an adjacent state, the department may enter into cooperative agreements with the appropriate officials or agencies of that state to:

- (1) exchange morbidity, mortality, and other technical information;
- (2) receive extrajurisdictional inspection reports;
- (3) coordinate disease control measures;
- (4) disseminate instructions to the population of the area, operators of interstate private or common carriers, and private vehicles in transit across state borders; and
- (5) participate in other public health activities appropriate to arrest, control, and eradicate the threat to the public health.

(e) The department or health authority may use all reasonable means of communication to inform persons in the quarantine area of the board's or health authority's orders and instructions during the period of area quarantine. The department or health authority shall publish at least once each week during the area quarantine period, in a newspaper of general circulation in the area, a notice of the orders or instructions in force with a brief explanation of their meaning and effect. Notice by publication is sufficient to inform persons in the area of their rights, duties, and obligations under the orders or instructions.

(f) The commissioner or, with the commissioner's consent, a health authority may terminate an area quarantine.

(g) To provide isolation and quarantine facilities during an area quarantine, the commissioner's court of a county, the governing body of a municipality, or the governing body of a hospital district may suspend the admission of patients desiring admission for elective care and treatment, except for needy or indigent residents for whom the county, municipality, or district is constitutionally or statutorily required to care.

(h) A person commits an offense if the person knowingly fails or refuses to obey a rule, order, or instruction of the board or an order or instruction of a health authority issued under a board rule and published during an area quarantine under this section. An offense under this subsection is a felony of the third degree. (V.A.C.S. Art. 4419b-1, Secs. 4.05, 5.01, 6.07.)

**Sec. 81.086. APPLICATION OF CONTROL MEASURES TO PRIVATE AND COMMON CARRIERS AND PRIVATE CONVEYANCES.** (a) This section applies to any private or common carrier or private conveyance, including a vehicle, aircraft, or watercraft, while the vehicle or craft is in this state.

(b) If the department or health authority has reasonable cause to believe that a carrier or conveyance has departed from or traveled through an area infected or contaminated with a communicable disease, the department or health authority may order the owner, operator, or authorized agent in control of the carrier or conveyance to:

(1) stop the carrier or conveyance at a port of entry or place of first landing or first arrival in this state; and

(2) provide a statement in a form approved by the board that includes information required by board rules, including information on passengers and cargo manifests, and that includes the details of:

(A) any illness suspected of being communicable that occurred during the journey;

(B) any condition on board the carrier or conveyance during the journey that may lead to the spread of disease; and

(C) any control measures imposed on the carrier or conveyance, its passengers or crew, or its cargo or any other object on board during the journey.

(c) The department or health authority may impose necessary technically feasible control measures under Section 81.083 or 81.084 to prevent the introduction and spread of communicable disease in this state if the department or health authority, after inspection, has reasonable cause to believe that a carrier or conveyance that has departed from or traveled through an infected or contaminated area:

(1) is or may be infected or contaminated with a communicable disease;

(2) has cargo or an object on board that is or may be infected or contaminated with a communicable disease; or

(3) has an individual on board who has been exposed to, or is the carrier of, a communicable disease.

(d) The owner or operator of a carrier or conveyance placed in quarantine by order of the department or health authority, or of a county or district court under Section 81.083 or 81.084, shall bear the expense of the control measures employed to disinfect or decontaminate the carrier or conveyance. The department or health authority, as appropriate, shall charge and be reimbursed for the cost of control measures performed by the department's or health authority's employees. The board shall deposit the

reimbursements to the credit of the general revenue fund to be used to administer this chapter. A health authority shall distribute the reimbursements to each county, municipality, or other governmental entity in an amount proportional to that entity's contribution to the quarantine and control expense.

(e) The owner or claimant of cargo or an object on board the carrier or conveyance shall pay the expense of the control measures employed in the manner provided by Section 81.084. The cost of services rendered or provided by the board or health authority is subject to reimbursement as provided by Subsection (d).

(f) A crew member, passenger, or individual on board the carrier or conveyance shall pay the expense of control measures employed under Section 81.083. The state may pay the expenses of an individual who is:

(1) without the financial means to pay for part or all of the required medical care or treatment; and

(2) not eligible for benefits under an insurance contract, group policy, or prepaid health plan, or benefits provided by a federal, state, or local medical assistance program, as provided by Section 81.083.

(g) A carrier, a conveyance, cargo, an object, an animal, or an individual placed in quarantine under this section may not be removed from or leave the area of quarantine without the department's or health authority's permission.

(h) If the department or health authority has reasonable cause to believe that a carrier or conveyance is transporting cargo or an object that is or may be infected or contaminated with a communicable disease, the department or health authority may:

(1) require that the cargo or object be transported in secure confinement or sealed in a car, trailer, hold, or compartment, as appropriate, that is secured on the order and instruction of the board or health authority, if the cargo or object is being transported through this state;

(2) require that the cargo or object be unloaded at an alternate location equipped with adequate investigative and disease control facilities if the cargo or object is being transported to an intermediate or ultimate destination in this state that cannot provide the necessary facilities; and

(3) investigate and, if necessary, quarantine the cargo or object and impose any required control measure as authorized by Section 81.084.

(i) The department or health authority may require an individual transported by carrier or conveyance who the department or health authority has reasonable cause to believe has been exposed to or is the carrier of a communicable disease to be isolated from other travelers and to disembark with the individual's personal effects and baggage at the first location equipped with adequate investigative and disease control facilities, whether the person is in transit through this state or to an intermediate or ultimate destination in this state. The department or health authority may investigate and, if necessary, isolate or involuntarily hospitalize the individual until the department or health authority approves the discharge as authorized by Section 81.084. (V.A.C.S. Art. 4419b-1, Sec. 4.06.)

**Sec. 81.087. VIOLATION OF CONTROL MEASURE ORDERS; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly refuses to perform or allow the performance of certain control measures ordered by a health authority or the department under Sections 81.083-81.086.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4419b-1, Sec. 6.04.)

**Sec. 81.088. REMOVAL, ALTERATION, OR DESTRUCTION OF QUARANTINE DEVICES; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly or intentionally:

(1) removes, alters, or attempts to remove or alter an object the person knows is a quarantine device in a manner that diminishes the device's effectiveness; or

(2) destroys an object the person knows is a quarantine device.



(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4419-b, Sec. 6.06.)

**Sec. 81.089. TRANSPORTATION; CRIMINAL PENALTY.** (a) A person commits an offense if, before notifying the board or health authority at a port of entry or a place of first landing or first arrival in this state, the person knowingly or intentionally:

(1) transports or causes to be transported into this state an object the person knows or suspects may be infected or contaminated with a communicable disease that is a threat to the public health;

(2) transports or causes to be transported into this state an individual who the person knows has or is the carrier of a communicable disease that is a threat to the public health; or

(3) transports or causes to be transported into this state a person, animal, or object in a private or common carrier or a private conveyance that the person knows is or suspects may be infected or contaminated with a communicable disease that is a threat to the public health.

(b) An offense under this section is a Class A misdemeanor, except that if the person acts with the intent to harm or defraud another, the offense is a felony of the third degree. (V.A.C.S. Art. 4419b-1, Sec. 6.08.)

**Sec. 81.090. SEROLOGIC TESTING DURING PREGNANCY.** (a) A physician or other person permitted by law to attend a pregnant woman during gestation or at delivery of an infant shall:

(1) take or cause to be taken a sample of the woman's blood at the first examination and visit;

(2) submit the sample to a laboratory approved under this section for a standard serologic test for syphilis approved by the board; and

(3) retain a report of each case for nine months and deliver the report to any successor in the case.

(b) A successor is presumed to have complied with this section.

(c) A physician or other person in attendance at a delivery shall:

(1) take or cause to be taken a sample of blood from the mother or from the umbilical cord of the infant within 24 hours of delivery; and

(2) submit the sample to a laboratory approved under this section for a standard serologic test for syphilis approved by the board.

(d) A state, county, municipal, or private laboratory that conducts standard serologic tests for syphilis on blood samples submitted under this section must be approved by the department. For the purpose of approving laboratories, the board shall adopt rules establishing:

(1) minimum standards of proficiency for a laboratory that conducts standard serologic tests;

(2) procedures for the inspection and monitoring of laboratories conducting standard serologic tests;

(3) criteria for the issuance, suspension, and revocation of laboratory proficiency certification to perform standard serologic tests; and

(4) criteria for approval and disapproval of serologic tests and procedures.

(e) The commissioner shall provide each county clerk with the names of the approved laboratories in the county and shall notify the county clerk of any additions, suspensions, or revocations of proficiency approval.

(f) A state, county, or municipal laboratory shall execute a test required by this section and submit a report to the physician without charge.

(g) A physician or other person required to report a birth or fetal death shall state on the birth or fetal death certificate whether a blood test for syphilis was performed under Subsections (a) and (c). (V.A.C.S. Art. 4419b-1, Secs. 1.04(18), 7.01, 7.04.)

Sec. 81.091. OPTHALMIA NEONATORUM PREVENTION; CRIMINAL PENALTY. (a) A physician, nurse, midwife, or other person in attendance at childbirth shall use or cause to be used prophylaxis approved by the board to prevent ophthalmia neonatorum.

(b) A lay midwife shall administer the prophylaxis to each infant the lay midwife delivers under standing orders by:

(1) a licensed physician; or

(2) an agent or employee of the department under standing orders by a licensed physician working for the department.

(c) Subject to the availability of funds, the department shall furnish prophylaxis approved by the board free of charge to:

(1) health care providers if the newborn's financially responsible adult is unable to pay; and

(2) each lay midwife identified under Section 3, Chapter 365, Acts of the 68th Legislature, Regular Session, 1983 (Article 4512i, Vernon's Texas Civil Statutes), subject to the restrictions of Section 3.06(d)(7)(A), Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).

(d) Administration and possession by a lay midwife of prophylaxis under this section is not a violation of Chapter 483.

(e) A health care provider may not charge for prophylaxis received free from the department.

(f) A person commits an offense if the person is a physician or other person in attendance on a pregnant woman either during pregnancy or at delivery and fails to perform a duty required by this section. An offense under this section is a Class B misdemeanor.

(g) In this section, "financially responsible adult" means a parent, guardian, spouse, or any other person whom the laws of this state hold responsible for the debts incurred as a result of hospitalization or treatment. (V.A.C.S. Art. 4419b-1, Secs. 1.04(5), 6.09, 7.02.)

Sec. 81.092. CONTRACTS FOR SERVICES. The department may contract with a physician to provide services to persons infected or reasonably suspected of being infected with a sexually transmitted disease or tuberculosis if:

(1) local or regional health department services are not available;

(2) the person in need of examination or treatment is unable to pay for the services; and

(3) there is an immediate need for examination or treatment of the person. (V.A.C.S. Art. 4419b-1, Sec. 7.03.)

[Sections 81.093-81.100 reserved for expansion]

#### SUBCHAPTER F. TESTS FOR ACQUIRED IMMUNE DEFICIENCY SYNDROME AND RELATED DISORDERS

Sec. 81.101. DEFINITIONS. In this subchapter:

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

(2) "HIV" means human immunodeficiency virus.

(3) "Bona fide occupational qualification" means a qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a reasonable cause for believing that a person of the excluded group would be unable to perform satisfactorily the duties of the job with safety.

(4) "Blood bank" means a blood bank, blood center, regional collection center, tissue bank, transfusion service, or other similar facility licensed by the Bureau of Biologics of

the United States Food and Drug Administration, accredited for membership in the American Association of Blood Banks, or qualified for membership in the American Association of Tissue Banks.

(5) "Test result" means any statement that indicates that an identifiable individual has or has not been tested for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS, including a statement or assertion that the individual is positive, negative, at risk, or has or does not have a certain level of antigen or antibody. (V.A.C.S. Art. 4419b-1, Sec. 9.01.)

**Sec. 81.102. TESTS; CRIMINAL PENALTY.** (a) A person may not require another person to undergo a medical procedure or test designed to determine or help determine if a person has AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS unless:

(1) the medical procedure or test is required under Subsection (c) or (g) or under Article 21.31, Code of Criminal Procedure;

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

(3) the medical procedure or test is necessary:

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

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

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

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

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

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

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

(b) An employer who alleges that a test is necessary as a bona fide occupational qualification has the burden of proving that allegation.

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

(d) The board may adopt emergency rules for mandatory testing for HIV infection if the commissioner files a certificate of necessity with the board that contains supportive findings of medical and scientific fact and that declares a sudden and imminent threat to public health. The rules must provide for:

(1) the narrowest application of HIV testing necessary for the protection of the public health;

(2) procedures and guidelines to be followed by an affected entity or state agency that clearly specify the need and justification for the testing, specify methods to be used to assure confidentiality, and delineate responsibility and authority for carrying out the recommended actions;

(3) counseling of persons with seropositive test results; and

(4) confidentiality regarding persons tested and their test results.

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

(f) This section does not create a duty to test for AIDS and related disorders or a cause of action for failure to test for AIDS and related disorders.

(g) A person who requires a medical procedure or test in violation of this section commits an offense. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 4419b-1, Secs. 9.02, 9.05.)

Sec. 81.103. **CONFIDENTIALITY; CRIMINAL PENALTY.** (a) A test result is confidential. A person that possesses or has knowledge of a test result may not release or disclose the test result or allow the test result to become known except as provided by this section.

(b) A test result may be released to:

- (1) the department under this chapter;
- (2) a local health authority if reporting is required under this chapter;
- (3) the Centers for Disease Control of the United States Public Health Service if reporting is required by federal law or regulation;
- (4) the physician or other person authorized by law who ordered the test;
- (5) a physician, nurse, or other health care personnel who have a legitimate need to know the test result in order to provide for their protection and to provide for the patient's health and welfare;
- (6) the person tested or a person legally authorized to consent to the test on the person's behalf;
- (7) the spouse of the person tested if the person tests positive for AIDS or HIV infection, antibodies to HIV, or infection with any other probable causative agent of AIDS and if the physician who ordered the test makes the notification; and
- (8) the victim of an offense listed in Article 21.31, Code of Criminal Procedure, if the person tested allegedly committed the offense and the test was required under that article.

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

(d) A person tested or a person legally authorized to consent to the test on the person's behalf may voluntarily release or disclose that person's test results to any other person, and may authorize the release or disclosure of the test results. An authorization under this subsection must be in writing and signed by the person tested or the person legally authorized to consent to the test on the person's behalf. The authorization must state the person or class of persons to whom the test results may be released or disclosed.

(e) A person may release or disclose a test result for statistical summary purposes only without the written consent of the person tested if information that could identify the person is removed from the report.

(f) A blood bank may report positive blood test results indicating the name of a donor with a possible infectious disease to other blood banks if the blood bank does not disclose the infectious disease that the donor has or is suspected of having. A report under this subsection is not a breach of any confidential relationship.

(g) A blood bank may report blood test results to the hospitals where the blood was transfused, to the physician who transfused the infected blood, and to the recipient of the blood. A blood bank may also report blood test results for statistical purposes. A report under this subsection may not disclose the name of the donor or person tested or any information that could result in the disclosure of the donor's or person's name, including an address, social security number, a designated recipient, or replacement information.

(h) A blood bank may provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing.

(i) An employee of a health care facility whose job requires the employee to deal with permanent medical records may view test results in the performance of the employee's duties under reasonable health care facility practices. The test results viewed are confidential under this chapter.

(j) A person commits an offense if, with criminal negligence and in violation of this section, the person releases or discloses a test result or other information or allows a test result or other information to become known. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 4419b-1, Secs. 9.03, 9.06.)

**Sec. 81.104. INJUNCTION; CIVIL LIABILITY.** (a) A person may bring an action to restrain a violation or threatened violation of Section 81.102 or 81.103.

(b) A person who violates Section 81.102 or who is found in a civil action to have negligently released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not more than \$1,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(c) A person who is found in a civil action to have wilfully released or disclosed a test result or allowed a test result to become known in violation of Section 81.103 is liable for:

(1) actual damages;

(2) a civil penalty of not less than \$1,000 nor more than \$5,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action.

(d) Each release or disclosure made, or allowance of a test result to become known, in violation of this subchapter constitutes a separate offense.

(e) A defendant in a civil action brought under this section is not entitled to claim any privilege as a defense to the action. (V.A.C.S. Art. 4419b-1, Sec. 9.04.)

[Sections 81.105–81.150 reserved for expansion]

#### **SUBCHAPTER G. COURT ORDERS FOR MANAGEMENT OF PERSONS WITH COMMUNICABLE DISEASES**

**Sec. 81.151. APPLICATION FOR COURT ORDER.** (a) At the request of the health authority or the department, a municipal, county, or district attorney may file a sworn written application for a court order for the management of a person with a communicable disease.

(b) The application must be filed with the district court in the county in which the person:

(1) resides;

(2) is found; or

(3) is receiving court-ordered health services.

(c) If the application is not filed in the county in which the person resides, the court may, on request of the person or the person's attorney and if good cause is shown, transfer the application to that county.

(d) A copy of written orders made under Section 81.083 and a medical evaluation must be filed with the application. (V.A.C.S. Art. 4419b-1, Secs. 8.02(a), (c) (part).)

**Sec. 81.152. FORM OF APPLICATION.** (a) An application for a court order for the management of a person with a communicable disease must be styled using the person's initials and not the person's full name.

(b) The application must state whether the application is for temporary or extended management of a person with a communicable disease.

(c) Any application must contain the following information according to the applicant's information and belief:

- (1) the person's name and address;
- (2) the person's county of residence in this state;
- (3) a statement that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health and that the person meets the criteria of this chapter for court orders for the management of a person with a communicable disease; and
- (4) a statement that the person fails or refuses to comply with written orders of the department or health authority under Section 81.083. (V.A.C.S. Art. 4419b-1, Secs. 8.02(b), (c) (part), (d).)

Sec. 81.153. APPOINTMENT OF ATTORNEY. (a) The judge shall appoint an attorney to represent a person not later than the 24th hour after the time an application for a court order for the management of a person with a communicable disease is filed if the person does not have an attorney. The judge shall also appoint a language or sign interpreter if necessary to ensure effective communication with the attorney in the person's primary language.

(b) The person's attorney shall receive all records and papers in the case and is entitled to have access to all hospital and physicians' records. (V.A.C.S. 4419b-1, Sec. 8.13.)

Sec. 81.154. SETTING ON APPLICATION. (a) The judge or a magistrate designated under this chapter shall set a date for a hearing to be held within 14 days after the date on which the application is filed.

(b) The hearing may not be held within the first three days after the application is filed if the person or the person's attorney objects.

(c) The court may grant one or more continuances of the hearing on the motion by a party and for good cause shown or on agreement of the parties. However, the hearing shall be held not later than the 30th day after the date on which the original application is filed. (V.A.C.S. Art. 4419b-1, Sec. 8.11.)

Sec. 81.155. NOTICE. (a) The person and the person's attorney are entitled to receive a copy of the application and written notice of the time and place of the hearing immediately after the date for the hearing is set.

(b) A copy of the application and the written notice shall be delivered in person or sent by certified mail to:

- (1) the person's parent, if the person is a minor;
- (2) the person's appointed guardian, if the person is the subject of a guardianship; or
- (3) each managing and possessory conservator, that has been appointed for the person.

(c) The court shall appoint a guardian ad litem for a minor if the parent cannot be located and a guardian or conservator has not been appointed. (V.A.C.S. Art. 4419b-1, Sec. 8.12.)

Sec. 81.156. DISCLOSURE OF INFORMATION. (a) The person's attorney may request information from the municipal, county, or district attorney in accordance with this section if the attorney cannot otherwise obtain the information. The attorney must request the information at least 48 hours before the time set for the hearing.

(b) If the person's attorney requests the information in accordance with Subsection (a), the municipal, county, or district attorney shall, within a reasonable time before the hearing, provide the attorney with a statement that includes:

- (1) the provisions of this chapter that will be relied on at the hearing to establish that the person requires a court order for the temporary or extended management of a person with a communicable disease;
- (2) the name, address, and telephone number of each witness who may testify at the hearing;

(3) a brief description of the reasons why temporary or extended management is required; and

(4) a list of any acts committed by the person that the applicant will attempt to prove at the hearing.

(c) At the hearing, the judge may admit evidence or testimony that relates to matters not disclosed under this chapter if the admission would not deprive the person of a fair opportunity to contest the evidence or testimony. (V.A.C.S. Art. 4419b-1, Secs. 8.12(b), (c).)

**Sec. 81.157. DISTRICT COURT JURISDICTION.** A proceeding under this chapter must be held in a district court of the county in which the person is found. (V.A.C.S. Art. 4419b-1, Sec. 8.10.)

**Sec. 81.158. AFFIDAVIT OF MEDICAL EVALUATION.** (a) An affidavit of medical evaluation must be dated and signed by the commissioner or the commissioner's designee, or by a health authority with the concurrence of the commissioner or the commissioner's designee. The certificate must include:

(1) the name and address of the examining physician, if applicable;

(2) the name and address of the person examined or to be examined;

(3) the date and place of the examination, if applicable;

(4) a brief diagnosis of the examined person's physical and mental condition, if applicable;

(5) the period, if any, during which the examined person has been under the care of the examining physician;

(6) an accurate description of the health treatment, if any, given by or administered under the direction of the examining physician; and

(7) the opinion of the health authority or department and the reason for that opinion, including laboratory reports, that:

(A) the examined person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to public health; and

(B) as a result of that communicable disease the examined person:

(i) is likely to cause serious harm to himself; or

(ii) will, if not examined, observed, or treated, continue to endanger public health.

(b) The department or health authority must specify in the affidavit each criterion listed in Subsection (a)(7)(B) that in the opinion of the department or health authority applies to the person.

(c) If the affidavit is offered in support of an application for extended management, the affidavit must also include the department's or health authority's opinion that the examined person's condition is expected to continue for more than 90 days.

(d) If the affidavit is offered in support of a motion for a protective custody order, the affidavit must also include the department's or health authority's opinion that the examined person presents a substantial risk of serious harm to himself or others if not immediately restrained. The harm may be demonstrated by the examined person's behavior to the extent that the examined person cannot remain at liberty.

(e) The affidavit must include the detailed basis for each of the department's or health authority's opinions under this section. (V.A.C.S. Art. 4419b-1, Sec. 8.03.)

**Sec. 81.159. RECOMMENDATION FOR TREATMENT.** (a) The commissioner shall designate health care facilities throughout the state that are capable of providing services for the examination, observation, isolation, or treatment of persons having or suspected of having a communicable disease. However, the commissioner may not designate a nursing home or custodial care home required to be licensed under Chapter 242.

(b) The health authority shall select a designated facility in the county in which the application is filed. If no facility is designated in the county, the commissioner shall select the facility.

(c) The court shall direct the facility to file, before the date set for the hearing, a recommendation for the person's treatment.

(d) The hearing on an application may not be held before the recommendation for treatment is filed unless the court determines that an emergency exists.

(e) This section does not relieve a county of its responsibility under other provisions of this chapter or applicable law for providing health care services.

(f) A designated facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(g) This section does not apply to a person for whom treatment in a private health facility is proposed. (V.A.C.S. Art. 4419b-1, Sec. 8.04.)

Sec. 81.160. LIBERTY PENDING HEARING. The person who is the subject of an application for management is entitled to remain at liberty pending the hearing on the application unless the person is detained under an appropriate provision of this chapter. (V.A.C.S. Art. 4419b-1, Sec. 8.05.)

Sec. 81.161. MOTION FOR ORDER OF PROTECTIVE CUSTODY. (a) A motion for an order of protective custody may be filed only in the court in which an application for a court order for the management of a person with a communicable disease is pending.

(b) The motion may be filed by the municipal, county, or district attorney on behalf of the department or health authority.

(c) The motion must state that:

(1) the department or health authority has reason to believe and does believe that the person meets the criteria authorizing the court to order protective custody; and

(2) the belief is derived from:

(A) the representations of a credible person;

(B) the conduct of the person who is the subject of the motion; or

(C) the circumstances under which the person is found.

(d) The motion must be accompanied by an affidavit of medical evaluation.

(e) The judge of the court in which the application is pending may designate a magistrate to issue protective custody orders in the judge's absence. (V.A.C.S. Art. 4419b-1, Secs. 8.06(a), (b).)

Sec. 81.162. ISSUANCE OF ORDER. (a) The judge or designated magistrate may issue a protective custody order if the judge or magistrate determines:

(1) that the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health; and

(2) that the person fails or refuses to comply with the written orders of the health authority or the department under Section 81.083.

(b) Noncompliance with orders issued under Section 81.083 may be demonstrated by the person's behavior to the extent that the person cannot remain at liberty.

(c) The judge or magistrate may consider only the application and affidavit in making a determination that the person meets the criteria prescribed by Subsection (a). If only the application and certificate are considered the judge or magistrate must determine that the conclusions of the health authority or department are adequately supported by the information provided.

(d) The judge or magistrate may take additional evidence if a fair determination of the matter cannot be made from consideration of the application and affidavit only.

(e) The judge or magistrate may issue a protective custody order for a person who is charged with a criminal offense if the person meets the requirements of this section and the head of the facility designated to detain the person agrees to the detention. (V.A.C.S. Art. 4419b-1, Secs. 8.06(c), (d), (e).)



**Sec. 81.163. APPREHENSION UNDER ORDER.** (a) A protective custody order shall direct a peace officer to take the person who is the subject of the order into protective custody and transport the person immediately to an appropriate inpatient health facility that has been designated by the commissioner as a suitable place.

(b) If an appropriate inpatient health facility is not available, the person shall be transported to a facility considered suitable by the health authority.

(c) The person shall be detained in the facility until a hearing is held under Section 81.165.

(d) A facility must comply with this section only to the extent that the commissioner determines that the facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health facility without the consent of the head of the facility. (V.A.C.S. Art. 4419b-1, Sec. 8.06(f).)

**Sec. 81.164. APPOINTMENT OF ATTORNEY.** (a) The judge or designated magistrate shall appoint an attorney to represent a person who is the subject of a protective custody order who does not have an attorney when the order is signed.

(b) Within a reasonable time before a hearing is held under Section 81.165, the court that ordered the protective custody shall provide the person and the person's attorney with a written notice that states:

(1) that the person has been placed under a protective custody order;

(2) the grounds for the order; and

(3) the time and place of the hearing to determine probable cause. (V.A.C.S. Art. 4419b-1, Secs. 8.07(a), (b) (part).)

**Sec. 81.165. PROBABLE CAUSE HEARING.** (a) A hearing must be held to determine if:

(1) there is probable cause to believe that a person under a protective custody order presents a substantial risk of serious harm to himself or others to the extent that the person cannot be at liberty pending the hearing on a court order for the management of a person with a communicable disease; and

(2) the health authority or department has stated its opinion and the detailed basis for its opinion that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to public health.

(b) The hearing must be held not later than 72 hours after the time that the person was detained under the protective custody order. If the period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday. The judge or magistrate may postpone the hearing for an additional 24 hours if the judge or magistrate declares that an extreme emergency exists because of extremely hazardous weather conditions that threaten the safety of the person or another essential party to the hearing.

(c) A magistrate or a master appointed by the presiding judge shall conduct the hearing. The master is entitled to reasonable compensation.

(d) The person and his attorney shall have an opportunity at the hearing to appear and present evidence to challenge the allegation that the person presents a substantial risk of serious harm to himself or others.

(e) The magistrate or master may consider evidence that may not be admissible or sufficient in a subsequent commitment hearing, including letters, affidavits, and other material.

(f) The state may prove its case on the health authority's or department's affidavit of medical evaluation filed in support of the initial motion. (V.A.C.S. Art. 4419b-1, Secs. 8.07(b) (part), 8.08(a).)

**Sec. 81.166. ORDER FOR CONTINUED DETENTION.** (a) The magistrate or master shall order that a person remain in protective custody if the magistrate or master determines after the hearing that an adequate factual basis exists for probable cause to

believe that the person presents a substantial risk of serious harm to himself or others to the extent that the person cannot remain at liberty pending the hearing on the application.

(b) The magistrate or master shall arrange for the person to be returned to the health facility or other suitable place, along with copies of the affidavits and other material submitted as evidence in the hearing and the notification prepared as prescribed by Subsection (d).

(c) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the district court that entered the original order of protective custody.

(d) The notification of probable cause hearing shall read as follows:

(Style of Case)

#### NOTIFICATION OF PROBABLE CAUSE HEARING

On this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_ (hereinafter referred to as proposed patient). The proposed patient was given the opportunity to challenge the allegations that (s)he presents a substantial risk of serious harm to self or others.

The proposed patient and his or her attorney \_\_\_\_\_ have been given written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_ (date of notice).

I have examined the affidavit of medical evaluation and \_\_\_\_\_ (other evidence considered). Based on this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or herself (yes \_\_\_\_ or no \_\_\_\_ or others (yes \_\_\_\_ or no \_\_\_\_ such that (s)he cannot be at liberty pending final hearing because (s)he is infected with or is reasonably suspected of being infected with a communicable disease that presents an immediate threat to the public health and (s)he has failed or refused to comply with the orders of the health authority or the Texas Department of Health delivered on \_\_\_\_\_ (date of service) \_\_\_\_\_. (V.A.C.S. Art. 4419b-1, Sec. 8.08(b) (part).)

Sec. 81.167. DETENTION IN PROTECTIVE CUSTODY. (a) The head of a facility or the facility head's designee shall detain a person under a protective custody order in the facility pending a court order for the management of a person with a communicable disease or until the person is released or discharged under Section 81.168.

(b) A person under a protective custody order shall be detained in an appropriate inpatient health facility that has been designated by the commissioner and selected by the health authority under Section 81.159.

(c) A person under a protective custody order may not be detained in a nonmedical facility used to detain persons who are charged with or convicted of a crime unless an extreme emergency exists and in no case for longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency. The person must be isolated from any person who is charged with or convicted of a crime.

(d) The health authority shall ensure that proper isolation methods are used and medical care is made available to a person who is detained in a nonmedical facility under Subsection (c). (V.A.C.S. Art. 4419b-1, Secs. 8.09(a), (b), (c).)

Sec. 81.168. RELEASE FROM DETENTION. (a) The magistrate or master shall order the release of a person under a protective custody order if the magistrate or master determines after the hearing under Section 81.165 that no probable cause exists to believe that the person presents a substantial risk of serious harm to himself or others.

(b) Arrangements shall be made to return a person released under Subsection (a) to:

- (1) the location at which the person was apprehended;
- (2) the person's place of residence in this state; or
- (3) another suitable location.

(c) The head of a facility shall discharge a person held under a protective custody order if:

(1) the head of the facility does not receive notice within 72 hours after detention begins, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency that a probable cause hearing was held and the person's continued detention was authorized;

(2) a final court order for the management of a person with a communicable disease has not been entered within the time prescribed by Section 81.154; or

(3) the health authority or commissioner determines that the person no longer meets the criteria for protective custody prescribed by Section 81.162. (V.A.C.S. Art. 4419b-1, Secs. 8.08(b) (part); 8.09(d), (e).)

**Sec. 81.169. GENERAL PROVISIONS RELATING TO HEARING.** (a) Except as provided by Subsection (b), the judge may hold a hearing on an application for a court order for the management of a person with a communicable disease at any suitable location in the county. The hearing should be held in a physical setting that is not likely to have a harmful effect on the public or the person.

(b) On the request of the person or the person's attorney, the hearing on the application shall be held in the county courthouse.

(c) The health authority shall advise the court on appropriate control measures to prevent the transmission of the communicable disease alleged in the application.

(d) The person is entitled to be present at the hearing. The person or the person's attorney may waive this right.

(e) The hearing must be open to the public unless the person or the person's attorney requests that the hearing be closed and the judge determines that there is good cause to close the hearing.

(f) The Texas Rules of Civil Evidence apply to the hearing unless the rules are inconsistent with this chapter.

(g) The court may consider the testimony of a nonphysician health professional in addition to medical testimony.

(h) The hearing is on the record, and the state must prove each element of the application criteria by clear and convincing evidence. (V.A.C.S. Art. 4419b-1, Secs. 8.14(c), 8.15.)

**Sec. 81.170. RIGHT TO JURY.** (a) A hearing for temporary management must be before the court unless the person or the person's attorney requests a jury.

(b) A hearing for extended management must be before a jury unless the person or the person's attorney waives the right to a jury.

(c) A waiver of the right to a jury must be in writing, under oath, and signed by the person and the person's attorney.

(d) The court may permit a waiver of the right to a jury to be withdrawn for good cause shown. The withdrawal must be made at least seven days before the date on which the hearing is scheduled.

(e) A court may not require a jury fee.

(f) The jury shall determine if the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and has refused or failed to follow the orders of the health authority. The jury may not make a finding about the type of services to be provided to the person. (V.A.C.S. Art. 4419b-1, Sec. 8.16.)

**Sec. 81.171. RELEASE AFTER HEARING.** (a) The court shall enter an order denying an application for a court order for temporary or extended management if after a hearing the judge or jury fails to find, from clear and convincing evidence, that the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health, has refused or failed to follow the orders of the health authority, and meets the applicable criteria for orders for the management of a person with a communicable disease.

(b) If the court denies the application, the court shall order the immediate release of a person who is not at liberty. (V.A.C.S. Art. 4419b-1, Secs. 8.17(a); 8.18(a).)

Sec. 81.172. ORDER FOR TEMPORARY MANAGEMENT. (a) The judge or jury may determine that a person requires court-ordered examination, observation, isolation, or treatment only if the judge or jury finds, from clear and convincing evidence, that:

(1) the person is infected with or is reasonably suspected of being infected with a communicable disease that presents a threat to the public health and has failed or refused to follow the orders of the health authority or department; and

(2) as a result of the communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health.

(b) The judge or jury must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The person or the person's attorney, by a written document filed with the court, may waive the right to cross-examine witnesses, and the court may admit, as evidence, the affidavit of medical evaluation. The affidavit admitted under this subsection constitutes competent medical testimony, and the court may make its findings solely from the affidavit.

(d) An order for temporary management shall state that examinations, treatment, and surveillance are authorized for a period not longer than 90 days. (V.A.C.S. Art. 4419b-1, Secs. 8.01(a) (part), (b); 8.14(a); 8.17(b), (c), (f).)

Sec. 81.173. ORDER FOR EXTENDED MANAGEMENT. (a) The jury, or the judge if the right to a jury is waived, may determine that a proposed patient requires court-ordered examination, observation, isolation, or treatment only if the jury or judge finds, from clear and convincing evidence, that:

(1) the person is infected with a communicable disease that presents a threat to the public health and has failed to follow the orders of the health authority or department;

(2) as a result of that communicable disease the person:

(A) is likely to cause serious harm to himself; or

(B) will, if not examined, observed, isolated, or treated, continue to endanger public health; and

(3) the person's condition is expected to continue for more than 90 days.

(b) The jury or judge must specify each criterion listed in Subsection (a)(2) that forms the basis for the decision.

(c) The court may not make findings solely from the affidavit of medical evaluation, but shall hear testimony. The court may not enter an order for extended management unless appropriate findings are made and are supported by testimony taken at the hearing. The testimony must include competent medical testimony.

(d) An order for extended management shall state that examination, treatment, and surveillance are authorized for not longer than 12 months. (V.A.C.S. Art. 4419b-1, Secs. 8.01(a) (part), (c); 8.14(b); 8.18(b), (c), (f).)

Sec. 81.174. ORDER OF CARE OR COMMITMENT. (a) The judge shall dismiss the jury, if any, after a hearing in which a person is found to be infected with or reasonably suspected of being infected with a communicable disease, to have failed or refused to follow the orders of a health authority or the department, and to meet the criteria for orders for the management of a patient with a communicable disease.

(b) The judge may hear additional evidence relating to alternative settings for examination, observation, treatment, or isolation before entering an order relating to the setting for the care the person will receive.

(c) The judge shall consider in determining the setting for care the recommendation for the appropriate health care facility filed under this chapter.

(d) The judge may enter an order:

(1) committing the person to a health care facility for inpatient care; or

(2) requiring the person to participate in other communicable disease management programs. (V.A.C.S. Art. 4419b-1, Secs. 8.17(d), (e); 8.18(d), (e).)

**Sec. 81.175. COURT-ORDERED OUTPATIENT SERVICES.** (a) The court, in an order that directs a person to participate in an outpatient communicable disease program, shall designate a health authority to monitor the person's compliance. The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority in implementing the court orders.

(b) The health authority or the department, with the cooperation of the head of the facility, shall submit to the court within two weeks after the court enters the order a general program of the treatment to be provided. The program must be incorporated into the court order.

(c) The health authority or department shall inform the court:

(1) if the person fails to comply with the court order; and

(2) of any substantial change in the general program of treatment that occurs before the order expires.

(d) A facility must comply with this section to the extent that the commissioner determines that the designated facility has sufficient resources to perform the necessary services.

(e) A person may not be detained in a private health care facility without the consent of the facility head. (V.A.C.S. Art. 4419b-1, Sec. 8.19.)

**Sec. 81.176. DESIGNATION OF FACILITY.** In a court order for the temporary or extended management of a person with a communicable disease specifying inpatient care, the court shall commit the person to a health care facility designated by the commissioner in accordance with Section 81.159. (V.A.C.S. Art. 4419b-1, Sec. 8.25.)

**Sec. 81.177. COMMITMENT TO PRIVATE FACILITY.** The court may order a person committed to a private health care facility at no expense to the state if the court receives:

(1) an application signed by the person or the person's guardian or next friend requesting that the person be placed in a designated private health care facility at the person's or applicant's expense; and

(2) written agreement from the head of the private health care facility to admit the person and to accept responsibility for the person in accordance with this chapter. (V.A.C.S. Art. 4419b-1, Sec. 8.26.)

**Sec. 81.178. COMMITMENT TO FEDERAL FACILITY.** (a) A court may order a person committed to a federal agency that operates a health care facility if the court receives written notice from the agency that facilities are available and that the person is eligible for care or treatment in the facility. The court may place the person in the agency's custody for transportation to the health care facility.

(b) A person admitted under court order to a health care facility operated by a federal agency, regardless of location, is subject to the agency's rules and regulations.

(c) The head of the health care facility has the same authority and responsibility with respect to the person as the head of a facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into the person's mental condition and the necessity of the person's continued commitment. (V.A.C.S. Art. 4419b-1, Sec. 8.27.)

**Sec. 81.179. TRANSPORTATION OF PERSON.** (a) The court may authorize the sheriff or constable to transport the person to the designated health care facility.

(b) A female shall be accompanied by a female attendant during conveyance to the health care facility.

(c) The health authority or department shall instruct the sheriff or constable on procedures that may be necessary in transporting the person to prevent the spread of the disease. (V.A.C.S. Art. 4419b-1, Sec. 8.28.)

Sec. 81.180. **WRIT OF COMMITMENT.** The court shall direct the court clerk to issue to the individual authorized to transport the person two writs of commitment requiring the individual to take custody of and transport the person to the designated health care facility. (V.A.C.S. Art. 4419b-1, Sec. 8.29.)

Sec. 81.181. **ACKNOWLEDGMENT OF DELIVERY.** The head of the facility, after receiving a copy of the writ of commitment and after admitting the person, shall:

- (1) give the individual transporting the person a written statement acknowledging acceptance of the person and of any personal property belonging to the person; and
- (2) file a copy of the statement with the clerk of the committing court. (V.A.C.S. Art. 4419b-1, Sec. 8.30.)

Sec. 81.182. **MODIFICATION OF ORDER FOR INPATIENT TREATMENT.** (a) The health authority, department, or head of a facility to which a person is committed for inpatient health services may request the court that entered the commitment order to modify the order to provide for outpatient care.

(b) The request must explain in detail the reason for the request. The request must be accompanied by an affidavit of a physician who examined the person during the preceding seven days.

(c) The person shall be given notice of the request.

(d) On the request of the person or any other interested individual, the court shall hold a hearing on the request. The court shall appoint an attorney to represent the person at the hearing. The hearing shall be held before the court without a jury and as prescribed by Section 81.169. The person shall be represented by an attorney and receive proper notice.

(e) If a hearing is not requested, the court may make the decision solely from the request and the supporting affidavit.

(f) If the court modifies the order, the court shall designate the health authority to monitor the person's compliance.

(g) The head of a health care facility or an individual involved in providing the services in which the person is to participate under the order shall cooperate with the health authority and shall comply with Section 81.175(b).

(h) A modified order may not extend beyond the term of the original order. (V.A.C.S. Art. 4419b-1, Sec. 8.21.)

Sec. 81.183. **MOTION FOR MODIFICATION OF ORDER FOR OUTPATIENT TREATMENT.** (a) The court that entered an order directing a person to participate in outpatient health services may set a hearing to determine if the order should be modified in a way that is a substantial deviation from the original program of treatment incorporated in the court's order. The court may set the hearing on its own motion, at the request of the health authority or department, or at the request of any other interested person.

(b) The court shall appoint an attorney to represent the person if a hearing is scheduled. The person shall be given notice of the matters to be considered at the hearing. The notice must comply with the requirements of Section 81.155 for notice before a hearing on an application for court orders for the management of a person with a communicable disease.

(c) The hearing shall be held before the court, without a jury, and as prescribed by this chapter. The person shall be represented by an attorney and receive proper notice. (V.A.C.S. Art. 4419b-1, Sec. 8.20(a), (b), (d).)

Sec. 81.184. **ORDER FOR TEMPORARY DETENTION.** (a) The health authority, department, or head of an outpatient facility in which the person receives treatment may file a sworn application for the person's temporary detention pending a modification hearing under Section 81.183.

(b) The application must state the applicant's opinion and detail the reason for the applicant's opinion that:

- (1) the person meets the criteria described by this chapter; and

(2) detention in an inpatient health care facility is necessary to evaluate the appropriate setting for continued court-ordered care.

(c) The court shall decide from the information in the application. The court may issue an order for temporary detention if a modification hearing is set and the court finds that there is probable cause to believe that the opinions stated in the application are valid.

(d) The judge shall appoint an attorney to represent a person who does not have an attorney when the order for temporary detention is signed.

(e) Within 24 hours after the time detention begins, the court that issued the temporary detention order shall provide to the person and the person's attorney a written notice that contains:

(1) a statement that the person has been placed under a temporary detention order;

(2) the grounds for the order; and

(3) the time and place of the modification hearing. (V.A.C.S. Art. 4419b-1, Sec. 8.20(c) (part).)

**Sec. 81.185. APPREHENSION AND RELEASE UNDER ORDER FOR TEMPORARY DETENTION.** (a) The order for temporary detention shall direct a peace officer to take the person into custody and immediately transport the person to an appropriate inpatient health care facility. The person shall be transported to a facility considered suitable by the health authority if an appropriate inpatient health care facility is not available.

(b) A person may be detained under a temporary detention order for not longer than 72 hours, excluding Saturdays, Sundays, legal holidays, and the period prescribed by Section 81.165(b) for an extreme weather emergency.

(c) A facility head shall immediately release a person held under an order for temporary detention if the facility head does not receive notice that a modification hearing was held within the time prescribed by Subsection (b) at which the patient's continued detention was authorized.

(d) A person released from custody under Subsection (c) continues to be subject to the terms of the outpatient orders for the management of the person issued before the order for temporary detention, if the orders have not expired. (V.A.C.S. Art. 4419b-1, Sec. 8.20(c) (part).)

**Sec. 81.186. ORDER OF MODIFICATION OF ORDER FOR OUTPATIENT SERVICES.** (a) The court may modify an order for outpatient services at the modification hearing if the court determines that the person continues to meet the applicable criteria for court orders for the management of a person with a communicable disease and that:

(1) the person has not complied with the court's order; or

(2) the person's condition has deteriorated to the extent that outpatient services are no longer appropriate.

(b) The court's decision to modify an order must be supported by an affidavit of medical evaluation prepared by the health authority or department.

(c) A court may refuse to modify the order and may direct the person to continue to participate in outpatient health services in accordance with the original order even if the criteria prescribed by Subsection (a) have been met.

(d) A modification may include:

(1) incorporating in the order a revised treatment program and providing for continued outpatient health services under the modified order, if a revised general program of treatment was submitted to and accepted by the court; or

(2) providing for examination, observation, isolation, or treatment at an appropriate inpatient health care facility. (V.A.C.S. Art. 4419b-1, Secs. 8.20(e), (f), (g).)

**Sec. 81.187. RENEWAL OF ORDER FOR EXTENDED MANAGEMENT.** (a) A municipal, county, or district attorney, as appropriate, at the request of the health authority or department, may file an application to renew an order for extended management.

(b) The application must explain in detail why the person requests renewal. An application to renew an order committing the person to extended inpatient services must also explain in detail why a less restrictive setting is not appropriate.

(c) The application must be accompanied by an affidavit of medical evaluation dated and signed by the health authority or department according to an examination conducted within the preceding 30 days.

(d) The court shall appoint an attorney to represent the person when an application is filed.

(e) The person or the person's attorney may request a hearing on the application. The court may set a hearing on its own motion. An application for which a hearing is requested or set is considered an original application for a court order for the extended management of a person with a communicable disease.

(f) A court may not renew an order unless the court finds that the patient meets the criteria for extended management required by this chapter. The court must make the findings prescribed by this subsection to renew an order, regardless of whether a hearing is requested or set. A renewed order authorizes treatment for not more than 12 months.

(g) The court may admit into evidence the affidavit of medical evaluation if a hearing is not requested or set. The affidavit constitutes competent medical testimony and the court may make its findings solely from the affidavit and the detailed request for renewal.

(h) The court, after renewing an order for extended inpatient health services, may modify the order to provide for outpatient health services in accordance with this chapter. (V.A.C.S. Art. 4419b-1, Sec. 8.22.)

Sec. 81.188. MOTION FOR REHEARING. (a) The court may set aside an order for the management of a person with a communicable disease and grant a motion for rehearing for good cause shown.

(b) The court may stay the order and release the person from custody before the hearing if the court is satisfied that the person does not meet the criteria for protective custody under this chapter.

(c) The court may require an appearance bond in an amount set by the court. (V.A.C.S. Art. 4419b-1, Sec. 8.23(a).)

Sec. 81.189. REQUEST FOR REEXAMINATION. (a) A person subject to an order for extended management, or any interested person on the person's behalf and with the person's consent, may file a request with a court for a reexamination and a hearing to determine if the person continues to meet the criteria for the court order.

(b) The request must be filed in the county in which the person is receiving the services.

(c) The court may, on good cause shown:

(1) require that the patient be reexamined;

(2) schedule a hearing on the request; and

(3) notify the health authority, department, and the head of the facility providing health services to the person.

(d) A court is not required to order a reexamination or hearing if the request is filed within six months after an order for extended management is entered or after a similar request is filed.

(e) The head of the facility shall arrange for the person to be reexamined after receiving the court's notice.

(f) The head of the facility shall immediately discharge the person if the health authority or department determines that the person no longer meets the criteria for court-ordered extended health services.

(g) If the health authority or department determines that the person continues to meet the criteria for a court order for extended management, the health authority or department shall file an affidavit of medical evaluation with the court within 10 days after the



request for reexamination and hearing is filed. (V.A.C.S. Art. 4419b-1, Secs. 8.23(b), (c), (d), (h).)

**Sec. 81.190. HEARING ON REQUEST FOR REEXAMINATION.** (a) A court that required a patient's reexamination under Section 81.189 may set a date and place for a hearing on the request if, not later than the 10th day after the request is filed:

- (1) an affidavit of medical evaluation stating that the patient continues to meet the criteria for extended management has been filed; or
- (2) an affidavit has not been filed and the person has not been discharged.

(b) When the hearing is set, the judge shall appoint an attorney to represent the person if the person does not already have an attorney. The judge shall also give notice of the hearing to the person, the person's attorney, the health authority or department, and the facility head.

(c) The judge shall appoint a physician who is not on the staff of the health care facility in which the person is receiving services to examine the person and file an affidavit with the court setting out the person's diagnosis and recommended treatment. The court shall ensure that the person may be examined by a physician of the person's choice and own expense if requested by the person.

(d) The hearing is held before the court and without a jury. The hearing must be held in accordance with the requirements for a hearing on an application for a court order for the management of a person with a communicable disease.

(e) The court shall dismiss the request if the court finds from clear and convincing evidence that the person continues to meet the criteria for extended management.

(f) The judge shall order the head of the facility to discharge the person if the court fails to find from clear and convincing evidence that the person continues to meet the criteria. (V.A.C.S. Art. 4419b-1, Secs. 8.23(e), (f), (g).)

**Sec. 81.191. APPEAL.** (a) An appeal from an order for the management of a person with a communicable disease, or from a renewal or modification of an order, must be filed in the court of appeals for the county in which the order is entered.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When an appeal is filed the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge in whose court the cause is pending may:

(1) stay the order and release the person from custody before the appeal if the judge is satisfied that the person does not meet the criteria for protective custody under this chapter; and

(2) if the person is at liberty, require an appearance bond in an amount set by the court.

(e) The court of appeals and supreme court shall give an appeal under this section preference over all other cases and shall advance the appeal on the docket. The courts may suspend all rules relating to the time for filing briefs and docketing cases. (V.A.C.S. Art. 4419b-1, Sec. 8.24.)

**Sec. 81.192. CONTINUING CARE PLAN BEFORE DISCHARGE.** The health authority or department, in consultation with the person, shall prepare a continuing care plan for a person who is scheduled to be discharged if the person requires continuing care. (V.A.C.S. Art. 4419b-1, Sec. 8.32.)

**Sec. 81.193. PASS FROM INPATIENT CARE.** (a) The head of a facility may permit a person admitted to the facility under order for extended inpatient management of a person with a communicable disease to leave the facility under a pass.

(b) A pass authorizes the person to leave the facility for not more than 72 hours.

(c) The pass may be subject to specified conditions.

(d) A pass may not be authorized without the concurrence of the health authority or department. (V.A.C.S. Art. 4419b-1, Sec. 8.33(a).)

Sec. 81.194. RETURN TO FACILITY. (a) If a person is permitted to leave a facility under Section 81.193, the head of the facility may have the person taken into custody, detained, and returned to the facility by:

(1) signing a certificate authorizing the person's return; or

(2) filing the certificate with a magistrate and requesting the magistrate to order the person's return.

(b) The health authority or department may also have a person returned by signing the certificate authorized by Subsection (a)(1).

(c) A magistrate may issue an order directing a peace officer to take a person into custody and return the person to the facility if the head of the facility, health authority, or department files the certificate as prescribed by this section.

(d) The head of the facility, health authority, or department may sign or file the certificate on a reasonable belief that:

(1) the person is absent without authority from the facility;

(2) the person has violated the conditions of a pass; or

(3) the person's condition has deteriorated to the extent that the person's continued absence from the facility under a pass is inappropriate.

(e) A peace officer shall take the person into custody and return the person to the facility as soon as possible if the person's return is authorized by the certificate or the court order.

(f) The peace officer may take the person into custody without having the certificate or court order in the officer's possession. (V.A.C.S. Art. 4419b-1, Secs. 8.33(b), (c); 8.34.)

Sec. 81.195. DISCHARGE ON EXPIRATION OF COURT ORDER. The head of a facility to which a person was committed or from which a person was required to receive temporary or extended inpatient or outpatient health services shall discharge the person when the court order expires. (V.A.C.S. Art. 4419b-1, Secs. 8.35(a); 8.36(a).)

Sec. 81.196. DISCHARGE BEFORE EXPIRATION OF COURT ORDER. (a) The health authority or department may direct the head of a facility to which a person was committed for inpatient health services or that provides outpatient health services to discharge the person at any time before the court order expires if the health authority or department determines that the person no longer meets the criteria for court-ordered health services.

(b) The health authority or department shall consider before discharging the person whether the person should receive outpatient health services in accordance with:

(1) a court order; or

(2) a modified order under Section 81.182 that directs the person to participate in outpatient health services.

(c) A discharge under Subsection (a) terminates the court order. (V.A.C.S. Art. 4419b-1, Secs. 8.35(b), (c); 8.36(b).)

Sec. 81.197. CERTIFICATE OF DISCHARGE. Before a person is discharged under Section 81.195 or 81.196, the health authority or department shall prepare a discharge certificate, file it with the court that entered the order, and notify the head of the facility. (V.A.C.S. Art. 4419b-1, Secs. 8.35(d); 8.36(c).)

Sec. 81.198. AUTHORIZATION FOR ADMISSION. The head of a health care facility may admit and detain a person under the procedures prescribed by this subchapter. (V.A.C.S. Art. 4419b-1, Sec. 8.37.)

Sec. 81.199. TRANSFER TO FEDERAL FACILITY. The health authority or department may authorize the head of a health care facility to transfer a person to a federal agency if:

(1) the federal agency sends notice that facilities are available and that the patient is eligible for care or treatment in the facility;

(2) notice of the transfer is sent to the committing court; and

(3) the committing court enters an order approving the transfer. (V.A.C.S. Art. 4419b-1, Sec. 8.38.)

**Sec. 81.200. TRANSFER OF RECORDS.** The head of the transferring inpatient health care facility shall send the person's appropriate medical records, or a copy of the records, to the head of the health care facility to which the person is transferred. (V.A.C.S. Art. 4419b-1, Sec. 8.39.)

**Sec. 81.201. WRIT OF HABEAS CORPUS.** This subchapter does not limit a person's right to obtain a writ of habeas corpus. (V.A.C.S. Art. 4419b-1, Sec. 8.44.)

**Sec. 81.202. EFFECT ON GUARDIANSHIP.** This subchapter, or an action taken or a determination made under this subchapter, does not affect a guardianship established under law. (V.A.C.S. Art. 4419b-1, Sec. 8.43.)

**Sec. 81.203. CONFIDENTIALITY OF RECORDS.** Records of a health care facility that directly or indirectly identify a present, former, or proposed patient are confidential unless disclosure is permitted by this chapter or other state law. (V.A.C.S. Art. 4419b-1, Sec. 8.46.)

**Sec. 81.204. RIGHTS SUBJECT TO LIMITATION BY HEAD OF FACILITY.** (a) A person in an inpatient health care facility has the right to:

- (1) receive visitors;
- (2) communicate with a person outside the facility; and
- (3) communicate by uncensored and sealed mail with legal counsel, the department, the courts, and the state attorney general.

(b) The rights provided in Subsection (a) are subject to facility rules. The head of the facility may restrict a right to the extent the head of the facility determines that the restriction is necessary to the public health or the person's welfare but may not restrict the right to communicate with legal counsel if an attorney-client relationship has been established.

(c) A restriction imposed by the head of the facility for the public health or the person's welfare and the reasons for the restriction shall be made a part of the person's clinical record. (V.A.C.S. Art. 4419b-1, Secs. 8.41(a), (b).)

**Sec. 81.205. NOTIFICATION OF RIGHTS.** A person receiving inpatient health services shall be informed of the rights provided by Section 81.206:

- (1) orally, in simple, nontechnical terms;
- (2) in writing that, if possible, is in the person's primary language; and
- (3) through the use of a means reasonably calculated to communicate with a hearing impaired or visually impaired person, if applicable. (V.A.C.S. Art. 4419b-1, Sec. 8.40(b).)

**Sec. 81.206. GENERAL RIGHTS RELATING TO TREATMENT.** A person receiving health services under this subchapter has the right to:

- (1) appropriate treatment for the person's illness in an appropriate setting consistent with the protection of the person and the community;
- (2) not receive unnecessary or excessive medication;
- (3) refuse to participate in a research program; and

(4) a humane treatment environment that provides reasonable protection from harm and appropriate privacy for personal needs. (V.A.C.S. Art. 4419b-1, Sec. 8.40(a).)

**Sec. 81.207. ADEQUACY OF TREATMENT.** (a) The head of an inpatient health care facility shall provide adequate medical care and treatment to every patient in accordance with the highest standards accepted in medical practice.

(b) The head of the facility is responsible for the detention of the patient and for providing suitable security to prevent the patient from transmitting the communicable disease. (V.A.C.S. Art. 4419b-1, Sec. 8.42.)

**Sec. 81.208. PERIODIC EXAMINATION.** The head of a health care facility is responsible for the examination by a physician of each person admitted to the facility under this

subchapter at least once every seven days and more frequently as necessary. (V.A.C.S. Art. 4419b-1, Sec. 8.31.)

Sec. 81.209. **USE OF PHYSICAL RESTRAINT.** (a) A physical restraint may not be applied to a person unless a physician prescribes the restraint.

(b) A physical restraint shall be removed as soon as possible.

(c) Each use of a physical restraint and the reason for the use shall be made a part of the patient's clinical record. The physician who prescribed the restraint shall sign the record. (V.A.C.S. Art. 4419b-1, Sec. 8.45.)

#### CHAPTER 82. CANCER

Sec. 82.001. **SHORT TITLE**

Sec. 82.002. **DEFINITIONS**

Sec. 82.003. **APPLICABILITY OF CHAPTER**

Sec. 82.004. **REGISTRY REQUIRED**

Sec. 82.005. **CONTENT OF REGISTRY**

Sec. 82.006. **BOARD POWERS**

Sec. 82.007. **ANNUAL REPORT**

Sec. 82.008. **DATA FROM MEDICAL RECORDS**

Sec. 82.009. **CONFIDENTIALITY**

Sec. 82.010. **IMMUNITY FROM LIABILITY**

Sec. 82.011. **EXAMINATION AND SUPERVISION NOT REQUIRED**

#### CHAPTER 82. CANCER

Sec. 82.001. **SHORT TITLE.** This chapter may be cited as the Texas Cancer Control Act. (V.A.C.S. Art. 4477-40, Sec. 1.)

Sec. 82.002. **DEFINITIONS.** In this chapter:

(1) "Cancer" includes:

(A) a large group of diseases characterized by uncontrolled growth and spread of abnormal cells;

(B) any condition of tumors having the properties of anaplasia, invasion, and metastasis;

(C) a cellular tumor the natural course of which is fatal; and

(D) malignant neoplasm.

(2) "Cancer treatment center" means a special health facility devoted to the study, prevention, diagnosis, and management of neoplastic and allied diseases.

(3) "Clinical laboratory" means an accredited facility in which:

(A) tests are performed identifying findings of anatomical changes; and

(B) specimens are interpreted and pathological diagnoses are made.

(4) "Hospital" means:

(A) a general or special hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(B) The University of Texas System Cancer Center.

(5) "Precancerous disease" means abnormality of development and organization of adult cells, which is a condition of early cancer without the invasion of neighboring tissue.

(6) "Tumorous disease" means a new growth of tissue in which the multiplication of cells is uncontrolled and progressive, also called neoplasm. It is a swelling, enlargement, or abnormal mass, either benign or malignant, that performs no useful functions. (V.A.C.S. Art. 4477-40, Sec. 3 (part).)

Sec. 82.003. **APPLICABILITY OF CHAPTER.** This chapter applies to records of cases of precancerous and tumorous diseases specified by the board and all cases of

cancer, diagnosed on or after January 1, 1979, and to records of all ongoing cases of those diseases diagnosed before January 1, 1979. (V.A.C.S. Art. 4477-40, Sec. 11.)

Sec. 82.004. **REGISTRY REQUIRED.** The board shall maintain a cancer registry for the state. (V.A.C.S. Art. 4477-40, Secs. 2 (part), 4 (part).)

Sec. 82.005. **CONTENT OF REGISTRY.** (a) The cancer registry must be a central data bank of accurate, precise, and current information that medical authorities agree serves as an invaluable tool in the early recognition, prevention, cure, and control of cancer and specified precancerous and tumorous diseases.

(b) The cancer registry must include:

(1) a record of the cases of precancerous and tumorous diseases specified by the board and of cancer that occur in the state; and

(2) information concerning those cases as the board considers necessary and appropriate for the recognition, prevention, cure, or control of those diseases. (V.A.C.S. Art. 4477-40, Secs. 2 (part), 4 (part).)

Sec. 82.006. **BOARD POWERS.** To implement this chapter, the board may:

(1) adopt rules that the board considers necessary;

(2) execute contracts that the board considers necessary;

(3) receive the data from medical records of cases of cancer or precancerous or tumorous disease that are in the custody or under the control of clinical laboratories, hospitals, and cancer treatment centers to record and analyze the data directly related to those diseases;

(4) compile and publish statistical and other studies derived from the patient data obtained under this chapter to provide, in an accessible form, information that is useful to physicians, other medical personnel, and the general public;

(5) comply with requirements as necessary to obtain federal funds in the maximum amounts and most advantageous proportions possible;

(6) receive and use gifts made for the purpose of this chapter; and

(7) limit cancer reporting activities under this chapter to specified geographic areas of the state to ensure optimal use of funds available for obtaining the data. (V.A.C.S. Art. 4477-40, Sec. 5.)

Sec. 82.007. **ANNUAL REPORT.** The department, in cooperation with The University of Texas System Cancer Center and other cancer research institutions, shall publish an annual report to the legislature of the information obtained under this chapter. (V.A.C.S. Art. 4477-40, Sec. 6.)

Sec. 82.008. **DATA FROM MEDICAL RECORDS.** (a) To ensure an accurate and continuing source of data concerning precancerous and tumorous diseases specified by the board and concerning cancer, each hospital, clinical laboratory, and cancer treatment center shall furnish to the board or its representative, on request, data the board considers necessary and appropriate that is derived from each medical record of a case of one of those diseases that is in the custody or under the control of the hospital, laboratory, or treatment center.

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

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

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

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

(d) The data required to be furnished under this section must include:

(1) diagnosis;

- (2) stage of disease;
- (3) medical history, including occupational information if available;
- (4) laboratory data;
- (5) tissue diagnosis;
- (6) method of treatment; and
- (7) family history of cancer.

(e) The department shall determine a reasonable fee to compensate the hospital, clinical laboratory, or cancer treatment center for the cost of collecting or furnishing the data.

(f) The department is responsible for an annual follow-up of each patient for five years. (V.A.C.S. Art. 4477-40, Secs. 2 (part), 7.)

Sec. 82.009. **CONFIDENTIALITY.** (a) Data obtained under this chapter directly from the medical records of a patient is for the confidential use of the department and the persons or public or private entities that the board determines are necessary to carry out the intent of this chapter. The data is privileged and may not be divulged or made public in a manner that discloses the identity of an individual whose medical records have been used for obtaining data under this chapter.

(b) Information that may identify an individual whose medical records have been used for obtaining data under this chapter is not available for public inspection under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(c) Statistical information collected under this chapter is public information. (V.A.C.S. Art. 4477-40, Sec. 8.)

Sec. 82.010. **IMMUNITY FROM LIABILITY.** The following persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter:

- (1) a hospital, clinical laboratory, or cancer treatment center;
- (2) an administrator, officer, or employee of a hospital, clinical laboratory, or cancer treatment center; and
- (3) a physician. (V.A.C.S. Art. 4477-40, Sec. 9.)

Sec. 82.011. **EXAMINATION AND SUPERVISION NOT REQUIRED.** This chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by the board or its representatives. (V.A.C.S. Art. 4477-40, Sec. 10.)

#### CHAPTER 83. EXPOSURE TO AGENT ORANGE

- Sec. 83.001. **DEFINITIONS**
- Sec. 83.002. **REPORTS TO DEPARTMENT**
- Sec. 83.003. **INFORMATION TO DEPARTMENT**
- Sec. 83.004. **REPORTS BY DEPARTMENT**
- Sec. 83.005. **CONFIDENTIALITY**
- Sec. 83.006. **IMMUNITY FROM LIABILITY**
- Sec. 83.007. **CLASS ACTION SUIT**
- Sec. 83.008. **ASSISTANCE PROGRAM**
- Sec. 83.009. **CERTAIN CASES EXCLUDED**
- Sec. 83.010. **TERMINATION OF PROGRAMS AND DUTIES**

#### CHAPTER 83. EXPOSURE TO AGENT ORANGE

Sec. 83.001. **DEFINITIONS.** In this chapter:

- (1) "Agent Orange" means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.
- (2) "Veteran" means a person who served in Vietnam, Cambodia, or Laos during the Vietnam conflict and was a resident of this state:

(A) when the person was inducted into the armed forces of the United States of America; or

(B) on March 31, 1981. (V.A.C.S. Art. 4447w, Secs. 1(1), (2).)

**Sec. 83.002. REPORTS TO DEPARTMENT.** (a) A physician having primary responsibility for treating a veteran who believes he may have been exposed to chemical defoliants or herbicides or other causative agents, including Agent Orange, while serving in the armed forces of the United States shall, at the request of the veteran, submit a report to the department.

(b) If there is no physician having primary responsibility for treating the veteran, the hospital treating the veteran shall, at the request of the veteran, submit the report to the department.

(c) If there is no physician or hospital treating the veteran, the veteran may submit the report directly to the department. If the veteran is deceased, the veteran's next of kin may submit the report.

(d) A report submitted under this section must be on a form provided by the department. (V.A.C.S. Art. 4447w, Sec. 2(a).)

**Sec. 83.003. INFORMATION TO DEPARTMENT.** (a) The reporting form provided by the department to a physician must request the following information:

(1) symptoms of the veteran that may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange;

(2) diagnosis of the veteran; and

(3) methods of treatment prescribed.

(b) The reporting form provided by the department to a veteran or the veteran's next of kin must request the following information:

(1) symptoms of the veteran that may be related to exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange; and

(2) any other information as determined by the commissioner.

(c) The department may require the veteran to provide other information as determined by the commissioner. (V.A.C.S. Art. 4447w, Secs. 2(b), (c), (d).)

**Sec. 83.004. REPORTS BY DEPARTMENT.** (a) The department shall compile and evaluate information submitted under this chapter into a report to be distributed annually to members of the legislature, the Veterans Administration, the Texas Veterans Commission, and other veterans' groups. The report must include statistical information and current research findings on the effects of exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange.

(b) The department shall conduct epidemiological studies on veterans who have cancer or other medical problems associated with exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange, or who have children born with birth defects after the veterans' suspected exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange.

(c) The department must obtain consent from each veteran to be studied under Subsection (b).

(d) The department shall compile and evaluate information obtained from studies conducted under Subsection (b) into a report to be distributed as provided by Subsection (a). (V.A.C.S. Art. 4447w, Sec. 3.)

**Sec. 83.005. CONFIDENTIALITY.** (a) The identity of a veteran about whom a report has been made under Section 83.002 or 83.004 may not be disclosed unless the veteran consents to the disclosure.

(b) Statistical information collected under this chapter is public information. (V.A.C.S. Art. 4447w, Sec. 4.)

**Sec. 83.006. IMMUNITY FROM LIABILITY.** A physician or hospital reporting in compliance with this chapter is not civilly or criminally liable for providing the information required by this chapter. (V.A.C.S. Art. 4447w, Sec. 5.)

Sec. 83.007. **CLASS ACTION SUIT.** The attorney general may represent a class of individuals composed of veterans who may have been injured because of contact with chemical defoliants or herbicides or other causative agents, including Agent Orange, in a suit for release of information relating to exposure to the chemicals during military service and for release of individual medical records. (V.A.C.S. Art. 4447w, Sec. 6.)

Sec. 83.008. **ASSISTANCE PROGRAM.** (a) The department and the health science centers and other medical facilities of The University of Texas System shall institute a cooperative program to:

(1) refer veterans to appropriate state and federal agencies to file claims to remedy medical and financial problems caused by the veterans' exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange;

(2) provide veterans with cytogenetic, sperm, immunological, neurological, progeny birth defect, and other appropriate clinical or laboratory evaluations to determine if the veteran has suffered physical damage as a result of substantial exposure to chemical defoliants or herbicides or other causative agents, including Agent Orange;

(3) provide veterans with genetic counseling; and

(4) refer a veteran's child for further evaluation and treatment if the child has a birth defect and the suspected cause of the birth defect is the veteran's exposure to a chemical defoliant or herbicide or other causative agent, including Agent Orange.

(b) The commissioner shall adopt rules necessary to administer the program authorized by this section. (V.A.C.S. Art. 4447w, Sec. 7.)

Sec. 83.009. **CERTAIN CASES EXCLUDED.** Sections 83.002 and 83.004 do not apply to veterans treated before January 1, 1982, for symptoms typical of a person who has been exposed to a chemical defoliant or herbicide or other causative agent, including Agent Orange. (V.A.C.S. Art. 4447w, Sec. 8 (part).)

Sec. 83.010. **TERMINATION OF PROGRAMS AND DUTIES.** If the commissioner determines that an agency of the federal government is performing the referral and screening functions required by Section 83.008, the commissioner may discontinue any program required by this chapter or any duty required of a physician or hospital under this chapter. (V.A.C.S. Art. 4447w, Sec. 9.)

#### CHAPTER 84. REPORTING OF OCCUPATIONAL DISEASES

Sec. 84.001. **SHORT TITLE**

Sec. 84.002. **DEFINITIONS**

Sec. 84.003. **REPORTABLE DISEASES; RULES**

Sec. 84.004. **REPORTING REQUIREMENTS**

Sec. 84.005. **POWERS AND DUTIES OF DEPARTMENT**

Sec. 84.006. **CONFIDENTIALITY**

Sec. 84.007. **INVESTIGATIONS**

#### CHAPTER 84. REPORTING OF OCCUPATIONAL DISEASES

Sec. 84.001. **SHORT TITLE.** This chapter may be cited as the Occupational Disease Reporting Act. (V.A.C.S. Art. 5182c, Sec. 1.)

Sec. 84.002. **DEFINITIONS.** In this chapter: (1) "Occupational disease" means a disease or abnormal health condition that is caused by or is related to conditions in the workplace.

(2) "Reportable disease" means a disease or condition required to be reported under this chapter. (V.A.C.S. Art. 5182c, Sec. 2 (part))

Sec. 84.003. **REPORTABLE DISEASES; RULES.** (a) Asbestosis, silicosis, and elevated blood lead levels in adults are occupational diseases that are reportable to the department.

(b) The board may adopt rules that require other occupational diseases to be reported under this chapter. Before the board requires other occupational diseases to be reported, the board must find that the disease:



- (1) has a well-understood etiology;
- (2) results predominantly from occupational conditions; and
- (3) is preventable.

(c) The board shall maintain a list of reportable diseases.

(d) The board shall adopt rules necessary to administer and implement this chapter. (V.A.C.S. Art. 5182c, Sec. 3.)

**Sec. 84.004. REPORTING REQUIREMENTS.** (a) The following persons shall report cases or suspected cases of reportable diseases to the department:

(1) a physician who diagnoses or treats the disease; and

(2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of the disease.

(b) The department may contact a physician attending a person with a case or a suspected case of an occupational disease. From information received from laboratory notification, the department may not, without the attending physician's consent, contact the person from whom the specimen was obtained if the notification indicates that the person has an attending physician.

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information necessary to achieve the purposes of this chapter, including the person's name, address, age, sex, race, occupation, employer, and attending physician. (V.A.C.S. Art. 5182c, Sec. 5.)

**Sec. 84.005. POWERS AND DUTIES OF DEPARTMENT.** (a) The department may enter into contracts or agreements as necessary to implement this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) The department may seek, receive, and spend any funds received through appropriations, grants, or donations from public or private sources for the purpose of identifying, reporting, or preventing those occupational diseases that have been determined by the board to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.

(c) Subject to the confidentiality requirements of this chapter, the department shall evaluate the reports of occupational diseases to establish the nature and magnitude of the hazards associated with those diseases, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this chapter and other law. (V.A.C.S. Art. 5182c, Sec. 4.)

**Sec. 84.006. CONFIDENTIALITY.** (a) All information and records relating to reportable diseases are confidential. That information may not be released or made public on subpoena or otherwise, except that release of information may be made:

(1) for statistical purposes, but only if a person is not identified;

(2) with the consent of each person identified in the information released; or

(3) to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named person.

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this chapter are kept confidential and protected from release to unauthorized persons. (V.A.C.S. Art. 5182c, Sec. 6.)

**Sec. 84.007. INVESTIGATIONS.** (a) The department shall investigate the causes of occupational diseases and methods of prevention.

(b) In performing the commissioner's duty to prevent an occupational disease, the commissioner or the commissioner's designee may enter at reasonable times and inspect within reasonable limits all or any part of an area, structure, or conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this section may take samples of materials present on the premises, including samples of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis.

(d) Persons securing the required samples may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner. (V.A.C.S. Art. 5182c, Sec. 7.)

[Chapters 85-100 reserved for expansion]

#### SUBTITLE E. HEALTH CARE COUNCILS

##### CHAPTER 101. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED DISORDERS

- Sec. 101.001. DEFINITIONS
- Sec. 101.002. COMPOSITION OF COUNCIL
- Sec. 101.003. APPLICATION OF SUNSET ACT
- Sec. 101.004. TERMS; VACANCY
- Sec. 101.005. COMPENSATION
- Sec. 101.006. MEETINGS
- Sec. 101.007. POWERS AND DUTIES OF COUNCIL
- Sec. 101.008. DUTIES OF DEPARTMENT
- Sec. 101.009. GIFTS AND GRANTS
- Sec. 101.010. REPORT

#### SUBTITLE E. HEALTH CARE COUNCILS

##### CHAPTER 101. TEXAS COUNCIL ON ALZHEIMER'S DISEASE AND RELATED DISORDERS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Alzheimer's disease and related disorders support group" means a local, state, or national organization that:

(A) is established to provide support services to aid victims of Alzheimer's disease and related disorders and their caregivers;

(B) encourages research into the cause, prevention, treatment, and care of victims of Alzheimer's disease and related disorders; and

(C) is dedicated to the development of essential services for victims of Alzheimer's disease and related disorders and their caregivers.

(2) "Council" means the Texas Council on Alzheimer's Disease and Related Disorders.

(3) "Primary family caregiver" means an individual who is a relative of a victim of Alzheimer's disease or related disorders, who has or has had a major responsibility for care and supervision of the victim, and who is not a professional health care provider paid to care for the victim. (V.A.C.S. Art. 4477-80, Sec. 1 (part).)

Sec. 101.002. COMPOSITION OF COUNCIL. (a) The Texas Council on Alzheimer's Disease and Related Disorders is composed of:

(1) five public members, one of whom is an individual related to a victim of Alzheimer's disease or related disorders but who is not a primary family caregiver, one of whom is a primary family caregiver, two of whom are members of an Alzheimer's disease and related disorders support group, and one of whom is an interested citizen;

(2) seven professional members with special training and interest in Alzheimer's disease and related disorders, with one representative each from nursing homes, physicians, nurses, public hospitals, private hospitals, home health agencies, and faculty of institutions of higher education; and

(3) the chief executive officer or the officer's designated representative from the department, Texas Department on Aging, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, and Long-Term Care Coordinating Council for the Elderly.

(b) The governor shall appoint two public members and two professional members, the lieutenant governor shall appoint two public members and two professional members, and the speaker of the house of representatives shall appoint one public member and three professional members.

(c) The members of the council shall annually elect a chairman from the council, except that an agency representative may not serve as the chairman. (V.A.C.S. Art. 4477-80, Secs. 1 (part); 2(b), (c), (d).)

Sec. 101.003. APPLICATION OF SUNSET ACT. The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 1999. (V.A.C.S. Art. 4477-80, Sec. 9(a).)

Sec. 101.004. TERMS; VACANCY. (a) Appointed council members serve for staggered two-year terms, with the terms of six members expiring September 1 of each even-numbered year and the terms of six members expiring September 1 of each odd-numbered year.

(b) If a vacancy occurs, the appropriate appointing authority shall appoint a person, in the same manner as the original appointment, to serve for the remainder of the unexpired term.

(c) A person who has served two full terms is not eligible for reappointment. (V.A.C.S. Art. 4477-80, Sec. 3(a).)

Sec. 101.005. COMPENSATION. (a) A member of the council is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

(b) A representative of a state agency shall be reimbursed from the funds of the agency the person represents. Other members shall be reimbursed from funds made available to the council.

(c) If funds are not made available to the council, members who are not representatives of state agencies serve at their own expense. (V.A.C.S. Art. 4477-80, Secs. 3(b), (c).)

Sec. 101.006. MEETINGS. (a) The council shall meet at least twice each calendar year and at the call of the chairman.

(b) The council shall adopt rules for the conduct of its meetings.

(c) Any action taken by the council must be approved by a majority of the members present. (V.A.C.S. Art. 4477-80, Secs. 4(a), (b), (d).)

Sec. 101.007. POWERS AND DUTIES OF COUNCIL. (a) The council shall:

(1) advise the board and recommend needed action for the benefit of victims of Alzheimer's disease and related disorders and for their caregivers;

(2) coordinate public and private family support networking systems for primary family caregivers;

(3) disseminate information on services and related activities for victims of Alzheimer's disease and related disorders to the medical and health care community, the academic community, primary family caregivers, advocacy associations, and the public;

(4) coordinate a volunteer assistance program primarily for in-home and respite care services;

(5) encourage research to benefit victims of Alzheimer's disease and related disorders;

(6) recommend to the board disbursement of grants and funds available for the council; and

(7) facilitate coordination of state agency services and activities relating to victims of Alzheimer's disease and related disorders.

(b) The council is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-80, Secs. 5, 9(b).)

Sec. 101.008. DUTIES OF DEPARTMENT. The department shall:

- (1) provide administrative assistance, services, and materials to the council;
- (2) accept, deposit, and disburse funds made available to the council at the direction of the board;
- (3) accept gifts and grants on behalf of the council from any public or private entity;
- (4) maintain a population data base of victims of Alzheimer's disease and related disorders in this state; and
- (5) apply for and receive on behalf of the council any appropriations, gifts, or other funds from the state or federal government or any other public or private entity, subject to limitations and conditions prescribed by legislative appropriation. (V.A.C.S. Art. 4477-80, Sec. 6.)

Sec. 101.009. GIFTS AND GRANTS. (a) The council is encouraged to seek and the department may accept on behalf of the council a gift or grant from any public or private entity.

(b) The board shall deposit any money received under Subsection (a) in the state treasury to the credit of the Alzheimer's disease and related disorders council fund to be used for the purposes of this chapter. (V.A.C.S. Art. 4477-80, Sec. 7.)

Sec. 101.010. REPORT. Before September 1 of each even-numbered year, the council shall submit a biennial report of the council's activities and recommendations to the governor, lieutenant governor, speaker of the house of representatives, members of the legislature, Long-Term Care Coordinating Council for the Elderly, and board. (V.A.C.S. Art. 4477-80, Sec. 8.)

#### CHAPTER 102. TEXAS CANCER COUNCIL

- Sec. 102.001. DEFINITION
- Sec. 102.002. TEXAS CANCER COUNCIL
- Sec. 102.003. APPLICATION OF SUNSET ACT
- Sec. 102.004. COMPOSITION OF COUNCIL
- Sec. 102.005. TERMS; VACANCY
- Sec. 102.006. OFFICERS
- Sec. 102.007. COMPENSATION
- Sec. 102.008. MEETINGS
- Sec. 102.009. POWERS AND DUTIES OF COUNCIL
- Sec. 102.010. GRANT PROGRAM
- Sec. 102.011. POWERS AND DUTIES OF DEPARTMENT
- Sec. 102.012. CANCER RESOURCE FUND

#### CHAPTER 102. TEXAS CANCER COUNCIL

Sec. 102.001. DEFINITION. In this chapter, "council" means the Texas Cancer Council. (V.A.C.S. Art. 4477-41, Sec. 1 (part).)

Sec. 102.002. TEXAS CANCER COUNCIL. (a) The Texas Cancer Council shall develop and implement the Texas Cancer Plan.

(b) The council is administratively attached to the department. (V.A.C.S. Art. 4477-41, Secs. 2(a), 5(a).)

Sec. 102.003. APPLICATION OF SUNSET ACT. The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 1997. (V.A.C.S. Art. 4477-41, Sec. 3.)

Sec. 102.004. COMPOSITION OF COUNCIL. The council is composed of:

- (1) one member of the house of representatives, appointed by the speaker of the house of representatives;
- (2) one member of the senate, appointed by the lieutenant governor;
- (3) the chairman of the Texas Board of Human Services or a representative appointed by the chairman;
- (4) the chairman of the board or a representative appointed by the chairman;
- (5) two physicians active in the treatment of cancer, appointed by the speaker of the house of representatives;
- (6) two physicians active in the treatment of cancer, appointed by the lieutenant governor;
- (7) a representative of a voluntary health organization interested in cancer, appointed by the speaker of the house of representatives;
- (8) a representative of a voluntary health organization interested in cancer, appointed by the lieutenant governor;
- (9) a representative of a public or private hospital that treats a significant number of cancer patients, appointed by the speaker of the house of representatives;
- (10) a representative of a public or private hospital that treats a significant number of cancer patients, appointed by the lieutenant governor;
- (11) two members of the public, appointed by the speaker of the house of representatives; and
- (12) two members of the public, appointed by the lieutenant governor. (V.A.C.S. Art. 4477-41, Sec. 2(b).)

Sec. 102.005. **TERMS; VACANCY.** (a) Except for a member of the legislature or a representative of a state agency, council members serve for staggered six-year terms, with the terms of four members expiring February 1 of each even-numbered year.

(b) If a vacancy occurs, the appropriate appointing authority shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term. (V.A.C.S. Art. 4477-41, Sec. 2(c).)

Sec. 102.006. **OFFICERS.** The speaker of the house of representatives shall appoint one member as chairman. The lieutenant governor shall appoint one member as vice-chairman. (V.A.C.S. Art. 4477-41, Sec. 2(d).)

Sec. 102.007. **COMPENSATION.** (a) A member of the council is not entitled to compensation but is entitled to reimbursement for actual and necessary expenses incurred in performing council duties.

(b) A member of the legislature shall be reimbursed from the appropriate fund of the legislature. A representative of a state agency shall be reimbursed from the funds of the agency the person represents. Other members shall be reimbursed from council funds. (V.A.C.S. Art. 4477-41, Sec. 2(e).)

Sec. 102.008. **MEETINGS.** The council shall meet at the call of the chairman. (V.A.C.S. Art. 4477-41, Sec. 4.)

Sec. 102.009. **POWERS AND DUTIES OF COUNCIL.** (a) The council shall:

- (1) work in cooperation and coordination with the Legislative Task Force on Cancer in Texas during its existence to implement the Texas Cancer Plan;
- (2) continually monitor and revise the Texas Cancer Plan as necessary;
- (3) promote the development and coordination of effective and efficient statewide public and private policies, programs, and services for persons with cancer;
- (4) encourage cooperative, comprehensive, and complementary planning among the public, private, and volunteer sectors involved in cancer research, prevention, and treatment;
- (5) coordinate administrative responsibilities with the department to avoid unnecessary duplication of facilities and services; and

(6) report to the legislature and to the Texas Health and Human Services Coordinating Council not later than January 31 of each odd-numbered year.

(b) The council may:

(1) employ an executive director and secretary;

(2) appoint advisory committees necessary to implement the Texas Cancer Plan and employ necessary staff to provide administrative support;

(3) monitor contracts and agreements for cancer programs authorized by this chapter;

(4) conduct necessary studies and surveys;

(5) accept, transfer, and spend, through the department, funds made available by the federal or state government or by any other public or private source, subject to limitations and conditions prescribed by legislative appropriation; and

(6) use the existing staff of an appointed official or agency to assist the council in performing its duties under this chapter. (V.A.C.S. Art. 4477-41, Secs. 5(b), (c); 8.)

Sec. 102.010. GRANT PROGRAM. (a) If funds are available, the council may establish a grant program to provide funds to public or private persons to implement the Texas Cancer Plan.

(b) The council shall adopt rules governing the submission and approval of grant requests and the cancellation of grants. The rules must be consistent with board rules.

(c) To receive a grant, a person whose grant request is approved must execute an interagency agreement or a contract with the department. The contract must require the person receiving the grant to perform the services as stated in the approved grant request. The contract must contain appropriate provisions for program and fiscal monitoring. The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract without the council's approval. (V.A.C.S. Art. 4477-41, Sec. 6.)

Sec. 102.011. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall:

(1) provide administrative assistance to the council at the council's request;

(2) coordinate administrative responsibilities with the council to avoid unnecessary duplication of facilities and services;

(3) submit the council's budget request to the legislature at the council's request; and

(4) disburse funds made available to the council at the direction of the council.

(b) The department may:

(1) apply for and receive on behalf of the council any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to limitations and conditions prescribed by legislative appropriation; and

(2) provide the council with other administrative services and material as needed. (V.A.C.S. Art. 4477-41, Sec. 7.)

Sec. 102.012. CANCER RESOURCE FUND. (a) The cancer resource fund is an account of the general revenue fund.

(b) The legislature may appropriate money deposited to the credit of the cancer resource fund only to the council for cancer prevention, cancer research, and medical care for cancer victims.

(c) The council shall develop a policy governing the award of funds for clinical research that follows scientific peer review and approval by the National Cancer Institute of the National Institutes of Health or that follows other review procedures that are designed to distribute those funds on the basis of scientific merit.

(d) Interest earned from the investment of the cancer resource fund shall be deposited to the credit of the fund. (V.A.C.S. Art. 4447x.)

**CHAPTER 103. TEXAS DIABETES COUNCIL**

- Sec. 103.001. DEFINITIONS**
- Sec. 103.002. COMPOSITION OF COUNCIL**
- Sec. 103.003. APPLICATION OF SUNSET ACT**
- Sec. 103.004. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT**
- Sec. 103.005. TERMS**
- Sec. 103.006. CHAIRMAN**
- Sec. 103.007. REMOVAL OF COUNCIL MEMBER**
- Sec. 103.008. VACANCY**
- Sec. 103.009. REIMBURSEMENT**
- Sec. 103.010. STAFF SUPPORT**
- Sec. 103.011. ADVISORY COMMITTEES**
- Sec. 103.012. MEETINGS**
- Sec. 103.013. STATE PLAN**
- Sec. 103.014. POWERS AND DUTIES**
- Sec. 103.015. GIFTS AND GRANTS**
- Sec. 103.016. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS**
- Sec. 103.017. PUBLIC AWARENESS AND TRAINING**
- Sec. 103.018. ANNUAL REPORT**
- Sec. 103.019. AUDIT**

**CHAPTER 103. TEXAS DIABETES COUNCIL**

**Sec. 103.001. DEFINITIONS.** In this chapter:

(1) "Council" means the Texas Diabetes Council.

(2) "Person with diabetes" means a person diagnosed by a physician as having diabetes. (V.A.C.S. Art. 4477-60, Sec. 1 (part).)

**Sec. 103.002. COMPOSITION OF COUNCIL.** (a) The Texas Diabetes Council is composed of eight citizen members appointed from the public and one representative each from the department, the Central Education Agency, the Texas Department of Human Services, the Texas Commission for the Blind, and the Texas Rehabilitation Commission.

(b) The governor, with the advice and consent of the senate, shall appoint the following citizen members:

(1) a licensed physician with a specialization in treating diabetes;

(2) a registered nurse with a specialization in diabetes education and training;

(3) a registered and licensed dietitian with a specialization in the diabetes education field;

(4) a person with experience and training in public health policy; and

(5) four consumer members, with special consideration given to persons active in the Texas affiliates of the Juvenile Diabetes Foundation or the American Diabetes Association.

(c) The chairman of the board of each agency listed in Subsection (a) shall appoint that agency's representative.

(d) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. (V.A.C.S. Art. 4477-60, Secs. 2(a), (c), (f).)

**Sec. 103.003. APPLICATION OF SUNSET ACT.** The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 1997. (V.A.C.S. Art. 4477-60, Sec. 10.)

**Sec. 103.004. RESTRICTIONS ON COUNCIL APPOINTMENT, MEMBERSHIP, OR EMPLOYMENT.** (a) A person is not eligible for appointment or service as a citizen member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds at the council's direction;

(2) owns or controls directly or indirectly more than a 10 percent interest in a business entity or other organization receiving funds at the council's direction; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department at the council's direction, other than compensation or reimbursement authorized by law for council membership, attendance, or expenses.

(b) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the council or act as the general counsel.

(c) An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the council. A person who is the spouse of an officer, employee, or paid consultant of a trade association in the field of health care may not be a member of the council and may not be an employee, including an employee exempt from the state's position classification plan, who is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For purposes of Subsection (c), a trade association is a nonprofit, cooperative, and voluntary 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 interests. (V.A.C.S. Art. 4477-60, Secs. 2(b), (d), (e).)

Sec. 103.005. TERMS. Council members serve for staggered two-year terms, with the terms of four citizen members and two agency representatives expiring February 1 of each odd-numbered year and the terms of four citizen members and three agency representatives expiring February 1 of each even-numbered year. (V.A.C.S. Art. 4477-60, Sec. 2(g) (part).)

Sec. 103.006. CHAIRMAN. Council members shall annually elect one citizen member to serve as chairman of the council. (V.A.C.S. Art. 4477-60, Sec. 2(h).)

Sec. 103.007. REMOVAL OF COUNCIL MEMBER. (a) It is a ground for removal from the council if a member:

(1) is not eligible for appointment to the council at the time of appointment as provided by Section 103.004(a);

(2) is not eligible to serve on the council as provided by Section 103.004(a);

(3) violates a prohibition established by Section 103.004(b) or (c);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend during each 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 that it is taken when a ground for removal of a member of the council exists.

(c) If the chairman of the council has knowledge that a potential ground for removal exists, the chairman shall notify the governor of its existence.

(d) The council shall inform its members as often as necessary of:

(1) the qualifications for office prescribed by this chapter; and

(2) their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 4477-60, Secs. 2(k), (l), (m), (n).)

Sec. 103.008. VACANCY. (a) The office of a member appointed by an agency becomes vacant when the person terminates employment with the agency.

(b) If the office of a member who is an agency representative becomes vacant, the chairman of the board of that agency shall appoint an agency representative to serve for the remainder of that member's term. (V.A.C.S. Art. 4477-60, Sec. 2(g) (part).)



**Sec. 103.009. REIMBURSEMENT.** (a) The department shall reimburse council and advisory committee members for travel and other necessary expenses incurred in performing official duties at the same rate provided for state employees in the General Appropriations Act.

(b) Funds for travel reimbursement shall be appropriated to the department. (V.A.C.S. Art. 4477-60, Sec. 6(a).)

**Sec. 103.010. STAFF SUPPORT.** Each agency represented on the council shall provide the council with periodic staff support of specialists as needed and may provide staff support to an advisory committee. (V.A.C.S. Art. 4477-60, Sec. 6(b).)

**Sec. 103.011. ADVISORY COMMITTEES.** (a) The council may establish advisory committees the council considers necessary and may determine the appropriate membership for each committee.

(b) The council shall specify the purpose and duties of each advisory committee and shall specify any product the committee is required to develop.

(c) Members of an advisory committee serve at the will of the council. The council may dissolve an advisory committee when necessary. (V.A.C.S. Art. 4477-60, Sec. 4.)

**Sec. 103.012. MEETINGS.** (a) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(b) Any action taken by the council must be approved by a majority of the members present. (V.A.C.S. Art. 4477-60, Secs. 2(i), (j).)

**Sec. 103.013. STATE PLAN.** (a) The council shall develop and implement a state plan for diabetes treatment, education, and training to ensure that:

(1) this chapter is properly implemented by the agencies affected;

(2) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(3) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The state plan may include provisions to ensure that:

(1) individual and family needs are assessed statewide and all available resources are coordinated to meet those needs; and

(2) health care provider needs are assessed statewide and strategies are developed to meet those needs.

(c) The council shall make written recommendations for performing its duties under this chapter to the board and the legislature. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

(d) The council shall submit the state plan to the state agency designated as the state health planning and development agency not later than November 1 of each odd-numbered year.

(e) Each state agency affected by the state plan shall:

(1) determine what resources would be required to implement the portions of the state plan affecting that agency; and

(2) determine whether that agency will seek funds to implement that portion of the state plan.

(f) Not later than November 1 of each even-numbered year, each state agency affected by the state plan shall report to the council, the Legislative Budget Board, and the Governor's Office of Budget and Planning:

(1) information determined under Subsection (e); and

(2) each deviation from the council's proposed plan, including an explanation for the deviation. (V.A.C.S. Art. 4477-60, Sec. 3.)

Sec. 103.014. **POWERS AND DUTIES.** (a) The council shall address contemporary issues affecting health promotion services in the state, including:

- (1) professional and patient education;
- (2) successful diabetes education strategies;
- (3) personnel preparation and continuing education;
- (4) state expenditures for treatment of chronic diseases;
- (5) screening services; and
- (6) public awareness.

(b) The council shall advise the legislature on legislation that is needed to develop further and maintain a statewide system of quality education services for all persons with diabetes. The council may develop and submit legislation to the legislature or comment on pending legislation that affects persons with diabetes.

(c) The council may:

- (1) compile and publish regional directories of services for persons with diabetes;
- (2) design or adapt and publish a handbook in English and Spanish relating to diet, exercise, and other self-care management skills for persons with diabetes;
- (3) study the feasibility of a statewide hotline for persons with diabetes; and
- (4) study the standards and structure of pilot programs to provide diabetes education and training in this state.

(d) The council may engage in studies that it determines are necessary or suitable under the state plan as provided by this chapter.

(e) The department shall accept funds appropriated for the purposes of this chapter and shall allocate those funds. The council shall make recommendations to the department concerning the allocation of funds. (V.A.C.S. Art. 4477-60, Secs. 5(a), (b), (c), (d), (e).)

Sec. 103.015. **GIFTS AND GRANTS.** (a) The council may receive gifts and grants from any public or private source to perform its duties under this chapter. The department shall accept the gifts on behalf of the council and shall deposit any funds accepted under this section to the credit of a special account in the general revenue fund.

(b) The department may retain five percent of any monetary gifts accepted on behalf of the council to cover its costs in administering this section. (V.A.C.S. Art. 4477-60, Sec. 5(f).)

Sec. 103.016. **PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS.** (a) The council shall prepare information of public interest describing the functions of the council and describing council procedures by which complaints are filed with and resolved by the council. The council shall make the information available to the general public and appropriate state agencies.

(b) The council by rule shall establish methods by which consumers or service recipients are notified of the name, mailing address, and telephone number of the council for the purpose of directing complaints to the council.

(c) 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 jurisdiction of the council. (V.A.C.S. Art. 4477-60, Sec. 9.)

Sec. 103.017. **PUBLIC AWARENESS AND TRAINING.** (a) The department, the Texas Commission for the Blind, the Texas Rehabilitation Commission, the Texas Department of Human Services, and the Central Education Agency shall work with the council to jointly develop, produce, and implement a general public awareness strategy focusing on diabetes, its complications, and techniques for achieving good management. Each agency shall pay for the costs of producing and disseminating information on diabetes to clients served by that agency.

(b) The department, the Texas Commission for the Blind, the Texas Rehabilitation Commission, the Texas Department of Human Services, and the Central Education Agency may jointly develop and implement a statewide plan for conducting regional

training sessions for public and private service providers, including institutional health care providers, who have routine contact with persons with diabetes.

(c) The council must approve the strategies and plans developed under this section. (V.A.C.S. Art. 4477-60, Secs. 7(a), (b) (part), (c).)

Sec. 103.018. **ANNUAL REPORT.** The department shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by or for the council during the preceding fiscal year. The form of the annual report and the reporting time are as provided by the General Appropriations Act. (V.A.C.S. Art. 4477-60, Sec. 8(a).)

Sec. 103.019. **AUDIT.** The state auditor, as part of the audit of the department, shall audit the financial transactions pertaining to the council at least once during each biennium. (V.A.C.S. Art. 4477-60, Sec. 8(b).)

**CHAPTER 104. STATEWIDE HEALTH COORDINATING COUNCIL  
AND STATE HEALTH PLAN**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 104.001. **POLICY; PURPOSE**
- Sec. 104.002. **DEFINITION**
- Sec. 104.003. **FEDERAL LAW**
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[Sections 104.006-104.010 reserved for expansion]

**SUBCHAPTER B. STATEWIDE HEALTH COORDINATING COUNCIL**

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- Sec. 104.021. **PROPOSED STATE HEALTH PLAN**
- Sec. 104.022. **STATE HEALTH PLAN**
- Sec. 104.023. **REVIEW OF STATE HEALTH PLAN**
- Sec. 104.024. **SUBMISSION OF PLAN TO GOVERNOR**
- Sec. 104.025. **IMPLEMENTATION OF STATE HEALTH PLAN**
- Sec. 104.026. **COST DATA**

[Sections 104.027-104.040 reserved for expansion]

**SUBCHAPTER D. THE DEPARTMENT AND THE STATE HEALTH PLAN**

- Sec. 104.041. **STATE HEALTH PLANNING AND DEVELOPMENT AGENCY**
- Sec. 104.042. **DATA COLLECTION**
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**CHAPTER 104. STATEWIDE HEALTH COORDINATING COUNCIL  
AND STATE HEALTH PLAN**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 104.001. **POLICY; PURPOSE.** (a) The policy of this state and the purpose of this chapter are to:

(1) ensure that health care services and facilities are available to all citizens in an orderly and economical manner; and

(2) meet the requirements of and implement the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79), the federal rules and regulations adopted under that Act, and other pertinent federal authority.

(b) To achieve this purpose it is essential that:

(1) appropriate health planning activities are undertaken and implemented; and

(2) health care services and facilities are provided in a cost-effective manner, compatible with the health care needs of the different areas and populations of the state. (V.A.C.S. Art. 4418h, Sec. 1.02.)

Sec. 104.002. **DEFINITION.** In this chapter, "health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and any other facility designated a health care facility by federal law. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups. (V.A.C.S. Art. 4418h, Sec. 1.03(9).)

Sec. 104.003. **FEDERAL LAW.** A reference in this chapter to federal law is a reference to any pertinent federal authority, including:

(1) the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79);

(2) Public Laws 79-725, 88-164, 89-749, and 92-603; and

(3) the federal rules and regulations adopted under a law specified by Subdivision (1) or (2). (V.A.C.S. Art. 4418h, Sec. 1.03(8).)

Sec. 104.004. **INTERAGENCY COOPERATION.** Each state agency, department, instrumentality, grantee, political subdivision, and institution of higher education shall cooperate with the department in performing assigned duties and functions. (V.A.C.S. Art. 4418h, Sec. 1.06.)

Sec. 104.005. **LIMITATIONS ON POWERS OF DEPARTMENT.** This chapter does not authorize the department or an official or employee of the department to:

(1) supervise or control the practice of medicine, the manner in which physician's services in private practice are provided, or the selection, tenure, compensation, or fees of a physician in the delivery of physician's services; or

(2) perform a duty or function under Title XI of the Social Security Act (42 U.S.C. Sec. 1301 et seq.) or a rule or regulation adopted under that Act. (V.A.C.S. Art. 4418h, Sec. 1.07 (part).)

[Sections 104.006-104.010 reserved for expansion]

#### SUBCHAPTER B. STATEWIDE HEALTH COORDINATING COUNCIL

Sec. 104.011. **COMPOSITION OF COUNCIL.** The statewide health coordinating council is composed of 21 members appointed by the governor in accordance with federal law. (V.A.C.S. Art. 4418h, Secs. 1.03(16) (part), 4.04(a).)

Sec. 104.012. **RULES.** The statewide health coordinating council shall adopt rules governing the development and implementation of the state health plan. (V.A.C.S. Art. 4418h, Sec. 1.03(16) (part).)

Sec. 104.013. **FEES.** The statewide health coordinating council may establish and charge fees for public health planning, data, and statistical services. (V.A.C.S. Art. 4418h, Sec. 4.04(c).)

Sec. 104.014. **ASSISTANCE.** The department, in accordance with rules adopted by the statewide health coordinating council, shall assist the council in performing the council's duties and functions. (V.A.C.S. Art. 4418h, Sec. 4.02(a) (part).)

[Sections 104.015–104.020 reserved for expansion]

**SUBCHAPTER C. STATE HEALTH PLAN**

**Sec. 104.021. PROPOSED STATE HEALTH PLAN.** (a) The department, in accordance with rules adopted by the statewide health coordinating council, shall prepare, review, and revise a proposed state health plan.

(b) The department shall submit the proposed plan to the statewide health coordinating council. (V.A.C.S. Art. 4418h, Secs. 4.02(a) (part), 4.05(e).)

**Sec. 104.022. STATE HEALTH PLAN.** (a) Information needed for the development of the state health plan shall be gathered through systematic methods designed to include local, regional, and statewide perspectives.

(b) The statewide health coordinating council, in consultation with the health and human services coordinating council, shall issue overall directives for the development of the state health plan.

(c) The department shall consult with the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, and other appropriate health-related state agencies designated by the governor before performing the duties and functions prescribed by state and federal law regarding the development of the state health plan.

(d) The statewide health coordinating council shall provide guidance to the department in developing the state health plan.

(e) The state health plan shall be developed and used in accordance with applicable state and federal law. The plan must identify:

- (1) major statewide health concerns;
- (2) the availability and use of current health resources of the state; and
- (3) future health service and facility needs of the state.

(f) The state health plan must:

- (1) propose strategies for the correction of major deficiencies in the service delivery system; and
- (2) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan. (V.A.C.S. Art. 4418h, Secs. 4.02(b); 4.04(b) (part); 4.05(a), (b), (c), (d).)

**Sec. 104.023. REVIEW OF STATE HEALTH PLAN.** The statewide health coordinating council shall submit the state health plan to the health and human services coordinating council for review and comment before the plan is sent to the governor. (V.A.C.S. Art. 4418h, Sec. 4.05(f).)

**Sec. 104.024. SUBMISSION OF PLAN TO GOVERNOR.** The statewide health coordinating council shall approve the state health plan for submission to the governor in accordance with applicable federal law and, not later than November 1 of each even-numbered year, submit the plan to the governor for adoption. (V.A.C.S. Art. 4418h, Secs. 4.04(b) (part), 4.05(g).)

**Sec. 104.025. IMPLEMENTATION OF STATE HEALTH PLAN.** The statewide health coordinating council shall promote the implementation of the recommendations made in the state health plan. (V.A.C.S. Art. 4418h, Sec. 4.04(b) (part).)

**Sec. 104.026. COST DATA.** (a) A state agency directly affected by a recommendation in the state health plan shall submit cost data for the implementation of the recommendation to the department and to the statewide health coordinating council, and shall indicate whether the agency is requesting funds in a manner consistent with the plan's recommendation.

(b) If the agency does not request funds consistent with the state health plan's recommendation, the agency shall submit an explanation and justification of any deviation.

(c) The department shall submit information received under this section to the Legislative Budget Board and the governor's budget office not later than November 1 of each even-numbered year. (V.A.C.S. Art. 4418h, Sec. 4.06.)

[Sections 104.027–104.040 reserved for expansion]

#### SUBCHAPTER D. THE DEPARTMENT AND THE STATE HEALTH PLAN

Sec. 104.041. STATE HEALTH PLANNING AND DEVELOPMENT AGENCY. (a) The department is the state health planning and development agency for this state.

(b) After a public hearing and with the governor's approval, the department may contract with an appropriate state agency to perform specific state health planning and development functions of the department. (V.A.C.S. Art. 4418h, Secs. 4.01, 4.08.)

Sec. 104.042. DATA COLLECTION. (a) The board by rule shall establish reasonable procedures for the collection of data from health care facilities and for the distribution of data necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The board by rule shall specify the type of data required, the entities required to submit the data, and the period during which the data must be submitted.

(c) The department, in accordance with rules adopted by the statewide health coordinating council, shall collect and distribute data necessary to support specific state health plan goals.

(d) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(e) Data received by the department under this section containing information identifying specific patients is confidential and may not be released unless the information identifying the patient is removed. (V.A.C.S. Art. 4418h, Secs. 4.02(a) (part); 4.03(a), (b), (c), (f).)

Sec. 104.043. FAILURE TO SUBMIT DATA; CIVIL PENALTY. (a) If the department does not receive necessary data from an entity as required by the board rules, the department shall send to the entity a notice requiring the entity to submit the data not later than the 30th day after the date on which the entity receives the notice.

(b) An entity that does not submit the data during the period determined under Subsection (a) is subject to a civil penalty of not more than \$500 for each day after the period that the entity fails to submit the data.

(c) At the request of the commissioner, the attorney general shall sue in the name of the state to recover the civil penalty. (V.A.C.S. Art. 4418h, Secs. 4.03(d), (e).)

[Chapters 105–120 reserved for expansion]

#### SUBTITLE F. LOCAL REGULATION OF PUBLIC HEALTH

#### CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT

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**SUBTITLE F. LOCAL REGULATION OF PUBLIC HEALTH**

**CHAPTER 121. LOCAL PUBLIC HEALTH REORGANIZATION ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 121.001. **SHORT TITLE.** This chapter may be cited as the Local Public Health Reorganization Act. (V.A.C.S. Art. 4436b, Sec. 1.01.)

Sec. 121.002. **DEFINITION.** In this chapter, “physician” means a person licensed to practice medicine by the Texas State Board of Medical Examiners. (V.A.C.S. Art. 4436b, Sec. 1.03(8).)

Sec. 121.003. **POWERS OF MUNICIPALITIES AND COUNTIES.** (a) The governing body of a municipality or the commissioners court of a county may enforce any law that is reasonably necessary to protect the public health.

(b) The governing bodies of municipalities and the commissioners courts of counties may cooperate with one another in making necessary improvements and providing services to promote the public health in accordance with The Interlocal Cooperation Act (Article 4413(32c), Vernon’s Texas Civil Statutes). (V.A.C.S. Art. 4436b, Secs. 2.01, 2.02.)

Sec. 121.004. **LOCAL HEALTH UNITS.** A local health unit is a division of municipal or county government that provides public health services but does not provide each service required of a local health department under Section 121.032(a) or of a public health district under Section 121.043(a). (V.A.C.S. Art. 4436b, Secs. 1.03(14); 4.09(a) (part), (c).)

Sec. 121.005. **STATE AND LOCAL AFFILIATION; CONTRACTS.** (a) A local health unit, local health department, or public health district may become affiliated with the department to facilitate the exchange of information and the coordination of public health services.

(b) To be affiliated with the department, a local health unit, local health department, or public health district must annually provide to the department information relating to:

- (1) services provided;
- (2) staffing patterns; and
- (3) funding sources and budget.

(c) The department may contract with a local health unit, local health department, or public health district for the provision of public health services.

(d) The board may adopt rules necessary to implement this section. (V.A.C.S. Art. 4436b, Secs. 4.09(d), (e), (f) (part).)

Sec. 121.006. PUBLIC HEALTH SERVICES FEES; STATE SUPPORT. (a) The governing body of a municipality, the commissioners court of a county, or the administrative board of a public health district may adopt ordinances or rules to charge fees for public health services.

(b) A municipality, county, or public health district may not deny public health services to an individual because of inability to pay for the services. A municipality, county, or public health district shall provide for the reduction or waiver of a fee for an individual who cannot pay for services in whole or in part.

(c) The Uniform Grant and Contract Management Act of 1981 (Article 4413(32g), Vernon's Texas Civil Statutes) and standards adopted under that Act control, if applicable, if the local health unit, local health department, or public health district receives state support for the provision of public health services.

(d) In this section, "public health services" means:

- (1) personal health promotion and maintenance services;
- (2) infectious disease control and prevention services;
- (3) environmental and consumer health programs;
- (4) public health education and information services;
- (5) laboratory services; and
- (6) administrative services. (V.A.C.S. Art. 4436b, Sec. 4.08.)

Sec. 121.007. PUBLIC HEALTH REGIONS. (a) The board may designate geographic areas of the state as public health regions to provide public health services.

(b) The board shall appoint a physician to serve as regional director for each public health region. The regional director is the chief administrative officer of the region. The board shall establish the qualifications and terms of employment of a regional director.

(c) The board or its designee may require a regional director to perform the duties of a health authority. The regional director may perform those duties, as authorized by the board or commissioner, in a jurisdiction in the region in which:

- (1) there is no health authority; or
- (2) the health authority fails to perform duties prescribed by the board under Section 121.024. (V.A.C.S. Art. 4436b, Secs. 1.03(11), (12); 5.01; 5.02; 5.03.)

Sec. 121.008. ANNUAL CONFERENCE. (a) The board shall hold an annual conference for health authorities and for directors of local health departments and public health districts. The commissioner or the commissioner's designee shall preside over the conference.

(b) A county or municipality may pay necessary expenses incurred by its health authority or director in attending the conference. (V.A.C.S. Art. 4436b, Secs. 1.03(4), 3.01(b).)

[Sections 121.009–121.020 reserved for expansion]

## SUBCHAPTER B. HEALTH AUTHORITIES

Sec. 121.021. APPOINTMENT. The governing body of a municipality or the commissioners court of a county that has not established a local health department or a public



health district may appoint a physician as health authority to administer state and local laws relating to public health in the municipality's or county's jurisdiction. (V.A.C.S. Art. 4436b, Secs. 1.03(5), 2.03 (part).)

**Sec. 121.022. QUALIFICATIONS.** (a) A health authority must be:

- (1) a competent physician with a reputable professional standing who is legally qualified to practice medicine in this state; and
- (2) a resident of this state.

(b) To be qualified to serve as a health authority, the appointee must:

- (1) take and subscribe to the official oath; and
- (2) file a copy of the oath and appointment with the board. (V.A.C.S. Art. 4436b, Secs. 3.02(a), (b) (part).)

**Sec. 121.023. TERM OF OFFICE.** A health authority serves for a term of two years and may be appointed to successive terms. (V.A.C.S. Art. 4436b, Sec. 3.02(b) (part).)

**Sec. 121.024. DUTIES.** (a) A health authority is a state officer when performing duties prescribed by state law.

(b) A health authority shall perform each duty that is:

- (1) necessary to implement and enforce a law to protect the public health; or
- (2) prescribed by the board.

(c) The duties of a health authority include:

- (1) establishing, maintaining, and enforcing quarantine in the health authority's jurisdiction;
- (2) aiding the board in relation to local quarantine, inspection, disease prevention and suppression, birth and death statistics, and general sanitation in the health authority's jurisdiction;
- (3) reporting the presence of contagious, infectious, and dangerous epidemic diseases in the health authority's jurisdiction to the board in the manner and at the times prescribed by the board;
- (4) reporting to the board on any subject on which it is proper for the board to direct that a report be made; and
- (5) aiding the board in the enforcement of the following in the health authority's jurisdiction:
  - (A) proper rules, requirements, and ordinances;
  - (B) sanitation laws;
  - (C) quarantine rules; and
  - (D) vital statistics collections. (V.A.C.S. Art. 4436b, Secs. 3.01(a), 3.02(b) (part).)

**Sec. 121.025. REMOVAL FROM OFFICE.** A health authority may be removed from office for cause under the personnel procedures applicable to the heads of departments of the local government that the health authority serves. (V.A.C.S. Art. 4436b, Sec. 3.02(c).)

[Sections 121.026–121.030 reserved for expansion]

#### **SUBCHAPTER C. LOCAL HEALTH DEPARTMENTS**

**Sec. 121.031. ESTABLISHMENT.** The governing body of a municipality or the commissioners court of a county may establish a local health department by majority vote. (V.A.C.S. Art. 4436b, Secs. 1.03(6), 4.07(a).)

**Sec. 121.032. POWERS AND DUTIES.** (a) A local health department may perform all public health functions that the municipality or county that establishes the local health department may perform.

(b) For purposes of Section 121.005, a local health department shall be identified by its program of public health services and shall, at a minimum, provide:

- (1) personal health promotion and maintenance services;
- (2) infectious disease control and prevention services;
- (3) environmental and consumer health programs for the enforcement of health and safety laws relating to food, water, waste control, general sanitation, and vector control;
- (4) public health education and information services;
- (5) laboratory services; and
- (6) administrative services. (V.A.C.S. Art. 4436b, Secs. 4.07(b), 4.09(a) (part), (b) (part).)

Sec. 121.033. DEPARTMENT DIRECTOR. (a) The governing body of a municipality or the commissioners court of a county shall appoint a physician as the director of the municipality's or county's local health department.

(b) The director is the chief administrative officer of the local health department and is the health authority in the local health department's jurisdiction.

(c) The governing body of a municipality or the commissioners court of a county may designate a person to perform its appointment duties under this section.

(d) A person serving as the director of a local health department on September 1, 1983, who is not a physician may continue to serve as department director, in which case the governing body of the municipality or commissioners court of the county shall appoint a physician as the health authority in the local health department's jurisdiction. (V.A.C.S. Art. 4436b, Secs. 1.03(4) (part), 4.07(c) (part).)

Sec. 121.034. PUBLIC HEALTH BOARD. (a) The governing body of a municipality that establishes a local health department may provide for the creation of an administrative or advisory public health board and the appointment of representatives to that board.

(b) The commissioners court of a county that establishes a local health department may provide for the creation of an advisory public health board and the appointment of representatives to that board.

(c) The director of the local health department is an ex officio, nonvoting member of any public health board established for the local health department. (V.A.C.S. Art. 4436b, Secs. 1.03(9) (part), (13) (part); 4.07(d).)

[Sections 121.035–121.040 reserved for expansion]

#### SUBCHAPTER D. PUBLIC HEALTH DISTRICTS

Sec. 121.041. ESTABLISHMENT. By a majority vote of each governing body, a public health district may be established by:

- (1) two or more counties;
- (2) two or more municipalities;
- (3) a county and one or more municipalities in the county; or
- (4) two or more counties and one or more municipalities in those counties. (V.A.C.S. Art. 4436b, Secs. 1.03(10), 4.01.)

Sec. 121.042. ADMISSION TO DISTRICT. (a) Any governmental entity, including a school district, may apply to become a member of a public health district.

(b) The governing body of each member shall review the application.

(c) The governmental entity may be admitted to membership on terms acceptable to the applicant and the members if a majority of the governing body of each member approves the application. (V.A.C.S. Art. 4436b, Secs. 1.03(7), 4.05.)

Sec. 121.043. POWERS AND DUTIES. (a) A public health district may perform any public health function that any of its members may perform unless otherwise restricted by law.

(b) For purposes of Section 121.005, a public health district shall be identified by its program of public health services and shall, at a minimum, provide the services listed for a local health department under Section 121.032(b). (V.A.C.S. Art. 4436b, Secs. 4.02, 4.09(a) (part), (b) (part).)

**Sec. 121.044. COOPERATIVE AGREEMENT.** (a) The members of a public health district shall prepare a written cooperative agreement that sets out fully the terms of operation of the district.

(b) The terms in a cooperative agreement must include:

- (1) organizational structure;
- (2) financial administration; and
- (3) procedures for:
  - (A) modification of the cooperative agreement;
  - (B) admission, withdrawal, and expulsion of members;
  - (C) dissolution of the district; and
  - (D) selection and removal of a director.

(c) A cooperative agreement must be:

- (1) approved by the governing body of each member; and
- (2) signed by the appropriate officers of each governing body.

(d) A modification of a cooperative agreement must be in writing. A modification is effective on approval by the governing body of each member.

(e) A copy of a cooperative agreement and of each modification shall be:

- (1) included in the minutes of the governing body of each member; and
- (2) filed with the clerk of each county and municipality in the district and with the department. (V.A.C.S. Art. 4436b, Secs. 4.03(a), (c), (d).)

**Sec. 121.045. DISTRICT DIRECTOR.** (a) The members of a public health district shall appoint a physician as the director of the district.

(b) The director is the chief administrative officer of the public health district and is the health authority in the district's jurisdiction.

(c) A member may designate a person to perform its appointment duties under this section.

(d) A person serving as the director of a public health district on September 1, 1983, who is not a physician may continue to serve as district director, in which case the district members shall appoint a physician as the health authority for the district. (V.A.C.S. Art. 4436b, Secs. 1.03(4) (part); 4.04(a), (b), (d).)

**Sec. 121.046. PUBLIC HEALTH BOARD.** (a) The cooperative agreement of a public health district may provide for the creation of an advisory or administrative public health board.

(b) An advisory public health board shall advise the members and director on matters of public health.

(c) An administrative public health board may adopt substantive and procedural rules that are necessary and appropriate to promote and preserve the health and safety of the public. However, an administrative board may not adopt a rule that is not specifically authorized by state law, conflicts with a law of this state, or conflicts with an ordinance of a municipality or county in the district.

(d) A public health board may perform any function relating to the operation of the public health district that is required under the cooperative agreement.

(e) The terms of a cooperative agreement that provides for a public health board must include:

- (1) the composition and number of the representatives that compose the public health board;
- (2) a method for appointing representatives to the public health board;

- (3) the length of the representatives' terms, which must be staggered;
  - (4) a requirement that a representative must have resided in the district for at least three years before the date of the representative's appointment;
  - (5) a requirement that each representative serve without compensation;
  - (6) the manner in which a vacancy is filled for an unexpired term;
  - (7) the procedure and substantive criteria for the removal of a representative; and
  - (8) a description of the relationship between the director and the public health board.
- (f) The director is an ex officio, nonvoting member of a public health board established by the cooperative agreement. (V.A.C.S. Art. 4436b, Secs. 1.03(9) (part), (13) (part); 4.03(b); 4.04(c); 4.09(f) (part).)

Sec. 121.047. FINANCES. The members of a public health district shall pay the costs necessary to operate the district, including costs for:

- (1) staff salaries;
- (2) supplies;
- (3) suitable offices;
- (4) health and clinic centers;
- (5) health services and facilities; and
- (6) maintenance. (V.A.C.S. Art. 4436b, Sec. 4.06.)

#### CHAPTER 122. POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES RELATING TO PUBLIC HEALTH

- Sec. 122.001. COUNTY FUNDING FOR PUBLIC HEALTH AND SANITATION
- Sec. 122.002. HEALTH UNIT IN COUNTY WITH POPULATION OF LESS THAN 22,000
- Sec. 122.003. HEALTH UNIT IN COUNTY WITH POPULATION OF 22,200 TO 22,500
- Sec. 122.004. APPROPRIATION TO HOSPITAL ESTABLISHED BY DONATION
- Sec. 122.005. POWERS OF TYPE A GENERAL-LAW MUNICIPALITY
- Sec. 122.006. POWERS OF HOME-RULE MUNICIPALITIES

#### CHAPTER 122. POWERS AND DUTIES OF COUNTIES AND MUNICIPALITIES RELATING TO PUBLIC HEALTH

Sec. 122.001. COUNTY FUNDING FOR PUBLIC HEALTH AND SANITATION. The commissioners court of a county may appropriate and spend money from the county general revenues for public health and sanitation in the county. (V.A.C.S. Art. 4414b, Sec. 1.07 (part).)

Sec. 122.002. HEALTH UNIT IN COUNTY WITH POPULATION OF LESS THAN 22,000. (a) The commissioners court of a county with a population of less than 22,000 may impose an ad valorem tax at a rate not to exceed five cents on each \$100 of the taxable value of property taxable by the county for:

- (1) the creation of a county health unit;
- (2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and
- (3) medical treatment for indigent persons who are not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(b) This section is effective for a county only if it is approved by a majority of the voters of the county at an election called for that purpose by the commissioners court on receipt of a petition signed by at least five percent of the property taxpaying voters in the county.

(c) The commissioners court may pay not more than half of the costs of medical treatment and immunization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(d) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a). (V.A.C.S. Art. 4436a-3.)

**Sec. 122.003. HEALTH UNIT IN COUNTY WITH POPULATION OF 22,200 TO 22,500.** (a) The commissioners court of a county with a population of 22,200 to 22,500 may impose an ad valorem tax at a rate not to exceed 10 cents on each \$100 of the taxable value of property taxable by the county for:

(1) the creation of a county health unit;

(2) vaccines and medical services required to immunize schoolchildren and indigent persons from communicable diseases; and

(3) medical treatment or hospitalization of indigent persons who are not entitled to treatment or hospitalization under Chapter 61 (Indigent Health Care and Treatment Act).

(b) The commissioners court may pay not more than half of the costs of medical treatment or hospitalization for an indigent person who is not entitled to treatment under Chapter 61 (Indigent Health Care and Treatment Act).

(c) A commissioners court that creates a county health unit under this section shall create a county health unit fund. The proceeds of the tax shall be deposited to the credit of that fund. Amounts in the fund shall be used for the purposes for which the commissioners court may impose a tax under Subsection (a). (V.A.C.S. Art. 4436a-2.)

**Sec. 122.004. APPROPRIATION TO HOSPITAL ESTABLISHED BY DONATION.** If a fund of at least \$50,000 is left by will or otherwise to establish and maintain a hospital in a municipality with a population of at least 10,000, the governing body of that municipality or the commissioners court of the county in which the municipality is located may make an appropriation to the hospital, in an amount that the governing body or commissioners court considers proper, to provide hospitalization and medical and surgical services for indigent residents of the municipality or county who are sick or wounded. (V.A.C.S. Art. 4437.)

**Sec. 122.005. POWERS OF TYPE A GENERAL-LAW MUNICIPALITY.** (a) The governing body of a Type A general-law municipality may take any action necessary or expedient to promote health or suppress disease, including actions to:

(1) prevent the introduction of a communicable disease into the municipality, including stopping, detaining, and examining a person coming from a place that is infected or believed to be infected with a communicable disease;

(2) establish, maintain, and regulate hospitals in the municipality or in any area within five miles of the municipal limits; or

(3) abate any nuisance that is or may become injurious to the public health.

(b) The governing body of a Type A general-law municipality may adopt rules:

(1) necessary or expedient to promote health or suppress disease; or

(2) to prevent the introduction of a communicable disease into the municipality, including quarantine rules, and may enforce those rules in the municipality and in any area within 10 miles of the municipality.

(c) The governing body of a Type A general-law municipality may fine a person who fails or refuses to observe the orders and rules of the health authority. (V.A.C.S. Arts. 1015(1), (2); 1072 (part); 1075 (part).)

**Sec. 122.006. POWERS OF HOME-RULE MUNICIPALITIES.** A home-rule municipality may:

(1) adopt rules to protect the health of persons in the municipality, including quarantine rules to protect the residents against communicable disease; and

(2) provide for the establishment of quarantine stations, emergency hospitals, and other hospitals. (V.A.C.S. Art. 1175, Subdiv. 7.)

[Chapters 123-140 reserved for expansion]

## SUBTITLE G. LICENSES

## CHAPTER 141. YOUTH CAMPS

- Sec. 141.001. SHORT TITLE
- Sec. 141.002. DEFINITIONS
- Sec. 141.003. LICENSE REQUIRED
- Sec. 141.004. LICENSE APPLICATION AND ISSUANCE
- Sec. 141.005. LICENSE RENEWAL
- Sec. 141.006. PRINCIPAL AUTHORITY FOR YOUTH CAMPS
- Sec. 141.007. INSPECTIONS
- Sec. 141.008. ADOPTION OF RULES; EXEMPTION FROM APPLICATION OF CERTAIN RULES
- Sec. 141.009. STANDARDS
- Sec. 141.010. OPERATOR'S DUTY
- Sec. 141.011. LICENSE REVOCATION
- Sec. 141.012. BOARD HEARINGS
- Sec. 141.013. JUDICIAL REVIEW
- Sec. 141.014. CIVIL PENALTY; INJUNCTION

## SUBTITLE G. LICENSES

## CHAPTER 141. YOUTH CAMPS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Texas Youth Camp Safety and Health Act. (V.A.C.S. Art. 4447I, Sec. 1.01.)

Sec. 141.002. DEFINITIONS. In this chapter:

(1) "Camper" means a minor who is attending a youth camp on a day care or boarding basis.

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

(3) "Youth camp" means a facility or property that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used primarily or partially for recreational, athletic, religious, or educational activities; and

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four days.

(4) "Youth camp operator" means a person who owns, operates, controls, or supervises a youth camp, regardless of profit. (V.A.C.S. Art. 4447I, Secs. 1.03(2), (5), (6), (7).)

Sec. 141.003. LICENSE REQUIRED. A person may not own, operate, control, or supervise a youth camp unless the person:

(1) holds a license issued under this chapter for that camp; and

(2) complies with this chapter and department rules and orders. (V.A.C.S. Art. 4447I, Secs. 2.03, 2.04(b), 3.01(a).)

Sec. 141.004. LICENSE APPLICATION AND ISSUANCE. (a) To obtain a license, a person must submit a license application accompanied by a \$35 license fee.

(b) On receiving a license application, the department shall inspect the applicant's facilities, operations, and premises and shall issue a license to each applicant who will operate a youth camp in accordance with this chapter and rules adopted under this chapter.

(c) The department shall issue serially numbered licenses. (V.A.C.S. Art. 4447I, Secs. 2.04(c), (d).)

**Sec. 141.005. LICENSE RENEWAL.** (a) A person holding a license issued under this chapter must renew the license annually by submitting a renewal application not later than May 1 of each year on a form provided by the department.

(b) The application must be accompanied by a renewal fee of:

- (1) \$35 for an established camp; or
- (2) \$10 for a temporary camp.

(c) In this section:

(1) "Established camp" includes a camp that, for at least four days, continuously provides residential services, including overnight accommodations for the duration of the camp session.

(2) "Temporary camp" includes a camp that primarily operates during any part of the day between 7 a.m. and 10 p.m. for at least four days and that may incidentally offer not more than two overnight stays during each camp session. (V.A.C.S. Art. 4447I, Sec. 2.05.)

**Sec. 141.006. PRINCIPAL AUTHORITY FOR YOUTH CAMPS.** The department is the principal authority on matters relating to health and safety conditions at youth camps. In addition to the powers and duties established by this chapter, the department has any other powers necessary and convenient to carry out its responsibilities under this chapter. (V.A.C.S. Art. 4447I, Sec. 2.01.)

**Sec. 141.007. INSPECTIONS.** (a) An employee or agent of the department may enter any property for which a license is issued under this chapter, property for which a license application to operate a youth camp is pending, or property on which a youth camp is in operation to investigate and inspect conditions relating to the health and safety of the campers.

(b) An employee or agent who enters a youth camp to investigate and inspect conditions shall notify the person in charge of the camp of the inspector's presence and shall present proper credentials. The department may exercise the remedies authorized by Section 141.014(b) if the employee or agent is not allowed to enter.

(c) The department may prescribe reasonable record-keeping requirements for licensed youth camps, including a requirement that the youth camp keep records relating to matters involving the health and safety of campers. An employee or agent of the department may examine, during regular business hours, any records relating to the health and safety of campers. (V.A.C.S. Art. 4447I, Secs. 2.10, 2.11.)

**Sec. 141.008. ADOPTION OF RULES; EXEMPTION FROM APPLICATION OF CERTAIN RULES.** (a) The board may adopt rules to implement this chapter. In developing the rules, the board shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

(b) A youth camp operator may grant an exemption from compliance with a rule that requires physical examinations or inoculations for children or staff if the exemption is requested on the grounds of religious convictions. (V.A.C.S. Art. 4447I, Secs. 2.02(a) (part), (e).)

**Sec. 141.009. STANDARDS.** The board by rule shall establish health and safety standards for youth camps. The standards may relate to:

- (1) adequate and proper supervision at all times of camp activities;
- (2) qualifications for directors, supervisors, and staff and sufficient numbers of those persons;
- (3) proper safeguards for sanitation and public health;
- (4) adequate medical services for personal health and first aid;
- (5) proper procedures for food preparation, handling, and mass feeding;
- (6) healthful and sufficient water supply;
- (7) proper waste disposal;
- (8) proper water safety procedures for swimming pools, lakes, and waterways;

- (9) safe boating equipment;
- (10) proper maintenance and safe use of motor vehicles;
- (11) safe buildings and physical facilities;
- (12) proper fire precautions;
- (13) safe and proper recreational and other equipment; and
- (14) proper regard for density and use of the premises. (V.A.C.S. Art. 4447I, Sec. 2.02(b).)

Sec. 141.010. OPERATOR'S DUTY. A youth camp operator shall provide each camper with safe and healthful conditions, facilities, and equipment that are free from recognized hazards that cause or may tend to cause death, serious illness, or bodily harm. (V.A.C.S. Art. 4447I, Sec. 1.04.)

Sec. 141.011. LICENSE REVOCATION. (a) If the department finds that a violation of this chapter or a rule adopted under this chapter has occurred or is occurring at a youth camp for which a license has been issued, the department shall give written notice to the licensee setting forth the nature of the violation and demanding that the violation cease.

(b) The department may initiate proceedings to revoke the license if the licensee refuses or fails to comply with the notice in the time and manner directed in the notice. (V.A.C.S. Art. 4447I, Sec. 2.07(a).)

Sec. 141.012. BOARD HEARINGS. (a) The board may:

- (1) call and conduct hearings;
- (2) administer oaths;
- (3) receive evidence;
- (4) issue subpoenas for witnesses, papers, and documents related to the hearing; and
- (5) make findings of fact and decisions concerning the administration of this chapter and rules adopted under this chapter.

(b) The board may delegate the authority to call and conduct hearings to employees of the department.

(c) Reasonable notice of the hearing shall be given to all involved parties. (V.A.C.S. Art. 4447I, Sec. 2.08.)

Sec. 141.013. JUDICIAL REVIEW. A person affected by a ruling, order, or other act of the department may appeal the action. (V.A.C.S. Art. 4447I, Sec. 4.01(a) (part).)

Sec. 141.014. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter or a rule or order adopted under this chapter is subject to a civil penalty of not less than \$50 or more than \$1,000 for each act of violation.

(b) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule or order adopted under this chapter, the department may bring a civil action in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(c) The district court, on a finding that the person is violating this chapter or a rule or order adopted under this chapter, shall grant the injunctive relief, assess a civil penalty, or both, as warranted by the facts.

(d) The department may petition a district court for a temporary restraining order to immediately halt a violation or other action creating an emergency condition if it appears that a person:

- (1) is violating or threatening to violate this chapter or a rule or order adopted under this chapter; or
- (2) is taking any other action that creates an emergency condition that constitutes an imminent danger to the health, safety, or welfare of campers at a youth camp.



(e) An action for injunctive relief, recovery of a civil penalty, or both, may be brought in the county in which the defendant resides or in which the violation or threat of violation occurs.

(f) In an action for injunctive relief under this section, the court may grant any prohibitory or mandatory injunction warranted by the facts, including temporary restraining orders, temporary injunctions, and permanent injunctions. The court shall grant injunctive relief without a bond or other undertaking by the department.

(g) An appellate court shall give precedence to an action brought under this section over other cases of a different nature on the docket of the court.

(h) A civil penalty recovered in an action brought by the department under this chapter shall be deposited to the credit of the youth camp health and safety fund. (V.A.C.S. Art. 4447l, Secs. 3.01(b); 3.02; 3.03; 3.04(a), (b), (c), (e).)

**CHAPTER 142. HOME HEALTH SERVICES**

- Sec. 142.001. DEFINITIONS
- Sec. 142.002. LICENSE REQUIRED
- Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT
- Sec. 142.004. LICENSE APPLICATION
- Sec. 142.005. ADDITIONAL LICENSE APPLICATION REQUIREMENTS FOR CORPORATE APPLICANTS
- Sec. 142.006. LICENSE ISSUANCE; TERM
- Sec. 142.007. HOSPICE
- Sec. 142.008. BRANCH OFFICE
- Sec. 142.009. INSPECTIONS; CONSUMER COMPLAINTS
- Sec. 142.010. FEES
- Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
- Sec. 142.012. POWERS AND DUTIES
- Sec. 142.013. INJUNCTION
- Sec. 142.014. CIVIL PENALTY
- Sec. 142.015. ADVISORY COUNCIL

**CHAPTER 142. HOME HEALTH SERVICES**

Sec. 142.001. DEFINITIONS. In this chapter:

- (1) "Certified agency" means a person who:
  - (A) provides a home health service; and
  - (B) holds a current letter of approval signed by an official of the Department of Health and Human Services that indicates compliance with conditions of participation in Title XVIII, Social Security Act (42 U.S.C. Section 1395 et seq.).
- (2) "Council" means the Home Health Services Advisory Council.
- (3) "Health service" means:
  - (A) nursing;
  - (B) physical, occupational, speech, or respiratory therapy;
  - (C) a medical social service;
  - (D) the service of a home health aide;
  - (E) the furnishing of medical equipment and supplies, excluding drugs and medicines; or
  - (F) nutritional counseling.
- (4) "Home health agency" means a place of business, including a hospice, that provides a home health service.
- (5) "Home health service" means the provision, for pay or other consideration, of a health service in a patient's residence.
- (6) "Person" means an individual, corporation, or association.

(7) "Place of business" means an office of a home health agency that maintains patient records or directs home health services. The term includes a suboffice, a branch office, a workroom, or any other subsidiary location.

(8) "Residence" means a place where a person resides and includes a home, a nursing home, or a convalescent home for the disabled or aged. (V.A.C.S. Art. 4447u, Sec. 1 (part).)

Sec. 142.002. LICENSE REQUIRED. (a) A person may not engage in the business of providing home health services without an appropriate license issued by the department for each place of business from which home health services are directed. A certified agency must have a Class A license, and any other person must have a Class B license.

(b) A license issued under this chapter may not be transferred to another person, but may be transferred from one location to another location with the approval of the department. The board by rule shall prescribe criteria for the approval of the relocation of a license. (V.A.C.S. Art. 4447u, Secs. 5, 9(b).)

Sec. 142.003. EXEMPTIONS FROM LICENSING REQUIREMENT. The following persons need not be licensed under this chapter:

(1) a physician, dentist, registered nurse, or physical therapist licensed under the laws of this state who provides home health services to a patient only as a part of and incidental to that person's private office practice;

(2) a registered nurse, licensed vocational nurse, physical therapist, occupational therapist, speech therapist, medical social worker, or any other health care professional as determined by the department who provides home health services as a sole practitioner;

(3) a nonprofit registry operated by a national or state professional association or society of licensed health care practitioners, or a subdivision of the association or society, that operates solely as a clearinghouse to put consumers in contact with licensed health care practitioners who give care in a patient's residence and that does not maintain official patient records or direct patient services;

(4) an individual whose permanent residence is in the patient's residence;

(5) an employee of a person licensed under this chapter who provides home health services only as an employee of the license holder and who receives no benefit for providing the services, other than wages from the license holder;

(6) a home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed under this chapter;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that does not furnish services, other than supplies, to a person at the person's house;

(10) a hospital or other licensed health care facility that serves only inpatient residents;

(11) a person providing home health services to an injured employee under the workers' compensation laws of this state (Article 8306 et seq., Revised Statutes); or

(12) a visiting nurse service that:

(A) is conducted by and for the adherents of a well-recognized church or religious denomination; and

(B) provides nursing services by a person exempt from licensing by Article 4528, Revised Statutes, because the person furnishes nursing care in which treatment is only by prayer or spiritual means. (V.A.C.S. Art. 4447u, Sec. 6.)

Sec. 142.004. LICENSE APPLICATION. (a) An applicant for a license to provide a home health service must:

(1) file a written application on a form prescribed by the department;

(2) file with the application:

(A) the name of the owner of the service or a list of the names of persons who own an interest in the service; and

(B) a list of any businesses with which the service subcontracts and in which the owner or owners of the service hold at least five percent of the ownership;

(3) cooperate with any inspections required by the department for a license; and

(4) pay the license fee prescribed by this chapter.

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

(c) The board by rule shall require that, at a minimum, before the department may approve a license application, other than an application for a renewal or branch office license, the applicant must provide to the department:

(1) documentation establishing that, at a minimum, the applicant has sufficient financial resources to provide the services required by this chapter and by the department during the term of the license;

(2) a list of the management personnel for the proposed home health agency, a description of personnel qualifications, and a plan for providing continuing training and education for the personnel during the term of the license;

(3) documentation establishing that the applicant is capable of meeting the minimum standards established by the board relating to the quality of care; and

(4) a plan that provides for the orderly transfer of care of the applicant's clients if the applicant cannot maintain or deliver home health services under the license. (V.A.C.S. Art. 4447u, Secs. 7(a), (b) (part), (d).)

**Sec. 142.005. ADDITIONAL LICENSE APPLICATION REQUIREMENTS FOR CORPORATE APPLICANTS.** (a) If an applicant for a license, other than a renewal or branch office license, proposes to operate a home health agency through a partnership, corporation, or other business entity that includes members that are not individuals, or through a corporation the shares of which are owned by another corporation, the applicant must:

(1) establish a corporation under the laws of this state if the applicant is not a corporation organized under the laws of this state;

(2) allow the department to review the competence and financial resources of any shareholder who holds at least 10 percent of the shares of the Texas corporation;

(3) allow the department to review the history and financial resources of each parent or health-related subsidiary of the Texas corporation;

(4) grant the Texas corporation full authority to operate the home health agency and any subsequent home health agencies for which the applicant may seek licensing under this chapter;

(5) disclose to the department any information the department needs to conduct the reviews authorized by this subsection; and

(6) establish a registered agent as required by Article 2.09, Texas Business Corporation Act, to receive service of process in this state.

(b) The department may not approve the application unless the department is satisfied that approval is justified based on the competence, history, and financial resources of the Texas corporation, each parent or health-related subsidiary of the Texas corporation, and the directors, officers, controlling persons, and principal shareholders of the Texas corporation and any parent or health-related subsidiary of the Texas corporation.

(c) The board may adopt rules to implement this section.

(d) Information received by the department relating to the competence and financial resources of the applicant is confidential and may not be disclosed to the public. (V.A.C.S. Art. 4447u, Sec. 7A.)

Sec. 142.006. LICENSE ISSUANCE; TERM. (a) The department shall issue a Class A or Class B home health service license for each place of business to each applicant who:

- (1) qualifies for the type of license requested;
- (2) submits an application and license fee as required by this chapter; and
- (3) complies with all licensing standards required or adopted by the board under this chapter.

(b) A license issued under this chapter expires one year after the date of issuance. The department may issue an initial license for a term of less than one year to conform expiration dates for a locality or an applicant. The department, in accordance with board rules, may issue a temporary license to an applicant for an initial license. (V.A.C.S. Art. 4447u, Secs. 9(a), (c).)

Sec. 142.007. HOSPICE. If the agency meets the standards adopted by the board for hospice services, a home health service license may state that a home health agency is a hospice. (V.A.C.S. Art. 4447u, Sec. 9(d).)

Sec. 142.008. BRANCH OFFICE. (a) The department may issue a branch office license to a person who holds a Class A or Class B license.

(b) The board by rule shall establish eligibility requirements for a branch office license.

(c) A branch office license expires on the same date as the Class A or Class B license held by that person. (V.A.C.S. Art. 4447u, Sec. 9(e).)

Sec. 142.009. INSPECTIONS; CONSUMER COMPLAINTS. (a) After reasonable prior notice, the department or its representative may enter the premises of a license applicant or license holder at reasonable times to conduct an inspection incidental to the issuance of a license and at other times as the department considers necessary to ensure compliance with this chapter and the rules adopted under this chapter.

(b) A home health agency shall provide each person who receives home health services with a written statement that contains the name, address, and telephone number of the department and a statement that informs consumers that a complaint against a home health agency may be directed to the department.

(c) The department or its authorized representative shall investigate each complaint received regarding the provision of home health services and may, as a part of the investigation:

(1) conduct an unannounced inspection of a place of business, including an inspection of medical and personnel records, if the department has reasonable cause to believe that the place of business is in violation of this chapter or a rule adopted under this chapter;

(2) conduct an interview with a recipient of home health services, which may be conducted in the recipient's home if the recipient consents; or

(3) interview a physician or other health care practitioner, including a member of the personnel of a home health agency, who cares for a recipient of home health services.

(d) The reports, records, and working papers used or developed in an investigation made under this section are confidential.

(e) The department's representative shall hold a conference with the person in charge of the home health agency before beginning the on-site inspection to explain the nature and scope of the inspection. When the inspection is completed, the department's representative shall hold a conference with the person who is in charge of the agency and shall identify any records that were duplicated. Agency records may be removed from an agency only with the agency's consent. (V.A.C.S. Art. 4447u, Sec. 10.)

Sec. 142.010. FEES. (a) The board shall set the home health service license fees in amounts that are reasonable to meet the costs of administering this chapter, except that the fees may not be:

- (1) less than \$600 or more than \$1,200 for an initial Class A or Class B license; or
- (2) less than \$200 or more than \$300 for renewal of a branch office license.

(b) A fee charged under this section is nonrefundable. (V.A.C.S. Art. 4447u, Sec. 8.)

**Sec. 142.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.** (a) The department may deny a license application or suspend or revoke the license of a person who fails to comply with the rules or standards for licensing required by this chapter.

(b) The department may immediately suspend or revoke a license when the health and safety of persons are threatened. A person whose license is suspended or revoked under this subsection is entitled to a hearing not later than the seventh day after the effective date of the suspension or revocation. (V.A.C.S. Art. 4447u, Secs. 11(a), (b).)

**Sec. 142.012. POWERS AND DUTIES.** (a) The board shall adopt rules necessary to implement this chapter.

(b) The board by rule shall set minimum standards for home health agencies licensed under this chapter that relate to:

- (1) qualifications for professional and nonprofessional personnel;
- (2) supervision of professional and nonprofessional personnel;
- (3) the provision and coordination of treatment and services;
- (4) the organizational structure, including lines of authority and delegation of responsibility;
- (5) clinical and business records;
- (6) financial ability to carry out the functions as proposed; and
- (7) any other aspects of home health services as necessary to protect the public.

(c) The department shall prescribe forms necessary to perform its duties.

(d) The department shall require each person or home health agency providing home health services to implement and enforce the applicable provisions of Chapter 102, Human Resources Code. (V.A.C.S. Art. 4447u, Sec. 4.)

**Sec. 142.013. INJUNCTION.** (a) A district court, on petition of the department and on a finding by the court that a person is violating this chapter, may by injunction:

- (1) prohibit the person from continuing the violation; or
- (2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County. (V.A.C.S. Art. 4447u, Secs. 12(a), (b), (c).)

**Sec. 142.014. CIVIL PENALTY.** (a) A person who operates a home health agency without a license issued under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each day of violation.

(b) An action to recover a civil penalty is in addition to an action brought for injunctive relief under Section 142.013 or any other remedy provided by law. (V.A.C.S. Art. 4447u, Sec. 12(d) (part).)

**Sec. 142.015. ADVISORY COUNCIL.** (a) The Home Health Services Advisory Council is composed of the following nine members, appointed by the governor:

- (1) one representative of the department;
- (2) two representatives of consumers of home health agency services;
- (3) one representative of the Texas Department of Human Services;
- (4) one representative of the Texas Association of Home Health Agencies, Incorporated;
- (5) one representative of private nonprofit home health agencies;
- (6) one representative of voluntary nonprofit home health agencies;
- (7) one representative of proprietary home health agencies; and

- (8) one representative of an official department home health agency.
- (b) The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires September 1, 1997.
- (c) The council shall advise the department on licensing standards and on the implementation of this chapter.
- (d) Members of the council serve staggered two-year terms, with the terms of five members expiring on January 31 of each even-numbered year and the terms of four members expiring on January 31 of each odd-numbered year.
- (e) The council shall elect a presiding officer from among its members to preside at meetings and to notify members of meetings. The presiding officer shall serve for one year and may not serve in that capacity for more than two years.
- (f) The council shall meet at least once a year and may meet at other times at the call of the presiding officer, any three members of the council, or the commissioner.
- (g) Members of the council serve without compensation. (V.A.C.S. Art. 4447u, Secs. 2, 3, 14.)

## CHAPTER 143. INDUSTRIAL HOMEWORK

- Sec. 143.001. DEFINITIONS
- Sec. 143.002. EMPLOYER'S PERMIT REQUIRED
- Sec. 143.003. EMPLOYER'S PERMIT APPLICATION AND ISSUANCE; TERM
- Sec. 143.004. SUSPENSION OR REVOCATION OF EMPLOYER'S PERMIT
- Sec. 143.005. HOMEWORKER'S CERTIFICATE REQUIRED
- Sec. 143.006. HOMEWORKER'S CERTIFICATE APPLICATION AND ISSUANCE; TERM
- Sec. 143.007. SUSPENSION OR REVOCATION OF HOMEWORKER'S CERTIFICATE
- Sec. 143.008. PROHIBITION ON ISSUANCE OF PERMIT OR CERTIFICATE
- Sec. 143.009. ORDER PROHIBITING CERTAIN INDUSTRIAL HOMEWORK; HEARING
- Sec. 143.010. GENERAL POWERS AND DUTIES OF BOARD
- Sec. 143.011. PROHIBITION ON CERTAIN DELIVERIES BY EMPLOYER
- Sec. 143.012. RECORD REQUIREMENTS; INVESTIGATION
- Sec. 143.013. LABEL REQUIREMENT
- Sec. 143.014. DISPOSITION OF UNLAWFULLY MANUFACTURED ARTICLES
- Sec. 143.015. CRIMINAL PENALTY

## CHAPTER 143. INDUSTRIAL HOMEWORK

## Sec. 143.001. DEFINITIONS. In this chapter:

(1) "Employer" means a person who, directly, indirectly, or through an employee, agent, independent contractor, or any other person, delivers to another person materials for articles that are:

(A) to be manufactured in a home and returned to the employer; and

(B) not for the personal use of the employer or a member of the employer's family.

(2) "Home" means a room, house, apartment, or other premises, whichever is most extensive, that is used in whole or in part as a dwelling.

(3) "Industrial homework" means the manufacture, in a home, of articles for an employer.

(4) "Manufacture" includes preparation, alteration, repair, or finishing, in whole or in part, for profit or compensation. (V.A.C.S. Art. 4420b, Sec. 1 (part).)

Sec. 143.002. EMPLOYER'S PERMIT REQUIRED. (a) An employer may not deliver materials for industrial homework to any person in this state without an employer's permit issued by the board.

(b) If the employer is not a resident of this state, the employer's agent must hold the employer's permit. (V.A.C.S. Art. 4420b, Sec. 5 (part).)

**Sec. 143.003. EMPLOYER'S PERMIT APPLICATION AND ISSUANCE; TERM.** (a) An applicant must apply for an employer's permit in the form prescribed by board rule.

(b) The application must be accompanied by a \$50 permit fee.

(c) An employer's permit is valid for one year from the date of issuance. (V.A.C.S. Art. 4420b, Sec. 5 (part).)

**Sec. 143.004. SUSPENSION OR REVOCATION OF EMPLOYER'S PERMIT.** The board may suspend or revoke an employer's permit if the board finds that the employer has violated this chapter or has failed to comply with a provision of the permit. (V.A.C.S. Art. 4420b, Sec. 5 (part).)

**Sec. 143.005. HOMEWORKER'S CERTIFICATE REQUIRED.** (a) A person may not engage in industrial homework without a homeworker's certificate issued by the board.

(b) A homeworker's certificate is valid only for work performed by the certificate holder in the certificate holder's home. (V.A.C.S. Art. 4420b, Sec. 6 (part).)

**Sec. 143.006. HOMEWORKER'S CERTIFICATE APPLICATION AND ISSUANCE; TERM.** (a) An applicant must apply for a homeworker's certificate in the form prescribed by board rule. Each applicant must present a health certificate or other evidence of good health as required by the board.

(b) The application must be accompanied by a fee in an amount set by the board, but not to exceed 50 cents.

(c) A homeworker's certificate is valid for one year from the date of issuance.

(d) The board may not issue a homeworker's certificate to a person who:

(1) is younger than 15 years of age;

(2) suffers from a communicable disease; or

(3) lives in a home that is not clean, sanitary, and free from communicable diseases. (V.A.C.S. Art. 4420b, Sec. 6 (part).)

**Sec. 143.007. SUSPENSION OR REVOCATION OF HOMEWORKER'S CERTIFICATE.** The board may suspend or revoke a homeworker's certificate if the board finds that the industrial homeworker:

(1) is performing industrial homework in violation of the conditions under which the certificate was issued or in violation of this chapter; or

(2) has allowed a person who does not hold a homeworker's certificate to assist the homeworker in performing the industrial homework. (V.A.C.S. Art. 4420b, Sec. 6 (part).)

**Sec. 143.008. PROHIBITION ON ISSUANCE OF PERMIT OR CERTIFICATE.** The board may not issue an employer's permit or a homeworker's certificate to authorize industrial homework or the delivery of materials for industrial homework if the board determines that the industrial homework:

(1) is injurious to the health or welfare of industrial homeworkers in that industry or to the public; or

(2) makes it unduly difficult to maintain or enforce health standards established by law or rule for factory workers in that industry. (V.A.C.S. Art. 4420b, Sec. 2.)

**Sec. 143.009. ORDER PROHIBITING CERTAIN INDUSTRIAL HOMEWORK; HEARING.** (a) The board by order shall prohibit industrial homework in a certain industry and shall require employers in that industry to stop delivering in this state any materials for that industrial homework if the board determines, after investigation, that the industrial homework may not be continued in that industry without injuring the health and welfare of industrial homeworkers in that industry or of the public.

(b) Before adopting an order under Subsection (a), the board must hold a public hearing at which an opportunity to be heard must be afforded to any person having an interest in the subject matter of the hearing, including:

- (1) an employer or a representative of employers; or
- (2) an industrial homemaker or a representative of industrial homeworkers.
- (c) The board must give public notice of the hearing:
  - (1) not later than the 30th day before the date on which the hearing is held; and
  - (2) in a manner determined by the board.
- (d) The board shall hold the hearing in the place the board determines to be most convenient to the employers and industrial homeworkers affected by the order.
- (e) The board shall determine the effective date of the order, which may not be less than 90 days after the date of its adoption.
- (f) After an order becomes effective, a person holding an employer's permit may not deliver materials for the industrial homework prohibited by the order. (V.A.C.S. Art. 4420b, Secs. 3, 4.)

Sec. 143.010. GENERAL POWERS AND DUTIES OF BOARD. (a) The board may adopt rules necessary to implement this chapter and shall enforce this chapter.

(b) The board or the board's representative shall conduct all inspections and investigations necessary to enforce this chapter.

(c) The board or the board's representative may:

- (1) administer oaths;
  - (2) take affidavits;
  - (3) issue subpoenas;
  - (4) compel the attendance of witnesses and the production of books, contracts, documents, or any other evidence;
  - (5) hear testimony under oath; and
  - (6) take depositions of witnesses who reside in this state or outside this state in the manner provided by law for similar depositions in civil actions in a justice court.
- (d) A subpoena or commission to take testimony shall be issued under the seal of the board. (V.A.C.S. Art. 4420b, Secs. 10 (part), 11.)

Sec. 143.011. PROHIBITION ON CERTAIN DELIVERIES BY EMPLOYER. An employer may not deliver or cause to be delivered any materials for industrial homework to a person who does not possess an employer's permit or a homemaker's certificate issued in accordance with this chapter. (V.A.C.S. Art. 4420b, Sec. 5 (part).)

Sec. 143.012. RECORD REQUIREMENTS; INVESTIGATION. (a) A person who holds an employer's permit may not deliver or cause to be delivered or received materials for industrial homework or receive an article as a result of industrial homework unless the employer keeps a record of:

- (1) the persons engaged in industrial homework on materials delivered by that employer;
- (2) the places where those persons work;
- (3) the articles that those persons have manufactured;
- (4) the agents or contractors to whom the employer has delivered materials for industrial homework; and
- (5) the persons from whom the employer has received materials for industrial homework.

(b) The employer shall maintain and report the information in the manner prescribed by board rule and on forms that the board may provide.

(c) The information and records required by this section may be used by the board only to enforce this chapter and may not be published or disclosed except to representatives of the board enforcing this chapter. (V.A.C.S. Art. 4420b, Sec. 9.)

Sec. 143.013. LABEL REQUIREMENT. (a) An employer may not deliver or cause to be delivered materials for industrial homework unless there has been conspicuously



affixed to those materials a label or other identifying trademark that bears the employer's name and address printed or written legibly in English.

(b) The label must be affixed to the package or container in which the materials are delivered or are to be kept if it is impossible to affix the label to the materials. (V.A.C.S. Art. 4420b, Sec. 7.)

Sec. 143.014. **DISPOSITION OF UNLAWFULLY MANUFACTURED ARTICLES.** (a) The board may remove from a home articles that are being manufactured in the home in violation of this chapter and materials used to manufacture those articles.

(b) The board shall give notice of the removal by registered mail to the person whose name and address are affixed to the materials as provided by Section 143.013.

(c) The board may retain the materials or articles until they are claimed by the employer, and if they are not claimed before the 31st day after the date on which the notice is sent, the board may destroy or otherwise dispose of the materials or articles. (V.A.C.S. Art. 4420b, Sec. 8.)

Sec. 143.015. **CRIMINAL PENALTY.** (a) An employer commits an offense if the employer:

(1) violates Section 143.002;

(2) refuses to allow the board or its representative to enter the employer's place of business to conduct an investigation authorized by this chapter;

(3) refuses to permit the board or its representative to inspect or copy the employer's records or other documents related to the enforcement of this chapter;

(4) makes an oral statement that the employer is required by the commissioner to make and the statement made is false; or

(5) otherwise violates this chapter or any provision of the employer's permit.

(b) A person commits an offense if the person violates a rule adopted by the board.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200, imprisonment for not less than 30 days or more than 60 days, or both. (V.A.C.S. Art. 4420b, Secs. 10 (part), 12.)

## **CHAPTER 144. RENDERERS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 144.001. **SHORT TITLE**

Sec. 144.002. **DEFINITIONS**

Sec. 144.003. **CONSTRUCTION OF OTHER LAWS**

[Sections 144.004–144.010 reserved for expansion]

### **SUBCHAPTER B. OPERATING LICENSES**

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CHAPTER 144. RENDERERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 144.001. SHORT TITLE. This chapter may be cited as the Texas Renderers' Licensing Act. (V.A.C.S. Art. 4477–6, Sec. 1.)

Sec. 144.002. DEFINITIONS. In this chapter:

(1) "Dead animal" means the whole or substantially whole carcass of a dead or fallen domestic animal, or domesticated wild animal, that was not slaughtered for human consumption.

(2) "Dead animal hauler" means a person who collects and disposes of dead animals for commercial purposes.

(3) "Disposal" means the burying, burning, cooking, processing, or rendering of dead animals or of renderable raw materials.

(4) "Employee" means a person who:

(A) is employed in or by a rendering establishment; and

(B) handles rendering equipment, utensils, containers, or packaging materials.

(5) "Nuisance" means any situation or condition that constitutes a nuisance under Section 341.011.

(6) "Person" means an individual, firm, partnership, association, corporation, trust, company, or organization, and includes an agent, officer, or employee of that individual or entity.

(7) "Processing" means an operation or combination of operations through which materials derived from a dead animal or renderable raw material sources are:

(A) prepared for disposal at a rendering establishment;

(B) stored; or

(C) treated for commercial use or disposition, other than as food for human consumption.

(8) "Related station" means an operation or facility that is necessary, useful, or incidental to the operation of a rendering establishment and that is operated or maintained separately from the rendering establishment.

(9) "Rendering business" means the collection, transportation, disposal, or storage of dead animals or renderable raw materials for commercial purposes, either as a separate business or in connection with any other established business.

(10) "Rendering establishment" means an establishment or part of an establishment, a plant, or any other premises at which dead animals or renderable raw materials are rendered, boiled, processed, or otherwise prepared to obtain a product for commercial use or disposition, other than as food for human consumption. The term includes all other operations and facilities, other than a related station, that are necessary, useful, or incidental to the establishment.

(11) "Renderable raw material" means any unprocessed or partially processed material of animal origin, other than a dead animal, that is processed by rendering establishments. The term includes:

(A) animals, poultry, or fish slaughtered or processed for human consumption but that are unsuitable for that use;

(B) the inedible products and by-products of animals, poultry, or fish slaughtered or processed for human consumption;

(C) parts from dead animals;

(D) whole or partial carcasses of dead poultry or fish; and

(E) waste cooking greases.

(12) "Renderable raw material hauler" means a person who collects and disposes of renderable raw materials for commercial purposes.

(13) "Transfer station" means a related station at which dead animals or renderable raw materials are transferred from one conveyance to another. (V.A.C.S. Art. 4477-6, Sec. 2 (part); New.)

Sec. 144.003. CONSTRUCTION OF OTHER LAWS. (a) This chapter does not affect:

(1) Chapter 141, Agriculture Code; or

(2) any state law or a rule of any public regulatory body that relates to the control of water or air pollution.

(b) This chapter does not affect a municipality's power to regulate by ordinance rendering businesses within the boundaries of the municipality. However, each rendering establishment, related station, dead animal hauler, or renderable raw material hauler subject to a municipal ordinance shall comply with this chapter. (V.A.C.S. Art. 4477-6, Sec. 20 (part).)

[Sections 144.004–144.010 reserved for expansion]

## SUBCHAPTER B. OPERATING LICENSES

Sec. 144.011. **LICENSE REQUIRED.** (a) A person may not operate a rendering business, or any adjunct to a rendering business, without having a rendering establishment operating license issued by the department or another appropriate operating license under this section.

(b) A person may not operate or maintain a related station without a related station operating license issued by the department unless:

- (1) the person is an employee of a rendering establishment that the station serves; or
- (2) the related station is a part or subsidiary of a rendering establishment that the station serves.

(c) A person may not operate as a dead animal hauler without a dead animal hauler operating license issued by the department unless the person:

- (1) is an employee of a rendering establishment or related station served by the person; or
- (2) does not operate separately from the rendering establishments or related stations served by the person.

(d) A person may not operate as a renderable raw material hauler without a renderable raw material hauler operating license issued by the department unless the person:

- (1) is an employee of a rendering establishment or related station served by the person; or
- (2) does not operate separately from the rendering establishments or related stations served by the person. (V.A.C.S. Art. 4477–6, Secs. 3(a) (part), 5 (part), 6 (part).)

Sec. 144.012. **EXEMPTIONS FROM LICENSING REQUIREMENT.** (a) Unless the person also performs rendering operations or processes, this chapter does not apply to a person who:

- (1) slaughters, butchers, manufactures, or sells animal flesh or products only for use as food for human consumption; or
- (2) transports or disposes of the bodies of animals killed for use as food for human consumption, or the products of those bodies, only for that purpose and use.

(b) This chapter does not apply to a governmental agency that collects, transports, or disposes of dead animals or renderable raw materials. (V.A.C.S. Art. 4477–6, Secs. 3(b) (part), (c).)

Sec. 144.013. **LICENSE APPLICATION AND ISSUANCE.** (a) To be considered by the department for an operating license, a person must submit a sworn application to the department. The application must:

- (1) state whether the applicant intends to operate as a rendering establishment, related station, dead animal hauler, or renderable raw material hauler;
- (2) state the location from which the business is to be conducted; and
- (3) include other relevant information required by the department to determine the applicant's compliance with the operating procedures established under Subchapter C.

(b) The application must be accompanied by the application fee.

(c) The department shall issue the appropriate operating license if, after investigation, it finds that the applicant's operations or proposed operations meet the requirements of Subchapter C.

(d) If the department finds that the applicant's operations or proposed operations do not meet the requirements of Subchapter C, the department shall deny the application and shall notify the applicant in writing of each reason why the applicant fails to meet those requirements. The applicant is entitled to 90 days to meet the requirements, after which the department shall reinvestigate.

(e) If the department determines after reinvestigation that the applicant is not in compliance, the department shall again deny the application and promptly notify the applicant in writing of each reason why the applicant fails to meet the requirements.

(f) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing before the commissioner on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial. The hearing must be conducted not later than the 30th day after the date of the request.

(g) Unless the period is extended by a written agreement between the department and the applicant, the department shall grant or deny a license application not later than the 30th day after the date on which:

- (1) the application and the required fee is filed with the department;
- (2) the period to meet the requirements expires; or
- (3) a hearing on the application denial is conducted. (V.A.C.S. Art. 4477-6, Secs. 4(a) (part), 7.)

[Sections 144.014-144.020 reserved for expansion]

#### **SUBCHAPTER C. OPERATING PROCEDURES FOR ALL LICENSE HOLDERS**

**Sec. 144.021. GENERAL REQUIREMENTS FOR OPERATING LICENSES.** (a) Each applicant for or holder of an operating license shall adopt operating procedures that:

- (1) provide for the sanitary performance of rendering operations and processes;
- (2) prevent the spread of infectious or noxious materials; and
- (3) ensure that finished products are free from disease-producing organisms.

(b) Each holder of an operating license shall comply with the specific operating procedures established under this subchapter. (V.A.C.S. Art. 4477-6, Secs. 4(a) (part), (b) (part), 5 (part), 6 (part).)

**Sec. 144.022. RECORDS.** (a) Each licensed rendering establishment, related station, or dead animal hauler shall have a dead animal log that meets the requirements prescribed by the department. The name of the licensed rendering establishment, related station, or dead animal hauler must be on the front of the log.

(b) When a license holder receives a dead animal, the license holder shall enter the following information in the log:

- (1) the date and time of the pickup of the dead animal;
- (2) the name of the driver of the collection vehicle;
- (3) a description of the dead animal;
- (4) the location of the dead animal, including the county; and
- (5) the owner of the dead animal, if known.

(c) The license holder shall also keep a record in the log, or in an appendix to the log, of the general route followed in making the collection.

(d) The log is subject to inspection at all reasonable times by the department or a person with written authorization from the department. Repeated or wilful failure or refusal to produce the log for inspection or to permit inspection by persons properly authorized to inspect the log constitutes grounds for license revocation.

(e) This section does not apply to a licensed renderable raw material hauler. (V.A.C.S. Art. 4477-6, Secs. 4(b) (part), 16.)

**Sec. 144.023. VEHICLES.** (a) A vehicle used to transport dead animals or renderable raw materials to or from a rendering establishment must be leak-proof and maintained in a manner that precludes the creation of a nuisance.

(b) A collection vehicle shall be held to a minimum number of stops, and the stops shall be brief, while traveling to the establishment with dead animals or renderable raw

materials. Each collection vehicle shall be washed and sanitized at the end of each day's operations.

(c) A truck bed used to transport dead animals or renderable raw materials shall be thoroughly washed and sanitized before use for the transport of finished products. A truck bed used to transport dead animals or renderable raw materials to a rendering establishment, or to transfer finished products from an establishment, shall, before being used to transport any product intended for human consumption, be thoroughly sanitized with a bactericidal agent that is determined by the department to be safe in a rendering establishment. A truck bed may not be used to transport dead animals or renderable raw materials at the same time the truck bed or any part of the truck bed is used to transport any product intended for human consumption, notwithstanding the manner in which part of the truck bed is sealed or separated from the remainder of the bed. (V.A.C.S. Art. 4477-6, Secs. 2(l), 4(b) (part).)

Sec. 144.024. TREATMENT OF DEAD ANIMALS OR RENDERABLE RAW MATERIALS. (a) Dead animals or renderable raw materials received by a rendering establishment shall either be immediately placed in the rendering process or stored for not more than 48 hours in a manner that precludes the creation of a nuisance or a malodorous condition.

(b) Cooking or other dehydration operations shall be conducted in a manner that prevents the survival of disease-producing organisms in the processed material. Adequate and suitable means for the treatment of cooking vapors shall be provided and operated in a manner that controls odors.

(c) All cooked or finished materials shall be kept apart from areas where dead animals or renderable raw materials are kept in a manner that prevents contamination. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

Sec. 144.025. FLOORS. (a) During operations, the floors in processing areas shall be kept reasonably free from processing wastes, including:

- (1) blood;
- (2) manure;
- (3) scraps;
- (4) grease;
- (5) water;
- (6) dirt; and
- (7) litter.

(b) The floors shall be thoroughly cleaned at the end of each day's operations. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

Sec. 144.026. WASTE TREATMENT. (a) Waste shall be handled and disposed of in a manner that prevents contamination of:

- (1) the water supply;
- (2) processing equipment;
- (3) packaging materials; and
- (4) finished products.

(b) Liquid waste shall be treated in the manner required by the department and disposed of in a manner approved by the department. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

Sec. 144.027. EMPLOYEE FACILITIES. (a) Adequate and convenient toilet facilities for employees shall be located in an establishment.

(b) An adequate number of lavatory facilities for employees to wash their hands shall be provided at convenient locations in the establishment and must be supplied with warm water under pressure and with soap or another detergent.

(c) A drinking water supply approved by the department shall be provided at convenient locations in the establishment for the use of employees. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

**Sec. 144.028. HYGIENE REQUIREMENTS.** A person engaging in rendering processes or operations shall wear washable garments and accessories and conform to hygienic practices. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

**Sec. 144.029. SANITARY CONDITIONS REQUIRED.** (a) The premises of a rendering establishment shall be kept clean and neat, in good repair, and reasonably free from:

- (1) undue collection of refuse;
- (2) waste materials;
- (3) rodent infestation;
- (4) insect breeding places;
- (5) standing water; and
- (6) other objectionable conditions.

(b) Equipment and utensils shall be provided as necessary for the rendering establishment to conduct operations in a sanitary manner.

(c) Rodents, roaches, and other vermin shall be controlled.

(d) Hide storage facilities shall be in closed areas separate from all other areas. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

**Sec. 144.030. COLLECTION CONTAINER REQUIREMENTS.** (a) A container in which dead animals or renderable raw materials are accumulated by a producer at collecting points for pickup by a dead animal hauler or renderable raw material hauler must remain on the premises at each collecting point and may not be replaced or exchanged by the hauler or returned to a rendering establishment.

(b) The producer of the materials shall maintain the containers in a clean and sanitary condition and shall replace them as necessary.

(c) This section does not apply to the containers of a producer who collects and accumulates the materials only in areas separated from areas in which the producer receives, holds, slaughters, butchers, or otherwise processes or prepares any animal or animal part as food for human consumption. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

**Sec. 144.031. PROHIBITED PURCHASES OR SALES.** (a) A person may not sell or offer for sale a raw or uncooked dead animal or renderable raw material that contains disease-producing organisms to any person who is not licensed under this chapter.

(b) A person licensed under this chapter may not purchase a dead animal from a dead animal hauler who is not licensed under this chapter. (V.A.C.S. Art. 4477-6, Sec. 4(b) (part).)

[Sections 144.032-144.040 reserved for expansion]

#### **SUBCHAPTER D. CONSTRUCTION PERMITS**

**Sec. 144.041. PERMIT REQUIRED.** (a) Except as provided by Section 144.042, a person may not construct a new rendering establishment or engage in construction involving an addition or replacement at a rendering establishment without a construction permit issued by the department.

(b) Except as provided by Section 144.042, a person may not construct a new related station or engage in construction involving an addition or replacement at a related station without a construction permit issued by the department unless the construction is conducted in connection with construction at a rendering establishment covered by a construction permit issued under Subsection (a).

(c) Construction at a related station is subject to the construction and layout requirements established under Subchapter E. (V.A.C.S. Art. 4477-6, Secs. 3(a) (part), 9 (part).)

Sec. 144.042. EXEMPTION FROM PERMIT REQUIREMENT. A construction permit from the department for the construction of a new rendering establishment or new related station or for construction at a rendering establishment or related station is not required if the cost to the rendering establishment or related station is less than \$10,000. However, the construction and layout requirements established under Subchapter E apply to the construction. (V.A.C.S. Art. 4477-6, Secs. 8(d), 12(b) (part).)

Sec. 144.043. PERMIT APPLICATION AND ISSUANCE. (a) To receive a construction permit, a person must submit a sworn application to the department. The application must:

- (1) describe the type of construction proposed, whether the construction is of a new rendering establishment or related station or additions or replacements;
  - (2) specify when the proposed construction is to occur; and
  - (3) include other relevant information required by the department to determine the applicant's compliance with the requirements of Subchapter E.
- (b) The department shall issue the construction permit if, after investigation, it finds that the proposed construction meets the requirements of Subchapter E.
- (c) If the department finds that the applicant's proposed construction does not meet the requirements of Subchapter E, the department shall deny the application and shall notify the applicant in writing of each reason why the applicant fails to meet the requirements. The applicant is entitled to 90 days in which to meet the requirements, after which the department shall reinvestigate.
- (d) If the department determines after reinvestigation that the applicant is not in compliance, the department shall again deny the application and notify the applicant in writing of each reason why the applicant fails to meet the requirements.
- (e) If the department denies an application twice, the application is canceled. The applicant is entitled to a hearing before the commissioner on the denial if the applicant requests the hearing not later than the 30th day after the date of the second denial. The hearing must be conducted not later than the 30th day after the date of the request.
- (f) Unless the period is extended by a written agreement between the department and the applicant, the department shall grant or deny a permit application not later than the 30th day after the date on which:
- (1) the application and the required fees are filed with the department;
  - (2) the period to meet the requirements expires; or
  - (3) a hearing on the application denial is conducted. (V.A.C.S. Art. 4477-6, Secs. 8(a) (part), 10.)

[Sections 144.044-144.050 reserved for expansion]

#### SUBCHAPTER E. CONSTRUCTION AND LAYOUT REQUIREMENTS FOR RENDERING ESTABLISHMENTS AND RELATED STATIONS

Sec. 144.051. RENDERING ESTABLISHMENT AND RELATED STATION CONSTRUCTION. (a) All construction of a rendering establishment or related station subject to this chapter must:

- (1) provide for sanitary operations and environmental conditions;
- (2) prevent the spread of disease-producing organisms and infectious or noxious materials; and
- (3) prevent the development of a malodorous condition or a nuisance.

(b) Each construction permit holder shall comply with the specific requirements established under this subchapter. (V.A.C.S. Art. 4477-6, Secs. 8(a) (part), (b) (part); 9 (part).)

Sec. 144.052. GENERAL CONSTRUCTION AND LAYOUT REQUIREMENTS. (a) A rendering establishment shall provide sufficient space for:

- (1) the sanitary administration of rendering operations and processes;



(2) the installation of necessary utility equipment; and

(3) the installation of processing equipment in a manner that makes the equipment easily accessible for cleaning.

(b) A rendering establishment must be constructed so as to be easily maintained in a sanitary condition and to prevent shelter for rodents, roaches, and other vermin.

(c) A floor in a rendering establishment must be constructed of good quality concrete, metal, or other equally impervious and easily cleanable material. It must be smooth, graded to drain, and provided with an adequate number of trapped drains or other waste disposal facilities approved by the department. A gutter used to conduct drainage must be constructed and located so it can be easily cleaned and maintained in a sanitary condition.

(d) A wall, partition, or post in a rendering establishment must be finished with a smooth, washable surface of concrete, metal, or other equally impervious and easily cleanable material.

(e) A ceiling, the underside of a roof if used as a ceiling, and any exposed overhead structure in a rendering establishment must have easily cleanable surfaces.

(f) Each exterior wall and roof, and any opening in an outer wall or roof, must protect against the entrance of insects, rodents, and other vermin. An interior wall, partition, post, ceiling, or other overhead structure may not contain crevices or openings that may provide shelter for rodents or insects.

(g) A rendering establishment shall provide a paved area of adequate size for washing and sanitizing trucks. The paved area must be provided with adequate drains that lead to a sanitary sewer system. (V.A.C.S. Art. 4477-6, Sec. 8(b) (part).)

**Sec. 144.053. RESTROOM FACILITIES.** (a) A rendering establishment shall provide toilet and dressing room facilities for employees of each sex. The department must approve the design, construction, and equipment of those facilities.

(b) This section does not apply to toilet or dressing room facilities located in the managerial office area of a rendering establishment. (V.A.C.S. Art. 4477-6, Sec. 8(b) (part).)

**Sec. 144.054. VENTILATION REQUIREMENTS.** (a) A rendering establishment shall provide sufficient ventilation to dispel disagreeable odors, condensate, and vapor.

(b) The establishment shall provide ventilating equipment as necessary, including individual fans, vents, and hoods. The establishment shall locate and control mechanical ventilating equipment to prevent contamination of finished products or processing equipment from nearby or preceding operations or other sources.

(c) An employee toilet room or dressing room must be adequately vented to the outside air.

(d) A space heater, gas stove, water heater, or other equipment that emits noxious odors, fumes, or vapors must be vented to the outside air.

(e) An exhaust outlet from a mechanical ventilation device must be conducted to the outside air and must be arranged, placed, and extended to avoid creating a nuisance to adjacent areas. (V.A.C.S. Art. 4477-6, Sec. 8(b) (part).)

**Sec. 144.055. WATER SUPPLY.** (a) The water supply used by a rendering establishment must be either a public water supply acceptable to the department or a private supply that is located, constructed, and treated, if necessary, to provide water of a safe, sanitary quality and that complies with department requirements.

(b) The establishment's water supply may not be physically connected to any unsafe or questionable supply. Water from an unsafe or questionable supply may be used only for limited purposes, such as fire control or for ammonia condensers. A supply line for unsafe or questionable water must be clearly identified.

(c) Hot and cold water must be conveniently accessible to all parts of the establishment. The water must be under ample pressure, and must be available through outlets and in quantities as necessary to meet effectively the needs of the establishment at all times.

The hot water system must have sufficient capacity to furnish ample water with a temperature of at least 180 degrees Fahrenheit during processing and cleanup.

(d) The plumbing system in a rendering establishment must be installed in compliance with state law and applicable local plumbing ordinances, and must be designed, installed, and maintained to protect the establishment's water supply from contamination through cross-connections, back siphonage, back-flow leakage, or condensation. The plumbing system must readily carry away all liquid wastes.

(e) If necessary to prevent discharge into the drainage system of solid wastes likely to clog the drainage system, liquid wastes containing solid materials must be passed through a separator or indirect-waste receptor that effectively retains the solids before discharge into the drainage system. (V.A.C.S. Art. 4477-6, Sec. 8(b) (part).)

[Sections 144.056-144.060 reserved for expansion]

#### SUBCHAPTER F. PROVISIONS APPLICABLE TO LICENSES AND PERMITS

Sec. 144.061. CONTENTS AND DISPLAY OF LICENSE OR PERMIT. (a) Each operating license and construction permit must state the name and address of the license holder or permit holder.

(b) The license or permit must be displayed at the place of business named in the license or the place of construction named in the permit. (V.A.C.S. Art. 4477-6, Sec. 11 (part).)

Sec. 144.062. NOT TRANSFERABLE OR ASSIGNABLE. A license or permit may not be transferred or assigned without the department's approval. (V.A.C.S. Art. 4477-6, Sec. 11 (part).)

Sec. 144.063. RENEWAL OF LICENSE OR PERMIT. (a) A license or permit is effective until it is relinquished, suspended, or revoked, or it expires.

(b) An operating license is valid for one year and may be renewed annually by the license holder. The annual renewal fee is the same as the original license fee for that license.

(c) A license holder may renew a license by paying the renewal fee to the department on or before January 1 of each year. On receipt of the fee, the license is automatically renewed for the next calendar year.

(d) If the renewal fee is not paid before the expiration of the 15th day after the date on which written notice of delinquency is given to the license holder by the department, the license expires unless the license holder shows good cause for failure to renew. After an operating license expires, a new application for the license must be submitted. (V.A.C.S. Art. 4477-6, Sec. 13.)

Sec. 144.064. SUSPENSION OR REVOCATION OF LICENSE OR PERMIT; REINSTATEMENT. (a) The commissioner may suspend or revoke an operating license or construction permit if the commissioner finds that:

(1) the license holder or permit holder has knowingly violated this chapter or a rule or order adopted under this chapter or did not exercise due care to prevent the violation; or

(2) a fact or condition exists that would have justified the denial of the license or permit application if the fact or condition was known at the time the original application was filed.

(b) On the discovery of such a violation, the commissioner shall notify the license holder or permit holder of the violation and shall allow a reasonable period for correction. If the license holder or permit holder fails to make the necessary corrections, the department shall notify the license holder or permit holder of a hearing to suspend or revoke the license or permit.

(c) The commissioner may reinstate a suspended license or permit, or may issue a new license or permit to a person whose license or permit has been revoked, if a ground to

deny the original license or permit application does not exist. (V.A.C.S. Art. 4477-6, Secs. 14(a) (part), (c).)

[Sections 144.065-144.070 reserved for expansion]

**SUBCHAPTER G. ADMINISTRATIVE AND ENFORCEMENT  
PROVISIONS; PENALTIES**

**Sec. 144.071. INSPECTIONS.** (a) At least once each year and at other times as the department considers necessary, the department shall inspect the place of business of each operating license holder and the construction site of each construction permit holder if construction is continuing.

(b) The department shall inquire into and inspect the premises, equipment, and operations of the license holder or permit holder that relate to matters regulated by this chapter.

(c) The department has free access to the place of business or construction site to conduct the inspection.

(d) A license holder or permit holder who unreasonably fails or refuses to cooperate and assist the department in an inspection violates this chapter, and the failure or refusal constitutes a ground for the suspension or revocation of the license or permit. (V.A.C.S. Art. 4477-6, Sec. 15.)

**Sec. 144.072. FEES.** (a) An application for an operating license must be accompanied by the applicable fee, as follows:

- (1) rendering establishment operating license: \$300;
- (2) related station operating license: \$200;
- (3) dead animal hauler operating license: \$150;
- (4) renderable raw material hauler operating license: \$150;
- (5) combination dead animal and renderable raw material hauler operating license: \$150.

(b) An application for a construction permit must be accompanied by the applicable fee. Construction permit fees are based on the dollar value at the cost to the rendering establishment or related station of the construction, according to the following schedule:

- (1) less than \$10,000: no permit required;
- (2) \$10,000-\$49,999: \$100;
- (3) \$50,000-\$99,999: \$200;
- (4) \$100,000-\$249,999: \$500;
- (5) \$250,000 and over: \$1,000.

(c) If an application is withdrawn not later than the fifth day after the date on which it is received by the department, the department shall refund the full amount of the application fee. (V.A.C.S. Art. 4477-6, Sec. 12 (part).)

**Sec. 144.073. ACCOUNT.** All fees collected under this chapter are payable to the department and shall be deposited in an account in the state treasury to the credit of the department to be used to process and investigate applications filed under this chapter and to administer this chapter. (V.A.C.S. Art. 4477-6, Sec. 12(c) (part).)

**Sec. 144.074. ADOPTION OF RULES.** The board may adopt rules consistent with this chapter as necessary for the enforcement of this chapter. (V.A.C.S. Art. 4477-6, Sec. 17(a) (part).)

**Sec. 144.075. CERTIFICATES; CERTIFIED COPIES.** (a) On application by any person and on payment of the associated costs, the department shall furnish a certificate of good standing and a certified copy of any license, permit, rule, or order.

(b) The department shall furnish the certificate or copy under its seal and signed by a representative of the department. (V.A.C.S. Art. 4477-6, Sec. 17(b).)

Sec. 144.076. PUBLIC RECORDS. The transcript of any hearing held by the commissioner and findings made by the commissioner or the department under this chapter are public records open to inspection at all reasonable times. (V.A.C.S. Art. 4477-6, Sec. 17(c).)

Sec. 144.077. JUDICIAL REVIEW. (a) A person aggrieved by a final decision under this chapter is entitled to judicial review.

(b) The manner of review is by trial de novo. (V.A.C.S. Art. 4477-6, Sec. 18(b) (part).)

Sec. 144.078. INJUNCTION. (a) The department may bring an action in any district court of this state that has jurisdiction and venue for an injunction to compel compliance with this chapter or to restrain any actual or threatened violation of this chapter.

(b) The court may enter an order or judgment to award a preliminary or final injunction as it considers appropriate.

(c) The department may bring an action under Subsection (a) in addition to any other action provided by this chapter and without prejudice to that action. (V.A.C.S. Art. 4477-6, Sec. 19(b).)

Sec. 144.079. PROCESSING ANIMALS FOR HUMAN CONSUMPTION PROHIBITED. A person may not receive, hold, slaughter, butcher, or otherwise process any animal as food for human consumption in a building or compartmented area of a building used as a rendering establishment or related station. (V.A.C.S. Art. 4477-6, Sec. 3(b) (part).)

Sec. 144.080. CRIMINAL PENALTY. (a) A person commits an offense if the person continues any operation or construction subject to regulation under this chapter without obtaining and maintaining an operating license or construction permit.

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

(1) a fine of not less than \$50 or more than \$500;

(2) confinement in the county jail for not more than 30 days; or

(3) both the fine and confinement.

(c) Each day of violation constitutes a separate offense. (V.A.C.S. Art. 4477-6, Sec. 19(a) (part).)

[Chapters 145-160 reserved for expansion]

#### SUBTITLE H. PUBLIC HEALTH PROVISIONS

#### CHAPTER 161. PUBLIC HEALTH PROVISIONS

##### SUBCHAPTER A. IMMUNIZATIONS

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION

Sec. 161.003. IMMUNIZATION REMINDER NOTICES

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##### SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. PERMISSION REQUIRED

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Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE

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[Sections 161.025–161.030 reserved for expansion]

**SUBCHAPTER D. RECORDS OF AND IMMUNITIES FOR  
MEDICAL COMMITTEES**

- Sec. 161.031. MEDICAL COMMITTEE DEFINED
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- Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS

[Sections 161.034–161.040 reserved for expansion]

**SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS**

- Sec. 161.041. MANDATORY REPORTING
- Sec. 161.042. CRIMINAL PENALTY

[Sections 161.043–161.060 reserved for expansion]

**SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR  
PAYMENT OF LABORATORY TESTS**

- Sec. 161.061. LABORATORY INFORMATION REQUIRED
- Sec. 161.062. GROUNDS FOR LICENSE DENIAL

[Sections 161.063–161.070 reserved for expansion]

**SUBCHAPTER G. TATTOOING**

- Sec. 161.071. DEFINITION
- Sec. 161.072. CRIMINAL PENALTY

[Sections 161.073–161.080 reserved for expansion]

**SUBCHAPTER H. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS**

- Sec. 161.081. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS PROHIBITED

**SUBTITLE H. PUBLIC HEALTH PROVISIONS**

**CHAPTER 161. PUBLIC HEALTH PROVISIONS**

**SUBCHAPTER A. IMMUNIZATIONS**

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by the board or is otherwise required by law or rule.

(b) This section does not apply to a negligent act in administering the vaccine or immunizing agent. (V.A.C.S. Art. 4419b–2.)

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual. (V.A.C.S. Art. 4447d–1.)

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The remainder notice must be addressed to an adult or parent and may not use:

- (1) an indication of the marital status of the addressee; or
- (2) the terms "Mr.," "Mrs.," "Miss," or "Ms." (V.A.C.S. Art. 4447d–2.)

[Sections 161.004–161.010 reserved for expansion]

#### SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. **PERMISSION REQUIRED.** A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

- (1) permission obtained from a lawful adult occupant of the residence; or
- (2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law or a health ordinance of a political subdivision. (V.A.C.S. Art. 4420a, Sec. 1 (part).)

Sec. 161.012. **CRIMINAL PENALTIES.** (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the state penitentiary for not more than two years, a fine of not more than \$1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than \$500, or both. (V.A.C.S. Art. 4420a, Secs. 2, 3.)

[Sections 161.013–161.020 reserved for expansion]

#### SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH CONDITIONS

Sec. 161.021. **AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY.** (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing home, rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

- (1) the department;
- (2) a person that makes inquiries under immunization surveys conducted for the department;
- (3) a medical organization;
- (4) a hospital; or
- (5) a hospital committee.

(b) A person is not liable for damages or other relief for:

- (1) providing the information;
- (2) releasing or publishing the findings or conclusions to advance medical research or medical education; or
- (3) releasing or publishing a general summary of those studies. (V.A.C.S. Art. 4447d, Sec. 1.)

Sec. 161.022. **USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY.** (a) The department, a medical organization, a hospital, or a hospital committee may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged. (V.A.C.S. Art. 4447d, Sec. 2.)

**Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE.** (a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization. (V.A.C.S. Art. 4447d, Sec. 3 (part).)

**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 the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code), the rules adopted under that Act, or other applicable state and federal statutes and rules. (V.A.C.S. Art. 4447d, Sec. 3 (part).)

[Sections 161.025–161.030 reserved for expansion]

#### **SUBCHAPTER D. RECORDS OF AND IMMUNITIES FOR MEDICAL COMMITTEES**

**Sec. 161.031. MEDICAL COMMITTEE DEFINED.** (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 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; or

(5) an extended care facility.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution. (V.A.C.S. Art. 4447d, Sec. 3 (part).)

**Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL.** (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(c) This section does not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, or extended care facility. (V.A.C.S. Art. 4447d, Sec. 3 (part).)

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member. (V.A.C.S. Art. 4447d, Sec. 3 (part).)

[Sections 161.034–161.040 reserved for expansion]

#### SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS

Sec. 161.041. MANDATORY REPORTING. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located. (V.A.C.S. Art. 4447p, Secs. 1, 2 (part).)

Sec. 161.042. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than \$100. (V.A.C.S. Art. 4447p, Sec. 2.)

[Sections 161.043–161.060 reserved for expansion]

#### SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge. (V.A.C.S. Art. 4447s, Sec. 1.)

Sec. 161.062. GROUNDS FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter. (V.A.C.S. Art. 4447s, Sec. 2.)

[Sections 161.063–161.070 reserved for expansion]

#### SUBCHAPTER G. TATTOOING

Sec. 161.071. DEFINITION. In this subchapter, “tattooing” means the practice of marking the skin with indelible patterns or pictures by making punctures and inserting pigments. (V.A.C.S. Art. 9013, Sec. 2.)

Sec. 161.072. CRIMINAL PENALTY. (a) A person commits an offense if the person tattoos a person who is younger than 21 years old.



(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200, confinement in the county jail for not more than six months, or both. (V.A.C.S. Art. 9013, Secs. 1, 3.)

[Sections 161.073–161.080 reserved for expansion]

**SUBCHAPTER H. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS**

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

- (1) sells or gives a cigarette or a tobacco product to a minor who is younger than 16 years of age; or
- (2) knowingly sells a cigarette or a tobacco product to another person for delivery to a minor who is younger than 16 years of age.

(b) An offense under this section is punishable by a fine of not less than \$10 or more than \$100. (V.A.C.S. Art. 4476–16.)

**CHAPTER 162. BLOOD BANKS**

- Sec. 162.001. DEFINITIONS**
- Sec. 162.002. REQUIRED TESTING OF BLOOD**
- Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS**
- Sec. 162.004. DISCLOSURE REQUIRED BY LAW**
- Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED**
- Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS**
- Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER**
- Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS**
- Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING**
- Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT**
- Sec. 162.011. DISCOVERY POWERS OF COURT**
- Sec. 162.012. LIMITATION ON LIABILITY**
- Sec. 162.013. CIVIL PENALTY**
- Sec. 162.014. CRIMINAL PENALTY**

**CHAPTER 162. BLOOD BANKS**

**Sec. 162.001. DEFINITIONS.** In this chapter:

(1) "Blood bank" means a facility that obtains blood from voluntary donors, as that term is defined by the United States Food and Drug Administration and the American Association of Blood Banks, and that is registered or licensed by the Office of Biologics of the United States Food and Drug Administration and accredited by the American Association of Blood Banks, or is qualified for membership in the American Association of Tissue Banks. The term includes a blood center, regional collection center, tissue bank, and transfusion service.

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

(3) "HIV" means human immunodeficiency virus. (V.A.C.S. Art. 4419b–1.5, Sec. 1.)

**Sec. 162.002. REQUIRED TESTING OF BLOOD.** (a) For each donation of blood, a blood bank shall require the donor to submit to tests for infectious diseases, including tests for AIDS, HIV, or hepatitis, and serological tests for contagious venereal diseases.

(b) A blood bank is not required to obtain the donor's informed consent before administering tests for infectious diseases and is not required to provide counseling concerning the test results. (V.A.C.S. Art. 4419b–1.5, Sec. 2.)

**Sec. 162.003. CONFIDENTIALITY OF BLOOD BANK RECORDS.** The medical and donor records of a blood bank are confidential and may not be disclosed except as provided by this chapter. (V.A.C.S. Art. 4419b–1.5, Sec. 3(a).)

Sec. 162.004. DISCLOSURE REQUIRED BY LAW. A blood bank shall disclose all information required by law, including HIV test results, to:

- (1) the department and a local health authority as required under Chapter 81 (Communicable Disease Prevention and Control Act);
- (2) the Centers for Disease Control of the United States Public Health Service, as required by federal law or regulation; or
- (3) any other local, state, or federal entity, as required by law, rule, or regulation. (V.A.C.S. Art. 4419b-1.5, Sec. 3(b).)

Sec. 162.005. DISCLOSURE TO CERTAIN PHYSICIANS OR PERSON TESTED. A blood bank shall disclose blood test results and the name of the person tested to:

- (1) the physician or other person authorized by law who ordered the test;
- (2) the physician attending the person tested; or
- (3) the person tested or a person legally authorized to consent to the test on behalf of the person tested. (V.A.C.S. Art. 4419b-1.5, Sec. 3(c).)

Sec. 162.006. DISCLOSURE TO OTHER BLOOD BANKS. (a) A blood bank may report to other blood banks the name of a donor with a possible infectious disease according to positive blood test results.

(b) A blood bank that reports a donor's name to other blood banks under this section may not disclose the infectious disease that the donor has or is suspected of having.

(c) A blood bank that reports as provided by this section does not breach a confidence arising out of any confidential relationship. (V.A.C.S. Art. 4419b-1.5, Sec. 3(d).)

Sec. 162.007. REPORT TO RECIPIENT OR TRANSFUSER. (a) A blood bank shall report blood test results for blood confirmed as HIV positive by the normal procedures blood banks presently use or found to be contaminated by any other infectious disease to:

- (1) the hospital or other facility in which the blood was transfused or provided;
- (2) the physician who transfused the infected blood; or
- (3) the recipient of the blood.

(b) A blood bank may report blood test results for statistical purposes.

(c) A blood bank that reports test results under this section may not disclose the name of the donor or person tested or any other information that could result in the disclosure of the donor's or person's identity, including an address, social security number, designated recipient, or replacement donation information. (V.A.C.S. Art. 4419b-1.5, Sec. 3(f).)

Sec. 162.008. PROCEDURES FOR NOTIFYING BLOOD RECIPIENTS. Each hospital, physician, health agency, and other transfuser of blood shall strictly follow the official "Operation Look-Back" procedure of the American Association of Blood Banks in notifying past and future recipients of blood. The only exception to notifying a recipient of blood is if the recipient is dead or cannot be located. (V.A.C.S. Art. 4419b-1.5, Sec. 3(g).)

Sec. 162.009. PROVISION OF BLOOD SAMPLES FOR TESTING. On request, a blood bank shall provide blood samples to hospitals, laboratories, and other blood banks for additional, repetitive, or different testing. (V.A.C.S. Art. 4419b-1.5, Sec. 3(e).)

Sec. 162.010. GENERAL POWERS AND DUTIES OF COURT. (a) After notice and hearing, a court of competent jurisdiction may require a blood bank to provide a recipient of blood from the blood bank with the results of tests of the blood of each donor of blood transfused into the recipient. The court may also require the test results to be given to an heir, parent, or guardian of the recipient, or a personal representative of the recipient's estate. The test results must be given in accordance with Section 162.007.

(b) If a blood bank fails to or cannot provide the test results as required under Subsection (a), the court may require the blood bank to use every reasonable effort, including any effort directed by the court, to locate any donor of the blood in question. The court may require the blood bank to obtain from that donor a blood sample for testing and may direct the blood bank to provide blood test results, samples of the blood, or both, to an independent laboratory designated by the court for testing. The results of

the independent laboratory test must be made available to the recipient, an heir, parent, or guardian of the recipient, or the personal representative of the recipient's estate.

(c) Section 162.002 applies if a blood bank requires a donor to provide a blood sample for testing under Subsection (b).

(d) If a blood test result is positive or if the blood bank fails to or cannot provide a blood test result or blood sample as required under Subsection (b), the court may require the blood bank to provide any information that the court determines is necessary to satisfy the court that the blood bank has complied in all respects with this section and the court's order or has demonstrated every reasonable effort to comply. The blood bank must provide the information to the judge of the court in camera and under seal.

(e) The court may not disclose to any other person the name of a donor or any other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information. However, on the motion of any party, the court shall order the taking of the donor's deposition at a specified time and in a manner that maintains the donor's anonymity.

(f) The court may not deny a party's attorney the right to orally cross-examine the donor. (V.A.C.S. Art. 4419b-1.5, Sec. 3(h).)

**Sec. 162.011. DISCOVERY POWERS OF COURT.** (a) A court of competent jurisdiction shall exercise the discovery powers granted in this section on the motion of any party. The court shall exercise the powers to the extent reasonably necessary to obtain information from or relating to a donor if that information:

(1) is reasonably calculated to lead to the discovery of admissible evidence regarding any matter relevant to the subject matter of a pending proceeding; and

(2) cannot otherwise be obtained without threatening the disclosure of the name of a donor or other information that could result in the disclosure of a donor's identity, including an address, social security number, designated recipient, or replacement donation information.

(b) This section does not apply to information obtainable under Section 162.010.

(c) The court may:

(1) order the deposition of any witness, including a donor, orally, on written questions and cross-questions propounded by the parties, or both; and

(2) compel the production of documents and things.

(d) A subpoena issued to a donor under this section may be served only in person at the donor's residence address. On a showing that service in person cannot be made at the donor's residence despite diligent efforts to do so, the court may order service on the donor at other places as directed by the court.

(e) The court shall deliver to the parties all discoverable information obtained through the exercise of powers provided by this section, including testimony, documents, or things. The court shall first delete from that information the name of any donor or any other information that could result in the disclosure of a donor's identity, including information described by Subsection (a)(2). The court may substitute fictitious names, such as "John Doe," or make other changes as necessary to protect the confidentiality of the donor's identity in the information made available to the parties.

(f) The court may not disclose confidential donor information to any person other than a person acting under Section 162.010(e) or (f). That person may not disclose the information to others.

(g) The exercise of the court's powers under this section is governed by the Texas Rules of Civil Procedure, except to the extent of any conflict with this section. (V.A.C.S. Art. 4419b-1.5, Sec. 3(i) (part).)

**Sec. 162.012. LIMITATION ON LIABILITY.** (a) A donor who provides information or blood samples under Section 162.010 is immune from all liability arising out of the donation of the blood transfused into a recipient.

(b) A blood bank is not liable for the disclosure of information to a court in accordance with an order issued under Sections 162.010(b)-(f).

(c) A presumption of negligence or causation does not attach to a donor's positive test result if the test result is obtained after the donation of blood or blood components that is the subject of discovery as provided under Section 162.011.

(d) Except as provided by Section 162.013 or 162.014, a person who negligently or intentionally discloses blood bank records in violation of this chapter is liable only for actual damages resulting from the negligent or intentional disclosure.

(e) This chapter does not give rise to any liability under Subchapter E, Chapter 17, Business & Commerce Code (Deceptive Trade Practices-Consumer Protection Act). (V.A.C.S. Art. 4419b-1.5, Secs. 3(i) (part), (j), (k); 4.)

Sec. 162.013. CIVIL PENALTY. (a) A person who is injured by a violation of Section 162.006, 162.007, 162.010, or 162.011 may bring a civil action for damages. In addition, any person may bring an action to restrain such a violation or threatened violation.

(b) If it is found in a civil action that a person has violated a section listed in Subsection (a), that person is liable for:

(1) actual damages;

(2) a civil penalty of not more than \$1,000; and

(3) court costs and reasonable attorney's fees incurred by the person bringing the action. (V.A.C.S. Art. 4419b-1.5, Secs. 5(a), (b).)

Sec. 162.014. CRIMINAL PENALTY. (a) A person commits an offense if the person discloses information in violation of Section 162.006, 162.007, 162.010, or 162.011.

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

(c) Each disclosure made in violation of Section 162.006 or 162.007 constitutes a separate offense. (V.A.C.S. Art. 4419b-1.5, Secs. 5(c), (d).)

[Chapters 163-190 reserved for expansion]

### TITLE 3. VITAL STATISTICS

#### CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. DEFINITIONS

Sec. 191.002. POWERS AND DUTIES OF DEPARTMENT

Sec. 191.003. POWERS AND DUTIES OF BOARD

Sec. 191.004. STATE REGISTRAR

Sec. 191.005. VITAL STATISTICS FUND

Sec. 191.006. RECORDS OF PERSONS IN HOSPITALS AND INSTITUTIONS

Sec. 191.007. REGULATION BY CERTAIN MUNICIPALITIES

[Sections 191.008-191.020 reserved for expansion]

##### SUBCHAPTER B. RECORDS OF BIRTHS, DEATHS, AND FETAL DEATHS

Sec. 191.021. REGISTRATION DISTRICTS

Sec. 191.022. LOCAL REGISTRARS

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Sec. 191.024. REPORTS OF INFORMATION

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Sec. 191.026. LOCAL RECORDS

Sec. 191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR

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Sec. 191.029. CERTIFICATES OR REPORT SENT TO STATE REGISTRAR

Sec. 191.030. RECORDS FILED WITH COUNTY

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Sec. 191.034. NOTATION OF DEATH ON BIRTH CERTIFICATE

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**TITLE 3. VITAL STATISTICS**

**CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 191.001. DEFINITIONS. In this title:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health. (New.)

Sec. 191.002. POWERS AND DUTIES OF DEPARTMENT. (a) The department shall administer the registration of vital statistics.

(b) The department shall:

- (1) establish a bureau of vital statistics with suitable offices that are properly equipped for the preservation of its official records;
- (2) establish a statewide system of vital statistics;
- (3) provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;
- (4) require the enforcement of this title and rules adopted under this title;
- (5) prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and
- (6) propose legislation necessary for the purposes of this title.

(c) The department may use birth records and provide those records on request to other state agencies for programs notifying mothers of young children about children's health needs. (V.A.C.S. Art. 4477, Rules 34a (part), 47a(a) (part), 51a, Subsec. A (part).)

Sec. 191.003. POWERS AND DUTIES OF BOARD. (a) The board shall:

- (1) adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics;
- (2) supervise the bureau of vital statistics; and
- (3) appoint the director of the bureau of vital statistics.

(b) In an emergency, the board may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules designed to expedite that registration under disaster conditions. (V.A.C.S. Art. 4477, Rules 34a (part), 35a (part).)

Sec. 191.004. STATE REGISTRAR. (a) The director of the bureau of vital statistics is the state registrar of vital statistics. The director must be a competent vital statistician.

(b) The state registrar shall prepare and issue detailed instructions necessary for the uniform observance of this title and the maintenance of a perfect system of registration. (V.A.C.S. Art. 4477, Rules 35a (part), 51a, Subsec. A (part).)

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

(b) The fund shall be used to defray expenses incurred in the enforcement and operation of this title.

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

(d) The state treasurer shall deposit the fees to the credit of the vital statistics fund. (V.A.C.S. Art. 4477, Rules 51a, Subsec. B, Para. (9) (part); 54a(a) (part).)

Sec. 191.006. RECORDS OF PERSONS IN HOSPITALS AND INSTITUTIONS. (a) This section applies to each public or private hospital, almshouse, or other institution to which persons are committed by process of law or voluntarily enter for treatment of disease or for confinement.

(b) When a person is admitted to the institution, the superintendent, manager, or other person in charge of the institution shall record, in the manner directed by the state registrar, the admitted person's personal and statistical data required by certificate forms under this title. If the person is admitted for the treatment of disease, the physician in charge shall specify for the record the nature of the disease and where, in the physician's opinion, the disease was contracted.

(c) The personal information required under Subsection (b) shall be obtained:

(1) from the person admitted to the institution, if practicable; or

(2) from the person's relatives or friends or from other persons acquainted with the facts, in as complete a manner as possible, if the information cannot be obtained from the person admitted to the institution. (V.A.C.S. Art. 4477, Rule 50a.)

Sec. 191.007. REGULATION BY CERTAIN MUNICIPALITIES. The governing body of a Type A general-law municipality may:

(1) regulate the registration of marriages; and

(2) direct the return and maintenance of bills of mortality. (V.A.C.S. Art. 1015, Subdiv. 7 (part).)

[Sections 191.008–191.020 reserved for expansion]

#### SUBCHAPTER B. RECORDS OF BIRTHS, DEATHS, AND FETAL DEATHS

Sec. 191.021. REGISTRATION DISTRICTS. (a) The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. The registration districts are:

(1) each justice of the peace precinct; and

(2) each municipality with a population of 2,500 or more.

(b) To facilitate registration, the board may combine or divide registration districts. (V.A.C.S. Art. 4477, Rule 36a (part).)

Sec. 191.022. LOCAL REGISTRARS. (a) The justice of the peace is the local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(b) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(c) Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths.

(d) The local registrar shall sign each report made to the bureau of vital statistics.

(e) If a local registrar fails or refuses to register each birth and death in the district or neglects duties under this title, the county judge or the mayor, as appropriate, shall

appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar. (V.A.C.S. Art. 4477, Rules 36a (part), 37a.)

**Sec. 191.023. CONSOLIDATION OF COUNTY AND MUNICIPAL MAINTENANCE OF BIRTH AND DEATH RECORDS.** (a) The duties imposed by law relating to the maintenance of birth and death records of a municipality with a population of 2,500 or more may be transferred to the county in which the municipality is located, as provided by this section.

(b) If the commissioners court adopts a resolution to transfer the duties and the governing body of the municipality subsequently adopts a concurring resolution, the county and municipality shall agree on a timetable for the transfer and shall execute the transfer in an orderly fashion.

(c) Before a commissioners court may adopt a resolution under Subsection (b), the official to whom the duties would be transferred must attest in writing that the official has sufficient resources and finances to assume those duties.

(d) If the governing body of a municipality does not adopt a concurring resolution before the 91st day after the date on which a county adopts a resolution under Subsection (b), a petition by the qualified voters of the municipality may serve as the equivalent of a concurring resolution under Subsection (b). The petition must succinctly describe the intention to consolidate county and municipal maintenance of birth and death records and must be signed by a number of qualified voters equal to at least 20 percent of the number of qualified voters voting in the most recent mayoral election.

(e) A consolidation under this section affects only the county and the municipality to which the resolutions apply. This section does not affect the apportionment of registration districts under Section 191.021. (V.A.C.S. Art. 4477, Rule 48a.)

**Sec. 191.024. REPORTS OF INFORMATION.** (a) On the state registrar's demand, a person, including a physician, midwife, or funeral director, who has information relating to a birth, death, or fetal death shall supply the information in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the department or on the original certificate.

(b) An organization or individual who has a record of births or deaths that may be useful to establish the genealogy of a resident of this state may file the record or a duly authenticated transcript of the record with the state registrar. (V.A.C.S. Art. 4477, Rule 51a, Subsec. A (part).)

**Sec. 191.025. RECORD BOOKS AND CERTIFICATES.** (a) Forms for the registration of births, deaths, and fetal deaths must be approved by the department.

(b) A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. The record books must be in forms approved by the state registrar.

(c) A local registrar shall supply forms of certificates to persons who need them.

(d) Information required on a certificate must be written legibly in durable black ink.

(e) A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item. (V.A.C.S. Art. 4477, Rules 51a, Subsec. A (part); 52a (part).)

**Sec. 191.026. LOCAL RECORDS.** (a) The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction.

(b) The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office.

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter 181 or

201, Local Government Code. The copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(d) The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records under Section 191.032. (V.A.C.S. Art. 4477, Rules 36a (part), 52a (part).)

Sec. 191.027. REVIEW OF CERTIFICATE BY LOCAL REGISTRAR. (a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained. (V.A.C.S. Art. 4477, Rule 52a (part).)

Sec. 191.028. AMENDMENT OF CERTIFICATE. (a) A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed except as provided by Subsection (b).

(b) An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the department. The amendment shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing, except as provided by Section 192.011(b).

(c) The applicant shall pay a \$7 fee to the state registrar to file an amendment under this section. (V.A.C.S. Art. 4477, Rules 51a, Subsec. A (part); 54a(c) (part).)

Sec. 191.029. CERTIFICATES OR REPORT SENT TO STATE REGISTRAR. On the 10th day of each month, the local registrar shall send to the state registrar:

(1) the original certificates that the local registrar registered during the preceding month; or

(2) a report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month. (V.A.C.S. Art. 4477, Rule 52a (part).)

Sec. 191.030. RECORDS FILED WITH COUNTY. (a) Not later than the 10th day of each month, the local registrar shall file with the commissioners court or the county auditor, as appropriate, a copy of each birth, death, and fetal death certificate filed with the local registrar during the preceding month.

(b) Each copy must show the local registrar's file date and signature.

(c) The copies shall be deposited in the county clerk's office.

(d) This subsection does not apply in a municipality that has an ordinance requiring that a copy of each birth, death, and fetal death certificate be permanently filed in the office of the municipality's registrar. (V.A.C.S. Art. 4477, Rule 53a (part).)

Sec. 191.031. REVIEW OF CERTIFICATES BY STATE REGISTRAR. (a) The state registrar shall carefully examine the certificates received monthly from the local registrars.

(b) The state registrar shall require additional information to make the record complete and satisfactory if necessary. (V.A.C.S. Art. 4477, Rule 51a, Subsec. A (part).)

Sec. 191.032. STATE RECORDS. (a) The state registrar shall arrange, bind, and permanently preserve birth, death, and fetal death certificates in a systematic manner.

(b) The state registrar shall maintain an index of all registered births and deaths, arranged alphabetically by the names of the fathers and mothers for births and by the names of the decedents for deaths. (V.A.C.S. Art. 4477, Rule 51a, Subsec. A (part).)

Sec. 191.033. ADDENDA. (a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may



contradict the information in a birth, death, or fetal death record required to be maintained in the bureau of vital statistics.

(b) If the state registrar attaches an addendum to an original record, the state registrar shall instruct the local registration official in whose jurisdiction the birth, death, or fetal death occurred to attach an identical addendum to any duplicate of the record in the official's custody.

(c) In this section, "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction. (V.A.C.S. Art. 4477f, Secs. 1(7), 2.)

**Sec. 191.034. NOTATION OF DEATH ON BIRTH CERTIFICATE.** (a) On receipt of the death certificate of a person younger than 55 years of age whose birth is registered in this state, the state registrar shall make a conspicuous notation on the decedent's birth certificate that the person is dead.

(b) The state registrar shall provide a copy of the death certificate to the county clerk of the county in which the decedent was born and to the local registrar of the registration district in which the decedent was born. On receipt of the copy, the county clerk or local registrar shall make a conspicuous notation on the decedent's birth certificate that the person is dead. (V.A.C.S. Art. 4477, Rules 51a, Subsec. A (part); 52a (part).)

**Sec. 191.035. COMPENSATION OF LOCAL REGISTRAR AND COUNTY CLERK.** (a) Except in a municipality in which the local registrar's compensation is set by ordinance, a local registrar shall be paid 50 cents for each properly completed birth, death, or fetal death certificate that the local registrar accepts for registration, correctly records, and promptly sends to the bureau of vital statistics.

(b) The state registrar shall certify annually to the commissioners court or the county auditor, as appropriate, the number of birth, death, and fetal death certificates filed by each local registrar and the amount due each registrar based on the rate provided by Subsection (a). At the discretion of the board, the state registrar may issue the statement monthly or quarterly. The commissioners court or the county auditor, as appropriate, shall audit the statement and the county treasurer shall pay the fees approved by the commissioners court or county auditor when the statement is issued. (V.A.C.S. Art. 4477, Rule 53a (part).)

**Sec. 191.036. SPANISH SURNAME INFORMATION.** (a) The purpose of this section is to:

(1) enable this state to participate in a study being conducted by a group of southwestern states to obtain information about the birth rates and mortality patterns of persons with Spanish surnames; and

(2) implement recommendations made by the National Center for Health Statistics for improved methods of maintaining vital statistics.

(b) In the next official revision of the prescribed forms for birth and fetal death certificates, the department shall include the following questions and instructions:

(1) Is the father of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(3) Is the mother of Spanish origin?

(4) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(c) In the next official revision of the prescribed forms for death certificates, the department shall include the following questions and instructions:

(1) Was the decedent of Spanish origin?

(2) If yes, specify Mexican, Cuban, Puerto Rican, etc. (V.A.C.S. Art. 4477e.)

[Sections 191.037–191.050 reserved for expansion]

#### **SUBCHAPTER C. COPIES OF RECORDS**

**Sec. 191.051. CERTIFIED COPIES.** (a) Subject to board rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on

request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

(b) A certified copy issued under this subsection may be issued only in the form approved by the department. (V.A.C.S. Art. 4477, Rules 51a, Subsecs. B (part), D (part); 54a(a) (part).)

Sec. 191.052. CERTIFIED COPY AS EVIDENCE. A copy of a birth, death, or fetal death record registered under this title that is certified by the state registrar is prima facie evidence of the facts stated in the record. (V.A.C.S. Art. 4477, Rules 51a, Subsec. D (part); 54a(a) (part).)

Sec. 191.053. FEES FOR COPIES AND SEARCHES. (a) The applicant shall pay to the state registrar a \$5 fee for each copy of a birth record.

(b) The applicant shall pay to the state registrar a \$5 fee for the first copy of a death record and a \$2 fee for each additional copy requested in a single request.

(c) The applicant shall pay a \$5 fee to the state registrar for a search of the files if a record is not found or a certified copy is not made.

(d) A local registrar who issues certified copies of death certificates shall charge the same fees as the state registrar. (V.A.C.S. Art. 4477, Rule 54a(a) (part).)

Sec. 191.054. FEE EXEMPTIONS. (a) On the request of a child's parent or guardian, the state registrar shall issue without fee a certificate necessary for admission to school or to secure employment. The certificate shall be limited to a statement of the child's date of birth.

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

(c) On court order, the state registrar may issue without fee a certified copy of a birth record in cases related to child labor or the public schools. (V.A.C.S. Art. 4477, Rule 54a(a) (part).)

Sec. 191.055. REFUNDS. The state registrar shall refund to the applicant any fee received for services that the bureau of vital statistics cannot render. If the money has been deposited to the credit of the vital statistics fund, the comptroller shall issue a warrant against the fund for refund of the payment on the presentation of a claim signed by the state registrar. (V.A.C.S. Art. 4477, Rule 54a(b).)

Sec. 191.056. COPIES COLLECTED BY NATIONAL AGENCY. (a) The national agency in charge of the collection of vital statistics may obtain, without expense to the state, transcripts of vital records without payment of the fees prescribed by this chapter.

(b) The bureau of vital statistics may contract with the national agency to have copies of vital records that are filed with the bureau transcribed for that agency.

(c) The state registrar may act as special agent for the national agency to accept the use of the franking privilege and forms furnished by the national agency. (V.A.C.S. Art. 4477, Rule 54a(a) (part).)

Sec. 191.057. RECORDS WITH ADDENDA. (a) In this section:

(1) "Copy" means a reproduction of a record made by any means.

(2) "Local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(b) If the bureau of vital statistics or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under Section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

(c) If the state registrar refuses to issue the certified copy:

- (1) the state registrar shall notify the applicant of the refusal and the reason for the refusal not later than the 10th day after the date on which the state registrar receives the application; and
- (2) the department shall give the applicant an opportunity for a hearing.
- (d) After the hearing, the state registrar shall notify the local officials who have duplicates of the questioned record of the department's final decision. The department may order the officials to issue or refuse to issue certified copies of the record.
- (e) A duty imposed on or a power granted to the state registrar under this section may be performed or exercised by a designee of the state registrar. (V.A.C.S. Art. 4477f, Secs. 1(6), (7); 3; 4; 5 (part); 6; 7.)

**CHAPTER 192. BIRTH RECORDS**

**SUBCHAPTER A. GENERAL REGISTRATION PROVISIONS**

- Sec. 192.001. REGISTRATION REQUIRED
- Sec. 192.002. FORM OF BIRTH CERTIFICATE
- Sec. 192.003. BIRTH CERTIFICATE FILED OR BIRTH REPORTED
- Sec. 192.004. INFORMATION OBTAINED BY LOCAL REGISTRAR
- Sec. 192.005. RECORD OF PATERNITY
- Sec. 192.006. SUPPLEMENTARY BIRTH CERTIFICATES
- Sec. 192.007. SUPPLEMENTARY CERTIFICATES FOR CHILD WHO DIES BEFORE ADOPTION
- Sec. 192.008. BIRTH RECORDS OF ADOPTED PERSON
- Sec. 192.009. CERTIFICATE OF ADOPTION, ANNULMENT OF ADOPTION, OR REVOCATION OF ADOPTION
- Sec. 192.010. CHANGE OF NAME
- Sec. 192.011. AMENDING BIRTH CERTIFICATE

[Sections 192.012–192.020 reserved for expansion]

**SUBCHAPTER B. DELAYED REGISTRATION**

- Sec. 192.021. DELAY LESS THAN ONE YEAR
- Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR
- Sec. 192.023. DELAY OF MORE THAN ONE BUT LESS THAN FOUR YEARS
- Sec. 192.024. DELAY OF FOUR YEARS OR MORE
- Sec. 192.025. SUPPORTING DOCUMENTS
- Sec. 192.026. REJECTION OR RETURN OF APPLICATION
- Sec. 192.027. REGISTRATION BY JUDICIAL ORDER
- Sec. 192.028. FEE

**CHAPTER 192. BIRTH RECORDS**

**SUBCHAPTER A. GENERAL REGISTRATION PROVISIONS**

- Sec. 192.001. REGISTRATION REQUIRED. The birth of each child born in this state shall be registered. (V.A.C.S. Art. 4477, Rule 45a.)
- Sec. 192.002. FORM OF BIRTH CERTIFICATE. (a) The department shall prescribe the form and contents of the birth certificate.
- (b) The section of the birth certificate entitled "For Medical and Health Use Only" is not part of the legal birth certificate. (V.A.C.S. Art. 4477, Rules 46a (part), 47a(a) (part), 47b.)
- Sec. 192.003. BIRTH CERTIFICATE FILED OR BIRTH REPORTED. (a) The physician, midwife, or person acting as a midwife in attendance at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.
- (b) If there is no physician, midwife, or person acting as a midwife in attendance at a birth, the following in the order listed shall report the birth to the local registrar:

- (1) the father or mother of the child; or
- (2) the owner or householder of the premises where the birth occurs if the birth does not occur in an institution, or the manager or superintendent of the institution in which the birth occurs.
- (c) A person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth. (V.A.C.S. Art. 4477, Rule 46a (part).)

Sec. 192.004. INFORMATION OBTAINED BY LOCAL REGISTRAR. (a) The local registrar shall obtain the information necessary to prepare the birth certificate from the person reporting a birth or from another person with the required knowledge if:

- (1) the birth is reported under Section 192.003(b); or
- (2) a physician, midwife, or person acting as a midwife who files a certificate under Section 192.003(a) cannot by diligent inquiry obtain an item of information required for the certificate.
- (b) A person from whom a local registrar requests necessary information shall answer correctly to the best of the person's knowledge. On request of the local registrar, a person who makes a statement under this section shall verify the statement by signing it. (V.A.C.S. Art. 4477, Rule 46a (part).)

Sec. 192.005. RECORD OF PATERNITY. (a) The items on a birth certificate relating to the child's father shall be completed only if:

- (1) the child's mother was married to the father:
  - (A) at the time of the child's conception;
  - (B) at the time of the child's birth; or
  - (C) after the child's birth; or
- (2) paternity is established by order of a court of competent jurisdiction.
- (b) An affidavit acknowledging paternity executed under Section 13.22, Family Code, may be filed with the state registrar. The state registrar shall maintain the affidavit with the original birth record but not as a part of that record.
- (c) An affidavit filed under Subsection (b) is privileged. The affidavit is available only to a court having jurisdiction of a pending suit to establish paternity of the person who is the subject of the affidavit, on the motion of the trial judge.
- (d) A person may apply to the state registrar for the removal of any indication of illegitimacy from the person's birth record, including separate medical records and the paternity affidavit. The state registrar shall collect a \$10 fee for the removal. (V.A.C.S. Art. 4477, Rule 47a(a) (part).)

Sec. 192.006. SUPPLEMENTARY BIRTH CERTIFICATES. (a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:

- (1) becomes the legitimate child of the person's father by the subsequent marriage of the person's parents;
- (2) has the person's parentage determined by a court of competent jurisdiction; or
- (3) is adopted under the laws of any state.
- (b) An application for a supplementary birth certificate may be filed by:
  - (1) an adult whose status is changed; or
  - (2) a legal representative of the person whose status is changed.
- (c) The state registrar shall require proof of the change in status that the board by rule may prescribe.
- (d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with board rules.
- (e) The state registrar is entitled to a \$10 fee for filing a supplementary birth certificate under this section. (V.A.C.S. Art. 4477, Rules 47a(b) (part), 54a(c) (part).)

**Sec. 192.007. SUPPLEMENTARY CERTIFICATES FOR CHILD WHO DIES BEFORE ADOPTION.** (a) If a child in the process of being adopted in this state dies before the adoption is completed, the persons who attempted to adopt the child may request the state registrar to file supplementary birth and death certificates for the child.

(b) Persons making a request under this section must include with the request:

(1) sufficient information to prove that they attempted to adopt the child and that the child died before the adoption was completed;

(2) a copy of an irrevocable affidavit of relinquishment of parental rights relating to the child;

(3) a copy of the affidavit of the status of the child, if applicable; and

(4) any other information required by the department.

(c) On receipt of the information required by Subsection (b), the state registrar shall complete birth and death certificates as if the child had been adopted by court decree and then died.

(d) In the absence of evidence to the contrary, compliance with this section and the completion of the birth certificate constitute adoption by estoppel. (V.A.C.S. Art. 4477, Rule 47a(f).)

**Sec. 192.008. BIRTH RECORDS OF ADOPTED PERSON.** (a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

(b) After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate.

(c) The board shall adopt rules and procedures to ensure that birth records and indexes under the control of the department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Chapter 49, Human Resources Code, or with a court order under this section.

(d) Except as provided by Subsection (e), only the court that granted the adoption may order access to an original birth certificate and the filed documents on which a supplementary certificate is based.

(e) A person applying for access to an original birth certificate and the filed documents on which the supplementary certificate is based is entitled to know the identity and location of the court that granted the adoption. If that information is not on file, the state registrar shall give the person an affidavit stating that the information is not on file with the state registrar. Any court of competent jurisdiction to which the person presents the affidavit may order the access. (V.A.C.S. Art. 4477, Rules 47a(b) (part), (d) (part); Rule 51a, Subsec. A-3.)

**Sec. 192.009. CERTIFICATE OF ADOPTION, ANNULMENT OF ADOPTION, OR REVOCATION OF ADOPTION.** (a) A certificate of each adoption, annulment of adoption, and revocation of adoption decreed in this state shall be filed with the state registrar.

(b) When a petition for adoption, annulment of adoption, or revocation of adoption is granted, the petitioner shall supply the clerk of the court the information necessary to prepare the certificate. The clerk shall:

(1) prepare the certificate on a form furnished by the department that provides the information prescribed by the department; and

(2) complete the certificate immediately after the decree becomes final.

(c) Not later than the 10th day of each month, the clerk shall forward to the state registrar the certificates that the clerk completed for decrees that became final in the preceding calendar month. (V.A.C.S. Art. 4477, Rule 47a(c).)

**Sec. 192.010. CHANGE OF NAME.** (a) Subject to board rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the board by rule may prescribe.

(c) The state registrar is entitled to a \$7 fee for filing an amendment under this section. (V.A.C.S. Art. 4477, Rules 47a(e), 54a(c) (part).)

Sec. 192.011. AMENDING BIRTH CERTIFICATE. (a) This section applies to an amending birth certificate that is filed under Section 191.028 and that completes or corrects information relating to the person's sex, color, or race.

(b) On the request of the person or the person's legal representative, the state registrar, local registrar, or other person who issues birth certificates shall issue a birth certificate that incorporates the completed or corrected information instead of issuing a copy of the original or supplementary certificate with an amending certificate attached.

(c) The department shall prescribe the form for certificates issued under this section. (V.A.C.S. Art. 4477, Rule 51a, Subsec. A-1.)

[Sections 192.012–192.020 reserved for expansion]

#### SUBCHAPTER B. DELAYED REGISTRATION

Sec. 192.021. DELAY LESS THAN ONE YEAR. (a) A birth that occurred more than five days but less than one year before the date of an application for registration may be recorded on a birth certificate and submitted for filing to the local registrar of the registration district in which the birth occurred.

(b) The local registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The local registrar may accept the certificate for filing if the evidence required by the local registrar is submitted.

(c) Registration under this section is subject to board rules. (V.A.C.S. Art. 4477, Rule 51a(B), Par. 2.)

Sec. 192.022. DELAY OF ONE YEAR OR MORE: APPLICATION FILED WITH STATE REGISTRAR. Subject to board rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to the state registrar. (V.A.C.S. Art. 4477, Rule 51a(B), Par. 1.)

Sec. 192.023. DELAY OF MORE THAN ONE BUT LESS THAN FOUR YEARS. (a) A birth that occurred at least one year but less than four years before the date of the application for registration shall be recorded on a birth certificate in the form prescribed by the state registrar and submitted to the state registrar for filing.

(b) The state registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The state registrar may accept the certificate for filing if the evidence required by the state registrar is submitted.

(c) A birth certificate filed under this section shall be marked "Delayed" and must show on its face the date of registration. (V.A.C.S. Art. 4477, Rule 51a(B), Pars. 3, 7.)

Sec. 192.024. DELAY OF FOUR YEARS OR MORE. (a) A birth that occurred four or more years before the date of the application for registration shall be recorded on a form entitled "Delayed Certificate of Birth." The department shall prescribe and furnish the form.

(b) The form shall provide for:

- (1) the name and sex of the person whose birth is to be registered;
- (2) the place and date of the person's birth;
- (3) the names of the person's parents;
- (4) the place of birth of each parent;
- (5) the date of registration; and

(6) any other information required by the state registrar.

(c) The information on the form must be subscribed and sworn to, before an official authorized to administer oaths, by:

(1) the person whose birth is to be registered; or

(2) the person's parent, legal guardian, or legal representative if the person is incompetent to swear to the information.

(d) The state registrar shall add to a certificate submitted under this section:

(1) a description of each document submitted in support of the delayed registration, including the title of the document or the type of document;

(2) the name and address of the affiant if the document is an affidavit of personal knowledge; and

(3) if the document is a record, or certified copy of a record, of a business entry:

(A) the name and address of the custodian of the record;

(B) the date of the original entry; and

(C) the date of the certified copy. (V.A.C.S. Art. 4477, Rule 51a(B), Pars. 4 (part), 7.)

**Sec. 192.025. SUPPORTING DOCUMENTS.** (a) The state registrar shall accept an application under Section 192.024 if the applicant's statement of date and place of birth and parentage is established to the state registrar's satisfaction by the evidence required by this section.

(b) The certification of the state registrar shall be added to a certificate accepted for filing under this section.

(c) If the birth occurred at least four years but less than 15 years before the date of the application:

(1) the statement of date and place of birth must be supported by at least two documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(d) If the birth occurred 15 or more years before the date of the application:

(1) the statement of date and place of birth must be supported by at least three documents, only one of which may be an affidavit of personal knowledge; and

(2) the statement of parentage must be supported by at least one document, which may be a document qualifying for submission under Subdivision (1).

(e) A document accepted as evidence under this section, other than an affidavit of personal knowledge, must be at least five years old. A copy or abstract of the document may be accepted if certified as true and correct by the custodian of the document. (V.A.C.S. Art. 4477, Rule 51a(B), Par. 4, Subpar. c (part); Par. 5.)

**Sec. 192.026. REJECTION OR RETURN OF APPLICATION.** (a) The state registrar may not register a delayed birth certificate if:

(1) the applicant does not submit the documentary evidence required by Section 192.025; or

(2) the state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence.

(b) On the state registrar's refusal to register a certificate under Subsection (a), the state registrar shall:

(1) furnish the applicant a statement of the reasons for the refusal; and

(2) advise the applicant of the right to appeal to the county court for probate matters of the county in which the birth occurred, as provided by Section 192.027.

(c) If an application to file a delayed birth certificate is not actively pursued, the state registrar shall:

(1) return the application, supporting evidence, and any related instruments to the applicant; or

(2) make another disposition of those documents that the state registrar considers appropriate. (V.A.C.S. Art. 4477, Rule 51a(B), Pars. 6, 8.)

Sec. 192.027. REGISTRATION BY JUDICIAL ORDER. (a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the county probate court of the county in which the birth occurred for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must be on a form prescribed and furnished by the department.

(c) The petition must be accompanied by:

(1) a statement of the state registrar issued under Section 192.026(b)(1); and

(2) the documentary evidence submitted to the state registrar in support of the application.

(d) If the court finds from the evidence presented that the person was born in this state, the court shall:

(1) make findings as to the person's date and place of birth and parentage;

(2) make other findings required by the case; and

(3) enter an order on a form prescribed and furnished by the department to establish a record of birth.

(e) An order under this section must include:

(1) the birth data to be registered;

(2) a description of the evidence presented; and

(3) the date of the court's action.

(f) Not later than the seventh day after the date on which the order is entered, the clerk of the court shall forward the order to the state registrar. The state registrar shall register the order, which is the record of birth. (V.A.C.S. Art. 4477, Rule 51a, Par. C (part).)

Sec. 192.028. FEE. The state registrar is entitled to a fee of not more than \$15 for each application for a delayed birth certificate. (V.A.C.S. Art. 4477, Rule 51a(B), Par. 9 (part).)

#### CHAPTER 193. DEATH RECORDS

Sec. 193.001. FORM OF CERTIFICATE

Sec. 193.002. PERSON REQUIRED TO FILE

Sec. 193.003. TIME AND PLACE FOR FILING DEATH CERTIFICATE

Sec. 193.004. PERSONAL AND MEDICAL INFORMATION

Sec. 193.005. DEATH WITHOUT MEDICAL ATTENDANCE

Sec. 193.006. INFORMATION RELATING TO VETERANS

Sec. 193.007. DELAYED REGISTRATION OF DEATH

Sec. 193.008. BURIAL-TRANSIT PERMIT

Sec. 193.009. BURIAL RECORDS

#### CHAPTER 193. DEATH RECORDS

Sec. 193.001. FORM OF CERTIFICATE. The department shall prescribe the form and contents of death certificates and fetal death certificates. (V.A.C.S. Art. 4477, Rules 39a (part), 40a (part).)

Sec. 193.002. PERSON REQUIRED TO FILE. The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

(1) obtain and file the death certificate or fetal death certificate;

(2) enter on the certificate the information relating to disposition of the body; and

(3) sign the certificate. (V.A.C.S. Art. 4477, Rules 39a (part), 40a (part).)



**Sec. 193.003. TIME AND PLACE FOR FILING DEATH CERTIFICATE.** (a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

- (1) the death occurs; or
- (2) the body is found, if the place of death is not known.

(b) Subject to board rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

- (1) the fetal death occurs; or
- (2) the body is found, if the place of fetal death is not known. (V.A.C.S. Art. 4477, Rules 39a (part), 40a (part).)

**Sec. 193.004. PERSONAL AND MEDICAL INFORMATION.** (a) The person required to file a death certificate shall obtain:

- (1) the required personal information from a competent person with knowledge of the facts; and
- (2) the required medical certification from the physician who was last in attendance on the decedent if the death occurred with medical attendance.

(b) The person required to file a fetal death certificate shall obtain:

- (1) the required personal information from the person best qualified to furnish the information; and
- (2) the required medical certification from the person in attendance at the fetal death if the death occurred with medical attendance.

(c) A person required to obtain information under this section shall obtain the information over the signature of the person who furnishes the information. (V.A.C.S. Art. 4477, Rules 39a (part), 40a (part).)

**Sec. 193.005. DEATH WITHOUT MEDICAL ATTENDANCE.** (a) If a death or fetal death occurs without medical attendance, the funeral director or the person acting as funeral director shall notify the local registrar of the death.

(b) The local registrar shall refer the case to the local health authority for immediate investigation and certification. If there is no local health authority, the local registrar may complete the death certificate or fetal death certificate and return from the statement of relatives or other persons having adequate knowledge of the facts.

(c) The local health authority or local registrar, as appropriate, shall refer the case to the justice of the peace or the medical examiner, as appropriate, for inquest, investigation, and certification if:

- (1) the authority or registrar is in doubt as to the cause of death; or
- (2) the case is otherwise properly referable for inquest.

(d) If a case is referred for inquest, the person conducting the inquest shall state in the death certificate or fetal death certificate:

- (1) the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal; and
- (2) any information required by the state registrar to properly classify the death.

(e) If a case referred for inquest is of a person who was not a resident of the registration district or was unknown in the district, the person conducting the inquest shall obtain:

- (1) the decedent's fingerprints;
- (2) information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks; and
- (3) other facts required by the board for assistance in identifying the decedent.

(f) Fingerprints and information relating to other physical identification marks required under Subsection (e) shall be placed on a form prescribed by the department. The report

showing the fingerprints and other physical identification marks shall be attached to the death certificate or fetal death certificate. The state registrar shall forward a copy of the report to the Department of Public Safety. (V.A.C.S. Art. 4477, Rules 39a (part), 41a.)

Sec. 193.006. INFORMATION RELATING TO VETERANS. (a) This section applies to the death certificate of a person who:

(1) served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas;

(2) was the wife or widow of a person who served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas; or

(3) at the time of death was in the service of the United States.

(b) The funeral director or the person in charge of the disposition of the body shall supply on the reverse side of the death certificate:

(1) the organization in which service was rendered;

(2) the serial number on the discharge papers or the adjusted service certificate; and

(3) the name and mailing address of the decedent's next of kin or next friend.

(c) When the death certificate is filed locally, the local registrar shall immediately notify the nearest congressionally chartered veteran organizations.

(d) When the death certificate is filed with the bureau of vital statistics, the state registrar shall notify:

(1) the state service officer of the adjutant general's department;

(2) the state adjutant of the American Legion; and

(3) the comptroller. (V.A.C.S. Art. 4477, Rule 40a (part).)

Sec. 193.007. DELAYED REGISTRATION OF DEATH. (a) To file a record of a death that occurred in this state but was not registered in the period provided by Section 193.003, a person shall submit a record of the death to the county probate court in the county in which the death occurred.

(b) The bureau of vital statistics shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the bureau. The state registrar may accept a certificate that is verified as provided by this section.

(c) The certificate must be supported by the affidavit of:

(1) the physician last in attendance on the decedent or the funeral director who buried the body; or

(2) if the affidavit of the physician or funeral director cannot be obtained:

(A) any person who was acquainted with the facts surrounding the death when the death occurred; and

(B) another person who was acquainted with the facts surrounding the death but who is not related to the decedent by consanguinity or affinity.

(d) For each application under this section, the court shall collect a \$1 fee. The court retains 50 cents of the fee and the remaining 50 cents is allocated to the clerk of the court for recording the certificate.

(e) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the bureau of vital statistics:

(1) the certificate; and

(2) an order from the court that the state registrar accept the certificate. (V.A.C.S. Art. 4477, Rule 51a, Subsec. D (part).)

Sec. 193.008. BURIAL-TRANSIT PERMIT. (a) A burial-transit permit issued under the law and rules of a place outside of this state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall

accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit. (V.A.C.S. Art. 4477, Rules 38a(a), 43a.)

**Sec. 193.009. BURIAL RECORDS.** (a) The person in charge of premises on which interments are made shall keep a record of the bodies interred or otherwise disposed of on the premises.

(b) The records must include for each decedent:

- (1) the decedent's name;
- (2) the place of death;
- (3) the date of interment or disposal;
- (4) the name and address of the funeral director; and
- (5) any other information required by the state registrar.

(c) The records are open to official inspection at all times. (V.A.C.S. Art. 4477, Rule 44a.)

#### **CHAPTER 194. MARRIAGE AND DIVORCE RECORDS**

**Sec. 194.001. REPORT OF MARRIAGE**

**Sec. 194.002. REPORT OF DIVORCE OR ANNULMENT**

**Sec. 194.003. STATE INDEX**

**Sec. 194.004. RELEASE OF INFORMATION**

#### **CHAPTER 194. MARRIAGE AND DIVORCE RECORDS**

**Sec. 194.001. REPORT OF MARRIAGE.** (a) The county clerk shall file with the bureau of vital statistics a copy of each completed marriage license application. The clerk shall file the copy not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copy.

(b) The county clerk shall file with the bureau of vital statistics a copy of each declaration of informal marriage executed under Section 1.92, Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed. (V.A.C.S. Art. 4477, Rules 50b(a), (b-1) (part).)

**Sec. 194.002. REPORT OF DIVORCE OR ANNULMENT.** (a) The bureau of vital statistics shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

- (1) each party's:
  - (A) full name;
  - (B) usual residence;
  - (C) age;
  - (D) place of birth;
  - (E) color or race; and
  - (F) number of children;
- (2) the date and place of the parties' marriage;
- (3) the date the divorce or annulment of marriage was granted; and
- (4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The bureau of vital statistics shall furnish sufficient copies of the form to each district clerk.

(c) When an attorney presents a final judgment for a divorce or annulment of marriage to a court for a final decree, the attorney shall:

- (1) enter on the form the information required under Subsection (a); and

(2) submit the report to the district clerk with the final judgment.

(d) Not later than the ninth day of each month, each district clerk shall file with the bureau of vital statistics a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month.

(e) For each report that a district clerk files with the bureau of vital statistics under this section, the clerk may collect a \$1 fee as costs in the case in which the divorce or annulment of marriage is granted. (V.A.C.S. Art. 4477, Rules 50c(a) (part), (b), (c), (d), (e).)

Sec. 194.003. STATE INDEX. (a) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage. (V.A.C.S. Art. 4477, Rules 50b(b), (b-1) (part); 50c(f).)

Sec. 194.004. RELEASE OF INFORMATION. (a) The bureau of vital statistics shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The bureau of vital statistics may not issue:

(1) a certificate or a certified copy of information relating to a marriage; or

(2) a certified copy of a report of divorce or annulment of marriage.

(c) The bureau of vital statistics may collect a \$2 fee for furnishing information relating to a marriage, and shall charge a \$2 fee for searching the statewide index of divorces and annulments of marriage.

(d) Fees collected under this section shall be deposited to the credit of the vital statistics fund. (V.A.C.S. Art. 4477, Rules 50b(b-1) (part), (c); 50c(g).)

#### CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING

Sec. 195.001. ENFORCEMENT OF TITLE; REPORTS BY LOCAL REGISTRAR

Sec. 195.002. SUPERVISION AND INVESTIGATION BY STATE REGISTRAR

Sec. 195.003. FALSE RECORDS

Sec. 195.004. FAILURE TO PERFORM DUTY

#### CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING

Sec. 195.001. ENFORCEMENT OF TITLE; REPORTS BY LOCAL REGISTRAR. (a) The local registrar in each local registration district shall enforce this title under the supervision and direction of the state registrar.

(b) A local registrar shall report immediately to the state registrar a violation of this title of which the local registrar has knowledge by observation, by complaint of another person, or by other means. (V.A.C.S. Art. 4477, Rule 55a (part).)

Sec. 195.002. SUPERVISION AND INVESTIGATION BY STATE REGISTRAR. (a) The state registrar shall execute this title throughout the state. To ensure uniform compliance with this title, the state registrar has supervisory power over local registrars, deputy registrars, and subregistrars.

(b) The state registrar or the state registrar's representative may investigate cases of irregularity or violations of law. On request, any other registrar shall aid in the investigation.

(c) If the state registrar considers it necessary, the state registrar shall report a violation of this title to the appropriate district or county attorney for prosecution. The report must include a statement of the facts and circumstances. The district or county attorney shall immediately initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation.

(d) On the request of the state registrar, the attorney general shall assist in enforcing this title. (V.A.C.S. Art. 4477, Rule 55a (part).)

Sec. 195.003. FALSE RECORDS. (a) A person commits an offense if the person intentionally or knowingly makes a false statement in:

- (1) a certificate, record, or report required under this title;
- (2) an application for an amendment of a certificate, record, or report required under this title;
- (3) an application for a delayed birth certificate or delayed death certificate; or
- (4) an application for a certified copy of a vital record.

(b) A person commits an offense if the person intentionally or knowingly supplies false information, or intentionally or knowingly creates a false record, for use in the preparation of a certificate, record, report, or amendment under this title.

(c) A person commits an offense if the person, without lawful authority and with intent to deceive, makes, counterfeits, alters, amends, or mutilates:

- (1) a certificate, record, or report required under this title; or
- (2) a certified copy of a certificate, record, or report required under this title.

(d) A person commits an offense if the person, for purposes of deception, intentionally or knowingly obtains, possesses, uses, sells, or furnishes, or attempts to obtain, possess, use, sell, or furnish a certificate, record, or report required under this title, or a certified copy of a certificate, record, or report required under this title, if the document:

- (1) is made, counterfeited, altered, amended, or mutilated without lawful authority and with intent to deceive;
- (2) is false in whole or in part; or
- (3) relates to the birth of another individual.

(e) An offense under this section is a felony of the third degree.

(f) In this section, "person" means an individual, corporation, or association. (V.A.C.S. Art. 4477c, Secs. 1 (part), 2.)

Sec. 195.004. FAILURE TO PERFORM DUTY. (a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or subregistrar commits an offense if that person fails, neglects, or refuses to perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) An offense under this section is a Class C misdemeanor.

(e) In this section, "person" means an individual, corporation, or association. (V.A.C.S. Art. 4477, Secs. 1 (part), 3.)

[Chapters 196–220 reserved for expansion]

#### **TITLE 4. HEALTH FACILITIES**

##### **SUBTITLE A. FINANCING, CONSTRUCTING, AND INSPECTING HEALTH FACILITIES**

#### **CHAPTER 221. HEALTH FACILITIES DEVELOPMENT ACT**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 221.001. SHORT TITLE

Sec. 221.002. PURPOSE; CONSTRUCTION

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- Sec. 221.004. ADOPTION OF ALTERNATE PROCEDURE
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- Sec. 221.011. AUTHORITY TO CREATE
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- Sec. 221.061. AUTHORITY TO ISSUE; USE OF PROCEEDS
- Sec. 221.062. INFORMATION FILED WITH SPONSORING ENTITY
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- Sec. 221.068. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS

[Sections 221.069–221.080 reserved for expansion]

**SUBCHAPTER D. DISSOLUTION OF CORPORATION**

- Sec. 221.081. DISSOLUTION AUTHORIZED
- Sec. 221.082. ARTICLES OF DISSOLUTION
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- Sec. 221.084. EXTENSION OF DURATION
- Sec. 221.085. VESTING PROPERTY IN SPONSORING ENTITY
- Sec. 221.086. RIGHTS, CLAIMS, AND LIABILITIES BEFORE DISSOLUTION

[Sections 221.087–221.100 reserved for expansion]

**SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE**

- Sec. 221.101. ADMINISTRATION OF CHAPTER**
- Sec. 221.102. FEES**
- Sec. 221.103. NOTICE AND APPEAL OF DISAPPROVAL**
- Sec. 221.104. DOCUMENTS AS PRIMA FACIE EVIDENCE**

**TITLE 4. HEALTH FACILITIES**

**SUBTITLE A. FINANCING, CONSTRUCTING, AND  
INSPECTING HEALTH FACILITIES**

**CHAPTER 221. HEALTH FACILITIES DEVELOPMENT ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 221.001. SHORT TITLE.** This chapter may be cited as the Health Facilities Development Act. (V.A.C.S. Art. 1528j, Sec. 1.01.)

**Sec. 221.002. PURPOSE; CONSTRUCTION.** (a) The purpose of this chapter is to enable a municipality, county, or hospital district to create a corporation with the power to provide, expand, and improve health facilities that the corporation determines are needed to improve the adequacy, cost, and accessibility of health care, research, and education in the state.

(b) The legislature intends that a corporation created under this chapter be a public corporation, constituted authority, and instrumentality authorized to issue bonds on behalf of its sponsoring entity for the purposes of Section 103, Internal Revenue Code of 1986 (26 U.S.C. Section 103). This chapter and the rules and rulings issued under this chapter shall be construed according to this intent.

(c) This chapter shall be liberally construed to conform to the intent of the legislature expressed by this section. (V.A.C.S. Art. 1528j, Secs. 1.02 (part), 7.02 (part).)

**Sec. 221.003. DEFINITIONS.** In this chapter:

- (1) "Board of directors" means the board of directors of a development corporation.
- (2) "Bonds" includes notes, interim certificates, or other evidences of indebtedness of a development corporation issued under this chapter.
- (3) "Cash management" means borrowing by a development corporation on behalf of a user to allow the user to manage the user's need for cash.
- (4) "Cost," as applied to a health facility, includes:
  - (A) the cost of acquisition of land, a right-of-way, an option to purchase land, an easement, a leasehold estate in land, or another interest in land;
  - (B) the cost of acquisition, construction, repair, renovation, remodeling, or improvement of a structure used as, or in connection with, the health facility;
  - (C) the cost of site preparation, including demolition or removal of a structure as necessary or incident to providing the health facility;
  - (D) the cost of architectural, engineering, legal, or other related services;
  - (E) preparation cost of plans, specifications, studies, surveys, cost and revenue estimates, and other expenses necessary or incident to planning, providing, or determining the feasibility of the health facility;
  - (F) the cost of machinery, equipment, furnishings, and facilities necessary or incident to placing the health facility in operation;
  - (G) finance charges, interest, and marketing and start-up costs, before and during construction and for not more than two years after the date that construction is completed;

(H) costs incurred in connection with financing the health facility, including:

- (i) amounts paid under Sections 221.061(c) and (d);
- (ii) financing, legal, accounting, financial advisory, and appraisal fees, expenses, and disbursements;
- (iii) the cost of a title insurance policy;
- (iv) the cost of printing, engraving, and reproduction services; and
- (v) the cost of a trustee's or paying agent's initial or acceptance fee;

(I) a cost of the development corporation incurred in connection with providing the health facility, including reasonable amounts to reimburse the development corporation for time spent by its agents or employees relating to providing the health facility and its financing; and

(J) the cost of financing, establishing, and funding a reserve fund for a self-insurance or risk management program, including the cost of preparation of a study, survey, or estimate of cost, revenue, risk, or liability or other cost or expense necessary or incident to planning, providing, or determining the feasibility and continuing program and operating costs of a self-insurance or risk management program.

(5) "Development corporation" means a health facilities development corporation created under this chapter.

(6) "Director" means a member of the board of directors.

(7) "District" means a hospital district created under state law.

(8) "Health facility" means property or an interest in property for which the board of directors finds that financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping is required, necessary, or convenient for health care, research, or education, including:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as a:

- (i) hospital, clinic, or health facility;
- (ii) nursing home;
- (iii) extended-care, outpatient, or rehabilitation facility;
- (iv) pharmacy;
- (v) medical or dental laboratory;
- (vi) physicians' office building;
- (vii) laundry, administrative, computer, communication, fire-fighting or fire-prevention, food service and preparation, storage, utility, or x-ray facility;
- (viii) parking facility or area;
- (ix) building related to a health care or health-care-related facility or system;
- (x) multiunit housing facility for medical staff, nurses, interns, and other employees of a health care or health-care-related facility or system, for patients of a health care facility, or for relatives of those persons; or
- (xi) medical or dental research or training facility or other facility used in the education or training of health care personnel;

(C) property or material used in landscaping, equipping, or furnishing a health care or health-care-related facility or similar items necessary or convenient for the operation of such a facility;

(D) an adult foster care facility, life care facility, retirement home, retirement village, home for the aging, or other facility that undertakes to furnish shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to an individual for more than one year; and



(E) any other structure, facility, or equipment related to or essential to the operation of a health care or health-care-related facility.

(9) "Resolution" means an action, including an order or ordinance, of a sponsoring entity's governing body.

(10) "Sponsoring entity" means a municipality, county, or district.

(11) "User" means a person who, as owner, lessee, or manager or through other authority, will occupy, operate, manage, or employ a health facility after the facility is financed, acquired, or constructed. (V.A.C.S. Art. 1528j, Sec. 1.08 (part).)

Sec. 221.004. **ADOPTION OF ALTERNATE PROCEDURE.** If a court holds that a procedure under this chapter violates the federal or state constitution, a development corporation by resolution may provide an alternate procedure that conforms to the constitution. (V.A.C.S. Art. 1528j, Sec. 7.02 (part).)

Sec. 221.005. **EFFECT OF CHAPTER ON OTHER LAW.** (a) This chapter does not limit the police powers provided by law to the state, a municipality, or other political subdivision of the state or an official or agency of the state, a municipality, or other political subdivision of the state over property of a corporation.

(b) This chapter does not exempt a corporation or user from compliance with Chapter 104 or 225.

(c) A sponsoring entity or development corporation may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter. (V.A.C.S. Art. 1528j, Secs. 7.01(a) (part), (b).)

[Sections 221.006–221.010 reserved for expansion]

#### **SUBCHAPTER B. CREATION AND OPERATION OF DEVELOPMENT CORPORATION**

Sec. 221.011. **AUTHORITY TO CREATE.** (a) A sponsoring entity may create one or more nonmember, nonstock development corporations for the sole public purpose of acquiring, constructing, providing, improving, financing, and refinancing a health facility to assist the maintenance of public health.

(b) The sponsoring entity may use the development corporation to:

(1) provide a health facility to promote and develop health care, research, and education for the public purpose of promoting the health and welfare of state citizens; and

(2) issue bonds on the sponsoring entity's behalf to finance the cost of the health facility.

(c) The sponsoring entity may not lend its credit or grant public money or other thing of value in aid of a development corporation. (V.A.C.S. Art. 1528j, Sec. 2.01.)

Sec. 221.012. **PROCEDURE.** (a) If the governing body of a sponsoring entity determines that it is in the public interest and to the benefit of the sponsoring entity's residents and the citizens of this state that a development corporation be created to promote and develop new, expanded, or improved health facilities to assist the maintenance of the public health and welfare, the governing body, by resolution stating that determination, may authorize and approve creation of a development corporation, and shall approve proposed articles of incorporation for the development corporation.

(b) No fewer than three residents of the sponsoring entity who are each at least 18 years of age may act as incorporators of the development corporation by signing and verifying the articles of incorporation and delivering the original and two copies of the articles of incorporation to the secretary of state. (V.A.C.S. Art. 1528j, Sec. 2.02 (part).)

Sec. 221.013. **ARTICLES OF INCORPORATION.** (a) The articles of incorporation of a development corporation must include:

(1) the corporation's name;

- (2) a statement that the corporation is a nonprofit public corporation;
- (3) the duration of the corporation, which may be perpetual;
- (4) a statement that the purpose of the corporation is to acquire, construct, provide, improve, finance, and refinance a health facility to assist the maintenance of the public health;
- (5) a statement that the corporation has no members and is a nonstock corporation;
- (6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;
- (7) the number of directors on the initial board of directors and those directors' names and addresses;
- (8) each incorporator's name and street address;
- (9) the sponsoring entity's name and address; and
- (10) a statement that the sponsoring entity by resolution has specifically authorized the corporation to act on its behalf to further the public purpose set forth in the articles of incorporation, and has approved the articles of incorporation.

(b) The corporate powers enumerated in this chapter are not required to be included in the articles of incorporation.

(c) The articles of incorporation may include provisions for the regulation of the internal affairs of the development corporation, including a provision required or permitted by this chapter to be in the bylaws.

(d) Except as provided by Subsection (e), if a bylaw conflicts with the articles of incorporation, the articles of incorporation control.

(e) Unless the articles of incorporation provide that a change in the number of directors may be made only by amendment to those articles, the change may be made by amendment to the bylaws. (V.A.C.S. Art. 1528j, Sec. 2.02 (part).)

Sec. 221.014. CERTIFICATE OF INCORPORATION. (a) The incorporators shall deliver to the secretary of state the original and two copies of the articles of incorporation and a certified copy of the resolution by the sponsoring entity's governing body approving the articles of incorporation.

(b) If the secretary of state finds that the articles of incorporation comply with this chapter and have been approved by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

- (1) write "filed" on the original and each copy of the articles of incorporation and the month, day, and year of the filing;
- (2) file the original in the office of the secretary of state; and
- (3) issue two certificates of incorporation with a copy of the articles of incorporation attached to each.

(c) The secretary of state shall deliver a certificate of incorporation, with a copy of the articles of incorporation attached, to the incorporators or their representative and to the sponsoring entity's governing body.

(d) The development corporation's existence begins on issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent required to be performed by the incorporators and by the sponsoring entity have been performed and that the corporation has been incorporated under this chapter. (V.A.C.S. Art. 1528j, Sec. 2.03.)

Sec. 221.015. ORGANIZATIONAL MEETING. (a) After issuance of the certificate of incorporation and at the call of a majority of the incorporators, the board of directors named in the articles of incorporation shall hold an organizational meeting in this state to adopt bylaws and elect officers and for any other purposes.

(b) Not later than the sixth day before the date of the meeting, the incorporators shall mail notice, postage prepaid, to each director of the time and place of the meeting. (V.A.C.S. Art. 1528j, Sec. 2.04.)

Sec. 221.016. AMENDMENT OF ARTICLES OF INCORPORATION. (a) Articles of incorporation may be amended to contain any provision that is lawful under this chapter if the sponsoring entity's governing body by appropriate resolution determines that the amendment is advisable and authorizes or directs that an amendment be made.

(b) The development corporation's president or vice-president and secretary or assistant secretary, or the presiding officer and the secretary or clerk of the sponsoring entity's governing body, shall execute articles of amendment on behalf of the development corporation. An officer signing the articles of amendment shall verify those articles.

(c) The articles of amendment must include:

- (1) the name of the development corporation;
- (2) if the amendment alters a provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as amended;
- (3) if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each added provision;
- (4) the name and current address of the sponsoring entity;
- (5) a statement that the amendment was authorized by the governing body of the sponsoring entity; and
- (6) the date of the meeting at which the governing body adopted or approved the amendment. (V.A.C.S. Art. 1528j, Sec. 2.05.)

Sec. 221.017. CERTIFICATE OF AMENDMENT. (a) The original and two copies of the articles of amendment and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of amendment comply with this chapter and are authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

- (1) write "filed" on the original and each copy of the articles of amendment and the month, day, and year of the filing;
- (2) file the original in the office of the secretary of state; and
- (3) issue two certificates of amendment with a copy of the articles of amendment attached to each.

(c) The secretary of state shall deliver to the development corporation or its representative and to the sponsoring entity's governing body a certificate of amendment with a copy of the articles of amendment attached.

(d) The amendment to the articles of incorporation takes effect on issuance of the certificate of amendment.

(e) An amendment does not affect an existing cause of action in favor of or against the development corporation, a pending suit to which the corporation is a party, or an existing right of any person. Change of the corporate name by amendment does not abate a suit brought by or against the corporation under its former name. (V.A.C.S. Art. 1528j, Sec. 2.06.)

Sec. 221.018. RESTATED ARTICLES OF INCORPORATION. (a) A development corporation may authorize, execute, and file restated articles of incorporation by following the procedure to amend articles of incorporation, including obtaining authorization from the sponsoring entity's governing body.

(b) The restated articles of incorporation must restate the entire text of the articles of incorporation as amended or supplemented by all previous certificates of amendment. The restated articles of incorporation may also contain further amendments to the articles of incorporation.

(c) Unless the restated articles of incorporation include amendments that were not previously in the articles of incorporation and previous certificates of amendment, the introductory paragraph of the restated articles of amendment must contain a statement that the instrument accurately copies the articles of incorporation and all amendments

that are in effect on the date of the filing without further changes, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted.

(d) If the restated articles of incorporation contain further amendments not included in the articles of incorporation and previous certificates of amendment, the instrument containing the restated articles of incorporation must:

(1) include for each further amendment a statement that the amendment has been made in conformity with this chapter;

(2) include the statements required by this chapter to be contained in articles of amendment, except that the full text of the amendment need not be included except in the restated articles of incorporation as amended;

(3) contain a statement that the instrument accurately copies the articles of incorporation and all previous amendments in effect on the date of the filing, as further amended by the restated articles of incorporation, and that the instrument does not contain any other change, except that the number of directors then constituting the board of directors and those directors' names and addresses may be inserted in place of the similar information concerning the initial board of directors, and the incorporators' names and addresses may be omitted; and

(4) restate the entire text of the articles of incorporation as amended and supplemented by all previous certificates of amendment and as further amended by the restated articles of incorporation. (V.A.C.S. Art. 1528j, Sec. 2.07 (part).)

Sec. 221.019. RESTATED CERTIFICATE OF INCORPORATION. (a) The original and two copies of the restated articles of incorporation and a certified copy of the resolution of the sponsoring entity's governing body authorizing the articles shall be delivered to the secretary of state.

(b) If the secretary of state finds that the restated articles of incorporation comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

(1) write "filed" on the original and each copy of the restated articles of incorporation and the month, day, and year of the filing;

(2) file the original in the office of the secretary of state; and

(3) issue two restated certificates of incorporation with a copy of the restated articles of incorporation attached to each.

(c) The secretary of state shall deliver a restated certificate of incorporation, with a copy of the restated articles of incorporation attached, to the development corporation or its representative and to the sponsoring entity's governing body.

(d) On issuance by the secretary of state of the restated certificate of incorporation, the original articles of incorporation and all amendments are superseded and the restated articles of incorporation become the development corporation's articles of incorporation. (V.A.C.S. Art. 1528j, Sec. 2.08.)

Sec. 221.020. REGISTERED OFFICE AND AGENT. (a) A development corporation shall continuously maintain a registered office and registered agent in this state.

(b) The registered office may be, but need not be, the same as the development corporation's principal office. The registered agent may be:

(1) an individual resident of this state whose business office is the same as the registered office; or

(2) a domestic or foreign profit or nonprofit corporation that is authorized to transact business or conduct affairs in this state and that has a principal or business office that is the same as the registered office. (V.A.C.S. Art. 1528j, Sec. 3.01.)

Sec. 221.021. CHANGE OF REGISTERED OFFICE OR AGENT. (a) A development corporation may change its registered office, registered agent, or both, by filing the original and a copy of a statement in the office of the secretary of state. The president or vice-president of the corporation shall execute and verify the statement.

(b) The statement must include:

- (1) the development corporation's name;
- (2) the post office address of the corporation's current registered office;
- (3) if the registered office is to be changed, the post office address of the corporation's new registered office;
- (4) the name of the corporation's registered agent;
- (5) if the registered agent is to be changed, the name of the successor registered agent;
- (6) a statement that, after the change, the post office address of the registered office will be the same as the post office address of the business office of the registered agent; and
- (7) a statement that the change was authorized by the board of directors or by a corporate officer authorized by the board of directors to make the change.

(c) If the secretary of state finds that the statement complies with this chapter, the secretary of state, when all fees have been paid as required by this chapter, shall:

- (1) write "filed" on the original and each copy of the statement and the month, day, and year of the filing;
- (2) file the original statement in the office of the secretary of state; and
- (3) return the copy of the statement to the corporation or its representative.

(d) The change made by the statement takes effect on the filing of the statement. (V.A.C.S. Art. 1528j, Secs. 3.02(a), (b), (c).)

**Sec. 221.022. RESIGNATION OF REGISTERED AGENT.** (a) A registered agent of a development corporation may resign by:

- (1) mailing or delivering written notice to the corporation; and
- (2) filing the original and two copies of the notice in the office of the secretary of state not later than the 10th day after the date the notice is mailed or delivered to the corporation.

(b) The notice must include the development corporation's last known address, a statement that written notice was given to the corporation, and the date the written notice was given to the corporation.

(c) If the secretary of state finds that the notice complies with this chapter, the secretary of state, on payment of all fees required by this chapter, shall:

- (1) write "filed" on the original notice and both copies and the month, day, and year of the filing;
- (2) file the original notice in the office of the secretary of state;
- (3) return one copy of the notice to the resigning registered agent; and
- (4) deliver one copy of the notice to the development corporation at the address shown in the notice.

(d) The resignation takes effect on the 31st day after the date the notice is received by the secretary of state. (V.A.C.S. Art. 1528j, Secs. 3.02(d), (e).)

**Sec. 221.023. AGENTS FOR SERVICE.** (a) The president, each vice-president, and the registered agent of a development corporation are the corporation's agents on whom may be served a process, notice, or demand required or permitted by law to be served on the corporation.

(b) If a development corporation fails to appoint or maintain a registered agent in this state, or if the registered agent cannot with reasonable diligence be found at the registered office, the secretary of state is an agent of the corporation on whom a process, notice, or demand may be served.

(c) The secretary of state may be served by delivering two copies of the process, notice, or demand to the secretary of state, the assistant secretary of state, or a clerk in charge of the corporation department of the secretary of state's office. The secretary of state

shall immediately forward one copy of the process, notice, or demand by registered mail to the development corporation at its registered office.

(d) Service on the secretary of state is returnable not earlier than the 30th day after the date of the service.

(e) The secretary of state shall keep a record of each process, notice, and demand served, including the time of the service and the action of the secretary of state in reference to the process, notice, or demand. (V.A.C.S. Art. 1528j, Sec. 3.03.)

Sec. 221.024. BOARD. (a) A development corporation's affairs are governed by a board of directors composed of at least three individuals appointed by the sponsoring entity's governing body. Directors may be divided into classes.

(b) A director serves for a term of not more than six years. The terms of directors of different classes may be of different lengths.

(c) A director holds office for the term to which the director is appointed and until a successor is appointed and has qualified.

(d) The sponsoring entity's governing body may remove a director for cause or at any time without cause.

(e) A director serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of duties under this chapter. (V.A.C.S. Art. 1528j, Sec. 3.04 (part).)

Sec. 221.025. OFFICERS. (a) The officers of a development corporation are:

(1) the president, vice-president, and secretary; and

(2) other officers, including a treasurer, and assistant officers considered necessary.

(b) An officer is elected or appointed at the time, in the manner, and for the term provided by the articles of incorporation or bylaws, except that an officer's term may not exceed three years. If the articles of incorporation or bylaws do not contain those requirements, the board of directors shall elect or appoint each officer annually.

(c) A person may simultaneously hold more than one office, except that the same person may not simultaneously hold the offices of president and secretary.

(d) An officer may be removed by the persons authorized to elect or appoint that officer if those persons believe the best interests of the corporation will be served by the removal. (V.A.C.S. Art. 1528j, Sec. 3.08.)

Sec. 221.026. INDEMNIFICATION. (a) Except as provided by Subsection (c), a development corporation may indemnify a director or officer or a former director or officer for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with a claim asserted against the person, by action in court or other forum, because of the person's being or having been a director or officer.

(b) If a development corporation has not fully indemnified a director or officer under Subsection (a), the court in a proceeding in which a claim is asserted against the director or officer, or a court having jurisdiction over an action brought by the director or officer on a claim for indemnity, may assess indemnity against the corporation or its receiver or trustee. The assessment must equal:

(1) the amount that the director or officer paid to satisfy the judgment or compromise the claim, not including any amount paid the corporation; and

(2) to the extent the court considers reasonable and equitable, the expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with the claim.

(c) A development corporation may not provide indemnity in a matter if the director or officer is guilty of negligence or misconduct in relation to the matter. A court may not assess indemnity unless it finds that the director or officer was not guilty of negligence or misconduct in relation to the matter in which indemnity is sought. (V.A.C.S. Art. 1528j, Sec. 3.09.)

Sec. 221.027. BYLAWS. (a) The board of directors shall adopt a development corporation's initial bylaws and may amend or repeal the bylaws or adopt new bylaws. The

bylaws and each amendment and repeal of the bylaws must be approved by the sponsoring entity's governing body by resolution.

(b) The bylaws may contain any provision for the regulation and management of the development corporation's affairs consistent with law and the articles of incorporation. (V.A.C.S. Art. 1528j, Secs. 3.05, 4.01 (part).)

**Sec. 221.028. COMMITTEES.** (a) If permitted by the articles of incorporation or bylaws, the board of directors, by resolution adopted by a majority of directors in office, may designate one or more committees consisting of two or more directors to exercise the board's authority in the management of the development corporation to the extent provided by the resolution, articles of incorporation, or bylaws. The designation of a committee or delegation of authority to a committee does not relieve the board of directors or an individual director of a responsibility imposed by law.

(b) Other committees not exercising the authority of the board of directors in the management of the development corporation may be designated. Those committees may be, but need not be, limited to directors, and shall be designated and appointed by:

(1) the board of directors by resolution of a majority of directors adopted at a meeting at which a quorum is present; or

(2) the president, if authorized by the articles of incorporation, bylaws, or a resolution of a majority of the board of directors adopted at a meeting at which a quorum is present. (V.A.C.S. Art. 1528j, Sec. 3.06.)

**Sec. 221.029. MEETINGS; ACTION WITHOUT MEETING.** (a) A regular board of directors meeting may be called and held, with or without notice, as provided by the bylaws. A special board of directors meeting may be held on notice as provided by the bylaws. A regular or special meeting may be held at any location in the state.

(b) Notice or waiver of notice of a regular or special board of directors meeting need not specify the business to be transacted or the meeting's purpose, unless required by the bylaws.

(c) A director's attendance at a meeting waives notice to the director of the meeting, unless the attendance is for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

(d) A quorum is the lesser of:

(1) a majority of the number of directors established by the bylaws, or if the bylaws do not establish a number of directors, a majority of the number of directors stated in the articles of incorporation; or

(2) the number of directors, which number may not be smaller than three, established as a quorum by the articles of incorporation or bylaws.

(e) The act of a majority of the directors present at a meeting at which a quorum is present is an act of the board of directors, unless the act of a larger number is required by the articles of incorporation or bylaws. The articles of incorporation control if, with respect to an action to be taken by the board of directors, the articles of incorporation require the vote or concurrence of a greater proportion of directors than required by this chapter with respect to the action.

(f) An action required or permitted to be taken at a board of directors meeting may be taken without a meeting if a consent is signed by all directors. An action permitted to be taken at a committee meeting may be taken without a meeting if a consent is signed by all members of the committee. A consent under this subsection must be in writing and must set forth the action to be taken. The consent has the effect of a unanimous vote and may be stated as a unanimous vote in articles or other documents filed with the secretary of state under this chapter. (V.A.C.S. Art. 1528j, Secs. 3.07, 6.02.)

**Sec. 221.030. CORPORATION'S GENERAL POWERS.** (a) Subject to Section 221.035, a development corporation has the rights and powers necessary or convenient to accomplish the corporation's purposes, including the power to:

(1) acquire, by purchase, devise, gift, lease, or a combination of those methods, construct, or improve, or cause a user to acquire, construct, or improve, one or more health facilities located in the state and located:

(A) wholly or partly within the limits of the sponsoring entity; or

(B) outside the limits of the sponsoring entity, with the consent of each other sponsoring entity in which the health facility is or is to be located;

(2) lease as lessor all or part of a health facility for the rental amount and on the terms and conditions that the corporation considers advisable;

(3) sell for installment payments or other method of payment, option or contract for sale, and convey all or part of a health facility for the price and on the terms and conditions that the corporation considers advisable;

(4) make a contract, incur a liability, borrow money at a rate of interest the corporation determines, and secure bonds or obligations by mortgage or pledge of all or part of the corporation's property, franchises, and income;

(5) make a secured or unsecured loan to provide temporary or permanent financing or refinancing of all or part of the cost of a health facility, including refunding of an outstanding obligation, mortgage, or advance issued, made, or given by a person for the cost of a health facility;

(6) charge and collect interest on a loan for the loan payments and on the terms that the board of directors considers advisable;

(7) lend money for its corporate purposes, invest and reinvest corporate funds, and take and hold property as security for the payment of the money loaned or invested;

(8) purchase, receive, lease, or acquire in another manner, own, hold, improve, or use property or an interest in property, or deal in any other manner in or with that property, regardless of location, as the purposes of the corporation require or, if the property is donated, subject to the terms of the donation;

(9) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or part of the corporation's property and assets;

(10) appoint agents of the corporation for the period the corporation determines, and determine their duties;

(11) sue, be sued, complain, and defend in its corporate name; and

(12) have a corporate seal, which the corporation may alter as it considers necessary, and use the seal by having it or a facsimile of it impressed on, affixed to, or reproduced on an instrument required or authorized to be executed by the corporation's proper officers.

(b) A development corporation may not incur a financial obligation under this chapter unless it is payable solely from:

(1) bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a corporation to finance or refinance a health facility in whole or part;

(3) revenue derived from operating a health facility; or

(4) other revenue provided by a user of a health facility.

(c) A sponsoring entity may not delegate to a development corporation the power of taxation or eminent domain, police power, or an equivalent sovereign power of the state or the sponsoring entity.

(d) This section does not authorize a corporate director or officer to exercise a power enumerated by this section in a manner inconsistent with the development corporation's articles of incorporation or bylaws or beyond the scope of the corporation's purposes. (V.A.C.S. Art. 1528j, Sec. 4.01 (part).)

Sec. 221.031. CONVEYANCE OF LAND. (a) A development corporation may convey land by deed if the conveyance is authorized by an appropriate resolution of the board of directors. The deed may be with or without the corporation's seal and must be signed by the corporation's president, vice-president, or attorney.



(b) If the deed is acknowledged by the signing officer or attorney to be the act of the development corporation, or if the deed is proved in the manner prescribed for other conveyances of land, it may be recorded in the same manner and with the same effect as other deeds.

(c) A deed that is signed by the development corporation's president or vice-president and recorded is prima facie evidence that the board of directors adopted the appropriate resolution. (V.A.C.S. Art. 1528j, Sec. 4.02.)

Sec. 221.032. **PERFECTION OF SECURITY INTEREST.** A security interest granted by a corporation may be perfected in the manner and with the effect provided by Chapter 9, Business & Commerce Code, notwithstanding Section 9.104 of that chapter. (V.A.C.S. Art. 1528j, Sec. 4.09.)

Sec. 221.033. **TAXATION.** (a) A health facility, including a leasehold estate in a health facility, that is owned by a development corporation and that, except for the purposes and nonprofit nature of the corporation, would be taxable to the corporation under Title 1, Tax Code, shall be assessed to the user of the health facility to the same extent and subject to the same exemptions from taxation as if the user owned the health facility. If there is more than one user of the health facility, the health facility shall be assessed to the users in proportion to the value of the rights of each user to occupy, operate, manage, or employ the health facility.

(b) The user of a health facility is considered the owner of the health facility for purposes of the application of:

(1) sales and use taxes in construction, sale, lease, or rental of the health facility; and

(2) other taxes levied or imposed by the state or a political subdivision of the state.

(c) A development corporation is engaged exclusively in performance of charitable functions and is exempt from taxation by the state, a municipality, or other political subdivision of the state. Bonds issued by a corporation under this chapter, a transfer of the bonds, interest on the bonds, and a profit from the sale or exchange of the bonds are exempt from taxation by the state, a municipality, or other political subdivision of the state. (V.A.C.S. Art. 1528j, Sec. 4.10.)

Sec. 221.034. **NET EARNINGS.** A development corporation is a nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses of accomplishing its public purpose may benefit a person other than the sponsoring entity. (V.A.C.S. Art. 1528j, Sec. 4.11.)

Sec. 221.035. **ALTERATION OF DEVELOPMENT CORPORATION OR ACTIVITIES.** The sponsoring entity, in its sole discretion, may alter the development corporation's structure, organization, programs, or activities, subject only to limitations provided by law relating to the impairment of contracts entered into by the corporation. (V.A.C.S. Art. 1528j, Sec. 4.12 (part).)

Sec. 221.036. **EXAMINATION OF BOOKS AND RECORDS.** A representative of the sponsoring entity may examine all books and records of the development corporation at any time. (V.A.C.S. Art. 1528j, Sec. 4.12 (part).)

Sec. 221.037. **WAIVER OF NOTICE.** If a notice is required to be given to a director by this chapter, the articles of incorporation, or bylaws, a waiver of the notice signed by the person entitled to the notice, before or after the time that would have been stated in the notice, is equivalent to giving the notice. (V.A.C.S. Art. 1528j, Sec. 6.01.)

[Sections 221.038–221.060 reserved for expansion]

#### **SUBCHAPTER C. BONDS**

Sec. 221.061. **AUTHORITY TO ISSUE; USE OF PROCEEDS.** (a) A development corporation may issue bonds to pay all or part of the cost of a health facility or for cash management.

(b) Before preparation and issuance of definitive bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, that may be

exchanged for definitive bonds after the definitive bonds are executed and available for delivery. The term of the interim receipts or temporary bonds may not exceed three years.

(c) Bond proceeds may be used only for payment of all or part of the cost of a health facility for which the bonds have been issued, for making a loan in the amount of all or part of the cost of that health facility, or for deposit to a reserve fund for the bonds. The proceeds shall be disbursed in the manner and under the restrictions determined by the development corporation.

(d) From the bond proceeds, the development corporation shall be paid an amount equal to:

(1) the corporation's expenses and costs in issuing, selling, and delivering the bonds, including financing, legal, financial advisory, and printing expenses; and

(2) the compensation paid to employees of the corporation for the time the employees spend on activities relating to issuing, selling, and delivering the bonds. (V.A.C.S. Art. 1528j, Secs. 4.04(a) (part), (e), (f).)

Sec. 221.062. INFORMATION FILED WITH SPONSORING ENTITY. (a) Not later than the 15th day before the date on which bonds are issued, the proceeds of which are to be used to pay all or part of the cost of a health facility, the development corporation shall file with the sponsoring entity's governing body a full and complete description of the health facility, including:

(1) an explanation of the projected costs and of the necessity for the proposed health facility; and

(2) the name of the proposed user of the health facility.

(b) If the bond proceeds are to be used for cash management, the user shall file with the sponsoring entity's governing body a forecast of the user's need for cash based on the user's most recent revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month for a period of not more than one year.

(c) After issuing the bonds and before using all of the bond proceeds, the development corporation may amend the filing required by this section and use the proceeds as provided by the amended filing if the sponsoring entity's governing body determines that the use according to the amended filing furthers the purposes of this chapter.

(d) Information filed under this section is public information open to public inspection. (V.A.C.S. Art. 1528j, Sec. 4.03.)

Sec. 221.063. TERMS. (a) Bonds issued under this chapter must be dated and bear interest at a fixed or variable rate determined by the development corporation. The bonds must mature at the time determined by the corporation, but may not mature later than 40 years after their date of issuance. Bonds issued for cash management may not mature later than 24 months after their date of issuance.

(b) The bonds may be made redeemable before maturity at the price and on the terms determined by the development corporation.

(c) The bonds, including any interest coupons initially attached, must be in the form and denomination, payable at the place, and executed or authenticated in the manner that the development corporation determines.

(d) The bonds may be issued in coupon or registered form or be payable to a specific person, as the development corporation determines. The corporation may provide for the registration of coupon bonds as to principal only, for the conversion of coupon bonds into fully registered bonds without coupons, and for reconversion into coupon bonds of fully registered bonds without coupons. The duty of conversion or reconversion may be imposed on a trustee in a trust agreement.

(e) The signature or facsimile of the signature of an officer that appears on the bonds or coupons remains valid and sufficient for all purposes regardless of whether the person ceases to be an officer before delivery of and payment for the bonds. (V.A.C.S. Art. 1528j, Secs. 4.04(a) (part), (b).)

**Sec. 221.064. SALE.** (a) A development corporation shall sell at a public or private sale the bonds at the price it determines.

(b) The net effective interest rate on the bonds, computed according to Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), may not exceed the maximum annual interest rate established for business loans of \$250,000 or more in this state. (V.A.C.S. Art. 1528j, Sec. 4.04(d).)

**Sec. 221.065. REFUNDING BONDS.** (a) A development corporation may issue bonds to refund its outstanding bonds, including any redemption premium on the bonds and interest accrued to the date of redemption. (b) The provisions of this chapter generally applicable to bonds apply to the issuance, maturity, terms, and holder's rights in the refunding bonds, and to the development corporation's rights, duties, and obligations in relation to the refunding bonds.

(c) The development corporation may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds. (V.A.C.S. Art. 1528j, Sec. 4.05.)

**Sec. 221.066. SOURCE OF PAYMENT; BONDS NOT GENERAL OBLIGATION.** (a) The principal of, interest on, and any redemption penalty on bonds issued under this chapter are payable solely from, and may be secured by a pledge of all or part of, one or more of the following:

(1) the bond proceeds;

(2) revenue derived from the lease or sale of a health facility or from a loan made by a development corporation to finance or refinance all or part of a health facility;

(3) revenue derived from the operation of a health facility; or

(4) other revenue provided by a user of a health facility.

(b) The bonds are not an obligation or a pledge of the faith and credit of the state, a sponsoring entity, or other political subdivision or agency of the state.

(c) Each bond must contain on its face a statement that:

(1) neither the state nor a political subdivision or agency of the state, including the sponsoring entity, is obligated to pay the bonds or interest on the bonds; and

(2) neither the faith and credit nor the taxing power of the state, the sponsoring entity, or other political subdivision or agency of the state is pledged to the payment of the principal of or interest or any redemption premium on the bonds. (V.A.C.S. Art. 1528j, Secs. 4.04(c), 4.06.)

**Sec. 221.067. EXEMPT SECURITIES.** (a) Bonds issued under this chapter and any interest coupons are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) If the bonds are secured by an agreement by a user to pay to the development corporation amounts sufficient to pay the principal of and interest and any redemption premium on the bonds, the agreement, for the purposes of The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes), is a separate security issued to purchasers of the bonds by the user, and not by the corporation. The agreement is exempt from that Act only if:

(1) that Act exempts the agreement; or

(2) the bonds or the payments to be made under the agreement are guaranteed by any person and the guarantee is an exempt security under that Act. (V.A.C.S. Art. 1528j, Sec. 4.07.)

**Sec. 221.068. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.** (a) Unless made ineligible under other law, rules, or rulings, bonds are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

- (5) an insurance company;
- (6) a fiduciary, trustee, or guardian; and
- (7) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposit of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons, if any. (V.A.C.S. Art. 1528j, Sec. 4.08.)

[Sections 221.069–221.080 reserved for expansion]

#### SUBCHAPTER D. DISSOLUTION OF CORPORATION

Sec. 221.081. DISSOLUTION AUTHORIZED. After a development corporation's bonds and other obligations are paid and discharged, or adequate provision is made for their payment and discharge, the sponsoring entity's governing body by written resolution shall authorize and direct the dissolution of the corporation. (V.A.C.S. Art. 1528j, Sec. 5.01(a).)

Sec. 221.082. ARTICLES OF DISSOLUTION. (a) Articles of dissolution on behalf of the corporation shall be executed by:

- (1) the president or vice-president and the secretary or assistant secretary; or
- (2) the presiding officer of the sponsoring entity's governing body and the secretary or clerk of that body.

(b) An officer signing the articles of dissolution shall verify them.

(c) The articles of dissolution must include:

- (1) the name of the development corporation;
- (2) the name and address of the sponsoring entity;
- (3) a statement that the dissolution was authorized by the governing body of the sponsoring entity;
- (4) the date of the meeting at which the dissolution was authorized;
- (5) a statement that all of the corporation's bonds and obligations have been paid and discharged or that adequate provision has been made for their payment and discharge; and
- (6) a statement that no suit is pending in a court against the corporation or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the corporation in each pending suit. (V.A.C.S. Art. 1528j, Sec. 5.01(b).)

Sec. 221.083. CERTIFICATE OF DISSOLUTION. (a) The original and two copies of the articles of dissolution shall be delivered to the secretary of state.

(b) If the secretary of state finds that the articles of dissolution comply with this chapter and have been authorized by the sponsoring entity's governing body, the secretary of state, on payment of all fees required by this chapter, shall:

- (1) write "filed" on the original and each copy of the articles of dissolution and the month, day, and year of the filing;
- (2) file the original in the office of the secretary of state; and
- (3) issue two certificates of dissolution with a copy of the articles of dissolution attached to each.

(c) The secretary of state shall deliver a certificate of dissolution with a copy of the articles of dissolution attached to the representative of the dissolved development corporation and to the sponsoring entity's governing body.

(d) The existence of the development corporation ceases on issuance of the certificates of dissolution, except for the purpose of suits, other proceedings, and appropriate corporate action by the directors and officers of the corporation as provided by this chapter. (V.A.C.S. Art. 1528j, Secs. 5.01(c), (d).)

Sec. 221.084. **EXTENSION OF DURATION.** If a corporation is dissolved by expiration of its duration, the corporation may amend its articles of incorporation to extend its duration within three years after the date of dissolution. (V.A.C.S. Art. 1528j, Sec. 5.02 (part).)

Sec. 221.085. **VESTING PROPERTY IN SPONSORING ENTITY.** The title to all funds and other property owned by a development corporation when it dissolves automatically vests in the sponsoring entity without further conveyance, transfer, or other act. (V.A.C.S. Art. 1528j, Sec. 5.01(e).)

Sec. 221.086. **RIGHTS, CLAIMS, AND LIABILITIES BEFORE DISSOLUTION.** The dissolution of a development corporation by issuance of a certificate of dissolution or expiration of its duration does not impair a remedy available to or against the corporation or a director or officer of the corporation for a right or claim existing or a liability incurred before the dissolution, if action or other proceeding on the remedy is begun within three years after the date of the dissolution. The action may be prosecuted or defended by the corporation in its corporate name. The directors and officers may take corporate or other action as appropriate to protect the remedy, right, or claim. (V.A.C.S. Art. 1528j, Sec. 5.02 (part).)

[Sections 221.087–221.100 reserved for expansion]

#### **SUBCHAPTER E. ADMINISTRATION BY SECRETARY OF STATE**

Sec. 221.101. **ADMINISTRATION OF CHAPTER.** The secretary of state may act as reasonably necessary to efficiently administer this chapter and to perform the duties imposed by this chapter. (V.A.C.S. Art. 1528j, Sec. 6.04.)

Sec. 221.102. **FEES.** (a) The secretary of state shall charge and collect fees for:

- (1) filing articles of incorporation and issuing two certificates of incorporation;
- (2) filing articles of amendment and issuing two certificates of amendment;
- (3) filing a statement of change of address of registered office or change of registered agent, or both;
- (4) filing restated articles of incorporation and issuing two restated articles of incorporation; and
- (5) filing articles of dissolution.

(b) The fees are in the amounts charged by the secretary of state for the respective filings and issuances under the Texas Non-Profit Corporation Act (Article 1396–1.01 et seq., Vernon's Texas Civil Statutes). (V.A.C.S. Art. 1528j, Sec. 6.03.)

Sec. 221.103. **NOTICE AND APPEAL OF DISAPPROVAL.** (a) If the secretary of state fails to approve a document required by this chapter to be approved by the secretary of state, the secretary of state, not later than the 10th day after the date the document is delivered to the secretary of state, shall give written notice of the disapproval to the person who delivered the document. The notice must state the reasons for the disapproval.

(b) The person may appeal the disapproval to a district court of Travis County by filing with the clerk of the court a petition including a copy of the disapproved document and a copy of the disapproval notice.

(c) The court shall try the matter de novo, and either sustain the secretary of state's action or direct the secretary of state to take action the court considers proper. (V.A.C.S. Art. 1528j, Sec. 6.05 (part).)

Sec. 221.104. DOCUMENTS AS PRIMA FACIE EVIDENCE. The following documents shall be received by a court, public office, or official body as prima facie evidence of the facts, or the existence or nonexistence of the facts, stated in the document:

- (1) a certificate issued by the secretary of state under this chapter;
- (2) a copy, certified by the secretary of state, of a document filed in the office of the secretary of state under this chapter; and
- (3) a certificate of the secretary of state under the Great Seal of Texas as to the existence or nonexistence of a fact relating to a development corporation that would not appear from a document or certificate under Subdivision (1) or (2). (V.A.C.S. Art. 1528j, Sec. 6.06.)

CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION,  
INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

- Sec. 222.001. SHORT TITLE  
Sec. 222.002. DEFINITIONS  
Sec. 222.003. EXCEPTION  
Sec. 222.004. DIVISION OF HOSPITAL SURVEY AND CONSTRUCTION  
Sec. 222.005. SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS  
Sec. 222.006. FUNDING  
Sec. 222.007. AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES  
Sec. 222.008. EXPERTS AND CONSULTANTS  
Sec. 222.009. COMMISSIONER'S REPORT

[Sections 222.010–222.020 reserved for expansion]

SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION  
OF HEALTH CARE FACILITIES

- Sec. 222.021. PURPOSE  
Sec. 222.022. DEFINITIONS  
Sec. 222.023. LIMITATION ON INSPECTIONS  
Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION  
Sec. 222.025. LIMITATION OF OTHER REGULATION  
Sec. 222.026. PATIENT TRANSFER AUTHORITY NOT AFFECTED

CHAPTER 222. HEALTH CARE FACILITY SURVEY, CONSTRUCTION,  
INSPECTION, AND REGULATION

SUBCHAPTER A. SURVEY AND CONSTRUCTION OF HOSPITALS

Sec. 222.001. SHORT TITLE. This subchapter may be cited as the Texas Hospital Survey and Construction Act. (V.A.C.S. Art. 4437d, Sec. 1.)

Sec. 222.002. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health.
- (4) "Hospital" includes a public health center, a general hospital, or a tuberculosis, mental, chronic disease, or other type of hospital, and related facilities such as a laboratory, outpatient department, nurses' home and training facility, or central service facility operated in connection with a hospital.
- (5) "Public health center" means a publicly owned facility for providing public health services and includes related facilities such as a laboratory, clinic, or administrative office operated in connection with a facility for providing public health services. (V.A.C.S. Art. 4437d, Sec. 2(a), (c) (part), (d).)

Sec. 222.003. **EXCEPTION.** This subchapter does not apply to a hospital furnishing primarily domiciliary care. (V.A.C.S. Art. 4437d, Sec. 2(c) (part).)

Sec. 222.004. **DIVISION OF HOSPITAL SURVEY AND CONSTRUCTION.** (a) The division of hospital survey and construction is a division of the department.

(b) The division is administered by a full-time salaried director appointed by the commissioner and under the supervision and direction of the board.

(c) The commissioner shall appoint other personnel of the division. (V.A.C.S. Art. 4437d, Secs. 3 (part), 4 (part).)

Sec. 222.005. **SURVEY, PLANNING, AND CONSTRUCTION OF HOSPITALS.** (a) The department, through the division of hospital survey and construction, is the only agency of the state authorized to make an inventory of existing hospitals, survey the need for construction of hospitals, and develop a program of hospital construction as provided by the federal Hospital Survey and Construction Act (42 U.S.C. Section 291 et seq.).

(b) The board may establish methods of administration and adopt rules to meet the requirements of the federal Hospital Survey and Construction Act relating to survey, planning, and construction of hospitals and public health centers.

(c) The commissioner shall:

(1) require reports, make inspections and investigations, and prescribe rules as the commissioner considers necessary; and

(2) take other action that the commissioner considers necessary to carry out the federal Hospital Survey and Construction Act and the regulations adopted under that Act. (V.A.C.S. Art. 4437d, Secs. 3 (part), 4 (part), 7.)

Sec. 222.006. **FUNDING.** (a) The commissioner shall accept, on behalf of the state, a payment of federal funds or a gift or grant made to assist in meeting the cost of carrying out the purpose of this subchapter, and may spend the payment, gift, or grant for that purpose.

(b) The commissioner shall deposit the payment, gift, or grant in the state treasury to the credit of the hospital construction fund.

(c) The commissioner shall deposit to the credit of the hospital construction fund money received from the federal government for a construction project approved by the surgeon general of the United States Public Health Service. The commissioner shall use the money only for payments to applicants for work performed and purchases made in carrying out approved projects. (V.A.C.S. Art. 4437d, Secs. 4 (part), 8 (part).)

Sec. 222.007. **AGREEMENTS FOR USE OF FACILITIES AND SERVICES OF OTHER ENTITIES.** To the extent the commissioner considers desirable to carry out the purposes of this subchapter, the commissioner may enter into an agreement for the use of a facility or service of another public or private department, agency, or institution. (V.A.C.S. Art. 4437d, Sec. 4 (part).)

Sec. 222.008. **EXPERTS AND CONSULTANTS.** The commissioner may contract for services of experts or consultants, or organizations of experts or consultants, on a part-time or fee-for-service basis. The contracts may not involve the performance of administrative duties. (V.A.C.S. Art. 4437d, Sec. 4 (part).)

Sec. 222.009. **COMMISSIONER'S REPORT.** (a) The commissioner annually shall report to the board on activities and expenditures under this subchapter.

(b) The commissioner shall include in the report recommendations for additional legislation that the commissioner considers appropriate to furnish adequate hospital, clinic, and similar facilities to the public. (V.A.C.S. Art. 4437d, Sec. 4 (part).)

[Sections 222.010–222.020 reserved for expansion]

#### **SUBCHAPTER B. LIMITATION ON INSPECTION AND OTHER REGULATION OF HEALTH CARE FACILITIES**

Sec. 222.021. **PURPOSE.** The purpose of this subchapter is to require that state agencies that perform inspections of health care facilities, including the Texas Depart-

ment of Health, the Texas Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and other agencies with which each of those agencies contracts, do not duplicate their procedures or subject health care facilities to duplicative rules. (V.A.C.S. Art. 4437h, Sec. 1.)

Sec. 222.022. DEFINITIONS. In this subchapter:

(1) "Health care facility" has the meaning assigned by Section 104.002, except that the term does not include a treatment facility licensed by the Texas Commission on Alcohol and Drug Abuse.

(2) "Inspection" includes a survey, inspection, investigation, or other procedure necessary for a state agency to carry out an obligation imposed by federal and state laws, rules, and regulations. (V.A.C.S. Art. 4437h, Sec. 2.)

Sec. 222.023. LIMITATION ON INSPECTIONS. (a) A state agency may make or require only those inspections necessary to carry out obligations imposed on the agency by federal and state laws, rules, and regulations.

(b) Instead of making an on-site inspection, a state agency shall accept an on-site inspection by another state agency charged with making an inspection if the inspection substantially complies with the accepting agency's inspection requirements.

(c) A state agency shall coordinate its inspections within the agency and with inspections required of other agencies to ensure compliance with this section. (V.A.C.S. Art. 4437h, Sec. 3.)

Sec. 222.024. CERTIFICATION OR ACCREDITATION INSTEAD OF INSPECTION.

(a) A hospital licensed by the Texas Department of Health or the Texas Department of Mental Health and Mental Retardation is not subject to additional licensing inspections under Chapter 241 (Texas Hospital Licensing Law) or by the licensing agency while the hospital maintains:

(1) certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); or

(2) accreditation from the Joint Commission on Accreditation of Health Organizations, the American Osteopathic Association, or other national accreditation organization for the offered services.

(b) An agency licensing a hospital exempt from a licensing inspection under Subsection (a) shall issue a renewal license to the hospital if the hospital annually remits any applicable fees and submits a copy of the most recent inspection results report from the certification or accreditation body. (V.A.C.S. Art. 4437h, Sec. 4(a).)

Sec. 222.025. LIMITATION OF OTHER REGULATION. (a) The Texas Department of Human Services, the Texas Department of Health, and the Texas Department of Mental Health and Mental Retardation each by rule shall execute a memorandum of understanding that establishes procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of Chapter 32, Human Resources Code, and federal law and regulations relating to Titles XVIII and XIX of the Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.). The procedures must provide for use by each agency of information collected by the agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facility under their jurisdiction.

(b) The Texas Department of Health shall coordinate all licensing or certification procedures conducted by the state agencies covered by this section. (V.A.C.S. Art. 4437h, Secs. 4(b), (c).)

Sec. 222.026. PATIENT TRANSFER AUTHORITY NOT AFFECTED. Sections 222.024 and 222.025 do not affect the authority of the Texas Department of Health to implement and enforce the provisions of Chapter 241 (Texas Hospital Licensing Law) relating to the transfer of hospital patients or the department's means of implementing and enforcing those provisions. (V.A.C.S. Art. 4437h, Sec. 4(d).)



**CHAPTER 223. HOSPITAL PROJECT FINANCING ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 223.001. SHORT TITLE**
- Sec. 223.002. DEFINITIONS**
- Sec. 223.003. HOSPITAL PROJECT COSTS**

[Sections 223.004–223.010 reserved for expansion]

**SUBCHAPTER B. FINANCING HOSPITAL PROJECTS**

- Sec. 223.011. PROVIDING HOSPITAL PROJECTS**
- Sec. 223.012. TITLE TO PROJECTS**
- Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT**
- Sec. 223.014. AUTHORITY OF ISSUER**
- Sec. 223.015. OBLIGATIONS LIMITED**
- Sec. 223.016. EMINENT DOMAIN**

[Sections 223.017–223.020 reserved for expansion]

**SUBCHAPTER C. HOSPITAL PROJECT BONDS**

- Sec. 223.021. ISSUANCE OF HOSPITAL PROJECT BONDS**
- Sec. 223.022. ELECTION ON BONDS**
- Sec. 223.023. ELECTION RESULTS**
- Sec. 223.024. PROTEST NOT FILED**
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- Sec. 223.026. FORM AND TERM OF BONDS**
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- Sec. 223.036. BONDS AS SECURITIES**
- Sec. 223.037. BONDS AS INVESTMENTS**
- Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS**

**CHAPTER 223. HOSPITAL PROJECT FINANCING ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 223.001. SHORT TITLE.** This chapter may be cited as the Hospital Project Financing Act. (V.A.C.S. Art. 4437e–2, Sec. 1.)

**Sec. 223.002. DEFINITIONS.** In this chapter:

(1) “Authority” means a public health authority, including a hospital authority created under Chapter 262 or 264.

(2) “Bond” includes a note.

(3) “Issuer” means an authority, municipality, county, or hospital district.

(4) “Hospital project” means existing or future real, personal, or mixed property, or an interest in that property, other than a nursing home licensed or required to be licensed under the authority of this state, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is found by the governing body of an issuer to be necessary for medical care, research, training, or teaching in this state. A hospital project may include one or

more of the following properties if found by the governing body of an issuer to be necessary or convenient for the project:

(A) land, a building, equipment, machinery, furniture, a facility, or an improvement;

(B) a structure suitable for use as:

(i) a hospital, clinic, health facility, extended care facility, outpatient facility, rehabilitation or recreation facility, pharmacy, medical laboratory, dental laboratory, physicians' office building, or laundry or administrative facility or building related to a health facility or system;

(ii) a multiunit housing facility for medical staff, nurses, interns, other employees of a health facility or system, patients of a health facility, or relatives of patients admitted for treatment or care in a health facility;

(iii) a support facility related to a hospital project such as an office building, parking lot or building, or maintenance, safety, or utility facility, and related equipment; or

(iv) a medical or dental research facility, medical or dental training facility, or another facility used in the education or training of health care personnel;

(C) property or material used in the landscaping, equipping, or furnishing of a hospital project and other similar items necessary or convenient for the operation of a hospital project; and

(D) any other structure, facility, or equipment related or essential to the operation of a health facility or system.

(5) "Nonprofit organization" means:

(A) a nonprofit corporation established under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes); or

(B) an association, foundation, trust, cooperative, or similar person no part of the net earnings of which is distributable to any private shareholder or individual and that incurs a contractual obligation with an issuer with respect to a hospital project under this chapter. (V.A.C.S. Art. 4437e-2, Secs. 3(a), (g) (part), (h), (i) (part); New.)

Sec. 223.003. HOSPITAL PROJECT COSTS. (a) Hospital project costs include costs related to:

(1) the acquisition of land, a right-of-way, an option to purchase land, an easement, or another interest in land related to a hospital project;

(2) the acquisition, construction, repair, renovation, remodeling, or improvement of a structure to be used as or with a hospital project;

(3) site preparation, including demolishing or removing a structure the removal of which is necessary or incident to providing a hospital project;

(4) expenses necessary or incident to planning, providing, or determining the feasibility and practicability of a hospital project, including architectural, engineering, legal, and related services, plans and specifications, studios, surveys, and cost and revenue estimates;

(5) machinery, equipment, furniture, and facilities necessary or incident to the equipping of a hospital project for operation;

(6) financing charges and interest accruing before and during construction, and after completion of construction for not more than two years;

(7) the start-up of a hospital project during construction and after completion of construction for not more than two years;

(8) hospital project financing, including:

(A) legal, accounting, and appraisal fees, expenses, and disbursements;

(B) printing, engraving, and reproduction services; and

(C) an initial or acceptance fee of a trustee or paying agent;

(9) the provision of the hospital project by the issuer, including:

- (A) costs incurred directly or indirectly by the issuer;
  - (B) reimbursement of reasonable sums to the issuer for time spent by its employees in providing the hospital project and its financing; and
  - (C) the appraisal obtained under Section 223.011(d)(2); and
- (10) the authorization, preparation, sale, issuance, and delivery of bonds under this chapter, including:
- (A) related fees, charges, and expenses;
  - (B) expenses and costs described by Section 223.029(b); and
  - (C) expenses incurred in carrying out a trust agreement relating to hospital project bonds.
- (b) The listing of items of cost in Subsection (a) is not inclusive of all hospital costs. (V.A.C.S. Art. 4437e-2, Secs. 3(c), 4 (part), 5 (part), 12 (part).)

[Sections 223.004–223.010 reserved for expansion]

#### **SUBCHAPTER B. FINANCING HOSPITAL PROJECTS**

**Sec. 223.011. PROVIDING HOSPITAL PROJECTS.** (a) An issuer acting for itself or through a nonprofit organization may provide one or more hospital projects by acquisition, construction, or improvement. An acquisition may occur by purchase, devise, gift, lease, or a combination of those methods.

(b) A hospital project must be located in this state and within or partially within the issuer's boundaries, except that a hospital project of a municipality may be located:

- (1) outside the municipality's limits if it is within the municipality's extraterritorial jurisdiction; or
  - (2) in another municipality if the governing body of the other municipality consents to the former municipality's provision of the project.
- (c) An issuer may only acquire a hospital project from a nonprofit organization that has been in existence and has operated the hospital project for at least three years before the date of acquisition by the issuer.

(d) An issuer must affirmatively find that the cost of an acquired hospital project is not more than:

- (1) the actual audited cost of the hospital project to the date of acquisition; or
- (2) the fair market value of the hospital project at the date of acquisition as determined by an appraisal obtained by the issuer. (V.A.C.S. Art. 4437e-2, Sec. 5 (part).)

**Sec. 223.012. TITLE TO PROJECTS.** (a) An issuer may vest title to a hospital project provided under this chapter in a nonprofit organization.

(b) If the issuer vests the title in a nonprofit organization, it may retain a mortgage interest in the hospital project. The mortgage interest expires when all bonds of the issuer sold to provide the hospital project are paid or provision has been made for their final payment. (V.A.C.S. Art. 4437e-2, Sec. 5 (part).)

**Sec. 223.013. CONTRACTS RELATING TO HOSPITAL PROJECT.** (a) An issuer may execute a contract, including a lease, with a nonprofit organization with respect to a hospital project. A contract may authorize the nonprofit organization to use, operate, or acquire the hospital project on the terms, including payment provisions, the issuer's governing body determines to be advisable.

(b) A contract may include the sale of a hospital project to a nonprofit organization, including a nonprofit organization using the hospital project. The terms of the sale may include installment payments. The sale must be fully consummated when all bonds of the issuer issued to provide the hospital project are paid or provision is made for their final payment if, during the time the bonds or interest on the bonds remains unpaid, there is no

failure to make any payments owing under any lease or contract at the time and in the manner as the payments come due.

(c) A contract under this chapter may be for the term agreed to by the parties and may provide that the contract continues until the bonds specified in the contract, or refunding or substitution bonds issued in place of those bonds, are fully paid or provision is made for their final payment. (V.A.C.S. Art. 4437e-2, Secs. 5 (part), 10.)

Sec. 223.014. **AUTHORITY OF ISSUER.** An issuer has full and complete authority relating to its bonds, a lease agreement in which the issuer is a lessor, or a sale or other contract, subject only to this chapter. (V.A.C.S. Art. 4437e-2, Sec. 16.)

Sec. 223.015. **OBLIGATIONS LIMITED.** (a) The issuer may not incur a financial obligation under this chapter that cannot be paid from the proceeds of hospital project bonds, revenues derived from operating a hospital project, or other revenues that may be provided by a nonprofit organization in accordance with this chapter.

(b) The legislature or an issuer may not make an appropriation to pay any part of a cost of a hospital project or any operating cost of a hospital project. (V.A.C.S. Art. 4437e-2, Sec. 4 (part).)

Sec. 223.016. **EMINENT DOMAIN.** (a) Under this chapter, an issuer may not acquire by eminent domain a hospital project, or any part of a hospital project, to be sold or leased under this chapter.

(b) Land previously acquired by eminent domain by an issuer may be sold or leased under this chapter if the governing body of the issuer determines that:

(1) the use of the land will not interfere with the purpose for which the land was originally acquired or that the land is no longer needed for that purpose;

(2) at least seven years have elapsed since the date the land was acquired by eminent domain; and

(3) the land was not acquired for park purposes or, if the land was acquired for park purposes, the sale or lease of parkland has been approved at an election held under Article 1112, Revised Statutes. (V.A.C.S. Art. 4437e-2, Sec. 6.)

[Sections 223.017-223.020 reserved for expansion]

#### SUBCHAPTER C. HOSPITAL PROJECT BONDS

Sec. 223.021. **ISSUANCE OF HOSPITAL PROJECT BONDS.** (a) An issuer may provide for the issuance of negotiable revenue bonds or other evidences of indebtedness for paying hospital project costs. The bonds may be issued subject only to the requirements of this chapter.

(b) As the governing body of the issuer determines to be in the best interest of the issuer, one or more series of bonds may be issued for each hospital project, or more than one hospital project may be combined in one or more series of bonds, but each hospital project may be considered separately with respect to Subsections (c), (d), and (e), and Sections 223.022-223.024.

(c) Before issuing bonds, the governing body of an issuer must adopt a resolution:

(1) declaring its intention to issue bonds; and

(2) stating the maximum amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the tentative date, time, and place at which the governing body proposes to authorize the issuance of the bonds.

(d) Unless the governing body of the issuer orders an election on the issuance of the bonds, a substantial copy of the resolution shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first publication must be made not earlier than the 45th day before the tentative date stated in the resolution. The third publication must be made not later than the 11th day before the tentative date.

(e) Before authorizing the issuance of any bonds or ordering an election on any matters authorized by this chapter, the issuer must deposit with the chief administrative officer of

the issuer a complete description of any proposed hospital project, including a detailed listing and explanation of projected costs, the reasons for the hospital project, and the name of each owner of the nonprofit organization for whom the hospital project is to be constructed. The required description is public information. (V.A.C.S. Art. 4437e-2, Secs. 7(a) (part), (c), (h), (k); 8 (part).)

Sec. 223.022. **ELECTION ON BONDS.** (a) The governing body of an issuer shall order and hold an election on the question of the issuance of hospital project bonds if at least five percent or 20,000 of the voters qualified to vote in an election held by the issuer, whichever is less, file a written protest against the issuance of the bonds before the close of business on the business day before the tentative date in the resolution for the authorization of the bonds.

(b) The issuer's governing body may order an election on its own motion without the filing of a protest.

(c) In addition to the contents required by the Election Code, the election order must specify the location of and the presiding judge and alternate judge for each polling place.

(d) Notice of a bond election shall be published three times in a newspaper of general circulation in the territorial limits of the issuer. The first notice must be published not earlier than the 45th day before the date set for the election, and the third notice must be published not later than the 11th day before the date set for the election.

(e) The election shall be conducted in accordance with the general laws pertaining to bond elections in municipalities, except as modified by this chapter.

(f) The ballot shall provide for voting for or against the proposition: "The issuance of revenue bonds or notes or other evidences of indebtedness for the hospital project or hospital projects."

(g) The governing body shall declare whether a majority of the voters voting in the election approve the proposition. (V.A.C.S. Art. 4437e-2, Secs. 8 (part), 9 (part).)

Sec. 223.023. **ELECTION RESULTS.** (a) If the proposition is approved by a majority of the voters voting in the election, the issuer may authorize the bonds.

(b) If the proposition is not approved, an election on the issuing of revenue bonds for the hospital project that was the subject of the election may not be ordered within six months after that election, and bonds may not be issued for the hospital project until a majority of the voters voting in an election held for that purpose approve the issuance of the bonds. (V.A.C.S. Art. 4437e-2, Sec. 9 (part).)

Sec. 223.024. **PROTEST NOT FILED.** If a protest requiring an election is not filed under Section 223.022(a) and an election is not called under Section 223.022(b), the issuer may issue the bonds under the resolution without an election for two years after the tentative date specified in the resolution. (V.A.C.S. Art. 4437e-2, Sec. 8 (part).)

Sec. 223.025. **LIMITATIONS ON BONDS.** (a) Bonds issued in accordance with this chapter are not general obligations or a pledge of the faith and credit of this state, the issuer, or another political subdivision of this state. The bonds are payable solely from revenues of the hospital project for which they are issued or from other revenues provided by a nonprofit organization. Money of this state or a political subdivision of this state from any source, including tax revenue, but excluding revenue of the hospital project being financed with the bonds, may not be used to pay the principal of, any redemption premium for, or interest on revenue bonds or refunding bonds issued under this chapter.

(b) Each revenue bond must state on its face that:

(1) this state, the issuer, or any political subdivision of this state is not obligated to pay the principal of, any redemption premium for, or interest on the bonds except from the revenues pledged for that purpose; and

(2) the faith, credit, or the taxing power of this state, the issuer, or any political subdivision of this state is not pledged to the payment of the principal of, any redemption premium for, or interest on the bonds. (V.A.C.S. Art. 4437e-2, Sec. 4 (part).)

Sec. 223.026. FORM AND TERM OF BONDS. (a) The issuer shall determine the form of the bonds, the date of the bond issue, the price and interest rate of the bonds, and the maturity for the bonds, which may not be more than 40 years after its date.

(b) The issuer may:

(1) make the bonds redeemable before maturity and determine the prices and conditions for early redemption;

(2) determine:

(A) the interest coupons to be attached to the bonds;

(B) the denominations of the bonds; and

(C) the places of payment of the bonds' principal, any redemption premium, and interest;

(3) issue the bonds in coupon or in registered form, or both;

(4) make the bonds payable to a specific person;

(5) provide for the registration of coupon bonds as to principal or as to principal and interest; and

(6) provide for the conversion of coupon bonds into registered bonds without coupons and for the reconversion into coupon bonds of any registered bonds without coupons.

(c) If the duty of conversion or reconversion of a bond is imposed on a trustee in a trust agreement, the substituted bonds need not be reapproved by the attorney general, and the bonds remain incontestable.

(d) The issuer may provide for execution of the bonds and any coupons using a facsimile signature under Chapter 204, Acts of the 57th Legislature, Regular Session, 1961 (Article 717j-1, Vernon's Texas Civil Statutes). If the signature or a facsimile signature of a person who has been an officer appears on a bond or coupon, the signature or facsimile signature is valid and sufficient for all purposes, regardless of whether the person is an officer when the bonds are delivered. (V.A.C.S. Art. 4437e-2, Secs. 7(a) (part), (d).)

Sec. 223.027. DEDICATED REPAYMENT REVENUE. The principal of, any redemption premium for, and interest on hospital project bonds are payable from and secured, as specified by the resolution of the governing body or in any trust agreement or other instrument securing the bonds, by a pledge of all or part of the revenues of the issuer to be derived from:

(1) the ownership, operation, lease, use, mortgage, or sale of the hospital project for which the bonds have been issued; or

(2) other revenues provided by a nonprofit organization. (V.A.C.S. Art. 4437e-2, Sec. 7(b).)

Sec. 223.028. SECURITY FOR BONDS. (a) Bonds issued under this chapter may be secured by a trust agreement between the issuer and a trust company or bank having the powers of a trust company in this state.

(b) A trust agreement may pledge or assign lease income, contract payments, fees, or other charges to be received from a nonprofit organization. The governing body of the issuer may secure the bonds additionally by a mortgage, a deed of trust lien, or other security interest on a designated hospital project vesting in the trustee the power to sell the hospital project for the payment of the indebtedness, the power to operate the hospital project, and any other power for the further security of the bonds.

(c) The trust agreement may:

(1) evidence a pledge of all or any part of the revenue of the issuer from the ownership, operation, lease, use, mortgage, or sale of a hospital project for the payment of principal of, any redemption premium for, and interest on the bonds when due and payable;

(2) provide for the creation and maintenance of reserves;

(3) set forth the rights and remedies of the bondholders and of the trustee;

(4) restrict the individual right of action by bondholders as is customary in trust agreements securing bonds and debentures of corporations;

(5) contain provisions the issuer considers reasonable and proper for the security of the bondholders; and

(6) provide for the issuance of bonds to replace lost, stolen, or mutilated bonds.

(d) A trust agreement or resolution providing for the issuance of bonds may provide for protecting and enforcing the rights and remedies of the bondholders as reasonable and proper, including covenants setting forth the duties of the issuer and the nonprofit organization in relation to:

(1) the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the hospital project in connection with which the bonds are issued; and

(2) the custody, safeguarding, and application of all money. (V.A.C.S. Art. 4437e-2, Sec. 12 (part).)

**Sec. 223.029. USE OF PROCEEDS.** (a) The proceeds of the bonds may be:

(1) used only for the payment of hospital project costs for which the bonds are issued; and

(2) disbursed in the manner and subject to the restrictions provided in the resolution authorizing the issuance or in the trust agreement securing the bonds.

(b) The issuer shall be paid, from the proceeds of its bonds, money in the amount equal to:

(1) the issuer's actual expenditures for financing, legal, printing, and other expenses incurred in issuing, selling, and delivering the bonds; and

(2) the compensation paid to the issuer's employees for the time the employees spent on activities related to the issuance, sale, and delivery of the bonds.

(c) If the amount of proceeds exceeds the cost of the hospital project for which the bonds are issued, the excess shall be deposited to the credit of the sinking fund for the bonds.

(d) The governing body of the issuer may provide for a bond reserve fund in the resolution authorizing the bonds or an instrument securing the bonds and may set aside amounts from the proceeds for payments into the reserve fund.

(e) Proceeds from the sale of bonds may be invested in:

(1) direct, indirect, or guaranteed obligations of the United States that mature in a manner specified by the resolution authorizing the bonds or another instrument securing the bonds; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(f) The issuer's governing body may designate a trust company or a bank with trust powers to act as depository for proceeds of bonds or revenues from a lease or other contract. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits. (V.A.C.S. Art. 4437e-2, Secs. 4 (part); 7(e), (f).)

**Sec. 223.030. TEMPORARY OBLIGATIONS.** (a) Before the issuance of definitive bonds, the issuer may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when those bonds are executed and are available for delivery.

(b) The term of an interim receipt or temporary bond may not be more than two years.

(c) The issuer shall submit the interim receipts or temporary bonds to the attorney general in accordance with Section 223.031. (V.A.C.S. Art. 4437e-2, Sec. 7(g).)

**Sec. 223.031. EXAMINATION OF BONDS.** (a) After issuance of the bonds is authorized and before delivery of the bonds to their purchasers, the bonds and the proceedings authorizing their issuance and securing the bonds shall be presented to the attorney general for examination.

(b) If the bonds state that they are secured by a pledge of all or part of the revenues of the issuer to be derived from a lease or other contract, the contract shall also be submitted to the attorney general.

(c) If the attorney general finds that the bonds have been authorized in accordance with state law and any contract securing the bonds has been made in accordance with state law, the attorney general shall approve the bonds and contract.

(d) The comptroller shall register the bonds when they are approved. After approval and registration, the bonds and contract submitted with the bonds are valid and binding obligations according to their terms and are incontestable. (V.A.C.S. Art. 4437e-2, Sec. 7(i).)

Sec. 223.032. REFUNDING BONDS. (a) An issuer by resolution may authorize the issuance of revenue bonds to refund:

(1) outstanding bonds or other evidences of indebtedness that have been issued to provide a hospital project; or

(2) outstanding obligations, mortgages, or advances issued, made, or given by a nonprofit organization for the cost of a hospital project.

(b) The amounts refunded may include the principal of and any redemption premium for the bonds or other evidences of indebtedness, and any interest accruing to the date of redemption.

(c) The bonds or other evidences of indebtedness to be refunded need not have been issued under this chapter and need not have been originally issued by the issuer of the refunding bonds.

(d) This subchapter governs the issuance of refunding bonds, the maturities and other details of the bonds, the rights of the bondholders, and rights, duties, and obligations of the refunding bond issuer.

(e) The issuer may issue the refunding bonds in exchange or substitution for outstanding bonds or other evidences of indebtedness or may sell the refunding bonds and use the proceeds for paying or redeeming outstanding bonds or other evidences of indebtedness. (V.A.C.S. Art. 4437e-2, Secs. 5 (part), 11.)

Sec. 223.033. ENFORCEMENT OF AGREEMENTS. (a) An agreement made under this chapter may provide, in the event of default in the payment of the principal of, interest on, or any redemption premium for bonds subject to the agreement or in the performance of an agreement contained in the proceedings, mortgage, or instruments relating to the bonds, for enforcement of the payment or performance by:

(1) mandamus; or

(2) the appointment of a receiver in equity with power to charge and collect rates, rents, or contract payments and to apply the revenues from the hospital project in accordance with the resolution, mortgage, or instruments.

(b) A mortgage to secure hospital project bonds may provide for foreclosure and the sale of the property secured by the mortgage on default in the mortgage payment or the violation of an agreement contained in the mortgage. The foreclosure and sale may occur under proceedings in equity or in any other manner permitted by law. The mortgage may provide that a trustee under the mortgage or the holder of any of the bonds secured by the mortgage may be the purchaser at a foreclosure sale if the trustee or bondholder is the highest bidder. (V.A.C.S. Art. 4437e-2, Secs. 13, 14.)

Sec. 223.034. MEMBERSHIP OF GOVERNING BODY NOT SUBJECT TO CHANGE. The resolution authorizing the issuance of hospital project bonds, the trust agreement securing the bonds, or any other agreement relating to the bonds may not prescribe the method of selecting or the term of office of any member of the issuer's governing body. (V.A.C.S. Art. 4437e-2, Sec. 15.)

Sec. 223.035. BONDS TAX EXEMPT. The bonds issued under this chapter, their transfer, and interest from the bonds, including profit made from their sale, are exempt from taxation by this state and a municipality or other political subdivision of the state. (V.A.C.S. Art. 4437e-2, Sec. 17 (part).)



**Sec. 223.036. BONDS AS SECURITIES.** (a) Bonds issued under this chapter and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A lease agreement, sales agreement, or other contract under this chapter is not a security under The Securities Act. (V.A.C.S. Art. 4437e-2, Sec. 18.)

**Sec. 223.037. BONDS AS INVESTMENTS.** (a) Unless the bonds issued under this chapter are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States, the bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee or guardian; and
- (8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of this state.

(b) The bonds may secure the deposits of public funds of this state or a municipality, county, school district, or other political corporation or subdivision of this state. The bonds are lawful and sufficient security for those deposits at their face value if accompanied by all appurtenant unmatured coupons. (V.A.C.S. Art. 4437e-2, Sec. 19.)

**Sec. 223.038. COST OF CERTAIN REQUIRED ALTERATIONS.** The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer or nonprofit organization, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of the bonds. (V.A.C.S. Art. 4437e-2, Sec. 20.)

## **CHAPTER 224. HOSPITAL EQUIPMENT FINANCING**

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### CHAPTER 224. HOSPITAL EQUIPMENT FINANCING

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 224.001. SHORT TITLE. This chapter may be cited as the Texas Hospital Equipment Financing Act. (V.A.C.S. Art. 4487e–3, Sec. 1.)

Sec. 224.002. DEFINITIONS. In this chapter:

(1) “Bond” includes a revenue bond, refunding bond, note, interim certificate, bond anticipation note, or other evidence of indebtedness issued by the financing council under this chapter.

(2) “Financing council” means the Texas Hospital Equipment Financing Council.

(3) “Health facility” means a public or nonprofit health care facility that is used in this state in providing medical care or research, in training or teaching health care personnel, or in both uses, and that is licensed by the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Commission on Alcohol and Drug Abuse, or a successor to any of those agencies. The term includes a licensed substance abuse treatment facility. The term also includes a facility or

building, such as a pharmacy, laboratory, or laundry or food preparation and service facility, related to a health care facility.

(4) "Health-related equipment" means equipment that will improve medical care, research, training, or teaching in this state.

(5) "Participating health care provider" means a public or private nonprofit corporation, association, foundation, trust, cooperative, governmental entity, or similar person that is authorized by the laws of this state to provide or operate a health facility and that contracts with or borrows from the financing council or any entity that will provide loans for financing or refinancing the lease or other acquisition of health-related equipment.

(6) "Pension fund contribution" means a contribution:

(A) that is required to be made by a participating health care provider and that is subject to the Employee Retirement Income Security Act of 1974; or

(B) that is required to be made by a governmental participating health care provider and that is not subject to the Employee Retirement Income Security Act of 1974.

(7) "Trustee" means a member of the council. (V.A.C.S. Art. 4437e-8, Secs. 3(3), (5), (6), (7), (8), (10) (part), (12).)

**Sec. 224.003. DETERMINATION OF COSTS OF HEALTH-RELATED EQUIPMENT.**  
The cost of health-related equipment is:

(1) the cost of the acquisition, repair, reconditioning, restoration, modification, refinancing, or installation of the health-related equipment;

(2) the cost of any property interest in the health-related equipment, including an option to purchase or a leasehold interest;

(3) expenses necessary or incidental to planning, providing, or determining the feasibility and practicability of health-related equipment, including the cost of architectural, engineering, legal, and related services, and the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue;

(4) the cost of interest and other financing charges before the acquisition and installation of health-related equipment and for not more than two years after the acquisition and installation;

(5) start-up costs related to health-related equipment and for not more than two years after its acquisition and installation;

(6) costs paid or incurred in connection with the financing of health-related equipment, including:

(A) out-of-pocket expenses;

(B) the cost of financing, legal, accounting, financial advisory, and consulting fees, expenses, and disbursements;

(C) the cost of insurance coverage;

(D) the cost of printing, engraving, and reproduction services; and

(E) the cost of the initial or acceptance fee of a trustee or paying agent;

(7) direct or indirect costs of the financing council and of the hospital advisory council incurred in connection with providing health-related equipment, including reasonable amounts to reimburse the financing council and the hospital advisory council for time spent by its agents or employees in providing, financing, and refinancing health-related equipment;

(8) costs paid or incurred for the administration of a program for:

(A) the purchase or lease of or the making of loans for health-related equipment by the financing council;

(B) the sale or lease of health-related equipment to any participating health care provider; and

(C) loans to participating health care providers or to any entity that will provide loans to a participating health care provider to enable the provider to purchase health-related equipment;

(9) costs to fund pension fund contributions; and

(10) other costs of or related or incidental to health-related equipment. (V.A.C.S. Art. 4437e-7, Secs. 3(4), (11).)

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

(b) Health-related equipment, including a leasehold interest in health-related equipment, owned by the financing council that would otherwise be taxable to the financing council under Title 1, Tax Code, but for the purposes and nonprofit nature of the financing council, shall be assessed to the participating health care provider using the health-related equipment. If there is more than one participating health care provider using the equipment, the assessment is to be made to each provider in proportion to the provider's share of the value of the rights in the equipment of all the providers. A participating health care provider is entitled to the exemptions from taxation, if any, as if the health-related equipment were owned by the participating health care provider. Each participating health care provider is considered to be the owner of health-related equipment used by the participating health care provider for the purposes of taxes levied or imposed by this state or any political subdivision of this state.

(c) Bonds issued by the financing council, the interest on those bonds, the transfer of bonds, and profits from the sale or exchange of the bonds are exempt from taxation by this state or a political subdivision of this state. (V.A.C.S. Art. 4437e-3, Sec. 17.)

[Sections 224.005-224.010 reserved for expansion]

#### SUBCHAPTER B. COUNCIL ORGANIZATION

Sec. 224.011. FINANCING COUNCIL. The Texas Hospital Equipment Financing Council is a public agency. (V.A.C.S. Art. 4437e-3, Secs. 4(a) (part), 8 (part).)

Sec. 224.012. APPLICATION OF SUNSET ACT. The financing council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the financing council is abolished September 1, 1997. (V.A.C.S. Art. 4437e-3, Sec. 4(b).)

Sec. 224.013. TRUSTEES. (a) The council is composed of 12 trustees appointed by the governor with the advice and consent of the senate.

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

(c) Appointments to the council shall be made with due regard for the race, creed, sex, religion, and national origin of the appointees and of the geographical distribution of the trustees.

(d) To be eligible to serve, a trustee must be a qualified voter of this state and may not be an officer, director, or employee of a participating health care provider.

(e) An appointment to fill a vacancy in an unexpired term is for the remainder of the term. (V.A.C.S. Art. 4437e-3, Secs. 5(a), (b) (part), (c) (part), (e) (part), (f) (part).)

Sec. 224.014. TRUSTEE CONFLICT OF INTEREST. A trustee who has a pecuniary interest in a participating health care provider shall resign from the financing council before the authorization of any bonds for the benefit of the participating health care provider. (V.A.C.S. Art. 4437e-3, Sec. 5(f) (part).)

Sec. 224.015. BOND REQUIRED. (a) As a qualification for and before taking office, each person appointed as trustee must execute a surety bond issued by a surety company authorized to do business in this state.

(b) The bond must be in a penal sum of at least \$10,000 and conditioned on the faithful performance of the duties of the trustee.

(c) The bond must be filed with the secretary of state.

(d) The bond must be kept in force after its execution.

(e) The cost of the bond shall be paid by the financing council. (V.A.C.S. Art. 4437e-3, Secs. 5(c) (part), 6(i).)

**Sec. 224.016. TRUSTEE EXPENSES.** A trustee serves without compensation but is entitled to be reimbursed by the financing council to the extent authorized by the board for actual expenses incurred by the trustee in performing duties under this chapter. (V.A.C.S. Art. 4437e-3, Sec. 6(a).)

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

(1) preside at meetings of the financing council;

(2) be the chief executive and administrative officer of the financing council; and

(3) administer the duties and functions of the financing council.

(b) The financing council shall elect one trustee as vice-chairman. The vice-chairman shall perform the duties of the chairman when the chairman is absent or incapable of performing the chairman's duties.

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

(d) The financing council may elect a treasurer.

(e) The secretary and treasurer may be the same individual.

(f) The secretary, treasurer, and assistant secretaries need not be trustees.

(g) The financing council may require other duties of the officers.

(h) The officers shall be elected at the first financing council meeting occurring on or after September 1 of each odd-numbered year and when necessary to fill a vacancy. (V.A.C.S. Art. 4437e-3, Secs. 6(b), (c), (d).)

**Sec. 224.018. FINANCING COUNCIL MEETINGS.** (a) The financing council shall meet regularly at the times and places specified by the financing council. The chairman or any two other trustees may call a special meeting to be held at any time and place in the state.

(b) The secretary of state shall post written notice of the date, hour, place, and subject of each financing council meeting at least 72 hours before the scheduled time of the meeting. The secretary of state may publish the notice in the Texas Register. The notice is sufficient if posted two hours before the convening of a meeting on an emergency or an urgent public necessity, which must be expressed in the notice. An action taken by the financing council on a subject for which notice was not given as required by this section is voidable. (V.A.C.S. Art. 4437e-3, Secs. 6(g), (h).)

**Sec. 224.019. ACTIONS BY RESOLUTION; COMMITTEES.** (a) The financing council acts by written resolution adopted by a majority of the trustees present at a meeting at which a quorum is present.

(b) A committee of the council may not be delegated the power to manage the affairs of the council. (V.A.C.S. Art. 4437e-7, Secs. 6(f), (l).)

**Sec. 224.020. RULES.** The council may adopt rules, which may include provisions for the management of the affairs of the financing council. (V.A.C.S. Art. 4437e-7, Secs. 6(k), 7(15).)

**Sec. 224.021. LIABILITY AND INDEMNIFICATION.** (a) A trustee is not personally liable for a bond issued or a contract made by the financing council.

(b) The financing council shall indemnify an individual for necessary and actual expenses and costs, including attorney's fees, incurred by the individual in connection

with a claim asserted against the individual as a result of service as a trustee or officer of the financing council.

(c) Subsection (b) does not require indemnity if the trustee or officer was guilty of gross negligence or misconduct in the matter for which indemnity is claimed. In any suit in which indemnity is sought, the court, to award indemnity, must find that the trustee or officer was not guilty of gross negligence or misconduct in the matter. (V.A.C.S. Art. 4437e-3, Secs. 6(j), (m), (n).)

Sec. 224.022. **CONFLICTING FINANCIAL INTERESTS.** A trustee or employee of the financing council may not have a direct or indirect financial interest in any bond issue or in any transaction under this chapter to which the financing council is a party. (V.A.C.S. Art. 4437e-3, Sec. 21.)

Sec. 224.023. **WAIVER OF NOTICE.** A trustee may waive notice required to be given to a trustee under the rules of the financing council or this chapter by a written waiver signed by the trustee entitled to the notice before or after the time required for the notice. (V.A.C.S. Art. 4437e-3, Sec. 27.)

Sec. 224.024. **OPEN RECORDS.** The books and records of the financing council are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4437e-3, Sec. 26(b) (part).)

Sec. 224.025. **EXEMPT FROM PUBLIC BIDDING.** The financing council is exempt from public bidding requirements of this state. (V.A.C.S. Art. 4437e-3, Sec. 8 (part).)

Sec. 224.026. **DISSOLUTION OF FINANCING COUNCIL; LIMITATIONS ON SUITS.** (a) The dissolution of the financing council does not take away or impair a remedy available to or against the financing council or its trustees or officers for any right or claim existing, or any liability incurred, before the dissolution if an action or other proceeding on the right, claim, or liability is begun within three years after the date of the dissolution.

(b) The action or proceeding by or against the financing council may be prosecuted or defended by the financing council in its name.

(c) The trustees and officers may take appropriate action to protect the remedy, right, or claim. (V.A.C.S. Art. 4437e-3, Sec. 26(e).)

[Sections 224.027-224.050 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 224.051. **GENERAL POWERS.** The financing council may provide at reasonable cost health-related equipment that will improve the adequacy, cost, and accessibility of health care in this state. (V.A.C.S. Art. 4437e-3, Secs. 2 (part), 4(a) (part), 7 (part).)

Sec. 224.052. **SPECIFIC POWERS.** The financing council may:

(1) provide, or arrange for the provision by a participating health care provider, through acquisition, lease, fabrication, repair, reconditioning, or installation, health-related equipment to be located in a health facility;

(2) lease as lessor health-related equipment;

(3) sell, by installment payments or other manner, grant an option, or contract to sell and convey health-related equipment;

(4) contract, incur a liability, and borrow money at interest;

(5) purchase, lease, acquire, own, possess, improve, and use and deal with or in health-related equipment or an interest in health-related equipment, wherever located, as the purposes of the financing council may require;

(6) sell, convey, mortgage, pledge, lease, exchange, or dispose of, in any manner, all or any part of the property or assets of the financing council;

(7) sue, be sued, and be a party to a suit in its own name;

(8) contract for services with engineers, attorneys, accountants, health care and financial experts, and other consultants and agents;

(9) appoint agents;

(10) select depositories;

(11) purchase any type of insurance; and

(12) have a seal and use the seal or its facsimile. (V.A.C.S. Art. 4437e-3, Sec. 7 (part).)

**Sec. 224.053. LENDING MONEY AND INVESTMENTS.** (a) The financing council may:

(1) lend money for its corporate purposes;

(2) invest its funds; and

(3) hold property as security for its loans or investments.

(b) A loan for the purpose of providing financing of the cost of health-related equipment may be:

(1) secured or unsecured;

(2) temporary or permanent;

(3) for all or any part of the costs of the health-related equipment;

(4) for refunding obligations, mortgages, or advances;

(5) at interest rates determined by the council;

(6) made to a participating health care provider; and

(7) made to a bank, savings and loan association, or other entity that will directly or indirectly provide financing for health-related equipment. (V.A.C.S. Art. 4437e-3, Sec. 7 (part).)

**Sec. 224.054. LIMITATION OF POWERS.** The financing council may not:

(1) incur a financial obligation unless the obligation is payable solely from:

(A) the proceeds from the sale of bonds;

(B) revenue from the lease or sale of health-related equipment;

(C) revenue realized from a loan made by the financing council to finance health-related equipment;

(D) revenue from the operation or ownership of health-related equipment;

(E) proceeds from insurance; or

(F) other revenue that may be provided by a participating health care provider;

(2) impose taxes;

(3) exercise the power of eminent domain;

(4) exercise police power; or

(5) exercise any other equivalent sovereign power of this state or of the hospital advisory council. (V.A.C.S. Art. 4437e-3, Sec. 7 (part).)

**Sec. 224.055. STATE FUNDS.** (a) The financing council may not use state money other than financing council funds received as authorized by this chapter.

(b) The state may not lend its credit or grant or loan any public money or other thing of value in aid of the financing council. (V.A.C.S. Art. 4437e-3, Secs. 4 (part), 8 (part).)

**Sec. 224.056. HEALTH-RELATED EQUIPMENT PROGRAM.** (a) The financing council may have a program to provide health-related equipment to be operated by participating health care providers in health facilities or to fund pension fund contributions for participating health care providers.

(b) For this program, the financing council may:

(1) establish financial eligibility standards for participating health care providers;

(2) obtain or aid in obtaining from the United States, this state, or any private company insurance for or a guarantee of the payment or repayment of a loan, rent,

principal, redemption premium, or interest, or any part of a payment or repayment, on a bond;

(3) contract or execute an instrument with respect to any insurance and accept payment in the event of damage to or destruction of any health-related equipment;

(4) contract or execute an instrument with respect to any insurance, guarantee, or letter of credit, accept payment in the event of default by a participating health care provider or other entity to which a loan has been made, and assign the insurance or guarantee as security for bonds issued by the financing council;

(5) obtain and pay the costs of obtaining letters of credit from a national or state bank or other entity authorized to issue letters of credit to secure the payment of bonds issued by the financing council or to secure the payment of any loan, lease, or purchase payment owed by a participating health care provider to the financing council;

(6) contract with an entity to secure the payment of bonds and to authorize the entity to approve those participating health care providers that may receive reimbursement for or finance or refinance directly or indirectly health-related equipment or that may receive funds to fund pension fund contributions with proceeds from the bonds secured by the entity;

(7) approve banks, savings and loan associations, or other entities to which the financing council may loan its funds to finance or to fund pension fund contributions for participating health care providers;

(8) loan to a participating health care provider or a bank, savings and loan association, or other entity under an installment purchase contract or loan agreement money to reimburse, finance, or refinance directly or indirectly the cost of specific items of health-related equipment; and

(9) loan funds to pay pension fund contributions for a participating health care provider. (V.A.C.S. Art. 4437e-3, Sec. 9.)

Sec. 224.057. **EMPLOYEES AND INDEPENDENT CONTRACTORS.** (a) The financing council may employ experts and agents and may contract with independent contractors and may delegate to those persons the power to manage the routine affairs of the financing council, including the processing of applications from health care providers for loans from the financing council for the financing of health-related equipment and for the lease or purchase from the financing council or financing by the financing council of health-related equipment.

(b) The financing council may not delegate:

(1) the power to issue, sell, and deliver bonds; or

(2) the power to establish financial eligibility standards for participating health care providers. (V.A.C.S. Art. 4437e-3, Sec. 10.)

Sec. 224.058. **FINANCING COUNCIL EXPENSES.** Expenses of the financing council incurred in carrying out this chapter are payable solely from funds provided under the authority of this chapter. The financing council may not incur liability in excess of money available from the sale of bonds or from participating health care providers. Money borrowed by the council for initial expenses, if any, shall be charged to and appropriated among participating health care providers. (V.A.C.S. Art. 4437e-3, Sec. 11 (part).)

Sec. 224.059. **USE AND APPLICATION OF OTHER LAWS.** (a) The financing council may use any other law not in conflict with this chapter to the extent convenient or necessary to carry out any power or authority granted by this chapter.

(b) This chapter does not exempt the financing council or any participating health care provider from complying with Chapter 104 or 225.

(c) A transaction involving health-related equipment may not be financed under this chapter until the participating health care provider that is a party to or benefits from the transaction complies with Chapter 225, if a program is established under that chapter, and with Chapter 104. (V.A.C.S. Art. 4437e-7, Secs. 16(a) (part), (b); 24.)

Sec. 224.060. **DISCRIMINATION PROHIBITED.** A person in this state may not, because of race, color, religion, national origin, age, or sex, be excluded from participation



in, denied the benefits of, or subjected to discrimination under a program or activity funded in whole or in part with funds made available under this chapter. (V.A.C.S. Art. 4437e-3, Sec. 22.)

Sec. 224.061. **PERFECTION OF SECURITY INTERESTS.** A security interest granted by the financing council may be perfected in the manner and with the effect provided by Chapter 9, Business & Commerce Code. This section prevails over any provision in Section 9.104, Business & Commerce Code, to the contrary. (V.A.C.S. Art. 4437e-3, Sec. 25.)

[Sections 224.062–224.100 reserved for expansion]

#### **SUBCHAPTER D. BONDS**

Sec. 224.101. **AUTHORITY TO ISSUE BONDS.** (a) The financing council may issue its bonds.

(b) The financing council shall sell the bonds at public or private sale for the price it determines. (V.A.C.S. Art. 4437e-3, Secs. 7(4) (part), 12(a) (part), (d) (part).)

Sec. 224.102. **BOND TERMS.** (a) The financing council shall prescribe the terms of its bonds.

(b) A financing council bond must:

(1) be dated;

(2) bear interest at a fixed or variable effective rate not to exceed 15 percent as computed according to Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes); and

(3) mature at the time or times not later than 20 years from their date.

(c) A financing council bond may be made redeemable before maturity at the price and on terms determined by the financing council. (V.A.C.S. Art. 4437e-3, Secs. 12(b) (part), (d) (part).)

Sec. 224.103. **BOND FORM.** (a) The financing council shall determine for the bonds, including initially attached interest coupons, their form and denomination, the places where they are payable, and the manner of their execution or authentication.

(b) The signature on a bond, or the facsimile signature on a bond, of an officer of the financing council who ceased to be an officer before the delivery of and payment for the bond, is valid and sufficient for all purposes as though the officer had remained in office until the delivery and payment.

(c) The bonds may be in coupon or registered form, or both, or may be payable to a specific person.

(d) The financing council may provide for the:

(1) registration of a coupon bond as to principal alone;

(2) conversion of coupon bonds into fully registered bonds without coupons; and

(3) reconversion into coupon bonds of any fully registered bonds without coupons.

(e) The duty of conversion or reconversion may be imposed in a trust agreement on a bank as trustee. (V.A.C.S. Art. 4437e-3, Sec. 12(b) (part).)

Sec. 224.104. **PAYMENT OF BONDS.** The principal of, any redemption premium for, and interest on the bonds are payable solely from, and may be secured by a pledge of:

(1) all or any part of the proceeds of bonds;

(2) revenues from the lease or sale of health-related equipment or from a loan made by the financing council to finance or refinance in whole or in part health-related equipment;

(3) funds to fund pension fund contributions;

(4) revenues from operating health-related equipment, including insurance proceeds; and

(5) any other revenues as may be provided by a participating health care provider, or a bank, savings and loan association, or other entity to which a loan is made. (V.A.C.S. Art. 4437e-3, Sec. 12(c).)

Sec. 224.105. USE OF BOND PROCEEDS. (a) The bond proceeds may be used solely for:

- (1) the payment of all or part of the cost of, or for the making of a loan in the amount of all or part of the cost of, health-related equipment;
- (2) funds to fund pension fund contributions;
- (3) the deposit to a reserve fund or funds for the bonds at the option of the financing council; and
- (4) the payment of costs provided by Subsection (b).

(b) The financing council is entitled to receive, from bond proceeds, reimbursement for:

(1) all of the financing council's out-of-pocket expenses and costs incurred in the issuance, sale, and delivery of the bonds, including all financing, legal, financial advisory, printing, and other expenses and costs in issuing the bonds; and

(2) compensation paid to employees, if any, of the financing council for the time the employees spent on activities relating to the issuance, sale, and delivery of the bonds.

(c) The proceeds shall be disbursed in the manner and under the restrictions, if any, as may be determined by the financing council. (V.A.C.S. Art. 4437e-3, Secs. 12(a) (part), (e).)

Sec. 224.106. SPECIAL PROVISIONS INCLUDABLE IN BONDS. (a) A bond resolution or related trust agreement, trust indenture, indenture of mortgage, or deed of trust may, as a part of the contract with the bondholders:

(1) pledge or assign:

(A) revenue from health-related equipment;

(B) a mortgage, lease, or other security given or to be given by participating health care providers, even if unidentified at the time of issuing the bonds, with respect to which the bonds are to be issued; or

(C) other specified financing council revenue;

(2) specify the rentals, fees, and other charges, the schedule of principal payments, and the amounts to be raised each year by the rentals, fees, and other charges, and the use, investment, and disposition of those amounts;

(3) set aside the reserves or sinking funds and provide for their regulation, investment, and disposition;

(4) limit:

(A) the use of health-related equipment and of money to fund pension fund contributions financed or to be financed by the proceeds of the sale of bonds;

(B) the purpose to which or the investments in which the proceeds of sale of bonds may be applied; and

(C) the issuance of additional bonds, the terms on which additional bonds may be issued and secured, and the terms on which additional bonds may rank on a parity with or be subordinate or superior to other bonds;

(5) provide for refunding of outstanding bonds;

(6) specify the procedure, if any, by which a contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent to the amendment or abrogation, the manner in which the consent may be given, and restrictions on the individual rights of action by bondholders;

(7) identify omissions that constitute a default in the financing council's duties to holders of its bonds and provide the rights and remedies of the holders in the event of default; and

(8) contain other matters relating to the bonds that the financing council considers desirable.

(b) A bond may be secured by a pooling of leases, of loan agreements, or of mortgages or other securities, regardless of whether the leases, loan agreements, or mortgages or other securities exist at the time of sale and delivery of the bonds or are agreed to by the financing council or granted to the financing council after that time.

(c) Under a pooling arrangement, the financing council may:

(1) assign its rights as lessor and pledge rents under two or more leases of health-related equipment with two or more participating health care providers as lessees;

(2) assign its rights as lender and pledge loan payments under two or more loan agreements relating to two or more items of health-related equipment with two or more participating health care providers as borrowers; or

(3) assign its rights as mortgagee and pledge mortgages from two or more participating health care providers, banks, savings and loan associations, or other entities on the terms provided in a bond resolution or other instrument under which the bonds are issued. (V.A.C.S. Art. 4437e-7, Sec. 12(f).)

**Sec. 224.107. PERSONAL LIABILITY OF ISSUER.** A trustee or any other person executing the bonds is not personally liable on the bonds or personally liable or accountable because of their issuance. (V.A.C.S. Art. 4437e-7, Sec. 12(g).)

**Sec. 224.108. ANTICIPATORY OBLIGATIONS.** (a) Before the issuance of definitive bonds, the financing council may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the definitive bonds have been executed and are available for delivery.

(b) The maximum term for interim receipts or temporary bonds is three years. (V.A.C.S. Art. 4437e-7, Sec. 12(h).)

**Sec. 224.109. FINANCING COUNCIL MAY PURCHASE OWN BONDS.** The financing council may purchase its bonds out of any of its available funds. The financing council may hold, pledge, cancel, or resell its own bonds in accordance with the resolution or trust indenture relating to the bonds. (V.A.C.S. Art. 4437e-3, Sec. 12(i).)

**Sec. 224.110. BONDS AND OTHER AGREEMENTS AS SECURITIES.** (a) Financing council bonds, including interest coupons, are securities within the meaning of Chapter 8, Business & Commerce Code, notwithstanding a provision of Section 8.102, Business & Commerce Code, to the contrary.

(b) Financing council bonds, including interest coupons, are exempt securities under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes). A lease agreement, sales agreement, or other contract under this chapter is not a security within the meaning of that Act. (V.A.C.S. Art. 4437e-3, Secs. 12(j), 14.)

**Sec. 224.111. REFUNDING BONDS.** (a) The financing council may issue its bonds to refund outstanding financing council bonds. Refunding includes the payment of redemption premiums and interest accrued or to accrue to the date of redemption of the refunded bonds.

(b) Refunding bonds may be issued in exchange or substitution for outstanding bonds or may be sold and the proceeds used to pay or redeem outstanding bonds.

(c) Other provisions of this chapter that apply to bonds, bondholder rights, and financing council powers and duties with respect to bonds apply to refunding bonds. (V.A.C.S. Art. 4437e-3, Sec. 13.)

**Sec. 224.112. BONDS NOT STATE OBLIGATIONS.** (a) The financing council's bonds are not obligations of the Texas Department of Health, this state, or any political subdivision or agency of this state, other than the financing council, and those bonds are not a pledge of the faith and credit of any of them, other than the financing council. The issuance of bonds under this chapter does not directly, indirectly, or contingently obligate the state or any political subdivision or agency of the state to levy taxes or to make any appropriation for payment of the bonds. All bonds issued by the financing council under this chapter are payable, and must state that they are payable, solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or of any trust indenture or mortgage or deed of trust executed as security for the bonds.

(b) Each bond of the financing council must contain on its face a statement to the effect that:

(1) this state is not obligated to pay the principal of, any redemption premium on, or interest on the bond; and

(2) the state's taxing power and the state's faith and credit are not pledged, given, or loaned to the bond payment. (V.A.C.S. Art. 4437e-3, Secs. 15(a), (b).)

Sec. 224.113. AGREEMENT NOT TO IMPAIR BONDS. The state agrees with the holders of bonds issued under this chapter not to limit or alter the rights vested in the financing council to fulfill the terms of agreements made with the bondholders or impair the rights and remedies of the bondholders until the bonds, the interest on the bonds, and expenses in connection with any action or proceeding by or on behalf of the bondholders are fully paid. The financing council may include this agreement for the state in any agreement with the bondholders. (V.A.C.S. Art. 4437e-3, Sec. 15(c).)

Sec. 224.114. BONDS AS INVESTMENTS. (a) The bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, fiduciaries, trustees and guardians, and sinking funds of political corporations and subdivisions of this state, unless the bonds are ineligible for investments in accordance with the criteria established in other statutes, rulings, or regulations of this state or the United States.

(b) The bonds are eligible to secure the deposit of public funds of this state and of political corporations and subdivisions of this state, and are lawful and sufficient security for those deposits at their face value when accompanied by the unmatured coupons appurtenant to the bonds. (V.A.C.S. Art. 4437e-3, Sec. 19.)

Sec. 224.115. REPLACEMENT BONDS. The financing council may provide for the replacement of a mutilated, lost, stolen, or destroyed bond or interest coupon. (V.A.C.S. Art. 4437e-3, Sec. 20.)

#### CHAPTER 225. HEALTH PLANNING AND CAPITAL EXPENDITURE REVIEW

Sec. 225.001. DEFINITIONS

Sec. 225.002. FEDERAL LAW

Sec. 225.003. GOVERNOR'S DUTIES RELATING TO HEALTH PLANNING

Sec. 225.004. CAPITAL EXPENDITURE REVIEW PROGRAM

Sec. 225.005. EXECUTIVE ORDER

#### CHAPTER 225. HEALTH PLANNING AND CAPITAL EXPENDITURE REVIEW

Sec. 225.001. DEFINITIONS. In this chapter:

(1) "Capital expenditure" means an expenditure that is not an operation or a maintenance expense under generally accepted accounting principles.

(2) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, and any other facility designated a health care facility by federal law. The term does not include the office of physicians or practitioners of the healing arts practicing individually or in groups. (V.A.C.S. Art. 4418h, Secs. 1.03(9), (17) (part).)

Sec. 225.002. FEDERAL LAW. A reference in this chapter to federal law is a reference to any pertinent federal authority, including:

(1) the National Health Planning and Resources Development Act of 1974 (Pub. L. No. 93-641), as amended by the Health Planning and Resources Development Amendments of 1979 (Pub. L. No. 96-79);

(2) Pub. L. Nos. 79-725, 88-164, 89-749, and 92-603; and

(3) the federal rules and regulations adopted under a law specified by Subdivision (1) or (2). (V.A.C.S. Art. 4418h, Sec. 1.03(8).)

**Sec. 225.003. GOVERNOR'S DUTIES RELATING TO HEALTH PLANNING.** (a) The governor, as chief executive and planning officer of this state, may perform the duties and functions assigned to the governor by federal law.

(b) The governor may transfer personnel, equipment, records, obligations, appropriations, functions, and duties of the governor's office to another agency. (V.A.C.S. Art. 4418h, Sec. 1.05(a).)

**Sec. 225.004. CAPITAL EXPENDITURE REVIEW PROGRAM.** (a) The governor by executive order may establish a program to comply with federal law to review capital expenditures made by or on behalf of a health care facility if the governor finds that the program is necessary to prevent the loss of federal funds.

(b) The governor may authorize the program to negotiate an agreement on behalf of the state with the Secretary of Health and Human Services to administer a state capital expenditure review program under Section 1122 of the Social Security Act (42 U.S.C. Section 1320a-1), the federal rules and regulations adopted under that Act, or other pertinent federal authority.

(c) If necessary, the governor may use any available funds to implement the program. (V.A.C.S. Art. 4418h, Secs. 1.03(17) (part); 1.05(b) (part), (d).)

**Sec. 225.005. EXECUTIVE ORDER.** (a) An order issued under Section 225.004(a) must contain the governor's findings, including a brief description of the reason for the findings.

(b) An unrescinded order issued under Section 225.004(a) that has not expired on its own terms expires on September 1 after the next regular legislative session that begins after the date on which the order is issued. (V.A.C.S. Art. 4418h, Secs. 1.05(b) (part), (c).)

[Chapters 226–240 reserved for expansion]

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SUBTITLE B. LICENSING OF HEALTH FACILITIES

CHAPTER 241. HOSPITALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 241.001. SHORT TITLE. This chapter may be cited as the Texas Hospital Licensing Law. (V.A.C.S. Art. 4437f, Sec. 1.)

Sec. 241.002. PURPOSE. The purpose of this chapter is to protect and promote the public health and welfare by providing for the development, establishment, and enforcement of certain standards in the construction, maintenance, and operation of hospitals. (V.A.C.S. Art. 4437f, Sec. 3.)

Sec. 241.003. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Council" means the Hospital Licensing Advisory Council.
- (3) "Department" means the Texas Department of Health.
- (4) "General hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy; and

(B) regularly maintains, at a minimum, clinical laboratory services, diagnostic X-ray services, treatment facilities including surgery or obstetrical care or both, and other definitive medical or surgical treatment of similar extent.

(5) "Governmental unit" means a political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(6) "Hospital" includes a general hospital and a special hospital.

(7) "Medical staff" means a physician or group of physicians and a podiatrist or group of podiatrists who by action of the governing body of a hospital are privileged to work in and use the facilities of a hospital for or in connection with the observation, care, diagnosis, or treatment of an individual who is, or may be, suffering from a mental or physical disease or disorder or a physical deformity or injury.

(8) "Person" means an individual, firm, partnership, corporation, association, or joint stock company, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(9) "Physician" means a physician licensed by the Texas State Board of Medical Examiners.

(10) "Podiatrist" means a podiatrist licensed by the Texas State Board of Podiatry Examiners.

(11) "Special hospital" means an establishment that:

(A) offers services, facilities, and beds for use for more than 24 hours for two or more unrelated individuals who are regularly admitted, treated, and discharged and who require services more intensive than room, board, personal services, and general nursing care;

(B) has clinical laboratory facilities, diagnostic X-ray facilities, treatment facilities, or other definitive medical treatment;

(C) has a medical staff in regular attendance; and

(D) maintains records of the clinical work performed for each patient. (V.A.C.S. Art. 4437f, Sec. 2 (part).)

**Sec. 241.004. EXEMPTIONS.** This chapter does not apply to a facility:

(1) licensed under Chapter 242 or Sections 88 through 99, Texas Mental Health Code (Articles 5547-88 through 5547-99, Vernon's Texas Civil Statutes);

(2) maintained or operated by the federal government or an agency of the federal government; or

(3) maintained or operated by this state or an agency of this state. (V.A.C.S. Art. 4437f, Sec. 2(b) (part).)

**Sec. 241.005. EMPLOYMENT OF PERSONNEL.** The department may employ stenographers, inspectors, and other necessary assistants in carrying out the provisions of this chapter. (V.A.C.S. Art. 4437f, Sec. 12.)

[Sections 241.006-241.020 reserved for expansion]

#### **SUBCHAPTER B. HOSPITAL LICENSES**

**Sec. 241.021. LICENSE REQUIRED.** A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain a hospital in this state without a license issued under this chapter. (V.A.C.S. Art. 4437f, Secs. 2(b) (part), 4.)

**Sec. 241.022. LICENSE APPLICATION.** (a) An application for a license must be made to the department on a form provided by the department.

(b) The application must contain information that the department may reasonably require.

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

(1) at least one physician is on the medical staff of the hospital, including evidence that the physician is currently licensed; and

(2) the governing body of the hospital has adopted and implemented a patient transfer policy in accordance with Sections 241.027 and 241.028.

(d) The application must be accompanied by:

(1) a copy of the hospital's current patient transfer policy; and

(2) a license fee, which shall be refunded to the applicant if the application is denied.

(e) The department may require that the application be approved by the local health authority or other local official for compliance with municipal ordinances on building construction, fire prevention, and sanitation. A hospital located outside the limits of a

municipality shall comply with corresponding state laws. (V.A.C.S. Art. 4437f, Secs. 7(a), (b), (c).)

Sec. 241.023. **ISSUANCE OF LICENSE.** (a) On receiving a license application and the license fee, the department shall issue a license if it finds that the applicant and the hospital comply with this chapter and the rules or standards adopted under this chapter.

(b) A license may be renewed annually after payment of the required fee.

(c) The department may issue a license only for the premises and person or governmental unit named in the application.

(d) A license may not be transferred or assigned without the written approval of the department.

(e) A license shall be posted in a conspicuous place on the licensed premises. (V.A.C.S. Art. 4437f, Secs. 8, 10.)

Sec. 241.024. **HOSPITAL LICENSING DIRECTOR.** (a) The commissioner of health shall appoint, with the advice and consent of the board, a person to serve as hospital licensing director.

(b) A person appointed as the hospital licensing director must:

(1) have at least five years experience or training, or both, in the field of hospital administration;

(2) be of good moral character; and

(3) have been a resident of this state for at least three years.

(c) The hospital licensing director shall administer this chapter and is directly responsible to the department. (V.A.C.S. Art. 4437f, Sec. 5(e).)

Sec. 241.025. **LICENSE FEES.** (a) The department shall charge each hospital an annual license fee for an initial license or a license renewal.

(b) The board by rule shall adopt fees according to a schedule in which the number of beds in the hospital determines the amount of the fee. The fee may not exceed \$3 a bed, and the total fee may not be less than \$100 or more than \$3,000.

(c) All license fees collected shall be deposited in the state treasury to the credit of the board to administer and enforce this chapter. (V.A.C.S. Art. 4437f, Secs. 7(d), (e).)

Sec. 241.026. **RULES AND MINIMUM STANDARDS.** (a) The board, with the advice of the council, shall adopt and enforce rules and minimum standards to further the purposes of this chapter. The rules and minimum standards may relate only to:

(1) minimum requirements for staffing by physicians and nurses;

(2) hospital services relating to patient care; and

(3) fire prevention, safety, and sanitary provisions of hospitals.

(b) The board may not adopt standards that exceed the minimum standards for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.). (V.A.C.S. Art. 4437f, Secs. 5(a), (b) (part).)

Sec. 241.027. **MINIMUM STANDARDS FOR PATIENT TRANSFERS.** (a) The board shall adopt rules to implement the minimum standards governing the transfer of patients as provided by this section.

(b) The rules must provide that patient transfers between hospitals should be accomplished in a medically appropriate manner from physician to physician and from hospital to hospital by providing for:

(1) notification to the receiving hospital before the patient is transferred and confirmation by the receiving hospital that the patient meets the receiving hospital's admissions criteria relating to appropriate bed, physician, and other services necessary to treat the patient;

(2) the use of medically appropriate life support measures that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use to stabilize the patient before the transfer and to sustain the patient during the transfer;



(3) the provision of appropriate personnel and equipment that a reasonable and prudent physician exercising ordinary care in the same or a similar locality would use for the transfer; and

(4) the transfer of all necessary records for continuing the care for the patient.

(c) The board may not adopt minimum standards that require the consent of the patient or the patient's personal representative before the patient is transferred. (V.A.C.S. Art. 4437f, Secs. 5(b) (part), (c).)

**Sec. 241.028. ADOPTION OF PATIENT TRANSFER POLICIES.** (a) A hospital shall adopt binding policies relating to patient transfers that are consistent with the rules adopted by the board.

(b) The board by rule shall set the date by which a hospital must adopt the patient transfer policies.

(c) A hospital shall, if possible, implement its transfer policies by adopting transfer agreements with other hospitals. (V.A.C.S. Art. 4437f, Secs. 5(b) (part), (d).)

[Sections 241.029–241.050 reserved for expansion]

### **SUBCHAPTER C. ENFORCEMENT**

**Sec. 241.051. INSPECTIONS.** An officer, employee, or agent of the department may enter and inspect a hospital at any reasonable time to assure compliance with or prevent a violation of this chapter. (V.A.C.S. Art. 4437f, Sec. 11.)

**Sec. 241.052. COMPLIANCE WITH RULES AND STANDARDS.** (a) A hospital that is in operation when an applicable rule or minimum standard is adopted under this chapter must be given a reasonable period within which to comply with the rule or standard.

(b) The period for compliance may not exceed six months, except that the department may extend the period beyond six months if the hospital sufficiently shows the department that it requires additional time to complete compliance with the rule or standard. (V.A.C.S. Art. 4437f, Sec. 6.)

**Sec. 241.053. DENIAL, SUSPENSION, REVOCATION, OR REISSUANCE OF LICENSE.** (a) The department may deny, suspend, or revoke a hospital's license if the department finds that the hospital:

(1) failed substantially to comply with this chapter or a rule or standard adopted under this chapter; or

(2) aided, abetted, or permitted the commission of an illegal act.

(b) A hospital whose license is suspended or revoked may apply to the department for the reissuance of a license. The department may reissue the license if the department determines that the hospital has corrected the conditions that led to the suspension or revocation.

(c) A hospital must apply for reissuance in the form and manner required by the department.

(d) Judicial review of a final decision by the department is by trial de novo in the same manner as a case appealed from the justice court to the county court. The substantial evidence rule does not apply. (V.A.C.S. Art. 4437f, Secs. 9(a), (c), (d).)

**Sec. 241.054. VIOLATIONS; INJUNCTIONS.** (a) The department shall:

(1) notify a hospital of a finding by the department that the hospital is violating or has violated this chapter or a rule or standard adopted under this chapter; and

(2) provide the hospital an opportunity to correct the violation.

(b) After the notice and opportunity to comply, the department may petition a district court in the county in which a violation occurs for assessment and recovery of the civil penalty provided by Section 241.055, for injunctive relief, or both.

(c) The department may petition a district court for a temporary restraining order to restrain a continuing violation if the department finds that the violation creates an immediate threat to the health and safety of the patients of a hospital.

(d) The district court shall grant the injunctive relief warranted by the facts.

(e) The attorney general or the appropriate district or county attorney shall initiate and conduct the suit at the request of the commissioner of health. (V.A.C.S. Art. 4437f, Secs. 9B(a), (b), (c).)

Sec. 241.055. CIVIL PENALTY. (a) A hospital that does not timely adopt, implement, and enforce a patient transfer policy in accordance with Sections 241.027 and 241.028 is liable for a civil penalty of not more than \$1,000 for each day of violation and for each act of violation.

(b) In determining the amount of the penalty, the district court shall consider:

- (1) the hospital's previous violations;
- (2) the seriousness of the violation;
- (3) whether the health and safety of the public was threatened by the violation; and
- (4) the demonstrated good faith of the hospital. (V.A.C.S. Art. 4437f, Sec. 9B(d).)

Sec. 241.056. SUIT BY PERSON HARMED BY FAILURE TO ADOPT, IMPLEMENT, OR ENFORCE PATIENT TRANSFER POLICY. (a) A person who is harmed by the failure of a hospital to timely adopt, implement, or enforce a patient transfer policy in accordance with Sections 241.027 and 241.028 may petition a district court for appropriate injunctive relief.

(b) Venue for a suit brought under this section is in the county in which the person resides or, if the person is not a resident of this state, in Travis County.

(c) The person may also pursue remedies for civil damages under common law. (V.A.C.S. Art. 4437f, Sec. 9C.)

Sec. 241.057. CRIMINAL PENALTY. (a) A person commits an offense if the person establishes, conducts, manages, or operates a hospital without a license.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100 for the first offense and not more than \$200 for each subsequent offense.

(c) Each day of a continuing violation constitutes a separate offense. (V.A.C.S. Art. 4437f, Sec. 16.)

[Sections 241.058-241.080 reserved for expansion]

#### SUBCHAPTER D. HOSPITAL LICENSING ADVISORY COUNCIL

Sec. 241.081. COMPOSITION. The Hospital Licensing Advisory Council is composed of the following nine members appointed by the governor:

- (1) three members who are physicians and who are engaged in the active practice of medicine, one of whom is a member of the staff of a hospital with fewer than 50 beds;
- (2) three members who are hospital administrators actively engaged in the field of hospital administration for at least two years, one of whom is an administrator of a hospital with fewer than 50 beds and one other of whom is an administrator of a hospital with fewer than 101 beds; and
- (3) three members who represent the public. (V.A.C.S. Art. 4437f, Sec. 13 (part).)

Sec. 241.082. TERMS. (a) Members of the council serve for staggered six-year terms.

(b) A member whose term expires holds office until a successor is appointed.

(c) An appointment to fill a vacancy is for the unexpired term. (V.A.C.S. Art. 4437f, Sec. 13 (part).)

Sec. 241.083. COMPENSATION AND EXPENSES. A member of the council, while serving or acting in the member's official capacity on the council's official business, is entitled to receive:

(1) compensation of \$20 per day; and

(2) actual and necessary travel expenses while serving or acting away from the member's place of residence. (V.A.C.S. Art. 4437f, Sec. 13 (part).)

**Sec. 241.084. DUTIES.** The council shall:

(1) consult with and advise the board in matters of policy affecting the administration of this chapter and the development of rules and standards authorized under this chapter; and

(2) review and make recommendations concerning the rules and standards authorized under this chapter before adoption by the board. (V.A.C.S. Art. 4437f, Sec. 14 (part).)

**Sec. 241.085. SPECIAL MEETINGS.** A special meeting of the council may be called by the presiding officer of the board or at least three members of the council. (V.A.C.S. Art. 4437f, Sec. 14 (part).)

[Sections 241.086–241.100 reserved for expansion]

#### **SUBCHAPTER E. STAFF, RECORDS, AND PLAN REVIEWS**

**Sec. 241.101. HOSPITAL AUTHORITY CONCERNING MEDICAL STAFF.** (a) Except as otherwise provided by this section and Section 241.102, this chapter does not change the authority of the governing body of a hospital, as it considers necessary or advisable, to:

(1) make rules, standards, or qualifications for medical staff membership; or

(2) grant or refuse to grant membership on the medical staff.

(b) This chapter does not prevent the governing body of a hospital from adopting reasonable rules and requirements in compliance with this chapter relating to:

(1) qualifications for any category of medical staff appointments;

(2) termination of appointments; or

(3) the delineation or curtailment of clinical privileges of those who are appointed to the medical staff.

(c) The process for considering applications for medical staff membership and privileges must afford each applicant procedural due process.

(d) An applicant for medical staff membership or privileges may not be denied membership or privileges on any ground that is otherwise prohibited by law. (V.A.C.S. Art. 4437f, Secs. 17(a), (c), (d); 18 (part).)

**Sec. 241.102. AUTHORIZATIONS AND RESTRICTIONS IN RELATION TO PHYSICIANS AND PODIATRISTS.** (a) This chapter does not authorize a physician or podiatrist to perform medical or podiatric acts that are beyond the scope of the respective license held.

(b) This chapter does not prevent the governing body of a hospital from providing that:

(1) a podiatric patient be coadmitted to the hospital by a podiatrist and a physician;

(2) a physician be responsible for the care of any medical problem or condition of a podiatric patient that may exist at the time of admission or that may arise during hospitalization and that is beyond the scope of the podiatrist's license; or

(3) a physician determine the risk and effect of a proposed podiatric surgical procedure on the total health status of the patient.

(c) An applicant for medical staff membership may not be denied membership solely on the ground that the applicant is a podiatrist rather than a physician.

(d) This chapter does not automatically entitle a physician or a podiatrist to membership or privileges on a medical staff.

(e) The governing body of a hospital may not require a member of the medical staff to involuntarily:

(1) coadmit patients with a podiatrist;

(2) be responsible for the care of any medical problem or condition of a podiatric patient; or

(3) determine the risk and effect of any proposed podiatric procedure on the total health status of the patient. (V.A.C.S. Art. 4437f, Secs. 17(b), (e); 18 (part); 18A.)

Sec. 241.103. PRESERVATION OF RECORDS. (a) A hospital may authorize the disposal of any medical record on or after the 10th anniversary of the date on which the patient who is the subject of the record was last treated in the hospital.

(b) If a patient was younger than 18 years of age when the patient was last treated, the hospital may authorize the disposal of medical records relating to the patient on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the date on which the patient was last treated, whichever date is later.

(c) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved. (V.A.C.S. Art. 4437f, Sec. 5A.)

Sec. 241.104. HOSPITAL PLAN REVIEWS. (a) The board by rule shall adopt fees for hospital plan reviews according to a schedule based on the estimated construction costs. If an estimated construction cost cannot be established, the estimated cost is \$105 per square foot.

(b) The fee schedule may not exceed the following:

	Cost of Construction	Fee
(1)	\$ 600,000 or less	\$ 250
(2)	\$ 600,001 - \$2,000,000	500
(3)	\$ 2,000,001 - \$5,000,000	750
(4)	\$ 5,000,001 - \$10,000,000	1,000
(5)	\$10,000,001 and over	1,500.

(c) The department shall charge a fee for field surveys of construction plans reviewed under this section. The board by rule shall adopt a fee schedule for the surveys that provides a minimum fee of \$100 and a maximum fee of \$400 for each survey conducted. (V.A.C.S. Art. 4437f, Secs. 7A(a), (b).)

## CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS

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CHAPTER 242. CONVALESCENT AND NURSING HOMES AND RELATED INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 242.001. PURPOSE. The purpose of this chapter is to promote the public health, safety, and welfare by providing for the development, establishment, and enforcement of

standards for the treatment of residents of institutions and the establishment, construction, maintenance, and operation of institutions that, in the light of advancing knowledge, will promote safe and adequate treatment of residents. (V.A.C.S. Art. 4442c, Sec. 1.)

**Sec. 242.002. DEFINITIONS.** In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Elderly person" means an individual who is 65 years of age or older.
- (4) "Governmental unit" means the state or a political subdivision of the state, including a county or municipality.
- (5) "Hospital" has the meaning assigned by Chapter 241 (Texas Hospital Licensing Law).
- (6) "Institution" means:
  - (A) an establishment that:
    - (i) furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment; and
    - (ii) provides minor treatment under the direction and supervision of a physician licensed by the Texas State Board of Medical Examiners, or other services that meet some need beyond the basic provision of food, shelter, and laundry;
  - (B) a place or establishment that receives, treats, or cares for, overnight or longer, within a period of 12 months, four or more pregnant women or women who, within two weeks before the date of the treatment or care, gave birth to a child, not including a woman who receives maternity care in the place or establishment that is the home of a relative of the woman related within the third degree of consanguinity or affinity; or
  - (C) a foster care type residential facility that provides room and board to fewer than five persons who:
    - (i) are not related within the second degree of consanguinity or affinity to the proprietor; and
    - (ii) because of their physical or mental limitation, or both, require a level of care and services suitable to their needs that contributes to their health, comfort, and welfare.
- (7) "Person" means an individual, firm, partnership, corporation, association, or joint stock company, and includes a legal successor of those entities.
- (8) "Resident" means an individual, including a patient, who resides in an institution. (V.A.C.S. Art. 4442c, Secs. 2(a) (part), (b), (c), (d), (g), (i); New.)

**Sec. 242.003. EXEMPTIONS.** (a) This chapter does not apply to:

- (1) a hotel or other similar place that furnishes only food, lodging, or both, to its guests;
- (2) a hospital;
- (3) an establishment conducted by or for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend exclusively on prayer or spiritual means for healing, without the use of any drug or material remedy, if the establishment complies with safety, sanitary, and quarantine laws and rules;
- (4) an establishment that furnishes, in addition to food, shelter, and laundry, only baths and massages;
- (5) an institution operated by a person licensed by the Texas Board of Chiropractic Examiners;
- (6) a facility that:
  - (A) primarily engages in training, habilitation, rehabilitation, or education of clients or residents;

(B) is operated under the jurisdiction of a state or federal agency, including the Texas Rehabilitation Commission, Texas Department of Mental Health and Mental Retardation, Texas Department of Human Services, Texas Commission for the Blind, Texas Commission on Alcohol and Drug Abuse, Texas Department of Corrections, and the Veteran's Administration; and

(C) is certified through inspection or evaluation as meeting the standards established by the state or federal agency; and

(7) a foster care type residential facility that serves fewer than five persons and operates under rules adopted by the Texas Department of Human Services.

(b) An institution described by Section 242.002(6)(C) is subject to licensing under this chapter only if written application is made for participation in the intermediate care program under federal law. (V.A.C.S. Art. 4442c, Sec. 2(a) (part).)

Sec. 242.004. **SIMULTANEOUS CARE FOR PREGNANT WOMEN AND OTHER WOMEN.** This chapter does not prohibit an institution defined by Section 242.002(6)(B) from simultaneously caring for pregnant women and other women younger than 50 years of age. (V.A.C.S. Art. 4442c, Sec. 2(a) (part).)

Sec. 242.005. **ANNUAL REPORT.** (a) The department shall prepare annually a full report of the operation and administration of this chapter, including recommendations and suggestions it considers advisable.

(b) The department shall submit the report to the governor and the legislature not later than October 1 of each year. (V.A.C.S. Art. 4442c, Sec. 14(a).)

Sec. 242.006. **DIRECTORY OF LICENSED INSTITUTIONS.** (a) The department shall prepare and publish annually a directory of all licensed institutions.

(b) The directory must contain:

(1) the name and address of the institution;

(2) the name of the proprietor or sponsoring organization; and

(3) other pertinent data that the department considers useful and beneficial to those persons interested in institutions operated in accordance with this chapter.

(c) The department shall make copies of the directory available to the public. (V.A.C.S. Art. 4442c, Sec. 14(b).)

Sec. 242.007. **CONSULTATION AND COOPERATION.** (a) Whenever possible, the department shall:

(1) use the services of and consult with state and local agencies in carrying out its responsibility under this chapter; and

(2) use the facilities of the Texas Department of Human Services, particularly in establishing and maintaining standards relating to the humane treatment of residents.

(b) The department may cooperate with local public health officials of a county or municipality in carrying out this chapter and may delegate to those officials the power to make inspections and recommendations to the department in accordance with this chapter.

(c) The department may coordinate its personnel and facilities with a local agency of a municipality or county and may provide advice to the municipality or county if the municipality or county decides to supplement the state program with additional rules required to meet local conditions. (V.A.C.S. Art. 4442c, Secs. 7(d), 9 (part).)

Sec. 242.008. **EMPLOYMENT OF PERSONNEL.** The department may employ the personnel necessary to administer this chapter properly. (V.A.C.S. Art. 4442c, Sec. 15 (part).)

Sec. 242.009. **FEDERAL FUNDS.** The department may accept and use any funds allocated by the federal government to the department for administrative expenses. (V.A.C.S. Art. 4442c, Sec. 15 (part).)

Sec. 242.010. **CHANGE OF ADMINISTRATORS.** An institution that hires a new administrator or person designated as chief manager shall:

(1) notify the department in writing not later than the 30th day after the date on which the change becomes effective; and



(2) pay a \$20 administrative fee to the department. (V.A.C.S. Art. 4442c, Sec. 4B.)

**Sec. 242.011. LANGUAGE REQUIREMENTS PROHIBITED.** An institution may not prohibit a resident or employee from communicating in the person's native language with another resident or employee for the purpose of acquiring or providing medical treatment, nursing care, or institutional services. (V.A.C.S. Art. 4442c, Sec. 7A.)

**Sec. 242.012. RIGHTS OF RESIDENTS.** (a) Each institution shall implement and enforce Chapter 102, Human Resources Code.

(b) A resident who is 55 years of age or older has the rights prescribed by Chapter 102, Human Resources Code, in addition to any other rights the resident may have as a citizen. (V.A.C.S. Art. 4442c, Sec. 7B, as added Ch. 936, Acts of the 68th Leg., Reg. Sess., 1983.)

**Sec. 242.013. PAPERWORK REDUCTION RULES.** (a) The department and the Texas Department of Human Services shall:

(1) adopt rules to reduce the amount of paperwork an institution must complete and retain; and

(2) attempt to reduce the amount of paperwork to the minimum amount required by state and federal law unless the reduction would jeopardize resident safety.

(b) The department, the contracting agency, and providers shall work together to review rules and propose changes in paperwork requirements so that additional time is available for direct resident care. (V.A.C.S. Art. 4442c, Sec. 7D.)

**Sec. 242.014. PROHIBITION OF REMUNERATION.** (a) An institution may not receive monetary or other remuneration from a person or agency that furnishes services or materials to the institution or its occupants for a fee.

(b) The department may revoke the license of an institution that violates Subsection (a). (V.A.C.S. Art. 4442c, Sec. 17.)

[Sections 242.015–242.030 reserved for expansion]

#### **SUBCHAPTER B. LICENSING, FEES, AND INSPECTIONS**

**Sec. 242.031. LICENSE REQUIRED.** A person or governmental unit, acting severally or jointly with any other person or governmental unit, may not establish, conduct, or maintain an institution in this state without a license issued under this chapter. (V.A.C.S. Art. 4442c, Sec. 3.)

**Sec. 242.032. LICENSE APPLICATION.** (a) An application for a license is made to the department on a form provided by the department and must be accompanied by the license fee.

(b) The application must contain information that the department requires, which may include affirmative evidence of ability to comply with the standards and rules adopted under this chapter. (V.A.C.S. Art. 4442c, Secs. 4(a), (b) (part).)

**Sec. 242.033. ISSUANCE AND RENEWAL OF LICENSE.** (a) After receiving an application for a license, the department shall issue the license if, after inspection and investigation, it finds that the applicant and facilities meet the requirements established under this chapter.

(b) The department may issue a license only for:

- (1) the premises and persons or governmental unit named in the application; and
- (2) the maximum number of beds specified in the application.

(c) A license may not be transferred or assigned.

(d) A license is renewable annually after:

- (1) an inspection, unless an inspection is not required as provided by Section 242.047;
- (2) payment of the annual license fee; and
- (3) department approval of the annual report filed by the licensee.

(e) The annual report required for license renewal under Subsection (d)(8) must comply with rules adopted by the board that specify the date of submission of the report, the information it must contain, and its form. (V.A.C.S. Art. 4442c, Sec. 4(c) (part).)

Sec. 242.034. LICENSE FEES. (a) The license fee is \$50 plus \$2 for each unit of capacity or bed space for which a license is sought. An additional license fee may be charged as provided by Section 242.097.

(b) The license fee must be paid annually with each application for renewal of the institution's license.

(c) The state is not required to pay the license fee.

(d) An approved increase in bed space is subject to an additional fee.

(e) Except as provided by Section 242.097, all license fees collected shall be deposited in the state treasury to the credit of the department and may be appropriated to the department to administer and enforce this chapter. (V.A.C.S. Art. 4442c, Secs. 4(b) (part), 4(c) (part).)

Sec. 242.035. LICENSING CATEGORIES. (a) The department shall determine the rank of licensing categories.

(b) Unless prohibited by another state or federal requirement, the department shall allow a licensed institution to operate a portion of the institution under the standards of a lower licensing category. The board shall establish procedures and standards to accommodate an institution's operation under the lower category. (V.A.C.S. Art. 4442c, Sec. 7(c) (part).)

Sec. 242.036. GRADING. (a) The board may adopt, publish, and enforce minimum standards relating to the grading of an institution, other than an institution that provides maternity care, in order to recognize those institutions that provide more than the minimum level of services and personnel as established by the board.

(b) An institution that has a superior grade shall prominently display the grade for public view.

(c) As an incentive to attain the superior grade, an institution may advertise its grade, except that it may not advertise a superior grade that has been canceled.

(d) The department may not award a superior grade to an institution that, during the year preceding the grading inspection, violated state or federal law, rules, or regulations relating to:

- (1) the health, safety, or welfare of its residents;
- (2) resident funds;
- (3) the confidentiality of a resident's records;
- (4) the financial practices of the institution; or
- (5) the control of medication in the institution.

(e) The department shall cancel an institution's superior grade if the institution:

- (1) does not meet the criteria established for a superior grade; or
- (2) violates a state or federal law, rule, or regulation described by Subsection (d). (V.A.C.S. Art. 4442c, Sec. 7(a)(9).)

Sec. 242.037. MINIMUM STANDARDS. The board may adopt, publish, and enforce minimum standards relating to:

- (1) the construction of an institution, including plumbing, heating, lighting, ventilation, and other housing conditions, to ensure the residents' health, safety, comfort, and protection from fire hazard;
- (2) the regulation of the number and qualification of all personnel, including management and nursing personnel, responsible for any part of the care given to the residents;
- (3) requirements for in-service education of all employees who have any contact with the residents;
- (4) training on the care of persons with Alzheimer's disease and related disorders for employees who work with those persons;

(5) sanitary and related conditions in an institution and its surroundings, including water supply, sewage disposal, food handling, and general hygiene in order to ensure the residents' health, safety, and comfort;

(6) the dietary needs of each resident according to good nutritional practice or the recommendations of the physician attending the resident;

(7) equipment essential to the residents' health and welfare; and

(8) the use and administration of medication in conformity with applicable law and rules. (V.A.C.S. Art. 4442c, Secs. 7(a)(1), (2), (3), (4), (5), (8) (part).)

**Sec. 242.038. REASONABLE TIME TO COMPLY.** The board by rule shall give an institution that is in operation when a rule or standard is adopted under this chapter a reasonable time to comply with the rule or standard. (V.A.C.S. Art. 4442c, Sec. 8.)

**Sec. 242.039. FIRE SAFETY REQUIREMENTS.** (a) An institution licensed under this chapter shall comply with the 1985 edition of the Code for Safety to Life from Fire in Buildings and Structures, known as the Life Safety Code (Pamphlet No. 101) of the National Fire Protection Association. The department shall determine which occupancy chapter of that code is applicable to an institution other than a nursing home or custodial care home.

(b) A nursing home or custodial care home or a portion of a home that was operating or approved for construction before September 1, 1987, must comply with the Life Safety Code provisions relating to existing construction.

(c) A nursing home or custodial care home or a portion of a home that is operating or approved for construction on or after September 1, 1987, must comply with the Life Safety Code provisions relating to new construction.

(d) This section does not preclude an institution from conforming to a higher or additional fire safety standard or provision. (V.A.C.S. Art. 4442c, Sec. 4A.)

**Sec. 242.040. CERTIFICATION OF INSTITUTIONS THAT CARE FOR PERSONS WITH ALZHEIMER'S DISEASE AND RELATED DISORDERS.** (a) The department shall establish a system for certifying institutions that meet standards adopted by the board concerning the specialized care and treatment of persons with Alzheimer's disease and related disorders.

(b) An institution is not required to be certified under this section in order to provide care and treatment of persons with Alzheimer's disease and related disorders.

(c) The board by rule may adopt standards for the specialized care and treatment of persons with Alzheimer's disease and related disorders and provide procedures for institutions applying for certification under this section. The rules must provide for annual certification.

(d) The board may establish and charge fees for the certification in an amount necessary to administer this section.

(e) An institution may not advertise or otherwise communicate that the institution is certified by the department to provide specialized care for persons with Alzheimer's disease or related disorders unless the institution is certified under this section. (V.A.C.S. Art. 4442c, Secs. 19(a), (b), (c), (d) (part), (e).)

**Sec. 242.041. FALSE COMMUNICATION CONCERNING CERTIFICATION; CRIMINAL PENALTY.** (a) An institution commits an offense if the institution violates Section 242.040(e).

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4442c, Sec. 19(f).)

**Sec. 242.042. POSTING.** Each institution shall prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by the department that specifies complaint procedures established under this chapter or rules adopted under this chapter and that specifies how complaints may be registered with the department;

(3) a notice in a form prescribed by the department stating that inspection and related reports are available at the institution for public inspection and providing the department's toll-free telephone number that may be used to obtain information concerning the institution; and

(4) a concise summary of the most recent inspection report relating to the institution. (V.A.C.S. Art. 4442c, Secs. 5(a) (part), 9A.)

Sec. 242.043. INSPECTIONS. (a) The department or the department's representative may make any inspection, survey, or investigation that it considers necessary and may enter the premises of an institution at reasonable times to make an inspection, survey, or investigation in accordance with board rules.

(b) The department is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this chapter and the rules adopted under this chapter.

(c) A license holder or an applicant for a license is considered to have consented to entry and inspection of the institution by a representative of the department in accordance with this chapter.

(d) The department shall establish procedures to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that the department reasonably believes threaten the health and safety of a resident, including photography and photocopying of relevant documents, such as a license holder's notes, a physician's orders, and pharmacy records, for use in any legal proceeding.

(e) When photographing a resident, the department:

(1) shall respect the privacy of the resident to the greatest extent possible; and

(2) may not make public the identity of the resident.

(f) An institution, an officer or employee of an institution, and a resident's attending physician are not civilly liable for surrendering confidential or private material under this section, including physician's orders, pharmacy records, notes and memoranda of a state office, and resident files.

(g) The department shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report.

(h) The department shall establish proper procedures to ensure that copies of all forms and reports under this section are made available to consumers, service recipients, and the relatives of service recipients as the department considers proper. (V.A.C.S. Art. 4442c, Secs. 5(a) (part), (b), (c), (d), (e); 9 (part).)

Sec. 242.044. UNANNOUNCED INSPECTIONS. (a) Each year, the department shall conduct at least two unannounced inspections of each institution.

(b) For at least two unannounced inspections each year of an institution other than one that provides maternity care, the department shall invite at least one person as a citizen advocate from:

(1) the American Association of Retired Persons;

(2) the Texas Senior Citizen Association;

(3) the Texas Retired Federal Employees;

(4) the Texas Department on Aging Certified Long Term Care Ombudsman; or

(5) another statewide organization for the elderly.

(c) In order to ensure continuous compliance, the department shall randomly select a sufficient percentage of institutions for unannounced inspections to be conducted between 5 p.m. and 8 a.m. Those inspections must be cursory to avoid to the greatest extent feasible any disruption of the residents.

(d) The department may require additional inspections. (V.A.C.S. Art. 4442c, Secs. 7(a)(6), (7), 9 (part).)

Sec. 242.045. DISCLOSURE OF UNANNOUNCED INSPECTIONS; CRIMINAL PENALTY. (a) Except as expressly provided by this chapter, a person commits an offense if the person intentionally, knowingly, or recklessly discloses to an unauthorized person

the date, time, or any other fact about an unannounced inspection of an institution before the inspection occurs.

(b) In this section, "unauthorized person" does not include:

- (1) the department;
- (2) the office of the attorney general;
- (3) a statewide organization for the elderly, including the American Association of Retired Persons, the Texas Senior Citizen Association, and the Texas Retired Federal Employees;
- (4) an ombudsman or representative of the Texas Department on Aging;
- (5) a representative of an agency or organization when a Medicare or Medicaid survey is made concurrently with a licensing inspection; or
- (6) any other person or entity authorized by law to make an inspection or to accompany an inspector.

(c) An offense under this section is a Class B misdemeanor.

(d) A person convicted under this section is not eligible for state employment. (V.A.C.S. Art. 4442c, Secs. 12(c), (d), (e).)

**Sec. 242.046. OPEN HEARING.** (a) The department shall hold at least one open hearing each year in each licensed institution, other than an institution that provides maternity care, to hear any complaints of substandard care or licensing violations.

(b) The department shall give notice of the time, place, and date of the hearing to:

- (1) the institution;
- (2) the designated closest living relative or legal guardian of each resident; and
- (3) appropriate state or federal agencies that work with the institution.

(c) The department may exclude an institution's administrators and personnel from the hearing.

(d) The department shall notify the institution of any complaints received at the hearing and, without identifying the source of the complaints, provide a summary of them to the institution.

(e) The department shall determine and implement a mechanism to notify confidentially a complainant of the results of the investigation of the complaint. (V.A.C.S. Art. 4442c, Sec. 9 (part).)

**Sec. 242.047. ACCREDITATION REVIEW INSTEAD OF INSPECTION.** (a) The department shall accept an annual accreditation review from the Joint Commission on Accreditation of Health Organizations for a nursing home instead of an inspection for renewal of a license under Section 242.038 only if:

- (1) the nursing home is accredited by the commission under the commission's long-term care standards;
- (2) the commission maintains an annual inspection or review program that, for each nursing home, meets the department's minimum standards as confirmed by the board;
- (3) the commission conducts an annual on-site inspection or review of the home; and
- (4) the nursing home submits to the department a copy of its annual accreditation review from the commission in addition to the application, fee, and report required for renewal of a license.

(b) The department shall coordinate its licensing activities with the commission.

(c) The department and the commission shall sign a memorandum of agreement to implement this section. The memorandum must provide that if all parties to the memorandum do not agree in the development, interpretation, and implementation of the memorandum, any area of dispute is to be resolved by the board.

(d) This section does not limit the department in performing any duties and inspections authorized by this chapter or under any contract relating to the medical assistance program under Chapter 32, Human Resources Code, and Titles XVIII and XIX of the

Social Security Act (42 U.S.C. Sections 1395 et seq. and 1396 et seq.), including authority to take appropriate action relating to an institution, such as closing the institution.

(e) This section does not require a nursing home to obtain accreditation from the commission. (V.A.C.S. Art. 4442c, Sec. 4(d).)

[Sections 242.048-242.060 reserved for expansion]

#### SUBCHAPTER C. GENERAL ENFORCEMENT

Sec. 242.061. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department, after providing notice and opportunity for a hearing to the applicant or license holder, may deny, suspend, or revoke a license if the department finds that the applicant or license holder has substantially failed to comply with the requirements established under this chapter.

(b) The status of a person as an applicant for a license or a license holder is preserved until final disposition of the contested matter, except as the court having jurisdiction of a judicial review of the matter may order in the public interest for the welfare and safety of the residents. (V.A.C.S. Art. 4442c, Sec. 6 (part), 10 (part).)

Sec. 242.062. EMERGENCY SUSPENSION OR CLOSING ORDER. (a) The department shall suspend an institution's license or order an immediate closing of part of the institution if:

(1) the department finds the institution is operating in violation of the standards prescribed by this chapter; and

(2) the violation creates an immediate threat to the health and safety of a resident.

(b) The board by rule shall provide for the placement of residents during the institution's suspension or closing to ensure their health and safety.

(c) An order suspending a license or closing a part of an institution under this section is immediately effective on the date on which the license holder receives written notice or a later date specified in the order.

(d) An order suspending a license or ordering an immediate closing of a part of an institution is valid for 10 days after the effective date of the order. (V.A.C.S. Art. 4442c, Sec. 6B.)

Sec. 242.063. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a person from continuing a violation of the standards prescribed by this chapter if the department finds that the violation creates an immediate threat to the health and safety of the institution's residents.

(b) A district court, on petition of the department, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements prescribed by this chapter;

(2) restrain or prevent the establishment, conduct, management, or operation of an institution without a license issued under this chapter; or

(3) grant the injunctive relief warranted by the facts on a finding by the court that a person is violating the standards or licensing requirements prescribed by this chapter.

(c) The attorney general, on request by the department, shall institute and conduct in the name of the state a suit authorized by this section or Subchapter D.

(d) A suit for a temporary restraining order or other injunctive relief must be brought in the county in which the alleged violation occurs. (V.A.C.S. Art. 4442c, Secs. 11(a), (b), (c), (d) (part).)

Sec. 242.064. LICENSE REQUIREMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person violates Section 242.031.

(b) An offense under this section is punishable by a fine of not more than \$1,000 for the first offense and not more than \$500 for each subsequent offense.

(c) Each day of a continuing violation after conviction is a separate offense. (V.A.C.S. Art. 4442c, Secs. 4(c) (part), 12(a).)

**Sec. 242.065. CIVIL PENALTY.** (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$10,000 for each act of violation if the department determines the violation threatens the health and safety of a resident.

(b) Each day of a continuing violation constitutes a separate ground for recovery. (V.A.C.S. Art. 4442c, Sec. 12(b).)

**Sec. 242.066. ADMINISTRATIVE PENALTY.** (a) The department may assess a civil penalty against a person who violates this chapter or a rule or order adopted or license issued under this chapter.

(b) The penalty may not exceed \$10,000 a day for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The board shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the department shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations; and

(5) efforts to correct the violation. (V.A.C.S. Art. 4442c, Secs. 12A(a), (b), (c).)

**Sec. 242.067. REPORT RECOMMENDING ADMINISTRATIVE PENALTY.** (a) The department may issue a preliminary report stating the facts on which it concludes that a violation of this chapter or a rule or order adopted or license issued under this chapter has occurred if:

(1) it has examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section 242.069 and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended; and

(3) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice is sent, the person charged may:

(1) give to the department written consent to the department's report, including the recommended penalty; or

(2) make a written request for a hearing.

(e) If the person charged with the violation consents to the administrative penalty recommended by the department or does not timely respond to the notice, the commissioner of health or the commissioner's designee shall:

(1) assess the administrative penalty recommended by the department; or

(2) order a hearing to be held on the findings and recommendations in the department's report.

(f) If the commissioner of health or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty. (V.A.C.S. Art. 4442c, Secs. 12A(d), (e), (f), (g).)

Sec. 242.068. HEARING. (a) The commissioner of health shall order a hearing and give notice of the hearing if:

- (1) a person charged requests a hearing; or
- (2) the commissioner or the commissioner's designee orders a hearing.

(b) The hearing shall be held by a hearing examiner designated by the commissioner of health.

(c) The hearing officer shall make findings of fact and promptly issue to the commissioner of health a written decision regarding the occurrence of a violation of this chapter or a rule or order adopted or license issued under this chapter and a recommendation regarding the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and recommendations of the hearing examiner, the commissioner of health by order may find:

- (1) a violation has occurred and assess a civil penalty; or
- (2) a violation has not occurred.

(e) Proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4442c, Sec. 12A(h).)

Sec. 242.069. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; REFUND. (a) The commissioner of health shall give notice of the decision taken under Section 242.068(d) to the person charged. If the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of the findings, the amount of the penalty, and the person's right to judicial review of the order.

(b) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the full amount of the penalty.

(c) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (b), shall:

- (1) send the amount of the penalty to the commissioner for placement in an escrow account; or
- (2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until the judicial review of the order or decision is final.

(d) A person who fails to comply with Subsection (c) waives the right to judicial review, and the commissioner may request enforcement by the attorney general.

(e) If a penalty is reduced or not assessed, the commissioner shall:

- (1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the supersedeas bond if one has been posted.

(f) Accrued interest on amounts remitted by the commissioner of health under Subsection (e)(1) shall be paid:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the date the penalty is paid to the commissioner under Subsection (c) and ending on the date the penalty is remitted. (V.A.C.S. Art. 4442c, Secs. 12A(i), (j) (part), (k), (m).)

[Sections 242.070-242.090 reserved for expansion]



**SUBCHAPTER D. TRUSTEES FOR NURSING OR CONVALESCENT HOMES**

**Sec. 242.091. FINDINGS AND PURPOSE.** (a) The legislature finds that the closing of a nursing or convalescent home for violations of laws and rules may:

(1) in certain circumstances, have an adverse effect on both the home's residents and their families; and

(2) in some cases, result in a lack of readily available funds to meet the basic needs of the residents for food, shelter, medication, and personal services.

(b) The purpose of this subchapter is to provide for:

(1) the appointment of a trustee to assume the operations of the home in a manner that emphasizes resident care and reduces resident trauma; and

(2) a fund to assist a court-appointed trustee in meeting the basic needs of the residents. (V.A.C.S. Art. 4442c, Sec. 6C(a).)

**Sec. 242.092. DEFINITION.** In this subchapter, "home" means a nursing or convalescent home. (New.)

**Sec. 242.093. APPOINTMENT BY AGREEMENT.** (a) A person holding a controlling interest in a home may, at any time, request the department to assume the operation of the home through the appointment of a trustee under this subchapter.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a trustee to take charge of the home under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section must:

(1) specify all terms and conditions of the trustee's appointment and authority; and

(2) preserve all rights of the residents as granted by law.

(d) The agreement terminates at the time specified by the parties or when either party notifies the other in writing that the party wishes to terminate the appointment agreement. (V.A.C.S. Art. 4442c, Sec. 6C(b).)

**Sec. 242.094. INVOLUNTARY APPOINTMENT.** (a) The department may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a trustee to operate a home if:

(1) the home is operating without a license;

(2) the department has suspended or revoked the home's license;

(3) license suspension or revocation procedures against the home are pending and the department determines that an imminent threat to the health and safety of the residents exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of the residents; or

(5) the home is closing and arrangements for relocation of the residents to other licensed institutions have not been made before closure.

(b) A trustee appointed under Subsection (a)(5) may only ensure an orderly and safe relocation of the home's residents as quickly as possible.

(c) After a hearing, a court shall appoint a trustee to take charge of a home if the court finds that involuntary appointment of a trustee is necessary.

(d) If possible, the court shall appoint as trustee an individual whose background includes institutional medical administration. (V.A.C.S. Art. 4442c, Secs. 6C(c), (d), 11(d) (part).)

**Sec. 242.095. FEE; RELEASE OF FUNDS.** (a) A trustee appointed under this subchapter is entitled to a reasonable fee as determined by the court.

(b) The trustee may petition the court to order the release to the trustee of any payment owed the trustee for care and services provided to the residents if the payment has been withheld, including a payment withheld by the Texas Department of Human Services at the recommendation of the department.

(c) Withheld payments may include payments withheld by a governmental agency or other entity during the appointment of the trustee, such as payments:

- (1) for Medicaid, Medicare, or insurance;
- (2) by another third party; or
- (3) for medical expenses borne by the resident. (V.A.C.S. Art. 4442c, Sec. 6C(e).)

**Sec. 242.096. NURSING AND CONVALESCENT HOME TRUST FUND AND EMERGENCY ASSISTANCE FUNDS.** (a) The nursing and convalescent home trust fund is with the state treasurer and shall be made available to the department for expenditures without legislative appropriation to make emergency assistance funds available to a home.

(b) A trustee of a home may use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents. The use may include payments for:

- (1) food;
- (2) medication;
- (3) sanitation services;
- (4) minor repairs;
- (5) supplies necessary for personal hygiene; or
- (6) services necessary for the personal care, health, and safety of the residents.

(c) A court may order the department to disburse emergency assistance funds to a home if the court finds that:

- (1) the home has inadequate funds accessible to the trustee for the operation of the home;
- (2) there exists an emergency that presents an immediate threat to the health and safety of the residents; and
- (3) it is in the best interests of the health and safety of the residents that funds are immediately available.

(d) The department shall disburse money from the nursing and convalescent home trust fund as ordered by the court in accordance with board rules.

(e) Any unencumbered amount in the nursing and convalescent home trust fund in excess of \$100,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated to the department for its use in administering and enforcing this chapter. (V.A.C.S. Art. 4442c, Secs. 6C(f), (g).)

**Sec. 242.097. ADDITIONAL LICENSE FEE.** (a) In addition to the license fee provided by Section 242.034, the department shall adopt an annual fee to be charged and collected if the amount of the nursing and convalescent home trust fund is less than \$100,000. The fee shall be deposited to the credit of the nursing and convalescent home trust fund created by this subchapter.

(b) The department shall set the fee for each nursing and convalescent home at \$1 for each licensed unit of capacity or bed space in that home or in an amount necessary to provide \$100,000 in the fund. (V.A.C.S. Art. 4442c, Sec. 6C(h).)

**Sec. 242.098. REIMBURSEMENT.** (a) A home that receives emergency assistance funds under this subchapter shall reimburse the department for the amounts received, including interest.

(b) Interest on unreimbursed amounts begins to accrue on the date on which the funds were disbursed to the home. The rate of interest is the rate determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money was disbursed to the home.

(c) The owner of the home when the trustee was appointed is responsible for the reimbursement.

(d) The amount that remains unreimbursed on the expiration of one year after the date on which the funds were received is delinquent and the Texas Department of Human Services may determine that the home is ineligible for a Medicaid provider contract.

(e) The department shall deposit the reimbursement and interest received under this section to the credit of the nursing and convalescent home trust fund.

(f) The attorney general shall institute an action to collect the funds due under this section at the request of the department. Venue for an action brought under this section is in Travis County. (V.A.C.S. Art. 4442c, Sec. 6C(i).)

**Sec. 242.099. APPLICABILITY OF OTHER LAW.** The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) does not apply to any payments made by a trustee under this subchapter. (V.A.C.S. Art. 4442c, Sec. 6C(j).)

**Sec. 242.100. NOTIFICATION OF CLOSING.** (a) A home that is closing temporarily or permanently, or voluntarily or involuntarily, shall notify the residents of the closing and make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the resident's support within a reasonable time before the closing.

(b) If the closing of a home is ordered by the department or is in any other way involuntary, the home shall make the notification, orally or in writing, immediately on receiving notice of the closing.

(c) If the closing of a home is voluntary, the home shall make the notification not later than one week after the date on which the decision to close is made. (V.A.C.S. Art. 4442c, Secs. 6D(a), (b).)

**Sec. 242.101. CRIMINAL PENALTY.** (a) A home commits an offense if the home fails or refuses to comply with Section 242.100.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 4442c, Sec. 6D(c).)

[Sections 242.102–242.120 reserved for expansion]

#### **SUBCHAPTER E. REPORTS OF ABUSE AND NEGLECT**

**Sec. 242.121. DEFINITION.** In this subchapter, "designated agency" means an agency designated by a court to be responsible for the protection of a resident who is the subject of a report of abuse or neglect. (New.)

**Sec. 242.122. REPORTING OF ABUSE AND NEGLECT.** (a) A person, including an owner or employee of an institution, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect in accordance with this subchapter.

(b) Each institution shall require each employee of the institution, as a condition of employment with the institution, to sign a statement that the employee realizes that the employee may be criminally liable for failure to report those abuses.

(c) A person shall make an oral report immediately on learning of the abuse or neglect and shall make a written report to the same agency not later than the fifth day after the oral report is made. (V.A.C.S. Art. 4442c, Secs. 16(a), (b)(4) (part).)

**Sec. 242.123. CONTENTS OF REPORT.** (a) A report of abuse or neglect is nonaccusatory and reflects the reporting person's belief that a resident has been or will be abused or neglected or has died of abuse or neglect.

(b) The report must contain:

(1) the name and address of the resident;

(2) the name and address of the person responsible for the care of the resident, if available; and

(3) other relevant information. (V.A.C.S. Art. 4442c, Secs. 16(b)(1) (part), (2).)

Sec. 242.124. **ANONYMOUS REPORTS OF ABUSE OR NEGLECT.** (a) An anonymous report of abuse or neglect, although not encouraged, shall be received and acted on in the same manner as an acknowledged report.

(b) An anonymous report about a specific individual that accuses the individual of abuse or neglect need not be investigated. (V.A.C.S. Art. 4442c, Sec. 16(b)(4) (part).)

Sec. 242.125. **PROCESSING OF REPORTS.** (a) A report of abuse or neglect shall be made to the department or a local or state law enforcement agency.

(b) A local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the department or the designated agency. (V.A.C.S. Art. 4442c, Secs. 16(b)(1) (part), (3).)

Sec. 242.126. **INVESTIGATION AND REPORT OF RECEIVING AGENCY.** (a) The department or the designated agency shall make a thorough investigation promptly after receiving either the oral or written report.

(b) The primary purpose of the investigation is the protection of the resident.

(c) In the investigation, the department or the designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other residents;
- (4) an evaluation of the persons responsible for the care of the residents;
- (5) the adequacy of the institution environment; and
- (6) any other information required by the department.

(d) The investigation shall include a visit to the resident's institution and an interview with the resident.

(e) If it is shown that admission to the institution, or any place where the resident is located, cannot be obtained, a probate or county court shall order the person responsible for the care of the resident or the person in charge of a place where the resident is located to allow entrance for the interview and investigation.

(f) Before the completion of the investigation the department shall file a petition for temporary care and protection of the resident if the department determines that immediate removal is necessary to protect the resident from further abuse or neglect.

(g) The department or the designated agency shall make a complete written report of the investigation and submit the report and its recommendations to the district attorney and the appropriate law enforcement agency and to the Texas Department of Human Services on its request. (V.A.C.S. Art. 4442c, Sec. 16(e).)

Sec. 242.127. **CONFIDENTIALITY.** A report, record, or working paper used or developed in an investigation made under this subchapter is confidential and may be disclosed only for purposes consistent with the rules adopted by the board or the designated agency. (V.A.C.S. Art. 4442c, Sec. 16(h).)

Sec. 242.128. **IMMUNITY.** (a) A person who reports as provided by this subchapter is immune from civil or criminal liability that, in the absence of the immunity, might result from making the report.

(b) The immunity provided by this section extends to participation in any judicial proceeding that results from the report.

(c) This section does not apply to a person who reports in bad faith or with malice. (V.A.C.S. Art. 4442c, Sec. 16(c) (part).)

Sec. 242.129. **PRIVILEGED COMMUNICATIONS.** In a proceeding regarding the abuse or neglect of a resident or the cause of any abuse or neglect, evidence may not be excluded on the ground of privileged communication except in the case of a communication between an attorney and client. (V.A.C.S. Art. 4442c, Sec. 16(d).)

Sec. 242.130. **CENTRAL REGISTRY.** (a) The department shall maintain in the city of Austin a central registry of reported cases of resident abuse or neglect.

(b) The board may adopt rules necessary to carry out this section.

(c) The rules shall provide for cooperation with hospitals and clinics in the exchange of reports of resident abuse or neglect. (V.A.C.S. Art. 4442c, Sec. 16(f).)

**Sec. 242.131. FAILURE TO REPORT; CRIMINAL PENALTY.** (a) A person commits an offense if the person has cause to believe that a resident's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 242.122.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 4442c, Sec. 16(g).)

**Sec. 242.132. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING; CRIMINAL PENALTY.** (a) A person commits an offense if the person reports under this subchapter in bad faith, maliciously, or recklessly.

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

(c) The criminal penalty provided by this section is in addition to any civil penalties for which the person may be liable. (V.A.C.S. Art. 4442c, Sec. 16(c) (part).)

**Sec. 242.133. SUIT FOR RETALIATION.** (a) A person has a cause of action against an institution, or the owner or employee of the institution, that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting the abuse or neglect of a resident to the person's supervisors, the department, or a law enforcement agency.

(b) The petitioner may recover:

(1) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown and damages for lost wages if the petitioner's employment was suspended or terminated;

(2) exemplary damages;

(3) court costs; and

(4) reasonable attorney's fees.

(c) In addition to the amounts that may be recovered under Subsection (b), a person whose employment is suspended or terminated is entitled to reinstatement in the person's former position.

(d) The petitioner must file a signed and written complaint not later than the 90th day after the date on which the person's employment is suspended or terminated.

(e) The petitioner has the burden of proof, except that there is a rebuttable presumption that the person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person reported in good faith.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff resides;

(2) the plaintiff was employed by the defendant; or

(3) the defendant conducts business. (V.A.C.S. Art. 4442c, Sec. 16(i).)

[Sections 242.134–242.150 reserved for expansion]

#### **SUBCHAPTER F. MEDICAL AND DENTAL CARE**

**Sec. 242.151. PERMITS TO ADMINISTER MEDICATION.** A person may not administer medication to a resident unless the person:

(1) holds a license under state law that authorizes the person to administer medication; or

(2) holds a permit issued under Section 242.154 and acts under the authority of a person who holds a license under state law that authorizes the person to administer medication. (V.A.C.S. Art. 4442c, Sec. 7B(a), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.152. RULES FOR ADMINISTRATION OF MEDICATION. The board by rule shall establish:

- (1) minimum requirements for the issuance, denial, renewal, suspension, emergency suspension, and revocation of a permit to administer medication to a resident;
- (2) curricula to train persons to administer medication to a resident;
- (3) minimum standards for the approval of programs to train persons to administer medication to a resident and for rescinding approval; and
- (4) the acts and practices that are allowed or prohibited to a permit holder. (V.A.C.S. Art. 4442c, Sec. 7B(b), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.153. TRAINING PROGRAMS TO ADMINISTER MEDICATION. (a) An application for the approval of a training program must be made to the department on a form and under rules prescribed by the board.

(b) The department shall approve a training program that meets the minimum standards adopted under Section 242.152. The department may review the approval annually. (V.A.C.S. Art. 4442c, Sec. 7B(c), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.154. ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) To be issued or to have renewed a permit to administer medication, a person shall apply to the department on a form prescribed and under rules adopted by the board.

(b) The department shall prepare and conduct, at the site of the training program, an examination for the issuance of a permit.

(c) The department shall require a permit holder to satisfactorily complete a continuing education course approved by the department for renewal of the permit.

(d) The department shall issue a permit or renew a permit to an applicant who:

- (1) meets the minimum requirements adopted under Section 242.152;
- (2) successfully completes the examination or the continuing education requirements; and
- (3) pays a nonrefundable application fee determined by the board.

(e) A permit is valid for one year and is not transferable. (V.A.C.S. Art. 4442c, Secs. 7(a)(8) (part); 7B(d), (e), (i), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.155. FEES FOR ISSUANCE AND RENEWAL OF PERMIT TO ADMINISTER MEDICATION. (a) The board shall set the fees in amounts reasonable and necessary to recover the amount projected by the department as required to administer its functions. The fees may not exceed:

- (1) \$25 for a combined permit application and examination fee; and
- (2) \$15 for a renewal permit application fee.

(b) Fees received under this section may only be appropriated to the department to defray costs incurred under this section. (V.A.C.S. Art. 4442c, Secs. 7B(f), (g), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.156. VIOLATION OF PERMITS TO ADMINISTER MEDICATION. (a) For the violation of this subchapter or a rule adopted under this subchapter, the department may:

- (1) suspend, revoke, or refuse to renew a permit;
- (2) suspend a permit in an emergency; or
- (3) rescind training program approval.

(b) Except as provided by Section 242.157, the procedure by which the department takes a disciplinary action and the procedure by which a disciplinary action is appealed are governed by the department's rules for a formal hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4442c, Secs. 7B(h)(1), (2), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

Sec. 242.157. EMERGENCY SUSPENSION OF PERMITS TO ADMINISTER MEDICATION. (a) The department shall issue an order to suspend a permit issued under this

subchapter if the department has reasonable cause to believe that the conduct of the permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the permit holder.

(c) If requested in writing by a permit holder whose permit is suspended, the department shall conduct a hearing to continue, modify, or rescind the emergency suspension.

(d) The hearing must be held not earlier than the 10th day or later than the 30th day after the date on which the hearing request is received.

(e) The hearing and an appeal from a disciplinary action related to the hearing are governed by the department's rules for a formal hearing and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4442c, Sec. 7B(h)(8), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

**Sec. 242.158. ADMINISTRATION OF MEDICATION; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly administers medication to a resident and the person:

(1) does not hold a license under state law that authorizes the person to administer medication; or

(2) does not hold a permit issued by the department under this subchapter.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4442c, Sec. 7B(j), as added by Ch. 940, Acts 68th Leg., Reg. Sess., 1983.)

**Sec. 242.159. REQUIRED MEDICAL EXAMINATION.** (a) The department shall require each resident to be given at least one medical examination each year.

(b) The department shall specify the details of the examination. (V.A.C.S. Art. 4442c, Sec. 7(b).)

**Sec. 242.160. DENTAL EXAMINATION.** (a) The department shall require that each resident of a nursing home or custodial care home or the resident's custodian be asked at least once each year if the resident desires a dental examination and possible treatment at the resident's own expense.

(b) Each nursing home or custodial care home shall be encouraged to use all reasonable efforts to arrange for a dental examination for each resident who desires one.

(c) The nursing home or custodial care home is not liable for any costs relating to a dental examination under this section. (V.A.C.S. Art. 4442c, Sec. 7(l).)

**Sec. 242.161. EMERGENCY MEDICATION KIT.** (a) An institution licensed under this chapter is entitled to maintain a supply of controlled substances in an emergency medication kit for a resident's emergency medication needs.

(b) The controlled substances shall be labeled in accordance with all applicable state and federal food and drug laws, including Chapter 481 (Texas Controlled Substances Act).

(c) The department's bureau of long-term care shall adopt rules governing the amount, type, and procedure for use of the controlled substances in the emergency medication kit. The storage of the controlled substances in the kit is under the supervision of the consultant pharmacist.

(d) The administration of the controlled substances in the emergency medication kit shall comply with all applicable laws. (V.A.C.S. Art. 4442c, Sec. 7(e).)

[Sections 242.162-242.180 reserved for expansion]

#### **SUBCHAPTER G. RESPITE CARE**

**Sec. 242.181. DEFINITIONS.** In this subchapter:

(1) "Handicapped person" means a person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(2) "Plan of care" means a written description of the medical care or the supervision and nonmedical care needed by a person during respite care.

(3) "Respite care" means the provision by an institution to a person, for not more than two weeks for each stay in the institution, of:

(A) room and board; and

(B) care at the level ordinarily provided for permanent residents. (V.A.C.S. Art. 4442c, Secs. 2(e), (f), (h).)

Sec. 242.182. RESPITE CARE. (a) An institution licensed under this chapter may provide respite care for an elderly or handicapped person according to a plan of care.

(b) The board may adopt rules for the regulation of respite care provided by an institution licensed under this chapter. (V.A.C.S. Art. 4442c, Secs. 8A(a) (part), (g).)

Sec. 242.183. PLAN OF CARE. (a) The institution and the person arranging the care must agree on the plan of care and the plan must be filed at the institution before the institution admits the person for the care.

(b) The plan of care must be signed by:

(1) a licensed physician if the person for whom the care is arranged needs medical care or treatment; or

(2) the person arranging for the respite care if medical care or treatment is not needed.

(c) The institution may keep an agreed plan of care for a person for not longer than six months from the date on which it is received. During that period, the institution may admit the person as frequently as is needed and as accommodations are available. (V.A.C.S. Art. 4442c, Secs. 8A(a) (part), (b), (c).)

Sec. 242.184. NOTIFICATION. An institution that offers respite care shall notify the department in writing that it offers respite care. (V.A.C.S. Art. 4442c, Sec. 8A(d).)

Sec. 242.185. INSPECTIONS. The department, at the time of an ordinary licensing inspection or at other times determined necessary by the department, shall inspect an institution's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter and with any rules the board may adopt to regulate respite care services. (V.A.C.S. Art. 4442c, Sec. 8A(e).)

Sec. 242.186. SUSPENSION. (a) The department may require an institution to cease providing respite care if the department determines that the respite care does not meet the standards required by this chapter and that the institution cannot comply with those standards in the respite care it provides.

(b) The department may suspend the license of an institution that continues to provide respite care after receiving a written order from the department to cease. (V.A.C.S. Art. 4442c, Sec. 8A(f) (part).)

[Sections 242.187–242.200 reserved for expansion]

#### SUBCHAPTER H. INVESTIGATION OF NURSING HOME OR CUSTODIAL CARE HOME EMPLOYEES

Sec. 242.201. DEFINITION. In this subchapter, "home" means a nursing home or custodial care home. (New.)

Sec. 242.202. APPLICABILITY OF SUBCHAPTER. If a home is part of a large complex of buildings, the requirement of a criminal conviction check under this subchapter applies only to a person who will work primarily in the immediate boundaries of the home. (V.A.C.S. Art. 4442c, Sec. 18(b) (part).)

Sec. 242.203. CRIMINAL CONVICTION RECORDS. (a) The Texas Department of Human Services, on behalf of the department, is entitled to obtain criminal conviction records maintained by the Department of Public Safety or the Federal Bureau of



Investigation's identification division to investigate an employee or a person applying for employment at a home licensed or applying for a license under this chapter.

(b) The Department of Public Safety may provide to the Texas Department of Human Services, the department, or the home the criminal conviction records of a person being investigated only if the record relates to:

- (1) a misdemeanor or felony classified as an offense against the person or the family;
- (2) a misdemeanor or felony classified as public indecency;
- (3) a felony violation of a statute intended to control the possession or distribution of a substance included in Chapter 481 (Texas Controlled Substances Act); or
- (4) a felony violation of Section 31.03, Penal Code. (V.A.C.S. Art. 4442c, Secs. 18(a), (d) (part).)

**Sec. 242.204. CRIMINAL CONVICTION CHECK REQUIRED BEFORE OFFER OF PERMANENT EMPLOYMENT.** (a) Except as provided by Subsection (b), a home may not make an offer of permanent employment to a person unless the home provides to the Texas Department of Human Services the name and relevant information relating to the person as required by the Texas Department of Human Services, such as fingerprints, social security number, or complete name.

(b) A home may make an offer of permanent employment to a person licensed under other law, including a nursing home administrator and a nurse, without following the procedures under this subchapter for a criminal conviction check.

(c) Immediately after receiving the information from the home, the Texas Department of Human Services shall request that the Department of Public Safety conduct a criminal conviction check on the person.

(d) At the request of the home, the Texas Department of Human Services, on behalf of the department, shall investigate any person employed at a home, including a person licensed under other law. (V.A.C.S. Art. 4442c, Secs. 18(b) (part), (e).)

**Sec. 242.205. TEMPORARY EMPLOYMENT PENDING CRIMINAL CONVICTION CHECK.** (a) A home may make an offer of temporary employment to a person pending the results of a criminal conviction check on the person.

(b) The home shall provide to the Texas Department of Human Services the name and relevant information relating to the person not later than the 72nd hour after the hour on which the person accepts temporary employment.

(c) The home may not hire a person permanently until the home receives the results of the criminal conviction check. (V.A.C.S. Art. 4442c, Sec. 18(c).)

**Sec. 242.206. NOTIFICATION OF APPLICANT.** A home shall inform each applicant for employment that:

- (1) the home is required to conduct a criminal conviction check before it may make an offer of permanent employment to the applicant; and
- (2) the home may request a criminal conviction check on the applicant. (V.A.C.S. Art. 4442c, Sec. 18(f).)

**Sec. 242.207. NOTIFICATION OF RESULTS.** Immediately after receiving the results of the criminal conviction check, the Texas Department of Human Services shall notify the home of the results and provide a copy of the results to the department. (V.A.C.S. Art. 4442c, Sec. 18(d) (part).)

**Sec. 242.208. CONVICTION BARS EMPLOYMENT.** (a) Except as provided by Subsection (b), a home may not hire a person or shall immediately terminate a person's employment if the results of the criminal conviction check reveal that the person has been convicted of an offense listed under Section 242.203(b).

(b) A home may employ or continue employing a person convicted of an offense under Chapter 481 (Texas Controlled Substances Act) only if:

- (1) the person produces evidence that the person has successfully completed a drug rehabilitation program; and

(2) the conviction was not for an offense under Section 481.107(b)-(e), 481.122, or 481.126. (V.A.C.S. Art. 4442c, Secs. 18(g), (h).)

Sec. 242.209. RECORDS PRIVILEGED. (a) All criminal records received by the Texas Department of Human Services are privileged information and are for the exclusive use of the Texas Department of Human Services, the department, and the home for which the Texas Department of Human Services requested the information.

(b) The records may not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the person being investigated. (V.A.C.S. Art. 4442c, Sec. 18(i).)

Sec. 242.210. CRIMINAL PENALTY. (a) A person commits an offense if the person releases or otherwise discloses any information received under this subchapter without the authorization prescribed by Section 242.209(b).

(b) An offense under this section is a felony of the second degree. (V.A.C.S. Art. 4442c, Sec. 18(j).)

Sec. 242.211. CIVIL LIABILITY. A home or an officer or employee of a home is not civilly liable for failure to comply with this subchapter if the home makes a good faith effort to comply. (V.A.C.S. Art. 4442c, Sec. 18(k).)

#### CHAPTER 243. AMBULATORY SURGICAL CENTERS

- Sec. 243.001. SHORT TITLE
- Sec. 243.002. DEFINITIONS
- Sec. 243.003. LICENSE REQUIRED
- Sec. 243.004. EXEMPTIONS FROM LICENSING REQUIREMENT
- Sec. 243.005. LICENSE APPLICATION AND ISSUANCE
- Sec. 243.006. INSPECTIONS
- Sec. 243.007. FEES
- Sec. 243.008. AMBULATORY SURGICAL CENTER LICENSING FUND
- Sec. 243.009. ADOPTION OF RULES
- Sec. 243.010. MINIMUM STANDARDS
- Sec. 243.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
- Sec. 243.012. INJUNCTION
- Sec. 243.013. CRIMINAL PENALTY
- Sec. 243.014. CIVIL PENALTY

#### CHAPTER 243. AMBULATORY SURGICAL CENTERS

Sec. 243.001. SHORT TITLE. This chapter may be cited as the Texas Ambulatory Surgical Center Licensing Act. (V.A.C.S. Art. 4437f-2, Sec. 1.)

Sec. 243.002. DEFINITIONS. In this chapter:

(1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

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

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

(4) "Person" means an individual, firm, partnership, corporation, or association. (V.A.C.S. Art. 4437f-2, Sec. 2.)

Sec. 243.003. LICENSE REQUIRED. (a) Except as provided by Section 243.004, a person may not establish or operate an ambulatory surgical center in this state without a license issued under this chapter.

(b) Each ambulatory surgical center must have a separate license.

(c) A license is not transferable or assignable. (V.A.C.S. Art. 4437f-2, Secs. 4(a); 5(e).)

Sec. 243.004. EXEMPTIONS FROM LICENSING REQUIREMENT. The following facilities need not be licensed under this chapter:

(1) an office or clinic of a licensed physician, dentist, or podiatrist;

- (2) a licensed nursing home; or
- (3) a licensed hospital. (V.A.C.S. Art. 4437f-2, Sec. 4(b).)

**Sec. 243.005. LICENSE APPLICATION AND ISSUANCE.** (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that there is at least one physician, dentist, or podiatrist on the staff of the center who is licensed by the appropriate state licensing board.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee must be paid annually on renewal of the license.

(f) The department shall issue a renewal license to a center certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) when the center:

- (1) remits any annual license fee; and
- (2) submits the inspection results or the inspection results report from the certification body. (V.A.C.S. Art. 4437f-2, Secs. 5(a), (b), (c), (d) (part).)

**Sec. 243.006. INSPECTIONS.** (a) The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this chapter.

(b) An ambulatory surgical center licensed by the department and certified under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.) is not subject to additional licensing inspections under this chapter while the center maintains the certification. (V.A.C.S. Art. 4437f-2, Secs. 5(d) (part); 7.)

**Sec. 243.007. FEES.** The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter. (V.A.C.S. Art. 4437f-2, Sec. 3(d).)

**Sec. 243.008. AMBULATORY SURGICAL CENTER LICENSING FUND.** All fees collected under this chapter shall be deposited in the state treasury to the credit of the ambulatory surgical center licensing fund and may be appropriated to the department only to administer and enforce this chapter. (V.A.C.S. Art. 4437f-2, Sec. 6.)

**Sec. 243.009. ADOPTION OF RULES.** The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center. (V.A.C.S. Art. 4437f-2, Sec. 3(a).)

**Sec. 243.010. MINIMUM STANDARDS.** (a) The rules must contain minimum standards applicable to an ambulatory surgical center and for:

- (1) the construction and design, including plumbing, heating, lighting, ventilation, and other design standards necessary to ensure the health and safety of patients;
- (2) the qualifications of the professional staff and other personnel;
- (3) the equipment essential to the health and welfare of the patients;
- (4) the sanitary and hygienic conditions within the center and its surroundings; and
- (5) a quality assurance program for patient care.

(b) Standards set under this section may not exceed the minimum standards for certification of ambulatory surgical centers under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.).

(c) This section does not authorize the board to:

- (1) establish the qualifications of a licensed practitioner; or
- (2) permit a person to provide health care services who is not authorized to provide those services under another state law. (V.A.C.S. Art. 4437f-2, Secs. 3(b), (c), (e).)

**Sec. 243.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.** (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4437f-2, Sec. 8.)

**Sec. 243.012. INJUNCTION.** (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an ambulatory surgical center.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of an ambulatory surgical center without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County. (V.A.C.S. Art. 4437f-2, Sec. 9.)

**Sec. 243.013. CRIMINAL PENALTY.** (a) A person commits an offense if the person violates Section 243.003(a).

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

(c) Each day of a continuing violation constitutes a separate offense. (V.A.C.S. Art. 4437f-2, Sec. 10(a).)

**Sec. 243.014. CIVIL PENALTY.** (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery. (V.A.C.S. Art. 4437f-2, Sec. 10(b).)

#### **CHAPTER 244. BIRTHING CENTERS**

**Sec. 244.001. SHORT TITLE**

**Sec. 244.002. DEFINITIONS**

**Sec. 244.003. LICENSE REQUIRED**

**Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT**

**Sec. 244.005. LICENSE APPLICATION AND ISSUANCE**

**Sec. 244.006. INSPECTIONS**

**Sec. 244.007. FEES**

**Sec. 244.008. BIRTHING CENTER LICENSING FUND**

**Sec. 244.009. ADOPTION OF RULES**

**Sec. 244.010. MINIMUM STANDARDS**

**Sec. 244.011. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**Sec. 244.012. INJUNCTION**

**Sec. 244.013. CRIMINAL PENALTY**

**Sec. 244.014. CIVIL PENALTY**

**CHAPTER 244. BIRTHING CENTERS**

**Sec. 244.001. SHORT TITLE.** This chapter may be cited as the Texas Birthing Center Licensing Act. (V.A.C.S. Art. 4437f-3, Sec. 1.)

**Sec. 244.002. DEFINITIONS.** In this chapter:

(1) "Birthing center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth.

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

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

(4) "Person" means an individual, firm, partnership, corporation, or association. (V.A.C.S. Art. 4437f-3, Sec. 2.)

**Sec. 244.003. LICENSE REQUIRED.** (a) Except as provided by Section 244.004, a person may not establish or operate a birthing center in this state without an appropriate license issued under this chapter.

(b) Each birthing center must have a separate license.

(c) A license is not transferable or assignable. (V.A.C.S. Art. 4437f-3, Secs. 4(a); 5(d).)

**Sec. 244.004. EXEMPTIONS FROM LICENSING REQUIREMENT.** The following facilities need not be licensed under this chapter:

(1) a licensed hospital;

(2) a licensed nursing home; or

(3) a licensed ambulatory surgical center. (V.A.C.S. Art. 4437f-3, Sec. 4(b).)

**Sec. 244.005. LICENSE APPLICATION AND ISSUANCE.** (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that the composition of the center's staff meets the standards adopted by the board under this chapter for the level of license for which the application is submitted.

(d) The department shall issue the appropriate license if, after inspection and investigation, it finds that the applicant and the center meet the requirements of this chapter and the standards adopted under this chapter.

(e) The license fee shall be paid annually on renewal of the license. (V.A.C.S. Art. 4437f-3, Secs. 5(a), (b), (c).)

**Sec. 244.006. INSPECTIONS.** The department may inspect a birthing center at reasonable times as necessary to assure compliance with this chapter. (V.A.C.S. Art. 4437f-3, Sec. 7.)

**Sec. 244.007. FEES.** The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter. (V.A.C.S. Art. 4437f-3, Sec. 3(c).)

**Sec. 244.008. BIRTHING CENTER LICENSING FUND.** All fees collected under this chapter shall be deposited in the state treasury to the credit of the birthing center licensing fund and may be appropriated to the department only to administer and enforce this chapter. (V.A.C.S. Art. 4437f-3, Sec. 6.)

**Sec. 244.009. ADOPTION OF RULES.** (a) The board shall adopt rules necessary to implement this chapter.

(b) The board shall adopt rules that establish different levels of licenses to operate a birthing center and that provide requirements for the issuance, renewal, denial, suspension, and revocation of each level of license. (V.A.C.S. Art. 4437f-3, Sec. 3(a).)

**Sec. 244.010. MINIMUM STANDARDS.** (a) For each level of license of a birthing center, the rules must contain minimum standards for:

- (1) the qualifications for professional and nonprofessional personnel;
  - (2) the supervision of professional and nonprofessional personnel;
  - (3) the provision and coordination of treatment and services;
  - (4) the organizational structure, including the lines of authority and the delegation of responsibility;
  - (5) the keeping of clinical records; and
  - (6) any other aspect of the operation of a birthing center that the board considers necessary to protect the public.
- (b) This section does not authorize the board to:
- (1) establish the qualifications of a licensed practitioner; or
  - (2) permit a person to provide health care services who is not authorized to provide those services under another state law. (V.A.C.S. Art. 4437f-3, Secs. 3(b), (d).)
- Sec. 244.011. **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.** (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.
- (b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4437f-3, Sec. 8.)
- Sec. 244.012. **INJUNCTION.** (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of a birthing center.
- (b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:
- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
  - (2) restrain or prevent the establishment or operation of a birthing center without a license issued under this chapter; or
  - (3) grant any other injunctive relief warranted by the facts.
- (c) The attorney general shall institute and conduct a suit authorized by this section at the request of the department.
- (d) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County. (V.A.C.S. Art. 4437f-3, Sec. 9.)
- Sec. 244.013. **CRIMINAL PENALTY.** (a) A person commits an offense if the person violates Section 244.003(a).
- (b) An offense under this section is a Class C misdemeanor.
- (c) Each day of a continuing violation constitutes a separate offense. (V.A.C.S. Art. 4437f-3, Sec. 10(a).)
- Sec. 244.014. **CIVIL PENALTY.** (a) A person who violates this chapter or who fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.
- (b) Each day of a continuing violation constitutes a separate ground for recovery. (V.A.C.S. Art. 4437f-3, Sec. 10(b).)

**CHAPTER 245. ABORTION FACILITIES**

- Sec. 245.001. **SHORT TITLE**  
Sec. 245.002. **DEFINITIONS**  
Sec. 245.003. **LICENSE REQUIRED**

- Sec. 245.004. EXEMPTIONS FROM LICENSING REQUIREMENT
- Sec. 245.005. LICENSE APPLICATION AND ISSUANCE
- Sec. 245.006. INSPECTIONS
- Sec. 245.007. FEES
- Sec. 245.008. ABORTION FACILITY LICENSING FUND
- Sec. 245.009. ADOPTION OF RULES
- Sec. 245.010. MINIMUM STANDARDS
- Sec. 245.011. REPORTING REQUIREMENTS; CRIMINAL PENALTY
- Sec. 245.012. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
- Sec. 245.013. INJUNCTION
- Sec. 245.014. CRIMINAL PENALTY
- Sec. 245.015. CIVIL PENALTY
- Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT

**CHAPTER 245. ABORTION FACILITIES**

Sec. 245.001. **SHORT TITLE.** This chapter may be cited as the Texas Abortion Facility Reporting and Licensing Act. (V.A.C.S. Art. 4512.8, Sec. 1.)

Sec. 245.002. **DEFINITIONS.** In this chapter:

(1) "Abortion" means an act or procedure performed after pregnancy has been medically verified and with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus. The term does not include birth control devices or oral contraceptives.

(2) "Abortion facility" means a place where abortions are performed.

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

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

(5) "Patient" means a female on whom an abortion is performed, but does not include a fetus.

(6) "Person" means an individual, firm, partnership, corporation, or association. (V.A.C.S. Art. 4512.8, Sec. 2.)

Sec. 245.003. **LICENSE REQUIRED.** (a) Except as provided by Section 245.004, a person may not establish or operate an abortion facility in this state without an appropriate license issued under this chapter.

(b) Each abortion facility must have a separate license.

(c) A license is not transferable or assignable. (V.A.C.S. Art. 4512.8, Secs. 5; 6(e).)

Sec. 245.004. **EXEMPTIONS FROM LICENSING REQUIREMENT.** The following facilities need not be licensed under this chapter:

(1) a hospital licensed under Chapter 241 (Texas Hospital Licensing Law); or

(2) the office of a physician licensed under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), unless the office is used primarily for the purpose of performing abortions. (V.A.C.S. Art. 4512.8, Sec. 6(f).)

Sec. 245.005. **LICENSE APPLICATION AND ISSUANCE.** (a) An applicant for an abortion facility license must submit an application to the department on a form prescribed by the department.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board.

(c) The application must contain evidence that there are one or more physicians on the staff of the facility who are licensed by the Texas State Board of Medical Examiners.

(d) The department shall issue a license if, after inspection and investigation, it finds that the applicant and the abortion facility meet the requirements of this chapter and the standards adopted under this chapter.

(e) As a condition for renewal of a license, the licensee must submit to the department the annual license renewal fee and an annual report, including the report required under Section 245.011. (V.A.C.S. Art. 4512.8, Secs. 6(a)-(d).)

Sec. 245.006. INSPECTIONS. The department may inspect an abortion facility at reasonable times as necessary to assure compliance with this chapter. (V.A.C.S. Art. 4512.8, Sec. 8.)

Sec. 245.007. FEES. The board shall set fees imposed by this chapter in amounts reasonable and necessary to defray the cost of administering this chapter. (V.A.C.S. Art. 4512.8, Sec. 3(c).)

Sec. 245.008. ABORTION FACILITY LICENSING FUND. All fees collected under this chapter shall be deposited in the state treasury to the credit of the abortion facility licensing fund and may be appropriated to the department only to administer and enforce this chapter. (V.A.C.S. Art. 4512.8, Sec. 7.)

Sec. 245.009. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an abortion facility. (V.A.C.S. Art. 4512.8, Sec. 3(a).)

Sec. 245.010. MINIMUM STANDARDS. (a) The rules must contain minimum standards to protect the health and safety of a patient of an abortion facility.

(b) Only a physician as defined by the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) may perform an abortion.

(c) The standards may not be more stringent than Medicare certification standards, if any, for:

- (1) qualifications for professional and nonprofessional personnel;
- (2) supervision of professional and nonprofessional personnel;
- (3) medical treatment and medical services provided by an abortion facility and the coordination of treatment and services;
- (4) sanitary and hygienic conditions within an abortion facility;
- (5) the equipment essential to the health and welfare of the patients; and
- (6) clinical records kept by an abortion facility.

(d) This section does not authorize the board to:

- (1) establish the qualifications of a licensed practitioner; or
- (2) permit a person to provide health care services who is not authorized to provide those services under other laws of this state. (V.A.C.S. Art. 4512.8, Secs. 3(b), (d).)

Sec. 245.011. REPORTING REQUIREMENTS; CRIMINAL PENALTY. (a) Each abortion facility must submit an annual report to the department on each abortion that is performed at the abortion facility. The report must be submitted on a form provided by the department.

(b) The report may not identify by any means the physician performing the abortion or the patient.

(c) The report must include:

- (1) whether the abortion facility at which the abortion is performed is licensed under this chapter;
- (2) the patient's year of birth, race, marital status, and state and county of residence;
- (3) the type of abortion procedure;
- (4) the date the abortion was performed;
- (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;
- (6) the period of gestation based on the best medical judgment of the attending physician at the time of the procedure;
- (7) the date, if known, of the patient's last menstrual cycle;



- (8) the number of previous live births of the patient; and
- (9) the number of previous induced abortions of the patient.

(d) All information and records held by the department under this chapter are confidential and are not open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). That information may not be released or made public on subpoena or otherwise, except that release may be made:

- (1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;
- (2) with the consent of each person, patient, and abortion facility identified in the information released; or
- (3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter.

(e) A person commits an offense if the person violates this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 4512.8, Sec. 4.)

**Sec. 245.012. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.** (a) The department may deny, suspend, or revoke a license for a violation of this chapter or a rule adopted under this chapter.

(b) The denial, suspension, or revocation of a license by the department and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4512.8, Sec. 9.)

**Sec. 245.013. INJUNCTION.** (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the patients of an abortion facility.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

- (1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (2) restrain or prevent the establishment or operation of an abortion facility without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the abortion facility is located or in Travis County. (V.A.C.S. Art. 4512.8, Sec. 10.)

**Sec. 245.014. CRIMINAL PENALTY.** (a) A person commits an offense if the person violates Section 245.003(a).

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

(c) Each day of a continuing violation constitutes a separate offense. (V.A.C.S. Art. 4512.8, Sec. 11(a).)

**Sec. 245.015. CIVIL PENALTY.** (a) A person who knowingly violates this chapter or who knowingly fails to comply with a rule adopted under this chapter is liable for a civil penalty of not less than \$100 or more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient.

(b) Each day of a continuing violation constitutes a separate ground for recovery. (V.A.C.S. Art. 4512.8, Sec. 11(b).)

**Sec. 245.016. ABORTION IN UNLICENSED ABORTION FACILITY TO PREVENT DEATH OR SERIOUS IMPAIRMENT.** This chapter does not remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed abortion facility if,

at the commencement of the abortion, the physician reasonably believes that the abortion is necessary to prevent the death of the patient or to prevent serious impairment of the patient's physical or mental condition. (V.A.C.S. Art. 4512.8, Sec. 12.)

## CHAPTER 246. CONTINUING CARE FACILITIES

## SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 246.001. SHORT TITLE
- Sec. 246.002. DEFINITIONS
- Sec. 246.003. BOARD POWERS AND DUTIES
- Sec. 246.004. RIGHTS OF RESIDENTS
- Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES
- Sec. 246.006. QUALITY OF CARE
- Sec. 246.007. REDUCTION OF FEES

[Sections 246.008–246.020 reserved for expansion]

## SUBCHAPTER B. CERTIFICATE OF AUTHORITY

- Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED
- Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY
- Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES
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- Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY
- Sec. 246.026. MANAGEMENT BY OTHERS
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## SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS

- Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS
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- Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER
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**CHAPTER 246. CONTINUING CARE FACILITIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 246.001. **SHORT TITLE.** This chapter may be cited as the Texas Continuing Care Facility Disclosure and Rehabilitation Act. (V.A.C.S. Art. 8876, Sec. 1.)

Sec. 246.002. **DEFINITIONS.** In this chapter:

- (1) "Board" means the State Board of Insurance.
- (2) "Commissioner" means the commissioner of the State Board of Insurance.
- (3) "Continuing care" means the furnishing of board and lodging, personal care services, and nursing services, medical services, or other health-related services, regardless of whether the services and the lodging are provided at the same location:
  - (A) to an individual who is not related by consanguinity or affinity to the person furnishing the care; and
  - (B) under an agreement that requires the payment of an entrance fee and that is effective either for the life of the individual or for more than one year.
- (4) "Entrance fee" means an initial or deferred transfer of money or other property valued at an amount exceeding three months' rent, made, or promised to be made, as full or partial consideration for acceptance by a provider of a specified individual as a resident.

(5) "Facility" means a place in which a person provides continuing care to an individual.

(6) "Living unit" means a room, apartment, cottage, or other area that is in a facility and that is set aside for the exclusive use or control of one or more specified individuals.

(7) "Person" means an individual, corporation, association, or partnership, and includes a fraternal or benevolent order or society.

(8) "Provider" means a person who undertakes to provide continuing care in a facility.

(9) "Resident" means an individual entitled to receive continuing care in a facility. (V.A.C.S. Art. 8876, Sec. 2.)

Sec. 246.003. BOARD POWERS AND DUTIES. (a) The board shall regulate providers as provided by this chapter.

(b) The board may adopt rules and take other action as necessary to administer and enforce this chapter. (V.A.C.S. Art. 8876, Sec. 3.)

Sec. 246.004. RIGHTS OF RESIDENTS. A resident receiving care in a portion of a facility licensed to provide nursing home care, personal care, or custodial care is entitled to all statutory rights provided to a nursing home, personal care, or custodial care resident. (V.A.C.S. Art. 8876, Sec. 13.)

Sec. 246.005. LICENSING FOR CERTAIN TAX PURPOSES. A facility regulated under this chapter is licensed for purposes of Section 151.314, Tax Code. (V.A.C.S. Art. 8876, Sec. 14.)

Sec. 246.006. QUALITY OF CARE. The commissioner may not regulate or in any manner inquire into the quality of care provided in a facility. (V.A.C.S. Art. 8876, Sec. 21.)

Sec. 246.007. REDUCTION OF FEES. The commissioner shall reduce the annual filing fees under this chapter if the cumulative amount of the fees exceeds the actual cost of regulation. (V.A.C.S. Art. 8876, Sec. 22 (part).)

[Sections 246.008-246.020 reserved for expansion]

#### SUBCHAPTER B. CERTIFICATE OF AUTHORITY

Sec. 246.021. CERTIFICATE OF AUTHORITY REQUIRED. A provider may not construct or acquire a facility or offer to the public a contract for continuing care without a certificate of authority issued under this subchapter. (V.A.C.S. Art. 8876, Sec. 4(a).)

Sec. 246.022. APPLICATION FOR AND ISSUANCE OF CERTIFICATE OF AUTHORITY. (a) The commissioner shall adopt rules stating the information an applicant for a certificate of authority must submit.

(b) On receiving an application for a certificate of authority, the commissioner shall conduct a hearing on the application.

(c) The commissioner shall grant an application for a certificate of authority if the commissioner finds that:

(1) the applicant or the facility is financially sound;

(2) the competence, experience, and integrity of the applicant, its board of directors, its officers, or its management make it in the public interest to issue the certificate; and

(3) the applicant is capable of complying with this chapter.

(d) The commissioner shall issue an order approving or disapproving an application not later than the 180th day after the date on which the application is filed.

(e) The commissioner may limit issuance of certificates of authority to incorporated entities only. (V.A.C.S. Art. 8876, Secs. 4(b), (c).)

**Sec. 246.023. MANDATORY ISSUANCE OF CERTIFICATE OF AUTHORITY TO CERTAIN FACILITIES.** (a) The commissioner shall issue a certificate of authority for a facility that:

- (1) was occupied by at least one resident on September 1, 1987;
- (2) was under construction on September 1, 1987; or
- (3) incurred substantial financial obligations before September 1, 1987, related to the development of the facility.

(b) A certificate of authority issued under this section may be suspended or revoked as any other certificate.

(c) This section prevails over Section 246.022. (V.A.C.S. Art. 8876, Sec. 4(g).)

**Sec. 246.024. TRANSFER OF CERTIFICATE OF AUTHORITY.** A certificate of authority may not be transferred unless the commissioner approves the transfer. (V.A.C.S. Art. 8876, Sec. 4(d).)

**Sec. 246.025. SUSPENSION OR REVOCATION OF CERTIFICATE OF AUTHORITY.** The commissioner may suspend or revoke a provider's certificate of authority if the provider:

- (1) draws on its entrance fee escrow in an amount greater than provided for by Section 246.073;
- (2) draws on its reserve fund escrow in an amount greater than provided for by Section 246.073; or
- (3) intentionally violates this chapter. (V.A.C.S. Art. 8876, Sec. 4(f).)

**Sec. 246.026. MANAGEMENT BY OTHERS.** A holder of a certificate of authority may not contract for management of the facility unless the commissioner is notified of the contract. (V.A.C.S. Art. 8876, Sec. 4(e).)

**Sec. 246.027. CERTIFICATE OF AUTHORITY FEES.** (a) Except as provided by Subsection (b), a facility that files an application for a certificate of authority must pay to the commissioner a fee of \$10,000.

(b) A facility that files an application for a certificate of authority issued under Section 246.023 must pay to the commissioner:

- (1) a fee of \$500; and
- (2) a fee of \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home. (V.A.C.S. Art. 8876, Sec. 22 (part).)

[Sections 246.028–246.040 reserved for expansion]

#### **SUBCHAPTER C. CONTINUING CARE CONTRACTS AND DISCLOSURE STATEMENTS**

**Sec. 246.041. PRECONTRACTUAL RECORDING REQUIREMENTS.** (a) A provider shall file with the board a current disclosure statement that meets the requirements of this subchapter and shall file copies of the agreements establishing the escrows under Subchapter D or a verified statement explaining that an escrow is not required before the provider:

- (1) contracts to provide continuing care in a facility located or to be located in this state;
- (2) extends the term of an existing continuing care contract in a facility that is located or to be located in this state and that requires or allows an entrance fee from any person, regardless of whether the extended contract requires an entrance fee; or
- (3) including a person acting on the provider's behalf, solicits for an individual who is a resident of this state a continuing care contract in this state.

(b) A contract is solicited in this state if, during the 12-month period preceding the date on which a continuing care contract for a facility is signed or accepted by either party,

information concerning the facility or the availability of a continuing care contract for the facility is given:

- (1) by personal, telephone, mail, or other communication directed to and received by a person at a location in this state; or
- (2) in a paid advertisement published or broadcast from within this state, other than in a publication in which more than two-thirds of the circulation is outside this state. (V.A.C.S. Art. 8876, Sec. 5.)

Sec. 246.042. DELIVERY OF DISCLOSURE STATEMENT. (a) A provider must deliver a disclosure statement to a person with whom a continuing care contract is to be made before the earlier of:

- (1) the execution of the contract; or
  - (2) the transfer of the entrance fee to the provider by or on behalf of the person.
- (b) The most recently filed disclosure statement is the only statement that:
- (1) is current for purposes of this chapter; and
  - (2) may be delivered under this section. (V.A.C.S. Art. 8876, Secs. 6(a) (part), 7(b) (part).)

Sec. 246.043. COVER PAGE OF DISCLOSURE STATEMENT. The cover page of a disclosure statement must:

- (1) state, in a prominent location and in boldfaced type, the date of the statement; and
- (2) include a statement that this chapter requires the delivery of the disclosure statement to a contracting party before the execution of a continuing care contract, but that the disclosure statement has not been approved by a governmental agency or representative to ensure the accuracy of its information. (V.A.C.S. Art. 8876, Sec. 6(n).)

Sec. 246.044. CONTENTS OF DISCLOSURE STATEMENT: PROVIDER. (a) The disclosure statement must include the name and business address of the provider and a statement of whether the provider is a partnership, corporation, or other type of legal entity. If the provider is not an individual, the statement must include:

- (1) the name and business address of each officer, director, trustee, and managing or general partner; and
- (2) the name and business address of each person who has at least a 10 percent interest in the provider and a description of the person's interest in or occupation with the provider.

(b) The provider may include in the disclosure statement any other material information concerning the facility or the provider. (V.A.C.S. Art. 8876, Secs. 6(a) (part), (b), (m).)

Sec. 246.045. CONTENTS OF DISCLOSURE STATEMENT: THIRD PARTY MANAGEMENT. If a person, other than an individual directly employed by the provider, is to be the day-to-day manager of a facility, the disclosure statement must include:

- (1) a description of the person's business experience, if any, in the operation or management of a similar facility;
- (2) the name and address of any professional service, firm, association, trust, partnership, or corporation that:
  - (A) has in the person, or in which the person has, at least a 10 percent interest; and
  - (B) proposes to provide goods, leases, or services to the facility or to the residents of the facility, of an aggregate value of at least \$500 in a year;
- (3) a description of any goods, leases, or services under Subdivision (2), and a statement of their probable or anticipated cost to the facility, provider, or residents, or a statement that their cost cannot be estimated; and
- (4) a description of any matter in which the person:
  - (A) has been convicted of a felony, pleaded nolo contendere to a felony charge, or has been held liable or enjoined in a civil action by final judgment, if the felony or

civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) is subject to an injunction or restrictive order of a court of record; or

(C) has had any state or federal license or permit suspended or revoked as a result of an action brought by a governmental agency if the order or action arose out of or was related to a business activity in a health care field, including an action affecting a license to operate a foster care facility, a nursing home, a retirement home, a home for the aged, or a facility subject to this chapter or a similar statute in another state. (V.A.C.S. Art. 8876, Sec. 6(c).)

**Sec. 246.046. CONTENTS OF DISCLOSURE STATEMENT: AFFILIATION WITH NONPROFIT ORGANIZATION.** The disclosure statement must state whether the provider is affiliated with a religious, charitable, or other nonprofit organization, and if so, the statement must:

(1) describe the extent of the affiliation;

(2) explain the extent to which the organization is responsible for the financial and contractual obligations of the provider; and

(3) cite any provision of the Internal Revenue Code of 1986 under which the provider or affiliate claims to be exempt from the payment of income tax. (V.A.C.S. Art. 8876, Sec. 6(d).)

**Sec. 246.047. CONTENTS OF DISCLOSURE STATEMENT: PHYSICAL PROPERTY.** (a) The disclosure statement must provide the location and a description of the proposed or existing physical property of the facility.

(b) If the physical property of the facility is proposed, the disclosure statement must state:

(1) the estimated completion date;

(2) whether construction has begun; and

(3) any contingencies under which construction may be deferred. (V.A.C.S. Art. 8876, Sec. 6(e).)

**Sec. 246.048. CONTENTS OF DISCLOSURE STATEMENT: CONTRACTS AND FEES.** The disclosure statement must describe:

(1) the services provided at the facility under a continuing care contract, including:

(A) the extent to which medical care is furnished; and

(B) those services that are included for specified basic fees for continuing care and those services that are made available at extra charge;

(2) all fees required of residents, including the entrance fee and any periodic charges;

(3) the conditions under which a continuing care contract at the facility may be canceled by the provider or the resident;

(4) any conditions under which all or part of the entrance fee is refundable on cancellation of the contract by the provider or the resident, or by the death of the resident before or during the occupancy of a living unit; and

(5) the manner by which the provider may adjust periodic charges or other recurring fees and any limitations on those adjustments. (V.A.C.S. Art. 8876, Secs. 6(f), (g) (part).)

**Sec. 246.049. CONTENTS OF DISCLOSURE STATEMENT: CHANGE OF CIRCUMSTANCES.** The disclosure statement must state:

(1) the policy of the facility regarding changes in the number of people residing in a living unit because of marriage or other relationships;

(2) the policy of the facility relating to the admission of a spouse to the facility and the consequences if the spouse does not meet the requirements for admission;

(3) the conditions under which a living unit occupied by a resident may be made available by the facility to a different resident other than on the death of the previous resident; and

(4) the health and financial conditions required for acceptance as a resident and for continuation as a resident, including the effect of any change in the health or financial condition of an individual between the date of the continuing care contract and the date on which the individual initially occupies a living unit. (V.A.C.S. Art. 8876, Secs. 6(g) (part), (h).)

Sec. 246.050. CONTENTS OF DISCLOSURE STATEMENT: FINANCIAL INFORMATION. The disclosure statement must:

(1) describe any provisions made or to be made to provide reserve funding or security to enable the provider to fully perform its obligations under a continuing care contract at a facility, including:

(A) the establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested; and

(B) the name and experience of any individual in the direct employment of the provider who will make the investment decisions; and

(2) provide financial statements of the provider, including:

(A) a balance sheet as of the end of the most recent fiscal year; and

(B) the provider's income statements for each of the three most recent fiscal years that the provider has been in existence. (V.A.C.S. Art. 8876, Secs. 6(i), (j).)

Sec. 246.051. CONTENTS OF DISCLOSURE STATEMENT: ANNUAL INCOME STATEMENTS. The disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

(1) a beginning cash balance consistent with the income statement required under Section 246.050 or, if operation of the facility has not begun, consistent with the statement of anticipated source and application of funds required under Section 246.052;

(2) anticipated earning on any cash reserves;

(3) estimates of net receipts from entrance fees, other than entrance fees included in the statement of anticipated source and application of funds required under Section 246.052, minus estimated entrance fee refunds, including a description of the actuarial basis and method of computation for the projection of entrance fee receipts;

(4) an estimate of gifts or bequests to be relied on to meet operating expenses;

(5) a projection of estimated income from fees and charges, excluding entrance fees, that:

(A) states individual rates anticipated to be charged; and

(B) includes a description of the assumptions used for computing the estimated occupancy rate of the facility and the effect on the income of the facility of any government subsidies for health care services to be provided under the continuing care contract;

(6) a projection of the facility's operating expenses, including:

(A) a description of the assumptions used in computing the expenses; and

(B) a separate allowance for the replacement of equipment and furnishings and anticipated major structural repairs or additions; and

(7) an estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility. (V.A.C.S. Art. 8876, Sec. 6(l).)

Sec. 246.052. CONTENTS OF DISCLOSURE STATEMENT: ANTICIPATED SOURCE AND APPLICATION OF FUNDS. If a facility has not begun operation, the disclosure statement must include a statement of the anticipated source and application of the funds to be used in the purchase or construction of the facility, including:

(1) an estimate of the cost of purchasing or constructing and of equipping the facility, including financing expenses, legal expenses, land costs, occupancy development costs, and similar costs that the provider expects to incur or to become obligated to pay before operations begin;



(2) a description of any mortgage loan or other long-term financing arrangement for the facility, including the anticipated terms and costs of the financing;

(3) an estimate of the total entrance fees to be received from, or on behalf of, residents before the operation of the facility begins; and

(4) an estimate of any funds anticipated to be necessary to cover initial losses and to provide reserve funds to assure full performance of the obligations of the provider under a continuing care contract. (V.A.C.S. Art. 8876, Sec. 6(k).)

**Sec. 246.053. STANDARD CONTRACT FORM.** A copy of the standard contract form used by a provider must be attached as an exhibit to each disclosure statement. (V.A.C.S. Art. 8876, Sec. 6(o) (part).)

**Sec. 246.054. ANNUAL DISCLOSURE STATEMENT REVISION.** (a) A provider shall file a revised disclosure statement with the board not later than the 120th day after the date on which the provider's fiscal year ends.

(b) The revised disclosure statement must revise, as of the end of the provider's fiscal year, the information required by this subchapter.

(c) The revised disclosure statement must describe any material differences between:

(1) the estimated income statements filed under Section 246.052 as a part of the disclosure statement filed after the start of the provider's most recently completed fiscal year; and

(2) the actual result of operations during that fiscal year with the revised estimated income statements filed as a part of the revised disclosure statement.

(d) A provider may revise its disclosure statement and may file the revised disclosure statement at any other time if, in the provider's opinion, revision is necessary to prevent a disclosure statement from containing a material misstatement of fact or omitting a material fact required to be included in the disclosure statement.

(e) The commissioner shall review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy. (V.A.C.S. Art. 8876, Secs. 7(a), (b) (part), (c).)

**Sec. 246.055. ADVERTISEMENT IN CONFLICT WITH DISCLOSURES.** A provider may not engage in any type of advertisement for a continuing care contract or facility if the advertisement contains a statement or representation in conflict with the disclosures required under this subchapter. (V.A.C.S. Art. 8876, Sec. 6(q).)

**Sec. 246.056. RESCISSION OF CONTRACT; REQUIRED LANGUAGE.** (a) A person who executes a continuing care contract with a provider may rescind the contract at any time before the later of midnight of the seventh day:

(1) after the date on which the contract is executed; or

(2) after the date on which the person receives a disclosure statement that meets the requirements of this subchapter.

(b) A resident who executes a continuing care contract may not be required to move into the facility before the expiration of the seven-day period.

(c) If a contract is rescinded under this section, any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be refunded not later than the 30th day after the date of rescission.

(d) Each continuing care contract must state in boldfaced type:

(1) "You may cancel this contract at any time prior to midnight of the seventh day after the date on which you sign this contract or you receive the facility's disclosure statement, whichever occurs later. If you elect to cancel the contract, you must do so by written notice and you will be entitled to receive a refund of all assets transferred other than periodic charges applicable to your occupancy of a living unit."; and

(2) "This document, if executed, constitutes a legal and binding contract between you and \_\_\_\_\_. You may wish to consult a legal or financial advisor before

signing, although it is not required that you do so to make this contract binding." (V.A.C.S. Art. 8876, Sec. 6(o) (part).)

Sec. 246.057. CANCELLATION OF CONTRACT: DEATH OR INCAPACITY BEFORE OCCUPANCY. (a) A continuing care contract is canceled if the resident:

- (1) dies before occupying a living unit in the facility; or
- (2) is precluded under the terms of the contract from occupying a living unit in the facility because of illness, injury, or incapacity.

(b) If a contract is canceled under this section, the resident or the resident's legal representative is entitled to a refund of all money or property transferred to the provider, minus:

(1) any nonstandard costs specifically incurred by the provider or facility at the request of the resident that are described in the contract or in an addendum to the contract signed by the resident; and

(2) a reasonable service charge, if set out in the contract, that may not exceed the greater of \$1,000 or two percent of the entrance fee. (V.A.C.S. Art. 8876, Sec. 6(p).)

Sec. 246.058. DISCLOSURE STATEMENT FEES. A facility that files an annual disclosure statement shall pay to the commissioner:

(1) a filing fee of \$500; and

(2) a fee of not more than \$2 for each living unit in the facility, excluding a unit devoted to that portion of the facility that is a licensed nursing home. (V.A.C.S. Art. 8876, Sec. 22 (part).)

[Sections 246.059–246.070 reserved for expansion]

#### SUBCHAPTER D. ENTRANCE FEE AND RESERVE FUND ESCROW ACCOUNTS

Sec. 246.071. ENTRANCE FEE ESCROW ACCOUNT; ESCROW AGENT. (a) Before a provider may make a continuing care contract, the provider must establish an entrance fee escrow account with a bank or trust company, as escrow agent, that is located in this state.

(b) The provider shall deposit with the escrow agent each entrance fee or portion of an entrance fee received by the provider from or on behalf of a resident not later than 72 hours after the provider receives the fee. (V.A.C.S. Art. 8876, Sec. 8(a).)

Sec. 246.072. RELEASE OR RETURN OF ENTRANCE FEE. Unless the escrow agent receives a written request from or on behalf of a payee, a resident, or the personal representative of a resident for the return of an entrance fee under Section 246.056, the agent shall release the fee to the provider, place the fee in a reserve fund escrow, or return the fee to the payee as provided by this subchapter. (V.A.C.S. Art. 8876, Sec. 8(b).)

Sec. 246.073. RELEASE TO THE PROVIDER. (a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts with those residents; and

(B) the receipt by the agent of entrance fee deposits of at least 10 percent of the entrance fee designated in each contract;

(2) the total amount of aggregate entrance fees received or receivable by the provider under binding continuing care contracts, the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under Subdivision (3), and funds from other sources in the actual possession of the provider are equal to or more than the total amount of:

(A) 90 percent of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility;

(B) 90 percent of the funds estimated, in the statement of anticipated source and application of funds included in the disclosure statement, to be necessary to cover initial losses of the facility; and

(C) 90 percent of the amount of any reserve fund escrow required to be maintained by the provider under Section 246.077; and

(8) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement and any conditions of the commitment before disbursement of funds have been substantially satisfied, other than completion of the construction or closing on the purchase of the facility; and:

(A) if construction of the facility has not been substantially completed:

(i) all necessary government permits or approvals have been obtained;

(ii) the provider and the general contractor responsible for construction of the facility have entered into a maximum price contract;

(iii) a recognized surety authorized to do business in this state has executed in favor of the provider a bond covering faithful performance of the construction contract by the general contractor and the payment of all obligations under the contract;

(iv) the provider has entered a loan agreement for an interim construction loan in an amount that, when combined with the amount of entrance fees in escrow plus the amount of funds from other sources in the actual possession of the provider, equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility;

(v) the lender has disbursed not less than 10 percent of the amount of the construction loan for physical construction or completed site preparation work; and

(vi) the provider has placed orders at firm prices for not less than 50 percent of the value of items necessary for equipping and furnishing the facility in accordance with the description in the disclosure statement, including any installation charges; or

(B) if construction or purchase of the facility has been substantially completed:

(i) an occupancy permit covering the living unit has been issued by the local government that has authority to issue the permit; and

(ii) if the entrance fee applies to a living unit that has been previously occupied, the living unit is available for occupancy by the new resident.

(b) Before the date on which the reserve fund escrow required under Section 246.077 is first established, the aggregate amount of entrance fees that may be released to the provider under this section may not exceed an amount equal to the aggregate amount of entrance fees received or receivable by the provider under binding continuing care contracts minus the amount of entrance fees received or receivable that are required to be maintained initially in the reserve fund escrow. (V.A.C.S. Art. 8876, Secs. 8(c), (d).)

**Sec. 246.074. RETURN OF ENTRANCE FEE.** The escrow agent shall return an entrance fee to the person who paid it if the fee is not released to the provider or placed in the reserve fund escrow required under Section 246.077 within:

(1) 36 months after the date on which any portion of the entrance fee is received by the provider; or

(2) a longer time specified by the provider in the disclosure statement delivered with the continuing care contract of the person who paid the fee. (V.A.C.S. Art. 8876, Sec. 8(e).)

**Sec. 246.075. ESCROW OF APPLICATION FEE NOT REQUIRED.** This subchapter does not require the escrow of a nonrefundable application fee that:

(1) does not exceed an amount equal to two percent of the entrance fee; and

(2) is clearly designated as nonrefundable in the continuing care contract. (V.A.C.S. Art. 8876, Sec. 8(f).)

Sec. 246.076. INTEREST ACCRUED ON ENTRANCE FEE FUNDS. Unless otherwise provided in a continuing care contract, interest that accrues on entrance fee funds held in escrow is the property of the provider. (V.A.C.S. Art. 8876, Sec. 8(g).)

Sec. 246.077. RESERVE FUND ESCROW. (a) When a facility is first occupied by a resident, the provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is located in this state a portion of all entrance fees received by the provider in an amount equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility.

(b) At the option of the facility, the reserve fund escrow amount may exclude the portion of principal and interest payments applicable to that portion of the facility that is a licensed nursing home.

(c) The funds in the reserve fund escrow account may be invested, with earnings payable to the provider. (V.A.C.S. Art. 8876, Sec. 9 (part).)

Sec. 246.078. RELEASE OF RESERVE FUND ESCROW. (a) The escrow agent may release an amount equal to not more than one-twelfth of the original principal balance of the escrow account if the provider requests the release in writing.

(b) The escrow agent must give written notice to the board not later than the 11th day before the date of the release.

(c) The escrow agent may not release funds under this section more than once during a calendar year. (V.A.C.S. Art. 8876, Sec. 9 (part).)

Sec. 246.079. TRANSITION. (a) A provider who operates a facility that existed on September 1, 1987, must comply with the escrow requirements imposed under this subchapter not later than September 1, 1990.

(b) The commissioner may extend the time for compliance under this section for a reasonable period if the commissioner determines that the provider is unable to comply with this section after making a good faith effort to comply. (V.A.C.S. Art. 8876, Secs. 20(a), (c).)

[Sections 246.080–246.090 reserved for expansion]

#### SUBCHAPTER E. SUPERVISION, REHABILITATION, AND LIQUIDATION

Sec. 246.091. SUPERVISION BY COMMISSIONER. (a) The commissioner may place a provider or facility into supervision if:

(1) the provider requests release of more than one-twelfth of the reserve fund escrow required under Section 246.077;

(2) the provider requests release of the reserve fund escrow more than once in a 12-month period;

(3) the commissioner determines, after a complaint and investigation, that the provider is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) The commissioner appoints the supervisor.

(c) The commissioner may provide that the facility may not, during the supervision period and without the prior approval of the commissioner or the supervisor:

(1) dispose of, convey, or encumber its assets;

(2) withdraw its bank accounts;

(3) lend its funds;

(4) invest its funds;

(5) transfer its property;

- (6) incur a debt, obligation, or liability; or
- (7) merge or consolidate with another facility.

(d) The commissioner shall terminate the supervision and restore to a provider the authority to manage the affairs of the facility if the commissioner determines that the facility is capable of meeting its financial obligations.

(e) The facility or provider shall pay the costs of a supervisor. (V.A.C.S. Art. 8876, Sec. 11.)

**Sec. 246.092. APPLICATION FOR COURT ORDER FOR REHABILITATION OR LIQUIDATION.** (a) The commissioner shall request the attorney general to apply to a district court of this state, or to the federal bankruptcy court that has exercised jurisdiction over a provider or facility, for an order directing the appointment of a trustee to rehabilitate or liquidate the facility if the commissioner elects not to place the facility into supervision and:

(1) the provider requests release of more than one-twelfth of the reserve fund escrow required under Section 246.077;

(2) the provider requests release of the reserve fund escrow more than once in a 12-month period;

(3) the board determines, after a complaint and investigation, that the provider is unable to meet the income or available cash projections previously filed by the provider and that the ability of the provider to fully perform its obligations under continuing care contracts is endangered; or

(4) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.

(b) In connection with an application for an order to rehabilitate or liquidate a facility, the court shall consider the manner in which the welfare of persons who have previously contracted with the provider for continuing care at the facility may be best served, and may order that the proceeds of a lien imposed under Section 246.111 may be used in full or partial payment of entrance fees to other facilities on behalf of the residents of the facility being liquidated. (V.A.C.S. Art. 8876, Secs. 12(a), (f).)

**Sec. 246.093. ORDER TO REHABILITATE.** An order to rehabilitate a facility must direct the trustee to:

(1) take possession of the provider's property in order to conduct the business, including employing any managers or agents the trustee considers necessary; and

(2) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary. (V.A.C.S. Art. 8876, Sec. 12(b).)

**Sec. 246.094. ORDER TO LIQUIDATE.** (a) If the trustee determines that further efforts to rehabilitate the provider would be impractical or useless, the trustee may apply to the court that ordered the rehabilitation for an order of liquidation.

(b) A court that has jurisdiction may issue an order to liquidate a facility on application of the board, regardless of whether an order to rehabilitate the facility exists. If the court issues an order to liquidate, the court shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.

(c) A person may not contract for continuing care at a facility after an order to liquidate that facility has been entered. (V.A.C.S. Art. 8876, Secs. 12(d), (e).)

**Sec. 246.095. BOND.** A court may refuse to make or may vacate an order to rehabilitate under this subchapter if the provider posts a bond that is:

(1) in an amount determined by the court to be equal to the reserve funding needed to fulfill the provider's obligations under its continuing care contracts at the facility;

(2) issued by a recognized surety authorized to do business in this state; and

(3) executed in favor of the state on behalf of all persons entitled to refunds of entrance fees from the provider or other damages if the provider is unable to fulfill its continuing care contracts at the facility. (V.A.C.S. Art. 8876, Sec. 12(g).)

Sec. 246.096. **TERMINATION OF REHABILITATION.** (a) A court may terminate a rehabilitation and order return of a facility and its assets and affairs to the management of the provider if the court, on petition of the trustee or the provider or on its own motion, finds that:

- (1) the objectives of the order to rehabilitate the facility have been accomplished; and
  - (2) the facility can be returned to the provider's management without further jeopardy to the residents, creditors, or owners of the facility or the public.
- (b) A court may enter an order under this section after:

- (1) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and
- (2) a report on the facility's financial condition. (V.A.C.S. Art. 8876, Sec. 12(c).)

Sec. 246.097. **PAYMENT OF TRUSTEE.** The reasonable costs, expenses, and fees of the trustee are payable from the assets of the facility. (V.A.C.S. Art. 8876, Sec. 12(h).)

[Sections 246.098–246.110 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 246.111. **LIEN.** (a) To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility. The lien covers the real and personal property of the provider located at the facility.

(b) The commissioner may remove a lien under this section if requested by a provider to obtain secondary financing or refinancing of a facility if:

- (1) the facility is financially sound; and
- (2) removal of the lien does not adversely affect the residents.

(c) A lien under this section is subordinate to the lien of a first mortgage on the real property of the facility if the proceeds of the loan secured by the first mortgage were used in whole or in part to:

- (1) construct or acquire the facility; or
- (2) refinance an earlier loan used to construct or acquire the facility.

(d) A lien under this section is effective for 10 years.

(e) A lien under this section may be foreclosed on application of the board if the facility is liquidated or the provider is insolvent or bankrupt. The proceeds from a foreclosed lien shall be used for full or partial satisfaction of the provider's obligations under continuing care contracts in effect on the date of the foreclosure. (V.A.C.S. Art. 8876, Sec. 10.)

Sec. 246.112. **INVESTIGATIONS.** The commissioner may conduct an examination or investigation as necessary to:

- (1) determine whether a person has violated or is about to violate this chapter;
- (2) aid in the enforcement of this chapter;
- (3) determine the financial solvency of a facility; or
- (4) verify a statement contained in a disclosure statement filed or delivered under this chapter. (V.A.C.S. Art. 8876, Sec. 16(a).)

Sec. 246.113. **PRODUCTION OF EVIDENCE.** (a) In an investigation or proceeding under this chapter, the board may:

- (1) require or allow a person to file a written statement regarding any of the facts and circumstances concerning the matter to be investigated;
- (2) administer oaths and affirmations;
- (3) subpoena witnesses;
- (4) compel attendance;
- (5) take evidence; and

(6) require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records considered relevant to the inquiry.

(b) The board may bring suit in district court to enforce a subpoena if the person to whom a subpoena is directed fails to comply. (V.A.C.S. Art. 8876, Secs. 16(b), (c).)

**Sec. 246.114. ACTUARIAL REVIEW.** (a) This section applies only to a facility whose contracts offer future guarantees of long-term nursing care that develop current actuarial liabilities.

(b) A facility that initially filed with the commissioner an actuarial review performed on or after September 1, 1982, and before September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of completion of the initial actuarial review.

(c) A facility that initially filed with the commissioner an actuarial review performed on or after September 1, 1987, shall file with the commissioner subsequent actuarial reviews at five-year intervals from the date of the filing of the initial actuarial review. (V.A.C.S. Art. 8876, Sec. 16(d).)

**Sec. 246.115. CEASE AND DESIST ORDERS; INJUNCTIONS.** (a) The board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the board determines, after a complaint or by other means, that the act or practice violates this chapter or an order made under this chapter.

(b) The action may be brought in the district court of a county in which:

- (1) the defendant resides;
- (2) the defendant has done business;
- (3) the principal place of business of the defendant is located; or
- (4) the transaction occurred.

(c) The court may grant an injunction or restraining order on a proper showing. If the court grants an injunction or restraining order, the court shall issue it without bond. (V.A.C.S. Art. 8876, Sec. 17.)

**Sec. 246.116. CRIMINAL PENALTY.** (a) A person commits an offense if the person intentionally violates this chapter.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 8876, Secs. 18, 20(d).)

**Sec. 246.117. CIVIL LIABILITY.** (a) A provider who makes a continuing care contract without complying with the disclosure statement requirement under Subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person with whom the continuing care contract is made for:

- (1) actual damages;
- (2) repayment of all fees paid to the provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;
- (3) interest at the legal rate for judgments;
- (4) court costs; and
- (5) reasonable attorney's fees.

(b) A provider is liable under this section regardless of whether the provider had actual knowledge of the misstatement or omission.

(c) A person may not file or maintain an action under this section if the person, before filing the action, received a written offer of a refund of all amounts paid to the provider, facility, or person violating this chapter and reasonable interest from the date of payment, minus the reasonable value of care and lodging provided before the receipt of the offer and:

- (1) the offer states the provisions of this section; and
- (2) the recipient of the offer fails to accept the offer within 30 days after the date the offer is received.
- (d) A person must bring suit under this section not later than three years after:
  - (1) the date on which the continuing care contract was entered into; or
  - (2) the violation, misstatement, or omission is discovered or reasonably should have been discovered.
- (e) Except as expressly provided by this chapter, civil liability does not arise in favor of a private party by implication from or as a result of the violation of this chapter or a rule or order adopted under this chapter.
- (f) This chapter does not limit a liability that would exist under any other statute or common law if this chapter were not in effect.
- (g) The provisions of this chapter are not exclusive and the remedies provided by this chapter are in addition to any other remedies provided by any other law. (V.A.C.S. Art. 8876, Sec. 15.)

[Chapters 247–260 reserved for expansion]

#### SUBTITLE C. LOCAL HOSPITALS

#### CHAPTER 261. MUNICIPAL HOSPITALS

##### SUBCHAPTER A. TYPE A GENERAL-LAW MUNICIPALITIES

##### Sec. 261.001. REGULATION OF HOSPITALS BY TYPE A GENERAL-LAW MUNICIPALITY

[Sections 261.002–261.010 reserved for expansion]

##### SUBCHAPTER B. SALE, LEASE, OR CLOSURE OF MUNICIPAL HOSPITAL

##### Sec. 261.011. AUTHORITY OF GOVERNING BODY

##### Sec. 261.012. SALE OR CLOSURE PETITION; ELECTION

##### Sec. 261.013. FORM AND TERMS OF LEASE IN MUNICIPALITY OF 25,000 OR LESS

#### SUBTITLE C. LOCAL HOSPITALS

#### CHAPTER 261. MUNICIPAL HOSPITALS

##### SUBCHAPTER A. TYPE A GENERAL-LAW MUNICIPALITIES

##### Sec. 261.001. REGULATION OF HOSPITALS BY TYPE A GENERAL-LAW MUNICIPALITY. The governing body of a Type A general-law municipality may:

- (1) construct or establish one or more hospitals and control and regulate those hospitals; and
- (2) prohibit or permit and regulate the establishment of private hospitals. (V.A.C.S. Art. 1015, Subd. (4).)

[Sections 261.002–261.010 reserved for expansion]

##### SUBCHAPTER B. SALE, LEASE, OR CLOSURE OF MUNICIPAL HOSPITAL

Sec. 261.011. AUTHORITY OF GOVERNING BODY. (a) The governing body of a municipality by ordinance may order the sale, lease, or closure of all or part of a hospital owned and operated by the municipality, including real property. The ordinance must include a finding by the governing body that the sale, lease, or closure is in the best interest of the residents of the municipality.

(b) A sale or closure may not take effect before the expiration of the period in which a petition may be filed under Section 261.012. (V.A.C.S. Art. 4437c–2, Sec. 1 (part); Secs. 2(a) (part), (c) (part).)



**Sec. 261.012. SALE OR CLOSURE PETITION; ELECTION.** (a) The governing body shall order and conduct an election on the sale or closure of a hospital if, before the 31st day after the date the governing body orders the sale or closure, the governing body receives a petition signed by at least 10 percent of the qualified voters of the municipality requesting the election.

(b) If a petition is filed under Subsection (a), the sale or closure is contingent on voter approval. If a majority of the qualified voters voting on the question approve the sale or closure, the hospital may be sold or closed. The number of qualified voters of the municipality is determined according to the most recent official list of qualified voters. (V.A.C.S. Art. 4437c-2, Secs. 2(c) (part), (3).)

**Sec. 261.013. FORM AND TERMS OF LEASE IN MUNICIPALITY OF 25,000 OR LESS.** (a) The governing body of a municipality with a population of 25,000 or less may lease all or part of a hospital owned by the municipality for operation by the lessee as a public hospital under terms that are satisfactory to the governing body and the lessee. The term of the lease may not exceed 50 years.

(b) The lease must:

- (1) be authorized by ordinance or resolution adopted by the governing body;
- (2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk; and
- (3) have the seal of the municipality impressed on the lease. (V.A.C.S. Art. 4437c-1.)

## **CHAPTER 262. MUNICIPAL HOSPITAL AUTHORITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 262.001. SHORT TITLE**
- Sec. 262.002. DEFINITIONS**
- Sec. 262.003. CREATION**
- Sec. 262.004. TAX EXEMPTION**
- Sec. 262.005. DISSOLUTION**

[Sections 262.006–262.010 reserved for expansion]

### **SUBCHAPTER B. BOARD OF DIRECTORS**

- Sec. 262.011. BOARD OF DIRECTORS**
- Sec. 262.012. APPOINTMENT OF BOARD; TERMS OF OFFICE**
- Sec. 262.013. OFFICERS**
- Sec. 262.014. AUTHORITY OF BOARD**
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[Sections 262.016–262.020 reserved for expansion]

### **SUBCHAPTER C. POWERS AND DUTIES**

- Sec. 262.021. GENERAL POWERS**
- Sec. 262.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS**
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- Sec. 262.031. SALE OF PROPERTY; GENERAL PROVISIONS**
- Sec. 262.032. SALE OF PROPERTY TO POLITICAL SUBDIVISION**
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[Sections 262.034–262.040 reserved for expansion]

## SUBCHAPTER D. BONDS

- Sec. 262.041. REVENUE BONDS
- Sec. 262.042. FORM AND PROCEDURE
- Sec. 262.043. TERMS
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- Sec. 262.048. REFUNDING BONDS
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- Sec. 262.050. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS

## CHAPTER 262. MUNICIPAL HOSPITAL AUTHORITIES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 262.001. SHORT TITLE. This chapter may be cited as the Hospital Authority Act. (V.A.C.S. Art. 4437e, Sec. 1 (part).)

Sec. 262.002. DEFINITIONS. In this chapter:

- (1) "Authority" means a hospital authority created under this chapter.
- (2) "Board" means the board of directors of an authority.
- (3) "Bond" includes a note.
- (4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.
- (5) "Governing body" means the governing body of a municipality.
- (6) "Hospital" means a hospital project as defined by Section 223.002.
- (7) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of, or creating a mortgage lien on, properties to secure revenue bonds issued by an authority.
- (8) "Trustee" means the trustee under a trust indenture. (V.A.C.S. Art. 4437e, Sec. 2 (part).)

Sec. 262.003. CREATION. (a) A governing body may adopt an ordinance creating a hospital authority and designating the name of the authority if the governing body finds that creation of the authority is in the best interest of the municipality and its residents.

(b) The governing bodies of two or more municipalities may each adopt an ordinance creating a hospital authority that includes those municipalities and designating the name of the authority if the governing bodies find that creation of the authority is in the best interest of the municipalities.

(c) The authority is composed only of the territory in each municipality in the authority.

(d) The authority is a body politic and corporate.

(e) The authority does not have taxing power. (V.A.C.S. Art. 4437e, Secs. 1 (part), 3 (part).)

Sec. 262.004. TAX EXEMPTION. The authority's property is exempt from taxation because it is held for public purposes only and devoted exclusively to the use and benefit of the public. (V.A.C.S. Art. 4437e, Sec. 16.)

Sec. 262.005. DISSOLUTION. (a) A governing body by ordinance may dissolve an authority created by the governing body if the governing body and the authority provide for the sale or transfer of the authority's assets and liabilities to the municipality or to another person.

(b) The dissolution of an authority and the sale or transfer of the authority's assets and liabilities may not:

- (1) violate a trust indenture or bond resolution relating to the outstanding bonds of the authority; or
- (2) diminish or impair the rights of the holders of outstanding bonds, warrants, or other obligations of the authority.
- (c) Except as otherwise provided by this section, an ordinance dissolving an authority takes effect on the 31st day after the date the governing body adopts the ordinance.
- (d) If before the ordinance takes effect the municipality receives a petition requesting a referendum on the dissolution that is signed by a number of registered voters of the municipality equal to at least 10 percent of the number of voters who voted in the most recent municipal election, the ordinance does not take effect and the governing body shall order the election.
- (e) Section 41.001(a), Election Code, requiring an election to be held on a uniform election date, does not apply to an election under this section. The ballot shall be printed to provide for voting for or against the proposition: "Dissolution of the (name of the authority)."
- (f) If a majority of the votes in the election are cast in favor of the proposition, the ordinance takes effect on a date stated in the order declaring the results of the election. If a majority of the votes in the election are cast against the proposition, the ordinance does not take effect and the governing body may not adopt an ordinance dissolving the authority before the first anniversary of the date of the election. That ordinance is also subject to the petition and election requirements of this section. (V.A.C.S. Art. 4437e, Sec. 19A.)

[Sections 262.006–262.010 reserved for expansion]

#### **SUBCHAPTER B. BOARD OF DIRECTORS**

**Sec. 262.011. BOARD OF DIRECTORS.** (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the ordinance or ordinances creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director. (V.A.C.S. Art. 4437e, Secs. 4(a) (part), (c) (part).)

**Sec. 262.012. APPOINTMENT OF BOARD; TERMS OF OFFICE.** (a) The governing body or governing bodies shall appoint the directors of the authority for terms not to exceed two years except as otherwise provided by this section. If the authority includes more than one municipality, each governing body shall appoint an equal number of directors unless the governing bodies agree otherwise

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The governing body or governing bodies shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) If the authority is financed under Chapter 223, the governing body or governing bodies by ordinance may require the board to submit nominees for appointment to the board. If a nominee is rejected by the governing body or governing bodies, the board shall submit another nominee. The governing body or governing bodies shall select the

directors from the nominees submitted by the board and any other nominee submitted by a member of a governing body. The governing body or governing bodies may also limit the number of successive terms that a director may serve.

(f) An officer or employee of a municipality in the authority is not eligible for appointment as a director. (V.A.C.S. Art. 4437e, Secs. 4(a) (part), (b), (c) (part).)

Sec. 262.013. OFFICERS. (a) The board shall elect:

- (1) a president and a vice-president, who must be directors;
- (2) a secretary and a treasurer, who are not required to be directors; and
- (3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined. (V.A.C.S. Art. 4437e, Sec. 5 (part).)

Sec. 262.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors. (V.A.C.S. Art. 4437e, Sec. 5 (part).)

Sec. 262.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services. (V.A.C.S. Art. 4437e, Sec. 4(a) (part).)

[Sections 262.016–262.020 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 262.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

- (1) have a seal;
- (2) sue and be sued; and
- (3) make, amend, and repeal its bylaws. (V.A.C.S. Art. 4437e, Sec. 3 (part).)

Sec. 262.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals. A hospital may be located outside the municipality or municipalities.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital, or part of a hospital, owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies. (V.A.C.S. Art. 4437e, Secs. 5 (part), 6(a), 14 (part); Art. 4437e–1, Secs. 1 (part), 3(a) (part).)

Sec. 262.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the authority to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel. (V.A.C.S. Art. 4437e, Sec. 5 (part).)

**Sec. 262.024. MANAGEMENT AGREEMENT.** (a) The board may enter into an agreement with any person for the management or operation of a hospital, or part of a hospital, owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the authority to manage the hospital and to employ and discharge employees. (V.A.C.S. Art. 4437e, Sec. 5 (part); Art. 4437e-1, Secs. 1 (part), 3(a) (part).)

**Sec. 262.025. COMMITTEES.** (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the authority to:

- (1) issue bonds;
- (2) make or amend a lease of a hospital or a management agreement relating to a hospital; or
- (3) employ or discharge a manager or executive director. (V.A.C.S. Art. 4437e, Sec. 5 (part).)

**Sec. 262.026. RATES FOR HOSPITAL SERVICES.** (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources the board shall produce revenue sufficient to:

- (1) pay the expenses of owning, operating, and maintaining the hospital;
- (2) pay the interest on the bonds as it becomes due;
- (3) create a sinking fund to pay the bonds as they become due; and
- (4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient with the nonprofit corporation's or lessee's other sources of revenue to:

- (1) pay the expenses of operating and maintaining the hospital; and
- (2) make payments or pay rentals to the authority that are sufficient with the authority's other pledged sources of estimated revenue to:
  - (A) pay the interest on the bonds as it becomes due;
  - (B) create a sinking fund to pay the bonds as they become due; and
  - (C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture. (V.A.C.S. Art. 4437e, Sec. 14 (part).)

**Sec. 262.027. DEPOSITORY.** The authority may:

- (1) select a depository in the same manner that a municipality may select a depository under Chapter 105, Local Government Code; or
- (2) award its depository contract to the depository or depositories selected as the depository or depositories of the municipality or municipalities in the authority and on

the same terms as the terms of the municipal depository agreement or agreements. (V.A.C.S. Art. 4437e, Sec. 15.)

Sec. 262.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section. (V.A.C.S. Art. 4437e, Sec. 17.)

Sec. 262.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors. (V.A.C.S. Art. 4437e, Sec. 19.)

Sec. 262.030. MEDICAL RECORDS. (a) The governing body may authorize the board to dispose of medical records of a patient on or after the 10th anniversary of the date on which the patient was last treated in the hospital. However, if the patient is under the age of 10 at the time of the last treatment, the disposal of the medical records may not be made until on or after the patient's 20th birthday.

(b) The governing body may authorize the board to transfer, destroy, or otherwise dispose of any other authority records that are more than five years old and that the board determines not to be of use to the authority as official records.

(c) The hospital may not destroy medical records that relate to a matter involved in litigation if the hospital knows the litigation has not been finally resolved.

(d) A district may microfilm and retain medical records and any other records that the board considers necessary to preserve in the manner provided by Sections 181.002-181.005, Local Government Code. (V.A.C.S. Art. 4437e, Sec. 5A.)

Sec. 262.031. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

- (1) a trust indenture or bond resolution relating to outstanding bonds of the authority;
- (2) prior restrictions placed on the use of the property; or
- (3) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board shall provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board shall publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in each municipality in the authority. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223. (V.A.C.S. Art. 4437e, Sec. 6(d).)

Sec. 262.032. SALE OF PROPERTY TO POLITICAL SUBDIVISION. (a) The authority may sell property to a political subdivision for the fair market value of the property.

(b) The board must publish a notice of its intention to sell, a description of the property, and the scheduled date of sale in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 15th day before the scheduled sale date.

(c) A petition requesting an election on the question of the sale, signed by at least 10 percent of the qualified voters residing in the authority, may be presented to the secretary or president of the board before the scheduled sale date.

(d) The board shall order the election on receiving the petition. If no petition is filed, the board may sell the property without an election or may order an election on its own

motion. The order must contain the same information contained in the notice of the election under Subsection (f).

(e) Section 41.001(a), Election Code, requiring elections to be held on uniform election dates, does not apply to the election.

(f) In addition to the contents of the notice required by the Election Code, the notice must state the names of the presiding judge, alternate judge, and clerks for each polling place. The board shall publish notice of the election in one or more newspapers of general circulation in the authority once a week for two consecutive weeks. The first notice must be published not later than the 31st day before election day.

(g) The ballot shall be printed to provide for voting for or against the proposition: "The sale of \_\_\_\_\_ by the \_\_\_\_\_ Hospital Authority."

(h) If a majority of qualified voters who vote in the election favor the sale, the board may sell the property. (V.A.C.S. Art. 4437e, Secs. 6(b), (c).)

**Sec. 262.038. SALE OR CLOSING OF HOSPITAL.** (a) The board may sell a hospital, or part of a hospital, owned by the authority or close a hospital, or part of a hospital, owned or operated by the authority. The sale or closure must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the authority. The number of qualified voters is determined according to the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing. (V.A.C.S. Art. 4437e, Sec. 5 (part); Art. 4437e-1, Secs. 1 (part); 3(a) (part), (b); 4.)

[Sections 262.034–262.040 reserved for expansion]

#### **SUBCHAPTER D. BONDS**

**Sec. 262.041. REVENUE BONDS.** (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property. (V.A.C.S. Art. 4437e, Sec. 7.)

**Sec. 262.042. FORM AND PROCEDURE.** (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

(1) be signed by the president or vice-president of the board;

(2) be countersigned by the secretary of the board; and

(3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary. (V.A.C.S. Art. 4437e, Sec. 8 (part).)

**Sec. 262.043. TERMS.** (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate as defined by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest. (V.A.C.S. Art. 4437e, Sec. 8 (part).)

Sec. 262.044. NOTICE. (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board shall publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be not later than the 15th day before the date set for adoption of the resolution. (V.A.C.S. Art. 4437e, Sec. 9(a).)

Sec. 262.045. REFERENDUM. (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the president or secretary of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the authority who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1, Title 22, Revised Statutes. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the municipality's governing body, mayor, and municipal secretary.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed. (V.A.C.S. Art. 4437e, Sec. 9(b).)

Sec. 262.046. JUNIOR LIEN BONDS; PARITY BONDS. (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture. (V.A.C.S. Art. 4437e, Sec. 10.)

Sec. 262.047. BOND PROCEEDS; INVESTMENT OF FUNDS. (a) The board may set aside from the proceeds from the sale of bonds:

(1) an amount for payment of not more than two years' interest on the bonds;

(2) the amount required for operating expenses during the first year of operation as estimated by the board; and

(3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of municipal funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture. (V.A.C.S. Art. 4437e, Secs. 11, 18.)

Sec. 262.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this chapter may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Chapter 503, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), or other applicable law. (V.A.C.S. Art. 4437e, Sec. 12.)



**Sec. 262.049. APPROVAL AND REGISTRATION OF BONDS.** (a) The authority shall submit to the attorney general bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation." (V.A.C.S. Art. 4437e, Sec. 13.)

**Sec. 262.050. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.** (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company; or

(6) the interest and sinking fund or other public fund of an authority.

(b) The bonds are eligible and lawful security, to the extent of the value of the bonds, for the deposits of public funds of the state or an authority if accompanied by all appurtenant unmatured interest coupons. (V.A.C.S. Art. 4437e, Sec. 8a.)

## **CHAPTER 263. COUNTY HOSPITALS AND OTHER HEALTH FACILITIES**

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**Sec. 263.001. TWO OR MORE COUNTIES MAY JOIN**

**Sec. 263.002. ADDITIONAL HOSPITAL**

[Sections 263.003–263.020 reserved for expansion]

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**Sec. 263.021. ESTABLISHING OR ENLARGING HOSPITAL ON PETITION; SUBMISSION OF BOND PROPOSITION**

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**Sec. 263.030. CLOSING OF HOSPITAL**

**Sec. 263.031. CLOSING PART OF HOSPITAL**

[Sections 263.032–263.040 reserved for expansion]

SUBCHAPTER C. BOARD OF MANAGERS

- Sec. 263.041. APPOINTMENT OF BOARD OF MANAGERS
- Sec. 263.042. OPERATION OF BOARD OF MANAGERS
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[Sections 263.086–263.100 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND DISSEMINATION OF INFORMATION

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CHAPTER 263. COUNTY HOSPITALS AND OTHER HEALTH FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 263.001. TWO OR MORE COUNTIES MAY JOIN. (a) Two or more adjacent counties may act together to carry out the purposes of this chapter and construct one or more hospitals for their joint use as provided by this chapter for a single county if:

- (1) each of the counties has fewer than 15,000 inhabitants; and
- (2) the Texas Board of Health approves.

(b) The counties acting together have the same powers and liabilities under this chapter as a single county. (V.A.C.S. Art. 4494.)

Sec. 263.002. ADDITIONAL HOSPITAL. A county may maintain more than one county hospital if considered advisable by the commissioners court of the county and approved by the Texas Board of Health. (V.A.C.S. Art. 4490.)

[Sections 263.003–263.020 reserved for expansion]

**SUBCHAPTER B. ESTABLISHING, ENLARGING, SELLING, AND  
CLOSING COUNTY HOSPITALS**

**Sec. 263.021. ESTABLISHING OR ENLARGING HOSPITAL ON PETITION; SUBMISSION OF BOND PROPOSITION.** (a) The commissioners court of a county may establish a county hospital or any medical or other health facility or enlarge an existing hospital or facility for the care and treatment of persons who are sick or injured in accordance with this subchapter.

(b) Ten percent or more of the qualified property taxpaying voters of a county may petition the commissioners court of the county to establish or enlarge a county hospital or any medical or other health facility.

(c) A petition may not be presented to the commissioners court during the 12-month period succeeding the date on which a petition under this section was last presented to the court unless the county does not own a hospital.

(d) On proper petition, the commissioners court shall, within the period designated in the petition, submit to the qualified voters of the county at a special or regular election the proposition of issuing bonds in the amount designated in the petition to establish or enlarge the hospital or facility.

(e) The commissioners court may not submit to the voters a bond proposition to establish or enlarge a county hospital or facility more than twice during any 12-month period. (V.A.C.S. Arts. 4478(a) (part); 4478a.)

**Sec. 263.022. POWERS AND DUTIES OF COMMISSIONERS COURT AFTER PASSAGE OF BOND PROPOSITION.** (a) If a bond proposition under Section 263.021 is approved by a majority of the qualified voters voting at the election, the commissioners court of the county shall establish or enlarge a hospital or medical or other health facility as provided in the proposition and maintain the hospital or facility.

(b) In establishing, enlarging, or maintaining a hospital or facility, the commissioners court may:

- (1) purchase or lease real or personal property or acquire real property and easements to real property by condemnation;
- (2) purchase or construct any necessary buildings;
- (3) make necessary improvements, repairs, and alterations to an existing building;
- (4) impose property taxes in the county for all necessary expenditures related to the hospital or facility, including maintenance expenses;
- (5) issue county bonds to provide funds to establish, enlarge, and equip the hospital or facility or make any necessary permanent improvements in connection with the hospital or facility; and
- (6) accept and hold a grant or devise of land or a gift or bequest of money or personal property in trust for the county and apply the principal or income, or both, for the benefit of the hospital or facility and in accordance with the terms of the gift.

(c) Subject to this chapter, the commissioners court may purchase or lease real or personal property, or both, in an adjacent county if the court considers the purchase or lease necessary for hospital purposes. The commissioners court may not acquire real property in an adjacent county by condemnation. (V.A.C.S. Arts. 4478(a) (part), (b).)

**Sec. 263.023. CONSTRUCTION OF HOSPITAL TO AVOID INADEQUATE CARE IN CERTAIN COUNTIES.** (a) The commissioners court of a county shall provide for the construction of a county hospital if:

- (1) the county has a municipality with more than 10,000 inhabitants as ascertained by the court in the manner determined by a resolution of the court; and
- (2) the county does not have a county hospital or the county hospital is inadequate.

(b) The commissioners court shall provide for the construction of the hospital within six months after the date the number of inhabitants of the municipality exceeds 10,000 except that the Texas Board of Health may, for good cause, extend this period.

(c) The hospital must have a room or ward for the care of confinement cases and a room or ward for the temporary care of persons suffering from mental or nervous disease.

(d) The hospital must have separate buildings for persons suffering from tuberculosis and other communicable diseases.

(e) Sufficient accommodations shall be added to the hospital as needed to take care of persons in the county who are sick or injured.

(f) If adequate funds for the issuance of county warrants and scrip for the construction of the hospital are not available from the county, the commissioners court shall submit, either at a special election called for the purpose or at a regular election, the proposition of the issuance of county bonds for the construction of the hospital. If the proposition is not approved by a majority vote at the election, the court shall, on petition of 10 percent or more of the qualified voters of the county, resubmit the proposition.

(g) A petition may not be presented to the commissioners court if a petition has been presented to the court in the preceding 12 months. (V.A.C.S. Art. 4493.)

Sec. 263.024. HOSPITAL REVENUE BONDS. (a) A county may issue revenue bonds for:

(1) acquiring, constructing, repairing, equipping, or renovating buildings and improvements for county hospital purposes; or

(2) acquiring land for county hospital purposes.

(b) The county may issue bonds to refund previously issued revenue bonds.

(c) The revenue bonds shall be payable from and secured by a pledge of all or a part of the revenues of the county derived from the operation of the hospital. The bonds may be additionally secured by a mortgage or deed of trust lien on all or part of the county's hospital property.

(d) The revenue bonds must be issued in accordance with Sections 264.042-264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050. (V.A.C.S. Art. 4494r-3, Secs. 1, 2.)

Sec. 263.025. HOSPITAL OPERATING FUNDS USED FOR IMPROVEMENTS IN COUNTIES OF 23,000 TO 23,100. The commissioners court of a county with a population of 23,000 to 23,100 may use excess money in the county hospital operating fund for making permanent improvements to the county hospital and for the payment of county bonds issued for the construction and improvement of a county hospital facility. (V.A.C.S. Art. 4494c-1.)

Sec. 263.026. HEALTH UNIT OR CENTER IN COUNTY WITH POPULATION GREATER THAN 100,000. (a) The commissioners court of a county with a population of more than 100,000 that has a county hospital may acquire sites and construct or otherwise acquire buildings to use for county public health units or public health centers as part of the county hospital system. The commissioners court may locate a health unit or center anywhere in the county.

(b) Payments for the sites or buildings shall be made from the county permanent improvement fund. To pay for a site or building for a health unit or center, the commissioners court may:

(1) issue negotiable bonds and impose taxes to pay the principal of and interest on the bonds in accordance with Chapter 1, Title 22, Revised Statutes;

(2) issue time warrants and impose taxes to pay the principal of and interest on the time warrants in accordance with the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes); or

(3) by order issue certificates of indebtedness and impose taxes to pay the principal of and interest on the certificates in accordance with this section.

(c) The certificates of indebtedness must:

- (1) mature not later than 35 years after the date of the certificates; and
  - (2) be signed by the county judge and attested by the county clerk, either by their actual or facsimile signatures as provided by the order of issuance.
  - (d) The interest on certificates of indebtedness may be evidenced by interest coupons at the discretion of the commissioners court. The interest coupons must be executed by the facsimile signatures of the county judge and county clerk.
  - (e) The certificates of indebtedness and the record relating to their issuance shall be submitted to the attorney general for examination. If the certificates are issued in accordance with the Texas Constitution and this section, the attorney general shall approve the certificates and the comptroller shall register the certificates. If the certificates are registered, they are incontestable after they are delivered to the purchasers.
  - (f) The commissioners court shall sell the certificates of indebtedness for not less than their par value plus accrued interest. The commissioners court shall impose a continuing annual ad valorem tax sufficient to pay the principal of and interest on the certificates as each becomes due and payable.
  - (g) Certificates of indebtedness issued under this section are negotiable instruments.
  - (h) The commissioners court may issue refunding bonds to refund bonds and certificates issued under this section, subject to state law applicable to refunding bonds issued by counties. The commissioners court may issue the refunding bonds without notice or a referendum.
  - (i) The commissioners court may issue refunding bonds to refund time warrants issued under this section, subject to the Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4436a-4, Secs. 1, 2, 3, and 4.)
- Sec. 263.027. APPROVAL OF CONSTRUCTION OR REPAIR BY BOARD OF HEALTH.** If requested by the commissioners court of a county, the Texas Board of Health must approve plans for the construction, alteration, or repair of a hospital or facility under this chapter before the construction, alteration, or repair may begin. (V.A.C.S. Art. 4478(a)(2) (part).)
- Sec. 263.028. CONTRACT FOR CARE.** (a) The commissioners court of a county that does not have a municipality with a population of more than 10,000 may contract with a hospital in the county, an incorporated society or municipality in the county that maintains a hospital, or an adjacent county for the care of residents of the county who are sick or injured.
- (b) The term of the contract may not exceed one year. (V.A.C.S. Art. 4491 (part).)
- Sec. 263.029. SALE OR LEASE OF HOSPITAL.** (a) A county may sell or lease all or part of a county hospital or medical or other health facility operated by the county, including real property, if the commissioners court of the county, by order entered in the minutes of the court, finds that the sale or lease is in the best interest of the county.
- (b) The commissioners court shall set a time and place for a hearing on the proposed sale or lease. The date of the hearing may not be earlier than the 16th day or later than the 30th day from the date of the order.
  - (c) The county clerk, immediately after the time and place of the hearing are set, shall give notice informing all qualified voters of the county and other persons interested in the issue of selling or leasing the hospital of the time and place of the hearing and their right to appear at the hearing and to speak for or against the proposed action. The county clerk shall publish notice once a week for two consecutive weeks in a newspaper published in the county. The first notice must be published not later than the 15th day before the date set for the hearing. If no newspaper is published in the county, the county clerk shall post the notice at the courthouse door for 14 days before the date set for the hearing.
  - (d) Ten percent or more of the qualified voters in the county may petition the commissioners court in writing before the time set for the hearing for a referendum on whether the hospital shall be sold or leased or shall continue under county operation. The commissioners court may not sell or lease the hospital unless the proposition to sell or

lease the hospital is approved by a majority of the votes cast at the election. The election shall be held under and governed by the election provisions of Section 263.021.

(e) If no petition is filed with the county clerk, the commissioners court may conduct the hearing. Any person interested may appear in person or by attorney. The commissioners court may adjourn the hearing from day to day and from time to time as it considers necessary. On completion of the hearing, the commissioners court may enter an order determining whether or not to sell or lease the hospital. If the court finds that due notice was given, no petition was filed, and the proposed sale or lease is in the best interest of the county, the commissioners court may enter in its minutes an order that the hospital be sold or leased.

(f) The commissioners court may submit the issue of the sale or lease to the voters and withhold its final determination pending the election even if no petition is filed.

(g) The court may sell the hospital or may lease the hospital to be operated as a hospital by the lessee under terms satisfactory to the commissioners court and the lessee. The commissioners court shall enter in its minutes an order of the sale or lease that contains a complete copy of the sales or lease contract.

(h) If 50 qualified property taxing voters in a county with a population of 5,000 to 10,390 file a written petition with the commissioners court requesting a referendum on the issue of leasing all or part of the county hospital and if the proposition to lease all or part of the hospital is not approved by a majority of the votes cast at the election, the commissioners court may not lease all or part of the hospital for a period greater than five years.

(i) The commissioners court may deposit all or part of the proceeds from the sale of a county hospital to the credit of a fund to be known as the county health care fund and shall deposit any of the remainder to the credit of the county general fund. The county health care fund may be used only to finance items related to providing health care to county residents, including indigent residents. The commissioners court may deposit to the credit of the county health care fund all or part of the interest from that fund and shall deposit any remainder to the credit of the county general fund. (V.A.C.S. Arts. 4478(a)(7); 4494h; 4494l, Secs. 1 (part), 2, 3, 4; 4494m-1.)

Sec. 263.030. CLOSING OF HOSPITAL. (a) The commissioners court of a county by order on terms it considers reasonable may close a hospital or medical facility constructed, purchased, or acquired under this chapter.

(b) The order is final 30 days after the date of adoption unless at least 10 percent of the qualified voters in the county petition the commissioners court requesting an election to determine whether the hospital or facility should be closed.

(c) On proper petition, the commissioners court shall set a time for an election and shall submit to the qualified voters of the county ballots providing for voting for or against the proposition: "The closing of (name of hospital or facility to be closed)." (V.A.C.S. Arts. 4478(a)(8); 4494l, Sec. 1 (part).)

Sec. 263.031. CLOSING PART OF HOSPITAL. A county may close a part of a county hospital. (V.A.C.S. Art. 4494l, Sec. 1 (part).)

[Sections 263.032-263.040 reserved for expansion]

#### SUBCHAPTER C. BOARD OF MANAGERS

Sec. 263.041. APPOINTMENT OF BOARD OF MANAGERS. (a) The commissioners court of a county shall appoint at least six but not more than 12 residents of the county as the board of managers of a county hospital or medical or other health facility after the court acquires the site for the hospital and awards the contracts for the buildings and improvements necessary for the hospital.

(b) A manager is appointed for a term of two years except that the commissioners court may set the terms of the initial managers at less than two years so that as close as possible to one-half of the managers' terms expire each year.

(c) An appointment to fill a vacancy is for the unexpired term.

(d) A vacancy is created if a manager misses three consecutive board meetings unless the board takes formal action to excuse the absences. (V.A.C.S. Arts. 4478(a) (part); 4479 (part).)

**Sec. 263.042. OPERATION OF BOARD OF MANAGERS.** (a) The board of managers shall elect from among its members a president, at least one vice-president, a secretary, and a treasurer.

(b) The county judge of the county in which the hospital is located may vote to break a tie vote by the board of managers.

(c) The board of managers shall meet at the hospital at least once a month and may meet at other times as provided by its bylaws.

(d) The board of managers shall hold an annual meeting before the beginning of the third week preceding the date of the meeting of the commissioners court at which the court considers appropriations for the following year. (V.A.C.S. Arts. 4479 (part), 4480 (part).)

**Sec. 263.043. COMPENSATION AND EXPENSES OF BOARD OF MANAGERS.** (a) The commissioners court may provide hospitalization insurance as compensation for the services of the board of managers.

(b) The commissioners court shall pay and audit, in the same manner as other expenses of the hospital, the managers' actual and necessary traveling and other expenses within this state. (V.A.C.S. Art. 4479 (part).)

**Sec. 263.044. TORT CLAIMS PAYMENTS.** A member of the board of managers is a county officer for purposes of Chapter 102, Civil Practice and Remedies Code. (V.A.C.S. Art. 4479 (part).)

**Sec. 263.045. REMOVAL OF MANAGER.** After citation, the commissioners court may, at any time, remove a member of the board of managers from office for cause. (V.A.C.S. Art. 4479 (part).)

**Sec. 263.046. GENERAL POWERS AND DUTIES OF BOARD OF MANAGERS.** (a) The board of managers shall generally manage and control the hospital, including:

- (1) its buildings and grounds;
- (2) its officers and employees;
- (3) its patients; and
- (4) all matters relating to its government, discipline, contracts, and fiscal concerns.

(b) The board of managers may adopt rules it considers necessary to carry out the purposes of the hospital.

(c) The board of managers shall maintain an effective inspection of the hospital and keep itself informed of the hospital's affairs and management. (V.A.C.S. Art. 4480 (part).)

**Sec. 263.047. SALARIES.** (a) The board of managers shall determine the salaries of the officers and employees of the hospital, including the superintendent.

(b) The salaries may not exceed the appropriation made for the salaries by the commissioners court.

(c) The salaries are full compensation for all services rendered. (V.A.C.S. Art. 4480 (part).)

**Sec. 263.048. VISITING PHYSICIANS.** (a) The board of managers shall appoint a staff of visiting physicians who visit and treat hospital patients at the request of the board or the superintendent.

(b) The physicians serve without pay from the county. (V.A.C.S. Art. 4480 (part).)

**Sec. 263.049. DISCHARGE OF PATIENTS.** (a) The board of managers shall make the final disposition of a case concerning the discharge of a patient from the hospital.

(b) The decision of the board of managers regarding discharge of a patient may not be appealed. (V.A.C.S. Art. 4485 (part).)

Sec. 263.050. DISPENSARIES AND CLINICS. (a) The board of managers may establish and operate:

(1) an outpatient department or a free dispensary and clinic at the hospital or in the municipality located nearest the hospital; and

(2) a branch dispensary or clinic in a municipality that is located in the county and that has 5,000 or more inhabitants.

(b) The board of managers shall appoint a physician to serve at the dispensary or clinic, determine the time that the physician is required to spend at the dispensary or clinic, and fix the salary, if any, of the physician.

(c) The board of managers shall appoint a trained visiting nurse to serve in connection with the dispensary or clinic and the hospital. The board shall fix the salary of the nurse within the limits of the appropriation made for the salary by the commissioners court. (V.A.C.S. Art. 4481.)

Sec. 263.051. SCHOOL FOR CHILDREN HAVING TUBERCULOSIS. (a) The board of managers may establish a special and separate school for the education, care, and treatment of children having tuberculosis.

(b) The school may be located at the hospital, in the municipality nearest the hospital, or in the largest municipality in the county.

(c) The school shall be conducted as a branch of the hospital and the children at the school are patients of the hospital and subject to this chapter.

(d) The board of managers shall employ a specially qualified teacher to instruct and care for the children of the school.

(e) The board of managers shall assign the superintendent of the hospital, a member of the staff of visiting physicians, or a physician serving a county dispensary or shall employ a physician to attend the children of the school and to supervise their care and treatment.

(f) The board of managers shall assign a nurse from the hospital or a visiting nurse or shall employ a nurse to assist in the care and treatment of the children of the school. (V.A.C.S. Art. 4482.)

Sec. 263.052. CONTRACT FOR CARE BY BOARD. The board of managers may contract for the care of a person who is sick or injured and who applies to the hospital for admission. The board may contract for this care with:

(1) a hospital in the county; or

(2) an incorporated society or municipality in the county that maintains a hospital. (V.A.C.S. Art. 4491 (part).)

Sec. 263.053. RECORDS. (a) The board of managers shall keep a proper record of its proceedings in a book provided for that purpose. The record must be open for inspection at all times to the board, the commissioners court, and any resident of the county.

(b) The board of managers shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, which shall provide for their payment in the same manner that other charges against the county are paid.

(c) The board of managers shall report to the commissioners court annually, and at other times as directed by the court, on the details of the operation during the year of the hospital dispensaries and school for children suffering from tuberculosis. The report must contain:

(1) the number of patients admitted and the methods and result of their treatment, together with suitable recommendations and other material required by the court; and

(2) full and detailed estimates of the appropriations required during the following year for all purposes, including maintenance, building construction, repairs, renewals, extensions, and improvements.

(d) The board of managers shall incorporate into its report to the commissioners court the accounts and records prepared by the superintendent of the hospital under Section 263.077. (V.A.C.S. Arts. 4484, 4485 (part).)



[Sections 263.054–263.070 reserved for expansion]

**SUBCHAPTER D. SUPERINTENDENT**

**Sec. 263.071. APPOINTMENT OF SUPERINTENDENT.** (a) The board of managers shall appoint a superintendent of the hospital who holds office at the pleasure of the board.

(b) The superintendent may not be a member of the board of managers and must be a qualified practitioner of medicine or be specially trained for the work of a superintendent. (V.A.C.S. Art. 4480 (part).)

**Sec. 263.072. ROLE OF SUPERINTENDENT.** (a) The superintendent is the chief executive officer of the hospital.

(b) The superintendent is subject to the bylaws and rules of the hospital and to the board of managers.

(c) The board of managers shall determine the amount of time that a superintendent must spend at the hospital in the performance of the superintendent's duties. (V.A.C.S. Arts. 4480 (part), 4485 (part).)

**Sec. 263.073. BOND.** The superintendent, before beginning to discharge the duties of office, shall give a bond in a sum determined by the board of managers to secure the faithful performance of the superintendent's duties. (V.A.C.S. Art. 4485 (part).)

**Sec. 263.074. GENERAL POWERS AND DUTIES OF SUPERINTENDENT.** (a) The superintendent has general supervision and control of:

- (1) the records and accounts of the hospital;
- (2) the hospital buildings; and
- (3) the internal affairs of the hospital, including discipline.

(b) The superintendent shall enforce the bylaws and rules adopted by the board of managers for the government, discipline, and management of the hospital and its employees and patients.

(c) The superintendent may adopt additional rules and orders the superintendent considers necessary that are not inconsistent with law or the rules and directions of the board of managers. (V.A.C.S. Art. 4485 (part).)

**Sec. 263.075. EQUIPPING THE HOSPITAL.** (a) The superintendent shall, with the consent of the board of managers, equip the hospital with furniture, appliances, fixtures, and other facilities necessary for the care and treatment of patients and the use of officers and employees.

(b) The superintendent shall purchase all supplies necessary for the hospital.

(c) Expenditures under this section may not exceed the amount provided for them by the commissioners court. (V.A.C.S. Art. 4485 (part).)

**Sec. 263.076. OFFICERS AND EMPLOYEES.** (a) With the consent of the board of managers, the superintendent shall appoint resident officers and employees considered proper and necessary by the superintendent for the efficient performance of the hospital's business.

(b) The superintendent shall determine the duties of the officers and employees of the hospital.

(c) The superintendent may discharge an officer or employee at the discretion of the superintendent for cause stated in writing after an opportunity for a hearing. (V.A.C.S. Art. 4485 (part).)

**Sec. 263.077. ACCOUNTS AND RECORDS.** (a) The superintendent shall require daily accounts and records of the hospital's business and operations.

(b) The superintendent shall require that:

- (1) a record is kept of the condition of a patient on and after admission; and

(2) proper records and accounts are kept of the admission of a patient, including the patient's name, age, sex, color, marital condition, residence, occupation, and place of past employment.

(c) The superintendent shall present the accounts and records to the board of managers in an annual report. (V.A.C.S. Art. 4485 (part).)

Sec. 263.078. FORMS FOR ADMISSION. (a) The county hospital shall provide forms for application for admission to the hospital and the superintendent shall forward the forms free to a licensed physician in the county in which the hospital is located at the request of the physician.

(b) An application for admission to a county hospital must be made, if practicable, on a form provided under this section. (V.A.C.S. Art. 4486 (part).)

Sec. 263.079. ADMISSION OF PERSONS FROM COUNTY. (a) A resident of a county in which a county hospital is located who desires treatment in the hospital may apply in person to the superintendent or to a licensed physician for examination. If the physician finds that the resident is sick or injured, the physician may apply to the superintendent for admission of the resident.

(b) After the superintendent receives an application for admission to the hospital, the superintendent shall notify the applicant to appear in person at the hospital if:

- (1) it appears from the application that the applicant is sick or injured; and
- (2) there is a vacancy in the hospital.

(c) The superintendent, acting under the general direction of the board of managers, shall admit an applicant for admission to the hospital in order of application or according to the urgency of need of treatment if:

- (1) after a personal examination of the applicant, the superintendent is satisfied that the applicant is sick or injured; and
- (2) the applicant resides in the county at the time of the application for admission to the hospital.

(d) An application for admission must state whether, in the judgment of the physician, the applicant is able to pay, in whole or in part, for the applicant's care and treatment while in the hospital.

(e) An application must be filed and recorded in a book kept for that purpose in the order it is received. (V.A.C.S. Arts. 4485 (part), 4486 (part).)

Sec. 263.080. ADMISSION OF PERSONS FROM ADJACENT COUNTY. The superintendent shall admit to the hospital a person sent by the commissioners court of an adjacent county if:

- (1) the adjacent county has contracted with the board of managers for the care and treatment of persons who are sick or injured;
- (2) the person resides in the adjacent county at the time of the application for admission to the hospital; and
- (3) there is sufficient provision for the care of persons who are sick or injured and who reside in the county in which the hospital is located. (V.A.C.S. Art. 4485 (part).)

Sec. 263.081. CONDITION AND TREATMENT OF PATIENT. The superintendent shall require that a patient's physical condition is carefully examined and the treatment the patient needs is provided. (V.A.C.S. Art. 4485 (part).)

Sec. 263.082. PAYMENT BY PATIENT. (a) A patient may not be permitted to pay an amount for the patient's maintenance in the hospital greater than the average per capita cost of maintenance in the hospital, including a reasonable allowance for the interest on the cost of the hospital.

(b) An officer or employee of a county hospital may not accept from a patient a fee, payment, or gratuity for any service. (V.A.C.S. Art. 4486 (part).)

Sec. 263.083. SUPPORT. (a) The superintendent shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to the hospital from the county in which the

hospital is located. If the superintendent finds that the patient or the patient's relatives are liable to pay for the patient's care and treatment in whole or in part, the superintendent shall issue an order directing the patient or the patient's relatives to pay to the treasurer of the hospital a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) A superintendent may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a decedent.

(d) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over that ability or if there is doubt in the mind of the superintendent of the hospital over that ability. The court shall hear witnesses and issue any order that may be proper. The order may not be appealed.

(e) Discrimination in the accommodations, care, or treatment of a patient may not be made because the patient or the patient's relatives contribute to the cost, in whole or in part, of the patient's maintenance. (V.A.C.S. Arts. 4486 (part), 4487.)

**Sec. 263.084. DISCHARGE OF PATIENTS.** (a) The superintendent shall temporarily or permanently discharge a patient from the hospital if the patient:

- (1) is not sick or injured or recovers from the sickness or injury;
- (2) wilfully or habitually violates hospital rules; or
- (3) is not suitable for treatment for any other reason.

(b) The superintendent shall make a full report of a discharge of a patient from the hospital at the next meeting of the board of managers after the discharge. (V.A.C.S. Art. 4485 (part).)

**Sec. 263.085. COLLECTION OF MONEY.** (a) The superintendent shall collect money due the hospital.

(b) The superintendent shall keep an accurate account of money collected at the hospital, report at the monthly meeting of the board of managers the amount of money collected, and transmit the money to the county treasurer of the county in which the hospital is located within 10 days after the date of the meeting of the board. (V.A.C.S. Art. 4485 (part).)

[Sections 263.086–263.100 reserved for expansion]

#### **SUBCHAPTER E. ENFORCEMENT AND DISSEMINATION OF INFORMATION**

**Sec. 263.101. INSPECTIONS.** (a) A resident officer of a county hospital shall admit a member of the board of managers into every part of the hospital and its premises.

(b) On the demand of a member of the board of managers, a resident officer of the hospital shall:

- (1) give the board access to all books, papers, accounts, and other records pertaining to the hospital; and
- (2) furnish the board with copies, abstracts, and reports.

(c) A hospital established or maintained under this chapter is subject to inspection by an authorized representative of:

- (1) the Texas Board of Health;
- (2) the commissioners court; or
- (3) a state board of charities, if such a board is created.

(d) A resident officer of a county hospital shall admit a representative listed in Subsection (c) into every part of the hospital and its buildings.

(e) On the demand of a representative listed in Subsection (c), a resident officer of the hospital shall give the representative access to all books, papers, accounts, reports, and other records pertaining to the hospital. (V.A.C.S. Art. 4488.)

Sec. 263.102. **TEXAS BOARD OF HEALTH RULES AND PUBLICATIONS.** (a) The board of managers shall print, or purchase from the Texas Board of Health at the actual cost of printing:

(1) rules adopted by the Texas Board of Health for the care of persons having a communicable disease and for the prevention and spread of communicable disease; and

(2) bulletins and other publications prepared by the Texas Department of Health providing information about the cause, nature, treatment, and prevention of disease.

(b) The board of managers shall send or deliver copies of those rules, bulletins, and publications to:

(1) all practicing physicians in the county in which the hospital is located;

(2) all public schools;

(3) private schools that request copies; and

(4) organizations, churches, societies, unions, and individuals who present a written request for copies. (V.A.C.S. Art. 4483 (part).)

#### **CHAPTER 264. COUNTY HOSPITAL AUTHORITIES**

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Sec. 264.003. **CREATION**

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##### **SUBCHAPTER C. POWERS AND DUTIES**

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**CHAPTER 264. COUNTY HOSPITAL AUTHORITIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 264.001. **SHORT TITLE.** This chapter may be cited as the County Hospital Authority Act. (V.A.C.S. Art. 4494r, Sec. 1 (part).)

Sec. 264.002. **DEFINITIONS.** In this chapter:

- (1) "Authority" means a county hospital authority created under this chapter.
- (2) "Board" means the board of directors of an authority.
- (3) "Bond" includes a note.
- (4) "Bond resolution" means the resolution authorizing the issuance of revenue bonds.
- (5) "Hospital" means a hospital project as defined under Section 223.002.
- (6) "Trust indenture" means the mortgage, deed of trust, or other instrument pledging revenues of or creating a mortgage lien on properties to secure revenue bonds issued by an authority.
- (7) "Trustee" means the trustee under a trust indenture. (V.A.C.S. Art. 4494r, Sec. 2.)

Sec. 264.003. **CREATION.** (a) The commissioners court of a county by order may create a county hospital authority and designate the name of the authority if the commissioners court finds that creation of the authority is in the best interest of the county and its residents.

- (b) The authority is composed only of the territory in the county.
- (c) The authority is a body politic and corporate and a political subdivision of the state.
- (d) The authority does not have taxing power. (V.A.C.S. Art. 4494r, Secs. 1 (part), 3 (part).)

[Sections 264.004–264.010 reserved for expansion]

**SUBCHAPTER B. BOARD OF DIRECTORS**

Sec. 264.011. **BOARD OF DIRECTORS.** (a) The authority is governed by a board of directors with at least seven and not more than 11 members.

(b) The number of directors shall be determined at the time the authority is created. The number may be changed by amendment of the order creating the authority unless prohibited by the resolution authorizing the issuance of bonds or by the trust indenture securing the bonds. However, a reduction in the number of directors may not shorten the term of an incumbent director. (V.A.C.S. Art. 4494r, Sec. 4(a) (part).)

Sec. 264.012. **APPOINTMENT OF BOARD; TERMS OF OFFICE.** (a) The commissioners court shall appoint the directors of the authority for terms not to exceed three years except as otherwise provided by this section.

(b) The resolution authorizing the issuance of revenue bonds or the trust indenture securing the bonds may prescribe the method of selecting a majority of the directors and the term of office of those directors, and the terms of directors appointed before the issuance of the bonds are subject to the resolution or trust indenture. The commissioners court shall appoint the remaining directors.

(c) The trust indenture may provide that in the event of a default, as defined in the trust indenture, the trustee may appoint all directors. On that appointment, the terms of the directors in office terminate.

(d) If the authority purchases an existing hospital or a hospital under construction from a nonprofit corporation, the directors shall be determined as provided in the contract of purchase.

(e) An officer or employee of the county is not eligible for appointment as a director. (V.A.C.S. Art. 4494r, Secs. 4(a) (part), (b).)

Sec. 264.013. OFFICERS. (a) The board shall elect:

- (1) a president and a vice-president, who must be directors;
- (2) a secretary and a treasurer, who are not required to be directors; and
- (3) any other officers authorized by the authority's bylaws.

(b) The offices of secretary and treasurer may be combined. (V.A.C.S. Art. 4494r, Sec. 5 (part).)

Sec. 264.014. AUTHORITY OF BOARD. (a) Action may be taken by a majority of the directors present if a quorum is present.

(b) The president has the same right to vote as other directors. (V.A.C.S. Art. 4494r, Sec. 5 (part).)

Sec. 264.015. COMPENSATION. A director may not receive compensation for services but is entitled to reimbursement for expenses incurred in performing services. (V.A.C.S. Art. 4494r, Sec. 4(a) (part).)

[Sections 264.016–264.020 reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES

Sec. 264.021. GENERAL POWERS. (a) The authority has the power of perpetual succession.

(b) The authority may:

- (1) have a seal;
- (2) sue and be sued; and
- (3) make, amend, and repeal its bylaws. (V.A.C.S. Art. 4494r, Sec. 3 (part).)

Sec. 264.022. ACQUISITION, OPERATION, AND LEASE OF HOSPITALS. (a) The authority may construct, purchase, enlarge, furnish, or equip one or more hospitals located in the county.

(b) The authority may operate and maintain one or more hospitals. The authority shall operate a hospital without the intervention of private profit for the use and benefit of the public unless the authority leases the hospital.

(c) The board may lease a hospital or part of a hospital owned by the authority for operation by the lessee as a hospital under terms that are satisfactory to the board and the lessee. The lease must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) have the seal of the authority impressed on the lease.

(d) The bond resolution or trust indenture may prescribe procedures and policies for the operation of a hospital. If a hospital is used, operated, or acquired by a nonprofit corporation or is leased, the authority may delegate to the nonprofit corporation or lessee the duty to establish the procedures and policies. (V.A.C.S. Art. 4437e–1, Secs. 1 (part), 3 (part); Art. 4494r, Secs. 5 (part), 6(a), 14 (part).)

Sec. 264.023. EMPLOYEES. (a) The board may employ a manager or executive director of a hospital and other employees, experts, and agents.

(b) The board may delegate to the manager or executive director the power to manage the hospital and to employ and discharge employees.

(c) The board may employ legal counsel. (V.A.C.S. Art. 4494r, Sec. 5 (part).)

**Sec. 264.024. MANAGEMENT AGREEMENT.** (a) The board may enter into an agreement with any person for the management or operation of a hospital or part of a hospital owned by the authority under terms that are satisfactory to the board and the contracting party.

(b) The agreement must:

- (1) be authorized by resolution of the board;
- (2) be executed on behalf of the authority by the president and secretary of the board; and
- (3) have the seal of the authority impressed on the agreement.

(c) The board may delegate to the manager the power to manage the hospital and to employ and discharge employees. (V.A.C.S. Art. 4437e-1, Secs. 1 (part), 3(a) (part); Art. 4494r, Sec. 5 (part).)

**Sec. 264.025. COMMITTEES.** (a) The board, by a resolution adopted by a majority of the directors in office, may designate one or more committees if authorized to do so by the authority's bylaws.

(b) At least two directors must serve on each committee. Each committee may have additional nonvoting members who are not directors if authorized by the resolution or the bylaws.

(c) A committee may exercise the board's power to manage the authority to the extent and in the manner provided by the resolution or the bylaws. However, the board may not delegate to a committee the power to:

- (1) issue bonds;
- (2) make or amend a lease of a hospital or a management agreement relating to a hospital; or
- (3) employ or discharge a manager or executive director. (V.A.C.S. Art. 4494r, Sec. 5 (part).)

**Sec. 264.026. RATES FOR HOSPITAL SERVICES.** (a) Except as provided by Subsection (b), through charging sufficient rates for services provided by a hospital and through its other revenue sources, the board shall produce revenue sufficient to:

- (1) pay the expenses of owning, operating, and maintaining the hospital;
- (2) pay the interest on the bonds as it becomes due;
- (3) create a sinking fund to pay the bonds as they become due; and
- (4) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture.

(b) If the hospital is used, operated, or acquired by a nonprofit corporation under Chapter 223 or is leased, the board shall require the nonprofit corporation or the lessee to charge rates for services provided by the hospital that are sufficient, with the nonprofit corporation's or lessee's other sources of revenue, to:

- (1) pay the expenses of operating and maintaining the hospital; and
- (2) make payments or pay rentals to the authority that are sufficient, with the authority's other pledged sources of estimated revenue, to:
  - (A) pay the interest on the bonds as it becomes due;
  - (B) create a sinking fund to pay the bonds as they become due; and
  - (C) create and maintain a bond reserve fund and other funds as provided in the bond resolution or trust indenture. (V.A.C.S. Art. 4494r, Sec. 14 (part).)

**Sec. 264.027. DEPOSITORY.** The authority may:

- (1) select a depository in the same manner that a county may select a depository under Chapter 116, Local Government Code; or

(2) award its depository contract to the depository or depositories of the county on the same terms as the terms of the county depository agreement. (V.A.C.S. Art. 4494r, Sec. 15.)

Sec. 264.028. EMINENT DOMAIN. (a) To carry out a power granted by this chapter, the authority may acquire the fee simple title to land, other property, and easements by condemnation under Chapter 21, Property Code.

(b) The authority is considered to be a municipal corporation for the purposes of Section 21.021(c), Property Code.

(c) The board shall determine the amount and character of the interest in land, other property, and easements to be acquired under this section. (V.A.C.S. Art. 4494r, Sec. 17.)

Sec. 264.029. GIFTS AND ENDOWMENTS. The board may accept gifts and endowments to hold and administer as required by the respective donors. (V.A.C.S. Art. 4494r, Sec. 19.)

Sec. 264.030. SALE OF PROPERTY; GENERAL PROVISIONS. (a) The board may sell, through sealed bids or at a public auction, real property acquired by gift or purchase that the board determines is not needed for hospital purposes if the sale does not violate:

(1) a trust indenture or bond resolution relating to outstanding bonds of the authority; or

(2) an agreement between the authority and a nonprofit corporation under Chapter 223.

(b) If the board conducts the sale by sealed bids, the board must provide notice of the sale under Section 272.001, Local Government Code.

(c) If the board conducts the sale by public auction, the board must publish a notice of the sale once a week for three consecutive weeks in a newspaper of general circulation in the county. The notice must include a description of the property and the date, time, and place of the auction. The first notice must be published not later than the 21st day before the date of the auction.

(d) This section does not affect the authority's powers under Chapter 223. (V.A.C.S. Art. 4494r, Sec. 6(b).)

Sec. 264.031. SALE OR CLOSING OF HOSPITAL. (a) The board may sell all or part of a hospital owned by the authority or close all or part of a hospital owned or operated by the authority. The sale or closing must:

(1) be authorized by resolution of the board;

(2) be executed on behalf of the authority by the president and secretary of the board; and

(3) be made by a document having the seal of the authority impressed on it.

(b) The sale or closing of a hospital may not take effect before the expiration of the time in which a petition may be filed under Subsection (c).

(c) The board shall order and conduct an election on the sale or closing if, before the 31st day after the date the governing body authorizes the sale or closing, the board receives a petition requesting the election signed by at least 10 percent of the qualified voters of the county. The number of qualified voters is determined by the most recent official list of registered voters.

(d) If a petition is filed under Subsection (c), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing. (V.A.C.S. Art. 4437e-1, Secs. 1 (part), 3 (part), 4; Art. 4494r, Sec. 5 (part).)

[Sections 264.032-264.040 reserved for expansion]

#### SUBCHAPTER D. BONDS

Sec. 264.041. REVENUE BONDS. (a) The authority may issue revenue bonds to provide funds for any of the authority's purposes.

(b) Revenue bonds must be payable from, and secured by a pledge of, revenues from the operation of one or more hospitals and any other revenues from owning hospital



property. Additionally, revenue bonds may be secured by a mortgage or deed of trust on real property owned by the authority or by a chattel mortgage on the authority's personal property. (V.A.C.S. Art. 4494r, Sec. 7.)

**Sec. 264.042. FORM AND PROCEDURE.** (a) Revenue bonds must be authorized by a resolution adopted by a majority vote of a quorum of the board. The bonds must:

- (1) be signed by the president or vice-president of the board;
- (2) be countersigned by the secretary of the board; and
- (3) have the seal of the authority impressed or printed on the bonds.

(b) Printed facsimile signatures may be substituted for the actual signatures of the president, vice-president, or secretary. (V.A.C.S. Art. 4494r, Sec. 8 (part).)

**Sec. 264.043. TERMS.** (a) Revenue bonds must mature serially or otherwise not more than 40 years after they are issued.

(b) Revenue bonds may:

(1) be sold at a price and under terms that the board considers the most advantageous reasonably obtainable, except that the net effective interest rate as defined by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), may not exceed 10 percent a year;

(2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds; and

(3) be made registrable as to principal or as to principal and interest. (V.A.C.S. Art. 4494r, Sec. 8 (part).)

**Sec. 264.044. NOTICE.** (a) Before the board adopts a resolution authorizing the issuance of bonds other than refunding bonds, the board must publish a notice of its intention to adopt the resolution and of the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in one or more newspapers of general circulation in the authority. The first notice must be published not later than the 15th day before the date set for adoption of the resolution. (V.A.C.S. Art. 4494r, Sec. 9(a).)

**Sec. 264.045. REFERENDUM.** (a) A petition requesting an election on the proposition for the issuance of the revenue bonds may be presented to the secretary or president of the board before the date set for the adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county who own taxable property in the authority.

(b) The election shall be ordered and held as provided by Chapter 1, Title 22, Revised Statutes. The board, president, and secretary shall perform the functions assigned under that chapter respectively to the commissioners court, county judge, and county clerk.

(c) If a majority of voters who vote at the election approve the issuance of the bonds, the board may issue the bonds. If a petition is not filed, the board may issue the bonds without an election. However, the board may order the election on its own motion if a petition is not filed. (V.A.C.S. Art. 4494r, Sec. 9(b).)

**Sec. 264.046. JUNIOR LIEN BONDS; PARITY BONDS.** (a) Bonds constituting a junior lien on the revenues or properties may be issued unless prohibited by the bond resolution or the trust indenture.

(b) Parity bonds may be issued under conditions specified by the bond resolution or trust indenture. (V.A.C.S. Art. 4494r, Sec. 10.)

**Sec. 264.047. BOND PROCEEDS; INVESTMENT OF FUNDS.** (a) The board may set aside from the proceeds from the sale of bonds:

- (1) an amount for payment of not more than two years' interest on the bonds;
- (2) the amount required for operating expenses during the first year of operation as estimated by the board; and
- (3) an amount to fund any bond reserve fund or other reserve funds provided for in the bond resolution or trust indenture.

(b) The bond proceeds may be deposited in banks and paid out under terms as provided in the bond resolution or trust indenture.

(c) The law relating to the security for and the investment of county funds controls, to the extent applicable, the investment of the authority's funds. The bond resolution or trust indenture may further restrict those investments. Additionally, the authority may invest its bond proceeds, until that money is needed, as authorized by the bond resolution or trust indenture. (V.A.C.S. Art. 4494r, Secs. 11, 18.)

Sec. 264.048. REFUNDING BONDS. (a) The authority may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this chapter.

(b) Bonds issued under this section may be exchanged by the comptroller or sold. The proceeds shall be applied as provided by Chapter 508, Acts of the 54th Legislature, 1955 (Article 717k, Vernon's Texas Civil Statutes), or other applicable law. (V.A.C.S. Art. 4494r, Sec. 12.)

Sec. 264.049. APPROVAL AND REGISTRATION OF BONDS. (a) The authority shall submit to the attorney general the bonds issued under this chapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this chapter, are valid and binding obligations of the authority, and are secured as recited in the bonds:

(1) the attorney general shall approve the bonds; and

(2) the comptroller shall register the bonds and certify the registration on the bonds.

(c) Following approval and registration, the bonds are incontestable.

(d) The bonds are negotiable and must contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation." (V.A.C.S. Art. 4494r, Sec. 13.)

Sec. 264.050. LEGAL INVESTMENTS. Bonds of the authority are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company; or

(6) the sinking fund of a political corporation or subdivision of the state, including a municipality, county, or school district. (V.A.C.S. Art. 4494r, Sec. 20.)

## CHAPTER 265. JOINT MUNICIPAL AND COUNTY HOSPITALS

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**CHAPTER 265. JOINT MUNICIPAL AND COUNTY HOSPITALS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 265.001. MUNICIPALITY WITH POPULATION OF AT LEAST 10,000 AND ANY COUNTY. (a) The commissioners court of a county may cooperate with the proper authorities of a municipality with at least 10,000 inhabitants to establish, build, equip, and maintain a hospital in the municipality.

(b) The commissioners court may appropriate funds for the hospital that the commissioners court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital. (V.A.C.S. Art. 4492, Sec. 1.)

Sec. 265.002. COUNTY AND ANY TWO OR MORE MUNICIPALITIES. (a) The commissioners court of a county may cooperate with the proper authorities of two or more municipalities to establish, build, equip, and maintain a hospital in the county.

(b) The commissioners court may appropriate funds for the hospital that the court considers appropriate after a joint conference with the municipal authorities.

(c) The commissioners court and the municipal authorities shall jointly control the management of the hospital. (V.A.C.S. Art. 4492, Sec. 2.)

Sec. 265.003. COUNTY WITH POPULATION OF AT LEAST 92,600 AND MUNICIPALITY WITH POPULATION OF AT LEAST 57,250. (a) The commissioners court of a county with a population of at least 92,600 and the governing body of a municipality in that county with a population of at least 57,250 may establish, build, equip, maintain, and operate a hospital for the care and treatment of sick, infirm, or injured inhabitants of the county or municipality.

(b) The commissioners court and the governing body by agreement may divide the hospital costs between the county and the municipality.

(c) If the amounts in the county or municipal general funds are insufficient to pay the hospital costs, the commissioners court or the governing body at a special or general election may submit to the qualified voters of the county or municipality, respectively, a proposition for the county and municipality to establish, build, equip, maintain, and operate a hospital and for:

(1) the levy of a tax for that purpose not to exceed 10 cents on each \$100 of the taxable value of real and personal property that is taxable by the county or municipality; or

(2) the issuance of bonds by the county or municipality in an amount not to exceed the amount specified in the proposition for all or part of the cost of establishing, building, or equipping the hospital and for the levy of a tax to create a sinking fund for the payment of interest on the bonds not to exceed 10 cents on each \$100 of the taxable value of real and personal property that is taxable by the county or municipality.

(d) The commissioners court or governing body may assess and levy a tax, or may issue bonds in the manner provided for issuance of other bonds by the county or municipality and assess and levy a tax, as stated in the proposition if the proposition is approved by a majority of votes cast in the election. (V.A.C.S. Art. 4494g, Secs. 1, 2, 3.)

[Sections 265.004–265.010 reserved for expansion]

#### SUBCHAPTER B. JOINT HOSPITAL WITH BOARD OF MANAGERS

Sec. 265.011. ESTABLISHMENT OF HOSPITAL BY COMMISSIONERS COURT AND MUNICIPAL GOVERNING BODY. The commissioners court of a county and the governing body of a municipality in that county may jointly appoint a board of managers to establish, build, equip, maintain, and operate one or more hospitals for the care and treatment of the sick, infirm, or injured. (V.A.C.S. Art. 4494i, Secs. 1 (part), 7 (part).)

Sec. 265.012. FINANCING. (a) If the municipality or county has issued and sold bonds to establish, build, equip, maintain, and operate a joint municipal and county hospital, the municipality or county may finance the hospital out of general revenue and may levy and collect a tax to finance the hospital not to exceed 10 cents on each \$100 of the taxable value of property taxable by the municipality or county.

(b) The commissioners court and the municipal governing body may contribute to the funds necessary for the hospital in a proportion to which they agree.

(c) The board of managers may spend, in a manner determined by the board, funds provided by the county or municipality through the issuance of bonds or other obligations or by appropriation from other funds, for purposes related to the hospital as if the action were taken by the commissioners court or the governing body. (V.A.C.S. Art. 4494i, Secs. 1 (part), 4 (part), 6, 7 (part).)

Sec. 265.013. BOARD OF MANAGERS. (a) The board of managers is composed of seven members.

(b) The commissioners court and the municipal governing body shall each appoint three members to the board, and the commissioners court and the governing body shall jointly

appoint one member to the board. Members are appointed for six-year terms. However, in making the initial appointments to the board, each appointing entity shall designate one of its appointees for a term expiring two years after the date of appointment, one for a term expiring four years after the date of appointment, and one for a term expiring six years after the date of appointment. The term of the initial joint appointee expires six years after the date of appointment.

(c) The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation. (V.A.C.S. Art. 4494i, Sec. 2.)

Sec. 265.014. **CHAIRMAN.** The board of managers shall select a chairman from among its members who shall:

(1) preside over the board's meetings; and

(2) sign any contract, agreement, or other instrument made by the board on behalf of the county and municipality. (V.A.C.S. Art. 4494i, Sec. 3 (part).)

Sec. 265.015. **CONTRACTS.** The board of managers may execute any contract relating to establishing, building, equipping, maintaining, or operating the hospital as if the action were taken by the commissioners court or the municipal governing body. (V.A.C.S. Art. 4494i, Sec. 4 (part).)

Sec. 265.016. **FINANCIAL STATEMENT; BUDGET.** (a) The board of managers shall annually prepare and present to the commissioners court and the municipal governing body a statement of the hospital's financial status with a proposed budget for the following year.

(b) On the basis of the financial statement and budget, the commissioners court and the governing body shall appropriate an amount those entities consider proper and necessary for the use of the board of managers in the operation of the hospital. (V.A.C.S. Art. 4494i, Secs. 5, 7 (part).)

[Sections 265.017–265.020 reserved for expansion]

#### **SUBCHAPTER C. JOINT HOSPITAL CONTROLLED BY MUNICIPALITY OR COUNTY**

Sec. 265.021. **OWNERSHIP AND CONTROL DESIGNATED.** (a) A county with a population of at least 200,000 and one or more municipalities in the county that jointly own and operate a hospital in the county may by agreement designate one of those governmental entities to assume the entire ownership and control of the hospital on terms to which those governmental entities agree.

(b) On the agreement of the commissioners court and the governing body of each municipality that jointly owns and operates the hospital, a countywide election on the issue of the future ownership and operation of the hospital may be ordered. The majority vote on the propositions submitted shall govern the future ownership and operation of the hospital. The commissioners court shall pay the costs of the election from county funds. (V.A.C.S. Art. 4437a, Secs. 1 (part), 2.)

Sec. 265.022. **BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY COUNTY.** (a) If the county is designated to own and control the hospital, the commissioners court shall appoint a board of managers with at least three and not more than nine members.

(b) The board of managers has control of the management of the hospital.

(c) The board of managers shall give a report of their management, including all acts and rules of the board, to the commissioners court once each quarter or more often at the request of the commissioners court.

(d) The board of managers shall give a quarterly financial statement to the commissioners court that shows all money spent and received by the board and the purposes of the expenditures. (V.A.C.S. Art. 4437a, Sec. 4.)

Sec. 265.023. BOARD OF MANAGERS OF HOSPITAL CONTROLLED BY MUNICIPALITY. If the municipality is designated to own and control the hospital, the governing body of the municipality may appoint the board of managers under its charter or as it considers appropriate. (V.A.C.S. Art. 4437a, Sec. 1 (part).)

Sec. 265.024. TERMS. Members of the board of managers shall be appointed for staggered six-year terms, with one-third of the terms expiring every two years. (V.A.C.S. Art. 4437a, Sec. 6.)

Sec. 265.025. TAX. (a) The commissioners court may authorize and levy a tax not to exceed 50 cents on each \$100 of the taxable value of property taxable by the county for construction of buildings or building additions, for other improvements or equipment, or for operation and maintenance of the hospital if the tax is approved by a majority vote at a county election. Additional taxes may be authorized at subsequent elections if the total tax does not exceed the limit imposed by this subsection.

(b) The voters may approve a part of the tax to be used for the interest and sinking fund for outstanding bonds of the municipality or county issued for construction or maintenance of the hospital, whether issued before or after the ownership and control of the hospital are designated under this chapter. (V.A.C.S. Art. 4437a, Secs. 1 (part), 8.)

Sec. 265.026. TUBERCULOSIS CONTROL. (a) The commissioners court and each municipal governing body that designates the ownership and control of a joint hospital under this subchapter may conduct a joint program of tuberculosis control in their jurisdictions to protect the public health through alleviation, suppression, and prevention of the spread of tuberculosis.

(b) The program may include cooperation with public or private agencies that have the same objective, whether federal, state, or local.

(c) The commissioners court may levy a tax not to exceed 10 cents on each \$100 of the taxable value of property taxable by the county, in addition to the tax under Section 265.025, if approved by a majority vote at a county election. The revenue from that tax shall be kept separate from other funds and shall be used only for the purposes of this section.

(d) The governing body of a municipality participating in the program may levy a tax not to exceed five cents on each \$100 of the taxable value of property taxable by the municipality if approved by a majority vote at a municipal election in accordance with the municipal charter in a home-rule municipality or with other law in a general-law municipality. The revenue from the tax shall be kept separate from other funds and shall be used only for the purposes of this section. The municipal charter of a home-rule municipality may be amended to create the fund for the tax proceeds or other income.

(e) The county and each municipality participating in the program and levying the taxes may create a joint tuberculosis control board to administer this section. The board must have at least five members. The district judges of the county by majority action, the county health board, the municipal health board of the participating municipality with the largest population, the county judge, and the mayor of each participating municipality shall each appoint a member to the board. Board members serve without compensation.

(f) The members are appointed for three-year terms. However, the term of the first appointment by the county health board or by a mayor expires one year after the date of appointment, the term of the first appointment by the municipal health board or the county judge expires two years after the date of appointment, and the term of the first appointment by the district judges expires three years after the date of appointment. The entity that made an original appointment shall appoint a successor member on the expiration of a member's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation.

(g) The board may administer this section to alleviate, suppress, and prevent the spread of tuberculosis in the county as a public health function.

(h) The county and each municipality participating under this section may combine the proceeds from taxes levied under this section to be spent under the board's direction only to:

(1) provide necessary economic aid to indigent persons with tuberculosis and dependent members of their immediate family, on certification by the county or municipal health authority that those persons are indigent and have resided in the county for at least six months before receiving aid or assistance from a public or private charity or service for the person's support or the support of the person's family, in order to treat and prevent the disease and protect the public health; or

(2) pay administrative expenses, including the expenses of case investigation and necessary equipment and services.

(i) The board quarterly shall report the condition of the fund, the expenditures from the fund, and the services performed to the commissioners court and the governing body of each municipality participating under this section. The commissioners court or the governing body of a municipality participating under this section may examine and audit the books and other records of the board. (V.A.C.S. Art. 4437a, Secs. 6A(a), (b), (c), (d), (e), (f).)

[Sections 265.027–265.030 reserved for expansion]

#### **SUBCHAPTER D. JOINT COUNTY-MUNICIPAL HOSPITAL BOARDS**

**Sec. 265.031. CREATION OF BOARD.** (a) The commissioners court of a county and the governing body of a municipality located in whole or in part in that county may adopt resolutions creating a joint county-municipal hospital board, without taxing power, designated the "\_\_\_\_\_ County-Municipality of \_\_\_\_\_, Texas, Hospital Board."

(b) A board created under this section is a public agency and body politic. (V.A.C.S. Art. 4494i–1, Secs. 1, 6 (part).)

**Sec. 265.032. APPOINTMENT OF BOARD.** (a) The board consists of seven directors. A director may serve successive terms.

(b) The commissioners court shall appoint four directors in its resolution creating the board, and the municipal governing body shall appoint three directors in its resolution creating the board.

(c) Directors are appointed for staggered terms of two years. However, in making the initial appointments to the board the commissioners court shall designate two of its appointees to serve two-year terms and two to serve one-year terms, and the governing body shall designate two of its appointees to serve two-year terms and one to serve a one-year term.

(d) The entity that makes an original appointment shall appoint a successor director on the expiration of a director's term or to fill, for the unexpired part of a term, a vacancy caused by death or resignation. (V.A.C.S. Art. 4494i–1, Secs. 2 (part), 3 (part).)

**Sec. 265.033. OFFICERS.** (a) The board shall elect a director as chairman. The chairman shall preside at board meetings and perform other duties and functions prescribed by the board. The chairman may vote in the same manner as any other director.

(b) The board shall elect a secretary, who is not required to be a director. The secretary is the official custodian of the minutes, books, records, and seal of the board and shall perform other duties and functions prescribed by the board.

(c) The board may elect any other officer that the board considers necessary or advisable. (V.A.C.S. Art. 4494i–1, Sec. 3 (part).)

**Sec. 265.034. AUTHORITY OF BOARD.** (a) The board shall act through resolutions adopted by the board. The affirmative vote of four directors is required to adopt a resolution.

(b) The board is a joint agent of the county and the municipality for hospital purposes and shall act solely for the joint benefit of the county and the municipality. However, the board shall act independently in the exercise of powers, duties, and functions under this subchapter.

(c) The board may appoint or employ any agent, employee, or official that the board considers necessary or advisable to carry out any power, duty, or function of the board. (V.A.C.S. Art. 4494i-1, Secs. 2 (part), 3 (part).)

Sec. 265.035. SUITS. The board may sue and be sued in its own name, capacity, and behalf. (V.A.C.S. Art. 4494i-1, Sec. 2 (part).)

Sec. 265.036. COMPENSATION. A director may not receive compensation but is entitled to reimbursement for actual expenses incurred in the performance of the duties of director to the extent authorized by the board. (V.A.C.S. Art. 4494i-1, Sec. 3 (part).)

Sec. 265.037. HOSPITAL FACILITIES; OTHER PROPERTY. (a) The board may purchase, construct, receive, lease, or otherwise acquire hospital facilities and may improve, enlarge, furnish, equip, operate, and maintain those facilities.

(b) The county or the municipality may lease or convey title to, or any other interest in, all or part of the county's or municipality's hospital facilities, including real and personal property, to the board on terms agreed to by the county or municipality and the board.

(c) The board may own, receive, encumber, sell, lease, or convey any interest in real or personal property, including gifts and grants. However, the board may not encumber, sell, lease, or convey real or personal property unless the commissioners court and the governing body of the municipality by resolution approve the transaction. (V.A.C.S. Art. 4494i-1, Secs. 4, 5 (part).)

Sec. 265.038. CONTRACTS FOR HOSPITAL SERVICES. The county or the municipality may contract with the board for the care and treatment of indigent or needy patients or for any other hospital services. The county or the municipality may make payments to the board under the contract and may levy ad valorem taxes or pledge funds or resources for the payments. (V.A.C.S. Art. 4494i-1, Sec. 5 (part).)

Sec. 265.039. FUNDS. (a) The board may apply for, receive, and spend federal or state funds available for hospital purposes.

(b) The county or the municipality by resolution may authorize the board to apply for, receive, and spend federal or state funds available for county or municipal hospital purposes. (V.A.C.S. Art. 4494i-1, Sec. 5 (part).)

Sec. 265.040. AUTHORITY TO ISSUE REVENUE BONDS. (a) The board may issue revenue bonds to perform any power, duty, or function under this subchapter. The issuance must be approved by resolution by the commissioners court and the municipal governing body.

(b) The board may prescribe procedures for the operation and maintenance of the hospital in the proceedings authorizing the issuance of the bonds. (V.A.C.S. Art. 4494i-1, Secs. 6 (part), 8, 9 (part).)

Sec. 265.041. TERMS OF BONDS. (a) The revenue bonds may mature serially or otherwise not more than 40 years after they are issued. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes), and may be made redeemable prior to maturity.

(b) The bonds and any appurtenant interest coupons are negotiable instruments.

(c) The bonds may be made registrable as to principal or as to principal and interest.

(d) The directors may determine, in the proceedings authorizing the issuance of the bonds:

(1) the form, denominations, and manner in which the bonds are issued;

(2) the terms and details under which the bonds are issued; and

(3) the manner in which the bonds are executed. (V.A.C.S. Art. 4494i-1, Sec. 7 (part).)

Sec. 265.042. PLEDGE OF SECURITY. (a) The revenue bonds may be payable from, and secured by a pledge of, all or part of the revenues, income, or resources of the board or the board's hospital facilities. Additionally, the bonds may be secured by a mortgage or deed of trust on real or personal property, and the board may authorize the execution and delivery of trust indentures or other encumbrances to evidence the security.



(b) The bonds must contain substantially the following statement: "The owner hereof shall never have the right to demand payment of this obligation from taxes levied by the hospital board." (V.A.C.S. Art. 4494i-1, Sec. 6 (part).)

**Sec. 265.043. SALE AND USE OF PROCEEDS.** (a) The revenue bonds may be sold at public or private sale at a price and under terms determined by the directors. The bonds may bear interest at a rate not to exceed the maximum rate provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(b) Proceeds from the sale of the bonds may be used, if the use is authorized in the proceedings authorizing issuance of the bonds, to:

- (1) pay interest on the bonds during the construction of hospital facilities acquired through issuance of the bonds;
- (2) pay operation and maintenance expense of the hospital facilities to the extent and for the time specified in the proceedings;
- (3) create reserves for the payment of principal of and interest on the bonds; or
- (4) invest, until needed, to the extent and in the manner provided in the bond resolution or a trust indenture executed in connection with the bonds. (V.A.C.S. Art. 4494i-1, Secs. 6 (part), 7 (part).)

**Sec. 265.044. PARITY AND SUBORDINATE LIEN BONDS.** The directors may provide in the authorization of the revenue bonds for the subsequent issuance of additional parity bonds or subordinate lien bonds under terms set by the board in the proceedings authorizing the issuance of the revenue bonds. (V.A.C.S. Art. 4494i-1, Sec. 7 (part).)

**Sec. 265.045. NOTICE; PETITION FOR ELECTION.** (a) Before the directors authorize the issuance of bonds other than refunding bonds, the directors shall prepare and publish a notice of:

- (1) its intention to adopt a resolution authorizing the issuance of bonds;
- (2) the date it intends to adopt the resolution; and
- (3) the maximum amount and maximum maturity of the bonds.

(b) The notice must be published once a week for two consecutive weeks in a newspaper of general circulation in the county and the municipality. The first notice must be published not later than the 15th day before the date set for adopting the bond resolution.

(c) A petition requesting an election on the proposition for the issuance of the bonds may be presented to the hospital board secretary before the date set for adoption of the bond resolution. The petition must be signed by at least 10 percent of the qualified voters residing in the county and in any part of the municipality that is not in the county.

(d) The directors shall order an election requested under Subsection (c) in the county and any part of the municipality that is not in the county. The election shall be held substantially as provided by Chapter 1, Title 22, Revised Statutes. The board may issue the bonds if the issuance is approved at the election.

(e) The bond resolution may be adopted on the date set for the adoption, or not later than the 30th day after that date, if no petition is filed, and the bonds may be issued and delivered without an election or the creation of an encumbrance.

(f) The directors may order an election on the issuance of the bonds on their own motion if they consider it advisable. (V.A.C.S. Art. 4494i-1, Sec. 10.)

**Sec. 265.046. REFUNDING BONDS.** Any bonds issued under this subchapter may be refunded by the issuance of refunding bonds in the manner provided by this subchapter for the issuance of other bonds, except the refunding bonds may be issued to be exchanged for the bonds being refunded. If the refunding bonds are issued to be exchanged, the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the proceedings authorizing the refunding bonds. The exchange may be made in one delivery or several installment deliveries. (V.A.C.S. Art. 4494i-1, Sec. 12.)

Sec. 265.047. EXAMINATION, APPROVAL, AND REGISTRATION OF BONDS. (a) The board shall submit to the attorney general for examination the bonds issued under this subchapter and the proceedings authorizing their issuance.

(b) The attorney general shall approve the bonds if the attorney general finds that the bonds have been authorized in accordance with this subchapter, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are valid and binding obligations in accordance with their terms. (V.A.C.S. Art. 4494i-1, Sec. 11.)

Sec. 265.048. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this subchapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and

(9) an interest and sinking fund or other public fund of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic.

(b) The bonds are eligible and lawful security for the deposits of public funds of the state or of an agency, subdivision, or instrumentality of the state, including a municipality, county, school district, special district, public agency, and body politic. The bonds may secure those deposits in an amount up to the value of the bonds, if accompanied by all appurtenant unmatured interest coupons. (V.A.C.S. Art. 4494i-1, Sec. 13.)

Sec. 265.049. CHARGES FOR SERVICES AND FACILITIES. The board shall operate its hospital facilities for the use and benefit of the public, but shall establish and collect charges for services and facilities that are sufficient combined with other revenue and income to:

- (1) pay all expenses related to ownership, operation, and maintenance of its hospital facilities;
- (2) pay principal of and interest on its bonds; and
- (3) create and maintain reserves and any other funds provided for in the proceedings authorizing the issuance of bonds. (V.A.C.S. Art. 4494i-1, Sec. 9 (part).)

Sec. 265.050. DEPOSITORY. The board may:

- (1) select a depository in the same manner that a municipality or county may select a depository under Chapter 105 or Chapter 116, Local Government Code; or
- (2) execute a depository contract with a depository selected by the municipality or the county on the same terms as the municipality or county. (V.A.C.S. Art. 4494i-1, Sec. 14.)

Sec. 265.051. INVESTMENT OF FUNDS. (a) The law relating to security for and investment of municipal or county funds applies to hospital board funds. A bond resolution or trust indenture executed for hospital board bonds may further restrict the security for and investment of hospital board funds.

(b) The hospital board may invest, until needed, all or part of its bond proceeds in direct obligations of the United States to the extent authorized in the bond resolution or trust indenture. (V.A.C.S. Art. 4494i-1, Sec. 17.)

Sec. 265.052. EMINENT DOMAIN. (a) The hospital board may acquire the fee simple title to or any other interest in land and other property by condemnation under Chapter 21, Property Code, to carry out any power, duty, or function under this subchapter.

(b) The board has the same rights as a county or municipality under Section 21.021, Property Code.

(c) The board shall determine the amount and character of the interest in land or other property to be acquired under this section. (V.A.C.S. Art. 4494i-1, Sec. 16.)

[Sections 265.053–265.070 reserved for expansion]

**SUBCHAPTER E. SALE, LEASE, OR CLOSING**

**Sec. 265.071. OFFICIAL ACTION.** (a) The commissioners court by order and the governing body of a municipality by ordinance may order the sale, lease, or closing of all or part of a joint municipal and county hospital, including real property, owned and operated by the county and municipality.

(b) The order and ordinance must include a finding that the sale, lease, or closing is in the best interest of the residents of the county or municipality, respectively.

(c) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 265.072. (V.A.C.S. Art. 4437c-2, Secs. 1 (part); 2(a) (part), (b), (c) (part).)

**Sec. 265.072. PETITION AND ELECTION.** (a) A petition requesting an election on the sale or closing of the hospital may be presented to the commissioners court and the municipal governing body before the 31st day after the date the commissioners court and the governing body order the sale or closing.

(b) The petition must be signed by at least 10 percent of the qualified voters of the county and any part of the municipality that is not in the county.

(c) On receipt of the petition, the commissioners court and the governing body shall order and conduct the election. The commissioners court and the governing body may sell or close the hospital only if a majority of the qualified voters voting at the election approve the sale or closing.

(d) The number of qualified voters of the county and any part of the municipality that is not in the county is determined according to the most recent official list of registered voters. (V.A.C.S. Art. 4437c-2, Secs. 2(c) (part), 3.)

[Chapters 266–280 reserved for expansion]

**SUBTITLE D. HOSPITAL DISTRICTS**

**CHAPTER 281. HOSPITAL DISTRICTS IN COUNTIES OF AT LEAST 190,000**

**SUBCHAPTER A. CREATION OF DISTRICT**

**Sec. 281.001. DEFINITIONS**

**Sec. 281.002. DISTRICT AUTHORIZATION**

**Sec. 281.003. CREATION ELECTION REQUIRED**

**Sec. 281.004. BALLOT PROPOSITIONS**

[Sections 281.005–281.020 reserved for expansion]

**SUBCHAPTER B. DISTRICT ADMINISTRATION**

**Sec. 281.021. APPOINTMENT OF BOARD**

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**Sec. 281.023. OFFICERS**

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[Sections 281.031–281.040 reserved for expansion]

SUBCHAPTER C. GENERAL POWERS AND DUTIES

- Sec. 281.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS
- Sec. 281.042. RETURN OF TRANSFERRED PROPERTY TO COUNTY OR MUNICIPALITY
- Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS
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- Sec. 281.045. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES
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- Sec. 281.049. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES
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- Sec. 281.052. COUNTY AUTHORITY TO SELL, LEASE, AND PURCHASE FACILITIES FOR DISTRICT PURPOSES
- Sec. 281.053. DISTRICT INSPECTIONS
- Sec. 281.054. EMINENT DOMAIN
- Sec. 281.055. GIFTS AND ENDOWMENTS
- Sec. 281.056. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION
- Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS IN DALLAS COUNTY

[Sections 281.058–281.070 reserved for expansion]

SUBCHAPTER D. MEDICAL TREATMENT AND CARE

- Sec. 281.071. PAYMENT AND SUPPORT
- Sec. 281.072. REIMBURSEMENT FOR SERVICES
- Sec. 281.073. DISPOSITION OF DISTRICT RECORDS

[Sections 281.074–281.090 reserved for expansion]

SUBCHAPTER E. DISTRICT FINANCES

- Sec. 281.091. BUDGET
- Sec. 281.092. ADMINISTRATOR'S REPORT
- Sec. 281.093. DEPOSITORY

[Sections 281.094–281.100 reserved for expansion]

SUBCHAPTER F. DISTRICT BONDS

- Sec. 281.101. GENERAL OBLIGATION BONDS
- Sec. 281.102. BOND ELECTION
- Sec. 281.103. REFUNDING BONDS
- Sec. 281.104. EXECUTION OF BONDS
- Sec. 281.105. APPROVAL AND REGISTRATION OF BONDS

[Sections 281.106–281.120 reserved for expansion]

SUBCHAPTER G. TAXES TO PAY BONDS

- Sec. 281.121. TAXES TO PAY BONDS; TAX ASSESSMENT AND COLLECTION

SUBTITLE D. HOSPITAL DISTRICTS

CHAPTER 281. HOSPITAL DISTRICTS IN COUNTIES OF AT LEAST 190,000

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 281.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of hospital managers of a district.
- (2) "District" means a hospital district created under this chapter. (New.)

Sec. 281.002. DISTRICT AUTHORIZATION. (a) A county with at least 190,000 inhabitants that does not own or operate a hospital system for indigent or needy persons may create a countywide hospital district and provide for the establishment of a hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) A county with at least 190,000 inhabitants that owns and operates a hospital or hospital system for indigent or needy persons, separately or jointly with a municipality, may create a countywide hospital district and take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district. (V.A.C.S. Art. 4494n, Sec. 1 (part).)

Sec. 281.003. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district is to be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion and shall order the election on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 4494n, Sec. 1 (part).)

Sec. 281.004. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (b), the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this chapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district, and the assumption by the district of all outstanding bonds previously issued for hospital purposes by \_\_\_\_\_ County and by any municipality in the county." (V.A.C.S. Art. 4494n, Sec. 1 (part).)

[Sections 281.005-281.020 reserved for expansion]

SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 281.021. APPOINTMENT OF BOARD. (a) The commissioners court of a county in which a district is created under this chapter shall appoint a board of hospital managers composed of not less than five or more than seven members.

(b) The commissioners court of a county with a population of more than 650,000 but less than 900,000 in which a district is created under this chapter shall appoint a board composed of not less than five or more than 15 members.

(c) The Harris County Commissioners Court shall appoint a board composed of not less than seven or more than nine members. (V.A.C.S. Art. 4494n, Secs. 5 (part), 5(a) (part), 5B (part).)

Sec. 281.022. TERM. A board member serves a two-year term, except that the commissioners court may make some initial appointments for one year in order to stagger terms. (V.A.C.S. Art. 4494n, Secs. 5 (part), 5(a) (part), 5B (part).)

Sec. 281.023. OFFICERS. (a) The board shall elect from among its members:

- (1) a chairman; and
- (2) a vice-chairman to preside in the chairman's absence.

(b) The board shall appoint a board member or the administrator to serve as secretary. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.024. COMPENSATION. A board member serves without compensation. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.025. RECORD OF BOARD MEETING. (a) The board shall require the secretary to keep a suitable record of each board meeting.

(b) The presiding member shall read and sign the record after the meeting, and the secretary shall attest to the record. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.026. ADMINISTRATOR; DUTIES. (a) The board shall appoint a person qualified by training and experience as the administrator for the district.

(b) The administrator serves at the will of the board and for terms of not more than two years.

(c) The administrator is entitled to compensation as determined by the board.

(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than \$10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

- (1) perform duties required by the board;
- (2) supervise the work and activities of the district; and
- (3) generally direct the affairs of the district. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.027. ASSISTANT ADMINISTRATOR. (a) If the administrator is incapacitated, absent, or unable to perform the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's powers or duties, subject to limitations prescribed by board order.

(b) The assistant administrator or other persons shall execute a bond as required by board order. (V.A.C.S. Art. 4494n, Sec. 7.)

Sec. 281.028. STAFF. (a) The board may appoint doctors to the district's staff and hire technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) The employment contract or term of employment of a person appointed or hired under this section may not exceed two years. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.029. RETIREMENT PROGRAMS. (a) With the approval of the commissioners court, the board may contract with the state or the federal government as necessary to establish or continue a retirement program for the benefit of district employees.

(b) In addition to the retirement programs authorized by Subsection (a), the board may establish a retirement program the board considers necessary and advisable for the benefit of district employees. (V.A.C.S. Art. 4494n, Secs. 5 (part), 5a.)

Sec. 281.030. SEAL. The board shall have a seal engraved with the district's name. The seal shall be kept by the secretary and used to authenticate the board's acts. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

[Sections 281.031–281.040 reserved for expansion]

#### SUBCHAPTER C. GENERAL POWERS AND DUTIES

Sec. 281.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) On the creation of a district under this chapter and the appointment and

qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county and municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

(1) all joint or separate county and municipal funds that are the proceeds of any bonds assumed by the district under Section 281.044; and

(2) all unexpended joint or separate county and municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created, to be used by the district to operate and maintain those facilities for the remainder of the year.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) On the creation of the district, the board of managers of the county or municipal hospital system shall continue to manage and control the property and affairs of that system until the board of the district is appointed and organized. At that time, the county or municipal board of managers shall transfer to the district board all county and municipal hospital system records, property, and affairs and shall cease to exist. (V.A.C.S. Art. 4494n, Sec. 4 (part).)

**Sec. 281.042. RETURN OF TRANSFERRED PROPERTY TO COUNTY OR MUNICIPALITY.** (a) The board by deed may transfer to the county or a municipality any property that:

(1) was transferred to the district by that county or municipality under Section 281.041; and

(2) the board considers is not and will not be useful for the purposes for which the property was originally transferred to the district.

(b) The transfer may be made on terms determined suitable by the board and the commissioners court. (V.A.C.S. Art. 4494n, Sec. 4 (part).)

**Sec. 281.043. ASSUMPTION OF CONTRACT OBLIGATIONS.** On the creation of the district, the district assumes, without prejudice to the rights of third parties, any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, or maintenance of hospital facilities before the creation of the district. (V.A.C.S. Art. 4494n, Sec. 4 (part).)

**Sec. 281.044. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS.** (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) On the creation of the district, the county or a municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of the bonds or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds by the county or municipality, or both, to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the county or municipality, or both, may not sell the bonds. (V.A.C.S. Art. 4494n, Secs. 3 (part), 4 (part).)

Sec. 281.045. **LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES.** (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems under Chapter 265 shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied. (V.A.C.S. Art. 4494n, Sec. 13 (part).)

Sec. 281.046. **DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE.** Beginning on the date on which taxes are collected for the district, the district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district. (V.A.C.S. Art. 4494n, Sec. 13 (part).)

Sec. 281.047. **MANAGEMENT, CONTROL, AND ADMINISTRATION.** The board shall manage, control, and administer the hospital or hospital system of the district. (V.A.C.S. Art. 4494n, Secs. 5 (part), 5(a) (part), 5B (part).)

Sec. 281.048. **DISTRICT RULES.** The board may adopt rules governing the operation of the hospital or hospital system. (V.A.C.S. Art. 4494n, Sec. 5 (part).)

Sec. 281.049. **PURCHASING AND ACCOUNTING METHODS AND PROCEDURES.** (a) The commissioners court may prescribe:

- (1) the method of making purchases and expenditures by and for the district; and
- (2) accounting and control procedures for the district.

(b) The commissioners court by resolution or order may delegate its powers under Subsection (a) to the board.

(c) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(d) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section. (V.A.C.S. Art. 4494n, Sec. 6.)

Sec. 281.050. **POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT.** With the approval of the commissioners court, the board may construct, condemn, acquire, lease, add to, maintain, operate, develop, regulate, sell, exchange, and convey any property, property right, equipment, hospital facility, or system to maintain a hospital, building, or other facility or to provide a service required by the district. (V.A.C.S. Art. 4494n, Sec. 5b(a).)

Sec. 281.051. **CONTRACTING AUTHORITY.** (a) With the approval of the commissioners court, the board may, in performing its powers under Section 281.050, contract or cooperate with:

- (1) the federal government;
- (2) this state;
- (3) a municipality;
- (4) another hospital district; or
- (5) a privately owned or operated hospital located in the district.

(b) The commissioners court and the board must determine that a contract under Subsection (a) is:

- (1) expedient and advantageous to the district under existing circumstances;



- (2) for fair and reasonable compensation; and
- (3) on other terms, including duration, as considered necessary to assist the district in performing its duty to provide medical and hospital care to needy county inhabitants.
- (c) With the approval of the commissioners court, the board may contract with:
  - (1) a county for care and treatment of the county's sick, diseased, or injured persons; and
  - (2) this state or the federal government for care and treatment of sick, diseased, or injured persons for whom the state or federal government is responsible. (V.A.C.S. Art. 4494n, Secs. 5 (part), 5b(b).)

**Sec. 281.052. COUNTY AUTHORITY TO SELL, LEASE, AND PURCHASE FACILITIES FOR DISTRICT PURPOSES.** (a) The commissioners court of a county in which a district is created under this chapter may sell real or personal property in order to enter into a contract to:

- (1) lease or rent buildings, land, facilities, equipment, or services from others for district purposes;
  - (2) construct, repair, renovate, improve, or enlarge buildings, land, facilities, or equipment for district purposes; and
  - (3) pay regular monthly utility bills, including electricity, gas, and water bills, for the leased or rented buildings, land, facilities, equipment, or services.
- (b) The commissioners court may pay for the facilities, equipment, and services and for the regular monthly utility bills for those facilities, equipment, and services from the county's general fund if a majority of the commissioners court considers the facilities, equipment, and services essential to the proper administration of the county.
- (c) A construction project under this section shall be let by contract. The contract must contain the prevailing wage for mechanics, laborers, and other persons employed in the project. The Tarrant County Commissioners Court shall set the prevailing wage in the amount set by the commissioners court for all construction projects involving the expenditure of county funds.

(d) On or before the expiration of the lease or rental contract, the county may purchase the facilities with county general funds if a majority of the commissioners court considers the purchase price reasonable. (V.A.C.S. Art. 4494n-2, Secs. 1, 2, 4.)

**Sec. 281.053. DISTRICT INSPECTIONS.** (a) The district may be inspected by a representative of the commissioners court, the Texas Board of Health, or the Texas Department of Human Services.

- (b) A district officer shall:
  - (1) admit an inspector into the district facilities; and
  - (2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district. (V.A.C.S. Art. 4494n, Sec. 11.)

**Sec. 281.054. EMINENT DOMAIN.** (a) The district has the power of eminent domain to acquire any interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit with the trial court money or a bond as provided by Section 21.021(a), Property Code.

- (c) In a condemnation proceeding brought by the district, the district is not required to:
  - (1) pay in advance or give bond or other security for costs in the trial court;
  - (2) give bond for the issuance of a temporary restraining order or a temporary injunction; or
  - (3) give bond for costs or supersedeas on an appeal or writ of error. (V.A.C.S. Art. 4494n, Sec. 9.)

Sec. 281.055. GIFTS AND ENDOWMENTS. On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district. (V.A.C.S. Art. 4494n, Sec. 15.)

Sec. 281.056. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION.  
(a) The board may sue and be sued.

(b) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district in all legal matters.

(c) The board may employ additional legal counsel when the board determines that additional counsel is advisable.

(d) The district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district. (V.A.C.S. Art. 4494n, Secs. 5 (part), 12.)

Sec. 281.057. EMPLOYMENT OF DISTRICT PEACE OFFICERS IN DALLAS COUNTY. (a) The board of the Dallas County Hospital District may employ and commission peace officers for the district.

(b) A district peace officer may make an arrest if:

(1) the arrest is necessary to prevent or abate the commission of a criminal offense and the offense or threatened offense occurs on any land, easement, right-of-way, or other property owned and controlled by the district; or

(2) the offense involves injury or harm to any property owned or controlled by the district. (V.A.C.S. Art. 4494n, Sec. 16.)

[Sections 281.058–281.070 reserved for expansion]

#### SUBCHAPTER D. MEDICAL TREATMENT AND CARE

Sec. 281.071. PAYMENT AND SUPPORT. (a) The administrator shall inquire into a patient's circumstances and the circumstances of the patient's relatives legally responsible for the patient's support if the patient is admitted to district facilities from the county in which the hospital is located. If the administrator finds that the patient or the patient's relatives are liable for the patient's care and treatment in whole or in part, the administrator shall issue an order directing the patient or the patient's relatives to pay to the district treasurer a specified amount each week in proportion to the financial ability of the patient or the patient's relatives to pay.

(b) A patient or the patient's relatives may not be required to pay an amount greater than the actual per capita cost of maintenance.

(c) An administrator may collect an amount owed under this section from the estate of a patient, or the relatives legally responsible for the patient's support, in the manner provided by law for the collection of expenses of the last illness of a deceased person.

(d) If the administrator finds that the patient and the patient's relatives are not able to pay in whole or in part, the district shall without charge supply the care and treatment to the patient.

(e) A county court of the county in which a patient's hospital is located shall hear and determine the ability of the patient or the patient's relatives to pay under this section if there is a dispute over this ability or if there is doubt in the mind of the administrator over this ability. The court shall hear witnesses and issue any order that may be proper.

(f) An appeal from an order of the county court must be made to a district court in the county in which the district is located. (V.A.C.S. Art. 4494n, Sec. 14 (part).)

**Sec. 281.072. REIMBURSEMENT FOR SERVICES.** The board shall require reimbursement from a county, municipality, or public hospital located outside the boundaries of the district for the district's care and treatment of a sick, diseased, or injured person of that county, municipality, or public hospital as provided by Chapter 61 (Indigent Health Care and Treatment Act). (New.)

**Sec. 281.073. DISPOSITION OF DISTRICT RECORDS.** (a) The commissioners court may authorize the board to transfer, destroy, or otherwise dispose of district records, other than medical records, that are:

- (1) more than five years old; and
- (2) determined by the board to be of no further use to the district as official records.

(b) The commissioners court may authorize the disposal of the medical records of a patient on or after the 10th anniversary of the date on which the patient was last treated in the hospital.

(c) If a patient was younger than 18 years of age when the patient was last treated, the hospital may authorize the disposal of medical records relating to the patient only on or after the date of the patient's 20th birthday or on or after the 10th anniversary of the date on which the patient was last treated, whichever date is later.

(d) The hospital may not destroy medical records that relate to any matter that is involved in litigation if the hospital knows the litigation has not been finally resolved.

(e) A district may microfilm and retain medical records and any other records the board considers necessary to preserve in the manner provided by Sections 181.002–181.005, Local Government Code. (V.A.C.S. Art. 4494n, Sec. 8A.)

[Sections 281.074–281.090 reserved for expansion]

#### **SUBCHAPTER E. DISTRICT FINANCES**

**Sec. 281.091. BUDGET.** (a) The administrator shall prepare an annual budget under the board's direction.

(b) The budget and budget revisions must be approved by the board and then shall be presented to the commissioners court for final approval. (V.A.C.S. Art. 4494n, Sec. 8 (part).)

**Sec. 281.092. ADMINISTRATOR'S REPORT.** (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the board, commissioners court, Texas Board of Health, and comptroller.

(b) The report must:

- (1) consist of a sworn statement of all money and choses in action received by the administrator and their disposition; and
- (2) show in detail the operations of the district for the fiscal year. (V.A.C.S. Art. 4494n, Sec. 8 (part).)

**Sec. 281.093. DEPOSITORY.** (a) Not later than the 30th day after the appointment of the board, the board shall:

- (1) select a depository for district funds in the manner provided by law for the selection of a county depository; or
- (2) elect to use the depository previously selected by the county.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for two years and until its successor is selected and qualified.

(c) The board may extend any contract with a depository to the next October and then select a depository for the following two years.

(d) All income of the district shall be deposited in the district depository.

(e) Warrants against district funds do not require the county clerk's signature. (V.A.C.S. Art. 4494n, Secs. 2 (part), 10.)

[Sections 281.094–281.100 reserved for expansion]

## SUBCHAPTER F. DISTRICT BONDS

Sec. 281.101. GENERAL OBLIGATION BONDS. The commissioners court, in the district's name and on the district's faith and credit, may issue and sell bonds to acquire, construct, equip, or enlarge the hospital or hospital system. (V.A.C.S. Art. 4494n, Sec. 3 (part).)

Sec. 281.102. BOND ELECTION. (a) The district may not issue bonds, excluding refunding bonds, unless the bonds are authorized by a majority of the qualified voters of the district voting at an election called and held for that purpose.

(b) The commissioners court may order a bond election on its own motion or on the board's request.

(c) The election must be:

(1) called and held in accordance with Chapter 1, Title 22, Revised Statutes; and

(2) conducted in the same manner as other countywide elections.

(d) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election. (V.A.C.S. Art. 4494n, Sec. 3 (part).)

Sec. 281.103. REFUNDING BONDS. (a) Refunding bonds of the district may be issued to refund and pay any outstanding bonded indebtedness of the district, including assumed bonded indebtedness.

(b) The refunding bonds must be issued in the manner provided for other bonds of the district except that an election is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged out of the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged out of those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds. (V.A.C.S. Art. 4494n, Sec. 3 (part).)

Sec. 281.104. EXECUTION OF BONDS. The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds. (V.A.C.S. Art. 4494n, Sec. 3 (part).)

Sec. 281.105. APPROVAL AND REGISTRATION OF BONDS. (a) District bonds are subject to the same requirements with regard to approval by the attorney general and registration by the comptroller as the law provides for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county. (V.A.C.S. Art. 4494n, Sec. 3 (part).)

[Sections 281.106–281.120 reserved for expansion]

## SUBCHAPTER G. TAXES TO PAY BONDS

Sec. 281.121. TAXES TO PAY BONDS; TAX ASSESSMENT AND COLLECTION. (a) When the district issues bonds under this chapter, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation. The commissioners court may impose the tax for the entire year in which the district is

created in order to finance initial district operation and to pay bonds assumed by the district.

(b) The tax amount:

(1) must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they mature; and

(2) may not exceed 75 cents on each \$100 of the taxable value of property taxable by the district.

(c) The proceeds of the tax may be used:

(1) to pay the interest on and create a sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system; and

(3) if requested by the board and approved by the commissioners court, to make further improvements and additions to the hospital system, including acquiring necessary sites by purchase, lease, or condemnation.

(d) The county tax assessor-collector shall collect the tax. (V.A.C.S. Art. 4494n, Secs. 2 (part), 3 (part).)

**CHAPTER 282. HOSPITAL DISTRICTS IN COUNTIES OF 75,000 OR LESS**

**SUBCHAPTER A. CREATION OF DISTRICT**

- Sec. 282.001. DEFINITIONS
- Sec. 282.002. DISTRICT AUTHORIZATION
- Sec. 282.003. CREATION ELECTION REQUIRED
- Sec. 282.004. PETITION FOR ELECTION
- Sec. 282.005. HEARING; ELECTION ORDER
- Sec. 282.006. ELECTION COSTS; DISPOSITION OF DEPOSIT

[Sections 282.007–282.020 reserved for expansion]

**SUBCHAPTER B. DISTRICT ADMINISTRATION**

- Sec. 282.021. ELECTION OF BOARD
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- Sec. 282.023. COMPENSATION
- Sec. 282.024. OFFICERS
- Sec. 282.025. QUORUM; MEETING PROCEDURE AND RECORD
- Sec. 282.026. SEAL
- Sec. 282.027. SUPERINTENDENT; DUTIES
- Sec. 282.028. OTHER OFFICERS AND DISTRICT EMPLOYEES

[Sections 282.029–282.040 reserved for expansion]

**SUBCHAPTER C. GENERAL POWERS AND DUTIES**

- Sec. 282.041. MANAGEMENT, CONTROL, AND ADMINISTRATION
- Sec. 282.042. DISTRICT RULES
- Sec. 282.043. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT
- Sec. 282.044. CONTRACTING AUTHORITY
- Sec. 282.045. PURCHASING PROCEDURES
- Sec. 282.046. EMINENT DOMAIN
- Sec. 282.047. GIFTS AND ENDOWMENTS
- Sec. 282.048. AUTHORITY TO SUE AND BE SUED; DISTRICT LIABILITY
- Sec. 282.049. OTHER BOARD POWERS
- Sec. 282.050. PROVISION OF HOSPITAL SERVICES

[Sections 282.051–282.060 reserved for expansion]

SUBCHAPTER D. DISTRICT FINANCES

- Sec. 282.061. ANNUAL REPORT
- Sec. 282.062. TREASURER
- Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS

[Sections 282.064–282.070 reserved for expansion]

SUBCHAPTER E. DISTRICT BONDS

- Sec. 282.071. GENERAL OBLIGATION BONDS
- Sec. 282.072. INTEREST, MATURITY, AND DENOMINATION
- Sec. 282.073. EXECUTION OF BONDS
- Sec. 282.074. APPROVAL AND REGISTRATION OF BONDS
- Sec. 282.075. BOND RECORD BOOK
- Sec. 282.076. COMPENSATION OF COUNTY CLERK
- Sec. 282.077. BOND OF COUNTY JUDGE
- Sec. 282.078. SALE OF THE BONDS
- Sec. 282.079. DISPOSITION OF UNNEEDED BONDS
- Sec. 282.080. ADDITIONAL BOND ISSUE AND ELECTION
- Sec. 282.081. CHANGE IN USE OF BOND PROCEEDS AFTER BOND ISSUANCE

[Sections 282.082–282.100 reserved for expansion]

SUBCHAPTER F. TAXES TO PAY BONDS

- Sec. 282.101. TAXES TO PAY BONDS
- Sec. 282.102. TAX ASSESSOR-COLLECTOR

CHAPTER 282. HOSPITAL DISTRICTS IN COUNTIES OF 75,000 OR LESS

SUBCHAPTER A. CREATION OF DISTRICT

Sec. 282.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of trustees of a district.
- (2) "District" means a hospital district created under this chapter. (New.)

Sec. 282.002. DISTRICT AUTHORIZATION. (a) The commissioners court of a county with a population of 75,000 or less and an assessed property valuation of at least \$200,000,000 may create one or more hospital districts.

(b) The district may include a municipality or town, or a part of a municipality or town, but the district may not include part of another district.

(c) To be formed the proposed district must be composed of territory having property of an assessed value of more than \$25,000,000. (V.A.C.S. Art. 4494o, Sec. 1 (part).)

Sec. 282.003. CREATION ELECTION REQUIRED. The creation of the district must be approved by a majority of the qualified voters of the area of the proposed district who vote at an election ordered and held for that purpose. (V.A.C.S. Art. 4494o, Sec. 5 (part).)

Sec. 282.004. PETITION FOR ELECTION. (a) To propose the establishment of a district:

(1) a petition for a creation election signed by at least five percent of the qualified property taxpaying voters of the area of the proposed district must be presented to the commissioners court; and

(2) \$200 in cash must be deposited with the county clerk at the time of the presentation of the petition.

(b) The petition must state:

- (1) the boundaries of the proposed district;
- (2) the public necessity for the proposed district; and

(3) the name of the proposed district which includes the county name.

(c) The petition may include a request for the commissioners court to provide on the ballot at the creation election for voting for or against:

(1) imposing a tax to provide funds to construct, equip, maintain, or purchase hospital buildings or land for the district; or

(2) the issuance of bonds to acquire sites for and to construct hospital buildings and imposing a tax at the rate necessary to create an interest and sinking fund sufficient to pay the principal of and interest on the bonds. (V.A.C.S. Art. 4494o, Secs. 2, 3 (part).)

**Sec. 282.005. HEARING; ELECTION ORDER.** (a) When the petition is presented to the commissioners court, the commissioners court shall:

(1) set a date for a hearing on the petition at a regular session or special session called for that purpose, not less than 30 days nor more than 60 days after the date on which the petition is presented; and

(2) order the county clerk to give notice of the date and place of the hearing by posting a copy of the petition and the order for at least 20 days before the date of the election at the courthouse door and at four other places in the proposed district.

(b) If the court finds at the hearing that the petition meets the requirements of this chapter, the court shall order an election to be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(c) The order must contain a description of the metes and bounds of the proposed district and must set the date of the election.

(d) The ballot for election shall be printed to provide for voting for or against:

(1) the creation of the district; and

(2) if the petition includes a request under Section 282.004(c), the imposition of a tax or the issuance of bonds according to the terms of the petition. (V.A.C.S. Art. 4494o, Secs. 4, 5 (part).)

**Sec. 282.006. ELECTION COSTS; DISPOSITION OF DEPOSIT.** (a) The county clerk shall retain the amount deposited under Section 282.004(a) until the commissioners court declares the election results.

(b) If at the election the majority of the voters approved the creation of the district, the county clerk shall return that amount to the petitioners or the petitioners' agent or attorney.

(c) If at the election the majority of the voters disapproved the creation of the district, the county clerk shall:

(1) pay from the amount deposited on warrants approved and signed by the county judge, all costs and expenses pertaining to the proposed district, including the costs related to the elections;

(2) return the remaining amount, if any, to the petitioners or the petitioners' agent or attorney. (V.A.C.S. Art. 4494o, Sec. 3 (part).)

[Sections 282.007–282.020 reserved for expansion]

#### **SUBCHAPTER B. DISTRICT ADMINISTRATION**

**Sec. 282.021. ELECTION OF BOARD.** (a) Board members shall be elected from the district at large.

(b) Initial board members shall be elected at the district creation election.

(c) A person who wishes to have his name printed on the ballot as a candidate to serve as an initial district board member must present to the commissioners court a petition requesting that the person's name be placed on the ballot at the district creation election. The petition must be accompanied by a second petition signed by at least 100 qualified voters of the proposed district requesting that the person's name be placed on the ballot

as a candidate for board membership. The petitions must be filed with the commissioners court before the third day before the date on which the election order is issued.

(d) The commissioners court shall declare that the five candidates receiving the highest number of votes at the initial election of board members are district board members. When they are qualified under this chapter, the candidates shall serve as district board members.

(e) The initial board members shall serve as district board members until the next regular election of state and county officers. An election for board members shall be held at that time and at the general election in each second year after that time. (V.A.C.S. Art. 4494o, Sec. 7 (part).)

Sec. 282.022. OATH AND BOND. (a) Before assuming the duties of office on the board, each district board member elect must:

(1) take and subscribe an oath before the county judge to faithfully and impartially discharge the duties of a board member and to give an account of the member's activities to the commissioners court when requested to do so; and

(2) execute a good and sufficient bond for \$5,000 payable to the county judge for the use and benefit of the district, conditioned on the faithful performance of the person's duties as a board member.

(b) The county clerk shall file and maintain the oath as part of the district records. (V.A.C.S. Art. 4494o, Secs. 8, 9.)

Sec. 282.023. COMPENSATION. A board member serves without compensation but is entitled to reimbursement for actual expenses incurred in the performance of official duties. (V.A.C.S. Art. 4494o, Sec. 10 (part).)

Sec. 282.024. OFFICERS. The board shall elect from among its members a chairman, a secretary, and other officers the board considers appropriate. (V.A.C.S. Art. 4494o, Sec. 10 (part).)

Sec. 282.025. QUORUM; MEETING PROCEDURE AND RECORD. (a) Three board members constitute a quorum.

(b) All board proceedings shall be by motion or resolution and shall be recorded in a book kept for that purpose. The book is a public record. (V.A.C.S. Art. 4494o, Sec. 10 (part).)

Sec. 282.026. SEAL. The board shall adopt an official seal. (V.A.C.S. Art. 4494o, Sec. 10 (part).)

Sec. 282.027. SUPERINTENDENT; DUTIES. (a) The board shall appoint a superintendent to serve as the district's chief administrator.

(b) The superintendent serves at the will of the board and is responsible to the board for the efficient administration of hospital affairs.

(c) The superintendent is entitled to compensation as determined by the board.

(d) The superintendent may attend board meetings and meetings of a board committee and may participate in the discussion of matters within the superintendent's functions, but the superintendent may not vote on matters considered by the board.

(e) The superintendent shall:

(1) control administrative functions of the hospital;

(2) carry out the board orders;

(3) ensure that the district complies with state law relating to matters within the superintendent's functions; and

(4) fully advise the board of the district's financial condition and needs.

(f) At least once a year, the superintendent shall:

(1) prepare an estimate of administrative expenses for the succeeding fiscal year;

(2) recommend to the board and estimate the cost of improvements to be made in the succeeding fiscal year;



(3) certify to the board district bills, allowances, and payrolls, including public works contractors' claims; and

(4) recommend to the board salary amounts of district employees under the administrator and a salary scale to be paid for different services required by the district. (V.A.C.S. Art. 4494o, Secs. 11 (part), 33 (part).)

**Sec. 282.028. OTHER OFFICERS AND DISTRICT EMPLOYEES.** (a) The board shall appoint other district officers that the board considers necessary.

(b) A person appointed under Subsection (a) serves at the will of the board and is entitled to receive compensation as determined by the board.

(c) The board may contract with or employ legal, technical, and professional assistance and other employees.

(d) If the superintendent is temporarily incapacitated or absent, the board may designate a competent person to perform the superintendent's powers or duties. (V.A.C.S. Art. 4494o, Secs. 11 (part), 33 (part).)

[Sections 282.029–282.040 reserved for expansion]

#### **SUBCHAPTER C. GENERAL POWERS AND DUTIES**

**Sec. 282.041. MANAGEMENT, CONTROL, AND ADMINISTRATION.** (a) The board shall manage, control, and administer the district.

(b) The board is a corporate body in the name of the "\_\_\_\_\_ County Public Hospital District No. \_\_\_\_\_." (V.A.C.S. Art. 4494o, Sec. 7 (part).)

**Sec. 282.042. DISTRICT RULES.** The board may adopt rules and bylaws the board considers proper. (V.A.C.S. Art. 4494o, Sec. 7 (part).)

**Sec. 282.043. POWERS RELATING TO DISTRICT PROPERTY, FACILITIES, AND EQUIPMENT.** (a) On the district's behalf, the board may hold, construct, condemn, purchase, acquire, lease, add to, maintain, operate, develop, regulate, sell, and convey land, property, a property right, equipment, a hospital facility, or a hospital system to maintain a district hospital, building, structure, or other facility.

(b) The board may lease an existing hospital, equipment, or property used in connection with a district hospital and equipment at a rate the board considers proper. (V.A.C.S. Art. 4494o, Secs. 1 (part), 7 (part), 33 (part).)

**Sec. 282.044. CONTRACTING AUTHORITY.** (a) In performing its powers under this subchapter the board may contract with:

- (1) the federal government;
- (2) this state;
- (3) a municipality; and
- (4) another hospital district.

(b) The district may incur indebtedness or borrow money for district purposes on the credit of the district or secured by the revenues of a district hospital.

(c) The district may contract with another community, corporation, or individual for services provided by the district. (V.A.C.S. Art. 4494o, Sec. 33 (part).)

**Sec. 282.045. PURCHASING PROCEDURES.** The district is subject to the County Purchasing Act (Subchapter C, Chapter 262, Local Government Code), and the board shall comply with the competitive bidding or proposal procedures prescribed by that Act. (V.A.C.S. Art. 4494o, Sec. 34.)

**Sec. 282.046. EMINENT DOMAIN.** (a) On a resolution by the board, the district may exercise the power of eminent domain for the acquisition of property necessary to carry out the powers and duties of the district, including preventing damage to district property, property rights, equipment, hospital facilities and systems, and property adjacent to district property.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, for the exercise of that power by a municipality.

(c) The district may not exercise the power of eminent domain against:

(1) a hospital, clinic, or sanatorium operated as a charitable, nonprofit establishment or operated by a religious organization; or

(2) a privately owned or operated hospital or clinic, whether or not incorporated. (V.A.C.S. Art. 4494o, Sec. 33 (part).)

Sec. 282.047. GIFTS AND ENDOWMENTS. The board may accept bequests and contributions on behalf of the district. (V.A.C.S. Art. 4494o, Sec. 7 (part).)

Sec. 282.048. AUTHORITY TO SUE AND BE SUED; DISTRICT LIABILITY. (a) The board may sue and be sued on behalf of the district.

(b) A suit against the district must be brought in the county in which the district is located.

(c) The district is not liable for negligence for an act of a district officer, agent, or employee. (V.A.C.S. Art. 4494o, Secs. 7 (part), 33 (part).)

Sec. 282.049. OTHER BOARD POWERS. The board may:

(1) promote health in the district;

(2) print and publish information; and

(3) do any other thing necessary to the performance of the board's duties under this chapter. (V.A.C.S. Art. 4494o, Secs. 7 (part), 33 (part).)

Sec. 282.050. PROVISION OF HOSPITAL SERVICES. (a) The district shall provide adequate hospital services for the district. A person who resides in the district is entitled to receive those services at available district hospital facilities at a rate determined by the board and in any manner the board considers expedient or necessary under existing conditions. The district may provide the services in hospitals located outside the district.

(b) The district may furnish hospital services to a person who does not reside in the district at a reasonable and fair rate the board considers proper, but the district shall give priority to a district resident in the provision of hospital services. (V.A.C.S. Art. 4494o, Sec. 1 (part), 33 (part).)

[Sections 282.051–282.060 reserved for expansion]

#### SUBCHAPTER D. DISTRICT FINANCES

Sec. 282.061. ANNUAL REPORT. (a) Not later than June 1 of each year, the board shall prepare and file with the commissioners court a full, detailed report of the condition of the district. The report must include:

(1) an estimate of the cost of maintenance, operation, and needed repairs for the succeeding year;

(2) an inventory of all funds and other property of the district; and

(3) a list of all legal demands, debts, and obligations against the district.

(b) The board shall verify the report.

(c) The commissioners court shall carefully investigate and consider the report before setting a tax rate. (V.A.C.S. Art. 4494o, Sec. 21.)

Sec. 282.062. TREASURER. (a) The county treasurer of the county in which the district is located serves as treasurer of the district.

(b) Funds received by the district shall be paid to the treasurer.

(c) District funds shall be deposited in the county depositories in the manner required by law for county depositories. Interest collected on those funds belongs to the district.

(d) The treasurer may not pay money from district funds unless the treasurer receives a warrant ordering the payment signed by the district board chairman or another district officer designated by the board.

(e) The treasurer shall maintain in the district's name the funds created by the board and shall place money in those funds as the board by resolution directs.

(f) The treasurer shall open an account with the district and shall keep a record of all of the district's money received for the account and paid from the account. The treasurer may not pay money from the account except on a voucher signed by the chairman or two board members.

(g) The treasurer shall maintain a file of the payment orders.

(h) As required by the board or the commissioners court, the treasurer shall give a correct accounting to the board or the commissioners court of all matters relating to district finances.

(i) For services on behalf of the district, the treasurer is entitled to receive an amount equal to:

(1) one-fourth of one percent of all money received by the treasurer on behalf of the district; and

(2) one-eighth of one percent of all money paid out by the treasurer on the order of the district.

(j) The treasurer is not entitled to receive a commission under Subsection (i) on district money the treasurer receives from the preceding treasurer. (V.A.C.S. Art. 4494o, Secs. 19 (part), 30, 31.)

**Sec. 282.063. DISTRICT FUNDS; INVESTMENT OF FUNDS.** (a) The treasurer shall maintain a construction and maintenance fund and an interest and sinking fund for the district.

(b) The amount of taxes collected that is necessary to pay the principal of and interest on the bonds as they mature shall be credited to the interest and sinking fund. All other funds and property received by the district shall be credited to the construction and maintenance fund.

(c) The treasurer shall pay from the construction and maintenance fund the expenses, debts, and obligations of the district created after the filing of the original petition and incurred in the creation, operation, and maintenance of the district, other than the principal of and interest on bonds.

(d) The interest and sinking fund may be invested for the benefit of the district in bonds and securities approved by the attorney general.

(e) The construction and maintenance fund and interest and sinking fund shall be held for the purposes for which they were created. If money is improperly paid from either fund, the commissioners court may require the county treasurer to transfer to the fund from the district account the amount necessary to restore that amount. (V.A.C.S. Art. 4494o, Secs. 19 (part), 23 (part), 32.)

[Sections 282.064–282.070 reserved for expansion]

#### **SUBCHAPTER E. DISTRICT BONDS**

**Sec. 282.071. GENERAL OBLIGATION BONDS.** The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire or construct hospital buildings or land if the bonds are approved by a majority of the qualified voters at the election to create the district in accordance with Subchapter A. (V.A.C.S. Art. 4494o, Secs. 15 (part), 33(d) (part).)

**Sec. 282.072. INTEREST, MATURITY, AND DENOMINATION.** (a) District bonds mature not more than 30 years after their date and bear interest at a rate ordered by the commissioners court but not more than six percent annually.

(b) The bonds must provide the interest rate and the time, place, manner, and conditions of payment as ordered by the commissioners court.

(c) The bonds may be payable annually or semiannually.

(d) The bonds must be issued in denominations of not less than \$100 nor more than \$1,000. (V.A.C.S. Art. 4494o, Sec. 15 (part).)

Sec. 282.073. EXECUTION OF BONDS. The county judge shall sign the bonds, and the county clerk shall attest the signature and place the seal of the court on the bonds. (V.A.C.S. Art. 4494o, Sec. 15 (part).)

Sec. 282.074. APPROVAL AND REGISTRATION OF BONDS. (a) Before the bonds are offered for sale, the district shall forward to the attorney general:

- (1) a copy of the bonds to be issued;
- (2) a certified copy of the court order imposing the tax to pay the interest on the bonds and provide a sinking fund;
- (3) a statement of the total bonded indebtedness of the district, including the series of bonds proposed;
- (4) the assessed value of property for the purpose of taxation as shown by the most recent official county assessment; and
- (5) any other information that the attorney general requires.

(b) The attorney general shall:

- (1) examine the bonds; and
- (2) certify the bonds if the attorney general determines that the bonds are issued in conformity with the constitution and law and that they are valid and binding obligations of the district.

(c) When the bonds are approved by the attorney general, the comptroller shall register the bonds in a book kept for that purpose and maintain the certificate of approval for the bonds.

(d) On approval and registration under this section, the bonds are incontestable for any cause. The certificate of approval or a certified copy of the certificate is admissible evidence in a suit to enforce the collection of the bonds as prima facie proof of the validity of the bonds with attached coupons. In that suit, only forgery or fraud may be offered as a defense against the validity of the bonds. (V.A.C.S. Art. 4494o, Secs. 16, 17.)

Sec. 282.075. BOND RECORD BOOK. (a) Before issuing the bonds, the commissioners court shall provide to the county clerk a well-bound book in which the clerk shall record all bonds issued, including the following information:

- (1) the bond numbers, amount, rate of interest, and date of issue;
- (2) the date when the bonds are due;
- (3) the place where the bonds are payable;
- (4) the amount received for each bond;
- (5) the annual assessment made to pay bond interest and to provide a sinking fund to pay the bonds; and
- (6) the payment made of each bond.

(b) The record book must be open for inspection at all times by a taxpayer of the district or a bondholder. (V.A.C.S. Art. 4494o, Sec. 14 (part).)

Sec. 282.076. COMPENSATION OF COUNTY CLERK. For recording services provided to the district, the county clerk is entitled to receive fees as provided by Chapter 118, Local Government Code. (V.A.C.S. Art. 4494o, Sec. 14 (part).)

Sec. 282.077. BOND OF COUNTY JUDGE. (a) When the bonds are registered, the county judge shall execute a good and sufficient bond, approved by the board and payable to the board, for an amount not less than the amount of the bonds issued. The bond must be conditioned on the faithful performance of the judge's duties.

(b) If the bond is executed by a satisfactory surety, the district may pay from the district construction and maintenance fund a reasonable premium on the bond on receipt of an invoice for the premium. If the amount of the premium is disputed as unreasonable, a court of competent jurisdiction may determine whether or not the premium is reasonable.

(c) The board may charge the cost of the bond premium against the commission allowed the county judge on the sale of district bonds. (V.A.C.S. Art. 4494o, Sec. 18.)

**Sec. 282.078. SALE OF THE BONDS.** (a) When the bonds are registered, the county judge, under the direction of the commissioners court, shall advertise and sell the bonds on the best terms and for the best price possible, but for a price not less than the sum of the amounts of the par value and the accrued interest.

(b) The county judge shall give the money received from the sale of a bond to the county treasurer. (V.A.C.S. Art. 4494o, Sec. 19 (part).)

**Sec. 282.079. DISPOSITION OF UNNEEDED BONDS.** With the consent of the commissioners court made of record, bonds that are not required for the purpose for which they were voted may be sold and the proceeds may be used to maintain, preserve, and operate the district hospital and to pay district debts and other obligations. (V.A.C.S. Art. 4494o, Secs. 22 (part), 23 (part).)

**Sec. 282.080. ADDITIONAL BOND ISSUE AND ELECTION.** (a) The board shall certify to the commissioners court the necessity for an additional bond issue if:

(1) the proceeds of the original bond issue are insufficient to complete the construction, equipment, maintenance, or purchase of hospital buildings or land for the district; or

(2) the board decides to provide for additional construction, equipment, maintenance, or purchase of hospital buildings or land.

(b) The certification must state:

(1) the amount required;

(2) the purpose for the funds;

(3) the rate of interest of the proposed bonds; and

(4) the maturity date of the proposed bonds.

(c) When the commissioners court receives the certification, the commissioners court shall order an election on the issuance of the bonds to be held in the district on the first uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law.

(d) The sum of the amount of any outstanding bonds and the amount of additional bonds issued under this section may not exceed one-fourth of the assessed value of the real property in the district, as shown by the most recent annual assessment made for county taxation. (V.A.C.S. Art. 4494o, Sec. 12.)

**Sec. 282.081. CHANGE IN USE OF BOND PROCEEDS AFTER BOND ISSUANCE.**

(a) After the issuance of bonds, the board may change the use of the bond proceeds to include a change or improvement to the district hospital if the change or improvement will not increase the cost of the proposed project beyond the amount of the authorized bonds.

(b) The board may make the change in the use of the bond proceeds by:

(1) entering in the minutes of the board a notation of the change; and

(2) by giving notice of the change by publication of the notation and the page number of the board minutes on which the notation was entered.

(c) The publication must be in English and must run for two successive weeks in a newspaper of general circulation in the county in which the district is located. (V.A.C.S. Art. 4494o, Sec. 13.)

[Sections 282.082–282.100 reserved for expansion]

#### **SUBCHAPTER F. TAXES TO PAY BONDS**

**Sec. 282.101. TAXES TO PAY BONDS.** (a) When the bonds have been approved by the voters at the election authorizing the levy of taxes, the commissioners court shall impose a property tax for the benefit of the district. The tax rate must be sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds as they become due.

(b) After investigation and consideration of the annual report in accordance with Section 282.061, the commissioners court shall impose and collect taxes annually on all taxable property in the district. The amount of tax revenue:

(1) must be sufficient to maintain, preserve, and operate the district hospital and to pay all legal district debts and other obligations; and

(2) may not exceed two-tenths of one percent of the annual total assessed valuation of the district. (V.A.C.S. Art. 4494o, Secs. 20, 22 (part).)

Sec. 282.102. TAX ASSESSOR-COLLECTOR. (a) The county tax assessor-collector shall levy and collect taxes for the district.

(b) After receiving a petition of at least five percent of the qualified taxpaying voters of a created district, the commissioners court may order an election to determine whether the district should have a tax assessor and collector other than the county tax assessor-collector. The commissioners court may order the election after:

(1) the district is created; and

(2) giving notice in the manner as provided for the creation election.

(c) If the voters determine by a two-thirds vote that the district should have a district tax assessor-collector, the board shall appoint a suitable person to serve in that position. (V.A.C.S. Art. 4494o, Secs. 24, 29.)

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**CHAPTER 283. OPTIONAL HOSPITAL DISTRICT LAW OF 1957**

**SUBCHAPTER A. CREATION OF DISTRICT**

Sec. 283.001. **SHORT TITLE.** This Act may be cited as the Optional Hospital District Law of 1957. (V.A.C.S. Art. 4494p, Sec: 1.)

Sec. 283.002. **DEFINITIONS.** In this chapter:

- (1) "Board" means the board of hospital managers of a district.
- (2) "District" means a hospital district created under this chapter. (New.)

Sec. 283.003. **DISTRICT AUTHORIZATION.** (a) A county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution may create a hospital district and provide for the establishment of a countywide hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district.

(b) If the county authorized to establish a hospital district under Article IX, Section 4, of the Texas Constitution owns and operates a hospital or hospital system for indigent or

needy persons, separately or jointly with a municipality, the countywide hospital district may take over the hospital or hospital system to furnish medical aid and hospital care to indigent and needy persons residing in the district. (V.A.C.S. Art. 4494p, Sec. 3(a) (part).)

Sec. 283.004. CREATION ELECTION REQUIRED. (a) The district may be created only if the creation is approved by a majority of the qualified voters of the county in which the proposed district will be located who vote at an election called and held for that purpose.

(b) The commissioners court may order a creation election to be held on its own motion or on the presentation of a petition for a creation election signed by at least 100 qualified property taxpaying voters of the county.

(c) When the commissioners court orders the election, the court shall determine, subject to Section 283.121(c)(2), a rate of property tax that produces the amount of tax revenue necessary:

(1) to operate and maintain the proposed district's hospital system; and

(2) to pay when due the principal of and interest on bonds assumed by the district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 4494p, Secs. 3(a) (part), (b), (c) (part).)

Sec. 283.005. BALLOT PROPOSITIONS. (a) Except as provided by Subsection (b), the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district under the Optional Hospital District Law of 1957 and the levy of a tax not to exceed \_\_\_\_\_ cents (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district."

(b) If the county or a municipality in the county has any outstanding bonds issued for hospital purposes, the ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "The creation of a hospital district, the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district, and the assumption by the district of all outstanding bonds previously issued for hospital purposes by \_\_\_\_\_ County and by any municipality in the county." (V.A.C.S. Art. 4494p, Sec. 3(c) (part).)

[Sections 283.006–283.020 reserved for expansion]

#### SUBCHAPTER B. DISTRICT ADMINISTRATION

Sec. 283.021. DISTRICT BOARD; OFFICERS. (a) The commissioners court of a county in which a district is created under this chapter serves as the district board of hospital managers.

(b) The county judge of the county in which the district is located serves as the district board chairman.

(c) The county clerk serves as the district board secretary. (V.A.C.S. Art. 4494p, Secs. 7(a) (part), (e) (part).)

Sec. 283.022. COMPENSATION. A board member serves without compensation other than the compensation provided by law for a county judge or a commissioner. (V.A.C.S. Art. 4494p, Sec. 7(a) (part).)

Sec. 283.023. RECORD OF BOARD MEETING. The secretary shall keep a suitable record of each board meeting. (V.A.C.S. Art. 4494p, Sec. 7(e) (part).)

Sec. 283.024. ADMINISTRATOR; DUTIES. (a) The board shall appoint an administrator for the district. The person must be qualified by training and experience.

(b) The administrator holds an office for a term of not more than two years but is subject to removal by the board at any time.

(c) The administrator is entitled to compensation as determined by the board.



(d) Before assuming duties, the administrator shall execute a bond payable to the district in the amount of not less than \$10,000, conditioned on the faithful performance of the administrator's duties and any other requirements determined by the board.

(e) Subject to the limitations prescribed by the board, the administrator shall:

- (1) perform duties required by the board;
- (2) supervise the work and activities of the district; and
- (3) generally direct the affairs of the district. (V.A.C.S. Art. 4494p, Sec. 7(b).)

Sec. 283.025. ASSISTANT ADMINISTRATOR. (a) If the administrator is absent or unable to perform any of the administrator's duties, the board may designate an assistant administrator to perform any of the administrator's functions or duties, subject to limitations prescribed by board order.

(b) The assistant administrator and other employees shall execute a bond as required by board order. (V.A.C.S. Art. 4494p, Sec. 9.)

Sec. 283.026. STAFF. (a) The board may hire doctors, technicians, nurses, and other employees the board considers advisable for the district's efficient operation.

(b) An employment contract may not exceed two years. (V.A.C.S. Art. 4494p, Sec. 7(c).)

Sec. 283.027. RETIREMENT PROGRAMS. The commissioners court may include district employees in:

- (1) an existing county employees' pension or retirement program; or
- (2) an employees' pension or retirement program established for the benefit of district employees. (V.A.C.S. Art. 4494p, Sec. 7(d).)

Sec. 283.028. SEAL. The commissioners court's seal is the district seal. The seal shall be used to authenticate the board's acts. (V.A.C.S. Art. 4494p, Sec. 7(e) (part).)

[Sections 283.029–283.040 reserved for expansion]

#### **SUBCHAPTER C. GENERAL POWERS AND DUTIES**

Sec. 283.041. TRANSFER OF COUNTY AND MUNICIPAL HOSPITAL PROPERTY AND FUNDS. (a) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning a hospital or hospital system located in the district, or the county and municipality jointly operating a hospital or hospital system located in the district, shall execute and deliver to the district board a written instrument conveying to the district the title to land, buildings, and equipment jointly or separately owned by the county or municipality and used to provide medical services or hospital care, including geriatric care, to indigent or needy persons of the county or municipality.

(b) On the creation of a district under this chapter and the appointment and qualification of the district board, the county owning the hospital or hospital system, or the county and municipality jointly operating a hospital or hospital system, shall, on the receipt of a certificate executed by the board's chairman stating that a depository for the district has been chosen and qualified, transfer to the district:

- (1) the unspent proceeds of any bonds assumed by the district under Section 283.043; and
- (2) all unspent joint or separate county or municipal funds that have been established or appropriated by the county or municipality to support and maintain the hospital facilities for the year in which the district is created.

(c) Funds transferred to the district under this section may be used only for a purpose for which the county or the municipality that transferred the funds could lawfully have used the funds if the funds had remained the property and funds of the county or municipality.

(d) As soon as practical after the declaration of the election results, the county or municipal board of managers shall transfer to the district board all county and municipal

hospital system records, property, and affairs and shall cease to exist. (V.A.C.S. Art. 4494p, Secs. 6(a) (part), (b) (part), (c).)

Sec. 283.042. ASSUMPTION OF CONTRACT OBLIGATIONS. On the creation of the district, the district assumes without prejudice to the rights of third parties any outstanding contract obligations legally incurred by the county or municipality, or both, for the construction, support, or maintenance of hospital facilities before the creation of the district. (V.A.C.S. Art. 4494p, Sec. 6(a) (part).)

Sec. 283.043. ASSUMPTION OF BONDED INDEBTEDNESS; CANCELLATION OF UNSOLD MUNICIPAL OR COUNTY BONDS. (a) On the creation of the district, the district assumes:

(1) any outstanding bonded indebtedness incurred by the county or municipality, or both, in the acquisition of land, buildings, and equipment transferred to the district or in the construction and equipping of hospital facilities; and

(2) any other outstanding bonds issued by the county or municipality for hospital purposes, the proceeds of which are in whole or in part unexpended.

(b) A county or municipality in the district that issued bonds for hospital purposes is no longer liable for the payment of bonds assumed by the district or for providing interest and sinking fund requirements on those bonds.

(c) This section does not limit or affect the rights of a bondholder against the county or municipality if there is a default in payment of the principal or interest on the bonds in accordance with their terms.

(d) If the issuance of bonds to provide hospital facilities was approved at a bond election but the bonds have not been sold on the date on which the hospital district is created under this chapter, the bond authority is canceled and the bonds may not be sold. (V.A.C.S. Art. 4494p, Secs. 5(d), 6(b) (part).)

Sec. 283.044. LIMITATION ON TAXING POWER BY GOVERNMENTAL ENTITY; DISPOSITION OF DELINQUENT TAXES. (a) On or after the creation of the district, the county or a municipality located in the district may not levy taxes for hospital purposes.

(b) The county or a municipality located in the district that collects delinquent taxes owed to the county or municipality on levies for county and municipal hospital systems or for the payment of bonds issued for the systems shall pay the amount of the collected delinquent taxes to the district, and the district shall apply that money to the purposes for which the taxes were originally levied. (V.A.C.S. Art. 4494p, Secs. 15(a) (part), (b).)

Sec. 283.045. DISTRICT RESPONSIBILITY FOR MEDICAL AID AND HOSPITAL CARE. The district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district. (V.A.C.S. Art. 4494p, Sec. 15(a) (part).)

Sec. 283.046. MANAGEMENT, CONTROL, AND ADMINISTRATION. The board shall manage, control, and administer the hospital or hospital system of the district. (V.A.C.S. Art. 4494p, Sec. 7(a) (part).)

Sec. 283.047. DISTRICT RULES. The board may adopt rules governing the operation of the hospital or hospital system. (V.A.C.S. Art. 4494p, Sec. 7(a) (part).)

Sec. 283.048. PURCHASING AND ACCOUNTING METHODS AND PROCEDURES. (a) The commissioners court may prescribe:

(1) the method of making purchases and expenditures by and for the district; and

(2) accounting and control procedures for the district.

(b) A county officer, employee, or agent shall perform any function or service required by the commissioners court under this section.

(c) The district shall pay salaries and expenses necessarily incurred by the county or by a county officer or agent in performing a duty prescribed or required under this section. (V.A.C.S. Art. 4494p, Sec. 8.)

Sec. 283.049. DISTRICT INSPECTIONS. (a) The district facilities may be inspected by a representative of the Texas Board of Health or any other state board authorized to supervise a hospital.

(b) A resident district officer shall:

(1) admit an inspector into the district facilities; and

(2) on demand give the inspector access to records, reports, books, papers, and accounts related to the district. (V.A.C.S. Art. 4494p, Sec. 13.)

**Sec. 283.050. EMINENT DOMAIN.** (a) The district may exercise the power of eminent domain to acquire by condemnation a fee simple or other interest in real, personal, or mixed property located in the district if the property interest is necessary or convenient for the exercise of the rights or authority conferred on the district by this chapter.

(b) The district must exercise the power of eminent domain in the manner provided by Chapter 21, Property Code, but the district is not required to deposit in the trial court money or a bond as provided by Section 21.021(a), Property Code.

(c) In a condemnation proceeding brought by the district, the district is not required to:

(1) pay in advance or give bond or other security for costs in the trial court;

(2) give bond for the issuance of a temporary restraining order or a temporary injunction; or

(3) give bond for costs or supersedeas on an appeal or writ of error. (V.A.C.S. Art. 4494p, Sec. 11.)

**Sec. 283.051. GIFTS AND ENDOWMENTS.** (a) On behalf of the district, the board may accept gifts and endowments to be held in trust and administered by the board for the purposes and under the directions, limitations, or provisions prescribed in writing by the donor that are consistent with the proper management of the district.

(b) The board may contract with the state to receive a payment or grant provided by the state for the care or treatment of hospital patients or patients in district facilities. (V.A.C.S. Art. 4494p, Sec. 17.)

**Sec. 283.052. AUTHORITY TO SUE AND BE SUED; LEGAL REPRESENTATION.**

(a) The board may sue and be sued.

(b) The county attorney, district attorney, or criminal district attorney, as appropriate, with the duty to represent the county in civil matters shall represent the district in all legal matters.

(c) The board may employ additional legal counsel when the board determines that additional counsel is advisable.

(d) The district shall contribute sufficient funds to the general fund of the county for the account of the budget of the county attorney, district attorney, or criminal district attorney, as appropriate, to pay all additional salaries and expenses incurred by that officer in performing the duties required by the district. (V.A.C.S. Art. 4494p, Secs. 7(a) (part), 14.)

[Sections 283.053–283.070 reserved for expansion]

#### **SUBCHAPTER D. MEDICAL TREATMENT AND CARE**

**Sec. 283.071. ADMISSION CRITERIA AND PAYMENT; CRIMINAL PENALTY.** (a) The board shall enter an order in district records defining “indigent or needy person” for the purpose of determining qualifications for admission to district hospital facilities.

(b) An order under Subsection (a) must detail the criteria for an emergency admission to district facilities without regard to indigency and for the length and basis of the stay at the facility.

(c) The board may require evidence of indigency that it considers appropriate, including an affidavit of inability to pay.

(d) The board may hire personnel necessary to determine the eligibility of an applicant for admission to district facilities and to process admissions.

(e) A person commits an offense if the person is able to pay for the person’s hospital care at a district facility and makes a false statement for the purpose of obtaining

admission to a district hospital facility. An offense under this subsection is a misdemeanor and punishable by a fine not to exceed \$200.

(f) A person who violates Subsection (e) is also liable for the cost of the person's hospital care. (V.A.C.S. Art. 4494p, Sec. 16.)

[Sections 283.072–283.080 reserved for expansion]

#### **SUBCHAPTER E. DISTRICT FINANCES**

**Sec. 283.081. BUDGET.** (a) The administrator shall prepare an annual budget.

(b) The budget and all budget revisions shall be approved by the commissioners court. (V.A.C.S. Art. 4494p, Sec. 10 (part).)

**Sec. 283.082. ADMINISTRATOR'S REPORT.** (a) As soon as practicable after the close of the fiscal year, the administrator shall make a report to the commissioners court, Texas Board of Health, and comptroller.

(b) The report must:

(1) contain a sworn statement of all money and choses in action received by the administrator and the disposition of the money and actions; and

(2) detail the operations of the district for the fiscal year. (V.A.C.S. Art. 4494p, Sec. 10 (part).)

**Sec. 283.083. DEPOSITORY.** (a) Not later than the 30th day after the appointment of the board, the board shall:

(1) select a depository for district funds in the manner provided by law for the selection of a county depository; or

(2) elect to use the county depository.

(b) If the board selects a depository in accordance with Subsection (a)(1), the depository shall serve as the district depository for two years and until its successor is selected and qualified.

(c) All income of the district shall be deposited in the district depository.

(d) The county clerk's signature is not required on warrants against district funds. (V.A.C.S. Art. 4494p, Secs. 4(b) (part), 12.)

[Sections 283.084–283.100 reserved for expansion]

#### **SUBCHAPTER F. DISTRICT BONDS**

**Sec. 283.101. GENERAL OBLIGATION BONDS.** The commissioners court may issue and sell bonds in the district's name and on the district's faith and credit to acquire, purchase, construct, equip, or enlarge the hospital or hospital system if:

(1) a tax may be imposed at a rate that:

(A) is sufficient to create an interest and sinking fund to pay the principal of and interest on the bonds; and

(B) when added to the rates of other taxes imposed by the district, does not exceed the maximum tax rate of the district; and

(2) the bonds are authorized by majority vote of the qualified voters of the district voting at an election held for the purpose. (V.A.C.S. Art. 4494p, Secs. 5(a) (part), (b) (part).)

**Sec. 283.102. BOND ELECTION.** (a) A bond election may be held at any time the commissioners court considers advisable, except that it may not be held within two years after the date of a previous election.

(b) The election must be:

(1) ordered and held in accordance with Chapter 1, Title 22, Revised Statutes; and

(2) conducted in the same manner as other countywide elections.

(c) The district shall pay for the cost of the election and shall provide for payment before the commissioners court orders the election. (V.A.C.S. Art. 4494p, Sec. 5(b).)

**Sec. 283.103. REFUNDING BONDS.** (a) Refunding bonds of the district may be issued to refund outstanding bonded indebtedness the district has issued or assumed.

(b) The bonds must be issued in the manner provided for other bonds of the district except that an election to authorize their issuance is not required.

(c) The refunding bonds may be:

(1) sold and the proceeds applied to the payment of outstanding bonds; or

(2) exchanged in whole or in part for not less than a similar principal amount of the outstanding bonds plus the unpaid, matured interest on those bonds.

(d) The average annual interest cost on the refunding bonds, computed in accordance with recognized standard bond interest cost tables, may not exceed the average annual interest cost so computed on the bonds to be discharged from the proceeds of the refunding bonds, unless the total interest cost on the refunding bonds, computed to their respective maturity dates, is less than the total interest cost so computed on the bonds to be discharged from those proceeds. In those computations, any premium required to be paid on the bonds to be refunded as a condition to payment in advance of their stated maturity dates shall be taken into account as an addition to the net interest cost to the district of the refunding bonds. (V.A.C.S. Art. 4494p, Secs. 5(b) (part), (c).)

**Sec. 283.104. EXECUTION OF BONDS.** The county judge of the county in which the district is created shall execute the bonds in the name of the district, and the county clerk shall countersign the bonds. (V.A.C.S. Art. 4494p, Sec. 5(a) (part).)

**Sec. 283.105. APPROVAL AND REGISTRATION OF BONDS.** (a) District bonds must be approved by the attorney general and registered by the comptroller subject to the same requirements for approval and registration of bonds issued by the county.

(b) The attorney general's approval of district bonds has the same effect as that approval for other bonds issued by the county. (V.A.C.S. Art. 4494p, Sec. 5(a) (part).)

[Sections 283.106–283.120 reserved for expansion]

#### **SUBCHAPTER G. TAXES**

**Sec. 283.121. TAX ASSESSMENT AND COLLECTION.** (a) If the district has issued or assumed bonds payable from taxes, the commissioners court shall impose a tax for the benefit of the district on all property subject to district taxation.

(b) The commissioners court may impose a tax for:

(1) the entire year in which the district is created;

(2) maintenance and operation of the district; and

(3) improvements and additions to the hospital system.

(c) The total tax rate of the district may not exceed:

(1) the rate authorized by the voters of the district; or

(2) the constitutional tax rate limit.

(d) The tax revenue may be used:

(1) to create an interest and sinking fund for bonds that may be assumed or issued by the district for hospital purposes in accordance with this chapter;

(2) to provide for the operation and maintenance of the hospital or hospital system; and

(3) to make improvements and additions to the hospital system, including the acquisition of necessary sites.

(e) The county tax assessor-collector shall collect the tax. (V.A.C.S. Art. 4494p, Secs. 4(a), (b) (part), (c).)

Sec. 283.122. **ELECTION TO INCREASE TAX AMOUNT.** (a) The tax rate approved in the creation of the district may be increased only if the increase is approved by a majority of the qualified voters of the district who vote in an election called and held for that purpose.

(b) The commissioners court may order an election to increase the allowable tax rate to be held on its own motion or on the presentation of a petition for an election signed by at least 100 qualified property taxpaying voters of the district.

(c) When the commissioners court orders the election, the court shall determine the amount of tax necessary for the proper maintenance of the hospital district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the other requirements of law and that occurs at least 30 days after the date on which the court orders the election. (V.A.C.S. Art. 4494p, Secs. 4(d) (part), (e).)

Sec. 283.123. **BALLOT PROPOSITION FOR TAX INCREASE.** The ballot for a tax increase under this subchapter shall be printed to provide for voting for or against the proposition: "The increase of the hospital district tax from (the existing tax levy) to (the amount of existing tax plus the increase determined by the commissioners court in its order calling the election) on each \$100 of the taxable value of property taxable by the district." (V.A.C.S. Art. 4494p, Sec. 4(d) (part).)

[Sections 283.124–283.130 reserved for expansion]

#### SUBCHAPTER H. DISTRICT CONVERSION

Sec. 283.131. **DISTRICT CONVERSION AUTHORITY.** A hospital district created in accordance with Chapter 281 may be converted into a district subject to this chapter, or a district created in accordance with this chapter may be converted into a district subject to Chapter 281. (V.A.C.S. Art. 4494p, Sec. 18(a) (part).)

Sec. 283.132. **CONVERSION ELECTION REQUIRED.** (a) A district may be converted under this subchapter only if the conversion is approved by a majority of the qualified voters of the county in which the district is located who vote at an election called and held for that purpose.

(b) The commissioners court shall order a conversion election not later than the 20th day after the date of presentation of a petition for conversion signed by at least five percent of the qualified property taxpaying voters of the county.

(c) If the election is on the question of conversion of a district created in accordance with Chapter 281, when the commissioners court orders the election, the court shall determine the amount of tax necessary:

- (1) to operate and maintain the district's hospital system;
- (2) to make improvements and additions to the hospital system, including the acquisition of necessary sites; and
- (3) to pay when due the principal of and interest on district bonds assumed by the original district but excluding bonds issued by the original district.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law and that occurs at least 30 days after the date on which the court orders the election. (V.A.C.S. Art. 4494p, Secs. 18(a) (part), (b) (part).)

Sec. 283.133. **BALLOT PROPOSITIONS.** (a) The ballot for the election held to determine the question of conversion of a district created under this chapter shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under the Optional Hospital District Law of 1957 to a district operated under Chapter 281, Health and Safety Code, and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district."

(b) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if no bonds issued by the district are outstanding,

shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district."

(c) The ballot for an election held to determine the question of conversion of a district created in accordance with Chapter 281, if bonds issued by the district are outstanding, shall be printed to provide for voting for or against the proposition: "The conversion of the hospital district from a district operated under Chapter 281, Health and Safety Code, to a district operated under the Optional Hospital District Law of 1957, and the levy of a tax not to exceed 75 cents on each \$100 of the taxable value of property taxable by the district until presently outstanding bonds issued by the district have been retired, and thereafter the levy of a tax not to exceed (the amount determined by the commissioners court in the election order) on each \$100 of the taxable value of property taxable by the district." (V.A.C.S. Art. 4494p, Sec. 18(b) (part).)

Sec. 283.184. **EFFECTIVE DATE OF CONVERSION.** If a majority of the qualified voters participating in the election vote in favor of the proposition, the conversion becomes effective on the 30th day after the date that the election results are declared. (V.A.C.S. Art. 4494p, Sec. 18(c) (part).)

Sec. 283.185. **EFFECT OF CONVERSION.** (a) The district's identity is not affected by the conversion, and the district is liable for all outstanding debts and obligations assumed or incurred by the district.

(b) Any bonds voted by a district originally created under Chapter 281 which have not been issued on the date of the conversion election may not be issued.

(c) On conversion of a district from one operated under Chapter 281 to one operated under this chapter, the district may not impose a tax in excess of the amount determined by the commissioners court in the election order for any purposes other than to pay the principal of and interest on the unpaid bonds issued by the district before the date of conversion. (V.A.C.S. Art. 4494p, Sec. 18(c) (part).)

Sec. 283.186. **LIMITATION ON FURTHER ELECTIONS.** (a) If the proposition fails to carry at the conversion election, the district may not hold another election on the proposition for two years after the date of the election.

(b) A district that has converted under this subchapter may hold an election for reconversion after five years after the date of the conversion. The election for reconversion must be held in the same manner as provided in this subchapter for the conversion. (V.A.C.S. Art. 4494p, Secs. 18(c) (part), (d).)

## **CHAPTER 284. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICT BONDS**

### **SUBCHAPTER A. ISSUANCE OF REVENUE BONDS IN COUNTIES WITH POPULATION OF AT LEAST 200,000**

Sec. 284.001. **AUTHORITY TO ISSUE; FORM OF BONDS**

Sec. 284.002. **TERMS**

Sec. 284.003. **APPROVAL AND REGISTRATION OF BONDS**

Sec. 284.004. **SECURITY**

Sec. 284.005. **SALE OF BONDS; USE OF PROCEEDS**

Sec. 284.006. **INVESTMENT OF BOND PROCEEDS**

Sec. 284.007. **LEGAL INVESTMENTS**

Sec. 284.008. **SECURITY FOR DEPOSITS**

Sec. 284.009. **AUTHORITY TO ISSUE SUBSEQUENT BONDS**

Sec. 284.010. **REFUNDING BONDS AND REFINANCING**

Sec. 284.011. **TAXES TO PAY OPERATING AND MAINTENANCE EXPENSES**

Sec. 284.012. **AUTHORITY OF DISTRICT GOVERNING BODY IN ABSENCE OF AD  
VALOREM TAX**

Sec. 284.013. **ANNUAL BUDGET**

Sec. 284.014. AUTHORITY TO CHARGE FOR HOSPITAL SERVICES  
Sec. 284.015. USE OF OTHER LAW

[Sections 284.016–284.030 reserved for expansion]

SUBCHAPTER B. ISSUING AND REFUNDING REVENUE BONDS BY HOSPITAL  
DISTRICTS CREATED UNDER ARTICLE IX, SECTION 9, OF THE  
TEXAS CONSTITUTION

Sec. 284.031. AUTHORITY TO ISSUE

[Sections 284.032–284.040 reserved for expansion]

SUBCHAPTER C. BOND ELECTIONS IN HOSPITAL DISTRICTS

Sec. 284.041. BOND ELECTIONS FOR REVENUE BONDS

CHAPTER 284. SPECIAL PROVISIONS RELATING TO  
HOSPITAL DISTRICT BONDS

SUBCHAPTER A. ISSUANCE OF REVENUE BONDS IN COUNTIES WITH  
POPULATION OF AT LEAST 200,000

Sec. 284.001. AUTHORITY TO ISSUE; FORM OF BONDS. (a) The commissioners court of a county with a population of at least 200,000 in which a hospital district has been created in accordance with Article IX of the Texas Constitution may issue revenue bonds to provide funds to:

(1) acquire, construct, repair, renovate, improve, enlarge, and equip a hospital facility; and

(2) acquire any real or personal property on behalf of the district for those purposes.

(b) The commissioners court may not issue revenue bonds under this subchapter on behalf of a hospital district to purchase a nursing home for long-term care.

(c) The bonds and bond interest coupons are negotiable instruments.

(d) The bonds may be issued in the form, denomination, and manner and under the terms and conditions determined and provided by the commissioners court in the order authorizing the issuance of the bonds. (V.A.C.S. Art. 4494r–2, Sec. 1 (part).)

Sec. 284.002. TERMS. (a) The bonds must mature serially or otherwise not more than 40 years after the date they are issued.

(b) The bonds may be:

(1) made redeemable before maturity; and

(2) issued registrable as to principal or as to principal and interest.

(c) The bonds shall be executed in the manner and bear interest at the rate provided by the commissioners court in the order authorizing the bonds. (V.A.C.S. Art. 4494r–2, Sec. 1 (part).)

Sec. 284.003. APPROVAL AND REGISTRATION OF BONDS. (a) The commissioners court shall submit the bonds and the proceedings authorizing their issuance to the attorney general for examination. If the attorney general finds that the bonds are authorized in accordance with law, the attorney general shall approve the bonds and the comptroller shall register the bonds.

(b) After approval and registration, the bonds are incontestable and are binding obligations according to their terms. (V.A.C.S. Art. 4494r–2, Sec. 3.)

Sec. 284.004. SECURITY. (a) The commissioners court may make bonds issued under this subchapter payable from and secured by a lien on or pledge of all or part of the hospital district revenue from operation or ownership of hospital facilities, except ad valorem taxes.

(b) The commissioners court may also secure the bonds by:



(1) a pledge of all or part of a grant, a donation, or other income received from a public or private source, whether in accordance with an agreement or otherwise; and

(2) a mortgage or deed of trust on real property on which a district hospital facility is or will be located and any real or personal property incident or appurtenant to that facility.

(c) The commissioners court may authorize the execution and delivery of a trust indenture, mortgage, deed of trust, or other form of encumbrance to evidence a security agreement under Subsection (b)(2). (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

Sec. 284.005. **SALE OF BONDS; USE OF PROCEEDS.** (a) The bonds may be sold in the manner, at the price, and under the terms determined and provided by the commissioners court in the order authorizing the issuance of the bonds.

(b) If permitted by the bond order, a required part of the proceeds from the bond sale may be used for:

(1) the payment of interest on the bonds during the construction of hospital facilities financed with bond proceeds;

(2) the payment of operation and maintenance expenses of those facilities to the extent and for the period specified by the bond order; and

(3) the creation of reserves for the payment of bond principal and interest. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

Sec. 284.006. **INVESTMENT OF BOND PROCEEDS.** Proceeds from the sale of bonds may be invested until needed to the extent and in the manner provided by the bond order. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

Sec. 284.007. **LEGAL INVESTMENTS.** The bonds are legal and authorized investments for:

(1) a bank;

(2) a trust company;

(3) a savings and loan association;

(4) an insurance company;

(5) a small business investment corporation;

(6) a fiduciary;

(7) a trustee;

(8) a guardian; or

(9) an interest or sinking fund or other public funds of the state or a municipality, county, school district, or other political subdivision of the state. (V.A.C.S. Art. 4494r-2, Sec. 4 (part).)

Sec. 284.008. **SECURITY FOR DEPOSITS.** The bonds are eligible to secure deposits of public funds of the state or of a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their market value if accompanied by all appurtenant unmatured coupons, if any. (V.A.C.S. Art. 4494r-2, Sec. 4 (part).)

Sec. 284.009. **AUTHORITY TO ISSUE SUBSEQUENT BONDS.** In the authorization of bonds under Section 284.001, the commissioners court may provide for the subsequent issuance of additional parity, subordinate lien, or other bonds, under the terms or conditions stated in the order authorizing the issuance of the original bonds. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

Sec. 284.010. **REFUNDING BONDS AND REFINANCING.** (a) Revenue bonds issued by the commissioners court under this subchapter or under any other statute of this state and payable from hospital facility revenue may be refunded or otherwise refinanced by the commissioners court.

(b) The provisions of this subchapter pertinent and appropriate to the issuance of revenue bonds generally apply to the refunding bonds.

(c) In issuing refunding bonds or in refinancing revenue bonds, the commissioners court in the same authorizing proceedings may:

(1) refund or refinance bonds issued under this subchapter and bonds issued under another statute of this state and combine the refunding bonds with other new bonds to be issued under those laws into one or more issues or series of bonds; and

(2) provide for the subsequent issuance of additional parity, subordinate lien, or other bonds.

(d) Refunding bonds shall be issued and delivered under the terms and conditions stated in the authorizing proceedings. (V.A.C.S. Art. 4494r-2, Sec. 2.)

**Sec. 284.011. TAXES TO PAY OPERATING AND MAINTENANCE EXPENSES.** (a) Ad valorem taxes of the hospital district shall be used to pay hospital facility operation and maintenance expenses to the extent that hospital facility revenue and income are not available at any time to pay all those expenses.

(b) The proceeds of an annual ad valorem tax may be pledged to pay hospital facility operation and maintenance expenses in the order authorizing the issuance of bonds under this subchapter.

(c) During each year that any of the bonds are outstanding, the commissioners court shall compute and determine the rate and amount of ad valorem tax that is sufficient to raise and produce the funds required to pay required hospital facility operation and maintenance expenses if the annual ad valorem tax is pledged as security for the payment of those expenses. In determining the tax rate, the commissioners court may allow for tax delinquencies and the cost of tax collection. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

**Sec. 284.012. AUTHORITY OF DISTRICT GOVERNING BODY IN ABSENCE OF AD VALOREM TAX.** If a hospital district created under Article IX of the Texas Constitution does not have ad valorem taxes levied on behalf of the district by the commissioners court of the county in which the hospital district is located, the district board of directors or other governing body has all of the powers and duties otherwise provided to a commissioners court under this subchapter. (V.A.C.S. Art. 4494r-2, Sec. 5.)

**Sec. 284.013. ANNUAL BUDGET.** (a) The commissioners court, board of hospital managers, or hospital district board of directors shall provide in each annual hospital district budget for the payment of all operation and maintenance expenses of the hospital district.

(b) In preparing the budget, the commissioners court or board may consider the estimated revenue and income from hospital facilities that will be available for paying operation and maintenance expenses after providing for all principal, interest, and reserve requirements in connection with the bonds. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

**Sec. 284.014. AUTHORITY TO CHARGE FOR HOSPITAL SERVICES.** (a) The commissioners court, board of hospital managers, or hospital district board of directors may fix and collect charges for the occupancy or use of hospital facilities and hospital services in the amount and manner determined by the commissioners court or board.

(b) The charges shall be fixed and collected in an amount:

(1) sufficient, with other pledged resources, to provide for all payments of principal, interest, and any other amounts required in connection with the bonds; and

(2) required by the bond order to provide for payment of all or part of the operation, maintenance, and other expenses of the hospital facilities. (V.A.C.S. Art. 4494r-2, Sec. 1 (part).)

**Sec. 284.015. USE OF OTHER LAW.** A commissioners court may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any power expressly or impliedly granted by this chapter. (V.A.C.S. Art. 4494r-2, Sec. 6 (part).)

[Sections 284.016–284.030 reserved for expansion]

**SUBCHAPTER B. ISSUING AND REFUNDING REVENUE BONDS BY HOSPITAL DISTRICTS CREATED UNDER ARTICLE IX, SECTION 9, OF THE TEXAS CONSTITUTION**

**Sec. 284.031. AUTHORITY TO ISSUE.** (a) A hospital district created in accordance with Article IX, Section 9, of the Texas Constitution may issue revenue bonds to:

- (1) acquire, construct, repair, renovate, or equip buildings and improvements for hospital purposes; and
- (2) acquire sites for hospital purposes.

(b) The hospital district may refund revenue bonds previously issued for the purposes specified by Subsection (a).

(c) The bonds must be payable from and secured by a pledge of all or part of district revenues from operation of a hospital. The bonds may also be secured by a mortgage or deed of trust lien on all or part of the district's property.

(d) The bonds must be issued in accordance with Sections 264.042–264.047(a), 264.048, and 264.049, and with the effect specified by Section 264.050. (V.A.C.S. Art. 4494r–1.)

[Sections 284.032–284.040 reserved for expansion]

**SUBCHAPTER C. BOND ELECTIONS IN HOSPITAL DISTRICTS**

**Sec. 284.041. BOND ELECTIONS FOR REVENUE BONDS.** (a) The commissioners court of a county authorized by law to issue revenue bonds on behalf of a hospital district in the county may, on its own motion, order an advisory election to determine whether a majority of the qualified voters of the hospital district voting at the election favor the issuance of revenue bonds. The order must contain the same information contained in the notice of the election.

(b) In addition to the contents of the notice required by the Election Code, the notice must state any other matters that the commissioners court considers necessary or advisable.

(c) Subject to any additional notice requirements under Section 4.003, Election Code, the commissioners court shall publish notice of the election one time, at least 10 days before the date set for the election, in a newspaper of general circulation in the hospital district.

(d) The election is advisory only and does not affect the authority of the commissioners court to issue revenue bonds on behalf of the hospital district under an applicable law that does not require an election.

(e) The expenses of holding the election shall be paid from hospital district funds. (V.A.C.S. Art. 4494r–2.1.)

**CHAPTER 285. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICTS**

**SUBCHAPTER A. PAYMENT OF HOSPITAL DISTRICT OPERATING EXPENSES IN COUNTIES OF AT LEAST 450,000**

**Sec. 285.001. DEFINITION**

**Sec. 285.002. APPLICABILITY OF SUBCHAPTER**

**Sec. 285.003. AUTHORITY TO MAKE REVENUE ANTICIPATION AGREEMENT**

**Sec. 285.004. TERMS**

**Sec. 285.005. REFUNDING PROHIBITED; REPAYMENT REQUIRED**

**Sec. 285.006. SECURITY; DEFAULT OF REPAYMENT**

**Sec. 285.007. LIMITATION ON USE OF PROCEEDS; AUDIT**

**Sec. 285.008. BONDS**

**Sec. 285.009. TAXES TO SECURE BONDS**

[Sections 285.010–285.020 reserved for expansion]

**SUBCHAPTER B. PARKING STATIONS NEAR HOSPITALS IN COUNTIES OF AT LEAST 900,000**

**Sec. 285.021. DEFINITIONS**

- Sec. 285.022. AUTHORITY TO CONSTRUCT, IMPROVE, OPERATE, AND LEASE PARKING STATION
- Sec. 285.023. AUTHORITY TO ISSUE REVENUE BONDS; SECURITY
- Sec. 285.024. FORM AND EXECUTION OF BONDS
- Sec. 285.025. TERMS
- Sec. 285.026. APPROVAL AND REGISTRATION OF BONDS
- Sec. 285.027. OTHER BONDS
- Sec. 285.028. USE OF PROCEEDS: INITIAL COSTS
- Sec. 285.029. CHARGE FOR DISTRICT SERVICES
- Sec. 285.030. PROCEDURES FOR STATION OPERATION

[Sections 285.031–285.040 reserved for expansion]

SUBCHAPTER C. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR IN HOSPITAL DISTRICTS CREATED UNDER CONSTITUTION

- Sec. 285.041. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR

[Sections 285.042–285.050 reserved for expansion]

SUBCHAPTER D. SALE, LEASE, OR CLOSING OF HOSPITAL

- Sec. 285.051. AUTHORITY OF GOVERNING BODY
- Sec. 285.052. PETITION; ELECTION

CHAPTER 285. SPECIAL PROVISIONS RELATING TO HOSPITAL DISTRICTS

SUBCHAPTER A. PAYMENT OF HOSPITAL DISTRICT OPERATING EXPENSES IN COUNTIES OF AT LEAST 450,000

- Sec. 285.001. DEFINITION. In this subchapter, “bond” includes a note. (New.)
- Sec. 285.002. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a county having:
  - (1) a population of at least 450,000; and
  - (2) a countywide hospital district that:
    - (A) has taxes imposed and collected by the commissioners court of the county; and
    - (B) has teaching hospital facilities affiliated with a state-owned or private medical school. (V.A.C.S. Art. 4494r–5, Sec. 1.)
- Sec. 285.003. AUTHORITY TO MAKE REVENUE ANTICIPATION AGREEMENT.
  - (a) The commissioners court of the county may make a revenue anticipation agreement with a person, including a bank or other financial institution, on the determination by the commissioners court that the county hospital district's projected revenue, including tax collections, will not be received by the district at the times necessary to pay when due the district's operating and maintenance expenses.
  - (b) Under the revenue anticipation agreement, the contracting person agrees to advance to the hospital district, and the county and district agree to repay from the sources specified by Section 285.006, funds necessary for the district hospital facilities' operation and maintenance during the term of the agreement. (V.A.C.S. Art. 4494r–5, Secs. 2, 3 (part).)
- Sec. 285.004. TERMS. (a) Subject to this section, the parties to a revenue anticipation agreement determine its terms.
  - (b) The term of the revenue anticipation agreement may not exceed two years.
  - (c) An advance may not be made to a district under a revenue anticipation agreement more than once each month. The amount of an advance may not exceed the difference between (1) the district's accumulated, unpaid operating and maintenance expenses, and (2) the district's revenue and income, including tax revenue, actually received by the district to the date of the advance and lawfully available for paying those expenses, together with the operating reserves reasonably required for one month.

(d) The party making the advances may rely on a certification made by the district's authorized officers concerning facts specified by Subsection (c).

(e) Amounts advanced under a revenue anticipation agreement may bear interest at a rate or rates not more than the legal rate for district revenue bonds, and the agreement may provide that the rate of interest on those amounts may be determined at the time the advance is made by reference to any determinative factors and formulae on which the parties agree.

(f) The agreement must provide:

(1) for the advanced amounts to mature and become due and payable on a date on or before the day the agreement ends; and

(2) that the advanced amounts may be paid without penalty at any time before maturity. (V.A.C.S. Art. 4494r-5, Secs. 3(a) (part), (b), (c), (d) (part).)

**Sec. 285.005. REFUNDING PROHIBITED; REPAYMENT REQUIRED.** (a) An advance may not be refunded, refinanced, or extended.

(b) When district revenues are received, the commissioners court shall apply them to the payment or prepayment of outstanding, unpaid advances under the revenue anticipation agreement if:

(1) those revenues are not required or committed to pay other district obligations and expenses; and

(2) the revenues are received during the term of the revenue anticipation agreement.

(c) Until all advances under a revenue anticipation agreement are repaid, retired, and canceled, an advance may not be made under a subsequent revenue anticipation agreement. (V.A.C.S. Art. 4494r-5, Secs. 3(d) (part), (e).)

**Sec. 285.006. SECURITY; DEFAULT OF REPAYMENT.** (a) An advance under a revenue anticipation agreement is secured by and payable from:

(1) a pledge of and lien on district revenue from the operation and maintenance of its hospital facilities; or

(2) tax revenues, when collected, imposed for the purpose of operating and maintaining the district's facilities for the year during which the advances are made.

(b) If the district fails to repay any advanced amount when due under an agreement or under this subchapter, an application for a writ of mandamus or other action may be filed in a district court to enforce the agreement and repayment as required by this subchapter. (V.A.C.S. Art. 4494r-5, Sec. 3(f).)

**Sec. 285.007. LIMITATION ON USE OF PROCEEDS; AUDIT.** (a) An advance under a revenue anticipation agreement may be used only for the purposes authorized by this subchapter.

(b) It is not a defense to repayment of advanced amounts that the funds are used for a purpose not authorized by this subchapter.

(c) The auditor of the hospital district shall:

(1) audit the use of advanced funds at the time of the district's regular audit; and

(2) certify to the commissioners court whether those funds are used for proper operating and maintenance purposes authorized by this subchapter. (V.A.C.S. Art. 4494r-5, Sec. 4.)

**Sec. 285.008. BONDS.** (a) In a revenue anticipation agreement, the commissioners court may promise to execute and deliver, concurrently with the making of advances under the agreement, interest-bearing bonds evidencing the county's and hospital district's obligation to repay the advances as provided by the agreement and this subchapter.

(b) The bonds may be delivered on terms consistent with the terms specified for a revenue anticipation agreement by this subchapter.

(c) The provisions of this subchapter that relate to advances apply to bonds issued under this section.

(d) Bonds issued under this subchapter are:

- (1) incontestable in a court or other forum;
  - (2) valid and binding obligations;
  - (3) investment securities under the Uniform Commercial Code (Title 1, Business & Commerce Code);
  - (4) legal and authorized security for public funds of the state and its political subdivisions; and
  - (5) legal and authorized investments by a bank, savings bank, savings and loan association, or insurance company. (V.A.C.S. Art. 4494r-5, Secs. 5(a), (b) (part), (c).)
- Sec. 285.009. TAXES TO SECURE BONDS. (a) The commissioners court may pay and secure the principal of and interest on bonds issued under this subchapter with annual ad valorem taxes imposed by the hospital district as required by the bonds and any relevant revenue anticipation agreement if:

- (1) the hospital district is created under Article IX, Section 4, of the Texas Constitution and the creation of the district is approved at an election held in the district as required by that constitutional provision; or
  - (2) the hospital district is created under another constitutional provision that permits the imposition and pledge of taxes.
- (b) The commissioners court shall set the tax rate of the hospital district at a rate sufficient to pay the bond principal and interest when due if taxes are pledged in accordance with this section. In setting the tax rate, the commissioners court shall give consideration to the amount of money estimated to be received from revenues pledged under a revenue anticipation agreement that may be available for the payment of bond principal and interest as provided by the revenue anticipation agreement, making allowance for tax delinquencies and the cost of tax collection.
- (c) The sum of all annual ad valorem taxes imposed by the hospital district may not exceed 75 cents on \$100 valuation of all taxable property in the district. (V.A.C.S. Art. 4494r-5, Sec. 5(b) (part).)

[Sections 285.010-285.020 reserved for expansion]

#### SUBCHAPTER B. PARKING STATIONS NEAR HOSPITALS IN COUNTIES OF AT LEAST 900,000

Sec. 285.021. DEFINITIONS. In this subchapter:

- (1) "Bond order" means the order authorizing the issuance of revenue bonds.
  - (2) "Parking station" means a lot, an area, or a surface or a subsurface structure for automotive vehicle parking. The term includes the equipment used in connection with the maintenance and operation of the station and the site of the station.
  - (3) "Trust indenture" means the indenture pledging revenues to secure revenue bonds issued by a hospital district. (V.A.C.S. Art. 4494s, Sec. 2 (part).)
- Sec. 285.022. AUTHORITY TO CONSTRUCT, IMPROVE, OPERATE, AND LEASE PARKING STATION. (a) A hospital district located in a county with a population of more than 900,000 may construct, enlarge, furnish, equip, operate, or lease a parking station near a hospital in the district on the determination by the commissioners court of the county that the action is in the best interest of the hospital district and the residents of the district.

(b) A lease under this section may be made to a person on terms considered appropriate by the commissioners court. (V.A.C.S. Art. 4494s, Sec. 1.)

Sec. 285.023. AUTHORITY TO ISSUE REVENUE BONDS; SECURITY. (a) The commissioners court may issue revenue bonds on behalf of the hospital district to pay the costs to construct, enlarge, furnish, or equip the parking station.

(b) The bonds must be payable from and secured by a pledge of:

- (1) the net revenues derived from the operation of the parking station; and

(2) other revenues resulting from the ownership of the parking station properties, including receipts from leasing all or part of the parking station.

(c) The bonds must be authorized by an order adopted by a majority vote of a quorum of the commissioners court on behalf of the hospital district. An election is not required. (V.A.C.S. Art. 4494s, Secs. 3, 4 (part).)

**Sec. 285.024. FORM AND EXECUTION OF BONDS.** The bonds must:

- (1) be negotiable;
- (2) be signed by the county judge;
- (3) be countersigned by the county clerk;
- (4) be registered by the county treasurer;
- (5) have the seal of the commissioners court impressed or printed on the bonds; and
- (6) contain the following provision: "The holder hereof shall never have the right to demand payment thereof out of money raised or to be raised by taxation." (V.A.C.S. Art. 4494s, Secs. 4 (part), 8 (part).)

**Sec. 285.025. TERMS.** (a) Bonds issued under this subchapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

- (1) be sold at a price and under terms that the commissioners court considers the most advantageous reasonably obtainable; and
- (2) be made callable before maturity at times and prices prescribed in the order authorizing the bonds.

(b) The bonds may not bear interest at a rate greater than that allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4494s, Sec. 4 (part).)

**Sec. 285.026. APPROVAL AND REGISTRATION OF BONDS.** (a) The county must submit to the attorney general bonds issued under this subchapter and the record relating to the issuance of those bonds.

(b) If the attorney general finds that the bonds were issued in accordance with this subchapter, are valid and binding obligations of the county, and are secured as recited in the bonds:

- (1) the attorney general shall approve the bonds; and
- (2) the comptroller shall register the bonds and certify the registration of the bonds.

(c) The bonds are incontestable after the comptroller certifies the registration of the bonds. (V.A.C.S. Art. 4494s, Sec. 8 (part).)

**Sec. 285.027. OTHER BONDS.** (a) Bonds constituting a junior lien on the net revenues may be issued unless prohibited by the bond order or the trust indenture.

(b) Parity bonds may be issued under conditions specified in the bond order or trust indenture.

(c) The county may issue bonds to refund outstanding bonds in the same manner that other bonds are issued under this subchapter.

(d) Refunding bonds issued under this section may be exchanged for previous bonds by the comptroller or may be sold. If the bonds are sold, the proceeds shall be applied to the payment of outstanding bonds. (V.A.C.S. Art. 4494s, Secs. 5, 7.)

**Sec. 285.028. USE OF PROCEEDS: INITIAL COSTS.** An amount necessary for the payment of not more than two years' interest on the bonds and an amount estimated by the commissioners court to be required for operating expenses until the parking station becomes sufficiently operative may be set aside out of the proceeds from the sale of the bonds. (V.A.C.S. Art. 4494s, Sec. 6.)

**Sec. 285.029. CHARGE FOR DISTRICT SERVICES.** The hospital district shall charge sufficient rentals or rates for services rendered by the parking station to produce revenues sufficient to:

- (1) pay all expenses of owning, operating, and maintaining the parking station;

(2) pay the principal of and interest on the bonds when due; and

(3) create and maintain a bond reserve fund and other funds as provided by the bond order or trust indenture. (V.A.C.S. Art. 4494s, Sec. 9 (part).)

Sec. 285.030. **PROCEDURES FOR STATION OPERATION.** The bond order or trust indenture may prescribe procedures for the operation of the parking station. (V.A.C.S. Art. 4494s, Sec. 9 (part).)

[Sections 285.031–285.040 reserved for expansion]

#### **SUBCHAPTER C. APPOINTMENT OF TAX ASSESSOR AND COLLECTOR IN HOSPITAL DISTRICTS CREATED UNDER CONSTITUTION**

Sec. 285.041. **APPOINTMENT OF TAX ASSESSOR AND COLLECTOR.** A hospital district created under Article IX, Section 9, of the Texas Constitution may appoint a tax assessor and collector for the district. (V.A.C.S. Art. 4494r–4.)

[Sections 285.042–285.050 reserved for expansion]

#### **SUBCHAPTER D. SALE, LEASE, OR CLOSING OF HOSPITAL**

Sec. 285.051. **AUTHORITY OF GOVERNING BODY.** (a) The governing body of a hospital district by resolution may order the sale, lease, or closing of all or part of a hospital owned and operated by the hospital district, including real property. The resolution must include a finding by the governing body that the sale, lease, or closing is in the best interest of the residents of the hospital district.

(b) A sale or closing may not take effect before the expiration of the period in which a petition may be filed under Section 285.052. (V.A.C.S. Art. 4437c–2, Secs. 1 (part); 2(a) (part), (c) (part).)

Sec. 285.052. **PETITION; ELECTION.** (a) The governing body of the hospital district shall order and conduct an election on the sale or closing of a hospital if, before the 31st day after the date the governing body orders the sale or closing, the governing body receives a petition requesting the election signed by at least 10 percent of the qualified voters of the hospital district. The number of qualified voters of the hospital district is determined according to the most recent official lists of registered voters.

(b) If a petition is filed under Subsection (a), the hospital may be sold or closed only if a majority of the qualified voters voting on the question approve the sale or closing. (V.A.C.S. Art. 4437c–2, Secs. 2(c) (part), 3.)

[Chapters 286–300 reserved for expansion]

#### **SUBTITLE E. COOPERATIVE ASSOCIATIONS**

##### **CHAPTER 301. COOPERATIVE ASSOCIATIONS**

###### **SUBCHAPTER A. HOSPITAL LAUNDRY COOPERATIVE ASSOCIATIONS**

Sec. 301.001. **DEFINITIONS**

Sec. 301.002. **CREATION OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION**

Sec. 301.003. **ARTICLES OF INCORPORATION**

Sec. 301.004. **USE OF PUBLIC FUNDS PROHIBITED**

Sec. 301.005. **MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS**

Sec. 301.006. **MEMBERSHIP NOT REQUIRED**

Sec. 301.007. **POWERS OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION**

Sec. 301.008. **COST OF SERVICES**

Sec. 301.009. **BONDS, NOTES, OR OTHER OBLIGATIONS**

Sec. 301.010. **BONDS AS INVESTMENTS**

Sec. 301.011. **BONDS AS SECURITY FOR DEPOSITS**

Sec. 301.012. **LIABILITY TO CREDITORS**



- Sec. 301.013. TAX EXEMPTION**
- Sec. 301.014. ANNUAL REPORT**
- Sec. 301.015. SURPLUS REVENUE**
- Sec. 301.016. LOANS TO MEMBERS PROHIBITED**

[Sections 301.017–301.030 reserved for expansion]

**SUBCHAPTER B. MISCELLANEOUS COOPERATIVE ASSOCIATIONS**

- Sec. 301.031. DEFINITIONS**
- Sec. 301.032. CREATION OF COOPERATIVE ASSOCIATION**
- Sec. 301.033. ARTICLES OF INCORPORATION**
- Sec. 301.034. USE OF PUBLIC FUNDS PROHIBITED**
- Sec. 301.035. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS**
- Sec. 301.036. MEMBERSHIP NOT REQUIRED**
- Sec. 301.037. POWERS OF COOPERATIVE ASSOCIATION**
- Sec. 301.038. COST OF SERVICES**
- Sec. 301.039. BONDS, NOTES, OR OTHER OBLIGATIONS**
- Sec. 301.040. BONDS AS INVESTMENTS**
- Sec. 301.041. LIABILITY TO CREDITORS**
- Sec. 301.042. TAX EXEMPTION**
- Sec. 301.043. ANNUAL REPORT**
- Sec. 301.044. SURPLUS REVENUE**
- Sec. 301.045. LOANS TO MEMBERS PROHIBITED**
- Sec. 301.046. LIBERAL CONSTRUCTION**

**SUBTITLE E. COOPERATIVE ASSOCIATIONS**

**CHAPTER 301. COOPERATIVE ASSOCIATIONS**

**SUBCHAPTER A. HOSPITAL LAUNDRY COOPERATIVE ASSOCIATIONS**

**Sec. 301.001. DEFINITIONS.** In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

- (A) a municipality;
- (B) a political subdivision of the state;
- (C) a state-supported health-related institution, including:
  - (i) The Texas A&M University System;
  - (ii) The University of Texas System; and
  - (iii) Texas Woman's University;
- (D) a nonprofit health-related institution; or
- (E) a cooperative association created under Subchapter B, a unit of which is located in a county with a population of more than 1,600,000.

(2) "Laundry system" includes:

- (A) buildings in which soiled or infected clothing, uniforms, or linens are laundered;
- (B) land and interests in land as sites for buildings or access to buildings;
- (C) equipment and appliances for a laundry operation;
- (D) supplies for a laundry operation;
- (E) clothing, uniforms, and linens;
- (F) automotive and other personal property appropriate for delivery and pickup services; and

(G) other property and equipment incidental or appropriate to the operation of laundry facilities. (V.A.C.S. Art. 4437f-1, Secs. 2(1) (part), (2).)

Sec. 301.002. CREATION OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. (a) Eligible institutions may create a hospital laundry cooperative association to establish, operate, and maintain a laundry system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Hospital Laundry Cooperative Association." (V.A.C.S. Art. 4437f-1, Secs. 1 (part), 6 (part).)

Sec. 301.003. ARTICLES OF INCORPORATION. (a) Eligible institutions creating a hospital laundry cooperative association may file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter. (V.A.C.S. Art. 4437f-1, Sec. 5.)

Sec. 301.004. USE OF PUBLIC FUNDS PROHIBITED. Public funds appropriated to a state department or to a state institution may not be used to create a hospital laundry cooperative association under this subchapter. (V.A.C.S. Art. 4437f-1, Sec. 4.)

Sec. 301.005. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS. (a) An eligible institution may be elected to membership in a hospital laundry cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property. (V.A.C.S. Art. 4437f-1, Secs. 1 (part), 11(a), (b), (c), (d).)

Sec. 301.006. MEMBERSHIP NOT REQUIRED. A component institution of a state-supported institution is not required to be a member of a hospital laundry cooperative association created under this subchapter but may be a member of one or more associations. (V.A.C.S. Art. 4437f-1, Sec. 2(1) (part).)

Sec. 301.007. POWERS OF HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION. A hospital laundry cooperative association may:

(1) acquire, own, and operate a laundry system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a laundry system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a laundry system and may own, hold, improve, develop, and manage land and interests in land acquired;

(3) construct, improve, enlarge, and equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a laundry system, including property for the cleaning, washing, steaming, bleaching, dry cleaning, and disinfecting of all types of clothing and fabrics, and the transportation and distribution of those articles;

(6) encumber and dispose of any personal property owned or held by the association;

(7) acquire by purchase or other method uniforms, clothing, or linen for its members;

(8) borrow or raise money without limit as to amount;

(9) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(10) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association. (V.A.C.S. Art. 4437f-1, Secs. 3, 8 (part).)

Sec. 301.008. **COST OF SERVICES.** A hospital laundry cooperative association may determine the amount to be charged for providing laundry services through its laundry system to eligible institutions. (V.A.C.S. Art. 4437f-1, Sec. 8 (part).)

Sec. 301.009. **BONDS, NOTES, OR OTHER OBLIGATIONS.** (a) A hospital laundry cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a laundry system.

(b) The association shall pay bonds, notes, or other obligations of the association solely from revenue received from the operation of a laundry system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations. (V.A.C.S. Art. 4437f-1, Secs. 8 (part), 9.)

Sec. 301.010. **BONDS AS INVESTMENTS.** Bonds issued by a hospital laundry cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings and loan association;

(3) an insurance company;

(4) a fiduciary;

(5) a trustee; and

(6) a sinking fund of a municipality, county, school district, or other political subdivision or corporation of the state or other public fund of the state or a state agency, including the permanent school fund. (V.A.C.S. Art. 4437f-1, Sec. 10 (part).)

Sec. 301.011. **BONDS AS SECURITY FOR DEPOSITS.** A hospital laundry cooperative association's bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision or corporation of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons. (V.A.C.S. Art. 4437f-1, Sec. 10 (part).)

Sec. 301.012. **LIABILITY TO CREDITORS.** Except as provided by this subchapter, a member of a hospital laundry cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases. (V.A.C.S. Art. 4437f-1, Sec. 12.)

Sec. 301.013. **TAX EXEMPTION.** (a) A hospital laundry cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. (V.A.C.S. Art. 4437f-1, Secs. 6 (part), 14 (part).)

Sec. 301.014. **ANNUAL REPORT.** A hospital laundry cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs. (V.A.C.S. Art. 4437f-1, Sec. 6 (part).)

Sec. 301.015. **SURPLUS REVENUE.** The directors of a hospital laundry cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from the laundry system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage. (V.A.C.S. Art. 4437f-1, Sec. 6 (part).)

Sec. 301.016. **LOANS TO MEMBERS PROHIBITED.** A hospital laundry cooperative association may not loan money to a member. (V.A.C.S. Art. 4437f-1, Sec. 7.)

[Sections 301.017–301.030 reserved for expansion]

#### SUBCHAPTER B. MISCELLANEOUS COOPERATIVE ASSOCIATIONS

Sec. 301.031. **DEFINITIONS.** In this subchapter:

(1) "Eligible institution" means an entity engaged in health-related pursuits that, except for cooperative associations, is exempt from federal income tax and includes only:

- (A) a municipality;
- (B) a political subdivision of the state;
- (C) a health-related institution supported by the state or federal government or by a federal department, division, or agency, including:
  - (i) The Texas A&M University System;
  - (ii) The University of Texas System;
  - (iii) Texas Woman's University; and
  - (iv) the Children's Nutrition Research Center;
- (D) a nonprofit health-related institution; and
- (E) a cooperative association created to provide a system, a unit of which is located in a county with a population of more than 2,400,000.

(2) "System" includes all property and facilities, including buildings and land and interests in land, necessary, incidental, or appropriate to provide the following services for the benefit of members of a cooperative association:

- (A) laundering services;
- (B) central heating and cooling services, including steam and chilled water supply;
- (C) communication services, including broadcast and other electronic communications, cable television, and transmission of X-rays, records, and documents;

(D) facilities and services for parking and traffic control, including the installation of appropriate traffic control devices on private streets;

(E) preparation, processing, delivery, and service of food, including food necessary for special diets;

(F) central administrative, financial, billing, conference, and educational services;

(G) child care services for the children of employees, consultants, students, and volunteers of cooperative association members, and temporary child care services for the children of patients and customers of those members;

(H) waste removal and disposal services of all types, including incineration and the removal, disposal, and abatement of hazardous wastes, including asbestos, lead, and other toxic substances;

generation, cogeneration, purchase, sale, and pooling of energy in any form to the extent reasonably necessary to support the activities of a cooperative association;

(J) production and publication of educational or research materials;

(K) storage and warehousing services;

(L) transportation services;

(M) police and security services; and

(N) housing for employees, consultants, students, volunteers, and patients of members of the cooperative association. (V.A.C.S. Art. 4447r, Secs. 2(1) (part), (2).)

**Sec. 301.032. CREATION OF COOPERATIVE ASSOCIATION.** (a) Eligible institutions may create a cooperative association to establish, operate, and maintain a system on a nonprofit, cooperative basis solely for the use and benefit of eligible institutions.

(b) An association is created under the terms prescribed by the governing bodies of the respective eligible institutions.

(c) An association created under this subchapter shall include as part of its name "Cooperative Association." (V.A.C.S. Art. 4447r, Secs. 1 (part), 6 (part).)

**Sec. 301.033. ARTICLES OF INCORPORATION.** (a) Eligible institutions creating a cooperative association may prepare and file articles of incorporation under the general corporation law of this state, including the Texas Business Corporation Act.

(b) An association incorporated as provided by this section is governed by the law under which it is incorporated except to the extent that that law conflicts with this subchapter. (V.A.C.S. Art. 4447r, Sec. 5.)

**Sec. 301.034. USE OF PUBLIC FUNDS PROHIBITED.** Public funds appropriated to a state department or to a state institution may not be used to create a cooperative association under this subchapter. (V.A.C.S. Art. 4447r, Sec. 4.)

**Sec. 301.035. MEMBERSHIP; MEMBERSHIP PRIVILEGES; EXPULSION OF MEMBERS.** (a) An eligible institution may be elected to membership in a cooperative association by:

(1) the organizers of the association at the time of organization; or

(2) the board of directors of the association according to the association's bylaws.

(b) Only an eligible institution may become a member of an association created under this subchapter.

(c) A membership certificate is transferable only to an eligible institution in the manner provided by the rules prescribed in the bylaws.

(d) Each member has voting rights in the management of an association as prescribed in the bylaws.

(e) A member may be suspended or expelled for misconduct under the rules prescribed in the bylaws.

(f) An association shall pay an expelled member for cancellation of the membership, if the member's contractual obligations pledged to the payment of the association's notes, bonds, or other obligations have been fully paid or other provision has been made. The amount and date of payment are as prescribed in the bylaws.

(g) Amounts paid or property conveyed or transferred to an association by an expelled member and not required to be returned to the member under Subsection (f) may be retained by the association. Facilities or property acquired by the association remains the property of the association and the expelled member does not have a lien or other right to the facilities or property. (V.A.C.S. Art. 4447r, Secs. 1 (part), 11(a), (b), (c), (d).)

Sec. 301.036. **MEMBERSHIP NOT REQUIRED.** A component institution of an institution that is supported by the federal or state government or a department, division, or agency of the federal government is not required to be a member of a cooperative association created under this subchapter but may be a member of one or more associations. (V.A.C.S. Art. 4447r, Sec. 2(1) (part).)

Sec. 301.037. **POWERS OF COOPERATIVE ASSOCIATION.** To carry out the purposes of this subchapter, a cooperative association may:

(1) acquire, own, and operate a system on a cooperative basis solely for the benefit of eligible institutions, regardless of whether the eligible institution is a member of the association, and may engage in activities for the benefit of eligible institutions that are necessarily related to the acquisition, ownership, operation, and maintenance of a system;

(2) acquire by purchase, lease, or other method land and interests in land appropriate or reasonably incidental to a system and may own, hold, improve, develop, and manage any land and interests in land acquired;

(3) construct, improve, enlarge, or equip buildings or other structures on that land;

(4) encumber or dispose of any land or interests in land, buildings, or structures owned or held by the association;

(5) acquire by lease, purchase, manufacture, or other method any personal property appropriate or reasonably incidental to a system;

(6) borrow or raise money;

(7) sell, grant security interest in, pledge, or otherwise dispose of and collect on accounts receivable, contract rights, and other choses in action; and

(8) make, draw, accept, endorse, execute, and issue bonds, debentures, notes, or other obligations for money borrowed or payment of property purchased, and may secure the payment by mortgage on, creation of security interests in, or pledge of or conveyance of assignment in trust of all or part of any property held by the association. (V.A.C.S. Art. 4447r, Secs. 3, 8 (part).)

Sec. 301.038. **COST OF SERVICES.** A cooperative association may provide services from a system to eligible institutions and may determine the amount to be charged for providing the services. (V.A.C.S. Art. 4447r, Sec. 8 (part).)

Sec. 301.039. **BONDS, NOTES, OR OTHER OBLIGATIONS.** (a) A cooperative association may borrow money from public or private sources or issue bonds, notes, or other obligations in amounts necessary to create, enlarge, maintain, or operate a system.

(b) The association shall pay the bonds, notes, or other obligations of the association solely from revenue received from the operation of a system or from funds specifically provided for that purpose from other sources. An association may pledge its revenues or funds to secure payment of the bonds, notes, or other obligations.

(c) Bonds, notes, or other obligations issued by an association do not constitute indebtedness of the state or of any eligible institution that is a member of the association. Holders of bonds, notes, or other obligations may not demand or enforce payment of principal of or interest on the bonds, notes, or other obligations out of funds other than those specifically pledged to secure payment of those bonds, notes, or other obligations. (V.A.C.S. Art. 4447r, Secs. 8 (part), 9.)

Sec. 301.040. **BONDS AS INVESTMENTS.** Bonds issued by a cooperative association under this subchapter are legal and authorized investments for:

(1) a bank;

(2) a savings and loan association;

(3) an insurance company;

(4) a fiduciary; and

(5) a trustee. (V.A.C.S. Art. 4447r, Sec. 10.)

**Sec. 301.041. LIABILITY TO CREDITORS.** (a) Except as provided by this subchapter, a member of a cooperative association is not liable to the association or its creditors in excess of the amount contracted for by the member. When the contract is paid in the amount and at the time specified in the contract, the member's liability ceases.

(b) This subchapter does not authorize a state-supported health-related institution to make a financial commitment beyond the current budget period for the institution. (V.A.C.S. Art. 4447r, Sec. 12.)

**Sec. 301.042. TAX EXEMPTION.** (a) A cooperative association created under this subchapter is not required to pay a tax or assessment on its property or on any purchase made by the association.

(b) Except as provided by Subsection (c), an association is not required to pay an annual franchise tax.

(c) An association is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the association is exempted by that chapter. (V.A.C.S. Art. 4447r, Secs. 6 (part), 14 (part).)

**Sec. 301.043. ANNUAL REPORT.** A cooperative association shall file an annual report with the secretary of state showing the assets and conditions of the association's affairs. (V.A.C.S. Art. 4447r, Sec. 6 (part).)

**Sec. 301.044. SURPLUS REVENUE.** The directors of a cooperative association may, in accordance with the association's bylaws, deposit to the credit of the surplus fund any surplus revenue derived from a system or divide the surplus revenue among the patrons in proportion to the patrons' respective contributions to the working capital of the association and their patronage. (V.A.C.S. Art. 4447r, Sec. 6 (part).)

**Sec. 301.045. LOANS TO MEMBERS PROHIBITED.** A cooperative association may not loan money to a member. (V.A.C.S. Art. 4447r, Sec. 7.)

**Sec. 301.046. LIBERAL CONSTRUCTION.** This subchapter shall be liberally construed. (V.A.C.S. Art. 4447r, Sec. 15 (part).)

[Chapters 302–310 reserved for expansion]

**SUBTITLE F. POWERS AND DUTIES OF HOSPITALS**

**CHAPTER 311. POWERS AND DUTIES OF HOSPITALS**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 311.001. SPECIAL HOSPITAL REQUIREMENTS FOR GRADUATE OF FOREIGN MEDICAL SCHOOL PROHIBITED**
- Sec. 311.002. ITEMIZED STATEMENT OF BILLED SERVICES**
- Sec. 311.003. REIMBURSEMENT FOR INFANT TRANSPORT TO HOSPITAL NEONATAL INTENSIVE CARE UNIT**

[Sections 311.004–311.020 reserved for expansion]

**SUBCHAPTER B. EMERGENCY SERVICES**

- Sec. 311.021. DEFINITION**
- Sec. 311.022. DISCRIMINATION PROHIBITED IN DENIAL OF SERVICES; CRIMINAL PENALTIES**
- Sec. 311.023. NO LIABILITY FOR FAILURE TO PROVIDE EMERGENCY SERVICES AFTER GOOD FAITH EFFORT**
- Sec. 311.024. PAYMENT FOR SERVICES REQUIRED**

[Sections 311.025–311.030 reserved for expansion]

**SUBCHAPTER C. HOSPITAL DATA REPORTING AND COLLECTION SYSTEM**

- Sec. 311.031. DEFINITIONS**

- Sec. 311.032. DEPARTMENT ADMINISTRATION OF HOSPITAL REPORTING AND COLLECTION SYSTEM
- Sec. 311.033. FINANCIAL AND UTILIZATION DATA REQUIRED
- Sec. 311.034. HOSPITAL DISCHARGE ABSTRACT RECORDS
- Sec. 311.035. USE OF DATA
- Sec. 311.036. DATA VERIFICATION
- Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY
- Sec. 311.038. HOSPITAL DATA ADVISORY COMMITTEE

## SUBTITLE F. POWERS AND DUTIES OF HOSPITALS

## CHAPTER 311. POWERS AND DUTIES OF HOSPITALS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. SPECIAL HOSPITAL REQUIREMENTS FOR GRADUATE OF FOREIGN MEDICAL SCHOOL PROHIBITED. (a) A hospital may not, as a condition to beginning a hospital internship or residency, require a United States citizen who resides in this state and who holds a diploma from a medical school outside the United States that is listed in the World Directory of Medical Schools published by the World Health Organization to:

- (1) take an examination other than an examination required by the Texas State Board of Medical Examiners to be taken by a graduate of a medical school in the United States before allowing that graduate to begin an internship or residency;
- (2) complete a period of internship or graduate clinical training; or
- (3) be certified by the Educational Council for Foreign Medical Graduates.

(b) This section applies only to a hospital that:

- (1) is licensed by this state;
- (2) is operated by this state or a political subdivision of this state; or
- (3) receives direct or indirect state financial assistance. (V.A.C.S. Art. 4437g.)

Sec. 311.002. ITEMIZED STATEMENT OF BILLED SERVICES. (a) Not later than the 10th business day after the date of the hospital discharge of a person who receives hospital services, the hospital shall have available an itemized statement of the billed services provided to the person.

(b) Before a person is discharged from a hospital, the hospital shall inform the person of the availability of the statement.

(c) To be entitled to receive a statement, a person must request the statement not later than one year after the date on which the person is discharged from the hospital. The hospital shall provide the statement to the person not later than the 10th day after the date on which the person requests the statement.

(d) If a person requests more than two copies of the statement, the hospital may charge a reasonable fee for the third and subsequent copies. The fee may not exceed the hospital's cost to copy, process, and deliver the copy to the person.

(e) The Texas Department of Health may enforce this section by injunction or by any other appropriate remedy, including suspending, revoking, or refusing to renew a hospital's license.

(f) This section does not apply to a hospital maintained or operated by the federal government. (V.A.C.S. Art. 4438c.)

Sec. 311.003. REIMBURSEMENT FOR INFANT TRANSPORT TO HOSPITAL NEONATAL INTENSIVE CARE UNIT. (a) A hospital that agrees to admit an infant into its level III neonatal intensive care unit shall pay for the part of the cost of transporting the infant to the hospital from any location in this state that the hospital administrator determines cannot be paid:



(1) by a member of the infant's immediate family or other person legally responsible for the infant's support through personal means; or

(2) by insurance or another benefit system that pays for transportation for that purpose.

(b) A hospital is entitled to receive state reimbursement for funds spent by the hospital under Subsection (a).

(c) The Texas Department of Health shall administer the state funds for reimbursement under this section, and may spend not more than \$100,000 each fiscal year from earned federal funds or private donations to implement this section.

(d) The Texas Board of Health shall adopt rules that establish qualifications for reimbursement and provide procedures for applying for reimbursement.

(e) In this section, "level III neonatal intensive care unit" means a neonatal care unit that complies with standards adopted by the American Academy of Pediatrics. (V.A.C.S. Art. 4438b, Secs. 1, 2, 3, 4, 5, 6(a).)

[Sections 311.004–311.020 reserved for expansion]

#### **SUBCHAPTER B. EMERGENCY SERVICES**

**Sec. 311.021. DEFINITION.** In this subchapter, "emergency services" means services that are usually and customarily available at a hospital and that must be provided immediately to:

(1) sustain a person's life;

(2) prevent serious permanent disfigurement or loss or impairment of the function of a body part or organ; or

(3) provide for the care of a woman in active labor or, if the hospital is not equipped for that service, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm. (V.A.C.S. Art. 4438a, Sec. 1(c).)

**Sec. 311.022. DISCRIMINATION PROHIBITED IN DENIAL OF SERVICES; CRIMINAL PENALTIES.** (a) An officer, employee, or medical staff member of a general hospital may not deny emergency services because a person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry if:

(1) the services are available at the hospital; and

(2) the person is diagnosed by a licensed physician as requiring those services.

(b) An officer or employee of a general hospital may not deny a person in need of emergency services access to diagnosis by a licensed physician on the hospital staff because the person cannot establish the person's ability to pay for the services or because of the person's race, religion, or national ancestry.

(c) In addition, the person needing emergency services may not be subjected to arbitrary, capricious, or unreasonable discrimination based on age, sex, physical condition, or economic status.

(d) An officer, employee, or medical staff member of a general hospital commits an offense if that person recklessly violates this section. An offense under this subsection is a Class B misdemeanor, except that if the offense results in permanent injury, permanent disability, or death, the offense is a Class A misdemeanor.

(e) An officer, employee, or medical staff member of a general hospital commits an offense if that person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor, except that if, as a direct result of the offense, a person denied emergency services dies, the offense is a felony of the third degree. (V.A.C.S. Art. 4438a, Secs. 1(a), (b); 2.)

**Sec. 311.023. NO LIABILITY FOR FAILURE TO PROVIDE EMERGENCY SERVICES AFTER GOOD FAITH EFFORT.** An employee of a general hospital that does not

have physician services available at the time of an emergency is not in violation of Section 311.022 if, after a reasonable good faith effort, a physician fails to provide or delegate the provision of medical services as required by state statutes. (V.A.C.S. Art. 4438a, Sec. 1(d).)

Sec. 311.024. PAYMENT FOR SERVICES REQUIRED. This subchapter does not relieve a person of that person's obligation to pay for services provided by a hospital if the person can pay for those services. (V.A.C.S. Art. 4438a, Sec. 3.)

[Sections 311.025–311.030 reserved for expansion]

#### SUBCHAPTER C. HOSPITAL DATA REPORTING AND COLLECTION SYSTEM

Sec. 311.031. DEFINITIONS. In this subchapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Hospital" means a general or special hospital licensed under Chapter 241 (Texas Hospital Licensing Law). (V.A.C.S. Art. 4438e, Sec. 1.)

Sec. 311.032. DEPARTMENT ADMINISTRATION OF HOSPITAL REPORTING AND COLLECTION SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial, utilization, and patient discharge data.

(b) The board shall adopt necessary rules consistent with this subchapter to govern the reporting and collection of data. (V.A.C.S. Art. 4438e, Sec. 2.)

Sec. 311.033. FINANCIAL AND UTILIZATION DATA REQUIRED. (a) A hospital shall submit to the department financial and utilization data for that hospital, including data relating to the hospital's:

- (1) total gross revenue, including:
  - (A) Medicare gross revenue;
  - (B) Medicaid gross revenue;
  - (C) other revenue from state programs;
  - (D) revenue from local government programs;
  - (E) local tax support;
  - (F) charitable contributions;
  - (G) other third party payments;
  - (H) gross inpatient revenue; and
  - (I) gross outpatient revenue;
- (2) total deductions from gross revenue, including:
  - (A) charity care;
  - (B) bad debt;
  - (C) contractual allowance; and
  - (D) any other deductions;
- (3) total admissions, including:
  - (A) Medicare admissions;
  - (B) Medicaid admissions;
  - (C) admissions under a local government program;
  - (D) charity care admissions; and
  - (E) any other type of admission;
- (4) total discharges;
- (5) total patient days;
- (6) average length of stay;

- (7) total outpatient visits;
- (8) total assets;
- (9) total liabilities;
- (10) total cost of reimbursed and unreimbursed care for indigent patients; and
- (11) total cost of reimbursed and unreimbursed medical education.

(b) The data must be based on the hospital's most recent audited financial records.

(c) The data must be submitted in the form and at the time established by the department. (V.A.C.S. Art. 4438e, Sec. 3.)

**Sec. 311.034. HOSPITAL DISCHARGE ABSTRACT RECORDS.** (a) If appropriate data is not available from existing credible sources, the department may establish a sampling method to collect hospital discharge abstract records relating to specific inpatient discharges from hospitals. The hospital discharge abstract records requested by the department must contain the data required by the department, including:

- (1) patient demographic data;
- (2) admission data, including the source and type of the data;
- (3) discharge data;
- (4) diagnoses and procedures;
- (5) total charges and the components of the charges; and
- (6) payor sources.

(b) The data must be submitted in the form and at the time established by the department. (V.A.C.S. Art. 4438e, Sec. 4.)

**Sec. 311.035. USE OF DATA.** (a) The department shall use the data collected under this subchapter to publish an annual report regarding:

- (1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;
- (2) the use of hospital services by indigent patients; and
- (3) the effect of indigent care services on hospitals.

(b) The department shall use the hospital discharge data collected under this subchapter to publish periodic reports on the use of hospital services. (V.A.C.S. Art. 4438e, Sec. 5.)

**Sec. 311.036. DATA VERIFICATION.** (a) Before the department may publish the report required by Section 311.035 or provide data to the public in any other manner, the department shall give each hospital a copy of the preliminary report or provide the hospital an opportunity in some other manner to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the date on which the hospital receives the preliminary report or other data, the department shall presume that the data is correct. (V.A.C.S. Art. 4438e, Sec. 6.)

**Sec. 311.037. CONFIDENTIAL DATA; CRIMINAL PENALTY.** (a) The following data reported or submitted to the department under this subchapter is confidential:

- (1) data regarding a specific patient; or
- (2) financial data regarding a provider or facility.

(b) Before the department may disclose confidential data under this subchapter, the department must remove any information that identifies a specific patient, provider, or facility.

(c) A person commits an offense if the person:

- (1) discloses, distributes, or sells confidential data obtained under this subchapter; or
- (2) violates Subsection (b).

(d) An offense under Subsection (c) is a Class B misdemeanor. (V.A.C.S. Art. 4438e, Sec. 7.)

Sec. 311.038. HOSPITAL DATA ADVISORY COMMITTEE. (a) The board shall appoint a hospital data advisory committee to assist in the development of reporting requirements and in the interpretation and evaluation of the data received under this subchapter.

(b) The advisory committee must include representatives from:

- (1) the hospital industry;
- (2) private business;
- (3) the insurance industry;
- (4) state agencies, such as the Texas Health and Human Services Coordinating Council, Texas Department of Human Services, and Employees Retirement System of Texas;
- (5) consumer organizations; and
- (6) the Statewide Health Coordinating Council. (V.A.C.S. Art. 4438e, Sec. 8.)

#### CHAPTER 312. MEDICAL AND DENTAL CLINICAL EDUCATION IN PUBLIC HOSPITALS

Sec. 312.001. FINDING; PURPOSE

Sec. 312.002. DEFINITIONS

Sec. 312.003. AGREEMENT REQUIRED

Sec. 312.004. CONTRACTS FOR COORDINATION OR COOPERATION

Sec. 312.005. APPROVAL OF CONTRACTS

Sec. 312.006. LIMITATION ON LIABILITY

Sec. 312.007. INDIVIDUAL LIABILITY

#### CHAPTER 312. MEDICAL AND DENTAL CLINICAL EDUCATION IN PUBLIC HOSPITALS

Sec. 312.001. FINDING; PURPOSE. (a) The legislature finds that the clinical education of medical and dental students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school and the provision of patient care to public hospitals can be more effectively and economically undertaken if those institutions and hospitals coordinate and cooperate, rather than compete, in their common endeavors.

(b) The purpose of this chapter is to authorize coordination and cooperation between medical and dental units, supported medical or dental schools, and public hospitals and to remove impediments to that coordination and cooperation in order to:

- (1) enhance the education of students, interns, residents, and fellows attending a medical and dental unit or a supported medical or dental school;
- (2) enhance patient care; and
- (3) avoid any waste of public money. (V.A.C.S. Art. 4494t, Sec. 1.)

Sec. 312.002. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Coordinating entity" means a nonprofit corporation under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) that is a health organization approved and certified by the Texas State Board of Medical Examiners under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes).
- (4) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.
- (5) "Public hospital" means a hospital, clinic, or other facility for the provision of health care or dental care that is owned or operated by the federal government, the

state, or a political subdivision or municipal corporation of the state, including a hospital district or authority.

(6) "Supported medical or dental school" means a medical school or dental school organized as a nonprofit corporation that is under contract with the Texas Higher Education Coordinating Board to provide educational services under Subchapter D, Chapter 61, Education Code. (V.A.C.S. Art. 4494t, Sec. 2.)

**Sec. 312.003. AGREEMENT REQUIRED.** This chapter applies only if a medical and dental unit and a supported medical or dental school agree, either directly or through a coordinating entity, to provide or cause to be provided medical, dental, or other patient care or services or to perform or cause to be performed medical, dental, or clinical education, training, or research activities in a coordinated or cooperative manner in a public hospital. (V.A.C.S. Art. 4494t, Sec. 3.)

**Sec. 312.004. CONTRACTS FOR COORDINATION OR COOPERATION.** (a) Medical and dental units, supported medical or dental schools, coordinating entities, and public hospitals may make and perform contracts among each other for the coordinated or cooperative clinical education of the students, interns, residents, and fellows enrolled at the units or schools.

(b) Medical and dental units and supported medical or dental schools may undertake coordination or cooperation of clinical education directly or through a coordinating entity.

(c) A medical and dental unit, a supported medical or dental school, and a coordinating entity may contract with the owner or operator of a public hospital for the clinical education of students, interns, residents, and fellows enrolled at the unit or school.

(d) The contracting parties may determine the terms of and the consideration for a contract authorized under this section.

(e) The contract may provide for the coordinated, cooperative, or exclusive assignment of the interns, residents, fellows, faculty, and associated health care professionals of the participating medical and dental units and supported medical or dental schools to provide or perform health or dental services or research at a public hospital.

(f) Coordinated or cooperative activities authorized under this section may be performed by or on behalf of one or more of the units, schools, or entities involved. (V.A.C.S. Art. 4494t, Sec. 4.)

**Sec. 312.005. APPROVAL OF CONTRACTS.** (a) To be effective, a contract under Section 312.004 must be submitted to the board.

(b) The commissioner shall review the contract on behalf of the board. The commissioner shall approve the contract if the commissioner finds the contract furthers the purposes of this chapter.

(c) The commissioner may disapprove a contract only after notice to all parties and a hearing.

(d) The commissioner may not modify a contract.

(e) The contract takes effect:

(1) when it is approved by the commissioner; or

(2) on the 31st day after the date on which the contract is filed with the board by a medical and dental unit, supported medical or dental school, or coordinating entity that is a party to the contract, if the commissioner does not approve or disapprove the contract within 30 days after the date on which the contract is filed. (V.A.C.S. Art. 4494t, Secs. 5, 7.)

**Sec. 312.006. LIMITATION ON LIABILITY.** (a) A medical and dental unit, supported medical or dental school, or coordinating entity engaged in coordinated or cooperative medical or dental clinical education under Section 312.004, including patient care and the provision or performance of health or dental services or research at a public hospital, is not liable for its acts and omissions in connection with those activities except to the extent and up to the maximum amount of liability of state government under Section 101.023(a), Civil Practice and Remedies Code, for the acts and omissions of a governmental unit of state government under Chapter 101, Civil Practice and Remedies Code.

(b) The limitation on liability provided by this section applies regardless of whether the medical and dental unit, supported medical or dental school, or coordinating entity is a "governmental unit" as defined by Section 101.001, Civil Practice and Remedies Code. (V.A.C.S. Art. 4494t, Sec. 6 (part).)

Sec. 312.007. **INDIVIDUAL LIABILITY.** (a) A medical and dental unit, supported medical or dental school, or coordinating entity is a state agency, and a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of a medical and dental unit, supported medical or dental school, or coordinating entity is an employee of a state agency for purposes of Chapter 104, Civil Practice and Remedies Code, and for purposes of determining the liability, if any, of the person for the person's acts or omissions while engaged in the coordinated or cooperative activities of the unit, school, or entity.

(b) A judgment in an action or settlement of a claim against a medical and dental unit, supported medical or dental school, or coordinating entity under Chapter 101, Civil Practice and Remedies Code, bars any action involving the same subject matter by the claimant against a director, trustee, officer, intern, resident, fellow, faculty member, or other associated health care professional or employee of the unit, school, or entity whose act or omission gave rise to the claim as if the person were an employee of a governmental unit against which the claim was asserted as provided under Section 101.106, Civil Practice and Remedies Code. (V.A.C.S. Art. 4494t, Sec. 6 (part).)

[Chapters 313–340 reserved for expansion]

## TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

### SUBTITLE A. SANITATION

#### CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION MEASURES

##### SUBCHAPTER A. GENERAL PROVISIONS

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Sec. 341.002. **RULES FOR SANITATION AND HEALTH PROTECTION**

[Sections 341.003–341.010 reserved for expansion]

##### SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

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Sec. 341.016. **SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY**

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Sec. 341.018. **RODENT CONTROL**

[Sections 341.019–341.030 reserved for expansion]

##### SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER

Sec. 341.031. **PUBLIC DRINKING WATER**

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- Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE
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- Sec. 341.061. TOILET FACILITIES
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- Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE VESSEL
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- Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES
- Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS

[Sections 341.068–341.080 reserved for expansion]

**SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES**

- Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED
- Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES

[Sections 341.083–341.090 reserved for expansion]

**SUBCHAPTER F. PENALTIES**

- Sec. 341.091. CRIMINAL PENALTY
- Sec. 341.092. CIVIL ENFORCEMENT

**TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY**

**SUBTITLE A. SANITATION**

**CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND  
HEALTH PROTECTION MEASURES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 341.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.
- (4) "Human excreta" means the urinary and bowel discharges of a human.
- (5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.
- (6) "Privy" means a facility for the disposal of human excreta.
- (7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.
- (8) "Septic tank" means a covered water-tight tank designed for sewage treatment.
- (9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.

(10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner. (V.A.C.S. Art. 4477-1, Sec. 1 (part); New.)

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION. The board may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures. (V.A.C.S. Art. 4477-1, Sec. 23(b).)

[Sections 341.008-341.010 reserved for expansion]

#### SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

Sec. 341.011. NUISANCE. Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;

(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans. (V.A.C.S. Art. 4477-1, Secs. 1 (part), 2.)

Sec. 341.012. ABATEMENT OF NUISANCE. (a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice



ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney shall immediately institute proceedings to abate the public health nuisance. (V.A.C.S. Art. 4477-1, Sec. 3.)

**Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE.** (a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health. (V.A.C.S. Art. 4477-1, Sec. 4.)

**Sec. 341.014. DISPOSAL OF HUMAN EXCRETA.** (a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the board. A privy may not be constructed or maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the board. (V.A.C.S. Art. 4477-1, Secs. 1 (part), 5(a), (b), (c) (part), (d), (e).)

**Sec. 341.015. SANITATION OF ICE PLANTS.** (a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

(e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant. (V.A.C.S. Art. 4477-1, Sec. 9.)

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY. (a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions caused by processes that may cause ill health of industrial workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers. (V.A.C.S. Art. 4477-1, Sec. 19.)

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES. (a) The board shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section. (V.A.C.S. Art. 4477-1, Sec. 22(e).)

Sec. 341.018. RODENT CONTROL. (a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, fumigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The board shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared. (V.A.C.S. Art. 4477-1, Secs. 8 (part); 21(a), (b), (c), (d).)

[Sections 341.019-341.030 reserved for expansion]

#### SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER

Sec. 341.031. PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the board or the United States Public Health Service.

(b) In a public place or an establishment catering to the public, a common drinking cup may not be used.

(c) Drinking water may not be served except in sanitary containers or through other sanitary mediums.

(d) In this section, "common drinking cup" means a water or other beverage receptacle used for serving more than one person. The term does not include a water or other beverage receptacle that is properly washed and sterilized after each use. (V.A.C.S. Art. 4477-1, Secs. 1 (part), 10.)

**Sec. 341.032. DRINKING WATER PROVIDED BY COMMON CARRIER.** (a) Drinking water provided by a common carrier or the common carrier's agent shall be taken only from supplies certified as meeting the standards established by the board. The drinking water shall be kept and dispensed in a sanitary manner.

(b) A watering point must meet the standards of sanitation and water-handling practices established for those purposes by the board. The department shall certify each watering point that meets those standards.

(c) If a sanitary defect exists at the watering point, the department shall issue a supplemental certification showing that the watering point is only provisionally approved. If a sanitary defect continues after the expiration of a reasonable time provided to correct the defect, the department shall notify the common carrier not to receive drinking water at the watering point involved.

(d) In this section:

(1) "Common carrier" means a licensed firm, corporation, or establishment that solicits and operates public freight or passenger transportation service, including a vehicle employed in that transportation service.

(2) "Watering point" means a place where drinking water is placed aboard a vehicle operated as a common carrier. (V.A.C.S. Art. 4477-1, Secs. 1 (part), 22(b), (c), (d).)

**Sec. 341.033. PROTECTION OF PUBLIC WATER SUPPLIES.** (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a valid certificate of competency issued under Section 341.034.

(b) An owner, agent, manager, operator, or other person in charge of a water supply system that furnishes water for public or private use may not knowingly furnish contaminated drinking water to a person or allow the appliances of the water supply system to become unsanitary.

(c) The owner or manager of a water supply system furnishing drinking water to at least 25,000 persons shall have the water tested at least once daily to determine its sanitary quality and shall submit monthly reports of the tests to the department.

(d) The owner or manager of a water supply system furnishing drinking water to less than 25,000 persons shall submit to the department during each monthly period of the system's operation at least one specimen of water taken from the supply for bacteriological analysis. The population under this subsection shall be determined according to the most recent federal census or other population-determining methods if a federal census is not taken for the area served by the water supply system.

(e) The distribution system of a public drinking water supply and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the department approves the connection.

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply.

(g) On discovery of a connection in violation of Subsection (e) or (f), the local health authority shall give written notice to the owner or agent maintaining the condition. The owner or agent shall make the necessary corrections to eliminate the condition.

(h) Subsections (a)-(d) do not apply to the production, distribution, or sale of raw, untreated surface water. (V.A.C.S. Art. 4477-1, Sec. 11.)

**Sec. 341.034. WATER SUPPLY SYSTEM OPERATOR: CERTIFICATE OF COMPETENCY.** (a) The board shall adopt rules establishing classes of certificates, duration of certificates, and fees.

(b) Before a certificate of competency is issued or renewed under this chapter, an applicant for or holder of a certificate must pay an annual \$10 fee. On receipt of the required fee, the department shall issue to a qualified person a certificate of competency. (V.A.C.S. Art. 4477-1, Sec. 23b(a).)

**Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES.**

(a) A person contemplating establishing a drinking water supply system for public use must submit completed plans and specifications to the department before construction of the system. The department shall approve plans that conform to the state's water safety laws. The water supply system may be established only on the department's approval. To avoid duplication of review by state agencies, the department's approval is not required for a public drinking water supply system if plans and specifications are required by law to be approved by the Texas Water Commission.

(b) Any agency, including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the department before making the change.

(c) A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the department's latest rating.

(d) The department shall assemble and tabulate all necessary data relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The data forms the basis of an official comparative rating of public drinking water supply systems.

(e) A water supply system that attains an approved rating is entitled to erect signs of a design approved by the department on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the department if the water supply system does not continue to meet the specified standards. (V.A.C.S. Art. 4477-1, Sec. 12.)

**Sec. 341.036. SANITARY DEFECTS AT PUBLIC DRINKING WATER SUPPLY SYSTEMS.** (a) A sanitary defect at a public drinking water supply system that obtains its water supply from underground sources shall be immediately corrected.

(b) A public drinking water supply system furnishing drinking water from underground sources may not be established in a place subject to possible pollution by floodwaters unless the system is adequately protected against flooding.

(c) Suction wells or suction pipes used in a public drinking water supply system must be constantly protected by practical safeguards against surface and subsurface pollution.

(d) Livestock may not be permitted to enter or remain in the wellhouse enclosure of a public drinking water supply system.

(e) Public drinking water distribution lines must be constructed of impervious materials with tight joints and must be a reasonably safe distance from sewer lines.

(f) Water from a surface public drinking water supply may not be made accessible or delivered to a consumer for drinking purposes unless the water has been treated to make it safe for human consumption. Water treatment plants, including aeration, coagulation, mixing, settling, filtration, and chlorinating units, shall be of a size and type prescribed by good public health engineering practices.

(g) A clear water reservoir shall be covered and be of a type and construction that prevents the entrance of dust, insects, and surface seepage. (V.A.C.S. Art. 4477-1, Sec. 13.)

**Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE.** The department shall enforce state laws and take other necessary action to protect a spring, well, pond, lake, reservoir, or other stream in this state from any condition or pollution that results from sewage and that may endanger the public health. (V.A.C.S. Art. 4477-1, Sec. 20.)

Sec. 341.038. PROTECTION OF IMPOUNDED WATER FROM DISEASE-BEARING MOSQUITOES. A person that impounds water for public use shall cooperate with the department and local departments of health to control disease-bearing mosquitoes on the impounded area. (V.A.C.S. Art. 4477-1, Sec. 14.)

Sec. 341.039. GRAYWATER STANDARDS. (a) The board by rule shall adopt and implement minimum standards for the use of graywater in irrigation and for other agricultural, domestic, commercial, and industrial purposes to assure that the use of graywater is not a nuisance and does not damage the quality of surface water and groundwater in this state.

(b) In this section, "graywater" means wastewater from clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for food preparation or disposal of chemical and biological ingredients. (V.A.C.S. Art. 4477-1, Secs. 3(c), (d).)

[Sections 341.040–341.060 reserved for expansion]

**SUBCHAPTER D. SANITATION AND SAFETY OF  
FACILITIES USED BY PUBLIC**

Sec. 341.061. TOILET FACILITIES. An operator, manager, or superintendent of a public building, schoolhouse, theater, filling station, tourist court, bus station, or tavern shall provide and maintain sanitary toilet accommodations. (V.A.C.S. Art. 4477-1, Sec. 6.)

Sec. 341.062. PUBLIC BUILDINGS. A public building constructed after September 4, 1945, shall incorporate the heating, ventilation, plumbing, and screening features necessary to protect the public health and safety. (V.A.C.S. Art. 4477-1, Sec. 8 (part).)

Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE VESSEL. A person managing or operating a bus line or airline in this state, or a person operating a coastwise vessel along the shores of this state, shall maintain sanitary conditions in its equipment and at all terminals or docking points. (V.A.C.S. Art. 4477-1, Sec. 22(a).)

Sec. 341.064. SWIMMING POOLS AND BATHHOUSES. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool shall maintain the pool in a sanitary condition.

(b) The bacterial content of the water in a public swimming pool may not exceed the safe limits prescribed by the board's standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use.

(c) Water in a swimming pool open to the public may not show an acid reaction to a standard pH test.

(d) A public bathhouse and its surroundings shall be kept in a sanitary condition at all times.

(e) Facilities shall be provided in a public swimming pool for adequate protection of bathers against sputum contamination.

(f) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool.

(g) The construction and appliances of a public swimming pool must be such as to reduce to a practical minimum the possibility of drowning or of injury to bathers. The construction after September 4, 1945, of a public swimming pool must conform to good public health engineering practices.

(h) Bathing suits and towels furnished to bathers shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) Dressing rooms of a public swimming pool shall contain shower facilities.

(j) A comb or hairbrush used by two or more persons may not be permitted or distributed in a bathhouse of a public swimming pool.

(k) The operator or manager of a public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers.

(l) In this section, "public swimming pool" means an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes. (V.A.C.S. Art. 4477-1, Secs. 1 (part), 15.)

Sec. 341.065. SCHOOL BUILDINGS AND GROUNDS. (a) A school building must be located on grounds that are well drained and maintained in a sanitary condition.

(b) A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

(c) A public school lunchroom must comply with the state food and drug rules.

(d) A public school building and its appurtenances shall be maintained in a sanitary manner.

(e) A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation. (V.A.C.S. Art. 4477-1, Sec. 16.)

Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES. (a) A person operating a tourist court, hotel, inn, or rooming house in this state shall:

(1) provide a safe and ample water supply for the general conduct of the tourist court, hotel, inn, or rooming house; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, and rooming house must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, or rooming house shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, or rooming house who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, or rooming house shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, or rooming house may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, or rooming house that does not conform to this chapter is a public health nuisance. (V.A.C.S. Art. 4477-1, Sec. 17.)

Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS. (a) A fairground, public park, or amusement center of any kind shall be maintained in a sanitary condition.

(b) Food and beverages sold in a fairground, public park, or amusement center shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition. (V.A.C.S. Art. 4477-1, Sec. 18.)

[Sections 341.068–341.080 reserved for expansion]

**SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES**

**Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED.** This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

- (1) more stringent ordinances in matters relating to this chapter; or
- (2) an ordinance under:
  - (A) Article XI, Section V, of the Texas Constitution;
  - (B) Article 1175, Revised Statutes; or
  - (C) Section 51.072, Local Government Code. (V.A.C.S. Art. 4477–1, Sec. 23(a).)

**Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES.** (a) In a home-rule municipality with a population of at least 800,000, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the board.

(c) The environmental health officer shall assist the board in enforcing this chapter and is subject to:

- (1) the authority of the board; and
- (2) removal from office in the same manner as a municipal health authority. (V.A.C.S. Art. 4477–1, Sec. 23a.)

[Sections 341.083–341.090 reserved for expansion]

**SUBCHAPTER F. PENALTIES**

**Sec. 341.091. CRIMINAL PENALTY.** (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense. (V.A.C.S. Art. 4477–1, Sec. 24.)

**Sec. 341.092. CIVIL ENFORCEMENT.** (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty of not less than \$10 or more than \$200 for each violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than \$10 or more than \$1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted under this chapter, the department, a county, or a municipality may institute a civil suit in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation;
- (2) the assessment and recovery of a civil penalty; or
- (3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter or a rule adopted under this chapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit. (V.A.C.S. Art. 4477-1, Sec. 25.)

#### CHAPTER 342. LOCAL REGULATION OF SANITATION

##### SUBCHAPTER A. MUNICIPAL REGULATION OF SANITATION

- Sec. 342.001. MUNICIPAL POWER CONCERNING STAGNANT WATER AND OTHER UNSANITARY CONDITIONS
- Sec. 342.002. MUNICIPAL POWER CONCERNING SEWERS AND PRIVIES
- Sec. 342.003. MUNICIPAL POWER CONCERNING FILTH, CARRION, AND OTHER UNWHOLESOME MATTER
- Sec. 342.004. MUNICIPAL POWER CONCERNING WEEDS OR OTHER UNSANITARY MATTER
- Sec. 342.005. VIOLATION OF ORDINANCE
- Sec. 342.006. WORK OR IMPROVEMENTS BY MUNICIPALITY; NOTICE
- Sec. 342.007. ASSESSMENT OF EXPENSES; LIEN

[Sections 342.008–342.020 reserved for expansion]

##### SUBCHAPTER B. REGULATION OF SANITATION BY CERTAIN TYPES OF MUNICIPALITIES

- Sec. 342.021. POWER OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING CARCASSES OR OTHER UNWHOLESOME MATTER
- Sec. 342.022. JOINT SANITARY REGULATIONS OF TYPE A GENERAL-LAW MUNICIPALITY AND COUNTY

#### CHAPTER 342. LOCAL REGULATION OF SANITATION

##### SUBCHAPTER A. MUNICIPAL REGULATION OF SANITATION

Sec. 342.001. MUNICIPAL POWER CONCERNING STAGNANT WATER AND OTHER UNSANITARY CONDITIONS. (a) The governing body of a municipality may require the filling, draining, and regulating of any place in the municipality that is unwholesome, contains stagnant water, or is in any other condition that may produce disease.

(b) The governing body of a municipality may require the inspection of all premises.

(c) The governing body of a municipality may impose fines on the owner of premises on which stagnant water is found. (V.A.C.S. Art. 4436 (part).)

Sec. 342.002. MUNICIPAL POWER CONCERNING SEWERS AND PRIVIES. The governing body of a municipality may:

(1) regulate the making, filling, altering, or repairing of sewers and privies;



(2) direct the mode and material for constructing sewers and privies; and

(3) regulate the cleaning and disinfecting of sewers and privies. (V.A.C.S. Art. 4436 (part).)

Sec. 342.003. **MUNICIPAL POWER CONCERNING FILTH, CARRION, AND OTHER UNWHOLESOME MATTER.** The governing body of a municipality may regulate the cleaning of a building, establishment, or ground from filth, carrion, or other impure or unwholesome matter. (V.A.C.S. Art. 4436 (part).)

Sec. 342.004. **MUNICIPAL POWER CONCERNING WEEDS OR OTHER UNSANITARY MATTER.** The governing body of a municipality may require the owner of a lot in the municipality to keep the lot free from weeds, rubbish, brush, and other objectionable, unsightly, or unsanitary matter. (V.A.C.S. Art. 4436 (part).)

Sec. 342.005. **VIOLATION OF ORDINANCE.** The governing body of a municipality may punish an owner or occupant of property in the municipality who violates an ordinance adopted under this subchapter. (V.A.C.S. Art. 4436 (part).)

Sec. 342.006. **WORK OR IMPROVEMENTS BY MUNICIPALITY; NOTICE.** (a) If the owner of property in the municipality does not comply with a municipal ordinance or requirement under this chapter within 10 days of notice of a violation, the municipality may:

(1) do the work or make the improvements required; and

(2) pay for the work done or improvements made and charge the expenses to the owner of the property.

(b) The notice must be given:

(1) personally to the owner in writing;

(2) by letter addressed to the owner at the owner's post office address; or

(3) by publication at least twice within 10 consecutive days if personal service cannot be obtained or the owner's post office address is unknown. (V.A.C.S. Art. 4436 (part).)

Sec. 342.007. **ASSESSMENT OF EXPENSES; LIEN.** (a) The governing body of a municipality may assess expenses incurred under Section 342.006 against the real estate on which the work is done or improvements made.

(b) To obtain a lien against the property, the mayor, municipal health authority, or other municipal official designated by the mayor must file a statement of expenses with the county clerk of the county in which the municipality is located.

(c) The lien obtained by the municipality's governing body is security for the expenditures made and interest accruing at the rate of 10 percent on the amount due from the date of payment by the municipality.

(d) The lien is inferior only to:

(1) tax liens; and

(2) liens for street improvements.

(e) The governing body of the municipality may bring a suit for foreclosure in the name of the municipality to recover the expenditures and interest due.

(f) The statement of expenses or a certified copy of the statement is prima facie proof of the expenses incurred by the municipality in doing the work or making the improvements.

(g) The remedy provided by this section is in addition to the remedy provided by Section 342.005. (V.A.C.S. Art. 4436 (part).)

[Sections 342.008–342.020 reserved for expansion]

#### **SUBCHAPTER B. REGULATION OF SANITATION BY CERTAIN TYPES OF MUNICIPALITIES**

Sec. 342.021. **POWER OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING CARCASSES OR OTHER UNWHOLESOME MATTER.** (a) The governing body of a Type A general-law municipality may:

(1) prevent a person from bringing, depositing, or having in the municipal limits a carcass or other offensive or unwholesome substance or matter; and

(2) require a person to remove or destroy any offensive or unwholesome substance or matter, filth, putrid or unsound beef, pork, or fish, or hides or skins of any kind that the person is responsible for placing in the municipality.

(b) If the person does not comply with a provision adopted under Subsection (a), the municipality's governing body may:

(1) authorize a municipal officer to remove or destroy the offending material; or

(2) require the owner of a dead animal to remove the dead animal to a place designated by the municipality's governing body. (V.A.C.S. Art. 1015, Subdiv. 6.)

Sec. 342.022. JOINT SANITARY REGULATIONS OF TYPE A GENERAL-LAW MUNICIPALITY AND COUNTY. The governing body of a Type A general-law municipality may cooperate with the commissioner's court of the county in which the municipality is located in making improvements considered necessary by those entities to:

(1) improve the public health and promote efficient sanitary regulations; and

(2) arrange for the construction of and payment for those improvements. (V.A.C.S. Art. 1015, Subdiv. 3.)

#### CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES IN CERTAIN COUNTIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.001. APPLICATION TO UNINCORPORATED AREA OF A COUNTY HAVING A POPULATION OF 2,400,000 OR MORE

Sec. 343.002. DEFINITIONS

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW

[Sections 343.004–343.010 reserved for expansion]

##### SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED

Sec. 343.011. PUBLIC NUISANCE

Sec. 343.012. CRIMINAL PENALTY

Sec. 343.013. INJUNCTION

[Sections 343.014–343.020 reserved for expansion]

##### SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE

Sec. 343.022. ABATEMENT PROCEDURES

Sec. 343.023. ASSESSMENT OF COSTS; LIEN

Sec. 343.024. AUTHORITY TO ENTER PREMISES

Sec. 343.025. ENFORCEMENT

#### CHAPTER 343. ABATEMENT OF PUBLIC NUISANCES IN CERTAIN COUNTIES

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 343.001. APPLICATION TO UNINCORPORATED AREA OF A COUNTY HAVING A POPULATION OF 2,400,000 OR MORE. This chapter applies to the unincorporated area of a county having a population of 2,400,000 or more. (V.A.C.S. Art. 4477–9b, Sec. 1.01.)

Sec. 343.002. DEFINITIONS. In this chapter:

(1) "Abate" means to eliminate by removal, repair, rehabilitation, or demolition.

(2) "Building" means a structure built for the support, shelter, or enclosure of a person, animal, chattel, machine, equipment, or other moveable property.

(3) "Garbage" means decayable waste from a public or private establishment or restaurant. The term includes vegetable, animal, and fish offal and animal and fish carcasses, but does not include sewage, body waste, or an industrial by-product.

(4) "Neighborhood" means:

(A) a platted subdivision; or

(B) property contiguous to and within 300 feet of a platted subdivision.

(5) "Platted subdivision" means a subdivision that has its approved or unapproved plat recorded with the county clerk of the county in which the subdivision is located.

(6) "Premises" means all privately owned property, including vacant land or a building designed or used for residential, commercial, business, industrial, or religious purposes. The term includes a yard, ground, walk, driveway, fence, porch, steps, or other structure appurtenant to the property.

(7) "Public street" means the entire width between property lines of a road, street, way, thoroughfare, or bridge if any part of the road, street, way, thoroughfare, or bridge is open to the public for vehicular or pedestrian traffic.

(8) "Receptacle" means a container that is composed of durable material and designed to prevent the discharge of its contents and to make its contents inaccessible to animals, vermin, or other pests.

(9) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses.

(10) "Rubbish" means nondecayable waste from a public or private establishment or residence.

(11) "Weeds" means all rank and uncultivated vegetable growth or matter that:

(A) has grown to more than 18 inches in height; or

(B) may create an unsanitary condition or become a harborage for rodents, vermin, or other disease-carrying pests, regardless of the height of the weeds. (V.A.C.S. Art. 4477-9b, Sec. 1.02 (part).)

Sec. 343.003. EFFECT OF CHAPTER ON OTHER STATE LAW. This chapter does not affect a right, remedy, or penalty under other state law. (V.A.C.S. Art. 4477-9b, Sec. 5.02.)

[Sections 343.004-343.010 reserved for expansion]

#### **SUBCHAPTER B. PUBLIC NUISANCE PROHIBITED**

Sec. 343.011. PUBLIC NUISANCE. (a) A person may not cause, permit, or allow a public nuisance under this section on any premises.

(b) A public nuisance is:

(1) keeping, storing, or accumulating refuse on premises in a neighborhood unless the refuse is entirely contained in a closed receptacle;

(2) keeping, storing, or accumulating rubbish or any unused, discarded, or abandoned object, including newspapers, vehicles, refrigerators, stoves, furniture, tires, and cans, on premises in a neighborhood for 10 days or more, unless the rubbish or object is completely enclosed in a building or is not visible from a public street;

(3) maintaining premises in a manner that creates an unsanitary condition likely to attract or harbor mosquitoes, rodents, vermin, or disease-carrying pests;

(4) allowing weeds to grow on premises in a neighborhood if the weeds are located within 300 feet of another residence or commercial establishment; or

(5) maintaining a building in a manner that is structurally unsafe or constitutes a hazard to safety, health, or public welfare because of inadequate maintenance, unsanitary conditions, dilapidation, obsolescence, disaster, damage, or abandonment or because it constitutes a fire hazard.

(c) This section does not apply to a site or facility that is permitted and regulated by a state agency. (V.A.C.S. Art. 4477-9b, Secs. 2.01; 3.01(a).)

Sec. 343.012. CRIMINAL PENALTY. (a) A person commits an offense if:

- (1) the person violates Section 343.011(a); and
  - (2) the nuisance remains unabated after the 30th day after the date on which the person receives notice from a county official, agent, or employee to abate the nuisance.
- (b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.
- (c) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this section within one year before the date on which the offense being tried occurred, the defendant is punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than six months, or both.
- (d) Each day a violation occurs is a separate offense.
- (e) The court shall order abatement of the nuisance if the defendant is convicted of an offense under this section. (V.A.C.S. Art. 4477-9b, Secs. 3.01(b), (c).)

Sec. 343.013. INJUNCTION. (a) A county or district court may by injunction prevent or restrain a violation of this chapter in the unincorporated area of the county.

(b) A county or a person affected or to be affected by a violation under this chapter, including a property owner, resident of a neighborhood, or organization of property owners or residents of a neighborhood, may bring suit under Subsection (a). If the court grants the injunction, the court may award the plaintiff reasonable attorney's fees and court costs. (V.A.C.S. Art. 4477-9b, Sec. 3.02.)

[Sections 343.014-343.020 reserved for expansion]

#### SUBCHAPTER C. COUNTY AUTHORITY RELATING TO NUISANCE

Sec. 343.021. AUTHORITY TO ABATE NUISANCE. A county may abate a nuisance under this chapter by demolition or removal if the county adopts abatement procedures that are consistent with the general purpose of this chapter and that conform to this chapter. (V.A.C.S. Art. 4477-9b, Sec. 4.01.)

Sec. 343.022. ABATEMENT PROCEDURES. (a) The abatement procedures adopted by the commissioners court must be administered by a regularly salaried, full-time county employee, but the removal or demolition of the nuisance may be made by a person authorized by the person administering the abatement program.

(b) The abatement procedures must require that written notice be given to the owner, lessee, occupant, agent, or person in charge of the premises. The notice must state:

- (1) the specific condition that constitutes a nuisance;
- (2) that the person receiving notice shall abate the nuisance before the 31st day after the date on which the notice is served;
- (3) that failure to abate the nuisance may result in abatement by the county, assessment of costs, and a lien against the property on which the nuisance exists; and
- (4) that the owner, lessee, occupant, agent, or person in charge of the premises is entitled to submit, before the 31st day after the date on which the notice is served, a written request for a hearing.

(c) The notice must be given:

- (1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the owner, lessee, agent, or person in charge of the property is unknown, by posting a copy of the notice on the premises on which the nuisance exists and by publishing the notice in a newspaper with general circulation in the county two times within 10 consecutive days.

(d) The abatement procedures must require a hearing before the county abates the nuisance if a hearing is requested. The hearing may be conducted before the commissioners court or any board, commission, or official designated by the commissioners court. (V.A.C.S. Art. 4477-9b, Sec. 4.02.)

**Sec. 343.023. ASSESSMENT OF COSTS; LIEN.** (a) A county may:

(1) assess the cost of abating the nuisance, plus an administrative fee of not more than \$100, on the owner, lessee, or occupant of the premises on which the nuisance exists; or

(2) by resolution or order, assess the cost of abating the nuisance, plus an administrative fee of not more than \$100, against the property on which the nuisance exists.

(b) The county may not make an assessment against property unless the owner or owner's agent receives notice of the nuisance in accordance with Section 343.022.

(c) To obtain a lien against the property to secure an assessment, the commissioners court of the county must file a statement of costs with the county clerk of the county in which the property is located and follow any other procedure required by law to secure a lien against the property.

(d) The county's lien to secure an assessment is inferior to a previously recorded bona fide mortgage lien attached to the real property to which the county's lien attaches, if the mortgage was filed for record in the office of the county clerk of the county in which the real property is located before the date on which the county begins the abatement.

(e) The county is entitled to accrued interest beginning on the 31st day after the date of the assessment against the property at the rate of 10 percent a year.

(f) The statement of costs or a certified copy of the statement of costs is prima facie proof of the costs incurred to abate the nuisance. (V.A.C.S. Art. 4477-9b, Sec. 4.03.)

**Sec. 343.024. AUTHORITY TO ENTER PREMISES.** (a) A county official, agent, or employee charged with the enforcement of health, environmental, safety, or fire laws may enter any premises in the unincorporated area of the county at a reasonable time to inspect, investigate, or abate a nuisance or to enforce this chapter.

(b) Before entering the premises, the official, agent, or employee must give reasonable notice and exhibit proper identification to the occupant, manager, or other appropriate person. (V.A.C.S. Art. 4477-9b, Secs. 5.01(a), (b).)

**Sec. 343.025. ENFORCEMENT.** A court of competent jurisdiction in the county may issue any order necessary to enforce this chapter. (V.A.C.S. Art. 4477-9b, Sec. 5.01(c).)

#### **CHAPTER 344. MOSQUITO CONTROL DISTRICTS**

**Sec. 344.001. ELECTION ON ESTABLISHMENT AND TAX LEVY**

**Sec. 344.002. BALLOT PROPOSITIONS**

**Sec. 344.003. LEVY AND COLLECTION OF TAX**

**Sec. 344.004. ADVISORY COMMISSION**

**Sec. 344.005. MOSQUITO CONTROL ENGINEER**

**Sec. 344.006. MERGER OF DISTRICTS**

**Sec. 344.007. ELECTION ON DISSOLUTION OF DISTRICT**

#### **CHAPTER 344. MOSQUITO CONTROL DISTRICTS**

**Sec. 344.001. ELECTION ON ESTABLISHMENT AND TAX LEVY.** The county judge on being petitioned by at least 200 qualified voters of the county may order an election to determine if the qualified voters of the county desire the:

(1) establishment of a mosquito control district in all or a portion of the county for the purpose of eradicating mosquitoes in the area; and

(2) levy of a tax not to exceed 25 cents on each \$100 of the taxable value of property taxable by the district to finance the program provided by this chapter. (V.A.C.S. Art. 4477-2, Secs. 1 (part), 2 (part), 3 (part).)

**Sec. 344.002. BALLOT PROPOSITIONS.** The ballot for an election under this chapter shall be printed to provide for voting for or against the propositions:

(1) "The establishment of a mosquito control district in \_\_\_\_\_ County."; and

(2) "The levy of a tax of \_\_\_\_\_ cents on each \$100 of the taxable value of property taxable by the district to finance the mosquito control district within \_\_\_\_\_ County." (V.A.C.S. Art. 4477-2, Secs. 1 (part), 2 (part).)

Sec. 344.003. LEVY AND COLLECTION OF TAX. (a) If the election results are in favor of the establishment of a mosquito control district and the levy of a tax, the commissioners court may levy a tax not to exceed the amount fixed by the election.

(b) The commissioners court may lower the tax to any designated sum it may determine if the anticipated revenue exceeds the revenue needed to carry out this chapter.

(c) The taxes levied under this section shall be:

(1) collected by the county tax assessor-collector;

(2) deposited in a separate fund; and

(3) used only to carry out this chapter. (V.A.C.S. Art. 4477-2, Sec. 4.)

Sec. 344.004. ADVISORY COMMISSION. (a) The commissioners court in each county in which a mosquito control district is established shall appoint an advisory commission composed of five members who are qualified property taxpaying voters of the county. The commissioners of the commissioners court and the county judge shall each appoint one member of the advisory commission.

(b) Members of the advisory commission serve without compensation.

(c) The advisory commission shall make recommendations to the commissioners court that it considers necessary to carry out this chapter and shall perform any other duties as the commissioners court may determine.

(d) Each advisory commission member must take an oath of office prescribed by the commissioners court. The commissioners court may remove any member of the advisory commission at any time it considers necessary. (V.A.C.S. Art. 4477-2, Sec. 5.)

Sec. 344.005. MOSQUITO CONTROL ENGINEER. (a) The commissioners court in each county that has established a mosquito control district may appoint a mosquito control engineer who must be well qualified in the field of mosquito control. The mosquito control engineer serves at a salary determined by the commissioners court.

(b) The commissioners court shall supervise the powers and duties of the engineer.

(c) The engineer shall make recommendations to the commissioners court relating to the number of assistants and employees that may be needed, and the commissioners court shall appoint the assistants and employees it considers necessary for mosquito eradication in the district.

(d) The engineer shall make semiannual reports to the commissioners court or as many reports as are requested by the court concerning the work of mosquito eradication and of the expenses needed for the ensuing year.

(e) The first report shall be made not later than June 30 following the establishment of the mosquito control district, and the second report shall be made not later than December 31 following the first report. (V.A.C.S. Art. 4477-2, Sec. 6.)

Sec. 344.006. MERGER OF DISTRICTS. (a) The commissioners courts of two or more counties operating under this chapter may enter into an agreement to merge their separate districts into a single mosquito control district composed of those counties.

(b) The commissioners courts shall enter into an agreement that complies with this chapter, except that the advisory commission and mosquito control engineer may be appointed for the entire district rather than for each county. (V.A.C.S. Art. 4477-2, Sec. 6A.)

Sec. 344.007. ELECTION ON DISSOLUTION OF DISTRICT. Each commissioners court that has established a mosquito control district under this chapter shall order an election to dissolve the mosquito control district on a petition of not less than 10 percent of the qualified voters of the county, as determined by the number of votes cast for all candidates for governor in the most recent gubernatorial general election. (V.A.C.S. Art. 4477-2, Sec. 7.)

## CHAPTER 345. BEDDING

### SUBCHAPTER A. GENERAL PROVISIONS

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[Sections 345.068–345.080 reserved for expansion]

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**CHAPTER 345. BEDDING**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 345.001. DEFINITIONS. In this chapter:

(1) "Bedding" means a mattress, mattress pad, mattress protector, box spring, sofa bed, studio couch, chairbed, convertible bed, convertible lounge, pillow, bolster, quilt, quilted spread, comforter, cot pad, sleeping bag, lounge chair pad, utility or all-purpose pad, crib pad, playpen pad, crib bumper pad, car bed pad, infant carrier pad, convertible

stroller pad, bassinet pad, bed rest and lounge-type cushion, or a stuffed or filled article that can be used by a human for sleeping or reclining.

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

(3) "Manufacturer" means a person whose principal business is the manufacture of bedding from new materials for the purpose of resale in this state by a distributor, jobber, wholesaler, or retail outlet or subsidiary outlet if the ownership and the name are the same as the manufacturer, or if it is an exclusive sales outlet for the manufacturer, or both.

(4) "Material" means an article, substance, or part of an article or substance, used in the manufacture, repair, or renovation of bedding.

(5) "New" means no previous use for any purpose.

(6) "Processor" means a person who manufactures, processes, and sells in this state or for delivery in this state any filling materials, including felt, batting, pads, or foam, to be used or that could be used in bedding, other than wooden frames or metal springs.

(7) "Renovate" means to restore to a former condition or to place in a good state of repair.

(8) "Secondhand" means previous use in any manner.

(9) "Sell" includes offering or exposing for sale, including in a sale, bartering, trading, delivering, consigning, leasing, possessing with intent to sell, or disposing of in any commercial manner.

(10) "Wholesaler" means a person located outside this state who on his own account sells, distributes, or jobs into this state to another for the purpose of resale bedding or filling material to be used in bedding. The term does not include an affiliate or subsidiary if the ownership and the name of the affiliate or subsidiary are the same as the manufacturer, and the affiliate or subsidiary is the exclusive sales outlet for the manufacturer. (V.A.C.S. Art. 4476a, Sec. 1 (part).)

Sec. 345.002. EVIDENCE OF INTENT TO SELL. The possession of bedding by a manufacturer, renovator, wholesaler, or person holding a germicidal treatment permit in the course of business is presumptive evidence of an intent to sell the bedding. (V.A.C.S. Art. 4476a, Sec. 1 (part).)

Sec. 345.003. PAYMENT TO DEPARTMENT. Money from the sale of stamps, and other money collected in the administration of this chapter, is payable to the department. (V.A.C.S. Art. 4476a, Sec. 8 (part).)

Sec. 345.004. LIMIT ON EXPENDITURE OF MONEY. The expenditure of money under this chapter may not exceed the amount of money collected under this chapter. (V.A.C.S. Art. 4476a, Sec. 8c.)

Sec. 345.005. MATERIALS OBTAINED FROM DUMP OR JUNKYARD. (a) A person may not manufacture, repair, or renovate bedding or batting using discarded materials obtained from any dump or junkyard.

(b) A person may not sell an item of discarded bedding obtained from a source set out in Subsection (a). (V.A.C.S. Art. 4476a, Sec. 3.)

Sec. 345.006. APPLICABILITY OF CHAPTER. This chapter does not apply to bedding manufactured, repaired, or renovated before June 30, 1939. (V.A.C.S. Art. 4476a, Sec. 11.)

[Sections 345.007–345.020 reserved for expansion]

#### SUBCHAPTER B. TAGS

Sec. 345.021. TAG REQUIRED. (a) A person may not manufacture, repair, renovate, or sell bedding unless a tag that conforms to this subchapter is securely attached to the bedding by a method approved by the department and is clearly visible.

(b) The tag must be white and made of substantial cloth or a substance of equal quality.



(c) The information required on a tag by this chapter must be in English. (V.A.C.S. Art. 4476a, Secs. 2(a) (part), (b) (part), (c) (part), (d) (part); 4(c) (part).)

**Sec. 345.022. TAGS ON BEDDING MADE OF NEW OR SECONDHAND MATERIAL.** (a) A tag required under this section shall be attached at the factory in which the bedding is manufactured.

(b) A tag attached to bedding wholly manufactured from new material must be at least six square inches and state, plainly stamped or printed in black ink:

- (1) "All New Material" in lettering at least one-eighth inch high;
- (2) the kind and grade of each material used in the filling and, if more than one kind or grade of material is used, the percentage by weight of each material; and
- (3) the manufacturer's permit number assigned by the department.

(c) A tag attached to bedding any part of which is manufactured from secondhand material, other than bedding reworked, repaired, or renovated for the owner for the owner's personal use, must be at least 12 square inches and state, plainly stamped or printed in red ink:

- (1) "Secondhand Material" in lettering at least one-fourth inch high; and
- (2) the manufacturer's permit number assigned by the department.

(d) A tag attached to bedding renovated, reworked, or repaired for the owner for the owner's personal use and from the owner's material that is in whole or in part secondhand must be at least six square inches and state, plainly stamped or printed in black ink:

- (1) "Not for Sale, Owner's Own Material which is Secondhand Material" in lettering at least one-eighth inch high;
- (2) the name and address of the owner; and
- (3) the manufacturer's permit number assigned by the department.

(e) A term used on a tag required by this section to describe kinds and grades of material used in filling must conform to those defined in the department's rules, and a trade or substitute term may not be used. (V.A.C.S. Art. 4476a, Secs. 2(a) (part), (b) (part), (c) (part), (d) (part), (e).)

**Sec. 345.023. FALSE OR MISLEADING STATEMENT PROHIBITED.** A person may not make a false or misleading statement on a tag required by Section 345.022. (V.A.C.S. Art. 4476a, Sec. 2(f) (part).)

**Sec. 345.024. GERMICIDAL TREATMENT OF BEDDING AND MATERIALS.** (a) Except as provided by Subsection (b), a person may not sell secondhand bedding or bedding manufactured in whole or in part from secondhand material unless the bedding has been germicidally treated and cleaned by a method approved by the department.

(b) An upholstered sofa bed or studio couch shall be germicidally treated and cleaned only when required by department rules.

(c) A person may not use in the manufacture, repair, or renovation of bedding a material that has not been cleaned and germicidally treated by a process or treatment approved by the department if the material:

- (1) has been used by a person with a communicable disease; or
- (2) is filthy, oily, or harbors loathsome insects or pathogenic bacteria.

(d) A person may not sell material or bedding requiring germicidal treatment under this section unless the person applying the germicidal treatment securely attaches by a method approved by the department a tag that is at least 12 square inches and contains, plainly printed in black ink:

- (1) a statement that the article or material has been germicidally treated by a method approved by the department;
- (2) a statement of the method of germicidal treatment applied;
- (3) the lot number and the tag number of the article germicidally treated;
- (4) the name and address of the person for whom the article was germicidally treated; and

(5) the permit number of the person applying the germicidal treatment. (V.A.C.S. Art. 4476a, Secs. 4(a), (b), (c) (part).)

Sec. 345.025. TAG, LABEL, OR MARKING REQUIRED BY PROCESSOR OF FILLING MATERIAL. A processor shall identify each shipment or delivery, however contained, of processed filling material used for filling bedding by affixing to the bedding in a conspicuous place a tag, label, or indelible marking that clearly indicates:

- (1) the kind of material;
- (2) whether the material is new or secondhand; and
- (3) the permit number of the processor. (V.A.C.S. Art. 4476a, Sec. 7(d) (part).)

Sec. 345.026. REMOVAL, DEFAACEMENT, OR ALTERATION. A person may not remove, deface, or alter, or cause the removal, defacing, or alteration of, a tag or a statement on the tag to defeat a provision of this chapter. (V.A.C.S. Art. 4476a, Sec. 2(f) (part).)

Sec. 345.027. DEFAACEMENT OF TAG BY STAMP. A tag is considered to be defaced if a stamp required by Subchapter D is placed over any lettering on the tag. (V.A.C.S. Art. 4476a, Sec. 2(f) (part).)

[Sections 345.028–345.040 reserved for expansion]

#### SUBCHAPTER C. PERMITS

Sec. 345.041. PERMITS. (a) A person may not manufacture, wholesale, or engage in the business of renovating or selling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department.

(b) A processor may not sell filling material used for filling bedding in this state or for delivery in this state unless the person has a permit for that purpose from the department. (V.A.C.S. Art. 4476a, Sec. 6(a).)

Sec. 345.042. PERMIT TO APPLY GERMICIDAL TREATMENT. (a) A person may not apply a germicidal process unless:

- (1) the process has been registered with and approved by the department; and
- (2) the person has a numbered germicidal treatment permit issued by the department.

(b) A permit may be renewed annually only after the permit holder submits proof of continued compliance with this chapter and department rules adopted under this chapter.

(c) A person who holds a permit shall keep the permit conspicuously posted on the premises of the person's business near the treatment device.

(d) A person who holds a permit shall keep an accurate record of all materials that have been germicidally treated. The record must include the:

- (1) source of the material;
- (2) date of treatment; and
- (3) name and address of the owner of each item.

(e) The record shall be available for inspection at any time by a representative of the department. (V.A.C.S. Art. 4476a, Sec. 6(b) (part).)

Sec. 345.043. FEES; EXPIRATION. (a) The fee for an initial permit issued under this chapter is \$15.

(b) A permit expires one year after the date of issuance.

(c) The renewal fee for a permit is \$10. (V.A.C.S. Art. 4476a, Secs. 6(b) (part), (c), (d).)

Sec. 345.044. REVOCATION OF PERMIT FOR UNSANITARY CONDITION. (a) A bedding manufacturer or renovator shall keep the manufacturer's or renovator's place of business in a sanitary condition satisfactory to the department.

(b) The department may revoke the permit of a bedding manufacturer or renovator who violates this section. (V.A.C.S. Art. 4476a, Sec. 10.)

[Sections 345.045–345.060 reserved for expansion]

**SUBCHAPTER D. STAMPS**

**Sec. 345.061. STAMPS REQUIRED.** (a) A person may not manufacture, renovate, or sell bedding in this state unless the person affixes to the tag required by Subchapter B an adhesive stamp issued by the department.

(b) This section does not apply to a person who is a processor or who holds a stamp exemption. (V.A.C.S. Art. 4476a, Secs. 7(a)(1), (d) (part).)

**Sec. 345.062. REGISTRATION.** (a) For the purpose of identifying a person applying for stamps and the stamps issued to the person, the department shall register the person and assign to the person a registry number, separate and different serial numbers to be printed on each stamp, or both.

(b) An identification number assigned to a person under this section may not be used by another person. (V.A.C.S. Art. 4476a, Sec. 7(a)(2).)

**Sec. 345.063. PRODUCTION OF STAMPS; FEES.** (a) The department shall prepare adhesive stamps and issue the stamps in quantities of at least 500. The department shall charge a person issued stamps an amount set by the Texas Board of Health, not to exceed \$15 for each 500 stamps.

(b) The stamps must contain:

- (1) a replica of the Great Seal of Texas;
- (2) the registry number, the serial numbers, or both; and
- (3) any other information as determined by the department. (V.A.C.S. Art. 4476a, Sec. 7(a)(1) (part), (3).)

**Sec. 345.064. STAMP REQUIREMENT EXEMPTION.** (a) The department shall:

(1) grant a stamp exemption to a person who makes a proper application on an approved form to the department for the exemption and pays a \$25 application fee; and

(2) register and assign a number to each person who is granted an exemption.

(b) A stamp exemption expires one year after the date of issuance.

(c) A stamp exemption holder may renew the exemption if the holder:

(1) submits proof of continued compliance with this chapter and department rules adopted under this chapter; and

(2) pays a \$25 renewal fee.

(d) A stamp exemption is not transferable and may not be used by a person other than the holder. (V.A.C.S. Art. 4476a, Sec. 7(b).)

**Sec. 345.065. REPORTING BY STAMP EXEMPTION HOLDER.** (a) A stamp exemption holder, including a person who makes or causes to be made the initial sale of bedding in this state or for delivery in this state, shall file a report with the department as provided by this section.

(b) The report shall be made quarterly, applies to the year beginning on September 1, and shall be filed with the department not later than the 15th day after the last day of each quarter.

(c) The report must show the exact number of articles of bedding sold by the stamp exemption holder in this state or for delivery in this state during the quarter to which the report applies.

(d) The report must contain a statement, made under oath by the stamp exemption holder, or if the holder is not an individual, the owner or official of the holder, that the information contained in the report is true to the best knowledge and belief of the person making the oath.

(e) The Texas Board of Health shall set a fee for each article of bedding sold in this state or for delivery in this state during the reporting period. The stamp exemption

holder shall pay the fees when the report is submitted under Subsection (b). (V.A.C.S. Art. 4476a, Secs. 7(c)(1), (2).)

Sec. 345.066. RECORDS OF STAMP EXEMPTION HOLDER. (a) A stamp exemption holder shall keep accurate records of all bedding manufactured, renovated, and sold in this state or for delivery in this state.

(b) The department may verify necessary shipping records of a stamp exemption holder if a report required by Section 345.065 is not filed or is unsatisfactory for the purpose of determining the amount owed under that section by the holder. (V.A.C.S. Art. 4476a, Sec. 7(c)(3).)

Sec. 345.067. FORFEITURE OF STAMP EXEMPTION. (a) A stamp exemption is forfeited if the stamp exemption holder fails to report or pay the fees required by Section 345.065, or if the department has evidence that the holder has reported falsely.

(b) A stamp exemption may be revoked or forfeited because of a failure to comply with this chapter or a rule adopted under this chapter. The exemption may not be reissued until the applicant for the exemption presents satisfactory evidence to the department that the applicant will abide by this chapter and rules adopted under this chapter. (V.A.C.S. Art. 4476a, Sec. 7(c)(4).)

[Sections 345.068–345.080 reserved for expansion]

#### SUBCHAPTER E. ENFORCEMENT

Sec. 345.081. DUTY TO ENFORCE CHAPTER. The department shall enforce this chapter for the protection of the public health and welfare. (V.A.C.S. Art. 4476a, Sec. 5(a) (part).)

Sec. 345.082. RULEMAKING AUTHORITY. The department may adopt rules to implement and enforce this chapter. (V.A.C.S. Art. 4476a, Sec. 5(a) (part).)

Sec. 345.083. INSPECTION. (a) To determine compliance with this chapter or a rule adopted under this chapter, a representative of the department may enter a place at which:

- (1) bedding is manufactured, repaired, renovated, stored, or sold;
- (2) materials are prepared for use in bedding; or
- (3) germicidal treatment of bedding is performed.

(b) A representative of the department may take a sample of materials for inspection and analysis.

(c) A representative of the department may hold for evidence in a case involving a violation of this chapter or a rule adopted under this chapter bedding or materials manufactured, repaired, renovated, or sold in violation of this chapter or a rule adopted under this chapter. (V.A.C.S. Art. 4476a, Secs. 5(c), (d).)

Sec. 345.084. SALE OF BEDDING OR MATERIALS PROHIBITED BY DEPARTMENT. (a) A representative of the department may prohibit the sale of specified bedding or material that is being or could be offered for sale in violation of this chapter or a rule adopted under this chapter.

(b) The representative shall appropriately tag any bedding or materials the sale of which is prohibited.

(c) A tag under this section may not be removed and bedding or materials that are tagged under this section may not be disposed of in any manner unless:

- (1) satisfactory compliance with this chapter and the rules adopted under this chapter has been shown;
- (2) a representative of the department releases the bedding for sale; and
- (3) a representative of the department has approved the removal or the department has directed that the tag be removed and the bedding or materials may be disposed of. (V.A.C.S. Art. 4476a, Sec. 5(e).)

Sec. 345.085. JUDICIAL REVIEW. A person aggrieved by a final decision of the department is entitled to judicial review. (V.A.C.S. Art. 4476a, Sec. 5(g) (part).)

Sec. 345.086. INTERFERENCE WITH DEPARTMENT REPRESENTATIVE. A person may not interfere with, obstruct, or hinder a representative of the department performing a duty under this chapter. (V.A.C.S. Art. 4476a, Sec. 5(b).)

Sec. 345.087. CRIMINAL OFFENSE. (a) A person commits an offense if a person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is punishable by a fine of not less than \$50 or more than \$200. (V.A.C.S. Art. 4476a, Sec. 9.)

[Chapters 346–360 reserved for expansion]

**SUBTITLE B. SOLID WASTE, SEWAGE, AND LITTER**

**CHAPTER 361. SOLID WASTE DISPOSAL ACT**

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**CHAPTER 361. SOLID WASTE DISPOSAL ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 361.001. **SHORT TITLE.** This chapter may be cited as the Solid Waste Disposal Act. (V.A.C.S. Art. 4477–7, Sec. 1 (part).)

Sec. 361.002. **POLICY.** It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated. (V.A.C.S. Art. 4477–7, Sec. 1 (part).)

Sec. 361.003. **DEFINITIONS.** Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Board of health" means the Texas Board of Health.

(3) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(4) "Commission" means the Texas Water Commission.

(5) "Commissioner" means the commissioner of health.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

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

(8) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(11) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(12) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(13) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the authority granted under Section 361.165.

(14) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(15) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(16) "Notice of intent to file an application" means the notice filed under Section 361.063.

(17) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(18) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(19) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for

reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission or department determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(20) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the board of health under that law.

(21) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(22) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(23) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(24) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(25) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the commission.

(26) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(27) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.).

(28) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. "Solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid,

liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(29) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(30) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the board of health or commission.

(31) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere. (V.A.C.S. Art. 4477-7, Sec. 2 (part).)

[Sections 361.004–361.010 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HEALTH  
AND TEXAS WATER COMMISSION**

**Sec. 361.011. DEPARTMENT'S JURISDICTION: MUNICIPAL SOLID WASTE.** (a) The department is responsible for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The board of health shall guide the department in its management of municipal solid waste, excluding hazardous municipal waste.

(c) The department shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(d) The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(e) In matters under the department's jurisdiction, the department shall consult with:

(1) the commission concerning water pollution control and water quality aspects; and

(2) the Texas Air Control Board concerning air pollution control and ambient air quality aspects. (V.A.C.S. Art. 4477-7, Sec. 3(a).)

**Sec. 361.012. DEPARTMENT'S JURISDICTION: MUNICIPAL SOLID WASTE AND INDUSTRIAL SOLID WASTE.** When both municipal solid waste and industrial solid waste, except Class I industrial solid waste that is not routinely collected with municipal solid waste and hazardous waste, are involved in any activity of management of solid waste, the department has jurisdiction over the activity. (V.A.C.S. Art. 4477-7, Sec. 3(c) (part).)

Sec. 361.013. **SOLID WASTE FACILITY FEE.** (a) The department shall charge an annual fee for each solid waste facility authorized by the department to be operated or maintained under this chapter.

(b) The board of health shall adopt fees according to a schedule in which the amount of the fees is reasonably related to one or more of the following factors:

- (1) the population served by the facility;
- (2) the volume of waste handled by the facility; or
- (3) the type and size of the facility.

(c) The board of health shall set the amount of fees under this section and Sections 361.014 and 361.065 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department.

(d) The fees collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 4(k)(2), (4).)

Sec. 361.014. **SOLID WASTE TRANSPORTATION FEE.** (a) The department shall charge an annual fee to transporters of solid waste who are required to register with the department by rule adopted under this chapter.

(b) The board of health by rule shall adopt fees according to a schedule in which the amount of the fees is reasonably related to:

- (1) the volume or the type of waste transported; or
- (2) both the volume and type of waste.

(c) The board of health shall set the amount of the fees under this section and Sections 361.013 and 361.065 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department. (V.A.C.S. Art. 4477-7, Secs. 4(k)(3), (4) (part).)

Sec. 361.015. **DEPARTMENT'S JURISDICTION: RADIOACTIVE WASTE.** The department is the state agency under Chapter 401 that regulates radioactive waste activities not preemptively regulated by the federal government. (V.A.C.S. Art. 4477-7, Sec. 3(d) (part).)

Sec. 361.016. **MEMORANDUM OF UNDERSTANDING BY BOARD OF HEALTH.** The board of health by rule shall adopt:

- (1) any memorandum of understanding between the department and any other state agency; and
- (2) any revision of a memorandum of understanding. (V.A.C.S. Art. 4477-7, Sec. 3(i).)

Sec. 361.017. **COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE.** (a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters under the commission's jurisdiction, the commission shall consult with:

- (1) the department concerning the public health aspects; and
- (2) the Texas Air Control Board concerning the air pollution control and ambient air quality aspects. (V.A.C.S. Art. 4477-7, Sec. 3(b).)

Sec. 361.018. **COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE.** (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation

of the management of hazardous waste components of radioactive waste under the department's jurisdiction.

(b) The commission shall consult with the department concerning regulation and management under this section.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste. (V.A.C.S. Art. 4477-7, Sec. 3(d) (part).)

**Sec. 361.019. APPROVAL BY APPROPRIATE STATE AGENCY IF MIXING CERTAIN WASTES.** (a) Class I industrial solid waste and hazardous waste may be accepted in a municipal solid waste facility if authorized in writing by the department with the written approval of the commission.

(b) Solid waste under the department's jurisdiction may be accepted in an industrial solid waste facility if authorized in writing by the commission with the written approval of the department. (V.A.C.S. Art. 4477-7, Sec. 3(c) (part).)

**Sec. 361.020. STATE SOLID WASTE PLANS.** (a) The department and the commission are each authorized to develop a state solid waste plan for solid waste under their respective jurisdictions and the state agencies shall coordinate the solid waste plans.

(b) In developing a solid waste plan for solid waste under its jurisdiction, the department shall consider the preference of municipal solid waste management methods under Section 361.022.

(c) Before the department or the commission adopts its solid waste plan or makes significant amendments to the plan, the Texas Air Control Board must have the opportunity to comment and make recommendations on the proposed plan or amendments and shall be given such reasonable time to do so as specified by the agency. (V.A.C.S. Art. 4477-7, Sec. 4(b).)

**Sec. 361.021. INTERAGENCY COORDINATION COUNCIL.** (a) The interagency coordination council shall coordinate the activities of its member agencies concerning the regulation of solid waste and solid waste management facilities and the enforcement of the applicable solid waste laws and rules.

(b) The council is composed of the executive head, or the executive head's designated representative, of the following agencies:

- (1) the commission;
- (2) the department;
- (3) the Texas Air Control Board; and
- (4) the Railroad Commission of Texas.

(c) The commission's representative is the council chairman.

(d) The council shall meet at least quarterly to review the solid waste regulatory and enforcement activities of the previous quarter and coordinate planned activities in the interest of efficiency and cooperation, including:

- (1) the consideration of the use of waste exchange programs;
- (2) the establishment of a clearinghouse for scientific and engineering information concerning hazardous waste management;
- (3) the coordination of hazardous waste research and development activities;
- (4) the coordination and development of consistent agency rules relevant to the regulation of hazardous waste activities;
- (5) the evaluation of means to assist small quantity hazardous waste generators and affected communities in the effective and safe management and disposal of their regulated waste;
- (6) the assessment of any preapplication public interactions with applicants to evaluate their effectiveness and to consider developing rules to incorporate those activities if appropriate;

(7) the consideration of the use of incentives to encourage waste minimization and reusing and recycling waste, and the use of resource recovery and detoxification equipment; and

(8) the evaluation of the feasibility of household hazardous waste collection and disposal programs.

(e) The chairman shall prepare a report summarizing each quarterly meeting. The report shall be submitted for approval by a majority of agencies represented on the council. The report is a public document. (V.A.C.S. Art. 4477-7, Secs. 3(g)(1), (2).)

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

(1) minimization of waste production;

(2) reuse or recycling of waste;

(3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or

(4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

(1) minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;

(4) applying sludge to land for beneficial use;

(5) land treatment; or

(6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the board of health shall consider the preference of municipal solid waste management methods under this section. (V.A.C.S. Art. 4477-7, Secs. 3(e)(3), (4); 4(c) (part).)

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

(1) minimization of waste production;

(2) reuse or recycling of waste, or both;

(3) treatment to destroy hazardous characteristics;

(4) treatment to reduce hazardous characteristics;

(5) underground injection; and

(6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability. (V.A.C.S. Art. 4477-7, Secs. 3(e)(1), (2).)



**Sec. 361.024. RULES AND STANDARDS.** (a) The board of health and the commission may each adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of the solid waste under their respective jurisdictions under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097–361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used. (V.A.C.S. Art. 4477–7, Sec. 4(c) (part).)

**Sec. 361.025. EXEMPT ACTIVITIES.** (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary. (V.A.C.S. Art. 4477–7, Sec. 3(f) (part).)

**Sec. 361.026. ASSISTANCE PROVIDED BY DEPARTMENT AND COMMISSION.** (a) The department and the commission may individually or jointly:

(1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

(2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

(A) the development of solid waste facilities and management programs; and

(B) research to improve solid waste management.

(b) The department or the commission individually may engage in the programs and activities under this section only as the participation by it concerns the management and control of the solid waste under its jurisdiction.

(c) If the department and the commission do not participate jointly, each shall coordinate efforts undertaken individually so that separate but similar programs and activities are compatible. (V.A.C.S. Art. 4477–7, Sec. 4(h) (part).)

**Sec. 361.027. TRAINING OF SOLID WASTE TECHNICIANS.** (a) The department and the commission may each:

(1) develop a program to train solid waste technicians to improve the competency of those technicians; and

(2) issue letters of competency.

(b) The owner or operator of a solid waste facility is encouraged to employ as site manager a solid waste technician holding a letter of competency from the appropriate agency.

(c) The department and the commission may each:

(1) prescribe standards of training required for the program;

(2) determine the duration of the letter of competency;

(3) award one or more categories of letters of competency with each category reflecting a different degree of training or skill;

(4) require a reasonable, nonrefundable fee, in an amount determined from time to time by the agency, to be paid by participants, deposited to the credit of the general revenue fund, and used to administer the program;

(5) extend or renew letters of competency issued by the agency; and

(6) withdraw a letter of competency for good cause, which may include a violation of this chapter or a rule of the agency concerning the technician's duties and responsibilities. (V.A.C.S. Art. 4477-7, Sec. 4(g).)

Sec. 361.028. **INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE.** (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs. (V.A.C.S. Art. 4477-7, Sec. 4A, as added by Ch. 139, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.029. **COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE.** (a) The board of health and the commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person. (V.A.C.S. Art. 4477-7, Sec. 4(n).)

Sec. 361.030. **FEDERAL FUNDS.** The department or commission may individually or jointly accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the agency. (V.A.C.S. Art. 4477-7, Sec. 4(h) (part).)

Sec. 361.031. **FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS.** (a) The department and the commission may administer and spend state funds provided to them by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the state agency to which the appropriation is made.

(c) The amount of financial assistance granted by the state through the department or commission to a local government under this chapter must be matched by local government funds at least in equal amounts. (V.A.C.S. Art. 4477-7, Sec. 4(i).)

**Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY.** (a) The department and the commission are each authorized to inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of the solid waste under the agency's jurisdiction.

(b) Agents or employees of the department, the commission, or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(d) Agents or employees inspecting an establishment shall observe the establishment's rules on safety, internal security, and fire protection. (V.A.C.S. Art. 4477-7, Secs. 4(d), 7(a).)

**Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY.** (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency. (V.A.C.S. Art. 4477-7, Sec. 7(c).)

**Sec. 361.034. REPORTS.** (a) The commission shall submit a report to the presiding officers of the legislature and the governor not later than January 1 of each odd-numbered year. The report must include:

(1) a summary of a performance report of the imposed hazardous waste permit and disposal fees, if the fees are approved by the legislature, and related activities to determine the appropriateness of the fee structure;

(2) an evaluation of progress made in accomplishing the state's public policy concerning the preference of waste management methods under Section 361.023; and

(3) projections for three years from the due date of the report of the volume of waste by type of waste, disposition of waste, and remaining waste disposal capacity.

(b) To develop the reports required under Subsection (a), the commission shall adopt rules requiring a person who generates, stores, treats, or disposes of hazardous waste to submit annually to the commission a report detailing projections of waste volume, disposition, and remaining capacity, concerning each facility owned or operated by the person. The report required under this subsection shall be submitted to the commission by March 1 of each year. (V.A.C.S. Art. 4477-7, Sec. 3(h) (part).)

**Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE.** (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted. (V.A.C.S. Art. 4477-7, Sec. 13a.)

**Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE.** The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential. (V.A.C.S. Art. 4477-7, Secs. 7(b), (d).)

Sec. 361.038. ANNUAL INSPECTION REPORT. (a) In January of each year, the commission shall publish an annual inspection report that:

(1) summarizes the commission's inspection strategy and the results of inspections conducted during the previous fiscal year; and

(2) lists each hazardous waste treatment, storage, and disposal facility not inspected.

(b) The report must identify each hazardous waste facility inspected and include a list of:

(1) each facility that is in compliance with hazardous waste regulations, including each facility with an exemplary record of compliance over the preceding three years;

(2) each facility that has only minor or clerical violations; and

(3) each facility that has substantive, nonclerical violations, including each facility that has been adjudicated during the preceding three years to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety or the environment.

(c) The report must identify the substantive, nonclerical violations and either summarize corrective actions or describe the status of unresolved violations.

(d) The report shall be submitted to the governor, lieutenant governor, and speaker of the house. The commission shall provide notice of the report's availability by publishing notice in the Texas Register. (V.A.C.S. Art. 4477-7, Secs. 7(e), (f), (g).)

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the department, the commission, the Texas Air Control Board, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law. (V.A.C.S. Art. 4477-7, Sec. 14.)

[Sections 361.040-361.060 reserved for expansion]

#### SUBCHAPTER C. PERMITS

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the department and the commission may each require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of the solid waste over which it has jurisdiction under this chapter. (V.A.C.S. Art. 4477-7, Sec. 4(e) (part).)

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the department issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the board of health under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the department must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the board of health and adopted by rule, the department may not consider the plan and its contents in the review of an application for a solid waste facility permit. (V.A.C.S. Art. 4477-7, Sec. 4(o).)

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS. (a) The department and the commission shall encourage applicants for solid waste facilities under the jurisdiction of the department or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the department or commission, as appropriate, a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the department or commission, as appropriate, initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The board of health and commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed \$25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the agency with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or, because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under Subsection (f).

(l) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987. (V.A.C.S. Art. 4477-7, Sec. 4(e)(12).)

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. If the department or the commission exercises the power to issue permits for solid waste facilities under this subchapter, the agency exercising the power, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application. (V.A.C.S. Art. 4477-7, Sec. 4(e) (part).)

Sec. 361.065. PERMIT APPLICATION FEE. (a) The department shall charge a fee for the submission to and review by the department of a permit application under this subchapter.

(b) The board of health by rule shall adopt fees according to a schedule in which the amount of the fees is reasonably related to one or more of the following:

(1) the population to be served by the facility;

(2) the volume of waste to be handled by the facility;

(3) the type and size of the facility; or

(4) the cost of the permit application review.

(c) The board of health shall set the amount of the fees under this section and Sections 361.013 and 361.014 to collect enough revenue to meet the expenses of performing the solid waste management, control, and permit duties of the department.

(d) The fees collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 4(k)(1), (4).)

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the department or the commission determines is necessary to make the application administratively complete not later than the 270th day after the applicant receives notice from the department or the commission that the additional information or material is needed.

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part), as amended by Ch. 299, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the department or the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the Texas Air Control Board;

(2) the other state agency;

(3) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(4) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to which the application was originally submitted, to present comments and recommendations on the permit application before the agency acts on the application. (V.A.C.S. Art. 4477-7, Sec. 4(e)(1).)

**Sec. 361.068. WHEN APPLICATION IS ADMINISTRATIVELY COMPLETE.** A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the department or the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the board of health or commission. (V.A.C.S. Art. 4477-7, Sec. 2(1).)

**Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY.** The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. (V.A.C.S. Art. 4477-7, Sec. 4(e)(2) (part).)

**Sec. 361.070. SOLE PERMIT HEARING.** (a) Except for a permit described under Section 361.071, all participation in the review of a permit application must be through one agency hearing, which shall be the sole permit hearing.

(b) The department or the commission shall conduct the hearing as the lead agency in accordance with the division of their jurisdiction. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(i) (part).)

**Sec. 361.071. PERMIT FROM OTHER AGENCIES.** The owner or operator of a hazardous waste or solid waste management facility is not required to obtain a permit from any agency of the state other than the department or commission to store, process, treat, dispose of, or destroy solid waste or hazardous waste unless:

(1) a permit is required under the new source review requirements of Part C or D, Title I, of the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) for a major source or a major modification; or

(2) a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(i) (part).)

**Sec. 361.072. JOINT RULES OR MEMORANDA OF AGREEMENT WITH DEPARTMENT OR COMMISSION.** (a) The Texas Air Control Board and other agencies that might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or the commission.

(b) The joint rules or memoranda of agreement:

(1) must include the criteria that the Texas Air Control Board or other agency that might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process; and

(2) shall at a minimum be consistent with the applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(c) Consistent with Section 361.070, the joint rules or memoranda of agreement must provide for the incorporation of provisions in the permits of the department or the commission for off-site waste management facilities concerning units that are:

(1) not otherwise subject to the permitting requirements of the department or commission; and

(2) subject to the permitting requirements of the Texas Air Control Board or other relevant agency.

(d) It is the intent of the legislature that:

(1) to the extent practicable in conformance with Sections 361.070–361.078, the lead agency shall defer to the policies, rules, and interpretations of the Texas Air Control Board on the effect on air quality of the proposed hazardous waste or solid waste management activities; and

(2) the Texas Air Control Board remain the state's principal authority in matters of air pollution control. (V.A.C.S. Art. 4477–7, Secs. 4(e)(4)(A)(i) (part), (ii) (part).)

Sec. 361.073. AIR CONTROL BOARD REVIEW OF PERMIT APPLICATION. (a) Except as otherwise provided by Sections 361.070–361.083, the Texas Air Control Board shall perform a technical review of the air quality aspects of a permit application for a solid waste or a hazardous waste management facility concerning the criteria established under Section 361.072.

(b) Except for a permit application for a facility that incinerates or burns solid or hazardous waste, this section does not apply to an application for:

(1) a hazardous waste management facility that existed on September 1, 1987; or

(2) the expansion of a hazardous waste land disposal facility that existed on September 1, 1987.

(c) The Texas Air Control Board shall complete its review under this section and forward recommendations or proposed permit provisions to the lead agency within the time established by the lead agency rules for the completion of technical review of the application.

(d) The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless the lead agency determines that the recommendations or proposed permit provisions are less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve the conflict before the technical review of the application ends.

(e) If a contested case hearing on a permit application is not held by the lead agency, the Texas Air Control Board's recommendations or proposed permit provisions shall be incorporated into the permit issued by the lead agency. If a contested case hearing is held, the Texas Air Control Board shall develop and present the state's evidence and testimony concerning the air quality aspects of the application. Any party, including the lead agency, is entitled to cross-examine any testifying witness of the Texas Air Control Board.

(f) At the conclusion of the presentation of testimony, the hearing examiner shall give the Texas Air Control Board at least 30 days in which to submit:

(1) proposed findings of fact and conclusions of law; and

(2) if applicable, proposed permit language, concerning the air quality aspects of the application that relate to the criteria established under Section 361.072.

(g) The hearing examiner and the final decision-making body of the lead agency must accept the information submitted by the Texas Air Control Board under Subsection (f) unless that body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence.

(h) The Texas Air Control Board may seek judicial review of the air quality aspects of a final decision of the lead agency. Both the lead agency and the Texas Air Control Board



may enforce the terms of a permit issued by the lead agency concerning air quality. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

**Sec. 361.074. CERTAIN PERMIT APPLICATIONS NOT AFFECTED.** (a) Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board before September 1, 1985, or appeals from decisions of the Texas Air Control Board on those applications, are not affected by Sections 361.072-361.073 and 361.075-361.078.

(b) An applicant may not withdraw a permit application to circumvent the intent of Subsection (a). (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

**Sec. 361.075. DELEGATION OF AIR CONTROL BOARD AUTHORITY.** The Texas Air Control Board may delegate to its executive director the powers and duties conferred on the board under Sections 361.072 and 361.073. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(ii) (part).)

**Sec. 361.076. OTHER STATE AGENCIES' REVIEW OF PERMIT APPLICATION.** (a) An agency other than the Texas Air Control Board may review the lead agency's proposed action concerning a permit application and determine if its concerns have been adequately addressed if the agency:

- (1) might otherwise have jurisdiction for permitting the facility; and
- (2) requested an opportunity to review the lead agency's proposed action.

(b) The other agency may review the lead agency's proposed action:

- (1) after the lead agency completes its technical review of the permit application; and
- (2) for a period of 20 days after the date on which the lead agency's technical review period ends.

(c) If the other agency determines that its concerns have not been adequately addressed, the other agency's sole remedy concerning the permit is to present its concerns in the permit proceedings of the lead agency.

(d) The other agency is entitled to:

- (1) request a hearing;
- (2) intervene as a matter of law;
- (3) seek judicial review; and

(4) enforce each aspect of a lead agency permit concerning the other agency's jurisdiction. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(iii).)

**Sec. 361.077. EXEMPTION OF CERTAIN FACILITIES THAT BURN HAZARDOUS WASTE.** Sections 361.070-361.076 do not apply to a facility that burns hazardous waste unless the facility is required to obtain a permit for the burning from the commission under rules adopted by the commission under a state hazardous waste regulatory program. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(iv).)

**Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW.** This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(A)(v).)

**Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION; HEARING PROCEDURES.** (a) The board of health and the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is administratively complete as determined by the department or the commission. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part).)

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B) (part).)

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR LANDFILL PERMIT. (a) The department shall give public notice of an opportunity for a hearing on an application for a landfill permit at least once each week for two consecutive weeks beginning not later than the 14th day from the last day allowed to request the hearing.

(b) The notice shall be published in the newspaper of the largest general circulation that is published in the county in which the proposed landfill will be located, unless a newspaper is not published in the county, in which case the notice shall be published in a newspaper of general circulation in the county.

(c) The department shall mail notice to each residence, business, and owner of real property located within one mile of the proposed landfill listed in the real property records of the county in which the landfill is sought to be permitted as of the date the department determines the permit application is administratively complete. The notice must be sent by certified or registered mail, return receipt requested, and be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(d) The department shall presume that the notice requirements under Subsection (c) have been complied with on the applicant's verification to the department that the mailings were deposited as required by that subsection unless it is demonstrated by at least 35 percent of the affected parties that the applicant did not comply with that subsection.

(e) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(B), as amended by Ch. 781, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected, the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing.

(d) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(e) A person who, on or before November 19, 1980, began on-site processing, storing, or disposing of hazardous waste under this section and who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110. (V.A.C.S. Art. 4477-7, Sec. 4(f)(2).)

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the department or the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the department, commission, or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate county tax rolls at the time of the mailing.

(c) The affidavit of the department or commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the tax rolls at

the time of mailing, is prima facie evidence of proper mailing. (V.A.C.S. Art. 4477-7, Sec. 4(e)(4)(C) (part).)

**Sec. 361.084. COMPLIANCE SUMMARIES.** (a) The board of health and the commission each by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities under each agency's jurisdiction.

(b) The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste facility permit with agency rules, permits, or other orders concerning solid waste management may be:

- (1) offered by a party at a hearing concerning the application; and
- (2) admitted into evidence subject to applicable rules of evidence.

(d) The agency shall consider all evidence admitted, including compliance history, in determining whether to issue, amend, extend, or renew a permit. (V.A.C.S. Art. 4477-7, Sec. 4(e)(11).)

**Sec. 361.085. FINANCIAL ASSURANCE BY PERMIT APPLICANT.** (a) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(b) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(c) An agency may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(d) The agency to which the application is submitted shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(e) Financial requirements established by the agency must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(f) The department and the commission may each:

- (1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and
- (2) spend the funds from the financial assurance arrangement to close the facility.

(g) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the department or commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(h) In addition to other forms of financial assurance authorized by rules of the board of health or commission, the agency may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

- (1) a bank chartered by the state or the federal government; and
- (2) federally insured and its financial practices are regulated by the state or the federal government. (V.A.C.S. Art. 4477-7, Sec. 4(e)(5).)

Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) A separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit. (V.A.C.S. Art. 4477-7, Secs. 4(e)(2) (part), (7).)

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit. (V.A.C.S. Art. 4477-7, Sec. 4(e)(2) (part).)

Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION, AND RENEWAL; NOTICE AND HEARING. (a) The department or the commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the department or commission, as appropriate.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Before a permit is issued, amended, extended, or renewed, the agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected. The agency may also hold a hearing on its own motion. (V.A.C.S. Art. 4477-7, Secs. 4(e)(3), (4).)

Sec. 361.089. PERMIT AMENDMENT OR REVOCATION; NOTICE AND HEARING. (a) The department or commission may, for good cause, amend or revoke a permit it issues for reasons pertaining to public health, air or water pollution, or land use, or for a violation of this chapter or other applicable laws or rules controlling the management of solid waste.

(b) Except as provided by Section 361.110, the department or commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder and persons affected. The department or commission may also hold a hearing on its own motion.

(c) The board of health and the commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the department or commission and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-7, Sec. 4(e)(8).)

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity. (V.A.C.S. Art. 4477-7, Sec. 4(f)(1).)

**Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS; CRIMINAL PENALTY.** (a) A solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the department and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the department to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the department that includes the approved route, date, and time; and

(4) a department inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The department may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The board of health may adopt rules of procedure necessary to carry out the permit program.

(c) The department may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The department shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the department for the compensation and expenses as provided by this section.

(d) The department shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The department shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the department shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The department may provide for payments in installments and shall specify the date by which each payment must be made to the department.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The department's order assessing costs is effective until the department:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The board of health may adopt rules necessary to carry out this section.

(i) An operator of a solid waste facility or a solid waste hauler commits an offense if the operator or hauler disposes of solid waste in a completely enclosed container or vehicle at a solid waste site or operation permitted as a Type IV landfill:

- (1) without having in possession the special permit required by this section;
- (2) on a date or time not authorized by the department; or
- (3) without a department inspector present to verify that the solid waste is free of putrescible, hazardous, and infectious waste.
- (j) An offense under this section is a Class B misdemeanor.
- (k) Penalties under this section are in addition to any other penalty applicable under this chapter.

(l) This section does not apply to:

- (1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the department, on certification to the department by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or
- (2) an enclosed vehicle of a municipality if the vehicle has a permit issued by the department to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the department that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.
- (m) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

- (1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or
- (2) provide food for or attract birds, animals, or disease vectors. (V.A.C.S. Art. 4477-7, Sec. 4A, as added by Ch. 1119, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.092. PERMIT FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The department and the commission may each require a permit to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The department or the commission shall issue a permit under this section in the same manner as provided by this subchapter for issuance of a permit to operate and maintain a solid waste facility.

(c) Each agency shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained. (V.A.C.S. Art. 4477-7, Sec. 4(j).)

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS. (a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish. (V.A.C.S. Art. 4477-7, Sec. 4(e)(9).)

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the department or the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

Sec. 361.095. APPLICANT FOR HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT EXEMPT FROM LOCAL PERMIT. (a) An applicant for a permit under this

subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

**Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION.** (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes. (V.A.C.S. Art. 4477-7, Sec. 4(e)(6) (part).)

**Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY.** The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS.** (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE ZONE OF SOLE SOURCE AQUIFER.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.102. PROHIBITION ON PERMIT FOR FACILITY WITHIN 1,000 FEET OF RESIDENCE, CHURCH, SCHOOL, OR PARK.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, or dedicated public park that is in use:

(1) when the notice of intent to file a permit application is filed with the commission; or

(2) if no notice of intent is filed, when the permit application is filed with the commission. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY.** The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

- (1) flood hazards;
- (2) discharge from or recharge to a groundwater aquifer;
- (3) soil conditions;
- (4) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (5) active geological processes;
- (6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or
- (7) critical habitat of endangered species. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA.** (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS.** The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably



available to manage the types and classes of hazardous waste that might be disposed of at the landfill. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.107. HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES.** The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.108. ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL.** The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

- (1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;
- (2) the costs associated with the above grade construction; and
- (3) the potential adverse effects, if any, that would be associated with the above grade construction. (V.A.C.S. Art. 4477-7, Sec. 4(c) (part).)

**Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY.** The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

- (1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;
- (2) the applicant for a proposed hazardous waste management facility not located in an area of industrial land use has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be reasonably minimized or mitigated; and
- (3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed. (V.A.C.S. Art. 4477-7, Sec. 4(e)(13).)

**Sec. 361.110. TERMINATION OF AUTHORIZATION OR PERMIT.** Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

- (1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;
- (2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or
- (3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988. (V.A.C.S. Art. 4477-7, Sec. 4(l).)

[Sections 361.111-361.130 reserved for expansion]

#### **SUBCHAPTER D. HAZARDOUS WASTE GENERATION, FACILITY, AND DISPOSAL; FEES AND FUNDS**

**Sec. 361.131. DEFINITIONS.** In this subchapter:

- (1) "Dry weight" means the weight of constituents other than water.

(2) "Generator of hazardous waste" or "generator" means a person whose act or process produces hazardous waste or whose act first causes a hazardous waste to be regulated by the commission.

(3) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) as of August 26, 1985.

(4) "Land disposal" does not include:

- (A) the normal application of agricultural chemicals or fertilizers; or
- (B) disposal of hazardous waste retrieved or created due to remediation of an inactive hazardous waste disposal facility for which a federal or state permit is not issued after August 26, 1985.

(5) "Land disposal facility" includes:

- (A) a landfill;
- (B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;
- (C) a waste pile;
- (D) a facility at which land farming or a land application process is used; and
- (E) an injection well.

(6) "Primary metals high volume, low-hazard waste" is hazardous waste from the extraction, beneficiation, and processing of ores, minerals, or scrap metal and whose constituents are subject to the criteria for the identification or listing as a hazardous waste under Section 3001(a) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and account for 10 percent or less of its total dry weight volume. (V.A.C.S. Art. 4477-7, Sec. 12(a).)

Sec. 361.132. HAZARDOUS WASTE GENERATION AND FACILITY FEES FUND.

(a) The hazardous waste generation and facility fees fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

- (1) fees imposed on hazardous waste generation and permitted or interim status solid waste facilities for processing, storing, or disposing of hazardous waste under Sections 361.134 and 361.135; and
- (2) interest and penalties imposed under Section 361.137 for late payment of hazardous waste generation or facility fees.

(c) The commission may use the money in the fund only for regulation of hazardous waste, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) The total amount of hazardous waste generation fees and facility fees collected and deposited to the credit of the hazardous waste generation and facility fees fund in a fiscal year may not be less than \$3.5 million or more than \$4.5 million. (V.A.C.S. Art. 4477-7, Secs. 11a(a) (part), (b); 12(b) (part), (c) (part).)

Sec. 361.133. HAZARDOUS WASTE DISPOSAL FEE FUND. (a) The hazardous waste disposal fee fund is in the state treasury.

(b) The fund consists of money collected by the commission from:

- (1) fees imposed on the operator of a solid waste facility for disposal of hazardous waste under Section 361.136;
- (2) interest and penalties imposed under Section 361.137 for late payment of a disposal fee or late filing of a report; and
- (3) money paid by a person liable for facility cleanup and maintenance under Subchapter F.

(c) The commission may use the money collected and deposited to the credit of the fund under this section only for:

(1) necessary and appropriate removal and remedial action at sites at which hazardous waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the fund for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance; and

(3) expenses concerning compliance with:

(A) the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.);

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I. (V.A.C.S. Art. 4477-7, Secs. 11a(a) (part), (c), (d), 12(d) (part).)

Sec. 361.134. HAZARDOUS WASTE GENERATION FEE. (a) The annual hazardous waste generation fee prescribed by this section is imposed on each generator of hazardous waste who generates hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of hazardous waste to register its activities; and

(2) collect the annual hazardous waste generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 or more than \$15,000.

(d) A generator of less than 100 kilograms of hazardous waste each month is exempt from the payment of a generation fee under this section. (V.A.C.S. Art. 4477-7, Sec. 12(b) (part).)

Sec. 361.135. HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee is imposed on each facility that holds one or more permits or is operating a hazardous waste management unit subject to permit authorization to process, store, or dispose of hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged. In adopting the schedule, the commission shall consider:

(1) the permitted capacity of facilities; and

(2) variations in the costs necessary to regulate different types of facilities.

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications. (V.A.C.S. Art. 4477-7, Sec. 12(c) (part).)

Sec. 361.136. HAZARDOUS WASTE DISPOSAL FEE. (a) A fee for each dry weight ton of hazardous waste deposited in a land disposal facility is imposed on the operator of a hazardous waste land disposal facility.

(b) The commission by rule shall:

(1) set the fee for each dry weight ton of hazardous waste, as provided by Subsection (e); and

(2) provide for methods of computing the dry weight of hazardous waste.

(c) The amount of the fee for primary metals high volume, low-hazard waste is 25 percent of the amount of the fee set under Subsection (b)(1).

(d) The generator of hazardous waste shall provide certification:

(1) of the computation to the operator of the dry weight of the hazardous waste to be disposed of; or

(2) that the composition of the industrial solid waste meets the definition of a primary metals high volume, low-hazard waste, in the case of primary metals high volume, low-hazard waste.

(e) The commission by rule may provide for a method to determine or estimate the dry weight of small volumes of hazardous waste delivered to commercial hazardous waste disposal facilities for which costs of analyzing the waste to determine dry weight are disproportionate.

(f) The commission by rule shall set the hazardous waste disposal fee and revise it as necessary so that the amount of money collected each biennium equals between \$10 million and \$12 million or an amount set by legislative appropriation.

(g) In setting a different amount by legislative appropriation to be raised in fees during a biennium, the legislature shall consider only:

(1) the amount necessary to raise the required state matches for remedial actions under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(2) the cost of state-funded remedial actions under Subchapter F.

(h) If during the biennium additional funds are necessary to match newly available federal funds under the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.), the commission may increase the fee to collect the necessary matching funds.

(i) The commission shall collect the hazardous waste disposal fee quarterly on dates established by rule. (V.A.C.S. Art. 4477-7, Sec. 12(d) (part).)

Sec. 361.137. INTEREST AND PENALTIES. (a) Interest at an annual rate of 15 percent of the amount of a fee due under Section 361.134, 361.135, or 361.136 and unpaid accrues from the date on which the fee is due.

(b) A person is subject to a civil penalty of \$100 for each day the violation continues for failure to timely submit a report as required by commission rule under Section 361.035.

(c) Interest collected under this section for late payment of generation or facility fees shall be deposited in the state treasury to the credit of the hazardous waste generation and facility fees fund.

(d) Interest and penalties collected under this section for late payment of disposal fees and late filing of reports shall be deposited in the state treasury to the credit of the hazardous waste disposal fee fund. (V.A.C.S. Art. 4477-7, Sec. 14a.)

[Sections 361.138-361.150 reserved for expansion]

#### SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the department or the commission from exercising the powers vested in the department or the commission under other provisions of this chapter, including the provisions authorizing the department and the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The department and the commission, each acting within its separate scope of jurisdiction, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter. (V.A.C.S. Art. 4477-7, Sec. 5(a) (part).)

**Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE.** The powers specified by Sections 361.154–361.162 and Sections 364.011 and 364.012 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies. (V.A.C.S. Art. 4477–7, Sec. 5(a) (part).)

**Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAM; FEES.** A county may:

(1) appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services; and

(2) develop county solid waste plans and coordinate those plans with the plans of local governments, regional planning agencies, other governmental entities, the department, and the commission. (V.A.C.S. Art. 4477–7, Secs. 5(b), (c).)

**Sec. 361.154. COUNTY LICENSING AUTHORITY.** (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the board of health or the commission, as appropriate; and

(2) approved by the department or the commission, as appropriate.

(c) Sections 361.155–361.161 apply if a county exercises licensing authority under this section. (V.A.C.S. Art. 4477–7, Sec. 5(d) (part).)

**Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO STATE AGENCIES.** The county shall mail a copy of each license application with pertinent supporting data to the department, the commission, and the Texas Air Control Board. Each agency has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the affected agency. (V.A.C.S. Art. 4477–7, Sec. 5(d) (part).)

**Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY.** (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it. (V.A.C.S. Art. 4477–7, Sec. 5(d) (part).)

**Sec. 361.157. CONTENTS OF LICENSE.** A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license. (V.A.C.S. Art. 4477–7, Sec. 5(d) (part).)

**Sec. 361.158. LICENSE FEE.** (a) A county may charge a license fee not to exceed \$100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund. (V.A.C.S. Art. 4477–7, Sec. 5(d) (part).)

**Sec. 361.159. LICENSE ISSUANCE, AMENDMENT, EXTENSION, AND RENEWAL.** (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the department or the commission, as appropriate. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.160. LICENSE AMENDMENT AND REVOCATION. (a) A county may, for good cause, after hearing with notice to the license holder and to the state agencies specified by Section 361.155, revoke or amend a license it issues for reasons concerning:

(1) public health;

(2) air or water pollution;

(3) land use; or

(4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the department and the commission, each acting within its separate scope of jurisdiction, may for good cause amend or revoke a license issued by a county, after hearing with notice to:

(1) the license holder;

(2) the county that issued the license; and

(3) the other state agencies specified by Section 361.155. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.161. PERMIT FROM DEPARTMENT OR COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the department or the commission for the same facility. (V.A.C.S. Art. 4477-7, Sec. 5(d) (part).)

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES. (a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors. (V.A.C.S. Art. 4477-7, Sec. 5(e).)

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services. (V.A.C.S. Art. 4477-7, Sec. 5(h).)

Sec. 361.164. ENFORCEMENT. A county may enforce this chapter and the rules adopted by the board of health and the commission concerning the management of solid waste. (V.A.C.S. Art. 4477-7, Sec. 5(f).)

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective. (V.A.C.S. Art. 4477-7, Sec. 6.)

**Sec. 361.166. MUNICIPAL RESTRICTIONS.** A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations. (V.A.C.S. Art. 4477-7, Sec. 6a(a).)

**Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION.** A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality. (V.A.C.S. Art. 4477-7, Sec. 6(b).)

[Sections 361.168-361.180 reserved for expansion]

#### **SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES**

**Sec. 361.181. REGISTRY.** (a) The commission shall publish a registry:

(1) identifying each facility listed by the survey required under Section 12, Chapter 566, Acts of the 69th Legislature, Regular Session, 1985;

(2) assigning the relative priority of the need for action at each facility to remedy environmental and health problems resulting from the presence of hazardous waste at those facilities; and

(3) recommending actions to achieve effective, efficient, and timely cleanup or other resolution of the problems identified for each facility.

(b) A recommendation under Subsection (a)(3) is not the remedial investigation and feasibility study for the relevant facility but must form the basis for the study. (V.A.C.S. Art. 4477-7, Sec. 13(a) (part).)

**Sec. 361.182. INVESTIGATION OF FACILITIES LISTED IN REGISTRY.** The commission may, in accordance with Section 361.032, investigate:

(1) facilities listed in the registry; and

(2) areas or sites that it has reason to believe should be included in the registry. (V.A.C.S. Art. 4477-7, Sec. 13(b)(1).)

**Sec. 361.183. RELATIVE PRIORITY FOR ACTION AT EACH FACILITY LISTED IN REGISTRY.** The commission shall, in cooperation with the department and as part of the registry, reassess by January 1 of each year the relative priority of the need for action at each facility listed in the registry to remedy environmental and health problems resulting from the presence of hazardous waste at those facilities. The reassessments shall be made according to new information received from public hearings and other sources. (V.A.C.S. Art. 4477-7, Sec. 13(b)(2).)

**Sec. 361.184. REVISION OF REGISTRY; FILING NOTICE.** The commission shall:

(1) revise the registry periodically to:

(A) add facilities that may be an imminent and substantial endangerment to public health and safety or the environment; and

(B) delete facilities that have been cleaned up under this subchapter or removed from the registry under Section 361.186; and

(2) file an affidavit or notice in the real property records of the county in which a facility is located identifying those facilities included in and deleted from the registry. (V.A.C.S. Art. 4477-7, Secs. 13(c), (d).)

Sec. 361.185. NOTICE OF INCLUSION IN REGISTRY. (a) The commission shall notify in writing any person identified as responsible for all or any part of a facility or area that is not listed in the registry of the contemplated addition of the facility or area in the registry.

(b) The notice must be sent by certified mail, return receipt requested, to each named responsible person at the person's last known address not later than two months before the revised registry is published.

(c) The notice must include a description of the duties and restrictions imposed by Section 361.187.

(d) The failure to receive a notice mailed to a named responsible person under this section does not affect the responsibilities, duties, or liabilities imposed on the person. (V.A.C.S. Art. 4477-7, Secs. 13(e)(1) (part), (2), (3).)

Sec. 361.186. REQUEST FOR CHANGE IN REGISTRY. (a) An owner or operator of a facility or other named person responsible for a facility listed or to be listed in the registry of the commission under this subchapter may, by submitting a written statement setting forth the grounds of the request in the form as the commission may require, request the commission to:

- (1) delete the facility from the registry;
- (2) modify the facility's priority in the registry; or
- (3) modify information concerning the facility.

(b) The commission by rule shall establish procedures, including public hearings, for review of requests submitted under this section to delete a facility. (V.A.C.S. Art. 4477-7, Secs. 13(e)(4), (5) (part).)

Sec. 361.187. CHANGE IN USE OF FACILITY LISTED IN REGISTRY. (a) A person may not substantially change the manner in which a facility listed in the registry is used without notifying the commission and receiving the commission's written approval for the change.

(b) The commission by rule shall define a substantial change of use and include in the definition:

- (1) the erection of a building or other structure at the facility and similar actions;
- (2) the use of the facility for agricultural production;
- (3) the paving of the facility for use as a roadway or parking lot; and
- (4) the creation of a park or other public or private recreational facility on the facility.

(c) The notice under Subsection (a) must:

- (1) be in writing and addressed to the executive director;
- (2) include a brief description of the proposed change of use; and
- (3) be submitted at least 60 days before the day physical alteration of the land or construction occurs or, if no alteration or construction is required to initiate the change of use, at least 60 days before the date of change of use.

(d) The executive director may not approve a change of use under this section if the new use will:

- (1) interfere significantly with a proposed, ongoing, or completed hazardous waste facility remedial action program at the facility; or
- (2) expose the environment or public health to a significantly increased threat of harm. (V.A.C.S. Art. 4477-7, Secs. 13(f)(1), (2).)

Sec. 361.188. CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES. The cleanup of a facility identified under Section 361.181 by the commission in the registry



and that is an imminent and substantial endangerment to the public health and safety or the environment shall be expedited. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

**Sec. 361.189. PRIORITY OF USE OF FUNDS FOR CLEANUP.** (a) Payment for cleanup of a facility identified in the registry shall be made in the following order:

(1) by private funding;

(2) by federal funding; and

(3) by state funding from the hazardous waste permit and disposal fee, if approved by the legislature.

(b) If voluntary assistance from private sources is not available, federal funds must be used for facility cleanup if those funds are available when needed.

(c) State funds may be used only if funds from a liable person, an independent third person, or the federal government are not available when needed. (V.A.C.S. Art. 4477-7, Secs. 13(a) (part), (g)(1) (part).)

**Sec. 361.190. IMMEDIATE REMOVAL ACTION; RECOVERY OF COSTS.** (a) The commission may, with the funds available to the commission from the hazardous waste permit and disposal fees if approved by the legislature, undertake immediate removal action at a facility to alleviate irreversible or irreparable harm, if the commission after an investigation finds that:

(1) a release or threatened release of hazardous waste that is causing irreversible or irreparable harm to the public health and safety or the environment exists at a facility identified by the registry; and

(2) the immediacy of the situation makes it prejudicial to the public interest to delay action until:

(A) an administrative order can be issued to a person liable under Section 361.191; or

(B) a judgment can be entered in an appeal of an administrative order.

(b) Findings required under Subsection (a) must be made in writing and may be made ex parte. The findings are subject to judicial review under the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The reasonable expenses of immediate removal action taken by the commission under this section may be recovered from a person identified as liable under Subchapter I. The state may seek to recover the reasonable expenses in a court of appropriate jurisdiction. (V.A.C.S. Art. 4477-7, Sec. 13(g)(3) (part).)

**Sec. 361.191. ADMINISTRATIVE ORDER CONCERNING FACILITY LISTED IN REGISTRY.** (a) If the commission finds that there exists an actual or threatened release of hazardous waste at a hazardous waste facility listed in the registry that presents an imminent and substantial endangerment to the public health and safety or the environment, or after any immediate danger of irreversible or irreparable harm is alleviated under Section 361.190, the commission may issue an administrative order to:

(1) the owner or operator of the facility;

(2) any other person responsible for the release of hazardous waste or a threatened release at the facility; or

(3) each of the persons under Subdivisions (1) and (2).

(b) The order may require a person liable under Subchapter I to:

(1) develop a remedial action program at the facility, subject to the commission's approval; and

(2) implement the program within a reasonable time specified by the order.

(c) The provisions of Subchapters I, K, and L concerning administrative orders apply to an order issued under this section. (V.A.C.S. Art. 4477-7, Secs. 13(g)(2), (3) (part).)

Sec. 361.192. VOLUNTARY CLEANUP OF FACILITY. (a) If possible, persons identified as persons liable under Subchapter I should be notified by the commission of an opportunity to participate voluntarily in a cleanup of the facility.

(b) If all persons liable under Subchapter I do not volunteer to develop and implement a remedial action program for the facility, private individuals or entities that volunteer to participate in cleanup activities should be allowed to do so and may recover costs under Section 361.344 from liable persons who do not participate in the voluntary cleanup.

(c) If no persons liable under Subchapter I volunteer to develop and implement a remedial action program for the facility, independent third persons who volunteer to participate in the cleanup of the facility should be permitted to contract with the commission to do so. Independent third persons may recover costs under Section 361.344 from liable persons who do not participate in the voluntary cleanup. (V.A.C.S. Art. 4477-7, Sec. 13(g)(1) (part).)

Sec. 361.193. REMEDIAL ACTION PROGRAM BY COMMISSION ON FAILURE OF RESPONSIBLE PERSON. (a) The commission may develop and implement a remedial action program for a facility if:

(1) a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment fails to do so within the time prescribed by the order; and

(2) no third person agrees to develop and implement a remedial action program for the facility under Section 361.192(c).

(b) Persons to whom the order is issued shall pay the commission's reasonable expenses of developing and implementing the remedial action program. The state may recover those reasonable expenses in a court of appropriate jurisdiction.

(c) An action instituted by the commission under this section is subject to Subchapters I, K, and L. (V.A.C.S. Art. 4477-7, Sec. 13(g)(4).)

Sec. 361.194. REMEDIAL ACTION PROGRAM BY COMMISSION IF NO RESPONSIBLE PERSON. (a) The commission may develop and implement a remedial action program for a facility identified by the registry if:

(1) the commission finds that at the facility there exists a release or threatened release of hazardous waste that presents an imminent and substantial endangerment to the public health and safety or the environment;

(2) after a reasonable attempt to determine who may be liable for the release or threatened release in accordance with Section 361.192, the commission cannot:

(A) determine who may be liable; or

(B) locate a person who may be liable; and

(3) no independent third person agrees to develop and implement a remedial action program for the facility under Section 361.192(c).

(b) Federal funds shall be used for a cleanup under this section to the extent available when needed in accordance with Section 361.189(b).

(c) The commission shall make every effort to obtain appropriate relief from a person subsequently identified or located who is liable for the release or threatened release of hazardous waste at the facility, including recovery of:

(1) the cost of developing and implementing a remedial action program;

(2) payment of the cost of the program; and

(3) reasonable expenses incurred by the state. (V.A.C.S. Art. 4477-7, Sec. 13(g)(5).)

Sec. 361.195. GOAL OF REMEDIAL ACTION PROGRAM. (a) The goal of a remedial action program under this subchapter is to eliminate the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of hazardous waste at a facility.

(b) The commission shall determine the appropriate extent of remedy at a particular facility by selecting the lowest cost remedial alternative that:

(1) is technologically feasible and reliable; and

(2) effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 13(g)(6).)

**Sec. 361.196. LIEN FOR CLEANUP ACTION.** (a) The state has a lien on the real property, and any interest in the real property, that is subject to or affected by a cleanup action for cleanup costs for which a person is liable to the state.

(b) The lien imposed by this section is perfected and attaches to the affected real property when and not before an affidavit is recorded in accordance with Subsection (d) in the county in which the real property is located.

(c) The affidavit must be executed by an authorized representative of the commission and must show:

- (1) the name and address of each person liable for the costs;
- (2) a description of the real property that is affected by the cleanup action; and
- (3) the amount of the costs and the amount due.

(d) The county clerk shall:

- (1) record the affidavit in records kept for that purpose; and
- (2) index the affidavit under the name of each person liable for the costs.

(e) The lien is effective until the liability for the costs is satisfied or becomes unenforceable by operation of law. The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied. (V.A.C.S. Art. 4477-7, Secs. 13(g)(7)(A), (B), (C), (D).)

**Sec. 361.197. VALIDITY AND ENFORCEABILITY OF LIEN.** The lien imposed by Section 361.196 is not valid or enforceable if real property or an interest in the real property or a mortgage, lien, or other encumbrance on or against the property is acquired before the lien is perfected unless the person acquiring the real property or an interest in the real property or acquiring the mortgage, lien, or other encumbrance:

- (1) had or reasonably should have had actual notice or knowledge that the real property is affected by a cleanup action; or
- (2) knows that the state has incurred cleanup costs. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(F).)

**Sec. 361.198. LIEN FORECLOSURE.** The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(E).)

**Sec. 361.199. FILING OF BOND.** (a) If a lien is perfected or attempted to be perfected as provided by Section 361.196, the owner of the real property affected by the lien may file a bond to indemnify against the lien.

(b) The bond must be filed with the county clerk of the county in which the real property subject to the lien is located.

(c) An action to establish, enforce, or foreclose a lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond.

(d) The bond must:

- (1) describe the real property on which the lien is claimed;
- (2) refer to the lien claimed in a manner sufficient to identify it;
- (3) be in an amount double the amount of the costs due stated in the lien;
- (4) be payable to the commission;
- (5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and
- (6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property. (V.A.C.S. Art. 4477-7, Secs. 13(g)(7)(G), (H).)

Sec. 361.200. NOTICE OF BOND TO NAMED OBLIGEE. (a) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice.

(b) The notice may be served on each obligee by having a copy delivered to the obligee by a person competent to make oath of the delivery.

(c) The original notice shall be returned to the county clerk, and the person making service of copy shall make an oath on the back of each copy showing on whom and on what date the copy is served. The county clerk shall record the bond notice and return in records kept for that purpose.

(d) In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(I).)

Sec. 361.201. SUIT ON BOND BY COMMISSION. (a) The commission may sue on the bond after the 30th day following the date on which the notice is served under Section 361.200 but may not sue on the bond later than one year after the date on which the notice is served.

(b) If the commission recovers in a suit on the lien or the bond, it is entitled to recover reasonable attorney's fees. (V.A.C.S. Art. 4477-7, Sec. 13(g)(7)(J).)

Sec. 361.202. COSTS OF CLEANUP PAYABLE TO COMMISSION FROM PERMIT FEES. (a) Money for actions taken or to be taken by the commission to eliminate an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous waste permit and disposal fees, if approved by the legislature.

(b) Costs payable to the commission under this section include costs of inspecting or sampling and laboratory analysis of waste, soil, air, surface water, and groundwater done for the commission. (V.A.C.S. Art. 4477-7, Sec. 13(g)(8).)

Sec. 361.203. PRIVATE PARTY CLEANUP; IMMUNITY. (a) The commission shall seek cleanup of a facility by private individuals or entities before spending federal or state funds for the cleanup.

(b) Private individuals or entities shall coordinate with ongoing federal and state hazardous waste programs and obtain necessary approvals for any cleanup.

(c) An action taken by the private individual or entity to contain or remove a release or threatened release in accordance with an approved remedial action plan is not an admission of liability for the release or threatened release.

(d) If a private individual's or entity's actions to contain or remove a release or threatened release comply with an approved remedial action plan, the individual or entity is not liable for additional cleanup costs at the facility resulting solely from an act or omission of that individual or entity, unless the cleanup costs are caused by that individual's or entity's gross negligence or wilful misconduct.

(e) Except as specifically provided, this section does not expand or diminish the common law tort liability, if any, of a private individual or entity participating in a cleanup action for civil damages to a third person. (V.A.C.S. Art. 4477-7, Sec. 13(g)(9).)

[Sections 361.204-361.220 reserved for expansion]

#### SUBCHAPTER G. ENFORCEMENT; CRIMINAL AND CIVIL PENALTIES

Sec. 361.221. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly:

(1) transports, or causes to be transported, for storage, processing, or disposal, any hazardous waste to any location that does not have a permit as required by the commission exercising jurisdiction under this chapter;

(2) stores, processes, or disposes of, or causes to be stored, processed, or disposed of, any hazardous waste without a permit as required by the commission exercising

jurisdiction under this chapter or in knowing violation of any material condition or requirement of a permit or of an applicable interim status rule or standard;

(3) omits or causes to be omitted material information or makes or causes to be made any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used to comply with any requirement of this chapter applicable to hazardous waste;

(4) generates, transports, stores, processes, or disposes of, or otherwise handles, or causes to be generated, transported, stored, processed, disposed of, or otherwise handled, hazardous waste, whether the activity took place before or after September 1, 1981, and who knowingly destroys, alters, conceals, or does not file, or causes to be destroyed, altered, concealed, or not filed, any record, application, manifest, report, or other document required to be maintained or filed to comply with the rules adopted by the commission under this chapter; or

(5) transports without a manifest, or causes to be transported without a manifest, any hazardous waste required by rules adopted by the commission under this chapter to be accompanied by a manifest.

(b) Except as provided by Subsection (c), a person who commits an offense under this section shall be subject on conviction to:

(1) a fine of not less than \$100 or more than \$50,000 for each act of violation and each day of violation;

(2) imprisonment not to exceed five years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed two years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(c) If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, the offense is punishable by:

(1) a fine of not less than \$200 or more than \$100,000 for each day of violation;

(2) imprisonment not to exceed 10 years for a violation under Subsection (a)(1) or (2) or imprisonment not to exceed four years for any other violation under Subsection (a); or

(3) both fine and imprisonment.

(d) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(e) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.

(f) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals. (V.A.C.S. Art. 4477-7, Secs. 8(b), (d), (e) (part), (f) (part).)

**Sec. 361.222. KNOWING ENDANGERMENT; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly transports, processes, stores, exports, or disposes of, or causes to be transported, processed, stored, exported, or disposed of, hazardous waste in violation of this chapter and the person knows at the time that the person by the person's conduct places another person in imminent danger of death or serious bodily injury.

(b) An individual who commits an offense under this section shall be subject on conviction to:

(1) a fine of not more than \$250,000;

(2) imprisonment for not more than 15 years; or

(3) both fine and imprisonment.

(c) A person, other than an individual, that commits an offense under this section shall be subject on conviction to a fine of not more than \$1 million.

(d) It is an affirmative defense to a prosecution under this section that the person endangered consented to the conduct charged and that the danger and conduct charged were reasonably foreseeable hazards of:

(1) an occupation, business, or profession; or

(2) medical treatment or medical or scientific experimentation conducted by professionally approved methods if the endangered person had been made aware of the risks involved before giving consent.

(e) Venue for prosecution for an alleged violation under this section is in the county in which the violation is alleged to have occurred or in Travis County.

(f) Unless otherwise provided by this chapter, a fine recovered under this section shall be equally divided between the state and the local government or governments that first brought the cause.

(g) In this section, "person" means an individual, corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of individuals. (V.A.C.S. Art. 4477-7, Secs. 8(c), (d), (e) (part), (f) (part).)

Sec. 361.223. CIVIL PENALTIES. (a) A person may not cause, suffer, allow, or permit the collection, storage, handling, transportation, processing, or disposal of solid waste or the use or operation of a solid waste facility to store, process, or dispose of solid waste or to extract materials under Section 361.092 in violation of this chapter or a rule, permit, license, or other order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs.

(b) Any person who violates any provision of this chapter or any rule, permit, license, or order of the department or commission, or a county or a political subdivision exercising the authority granted by Section 361.165 in whose jurisdiction the violation occurs is subject to a civil penalty of not less than \$100 or more than \$25,000 for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided by this section.

(c) A civil penalty recovered in a suit first brought by a local government or governments under this chapter shall be equally divided between the state and the local government or governments that first brought the suit, and the state shall deposit its recovery to the credit of the general revenue fund.

(d) The penalties imposed under this section do not apply to failure to pay a fee under Sections 361.134-361.136 or failure to file a report under Section 361.035. Subsection (c) does not apply to interest and penalties imposed under Section 361.137. (V.A.C.S. Art. 4477-7, Secs. 8(a)(1), (2), (9); (i) as amended by Ch. 279, Acts 70th Leg., Reg. Sess., 1987.)

Sec. 361.224. SUIT BY STATE. (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or commission, the department or the commission may request a civil suit to be brought in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

(2) the assessment and recovery of a civil penalty as provided by this subchapter, as the court may consider proper; or

(3) both the injunctive relief and civil penalty.

(b) At the request of the commissioner or the executive director, the attorney general shall bring and conduct the suit in the name of the state. (V.A.C.S. Art. 4477-7, Sec. 8(a)(3) (part).)

Sec. 361.225. SUIT BY COUNTY OR POLITICAL SUBDIVISION. If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in the jurisdiction of that county or political subdivision, the county or political subdivision, in

the same manner as the commission and the department, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation. (V.A.C.S. Art. 4477-7, Sec. 8(a)(4).)

Sec. 361.226. **SUIT BY MUNICIPALITY.** If it appears that a violation or threat of violation of any provision of this chapter or any rule, permit, license, or other order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165 has occurred or is occurring in a municipality or its extraterritorial jurisdiction, or is causing or will cause injury to or an adverse effect on the health, welfare, or physical property of the municipality or its inhabitants, the municipality, in the same manner as the department and the commission, may institute a civil suit in a district court by its own attorney for the injunctive relief or civil penalty, or both, as authorized by Section 361.224, against the person who committed, is committing, or is threatening to commit the violation. (V.A.C.S. Art. 4477-7, Sec. 8(a)(5).)

Sec. 361.227. **VENUE.** A suit for injunctive relief or for recovery of a civil penalty, or for both, may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs. (V.A.C.S. Art. 4477-7, Sec. 8(a)(6) (part).)

Sec. 361.228. **INJUNCTION.** (a) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or of any rule, permit, or other order of the department or the commission, the district court shall grant appropriate injunctive relief.

(b) In a suit brought to enjoin a violation or threat of violation of this chapter or of any rule, permit, license, or order of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the court may grant any prohibitory or mandatory injunction warranted by the facts, including a temporary restraining order after notice and hearing, a temporary injunction, and a permanent injunction. The court shall grant injunctive relief without bond or other undertaking by the governmental entity. (V.A.C.S. Art. 4477-7, Secs. 8(a)(3) (part), (6) (part).)

Sec. 361.229. **PARTIES IN SUIT BY LOCAL GOVERNMENT.** In a suit brought by a local government under Section 361.225 or 361.226, the department and the commission are necessary and indispensable parties. (V.A.C.S. Art. 4477-7, Sec. 8(a)(7).)

[Sections 361.230-361.250 reserved for expansion]

#### **SUBCHAPTER H. ENFORCEMENT; ADMINISTRATIVE PENALTIES**

Sec. 361.251. **ADMINISTRATIVE PENALTY BY DEPARTMENT.** (a) The department may assess a civil penalty against a person as provided by this section if the person violates:

- (1) a provision of this chapter that is under the department's jurisdiction; or
- (2) a rule adopted by the board of health or order, license, or permit issued by the department under this chapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health or safety of the public;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report:

- (1) stating the facts that support the conclusion;
- (2) recommending that a civil penalty under this section be imposed; and
- (3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may give to the commissioner written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or does not timely respond to the notice, the commissioner or the commissioner's designee by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the department's report. If the commissioner or the commissioner's designee assesses the penalty, the department shall give written notice to the person charged of the decision and the person shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall order and shall give notice of the hearing.

(i) The hearing shall be held by a hearing examiner designated by the commissioner.

(j) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(k) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess a civil penalty or may find that no violation occurred.

(l) All proceedings under Subsections (h)-(k) are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) The commissioner shall give notice of the commissioner's decision to the person charged, and if the commissioner finds that a violation has occurred and assesses a civil penalty, the commissioner shall give written notice to the person charged of:

- (1) the commissioner's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commissioner's order.

(n) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(o) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (n), shall:

- (1) send the amount of the penalty to the commissioner for placement in an escrow account; or
- (2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(p) A person who fails to comply with Subsection (o) waives the right to judicial review, and the commissioner may refer the matter to the attorney general for enforcement.



(q) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(r) If the penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(s) The accrued interest on amounts remitted by the commissioner shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the commissioner under Subsection (o) and ending on the date the penalty is remitted.

(t) A penalty collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 8a(a)-(i), (j) (part), (k)-(n).)

**Sec. 361.252. ADMINISTRATIVE PENALTY BY COMMISSION.** (a) The commission may assess a civil penalty against a person as provided by this section if the person violates:

(1) a provision of this chapter concerning solid waste that is under the commission's jurisdiction;

(2) a rule or order adopted by the commission concerning solid waste that is under the commission's jurisdiction; or

(3) a solid waste permit or registration issued by the commission under this chapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, or permit issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act with special emphasis on the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on a receiving stream or underground water reservoir, on the property owners along a receiving stream or underground water reservoir, and on water users of a receiving stream or underground water reservoir;

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation;

(D) economic benefit gained by the violation; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director concludes that a violation has occurred, the executive director may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that a civil penalty under this section be imposed; and

(3) recommending the amount of the penalty, which shall be based on the factors prescribed by Subsection (c), including an analysis of each factor for the commission.

(e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged with the violation. The notice must include:

- (1) a brief summary of the charges;
- (2) a statement of the amount of the penalty recommended; and
- (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Not later than the 20th day after the date on which notice is received, the person charged may give to the commission written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission by order shall assess the penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision.

(h) If the person charged requests or the commission orders a hearing, the commission shall order and shall give notice of the hearing. The commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. In making a penalty decision, the commission shall analyze each factor prescribed by Subsection (c). All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commission shall give notice of its decision to the person charged, and if the commission finds that a violation has occurred and assesses a civil penalty, the commission shall give written notice to the person charged of:

- (1) the commission's findings;
- (2) the amount of the penalty; and
- (3) the person's right to judicial review of the commission's order.

(j) If the commission is required to give notice of a civil penalty under Subsection (g) or (i), the commission shall file notice of its decision in the Texas Register not later than the 10th day after the date on which the decision is adopted.

(k) Not later than the 30th day after the date on which the commission's order is final, the person charged with the penalty shall pay the penalty in full or file a petition for judicial review.

(l) If the person seeks judicial review of the fact of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (k), shall:

- (1) send the amount of the penalty to the commission for placement in an escrow account; or
- (2) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(m) A person who fails to comply with Subsection (l) waives the right to judicial review, and the commission or the executive director may refer the matter to the attorney general for enforcement.

(n) Judicial review of the order or decision of the commission assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(o) The commission may compromise, modify, or remit, with or without conditions, a civil penalty imposed under this section.

(p) Payment of a penalty under this section is full and complete satisfaction of the violation for which the administrative penalty is assessed and precludes any other civil or criminal penalty for the same violation.

(q) A penalty collected under this section shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7, Secs. 8b(a)-(i), (j) (part), (k)-(o).)

[Sections 361.253-361.270 reserved for expansion]

**SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING  
IMMINENT AND SUBSTANTIAL ENDANGERMENT**

**Sec. 361.271. PERSONS RESPONSIBLE FOR SOLID WASTE.** For the purpose of this subchapter, a person is responsible for solid waste if the person:

- (1) is any owner or operator of a solid waste facility;
- (2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;
- (3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:
  - (A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or
  - (B) the site to which the solid waste was transported that contains the solid waste; or
- (4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person. (V.A.C.S. Art. 4477-7, Sec. 8(g)(2) (part).)

**Sec. 361.272. ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT.** (a) The department or the commission, as appropriate, may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

- (1) from a solid waste facility at which solid waste is stored, processed, or disposed of; or
  - (2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.
- (b) An administrative order may be issued under this section to:

- (1) restrain the person from allowing or continuing the release or threatened release; and
- (2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

- (1) be delivered to the persons identified by the order by certified mail, return receipt requested;
- (2) be delivered by hand delivery to the person identified by the order; or
- (3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:
  - (A) once in the Texas Register; and
  - (B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address. (V.A.C.S. Art. 4477-7, Secs. 8(g)(1) (part), (2) (part).)

**Sec. 361.273. INJUNCTION AS ALTERNATIVE TO ADMINISTRATIVE ORDER.** The department or commission, as appropriate, may cause a civil suit for injunctive relief to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

- (1) restrain a person responsible for solid waste under Section 361.271 from allowing or continuing the release or threatened release; and

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the department or commission. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

Sec. 361.275. DEFENSES. (a) A person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third person; or
- (4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

(1) is an employee or agent of the defendant; or

(2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

(A) the defendant has satisfied Subsection (b);

(B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

- (4) the obvious presence or likely presence of contamination of the property; and
- (5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility. (V.A.C.S. Art. 4477-7, Secs. 8(g)(3), (6).)

**Sec. 361.276. APPORTIONMENT OF LIABILITY.** (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan. (V.A.C.S. Art. 4477-7, Sec. 8(g)(4).)

**Sec. 361.277. JUDGMENT BY STATE AGAINST NONSETTLING PARTY; ACTION FOR CONTRIBUTION BY NONSETTLING PARTY.** (a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under Section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend.

(b) In an action for contribution brought by a nonsettling person against a settling person, the nonsettling person has the burden to prove that the amount of cleanup costs that a settling person agreed to pay under an agreement with the state is unreasonable considering the factors under Section 361.343 and the need to undertake timely cleanup action concerning the release or threatened release. (V.A.C.S. Art. 4477-7, Sec. 8(g)(5).)

**Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR.** (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

- (1) identifying a hazardous or solid waste site;
- (2) developing a plan to clean up the site; or
- (3) supervising or implementing the plan to clean up the site. (V.A.C.S. Art. 4477-7, Sec. 8(i) as added by Ch. 302, Acts 70th Legis., Reg. Sess., 1987.)

**Sec. 361.279. CONTRACTS WITH STATE.** A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, non-clerical violations resulting in an actual release of hazardous waste that presented an

imminent and substantial danger to the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 8(h).)

Sec. 361.280. REMEDIES CUMULATIVE. (a) The remedies under this subchapter are cumulative of all other remedies.

(b) This subchapter does not exempt a person from complying with or being subject to other law. (V.A.C.S. Art. 4477-7, Sec. 8(g)(1) (part).)

[Sections 361.281-361.300 reserved for expansion]

#### SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION

Sec. 361.301. EMERGENCY ORDER. (a) The department and the commission may each issue an emergency mandatory or prohibitory order concerning an activity of solid waste management under its jurisdiction, even if the activity is not covered by a permit, if the agency determines that an emergency requiring immediate action to protect the public health and safety or the environment exists.

(b) The order may be issued without notice and hearing or with notice and hearing the agency considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the issuing agency shall set a time and place for a hearing to be held in accordance with the rules of the board of health or commission to affirm, modify, or set aside the emergency order.

(d) The requirements of Section 361.088 concerning public notice do not apply to the hearing, but general notice of the hearing shall be given in accordance with the rules of the board of health or commission. (V.A.C.S. Art. 4477-7, Sec. 4(e)(10).)

Sec. 361.302. ISSUANCE OF ORDER BY COMMISSION. (a) The commission may issue an order to a person requiring compliance with this chapter and prescribing the corrective action that the person must take to achieve compliance if the person violates:

(1) the provisions of this chapter concerning solid waste under the commission's jurisdiction;

(2) a rule or order adopted by the commission concerning solid waste under the commission's jurisdiction; or

(3) a solid waste permit or registration issued by the commission under this chapter.

(b) The order may be issued instead of or in addition to an order under Section 361.252 assessing an administrative civil penalty.

(c) Judicial review of an order issued under this section is in the district court of the county in which the alleged violation occurred. (V.A.C.S. Art. 4477-7, Sec. 8c.)

Sec. 361.303. CORRECTIVE ACTION. (a) The commission shall require corrective action for a release of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility that is required to obtain a permit for the management of hazardous waste and whose permit is issued after November 8, 1984, regardless of when the waste is placed in the unit.

(b) The commission shall establish schedules for compliance for the corrective action, if the corrective action cannot be completed before permit issuance, and shall require assurances of financial responsibility for completing the corrective action.

(c) If, before the issuance of a permit, the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measure considered necessary to protect human health or the environment; or

(2) institute a civil action under Section 361.224.

- (d) An order issued under this section:
  - (1) may include a suspension or revocation of authorization to operate;
  - (2) must state with reasonable specificity the nature of the required corrective action or other response measure; and
  - (3) must specify a time for compliance.
- (e) If any person named in the order does not comply with the order, the agency issuing the order may assess a civil penalty in accordance with this chapter. (V.A.C.S. Art. 4477-7, Sec. 4(m).)

[Sections 361.304-361.320 reserved for expansion]

#### **SUBCHAPTER K. APPEALS; JOINDER OF PARTIES**

**Sec. 361.321. APPEALS.** (a) A person affected by a ruling, order, decision, or other act of the department or the commission may appeal the action by filing a petition in the district court of Travis County.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) Except as provided by Section 361.322(b), the petition must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the department, the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable. (V.A.C.S. Art. 4477-7, Sec. 9(a) (part).)

**Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES.** (a) A person filing a petition appealing an administrative order issued under Section 361.272 must join as a party the state agency issuing the administrative order and may join as a party:

- (1) any other person named in the administrative order; and
- (2) any other person who is or may be liable for the elimination of the actual or threatened release of solid waste governed by the administrative order.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of the petition before the 46th day after the date of receipt, hand delivery, or publication service of the order stays the order as to the appealing party pending action by the district court. The filing of the petition does not affect other enforcement powers of the department or commission.

(d) The administrative order is final as to a nonappealing party on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(e) The district court shall uphold the order if the department or the commission, by a preponderance of the evidence, proves that:

(1) there is an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(f) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(g) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the department or the commission or other party to comply with the order.

(h) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief. (V.A.C.S. Art. 4477-7, Secs. 9(a) (part), (b)-(g).)

Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action. (V.A.C.S. Art. 4477-7, Sec. 10.)

[Sections 361.324-361.340 reserved for expansion]

#### SUBCHAPTER L. COST RECOVERY

Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

(1) an appeal of an administrative order issued under Section 361.272 or Section 361.191;

(2) an action to enforce such an administrative order;

(3) a civil suit seeking injunctive relief under Section 361.273; or

(4) a cost recovery suit under Section 361.190.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) Costs recovered by the state under this section shall be:

(1) remitted to the commission; and

(2) placed in a separate account in the hazardous waste generation and facility fees fund for use by the commission to administer the hazardous waste management program. (V.A.C.S. Art. 4477-7, Secs. 9(h)(1), (2).)

Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

(1) attorney's fees;

(2) costs to prepare and provide witnesses; and

(3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case. (V.A.C.S. Art. 4477-7, Sec. 9(h)(3).)



**Sec. 361.343. APPORTIONMENT OF COSTS.** (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

- (1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;
- (2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;
- (3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and
- (4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state. (V.A.C.S. Art. 4477-7, Sec. 11(a).)

**Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY.** (a) A person subject to a court injunction or an administrative order issued under this chapter, or a third person identified by Section 361.192(c) who acts to eliminate a release or threatened release, in addition to having the right to file an action for contribution or indemnity, or both, in an appeal proceeding or in an action brought by the attorney general, may bring suit in a district court to recover costs incurred to eliminate the release or threatened release and other costs as the court, in its discretion, considers reasonable.

(b) Venue for the suit is:

- (1) in the county in which the release or threatened release is or was located; or
- (2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

- (1) of the existence of the release or threatened release; and
- (2) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal. (V.A.C.S. Art. 4477-7, Secs. 11(b), (c).)

**Sec. 361.345. CREATION OF RIGHTS.** Subchapter I and Section 361.344 and the enforcement by the department or the commission of that subchapter and section do not:

- (1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or
- (2) change common law or a rule of decision except as limited by this chapter to actions by the department or the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment. (V.A.C.S. Art. 4477-7, Sec. 11b.)

## CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT

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## CHAPTER 362. SOLID WASTE RESOURCE RECOVERY FINANCING ACT

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 362.001. SHORT TITLE. This chapter may be cited as the Solid Waste Resource Recovery Financing Act. (V.A.C.S. Art. 4477–7a, Sec. 1.)

Sec. 362.002. POLICY AND PURPOSE. (a) The policy of the state is to safeguard the public health, general welfare, and physical property from solid waste pollution by encouraging the processing of solid waste for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(b) It is the policy of the state that the processing of solid waste for reuse is essential to the well-being and survival of state inhabitants and the protection of the environment. That processing will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution by preventing further damage to the environment. (V.A.C.S. Art. 4477–7a, Secs. 2(a) (part), (b) (part).)

Sec. 362.003. DEFINITIONS. In this chapter:

- (1) "Bond" includes a note or other evidence of indebtedness.

(2) "Cost" means expenses related or incidental to the acquisition, construction, or improvement of a system, including:

- (A) real property acquired for a system;
- (B) finance charges;
- (C) interest before and during construction and for a period the issuer finds reasonable after completion of construction;
- (D) expenses incurred for architectural, engineering, and legal services;
- (E) license fees and royalties;
- (F) expenses incurred for plans, specifications, surveys, and estimates;
- (G) expenses incurred in placing the system in operation; and
- (H) administration expenses.

(3) "Issuer" means a district or authority that:

- (A) is created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution;
- (B) is authorized by law to own a waste disposal system; and
- (C) includes within its boundaries all of at least one county.

(4) "Public agency" means:

- (A) an issuer;
- (B) a municipality; or
- (C) another political subdivision or agency of the state authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(5) "Real property" means land, a structure, a franchise or interest in land, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(6) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the issuer's governing body.

(7) "Security agreement" means a trust indenture or other instrument securing bonds.

(8) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(9) "System" means real property, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful:

(A) in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste, or convert it to energy or useful matter or resources including electricity, steam, or other form of energy, metal, fertilizer, glass, or other form of resource; or

(B) in the transportation, receipt, storage, transfer, and handling of solid waste, the preparation, separation, or processing of solid waste for reuse, the handling and transportation of recovered matter, resources, or energy, and the handling, transportation, and disposition of nonrecoverable solid waste residue. (V.A.C.S. Art. 4477-7a, Secs. 3 (part), 5(a) (part); New.)

**Sec. 362.004. EFFECT OF OTHER LAW.** (a) This chapter does not limit the authority of the Texas Water Commission, the Texas Department of Health, or a local government to:

(1) perform a power or duty provided by other law; or

(2) adopt and enforce rules to carry out duties under Chapter 361 (Solid Waste Disposal Act).

(b) Chapter 361 (Solid Waste Disposal Act) shall be enforced without regard to ownership of a system financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate, or recover damages for, a condition of pollution or other nuisance. A person purchasing or leasing a system under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the system.

(d) An issuer or public agency may use other law not in conflict with this chapter to the extent convenient or necessary to carry out any authority expressly or impliedly granted by this chapter. (V.A.C.S. Art. 4477-7a, Secs. 14, 15, 17 (part).)

Sec. 362.005. EXCEPTION FOR CERTAIN MATERIAL PRESORTED TO BE RECYCLED. This chapter does not authorize a public agency to compel burning of material presorted to be recycled. (V.A.C.S. Art. 4477-7a, Sec. 2(b) (part).)

[Sections 362.006-362.010 reserved for expansion]

#### SUBCHAPTER B. OPERATION OF SYSTEM

Sec. 362.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY. (a) An issuer may acquire, construct, and improve a system for lease or sale as provided by this chapter and may acquire real property as the issuer considers appropriate for the system.

(b) An issuer may lease its system to another person.

(c) An issuer may sell a system, by installment payments or other method of payment, to any person on conditions the issuer considers desirable.

(d) A lease or sales contract entered into under this chapter may be for the term agreed to by the parties, and must provide that it continues in effect until the bonds specified in the lease or contract, or refunding bonds issued in place of those bonds, are fully paid. (V.A.C.S. Art. 4477-7a, Sec. 4(a) (part).)

Sec. 362.012. LOCATION OF SYSTEM. A system may be located on the property of any person. (V.A.C.S. Art. 4477-7a, Sec. 4(a) (part).)

Sec. 362.013. CONTRACT TERMS AND PROCEDURES. (a) The provisions of Article 5160, Revised Statutes, that relate to performance and payment bonds apply to a contract entered into by an issuer.

(b) An issuer may contract for the acquisition, construction, and improvement of a system on the terms and under the conditions that the governing body of the issuer considers appropriate, including a contract under which a person agrees to perform and supply all services and materials required in connection with the design, construction, and placing into operation of a system.

(c) The issuer shall publish notice of the time and place the contract will be let in a newspaper of general circulation within the boundaries of the issuer once a week for two consecutive weeks, with the first publication occurring not later than the 15th day before the date the contract will be let.

(d) The issuer shall analyze competitive proposals received in response to the notice and let the contract to the responsible party making the proposal that is most advantageous to the issuer and that will result in the most economical completion of the system. (V.A.C.S. Art. 4477-7a, Sec. 11.)

Sec. 362.014. PUBLIC AGENCY CONTRACT. (a) A public agency, on terms it considers appropriate, may contract with an issuer or other person who finances, constructs, or improves a system to sell, lease, or dedicate the use of real property or all or part of a solid waste disposal facility for use as part of the system.

(b) A public agency may contract with any person for the supply, collection, or transportation of solid waste for disposal at a system. The public agency may agree in the contract to supply minimum amounts of solid waste and to pay minimum fees for the right to dispose of the solid waste at the system during the term of the contract. The contract may continue in effect for the term of years that the public agency's governing body determines to be desirable. (V.A.C.S. Art. 4477-7a, Secs. 4(b), 10(a).)

**Sec. 362.015. PAYMENT OF CONTRACT FROM SOURCES OTHER THAN TAXES.**

(a) A public agency may use any available revenue or resource for, or pledge the revenue or resource to, payment of all or part of the amount due under a contract under Section 362.014. The public agency may agree in the contract to assure availability of payment when required.

(b) The public agency may agree to make sufficient provision in its annual budget to make all payments under the contract.

(c) The public agency may fix, charge, and collect, from its inhabitants or other users or beneficiaries of a service or facility provided in connection with the contract, a fee, rate, charge, rental, or other amount for the service or facility, including a water charge, sewage charge, solid waste disposal fee or charge, garbage collection or handling fee, or other fee or charge. The public agency may use those amounts for, or pledge them to, payments required under the contract, and may agree in the contract to make that use or pledge in an amount sufficient to make all or part of the payments when due. (V.A.C.S. Art. 4477-7a, Sec. 10(b) (part).)

**Sec. 362.016. PAYMENT OF CONTRACT FROM TAXES.** (a) A public agency that has taxing power and that, when it enters into a contract under Section 362.014, is using its general funds, including tax revenue, to pay all or part of the cost of providing solid waste collection, transportation, and disposal services may agree that the payments under the contract are an obligation against the public agency's taxing power.

(b) Except as provided by Subsection (c), a person is not entitled to demand payment from taxes during any period unless the contracting person is willing and able to receive and dispose of solid waste during the period as provided by the contract.

(c) A public agency that has taxing power may hold an election substantially in accordance with Chapter 1, Title 22, Revised Statutes, applicable to issuance of bonds by a municipality to determine whether a contract may be an obligation secured by the taxing power of the public agency to an extent not permitted by Subsection (b). If it is determined by a favorable vote at the election that the public agency is authorized to levy an ad valorem tax to make all or part of the payments under the contract, and that the payments are to be made unconditionally regardless of whether the contracting person is willing and able to receive and dispose of solid waste as provided by the contract, the contract is an obligation secured by the public agency's taxing power to the extent provided. The ballot proposition at the election must plainly state that ad valorem tax funds may be used to make contract payments if the contractor cannot receive or dispose of solid waste because of mechanical failure of the facility financed by the bonds or for other reasons. (V.A.C.S. Art. 4477-7a, Secs. 10(b) (part), (c).)

**Sec. 362.017. INDUSTRIAL DEVELOPMENT CORPORATION.** (a) A public agency that has entered into a contract under Section 362.014 may sponsor the creation of an industrial development corporation under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(b) The corporation may issue bonds, notes, or other evidences of indebtedness under the Development Corporation Act of 1979 to finance the cost of a system under the contract regardless of whether the system is located within the boundaries of the public agency. (V.A.C.S. Art. 4477-7a, Sec. 16.)

**Sec. 362.018. COST OF CERTAIN REQUIRED ALTERATIONS.** The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a system. (V.A.C.S. Art. 4477-7a, Sec. 13.)

**Sec. 362.019. TAXATION.** (a) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(b) A system purchased or leased under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer according to state law. An item

purchased or leased as part of a system is subject to all applicable state taxation. (V.A.C.S. Art. 4477-7a, Sec. 12.)

[Sections 362.020-362.030 reserved for expansion]

#### SUBCHAPTER C. BONDS

**Sec. 362.031. AUTHORITY TO ISSUE BONDS AND BOND ANTICIPATION NOTES.** (a) An issuer may issue bonds, payable from revenues of the issuer, to finance or refinance the cost of acquiring, constructing, or improving a system.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) The issuer may declare an emergency because funds are not available to pay the principal of and interest on its bonds or to meet other needs of the issuer and may issue bond anticipation notes to borrow the needed money. The bond anticipation notes may bear interest at any fixed, floating, or other type of rate, and must mature within one year of their date. The bond anticipation notes shall be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of the notes. (V.A.C.S. Art. 4477-7a, Secs. 5(a) (part), (b), (d).)

**Sec. 362.032. FORM AND PROCEDURE.** (a) Bonds under this chapter must be authorized by resolution. The bonds must:

(1) be signed by the presiding officer or assistant presiding officer of the issuer's governing body;

(2) be attested by the secretary of the issuer's governing body; and

(3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the issuer's governing body, except that the designation must include:

(1) the name of each person guaranteeing the contractual obligation of each person leasing or purchasing the system; or

(2) a statement, if applicable, that a group of persons will be leasing or purchasing the system.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser. (V.A.C.S. Art. 4477-7a, Sec. 5(c) (part).)

**Sec. 362.033. TERMS.** Bonds issued under this chapter must mature serially or in another manner not more than 40 years after they are issued. The bonds may:

(1) bear interest at a fixed, floating, or other type of rate, and be sold at public or private sale at a price or under terms that the issuer's governing body determines to be the most advantageous reasonably obtainable;

(2) be made callable before maturity at times and prices prescribed by the issuer's governing body;

(3) be in coupon form; and

(4) be registrable as to principal or as to principal and interest. (V.A.C.S. Art. 4477-7a, Sec. 5(c) (part).)

**Sec. 362.034. APPROVAL AND REGISTRATION.** (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or contract of sale previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable. (V.A.C.S. Art. 4477-7a, Sec. 8.)

**Sec. 362.035. PLEDGE OF REVENUE AND OTHER AMOUNTS AS SECURITY.** (a) Bonds are payable solely from and shall be secured by a pledge of:

(1) revenues of the issuer derived from the lease or sale of a system;

(2) amounts attributable to bond proceeds; or

(3) amounts obtained through the exercise of a remedy provided by the governing body's resolution or a security agreement securing the bonds in the manner specified in the resolution or security agreement.

(b) The governing body shall fix and periodically revise payments under a lease or contract for sale of a system so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement.

(c) The governing body may direct the investment of money in the funds created by the resolution or security agreement, and may delegate this authority to its authorized agent. (V.A.C.S. Art. 4477-7a, Secs. 5(e) (part), (f).)

**Sec. 362.036. SECURITY MAY APPLY TO ADDITIONAL BONDS.** (a) A pledge under Section 362.035 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge.

(b) Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law. (V.A.C.S. Art. 4477-7a, Sec. 5(e) (part).)

**Sec. 362.037. TRUST AS SECURITY.** (a) The issuer's governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank that has trust powers and that is located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 362.038, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's system as provided by the trust indenture;

(4) provide in other manners for protection and enforcement of bondholders' rights and remedies as is reasonable and proper; and

(5) provide for the issuance of replacement bonds for lost, stolen, or mutilated bonds. (V.A.C.S. Art. 4477-7a, Sec. 7 (part).)

**Sec. 362.038. OTHER SECURITY.** (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated system of the issuer's governing body and all property and rights appurtenant to the system.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the system, sell the system to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the system and rights purchased. (V.A.C.S. Art. 4477-7a, Sec. 7 (part).)

**Sec. 362.039. ACTION BY BONDHOLDERS.** (a) The resolution or a security agreement may provide that on default in the payment of principal or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income. (V.A.C.S. Art. 4477-7a, Sec. 5(h).)

Sec. 362.040. INVESTMENT AND USE OF PROCEEDS. (a) The governing body of the issuer may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds shall be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds shall be invested in the manner provided by the resolution or security agreement.

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of sales contract or lease revenue. The bank or trust company shall furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits. (V.A.C.S. Art. 4477-7a, Sec. 5(g).)

Sec. 362.041. REFUNDING BONDS. (a) The governing body of an issuer may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

(1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and

(2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

(1) on the surrender and cancellation of the original bonds; or

(2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date. (V.A.C.S. Art. 4477-7a, Sec. 6.)

Sec. 362.042. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS. (a) Bonds issued under this chapter are legal and authorized investments for:

(1) a bank;

(2) a savings bank;

(3) a trust company;

(4) a savings and loan association;

(5) an insurance company;

(6) a fiduciary;

(7) a trustee; and

(8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons. (V.A.C.S. Art. 4477-7a, Sec. 9.)

Sec. 362.043. BONDS NOT GENERAL OBLIGATION. The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds. (V.A.C.S. Art. 4477-7a, Sec. 5(i).)



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### CHAPTER 363. MUNICIPAL SOLID WASTE

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 363.001. **SHORT TITLE.** This chapter may be cited as the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act. (V.A.C.S. Art. 4477–7c, Sec. 1.)

Sec. 363.002. **POLICY.** It is this state's policy to safeguard the health, general welfare, and physical property of the people and to protect the environment by encouraging the reduction in solid waste generation and the proper management of solid waste, including disposal and processing to extract usable materials or energy. Encouraging a cooperative effort among federal, state, and local governments and private enterprise, to accomplish the purposes of this chapter, will further that policy. (V.A.C.S. Art. 4477–7c, Sec. 2.)

Sec. 363.003. **FINDINGS.** The legislature finds that:

- (1) the growth of the state's economy and population has resulted in an increase in discarded materials;
- (2) the improper management of solid waste creates hazards to the public health, can cause air and water pollution, creates public nuisances, and causes a blight on the landscape;
- (3) there is increasing public opposition to the location of solid waste land disposal facilities;

(4) because some communities lack sufficient financial resources, municipal solid waste land disposal sites in the state are being improperly operated and maintained, causing potential health problems to nearby residents, attracting vectors, and creating conditions that destroy the beauty and quality of our environment;

(5) often, operational deficiencies occur at rural solid waste land disposal sites operated by local governments that do not have the funds, personnel, equipment, and technical expertise to properly operate a disposal system;

(6) many smaller communities and rural residents have no organized solid waste collection and disposal system, resulting in dumping of garbage and trash along the roadside, in roadside parks, and at illegal dump sites;

(7) combining two or more small, inefficient operations into local, regional, or countywide systems may provide a more economical, efficient, and safe means for the collection and disposal of solid waste and will offer greater opportunities for future resource recovery;

(8) there are private operators of municipal solid waste management systems with whom persons can contract or franchise their services, and many of those private operators possess the management expertise, qualified personnel, and specialized equipment for the safe collection, handling, and disposal of solid waste;

(9) technologies exist to separate usable material from solid waste and to convert solid waste to energy, and it will benefit this state to work in cooperation with private business, nonprofit organizations, and public agencies that have acquired knowledge, expertise, and technology in the fields of energy production and recycling, reuse, reclamation, and collection of materials;

(10) the opportunity for resource recovery is diminished unless local governments can exercise control over solid waste and can enter long-term contracts to supply solid waste to resource recovery systems or to operate those systems; and

(11) the control of solid waste collection and disposal should continue to be the responsibility of local governments and public agencies, but the problems of solid waste management have become a matter of state concern and require state financial assistance to plan and implement solid waste management practices that encourage the safe disposal of solid waste and the recovery of material and energy resources from solid waste. (V.A.C.S. Art. 4477-7c, Sec. 3.)

**Sec. 363.004. DEFINITIONS.** In this chapter:

(1) "Advisory council" means the Municipal Solid Waste Management and Resource Recovery Advisory Council.

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

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

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

(5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of containerized or uncontainerized solid waste or hazardous waste into or on land or water so that the solid waste or hazardous waste or any constituent of solid waste or hazardous waste may enter the environment or be emitted into the air or discharged into surface water or groundwater.

(6) "Governing body" means the governing body of a municipality, the commissioners court, the board of directors, the trustees, or a similar body charged by law with governing a public agency.

(7) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(8) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(9) "Local government" means a county, municipality, or other political subdivision of the state exercising the authority granted under Section 361.165 (Solid Waste Disposal Act).

(10) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(11) "Planning fund" means the municipal solid waste management planning fund.

(12) "Planning region" means a region of this state identified by the governor as an appropriate region for municipal solid waste planning as provided by Section 4006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).

(13) "Processing" means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of hazardous waste so as to:

(A) neutralize hazardous waste;

(B) recover energy or material from hazardous waste; or

(C) render hazardous waste nonhazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume.

(14) "Property" means land, structures, interest in land, air rights, water rights, and rights that accompany interest in land, structures, water rights, and air rights and includes easements, rights-of-way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(15) "Public agency" means a municipality, county, or district or authority created and operating under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution, or a combination of two or more of those governmental entities acting under an interlocal agreement and having the authority under this chapter or other law to own and operate a solid waste management system.

(16) "Regional or local solid waste management plan" means a plan adopted by a planning region under Section 363.062 or a local government under Section 363.063.

(17) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body.

(18) "Resource recovery" means recovering materials or energy from solid waste or otherwise converting solid waste to a useful purpose.

(19) "Resource recovery system" means real property, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with processing solid waste to extract, recover, reclaim, salvage, reduce, or concentrate the solid waste or convert it to energy or useful matter or resources, including electricity, steam, or other forms of energy, metal, fertilizer, glass, or other forms of material and resources. The term includes real property, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) transporting, receiving, storing, transferring, and handling solid waste;

(B) preparing, separating, or processing solid waste for reuse;

(C) handling and transporting recovered matter, resources, or energy; and

(D) handling, transporting, and disposing of nonrecoverable solid waste residue.

(20) "Solid waste" means garbage, rubbish, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities, but does not include:

(A) solid or dissolved material in domestic sewage or irrigation return flows or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for surface improvement construction; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas.

(21) "Solid waste management" means the systematic control of any of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(22) "Solid waste management system" means a plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment that is acquired, installed, or operated to collect, handle, store, process, recover material or energy from, or dispose of solid waste, and includes sites for those works and equipment.

(23) "State solid waste management plan" means the Solid Waste Management Plan for Texas, Volume 1, Municipal Solid Waste, adopted by the board.

(24) "Technical assistance fund" means the municipal solid waste resource recovery applied research and technical assistance fund. (V.A.C.S. Art. 4477-7c, Secs. 6(1), (2), (4)-(11), (13), (14), (16)-(22), (24)-(28).)

**Sec. 363.005. APPLICATION OF CHAPTER.** This chapter applies only to solid waste and hazardous waste under the department's jurisdiction as defined by Chapter 361 (Solid Waste Disposal Act). (V.A.C.S. Art. 4477-7c, Sec. 5.)

**Sec. 363.006. CONSTRUCTION OF CHAPTER; EXEMPTIONS.** (a) This chapter does not prohibit or limit a person from extracting or using materials that the person generates or legally collects or acquires for recycling or resale.

(b) Materials that are separated or recovered from solid waste for reuse or recycling by the generator, by a private person under contract with the generator, or by a collector of solid waste or recovered materials are not subject to this chapter. (V.A.C.S. Art. 4477-7c, Sec. 4.)

**Sec. 363.007. STATUTES NOT AFFECTED BY CHAPTER.** This chapter does not affect:

(1) Chapter 361 (Solid Waste Disposal Act);

(2) Chapter 364 (County Solid Waste Control Act); or

(3) Chapter 362 (Solid Waste Resource Recovery Financing Act). (V.A.C.S. Art. 4477-7c, Sec. 39.)

[Sections 363.008-363.020 reserved for expansion]

## SUBCHAPTER B. BOARD AND DEPARTMENT POWERS AND DUTIES

Sec. 363.021. BOARD RULEMAKING AUTHORITY. The board may adopt rules necessary to implement this chapter. (V.A.C.S. Art. 4477-7c, Sec. 11(a).)

Sec. 363.022. DEPARTMENT POWERS AND DUTIES. (a) The department, under the board's direction, shall implement and enforce this chapter.

(b) The department shall:

(1) provide technical assistance to public agencies and planning regions and cooperate with federal agencies and private organizations in carrying out this chapter;

(2) promote planning for and implementation of the recovery of materials and energy from solid waste;

(3) establish guidelines for regional and local municipal solid waste management plans;

(4) review and approve or disapprove regional and local municipal solid waste management plans;

(5) assist the advisory council in its duties;

(6) provide educational and informational programs to promote effective municipal solid waste management practices and to encourage resource recovery;

(7) provide procedures under which public agencies and planning regions may apply for financial assistance grants;

(8) evaluate applications and award financial assistance grants in accordance with board rules; and

(9) coordinate programs under this chapter with other state agencies, including the Texas Air Control Board, the Texas Water Commission, the Railroad Commission of Texas, and any other state or federal agency having an interest in a program or project. (V.A.C.S. Art. 4477-7c, Secs. 11(b), (c).)

Sec. 363.023. APPLICATION FOR FEDERAL FUNDS; CONTRACTS AND AGREEMENTS WITH FEDERAL GOVERNMENT. The department may apply for and accept federal funds and enter into contracts and agreements with the federal government relating to planning, developing, maintaining, and enforcing the municipal solid waste management program. (V.A.C.S. Art. 4477-7c, Sec. 11(d).)

Sec. 363.024. DISBURSEMENT OF FEDERAL FUNDS. (a) The department may accept and disburse funds received from the federal government for purposes relating to solid waste management and resource recovery in the manner provided by this chapter and by agreement between the federal government and the department.

(b) State funds provided to public agencies or planning regions under this chapter may be combined with local or regional funds to match federal funds on approved programs for municipal solid waste management. (V.A.C.S. Art. 4477-7c, Sec. 15.)

[Sections 363.025-363.040 reserved for expansion]

## SUBCHAPTER C. ADVISORY COUNCIL

Sec. 363.041. COMPOSITION OF ADVISORY COUNCIL. The Municipal Solid Waste Management and Resource Recovery Advisory Council is composed of the following 15 members appointed by the board:

(1) an elected official from a municipality with a population of 750,000 or more;

(2) an elected official from a municipality with a population of 100,000 or more but less than 750,000;

(3) an elected official from a municipality with a population of 25,000 or more but less than 100,000;

(4) an elected official from a municipality with a population of less than 25,000;

(5) two elected officials of separate counties, one of whom is from a county with a population of less than 150,000;

(6) an official from a municipality or county solid waste agency;

(7) a representative from a private environmental conservation organization;

(8) a representative from a public solid waste district or authority;

(9) a representative from a planning region;

(10) a representative of the financial community;

(11) a representative from a solid waste management organization composed primarily of commercial operators;

(12) a board member; and

(13) two persons representing the public who would not otherwise qualify as members under this section. (V.A.C.S. Art. 4477-7c, Sec. 10(a).)

Sec. 363.042. **TERMS; VACANCIES.** (a) Advisory council members serve for staggered six-year terms, with the terms of five members expiring August 31 of each odd-numbered year.

(b) The board shall fill a vacancy on the advisory council for the unexpired term by appointing a person who has the same qualifications as required under Section 363.041 for the person who previously held the vacated position.

(c) A person who is appointed to a term on the advisory council or to fill a vacancy on the advisory council may continue to serve as a member only while the person continues to qualify for the category from which the person is appointed. (V.A.C.S. Art. 4477-7c, Sec. 10(b) (part).)

Sec. 363.043. **PRESIDENT.** (a) The board chairman shall appoint one member as advisory council president.

(b) The advisory council president serves for a term of two years expiring August 31 of each odd-numbered year. (V.A.C.S. Art. 4477-7c, Sec. 10(d).)

Sec. 363.044. **PAYMENT OF AND REIMBURSEMENT FOR EXPENSES.** (a) Each advisory council member other than the member representing the board is entitled to \$50 for each council meeting the member attends and the travel allowance provided by the General Appropriations Act for state employees.

(b) The member representing the board is entitled to receive the same per diem and travel allowance the member receives for board meetings.

(c) The expenses incurred by the advisory council are to be paid from the planning fund, the technical assistance fund, or other money available for that purpose. (V.A.C.S. Art. 4477-7c, Secs. 10(c), (h).)

Sec. 363.045. **MEETINGS.** (a) The advisory council shall adopt and may amend procedures for the conduct of advisory council business.

(b) The advisory council shall hold at least one meeting every three months. (V.A.C.S. Art. 4477-7c, Secs. 10(e), (f).)

Sec. 363.046. **DUTIES.** The advisory council shall:

(1) review and evaluate the effect of state policies and programs on municipal solid waste management;

(2) make recommendations to the commissioner and the board on matters relating to municipal solid waste management;

(3) recommend legislation to the board to encourage the efficient management of municipal solid waste;

(4) recommend policies to the board for the use, allocation, or distribution of the planning fund that include:

(A) identification of statewide priorities for use of funds;

(B) the manner and form of application for financial assistance; and

(C) criteria, in addition to those prescribed by Section 363.093(d), to be evaluated in establishing priorities for providing financial assistance to applicants; and

(5) recommend to the commissioner special studies and projects to further the effectiveness of municipal solid waste management and resource recovery. (V.A.C.S. Art. 4477-7c, Sec. 10(g).)

[Sections 363.047-363.060 reserved for expansion]

#### SUBCHAPTER D. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS

Sec. 363.061. BOARD RULES; APPROVAL OF REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANS. (a) The board shall adopt rules relating to regional and local solid waste management plans, including procedures for review and criteria for approval of those plans.

(b) The board by rule shall require as criteria for approval of a regional or local solid waste management plan that the plan reflect consideration of the preference of municipal solid waste management methods under Section 361.022 (Solid Waste Disposal Act). (V.A.C.S. Art. 4477-7c, Sec. 7(a) (part).)

Sec. 363.062. REGIONAL SOLID WASTE MANAGEMENT PLAN. (a) A planning region may develop a regional solid waste management plan that must conform to the state solid waste management plan.

(b) A regional solid waste management plan may be submitted to the department for review.

(c) If the department determines that a regional solid waste management plan conforms to the requirements adopted by the board, the department shall submit the regional solid waste management plan to the board for approval.

(d) The board by rule shall adopt an approved regional solid waste management plan. (V.A.C.S. Art. 4477-7c, Sec. 7(b) (part).)

Sec. 363.063. LOCAL SOLID WASTE MANAGEMENT PLAN. (a) A local government may develop a local solid waste management plan.

(b) A local solid waste management plan must conform to:

(1) an adopted regional solid waste management plan that covers the area in the local government's jurisdiction; or

(2) if the regional solid waste management plan has not been adopted, the state solid waste management plan.

(c) A local solid waste management plan may be submitted to the department for review. If the department determines that the plan conforms to the requirements adopted by the board, the department shall submit the plan to the board for approval.

(d) If the department determines that a local solid waste management plan does not conform to the requirements adopted by the board, the department shall give written notice to the local government of each aspect of the plan that must be changed to conform to board requirements. After changes are made in the plan as requested by the department, the department shall submit the plan to the board for approval.

(e) The board by rule shall adopt an approved local solid waste management plan. (V.A.C.S. Art. 4477-7c, Sec. 7(c) (part).)

Sec. 363.064. CONTENTS OF REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN. A regional or local solid waste management plan must:

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid waste, including sludge, and efforts to reuse or recycle waste;

(2) identify additional opportunities for waste minimization and waste reuse or recycling; and



(3) make recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan. (V.A.C.S. Art. 4477-7c, Sec. 7(a) (part).)

**Sec. 363.065. PLANNING PROCESS; PLANNING AREA.** (a) A regional or local solid waste management plan must result from a planning process that:

(1) is related to proper management of solid waste in the planning area under consideration; and

(2) identifies problems and collects and evaluates data necessary to provide a written public statement of goals, objectives, and recommended actions intended to accomplish those goals and objectives.

(b) A regional solid waste management plan must consider the entire area in an identified planning region.

(c) A local solid waste management plan must consider all the area in the jurisdiction of one or more local governments but may not include an entire planning region. (V.A.C.S. Art. 4477-7c, Sec. 7(e).)

**Sec. 363.066. CONFORMITY WITH REGIONAL OR LOCAL SOLID WASTE MANAGEMENT PLAN.** (a) If a regional or local solid waste management plan is adopted by board rule, public and private solid waste management activities and state regulatory activities must conform to that plan.

(b) The department may grant a variance from the adopted plan under procedures and criteria adopted by the board. (V.A.C.S. Art. 4477-7c, Sec. 7(d).)

**Sec. 363.067. STUDY REQUIRED FOR RESOURCE RECOVERY OR OTHER SOLID WASTE MANAGEMENT SYSTEMS.** (a) To develop programs to implement regional or local solid waste management plans or other solid waste management alternatives that include resource recovery, a study must be made to determine feasibility and acceptance of the programs.

(b) The study shall be conducted in three phases:

(1) a screening study;

(2) a feasibility study; and

(3) an implementation study.

(c) Public agencies that conduct all or part of one or more phases may qualify for assistance to accomplish other phases or parts of phases.

(d) After each phase, the governing body shall determine whether to proceed to the next phase.

(e) A study may not include final design and working drawings of any request for proposals for project facilities or operations. (V.A.C.S. Art. 4477-7c, Secs. 7(f), (j).)

**Sec. 363.068. SCREENING STUDY.** (a) A screening study must provide a survey and assessment of the various factors affecting the suitability of resource recovery or other solid waste management systems with the scope and detail needed to make an initial determination of whether those systems are potentially successful alternatives to existing systems.

(b) The survey and assessment must include:

(1) the amount and characteristics of available waste;

(2) the suitability and economics of existing solid waste management systems;

(3) institutional factors affecting potential alternatives;

(4) technologies available;

(5) identification of potential material and energy markets;

(6) economics of alternative systems; and

(7) interest of the local citizenry in available alternatives. (V.A.C.S. Art. 4477-7c, Sec. 7(g).)

Sec. 363.069. **FEASIBILITY STUDY.** A feasibility study must provide an evaluation of alternatives that:

- (1) identifies current solid waste management practices and costs;
- (2) analyzes the waste stream and its availability by composition and quantity;
- (3) identifies potential markets and obtains statements of interest for recovered materials and energy;
- (4) identifies and evaluates alternative solid waste management systems;
- (5) provides an assessment of potential effects of alternatives in terms of their public health, physical, social, economic, fiscal, environmental, and aesthetic implications;
- (6) conducts and evaluates results of public hearings or surveys of local citizens' opinions; and
- (7) makes recommendations on alternatives for further consideration. (V.A.C.S. Art. 4477-7c, Sec. 7(h).)

Sec. 363.070. **IMPLEMENTATION STUDY.** An implementation study must:

- (1) provide a recommended course of action for a public agency;
- (2) provide for the collection and analysis of data;
- (3) identify and characterize solid waste problems and issues;
- (4) determine waste stream composition and quantity;
- (5) identify and analyze alternatives;
- (6) evaluate risk elements of alternatives;
- (7) identify and solidify markets;
- (8) make site analyses;
- (9) evaluate financing options and recommend preferred methods of financing;
- (10) evaluate the application of resource recovery technologies;
- (11) identify and discuss potential effects of alternative systems;
- (12) provide for public participation and recommend preferred alternatives; and
- (13) provide for implementation. (V.A.C.S. Art. 4477-7c, Sec. 7(i).)

[Sections 363.071-363.090 reserved for expansion]

#### SUBCHAPTER E. PLANNING FUND AND TECHNICAL ASSISTANCE FUND

Sec. 363.091. **MUNICIPAL SOLID WASTE MANAGEMENT PLANNING FUND.** (a) The municipal solid waste management planning fund is in the state treasury.

(b) In addition to money appropriated by the legislature, money received from other sources, including money received under contracts or agreements entered into under Section 363.116, shall be deposited to the credit of the planning fund. (V.A.C.S. Art. 4477-7c, Sec. 8(a).)

Sec. 363.092. **PLANNING FUND USE; FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS AND PLANNING REGIONS.** (a) The commissioner shall administer the financial assistance program and the planning fund under the board's direction.

(b) The board shall adopt rules for the use and distribution to public agencies and planning regions of money in the planning fund.

(c) The department shall use the planning fund to provide financial assistance to:

- (1) local governments and planning regions to develop regional and local solid waste management plans; and
- (2) public agencies and planning regions to prepare screening, feasibility, and implementation studies.

(d) The department shall use at least 90 percent of the money appropriated to it for the planning fund to provide financial assistance, and not more than 10 percent of the total

funds appropriated to the department for the planning fund may be used to administer the financial assistance program and the planning fund and to pay the expenses of the advisory council.

(e) The planning fund may not be used for construction or to prepare final design and working drawings, acquire land or an interest in land, or pay for recovered resources. (V.A.C.S. Art. 4477-7c, Secs. 8(b), (c), (d), (f), (i).)

**Sec. 363.093. APPLICATION FOR FINANCIAL ASSISTANCE.** (a) An applicant for financial assistance from the planning fund must agree to comply with:

- (1) the state solid waste management plan;
- (2) the department's municipal solid waste management rules; and
- (3) other board requirements.

(b) The department may not authorize release of funds under a financial assistance application until the applicant furnishes to the department a resolution adopted by the governing body of each public agency or planning region that is a party to the application certifying that:

- (1) the applicant will comply with the financial assistance program's provisions and the department's requirements;
- (2) the funds will be used only for the purposes for which they are provided;
- (3) regional or local solid waste management plans or studies developed with the financial assistance will be adopted by the governing body as its policy; and
- (4) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(c) Financial assistance provided by the department to a public agency or planning region must be matched at least equally by funds provided by the recipient.

(d) The priority given to applicants in receiving financial assistance must be determined by:

- (1) the need to initiate or improve the solid waste management program in the applicant's jurisdiction;
- (2) the needs of the state;
- (3) the applicant's financial need; and
- (4) the degree to which the proposed program will result in improvements that meet the requirements of state, regional, and local solid waste management plans.

(e) The department may approve an application for financial assistance if:

(1) the application is consistent with the rules adopted by the board under Section 363.092(b); and

(2) the department finds that the applicant requires state financial assistance and that it is in the public interest to provide the financial assistance. (V.A.C.S. Art. 4477-7c, Secs. 8(e), (g), (h), (j), (k).)

**Sec. 363.094. MUNICIPAL SOLID WASTE RESOURCE RECOVERY APPLIED RESEARCH AND TECHNICAL ASSISTANCE FUND.** (a) The municipal solid waste resource recovery applied research and technical assistance fund is in the state treasury.

(b) The technical assistance fund is composed of legislative appropriations.

(c) The technical assistance fund shall be used to:

- (1) accomplish applied research and development studies; and
- (2) provide technical assistance to public agencies to carry out investigations and to make studies relating to resource recovery and improved municipal solid waste management.

(d) The commissioner shall administer the technical assistance fund under the board's direction. (V.A.C.S. Art. 4477-7c, Secs. 9(a), (b), (c).)

Sec. 363.095. USE OF TECHNICAL ASSISTANCE FUND. (a) Studies, applied research, investigations, and other purposes accomplished with and technical assistance provided through use of money in the technical assistance fund must comply with:

- (1) the state solid waste management plan;
- (2) the department's municipal solid waste management rules; and
- (3) other board policy requirements.

(b) Technical assistance, applied research, investigations, studies, and other purposes for which funds may be provided may include:

- (1) an evaluation of the long-term statewide needs of public agencies in financing municipal solid waste systems and consideration of the nature and extent of financial support that the state should provide for those systems;
- (2) an evaluation of state of the art waste reduction systems and waste-to-energy systems that include steam generation and electrical production;
- (3) establishment and evaluation of a pilot source separation and recycling project;
- (4) feasibility studies of appropriate technology that may be applicable to several local governments for the improvement of solid waste management systems;
- (5) cost and economic comparisons of alternative solid waste management systems;
- (6) an evaluation of available markets for energy and recovered materials;
- (7) an evaluation of the availability of recovered materials and energy resources for new market opportunities; and
- (8) a citizen involvement program to educate citizens in solid waste management issues and the improvement of solid waste management practices.

(c) The department may hire personnel to be paid from the technical assistance fund and may use the technical assistance fund for obtaining consultant services and for entering into interagency agreements with other state agencies, public agencies, or planning regions. (V.A.C.S. Art. 4477-7c, Secs. 9(d), (e), (f).)

[Sections 363.096-363.110 reserved for expansion]

#### SUBCHAPTER F. LOCAL SOLID WASTE SERVICES AND REGULATION

Sec. 363.111. ADOPTION OF RULES BY PUBLIC AGENCY. (a) A governing body may adopt rules for regulating solid waste collection, handling, transportation, storage, processing, and disposal.

(b) The rules may not authorize any activity, method of operation, or procedure prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules or regulations of the department or other state or federal agencies. (V.A.C.S. Art. 4477-7c, Sec. 34(a).)

Sec. 363.112. PROHIBITION OF PROCESSING OR DISPOSAL OF SOLID WASTE IN CERTAIN AREAS. (a) To prohibit the processing or disposal of solid waste in certain areas of a municipality or county, the governing body of the municipality or county must by ordinance or order specifically designate the area of the municipality or county, as appropriate, in which the disposal of solid waste will not be prohibited.

(b) The ordinance or order must be published for two consecutive weeks in a newspaper of general circulation in the area of the municipality or county, as appropriate, before the date the proposed ordinance or order is adopted by the governing body.

(c) This section does not apply to a municipality or county that has adopted solid waste management plans approved by the department under Section 363.063. (V.A.C.S. Art. 4477-7c, Secs. 34(b), (c).)

Sec. 363.113. ESTABLISHMENT OF SOLID WASTE MANAGEMENT SERVICES. Each county with a population of more than 30,000 and each municipality shall review the provision of solid waste management services in its jurisdiction and shall assure that those services are provided to all persons in its jurisdiction by a public agency or private person. (V.A.C.S. Art. 4477-7c, Sec. 12.)

**Sec. 363.114. RESOURCE RECOVERY SERVICE; FEES.** (a) A public agency may offer a resource recovery service to persons in its jurisdictional boundaries and may charge fees for that service.

(b) To aid in enforcing collection of fees for a resource recovery service, a public agency, after notice and hearing, may suspend service provided by any utility owned or operated by the public agency to a person who is delinquent in payment of those fees. (V.A.C.S. Art. 4477-7c, Sec. 13.)

**Sec. 363.115. TAX EXEMPT STATUS OF CERTAIN RESOURCE RECOVERY SYSTEMS.** A resource recovery system acquired by a public agency to reduce municipal solid waste by mechanical means or incineration is exempt from property taxes of any municipality, county, school district, or other political subdivision of the state. (V.A.C.S. Art. 4477-7c, Sec. 35.)

**Sec. 363.116. AUTHORITY TO ENTER CONTRACTS CONCERNING SOLID WASTE MANAGEMENT SERVICES.** (a) A public agency may enter into contracts to enable it to furnish or receive solid waste management services on the terms considered appropriate by the public agency's governing body.

(b) A home-rule municipality's charter provision restricting the duration of a municipal contract does not apply to a municipal contract that relates to solid waste management services. (V.A.C.S. Art. 4477-7c, Sec. 14(a).)

**Sec. 363.117. SOLID WASTE MANAGEMENT SERVICE CONTRACTS.** Under a solid waste management service contract, a public agency may:

(1) acquire and operate all or any part of one or more solid waste management systems, including resource recovery systems;

(2) contract with a person or other public agency to manage solid waste for that person or agency;

(3) contract with a person to purchase or sell, by installments over a term considered desirable by the governing body or otherwise, all or any part of a solid waste management system, including a resource recovery system;

(4) contract with a person or other public agency for the operation of all or any part of a solid waste management system, including a resource recovery system;

(5) lease to or from a person or other public agency, for the term and on the conditions considered desirable by the governing body, all or any part of a solid waste management system, including a resource recovery system;

(6) contract to make all or any part of a solid waste management system available to other persons or public agencies and furnish solid waste management services through the public agency's system, provided the contract:

(A) includes provisions to assure equitable treatment of parties who contract with the public agency for solid waste management services from all or any part of the same solid waste management system;

(B) provides the method of determining the amounts to be paid by the parties;

(C) provides that the public agency shall either operate or contract with a person to operate for the public agency a solid waste management system or part of a solid waste management system;

(D) provides that the public agency is entitled to continued performance of the services after the amortization of the public agency's investment in the solid waste management system during the useful life of the system on payment of reasonable charges for the services, reduced to take into consideration the amortization; and

(E) includes any other provisions and requirements the public agency determines to be appropriate;

(7) contract with another public agency or other persons for solid waste management services, including contracts for the collection and transportation of solid waste and for processing or disposal at a permitted solid waste management facility, including a resource recovery facility, provided the contract may specify:

(A) the minimum quantity and quality of solid waste to be provided by the public agency; and

(B) the minimum fees and charges to be paid by the public agency for the right to have solid waste processed or disposed of at the solid waste management facility;

(8) contract with a person or other public agency to supply materials, fuel, or energy resulting from the operation of a resource recovery facility; and

(9) contract with a person or other public agency to receive or purchase solid waste, materials, fuel, or energy recovered from resource recovery facilities. (V.A.C.S. Art. 4477-7c, Sec. 14(b).)

Sec. 363.118. INDUSTRIAL DEVELOPMENT CORPORATIONS. (a) A public agency that enters into a contract under Section 363.116 may sponsor the creation of an industrial development corporation as provided by the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes).

(b) If the system is located in the public agency's boundaries, the corporation may issue its bonds, notes, or other evidences of indebtedness to finance the costs of a solid waste management system, including a resource recovery system, contemplated under the contract. (V.A.C.S. Art. 4477-7c, Sec. 33.)

Sec. 363.119. FUNDING SOLID WASTE MANAGEMENT SERVICES. (a) A public agency may establish a solid waste management fund to make payments for solid waste management services covered by contracts entered into by the public agency.

(b) A public agency may agree to make sufficient provision in its annual budget to make payments under its contracts.

(c) Payments to be made by a public agency under a contract may also be made from revenues of the public agency's solid waste, water, sewer, electric, or gas system or any combination of utility systems.

(d) As a source of payment or as the sole source of payment, a public agency may use and pledge available revenues or resources for and to the payment of amounts due under contracts and may enter into covenants concerning those sources of payment to assure their availability if required.

(e) A public agency may establish, charge, and collect fees, rates, charges, rentals, and other amounts for services or facilities provided under or in connection with a contract. Those fees, rates, charges, rentals, and other amounts may be charged to and collected from the residents of the public agency, if any, or from users or beneficiaries of the services or facilities and may include water charges, sewage charges, and solid waste disposal fees and charges, including solid waste collection or handling fees. The public agency may use and pledge those fees, rates, charges, rentals, and other amounts to make payments required under a contract and may enter into a covenant to do so in amounts sufficient to make all or any part of the payments when due.

(f) A public agency that has taxing power, and that at the time of entering into a contract is using its general funds, including its tax revenues, to pay all or part of the costs of providing solid waste collection, transportation, and disposal services, may agree and pledge that the contract is an obligation against the taxing power of the public agency. (V.A.C.S. Art. 4477-7c, Sec. 16.)

[Sections 363.120-363.130 reserved for expansion]

#### SUBCHAPTER G. BONDS

Sec. 363.131. AUTHORITY TO ISSUE BONDS. (a) A public agency may issue bonds in the name of the public agency to acquire, construct, improve, enlarge, and repair all or part of a solid waste management system, including a resource recovery system.

(b) Pending the issuance of definitive bonds, a public agency may issue negotiable interim bonds eligible for exchange or substitution on issuance of definitive bonds. (V.A.C.S. Art. 4477-7c, Sec. 17.)

Sec. 363.132. TERMS; FORM. (a) A public agency may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 50 years after the date of issuance and shall bear interest at a rate permitted by state law.

(c) A public agency's bonds and interest coupons, if any, are investment securities under Chapter 8, Business & Commerce Code, and may be:

(1) issued registrable as to principal or as to principal and interest; and

(2) made redeemable before maturity, at the option of the public agency, or may contain a mandatory redemption provision.

(d) A public agency's bonds may be issued in the form, denominations, and manner, and under the terms, and shall be signed and executed, as provided by the governing body in the resolution or order authorizing the bonds. (V.A.C.S. Art. 4477-7c, Sec. 21.)

**Sec. 363.133. BOND PROVISIONS.** (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the governing body may:

(1) provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds; and

(2) make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of the physical property of the solid waste management system, the revenue of which is pledged.

(b) In the orders or resolutions authorizing the issuance of bonds, the governing body may:

(1) prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued; and

(2) include other provisions as the governing body may determine.

(c) The governing body may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds. (V.A.C.S. Art. 4477-7c, Sec. 22.)

**Sec. 363.134. APPROVAL AND REGISTRATION.** (a) A public agency shall submit bonds issued by the public agency and records relating to their issuance to the attorney general for examination as to their validity. If the bonds are secured by a pledge of proceeds from a contract, the public agency shall submit to the attorney general for examination a copy of the contract and a copy of the records relating to the contract.

(b) If the attorney general finds that the bonds have been authorized and a contract entered into in accordance with law, the attorney general shall approve the bonds, and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds are incontestable and are binding obligations according to their terms. (V.A.C.S. Art. 4477-7c, Sec. 23.)

**Sec. 363.135. BOND PAYMENT AND SECURITY.** A public agency may pay the principal of and interest on bonds:

(1) from the levy and collection of taxes on all taxable property in the public agency's boundaries if the public agency is authorized by law to levy and collect property taxes;

(2) by pledging all or part of the designated revenues from the ownership or operation of physical property of a solid waste management system, including a resource recovery system, or from a contract entered into by a public agency under this chapter; or

(3) from other income of the public agency. (V.A.C.S. Art. 4477-7c, Sec. 18.)

**Sec. 363.136. BOND ELECTION.** Bonds secured in whole or in part by taxes may not be issued by a public agency until authorized by a majority vote of the qualified voters of the public agency at an election ordered for that purpose. A bond election shall be held in the manner provided by law for other bond elections of the public agency. (V.A.C.S. Art. 4477-7c, Sec. 20.)

**Sec. 363.137. OTHER SECURITY.** (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical property of a solid waste

management system, including a resource recovery system, of the public agency and rights appurtenant to that property.

(b) The deed of trust or mortgage lien may give the trustee the power to operate the property, sell the property to pay the debt, or take any other action to secure the bonds. A purchaser at a sale under a deed of trust or mortgage lien is the absolute owner of the property and rights purchased.

(c) Regardless of any deed of trust or mortgage lien under Subsection (a), the trust indenture may:

- (1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;
- (2) provide for amendment or modification of the trust indenture; and
- (3) provide for investment of the public agency's funds. (V.A.C.S. Art. 4477-7c, Sec. 19.)

Sec. 363.138. BOND SALE AND EXCHANGE. (a) A public agency may sell bonds at a public or private sale at a price and on terms determined by the governing body.

(b) The public agency may exchange its bonds for property or an interest in property that its governing body considers necessary or convenient to carry out this chapter. (V.A.C.S. Art. 4477-7c, Sec. 24.)

Sec. 363.139. INVESTMENT AND USE OF PROCEEDS. (a) Money may be set aside out of bond proceeds to provide for:

- (1) interest to accrue on the bonds;
- (2) administrative expenses up to the estimated date on which the solid waste management system will produce revenue; and
- (3) reserve funds created by the resolution that authorized the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture. (V.A.C.S. Art. 4477-7c, Sec. 30.)

Sec. 363.140. REFUNDING BONDS. (a) A public agency may issue refunding bonds to refund all or part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds:

- (1) mature serially or otherwise not more than 50 years after the date of issuance and bear interest at a rate permitted by state law; and
- (2) may be payable from the same source as the bonds being refunded or from other additional sources.

(c) Refunding bonds must be approved by the attorney general in the same manner as other bonds.

(d) The comptroller shall register refunding bonds:

- (1) on the surrender and cancellation of the original bonds; or
- (2) without surrender and cancellation of the original bonds if:
  - (A) the order or resolution authorizing the refunding bonds provides that their proceeds be deposited in the place where the original bonds are payable; and
  - (B) the refunding bonds are issued in an amount sufficient to pay the principal of and interest on the original bonds up to their maturity date or to their option date if the bonds are called for payment before maturity according to their terms.

(e) A public agency may refund bonds in one or several installments.

(f) Instead of the method provided by this section, a public agency may refund bonds, notes, or other obligations as provided by general law. (V.A.C.S. Art. 4477-7c, Sec. 25.)



**Sec. 363.141. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.** (a) Public agency bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) a sinking fund of a municipality, county, school district, or other political subdivision of the state and other public funds of the state, including the permanent school fund.

(b) Public agency bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political subdivision of the state. The bonds are lawful and sufficient security for deposits to the extent of their value, if accompanied by all unmatured coupons. (V.A.C.S. Art. 4477-7c, Secs. 26, 27.)

**Sec. 363.142. TAX STATUS OF BONDS.** Since a public agency is a public entity performing an essential public function, bonds issued by the public agency, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by a municipality, county, special district, or other political subdivision of the state. (V.A.C.S. Art. 4477-7c, Sec. 28 (part).)

**Sec. 363.143. FEES FOR SERVICES.** (a) While bonds are outstanding, the governing body may adopt and collect fees for services furnished or made available by the solid waste management system, including a resource recovery system.

(b) The fees must be adequate to provide and maintain the funds created by the resolution authorizing the bonds and to pay:

- (1) operational costs or expenses allocable to the solid waste management system, including a resource recovery system; and
- (2) the principal of and interest on the bonds. (V.A.C.S. Art. 4477-7c, Sec. 29.)

**Sec. 363.144. ADJUSTMENT OF RATES FOR ADEQUATE REVENUE.** A public agency shall adopt and adjust the rates charged for solid waste management services so that revenues, together with taxes levied to support the services, will be sufficient to pay:

- (1) the expense of operating and maintaining the solid waste management system, including a resource recovery system;
- (2) the public agency's obligations under a contract; and
- (3) the public agency's obligations under and in connection with bonds issued that are secured by revenues from the solid waste management service or a solid waste management system, including a resource recovery system. (V.A.C.S. Art. 4477-7c, Sec. 31.)

**Sec. 363.145. BOND ANTICIPATION NOTES.** (a) A public agency may declare an emergency if funds are not available to pay the principal of or interest on the public agency's bonds issued under this chapter.

(b) The public agency may issue negotiable bond anticipation notes to borrow the money needed in an emergency, and the bond anticipation notes may bear interest at any rate authorized by state law and shall mature within one year of the date of issuance.

(c) The bond anticipation notes may be paid with the proceeds of bonds, or bonds may be issued and delivered in exchange for and in substitution of bond anticipation notes. (V.A.C.S. Art. 4477-7c, Sec. 32.)

CHAPTER 364. COUNTY SOLID WASTE

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CHAPTER 364. COUNTY SOLID WASTE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 364.001. SHORT TITLE. This chapter may be cited as the County Solid Waste Control Act. (V.A.C.S. Art. 4477–8, Sec. 2.)

Sec. 364.002. PURPOSE. The purpose of this chapter is to authorize a cooperative effort by counties, public agencies, and other persons for the safe and economical collection, transportation, and disposal of solid waste to control pollution in this state. (V.A.C.S. Art. 4477–8, Sec. 1.)

Sec. 364.003. DEFINITIONS. In this chapter:

(1) "Composting" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(2) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution.

(3) "Public agency" means a district, municipality or other political subdivision, or state agency authorized to own and operate a solid waste collection, transportation, or disposal facility or system.

(4) "Sanitary landfill" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(5) "Solid waste" has the meaning assigned by Chapter 361 (Solid Waste Disposal Act).

(6) "Solid waste disposal system" means a plant, composting process plant, incinerator, sanitary landfill, or other works and equipment that are acquired, installed, or operated to collect, handle, store, treat, neutralize, stabilize, or dispose of solid waste, and includes the sites. (V.A.C.S. Art. 4477-8, Secs. 3(c), (e), (g), (h).)

[Sections 364.004-364.010 reserved for expansion]

#### **SUBCHAPTER B. COUNTY SOLID WASTE MANAGEMENT**

**Sec. 364.011. COUNTY ADOPTION OF SOLID WASTE RULES.** (a) Subject to the limitation provided by Sections 361.151 and 361.152 (Solid Waste Disposal Act), a commissioners court by rule may regulate solid waste collection, handling, storage, and disposal in areas of the county not in a municipality or the extraterritorial jurisdiction of a municipality.

(b) A county, in making any rules, including those under the licensing power granted by Chapter 361 (Solid Waste Disposal Act), may not impose an unreasonable requirement on the disposal of the solid waste in the county not warranted by the circumstances.

(c) A rule adopted under this section may not authorize an activity, method of operation, or procedure that is prohibited by Chapter 361 (Solid Waste Disposal Act) or by rules of the Texas Department of Health, the Texas Water Commission, or the board.

(d) A county may institute legal proceedings to enforce its rules. (V.A.C.S. Art. 4477-8, Sec. 18(a) (part).)

**Sec. 364.012. PROHIBITING SOLID WASTE DISPOSAL IN COUNTY.** (a) The county may prohibit the disposal of solid waste in the county if the disposal of the solid waste is a threat to the public health, safety, and welfare.

(b) To prohibit the disposal of solid waste in a county, the commissioners court must adopt an ordinance in the general form prescribed for municipal ordinances specifically designating the area of the county in which solid waste disposal is not prohibited. The requirement in this subsection does not apply if the county has adopted solid waste disposal guidelines approved by the Texas Department of Health.

(c) An ordinance required by Subsection (b) may be passed on first reading, but the proposed ordinance must be published in a newspaper of general circulation in the county for two consecutive weeks before the commissioners court considers the proposed ordinance. The publication must contain:

(1) a statement of the time, place, and date that the commissioners court will consider the proposed ordinance; and

(2) notice that an interested citizen of the county may testify at the hearing.

(d) A public hearing must be held on a proposed ordinance before it is considered by the commissioners court, and any interested citizen of the county shall be allowed to testify. (V.A.C.S. Art. 4477-8, Secs. 18(a) (part), (b), (c), (d).)

**Sec. 364.013. COUNTY AUTHORITY.** A county may:

(1) acquire, construct, improve, enlarge, repair, operate, and maintain all or part of one or more solid waste disposal systems;

(2) contract with a person to collect, transport, handle, store, or dispose of solid waste for that person;

(3) contract with a person to purchase or sell, by installments for a term considered desirable, all or part of a solid waste disposal system;

(4) enter into an operating agreement with a person, for the terms and on the conditions considered desirable, for the operation of all or part of a solid waste disposal system by that person or by the county; and

(5) lease to or from a person, for the term and on the conditions considered desirable, all or part of a solid waste disposal system. (V.A.C.S. Art. 4477-8, Sec. 4.)

Sec. 364.014. ACQUISITION OF PROPERTY. (a) A county may acquire by purchase, lease, gift, condemnation, or any other manner and may own, maintain, use, and operate property or an interest in property necessary or convenient to the exercise of the powers and purposes provided by this chapter.

(b) The power of eminent domain is restricted to the county and may be exercised in the manner provided by law.

(c) A county may not exercise the power of eminent domain to acquire real property under this section if that power conflicts with a corporation's power of eminent domain as provided by law. (V.A.C.S. Arts. 2351g-1, Secs. 1, 3; 4477-8, Sec. 5 (part).)

Sec. 364.015. DUMPING OR GARBAGE DISPOSAL GROUNDS. The commissioners court shall determine the consideration to be paid to acquire real property on which to locate dumping or garbage disposal grounds. In determining where to locate dumping or garbage disposal grounds, the commissioners court shall consider:

(1) the convenience of the people to be served; and

(2) the general health of, and the annoyance to, the community to be served by the dumping or garbage disposal grounds. (V.A.C.S. Art. 2351g-1, Sec. 2.)

Sec. 364.016. COST OF CERTAIN REQUIRED ALTERATIONS. The relocation, raising, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of a county shall be accomplished at the sole expense of the county, which shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. (V.A.C.S. Art. 4477-8, Sec. 17.)

[Sections 364.017-364.030 reserved for expansion]

#### SUBCHAPTER C. SOLID WASTE MANAGEMENT SYSTEMS AND SERVICES CONTRACTS

Sec. 364.031. PUBLIC AGENCY CONTRACTS. (a) A public agency may contract with a county for the county to:

(1) make all or part of a solid waste disposal system available to a public agency, a group of public agencies, or other persons; and

(2) furnish solid waste collection, transportation, handling, storage, or disposal services through the county's system.

(b) The contract may:

(1) be for the duration agreed on by the parties;

(2) provide that the contract remains in effect until bonds issued or to be issued by the county and refunding bonds issued for those original bonds are paid;

(3) contain provisions to assure equitable treatment of parties who contract with the county for solid waste collection, transportation, handling, storage, or disposal services from the same solid waste disposal system;

(4) provide for the sale or lease to or use by the county of a solid waste disposal system owned or to be acquired by the public agency;

(5) provide that the county will operate a solid waste disposal system owned or to be acquired by the public agency;

(6) provide that the public agency is entitled to continued performance of services after the amortization of the county's investment in the disposal system during the

useful life of the system on payment of reasonable charges, reduced to take into consideration the amortization; and

(7) contain any other provisions and requirements the county and the public agency determine to be appropriate or necessary.

(c) The contract must provide the method to determine the amount the public agency will pay to the county.

(d) A municipality may provide in its contract that the county has the right to use the streets, alleys, and public ways and places in the municipality during the term of the contract. (V.A.C.S. Art. 4477-8, Sec. 6.)

**Sec. 364.032. PUBLIC AGENCY PAYMENTS.** (a) Public agency payments to a county for solid waste collection, transportation, handling, storage, or disposal services may be made from income of the public agency's solid waste disposal fund as provided by the contract between the county and the public agency. The payments are an operating expense of the fund, and the revenues of the fund are to be applied toward those payments.

(b) Public agency payments to be made under the contract may be made from revenues of the public agency's water, sewer, electric, or gas system or a combination of utility systems.

(c) Unless the ordinance or resolution authorizing the outstanding bonds of the public agency expressly reserves the right to accord contract payments a position of parity with, or a priority over, the public agency's bond requirements, the payments under a contract are subordinate to amounts required to be paid from the revenues of the utility system for principal of and interest on bonds of the public agency that are:

(1) outstanding at the time the contract is made; and

(2) payable from those revenues. (V.A.C.S. Art. 4477-8, Sec. 7 (part).)

**Sec. 364.033. ALTERNATIVE PAYMENT PROCEDURE USING TAX FUNDS.** (a) A contract between a public agency and a county that is authorized by the public agency's governing body is an obligation against the public agency's taxing power to the extent provided by the contract if:

(1) the public agency holds an election according to applicable procedure provided by Chapter 1, Title 22, Revised Statutes, relating to the issuance of bonds by a municipality; and

(2) at the election, it is determined that the public agency's governing body may levy an ad valorem tax to make any payments required of the public agency under the contract.

(b) Except for the levy of a tax under this section, an election is not required for the exercise of a power granted by this chapter.

(c) Only qualified voters of the public agency are entitled to vote at an election held under this section, and except as otherwise provided by this section and by Chapter 1, Title 22, Revised Statutes, the Election Code governs an election under this section.

(d) If the alternative procedure for payment provided by this section is followed, payments under the contract may be:

(1) payable from and are solely an obligation against the taxing power of the public agency; or

(2) payable both from taxes and from revenues as provided by the contract.

(e) If the alternative procedure of public agency payment to a county for disposal services provided by this section is not followed, the county or a holder of county bonds is not entitled to demand payment of the public agency's obligation from funds raised or to be raised by taxation. (V.A.C.S. Art. 4477-8, Secs. 7 (part), 8.)

**Sec. 364.034. SOLID WASTE DISPOSAL SERVICE.** (a) A public agency or a county may:

(1) offer solid waste disposal service to persons in its territory;

(2) require the use of the service by those persons;

- (3) charge fees for the service; and
  - (4) establish the service as a utility separate from other utilities in its territory.
- (b) To aid enforcement of fee collection for the solid waste disposal service, a public agency or county may suspend service to a person who is delinquent in payment of solid waste disposal service fees until the delinquent claim is fully paid. (V.A.C.S. Art. 4477-8, Sec. 13.)

**Sec. 364.035. PUBLIC AGENCY DUTY TO ADJUST RATES CHARGED.** (a) A public agency shall establish, maintain, and adjust the rates charged by the public agency for solid waste disposal services if:

- (1) the public agency executes a contract with a county under this chapter; and
  - (2) the payments under the contract are to be made either wholly or partly from the revenues of the public agency's solid waste disposal fund.
- (b) The revenues of the public agency's solid waste disposal fund, and any taxes levied in support, must be sufficient to pay:
- (1) the expense of operating and maintaining the solid waste disposal service or system; and
  - (2) the public agency's obligations to the county under the contract and in connection with bonds issued or that may be issued that are secured by revenues of the solid waste disposal service or system.
- (c) A contract between a public agency and a county may require the use of consulting engineers and financial experts to advise the public agency whether and at what time rates are to be adjusted under this section. (V.A.C.S. Art. 4477-8, Sec. 9.)

**Sec. 364.036. AUTHORITY TO PROVIDE DISPOSAL SERVICES TO MORE THAN ONE PERSON.** A contract or group of contracts under this chapter may provide that:

- (1) a county may render concurrently to more than one person services relating to the construction or operation of all or part of a solid waste disposal system; and
- (2) the cost of the services will be allocated among the several persons as determined by the contract or group of contracts. (V.A.C.S. Art. 4477-8, Sec. 10.)

[Sections 364.037-364.050 reserved for expansion]

#### SUBCHAPTER D. BONDS

**Sec. 364.051. AUTHORITY TO ISSUE BONDS.** (a) To acquire, construct, improve, enlarge, and repair all or part of a solid waste disposal system, a county may issue bonds payable:

- (1) from and secured by a pledge of all or part of the revenues to accrue under a contract entered into under this chapter; and
- (2) from other income pledged by the county.

(b) Pending issuance of definitive bonds, a county may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of the definitive bonds. (V.A.C.S. Art. 4477-8, Sec. 11 (part).)

**Sec. 364.052. TERMS; FORM.** (a) Bonds issued under this chapter must be in the form and denomination and bear the rate of interest prescribed by the commissioners court.

(b) The bonds may be:

- (1) sold at a public or private sale at a price and on the terms determined by the commissioners court; or
- (2) exchanged for property or an interest in property determined by the commissioners court to be necessary or convenient to the purposes authorized by this chapter.

(c) The bonds are investment securities under Chapter 8, Business & Commerce Code. (V.A.C.S. Art. 4477-8, Sec. 11 (part).)

**Sec. 364.053. APPROVAL AND REGISTRATION.** (a) A county may submit bonds that have been authorized by the commissioners court and any record relating to their issuance to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a contract between the county and a public agency, the county may submit to the attorney general a copy of the contract and the proceedings of the public agency authorizing the contract.

(b) If the attorney general finds that the bonds have been authorized and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and the contract are incontestable. (V.A.C.S. Art. 4477-8, Sec. 14 (part).)

**Sec. 364.054. DISTRICT BOND VALIDATION BY SUIT.** (a) As an alternative for, or in addition to, the procedure provided by Section 364.053, the board of directors of a district may validate its bonds by filing suit in a district court in the manner and with the effect provided by Chapter 400, Acts of the 66th Legislature, 1979 (Article 717m-1, Vernon's Texas Civil Statutes).

(b) The interest rate and sale price of the bonds need not be fixed until after the termination of the validation proceedings or suit.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract made by the district and one or more public agencies, the petition must allege that fact and the notice of the suit must mention that allegation and each public agency's fund or revenues from which the contract is payable.

(d) The suit is a proceeding in rem, and the judgment is res judicata as to the validity of the bonds and any contract and the pledge of revenues. (V.A.C.S. Art. 4477-8, Sec. 14 (part).)

**Sec. 364.055. INVESTMENT AND USE OF PROCEEDS.** (a) The commissioners court may set aside from proceeds of a bond sale:

- (1) interest to accrue on the bonds;
- (2) administrative expenses to the estimated date when the solid waste disposal system will become revenue producing; and
- (3) reserve funds created by the resolution authorizing the bonds.

(b) Proceeds from the sale of bonds may be invested, pending their use, in the securities or time deposits as specified by the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds.

(c) The earnings on the investments may be applied as provided by the resolution or trust indenture. (V.A.C.S. Art. 4477-8, Secs. 12 (part), 15.)

**Sec. 364.056. REFUNDING OF BONDS.** A county may refund bonds issued under this chapter on terms and conditions and bearing the rate of interest prescribed by the commissioners court. (V.A.C.S. Art. 4477-8, Sec. 11 (part).)

**Sec. 364.057. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.** (a) Bonds issued under this chapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee; and
- (8) a sinking fund of a municipality, school district, or any other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or of a political subdivision of the state. The bonds are lawful and sufficient security for those deposits

in an amount up to their face value, if accompanied by all appurtenant unmatured coupons. (V.A.C.S. Art. 4477-8, Sec. 16.)

Sec. 364.058. ADJUSTMENT OF RATES AND CHARGES TO MAINTAIN ADEQUATE REVENUE. If bonds are outstanding, the commissioners court shall establish, maintain, and collect rates and charges for services furnished or made available by the solid waste disposal system adequate to:

(1) pay maintenance and operation costs of and expenses allocable to the solid waste disposal system and the principal of and interest on the bonds; and

(2) provide and maintain funds created by the resolution authorizing the bonds. (V.A.C.S. Art. 4477-8, Sec. 12 (part).)

#### CHAPTER 365. LITTER

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Sec. 365.001. SHORT TITLE

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE

Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT

[Sections 365.005-365.010 reserved for expansion]

##### SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED

Sec. 365.011. DEFINITIONS

Sec. 365.012. DISPOSING OF SOLID WASTE; CRIMINAL PENALTY; INJUNCTION

Sec. 365.013. DUMPING REFUSE ON OR NEAR HIGHWAY; CRIMINAL PENALTY; INJUNCTION

Sec. 365.014. THROWING INJURIOUS SUBSTANCE ON HIGHWAY; CRIMINAL PENALTY

Sec. 365.015. LIABILITY OF OPERATOR OF BOAT OR MOTOR VEHICLE; CRIMINAL PENALTY

Sec. 365.016. ILLEGAL DUMPING FROM VEHICLE; CRIMINAL PENALTY

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[Sections 365.018-365.030 reserved for expansion]

##### SUBCHAPTER C. SPECIAL PROVISIONS

Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE

Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY

Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY

#### CHAPTER 365. LITTER

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 365.001. SHORT TITLE. This chapter may be cited as the Texas Litter Abatement Act. (V.A.C.S. Art. 4477-9a, Sec. 1.01.)

Sec. 365.002. WATER POLLUTION CONTROLLED BY WATER CODE. The pollution of water in the state is controlled by Chapter 26, Water Code, and other applicable law. (V.A.C.S. Art. 4477-9a, Sec. 2.06.)

Sec. 365.003. LITTER ON BEACHES CONTROLLED BY NATURAL RESOURCES CODE. The regulation of litter on public beaches is controlled by Subchapters C and D, Chapter 61, Natural Resources Code. (V.A.C.S. Art. 4477-9a, Sec. 3.02.)



**Sec. 365.004. DISPOSAL OF GARBAGE, REFUSE, AND SEWAGE IN CERTAIN AREAS UNDER CONTROL OF PARKS AND WILDLIFE DEPARTMENT.** The Parks and Wildlife Commission may adopt rules to govern the disposal of garbage, refuse, and sewage in state parks, public water in state parks, historic sites, scientific areas, and forts under the control of the Parks and Wildlife Department. (V.A.C.S. Art. 4477-9a, Sec. 3.01.)

[Sections 365.005-365.010 reserved for expansion]

**SUBCHAPTER B. CERTAIN ACTIONS PROHIBITED**

**Sec. 365.011. DEFINITIONS.** In this subchapter:

- (1) "Dispose" means to discharge, deposit, inject, dump, spill, leak, or place junk, garbage, rubbish, refuse, or other solid waste on or into land or water.
- (2) "Garbage" means all decayable wastes from public and private establishments and restaurants, including vegetable, animal, and fish offal and animal and fish carcasses, but not including sewage, body wastes, or industrial by-products.
- (3) "Junk" means all worn-out, worthless, and discarded material, including odds and ends, old iron or other metal, glass, and cordage.
- (4) "Refuse" means garbage, rubbish, paper, and other decayable and nondecayable waste, including vegetable matter and animal and fish carcasses, but not including sewage from a public or private establishment or residence.
- (5) "Rubbish" means all nondecayable wastes, except ashes, from a public or private establishment or residence. (V.A.C.S. Art. 4477-9a, Sec. 2.01.)

**Sec. 365.012. DISPOSING OF SOLID WASTE; CRIMINAL PENALTY; INJUNCTION.** (a) A person commits an offense if the person disposes of junk, garbage, rubbish, refuse, or other solid waste on a public highway, right-of-way, other public or private property, or into inland or coastal waters of this state.

(b) A person commits an offense if the person allows or permits another person to dispose of junk, garbage, rubbish, refuse, or other solid waste on the person's property.

(c) It is a defense to prosecution under this section that the disposal occurred:

- (1) at a solid waste site permitted by the Texas Water Commission or the Texas Department of Health;
- (2) at a solid waste site licensed by a county under Chapter 361 (Solid Waste Disposal Act); or
- (3) in a designated collection area for ultimate disposal at a permitted or licensed municipal solid waste site.

(d) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

(e) A county or district attorney may bring suit for an injunction to prevent or restrain a violation under this section. A person affected or to be affected by a violation is entitled to seek injunctive relief to enjoin the violation. (V.A.C.S. Art. 4477-9a, Sec. 2.011.)

**Sec. 365.013. DUMPING REFUSE ON OR NEAR HIGHWAY; CRIMINAL PENALTY; INJUNCTION.** (a) In this section, "public highway" means the entire width between property lines of a road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park:

- (1) is opened to the public for vehicular traffic;
- (2) is used as a public recreational area; or
- (3) is under the state's legislative jurisdiction through its police power.

(b) An individual, firm, private corporation, or municipality commits an offense if that entity dumps, deposits, or leaves refuse, garbage, rubbish, or junk on a public highway in this state.

(c) An individual, firm, private corporation, or municipality commits an offense if that entity dumps, deposits, or leaves refuse, garbage, rubbish, or junk within 300 yards of a public highway, regardless of whether the refuse, garbage, rubbish, or junk or the land on which it is dumped, deposited, or left belongs to the offender.

(d) This section does not apply to farmers:

- (1) in handling anything necessary to grow, handle, and care for livestock; or
- (2) in erecting, operating, and maintaining improvements necessary to handle, thresh, and prepare agricultural products.

(e) The Texas Department of Health shall adopt rules and standards regulating the processing and treating of refuse, garbage, rubbish, or junk dumped, deposited, or left within 300 yards of a public highway. Subsection (c) does not apply if the refuse, garbage, rubbish, or junk is processed and treated in accordance with those rules and standards. A person commits an offense if the person violates a rule adopted under this subsection.

(f) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor.

(g) A county or district attorney may bring suit for an injunction to prevent or restrain a violation of this section. A person affected or to be affected by a violation is entitled to enjoin the violation. (V.A.C.S. Art. 4477-9a, Sec. 2.04.)

Sec. 365.014. **THROWING INJURIOUS SUBSTANCE ON HIGHWAY; CRIMINAL PENALTY.** (a) A person commits an offense if the person throws or deposits on a highway a glass bottle, glass, a nail, a tack, wire, a can, or any other substance likely to injure a person, animal, or vehicle on the highway.

(b) A person who commits an offense under this section is, on conviction, subject to the penalties and procedures provided by Sections 143 through 153, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4477-9a, Sec. 2.05.)

Sec. 365.015. **LIABILITY OF OPERATOR OF BOAT OR MOTOR VEHICLE; CRIMINAL PENALTY.** (a) In this section:

- (1) "Litter" means refuse or junk.
- (2) "Motor vehicle" has the meaning assigned by Section 2(b), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).
- (3) "Public highway" has the meaning assigned by Section 365.013.

(b) A person operating a boat or motor vehicle commits an offense if litter is thrown or discharged from the boat or motor vehicle into the state's inland or coastal waters or onto a public highway.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4477-9a, Sec. 2.08.)

Sec. 365.016. **ILLEGAL DUMPING FROM VEHICLE; CRIMINAL PENALTY.** (a) A person commits an offense if the person uses a motor vehicle to dispose of trash, refuse, waste, litter, or any other material in violation of a law or ordinance of the state or a political subdivision of the state.

(b) It is an exception to the application of this section that the person has a valid license with or contract from the state or a political subdivision of the state to dispose of the material in the manner and at the place in which it was disposed.

(c) An offense under this section is punishable by a fine of not more than \$2,000. (V.A.C.S. Art. 4477-9a, Sec. 2.09.)

**Sec. 365.017. DISPOSING OF REFUSE IN CAVES; CRIMINAL PENALTY.** (a) A person commits an offense if, without prior permission of the owner, the person stores, dumps, disposes of, or otherwise places in a cave a chemical or a dead animal or sewage, junk, garbage, rubbish, or other refuse.

(b) An offense under this section is a Class C misdemeanor unless:

(1) it is shown on the trial of the defendant that the defendant has previously been convicted once of an offense under this section, in which event the offense is a Class A misdemeanor; or

(2) it is shown on the trial of the defendant that the defendant has previously been convicted two or more times of an offense under this section, in which event the offense is a felony of the third degree. (V.A.C.S. Art. 4477-9a, Sec. 2.03.)

[Sections 365.018-365.030 reserved for expansion]

#### **SUBCHAPTER C. SPECIAL PROVISIONS**

**Sec. 365.031. LITTER, GARBAGE, REFUSE, AND RUBBISH IN LAKE SABINE.** The governing body of Port Arthur by ordinance may prohibit the depositing or placing of litter, garbage, refuse, or rubbish into or on the waters of Lake Sabine within the municipal limits. (V.A.C.S. Art. 4477-9a, Sec. 3.03.)

**Sec. 365.032. THROWING CERTAIN SUBSTANCES IN OR NEAR LAKE LAVON; CRIMINAL PENALTY.** (a) The definitions provided by Section 365.011 apply to this section.

(b) A person commits an offense if the person throws, leaves, or causes to be thrown or left wastepaper, glass, metal, a tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or near Lake Lavon in Collin County if the substance is detrimental to fish or to a person fishing in Lake Lavon.

(c) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4477-9a, Sec. 2.07.)

**Sec. 365.033. DISCARDING REFUSE IN CERTAIN COUNTY PARKS; CRIMINAL PENALTY.** (a) The definitions provided by Section 365.011 apply to this section.

(b) In this section, "beach" means an area in which the public has acquired a right of use or an easement and that borders on the seaward shore of the Gulf of Mexico or extends from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(c) This section applies only to a county park located in a county that has the Gulf of Mexico as one boundary, but does not apply to a beach located in that park.

(d) A person commits an offense if the person discards in a county park any junk, garbage, rubbish, or other refuse in a place that is not an officially designated refuse container or disposal unit.

(e) An offense under this section is a Class C misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4477-9a, Sec. 2.02.)

#### **CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

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- Sec. 366.071. REGISTRATION
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- Sec. 366.092. INJUNCTION
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CHAPTER 366. ON-SITE SEWAGE DISPOSAL SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 366.001. POLICY AND PURPOSE. It is the public policy of this state and the purpose of this chapter to:

(1) eliminate and prevent health hazards by regulating and properly planning the location, design, construction, installation, operation, and maintenance of on-site sewage disposal systems;

(2) authorize the department or authorized agent to impose and collect a permit fee for:

(A) construction, installation, alteration, repair, or extension of on-site sewage disposal systems; and

(B) tests, designs, and inspections of those systems;

(3) authorize the department or authorized agent to impose a penalty for a violation of this chapter or a rule adopted under this chapter;

(4) require an on-site sewage disposal system installer to register with the department; and

(5) allow the individual owner of a disposal system to install and repair the system in accordance with this chapter. (V.A.C.S. Art. 4477-7e, Sec. 1(c), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.002. DEFINITIONS.** In this chapter:

(1) "Authorized agent" means a local governmental entity authorized by the department to implement and enforce rules under this chapter.

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

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

(4) "Designated representative" means a person who is designated by the department or authorized agent to make percolation tests, system designs, and inspections subject to the department's or authorized agent's approval.

(5) "Installer" means a person who is compensated by another to construct, install, alter, or repair an on-site sewage disposal system.

(6) "Local governmental entity" means a municipality, county, river authority, or special district, including an underground water district and a soil and water conservation district.

(7) "Nuisance" means:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewage disposal system, or a blatant discharge from an on-site sewage disposal system.

(8) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities that are not regulated by the Texas Water Commission and that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on the site where the system is located.

(9) "Owner" means a person who owns a building or other property served by an on-site sewage disposal system.

(10) "Sewage" means waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) generally originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food. (V.A.C.S. Art. 4477-7e, Sec. 2 (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.003. IMMUNITY.** The department, an authorized agent, or a designated representative is not liable for damages resulting from the department's or authorized agent's approval of the installation and operation of an on-site sewage disposal system. (V.A.C.S. Art. 4477-7e, Sec. 14, as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.004. COMPLIANCE REQUIRED. A person may not construct, alter, repair, or extend, or cause to be constructed, altered, repaired, or extended, an on-site sewage disposal system that does not comply with this chapter and applicable rules. (V.A.C.S. Art. 4477-7e, Sec. 3, as added Acts 70th Leg., R.S., Ch. 406, 1987.)

[Sections 366.005-366.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DEPARTMENT  
AND AUTHORIZED AGENTS

Sec. 366.011. GENERAL SUPERVISION AND AUTHORITY. The department or authorized agents:

(1) have general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and

(2) shall administer this chapter and the rules adopted under this chapter. (V.A.C.S. Art. 4477-7e, Sec. 4(a), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.012. RULES CONCERNING ON-SITE SEWAGE DISPOSAL SYSTEMS. (a) To assure the effective and efficient administration of this chapter, the board shall:

(1) adopt rules governing the installation of on-site sewage disposal systems, including rules concerning the:

(A) review and approval of on-site sewage disposal systems;

(B) registration of installers; and

(C) temporary waiver of a permit for an emergency repair; and

(2) adopt rules under this chapter that encourage the use of economically feasible alternative techniques and technologies for on-site sewage disposal systems that can be used in soils not suitable for conventional on-site sewage disposal.

(b) In rules adopted under this chapter, the board shall include definitions and detailed descriptions of good management practices and procedures for the construction of on-site sewage disposal systems that:

(1) justify variation in field size or in other standard requirements;

(2) promote the use of good management practices or procedures in the construction of on-site sewage disposal systems;

(3) require the use of one or more specific management practices or procedures as a condition of approval of a standard on-site sewage disposal system if, in the opinion of the department or authorized agent, site conditions or other problems require the use of additional management practices or procedures to ensure the proper operation of an on-site sewage disposal system; and

(4) make available general, operational information to the public. (V.A.C.S. Art. 4477-7e, Sec. 4(b) (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.013. TRAINING PROGRAM. (a) The department shall establish a training program specifically developed for installers, authorized agents, and designated representatives.

(b) The department may charge a program participant a reasonable fee to cover the cost of the training. (V.A.C.S. Art. 4477-7e, Sec. 4(c), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.014. DESIGNATED REPRESENTATIVE. (a) The department or an authorized agent may designate a person to make percolation tests, systems designs, and inspections subject to the approval of the department or agent.

(b) To qualify as a designated representative, a person must:

(1) demonstrate to the department's or authorized agent's satisfaction the person's competency to make percolation tests, designs, and inspections for on-site sewage disposal systems in accordance with this chapter and rules adopted under this chapter; and

(2) successfully complete the training program provided by the department. (V.A.C.S. Art. 4477-7e, Sec. 2(3) (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.015. ENFORCEMENT.** The department shall enforce this chapter and rules adopted under this chapter. (V.A.C.S. Art. 4477-7e, Sec. 4(b)(6), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.016. EMERGENCY ORDERS.** (a) If the department or authorized agent determines that an emergency exists and that the public health or safety is endangered because of the operation of an on-site sewage disposal system that does not comply with this chapter or a rule adopted under this chapter, the department or authorized agent by order may:

- (1) suspend the registration of the installer;
- (2) regulate the on-site sewage disposal system; or
- (3) both suspend the registration and regulate the system.

(b) The order may be issued without notice and hearing.

(c) If the emergency order is issued without a hearing, the department or authorized agent shall set a time and place for a hearing to affirm, modify, or set aside the emergency order to be held not later than the 30th day after the date on which the emergency order is issued.

(d) General notice of the hearing shall be given in accordance with the laws of this state and rules adopted by the board or authorized agent.

(e) The hearing shall be conducted in accordance with the board's rules or laws and rules governing the authorized agent. (V.A.C.S. Art. 4477-7e, Sec. 9(e), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.017. REQUIRED REPAIRS; PENALTY.** (a) The department or authorized agent may require a property owner to repair a malfunctioning on-site sewage disposal system on the owner's property not later than the 30th day after the date on which the owner is notified by the department or authorized agent of the malfunctioning system.

(b) The property owner must take adequate measures as soon as practicable to abate an immediate health hazard.

(c) The property owner may be assessed a penalty under Chapter 341 for each day that the on-site sewage disposal system remains unrepaired. (V.A.C.S. Art. 4477-7e, Sec. 10, as added Acts 70th Leg., R.S., Ch. 406, 1987.)

[Sections 366.018-366.030 reserved for expansion]

#### **SUBCHAPTER C. DESIGNATION OF LOCAL GOVERNMENTAL ENTITY AS AUTHORIZED AGENT**

**Sec. 366.031. DESIGNATION.** (a) The department shall designate a local governmental entity as an authorized agent if the governmental entity:

- (1) notifies the department that the entity wants to regulate the use of on-site sewage disposal systems in its jurisdiction;
- (2) in accordance with department procedures, holds a public hearing and adopts an order or resolution that complies with Section 366.032; and
- (3) submits the order or resolution to the department.

(b) The department in writing may approve the local governmental entity's order or resolution, and the designation takes effect only when the order or resolution is approved. (V.A.C.S. Art. 4477-7e, Secs. 5(a) (part), (b), (d), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.032. ORDER OR RESOLUTION; REQUIREMENTS.** (a) The local governmental entity's order or resolution must:

- (1) incorporate the board's rules on abatement or prevention of pollution and the prevention of injury to the public health;

(2) meet the department's minimum requirements for on-site sewage disposal systems; and

(3) include a written enforcement plan.

(b) If the order or resolution adopts more stringent standards for on-site sewage disposal systems than this chapter or the department's standards and provides greater public health and safety protection, the authorized agent's order or resolution prevails over this chapter or the standards.

(c) An authorized agent must obtain department approval of substantive amendments to the agent's order or resolution. (V.A.C.S. Art. 4477-7e, Secs. 5(a) (part), (c), (e); Sec. 13, as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.033. DELEGATION TO LOCAL GOVERNMENTAL ENTITIES. The department shall delegate to local governmental entities responsibility for the implementation and enforcement of applicable rules, subject to the board's approval. (V.A.C.S. Art. 4477-7e, Sec. 4(b)(3), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.034. INVESTIGATION OF AUTHORIZED AGENTS. (a) The department shall:

(1) conduct not more often than once a year an investigation of each authorized agent to determine the authorized agent's compliance with this chapter; and

(2) submit an annual report to the board concerning the status of the local governmental entity's regulatory program.

(b) If the department determines that an authorized agent does not consistently enforce the department's minimum requirements for on-site sewage disposal systems, the department shall hold a hearing and determine whether to continue the designation as an authorized agent. (V.A.C.S. Art. 4477-7e, Sec. 5(g), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

[Sections 366.035-366.050 reserved for expansion]

#### SUBCHAPTER D. PERMITS; FEES

Sec. 366.051. PERMITS. (a) A person must hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system.

(b) If the on-site sewage disposal system is located in the jurisdiction of an authorized agent, the permit is issued by the authorized agent; otherwise, the permit is issued by the department.

(c) A person may not begin to construct, alter, repair, or extend an on-site sewage disposal system that is owned by another person unless the owner or owner's representative shows proof of a permit and approved plan from the department or authorized agent. (V.A.C.S. Art. 4477-7e, Secs. 5(f), 6(c), 7(a) (part), (b), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.052. PERMIT NOT REQUIRED FOR ON-SITE SEWAGE DISPOSAL ON CERTAIN SINGLE RESIDENCES. (a) Sections 366.051, 366.053, 366.054, and 366.057 do not apply to an on-site sewage disposal system of a single residence that is located on a land tract that is 10 acres or larger in which the field line or sewage disposal line is not closer than 100 feet of the property line.

(b) Effluent from the on-site sewage disposal system on a single residence:

(1) must be retained in the specified limits;

(2) may not create a nuisance; and

(3) may not pollute groundwater. (V.A.C.S. Art. 4477-7e, Sec. 7(f), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.053. PERMIT APPLICATION. (a) Application for a permit must:

(1) be made on a form provided by the department or authorized agent; and



(2) include information required by the department or authorized agent to establish that the individual sewage disposal system complies with this chapter and rules adopted under this chapter.

(b) The board shall adopt rules and procedures for the submission, review, and approval or rejection of permit applications. (V.A.C.S. Art. 4477-7e, Secs. 4(b)(7)(B) (part), 7(d), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.054. NOTICE FROM INSTALLER. An installer may not begin construction, alteration, repair, or extension of an on-site sewage disposal system unless the installer notifies the department or authorized agent of the date on which the installer plans to begin work on the system. (V.A.C.S. Art. 4477-7e, Secs. 7(c), 9(b), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.055. INSPECTIONS. (a) The department or authorized agent shall review a proposal for an on-site sewage disposal system and make inspections of the system as necessary to ensure that the on-site sewage disposal system is in substantial compliance with this chapter and the rules adopted under this chapter.

(b) An on-site sewage disposal system may not be used unless it is inspected and approved by the department or the authorized agent.

(c) A holder of a permit issued under this chapter shall notify the department, the authorized agent, or a designated representative not later than the fifth working day before the proposed date of the operation of an installation that the installation is ready for inspection.

(d) The inspection shall be made on a date and time mutually agreed on by the holder of a permit and the department, the authorized agent, or a designated representative.

(e) An installation inspection shall be made not later than the second working day, excluding holidays, after the date on which notification that the installation is completed and ready for inspection is given to the department, the authorized agent, or a designated representative.

(f) The owner, owner's representative, or occupant of the property on which the installation is located shall give the department, the authorized agent, or a designated representative reasonable access to the property at reasonable times to make necessary inspections. (V.A.C.S. Art. 4477-7e, Secs. 6(a), (b), (f), (g), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The department or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

(b) If a system is not approved under this section, the on-site sewage disposal system may not be used until all deficiencies are corrected and the system is reinspected and approved by the department or authorized agent. (V.A.C.S. Art. 4477-7e, Secs. 6(d), (e), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.057. PERMIT ISSUANCE. (a) The department shall issue or authorize the issuance of permits and other documents.

(b) A permit and approved plan to construct, alter, repair, extend, or operate an on-site sewage disposal system must be issued in the name of the person who owns the system and must identify the specific property location or address for the specific construction, alteration, extension, repair, or operation proposed by the person.

(c) The department may not issue a permit to construct, alter, repair, or extend an on-site sewage disposal system if the issuance of a permit conflicts with other applicable laws or public policy under this chapter. (V.A.C.S. Art. 4477-7e, Secs. 4(b)(7) (part); 7(a) (part), (e), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.058. PERMIT FEE. (a) The board by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system.

(b) The department at its discretion may provide variances to the uniform application of the permit fee. (V.A.C.S. Art. 4477-7e, Secs. 4(b)(7)(A) (part), 8(a), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.059. PERMIT FEE PAID TO DEPARTMENT OR AUTHORIZED AGENT.

(a) The permit fee shall be paid to the authorized agent or the department, whichever performs the permitting function.

(b) The department may assess a charge-back fee to a local governmental entity for which the department issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. (V.A.C.S. Art. 4477-7e, Secs. 8(b), (c), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

[Sections 366.060-366.070 reserved for expansion]

#### SUBCHAPTER E. REGISTRATION OF INSTALLERS

Sec. 366.071. REGISTRATION. A person may not operate as an installer in this state unless the person is registered by the department or an authorized agent. (V.A.C.S. Art. 4477-7e, Sec. 9(a) (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.072. REGISTRATION APPLICATION. The board shall adopt a registration application form and rules and procedures for the submission, review, and approval or rejection of registration applications. (V.A.C.S. Art. 4477-7e, Sec. 4(b)(7)(B) (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.073. REGISTRATION ISSUANCE. (a) The department shall issue or authorize the issuance of registrations and other documents.

(b) The department shall issue a registration to an installer if the installer:

(1) completes an application form that complies with this chapter and rules adopted under this chapter; and

(2) completes the training program provided by the department. (V.A.C.S. Art. 4477-7e, Secs. 4(b)(7) (part), 9(a) (part), (c), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.074. REGISTRATION FEE. The board shall establish and collect a reasonable registration fee to cover the cost of issuing registrations under this chapter. (V.A.C.S. Art. 4477-7e, Sec. 4(b)(7)(A) (part), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.075. PROOF OF REGISTRATION. Each installer shall furnish proof of registration if requested by the department, an authorized agent, or a designated representative. (V.A.C.S. Art. 4477-7e, Sec. 9(f), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.076. REGISTRATION RENEWAL. The department may provide for periodic renewal of registrations. (V.A.C.S. Art. 4477-7e, Sec. 9(g), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.077. REGISTRATION REVOCATION. (a) An installer's statewide registration may be revoked by the department or an authorized agent after notice and hearing if the installer violates this chapter or a rule adopted under this chapter.

(b) The revocation procedures must comply with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The installer may appeal a revocation under this section as provided by law. (V.A.C.S. Art. 4477-7e, Sec. 9(d), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

Sec. 366.078. OFFICIAL ROSTER OF REGISTERED INSTALLERS. On request, the department semiannually shall:

(1) disseminate to the public an official roster of registered installers; and

(2) provide to authorized agents a monthly update of the roster. (V.A.C.S. Art. 4477-7e, Sec. 9(h), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

[Sections 366.079-366.090 reserved for expansion]

**SUBCHAPTER F. PENALTIES**

**Sec. 366.091. CRIMINAL PENALTIES.** (a) A person commits an offense if the person violates Section 366.071.

(b) A person commits an offense if the person begins to construct, alter, repair, or extend an on-site sewage disposal system owned by another person before the owner of the system obtains a permit to construct, alter, repair, or extend the on-site sewage disposal system as required by Subchapter D.

(c) An emergency repair to an on-site sewage disposal system without a permit in accordance with the rules adopted under Section 366.012(a)(1)(C) is not an offense under this section.

(d) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$100 unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is punishable by:

- (1) a fine of not less than \$125 or more than \$500;
- (2) confinement in jail for not more than one month; or
- (3) both the fine and confinement.

(e) Each day of a continuing violation is a separate offense. (V.A.C.S. Art. 4477-7e, Secs. 11(a), (b), (c), (e), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.092. INJUNCTION.** The department or an authorized agent may bring suit for injunction to prevent or restrain a violation of this chapter. (V.A.C.S. Art. 4477-7e, Sec. 11(d), as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**Sec. 366.093. LEGAL PROCEEDINGS.** A prosecuting attorney who receives a report from the department or an authorized agent of a violation of this chapter or a rule adopted under this chapter shall:

- (1) begin appropriate proceedings in the proper court without unnecessary delay; and
- (2) prosecute the cause as required by law. (V.A.C.S. Art. 4477-7e, Sec. 12, as added Acts 70th Leg., R.S., Ch. 406, 1987.)

**CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL**

- Sec. 367.001. DEFINITIONS**
- Sec. 367.002. COMPOSITION OF COUNCIL**
- Sec. 367.003. APPLICATION OF SUNSET ACT**
- Sec. 367.004. TERMS**
- Sec. 367.005. OFFICERS; MEETINGS**
- Sec. 367.006. COMPENSATION; EXPENSES**
- Sec. 367.007. ADMINISTRATION**
- Sec. 367.008. AWARD OF COMPETITIVE GRANTS**
- Sec. 367.009. APPROPRIATIONS**
- Sec. 367.010. FEES**

**CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL**

**Sec. 367.001. DEFINITIONS.** In this chapter:

- (1) "Council" means the On-site Wastewater Treatment Research Council.
- (2) "Department" means the Texas Department of Health.
- (3) "On-site wastewater treatment system" means a system of treatment devices or disposal facilities that:
  - (A) is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments;
  - (B) is located on the site where the sewage is produced; and

(C) produces not more than 5,000 gallons of waste a day. (V.A.C.S. Art. 4477-7f, Secs. 1.01(1), (3), (4), (5).)

Sec. 367.002. COMPOSITION OF COUNCIL. The On-site Wastewater Treatment Research Council is composed of the following 11 members appointed by the governor:

- (1) two builders of housing constructed on-site in this state;
- (2) one residential real estate developer;
- (3) one professional engaged in municipal or county regulation of on-site wastewater treatment in this state;
- (4) one practicing engineer with significant experience designing on-site wastewater treatment systems;
- (5) one professional engaged in monitoring the environmental impact of on-site wastewater treatment systems in this state;
- (6) one employee of the Texas Water Commission;
- (7) one representative of an industry using on-site wastewater treatment in this state as part of its commercial or manufacturing process;
- (8) one person employed in the field of rural water quality in this state;
- (9) one soils scientist who is involved in and familiar with innovative on-site wastewater disposal techniques; and
- (10) one representative of the public with a demonstrated involvement in efforts to safeguard the environment. (V.A.C.S. Art. 4477-7f, Sec. 2.02.)

Sec. 367.003. APPLICATION OF SUNSET ACT. (a) The council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the council is abolished and this chapter expires August 31, 1989.

(b) If this chapter expires under Subsection (a), uncommitted money in the on-site wastewater treatment research account shall be deposited to the credit of the general revenue fund. (V.A.C.S. Art. 4477-7f, Secs. 5.01, 5.02.)

Sec. 367.004. TERMS. Council members serve for staggered two-year terms, with the terms of five members expiring September 1 of each even-numbered year and the terms of six members expiring September 1 of each odd-numbered year. (V.A.C.S. Art. 4477-7f, Sec. 2.03.)

Sec. 367.005. OFFICERS; MEETINGS. (a) Each year the council shall elect one of its members as chairman.

(b) The council shall meet quarterly as designated by the chairman or may meet in an emergency as determined by the chairman or a majority of the members.

(c) The vote of a majority, but not fewer than four, of the council members present at a meeting or the written approval of a majority of the council members is required for any council action, including the approval of a grant request. (V.A.C.S. Art. 4477-7f, Sec. 2.04.)

Sec. 367.006. COMPENSATION; EXPENSES. A council member is entitled to receive:

- (1) the amount provided by legislative appropriation for the member's services; and
- (2) reimbursement for travel expenses and other necessary expenses as provided by law. (V.A.C.S. Art. 4477-7f, Sec. 2.05.)

Sec. 367.007. ADMINISTRATION. (a) The department shall implement council decisions.

(b) The council may enter into an interagency contract with the department to provide staff and other administrative support as required.

(c) Administrative costs are payable from the on-site wastewater treatment research account. (V.A.C.S. Art. 4477-7f, Sec. 2.06.)

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The council shall establish procedures for awarding competitive grants and disbursing grant money.

(b) The council may award competitive grants to:

(1) support applied research at accredited colleges and universities in this state regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

(c) The council may award grants or make other expenditures authorized under this chapter only after the comptroller certifies that the on-site wastewater treatment research account contains enough money to pay for those expenditures. (V.A.C.S. Art. 4477-7f, Secs. 3.01, 3.02, 3.03.)

Sec. 367.009. APPROPRIATIONS. Money appropriated for the purposes of this chapter shall be disbursed as the council directs and in accordance with Section 367.008. (V.A.C.S. Art. 4477-7f, Sec. 4.03 (part).)

Sec. 367.010. FEES. (a) The Texas Department of Health and each county, municipality, public health department, and river authority shall collect a \$10 fee for each on-site wastewater treatment permit it issues.

(b) The fee shall be forwarded to the department not later than the 30th day after the date on which it is collected.

(c) The department may enforce the collection and forwarding of the fee.

(d) The fee proceeds shall be deposited to the credit of the on-site wastewater treatment research account of the general revenue fund. (V.A.C.S. Art. 4477-7f, Secs. 4.01, 4.02(a), (b), (c).)

## **CHAPTER 368. COUNTY REGULATION OF TRANSPORTATION OF WASTE**

### **SUBCHAPTER A. TRANSPORTERS OF GREASE TRAP, SAND TRAP, AND SEPTIC WASTE**

Sec. 368.001. REGULATORY PROGRAM

Sec. 368.002. PARTICIPATION BY MUNICIPALITY IN REGULATORY PROGRAM

Sec. 368.003. PERMITS

Sec. 368.004. INSPECTIONS

Sec. 368.005. CONTRACTS

Sec. 368.006. FORMS

[Sections 368.007-368.010 reserved for expansion]

### **SUBCHAPTER B. REGULATION AND LICENSING OF WASTE HAULERS**

Sec. 368.011. DEFINITIONS

Sec. 368.012. COUNTY LICENSING AND REGULATION

Sec. 368.013. EXEMPTIONS FOR CERTAIN WASTE HAULERS

Sec. 368.014. BOND OR OTHER FINANCIAL ASSURANCE

Sec. 368.015. FEES

Sec. 368.016. CONFLICT WITH OTHER REGULATIONS

Sec. 368.017. INJUNCTION

Sec. 368.018. CRIMINAL PENALTY

## **CHAPTER 368. COUNTY REGULATION OF TRANSPORTATION OF WASTE**

### **SUBCHAPTER A. TRANSPORTERS OF GREASE TRAP, SAND TRAP, AND SEPTIC WASTE**

Sec. 368.001. REGULATORY PROGRAM. The commissioners court of a county may establish a program regulating transporters of grease trap, sand trap, and septic waste. (V.A.C.S. Art. 4477-7e, Sec. 2, as added Acts 70th Leg., R.S., Ch. 810, 1987.)

Sec. 368.002. PARTICIPATION BY MUNICIPALITY IN REGULATORY PROGRAM. The commissioners court may enter into a contract with a municipality that provides the terms and conditions under which the municipality may participate in the regulatory program. (V.A.C.S. Art. 4477-7e, Sec. 4(3), as added Acts 70th Leg., R.S., Ch. 810, 1987.)

Sec. 368.003. PERMITS. The commissioners court of a county may:

- (1) require a permit for trucks that transport grease trap, sand trap, and septic waste, including trucks serving unincorporated areas of the county;
- (2) by order establish guidelines and procedures for issuing permits to trucks that transport grease trap, sand trap, and septic waste; and
- (3) issue a single permit number that allows a municipality participating in the county regulatory program the option to add to that permit number a suffix unique to the municipality. (V.A.C.S. Art. 4477-7e, Secs. 3(1), (2); 4(1) (part), as added Acts 70th Leg., R.S., Ch. 810, 1987.)

Sec. 368.004. INSPECTIONS. The commissioners court of a county may:

- (1) coordinate with municipalities the inspection of trucks that transport grease trap, sand trap, and septic waste;
- (2) by order establish guidelines and procedures to coordinate truck inspections; and
- (3) assess an inspection fee sufficient to cover the cost to the county of providing the inspection service. (V.A.C.S. Art. 4477-7e, Secs. 3(3); 4(1) (part), (4), as added Acts 70th Leg., R.S., Ch. 810, 1987.)

Sec. 368.005. CONTRACTS. The commissioners court of a county may contract with a person to provide a service that is part of the regulatory program. (V.A.C.S. Art. 4477-7e, Sec. 4(2), as added Acts 70th Leg., R.S., Ch. 810, 1987.)

Sec. 368.006. FORMS. The commissioners court of a county may develop a single manifest form with a uniform manifest registration and numbering system to be used by the county and each participating municipality. (V.A.C.S. Art. 4477-7e, Sec. 3(4), as added Acts 70th Leg., R.S., Ch. 810, 1987.)

[Sections 368.007-368.010 reserved for expansion]

#### SUBCHAPTER B. REGULATION AND LICENSING OF WASTE HAULERS

Sec. 368.011. DEFINITIONS. In this subchapter:

(1) "Waste" means:

- (A) animal and vegetable waste materials resulting from the handling, preparation, cooking, or consumption of food;
- (B) discarded paper, rags, cardboard, wood, rubber, plastics, yard trimmings, fallen leaves, brush materials, and similar combustible items; and
- (C) discarded glass, crockery, tin or aluminum cans, metal items, and similar items that are noncombustible at ordinary incinerator temperatures.

(2) "Waste hauler" means a person who, for compensation, transports waste by the use of a motor vehicle. (V.A.C.S. Art. 4477-8a, Sec. 1 (part).)

Sec. 368.012. COUNTY LICENSING AND REGULATION. To protect the public health, safety, or welfare, the commissioners court of a county with a population of less than 100,000 may by ordinance:

- (1) require a waste hauler who transports waste in unincorporated areas of the county to be licensed by the county;
- (2) establish requirements for obtaining and renewing a waste hauler license;
- (3) impose a license issuance or renewal fee in an amount that generates annually the approximate amount of revenue needed to fund the licensing program for a year;
- (4) establish standards governing the transportation of waste in unincorporated areas of the county;

(5) establish grounds for suspending or revoking a waste hauler license; and

(6) prescribe any other provisions necessary to administer the licensing program. (V.A.C.S. Art. 4477-8a, Sec. 2.)

**Sec. 368.013. EXEMPTIONS FOR CERTAIN WASTE HAULERS.** (a) This subchapter does not apply to an entity that transports:

(1) material as part of a recycling program; or

(2) salt water, drilling fluids, or other waste associated with the exploration, development, and production of oil, gas, or geothermal resources.

(b) Except as provided by Subsection (c), a county may not require a waste hauler license to be held by a waste hauler:

(1) while transporting waste on behalf of a municipality or other governmental entity; or

(2) operating regularly in more than three counties.

(c) A county may require a waste hauler who transports waste on behalf of a municipality or other governmental entity to have a waste hauler license if the hauler deposits any part of that waste in a county other than the county in which all or part of the municipality or other governmental entity is located. (V.A.C.S. Art. 4477-8a, Secs. 1 (part), 3.)

**Sec. 368.014. BOND OR OTHER FINANCIAL ASSURANCE.** (a) An applicant for a waste hauler license must execute a surety bond or provide other financial assurance that is payable for the use and benefit of the county or any other person harmed by the waste hauler's actions.

(b) The bond or other financial assurance must be in an amount the commissioners court considers necessary or desirable according to the risk of harm associated with the operation of the waste hauling business.

(c) A bond executed under this section must comply with the insurance laws of this state. (V.A.C.S. Art. 4477-8a, Sec. 4.)

**Sec. 368.015. FEES.** Fees or other money received by a county under the licensing program shall be deposited to the credit of the general fund of the county. (V.A.C.S. Art. 4477-8a, Sec. 5.)

**Sec. 368.016. CONFLICT WITH OTHER REGULATIONS.** If a requirement or standard established under Section 368.012 conflicts with state law, a rule adopted under state law, or a municipal ordinance or charter, the stricter provision prevails. (V.A.C.S. Art. 4477-8a, Sec. 6.)

**Sec. 368.017. INJUNCTION.** A county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an ordinance the county adopts under this subchapter. (V.A.C.S. Art. 4477-8a, Sec. 7.)

**Sec. 368.018. CRIMINAL PENALTY.** (a) If a county ordinance adopted under this subchapter defines an offense for a violation of the ordinance, the offense is a Class C misdemeanor.

(b) A separate offense occurs on each day on which all the elements of the offense exist. (V.A.C.S. Art. 4477-8a, Sec. 8.)

[Chapters 369-380 reserved for expansion]

#### **SUBTITLE C. AIR QUALITY**

#### **CHAPTER 381. ORGANIZATION OF TEXAS AIR CONTROL BOARD**

**Sec. 381.001. DEFINITIONS**

**Sec. 381.002. BOARD AS PRINCIPAL AUTHORITY**

**Sec. 381.003. COMPOSITION OF BOARD**

**Sec. 381.004. APPLICATION OF SUNSET ACT**

**Sec. 381.005. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT**

**Sec. 381.006. TERMS**

- Sec. 381.007. OFFICERS
- Sec. 381.008. REMOVAL OF BOARD MEMBER
- Sec. 381.009. VACANCY
- Sec. 381.010. PER DIEM; REIMBURSEMENT FOR EXPENSES
- Sec. 381.011. BOARD MEETINGS
- Sec. 381.012. EXECUTIVE DIRECTOR
- Sec. 381.013. PERSONNEL
- Sec. 381.014. FEES
- Sec. 381.015. STAFF SERVICES
- Sec. 381.016. FINANCES; FUND
- Sec. 381.017. REPORTS
- Sec. 381.018. PUBLIC INTEREST INFORMATION AND COMPLAINTS
- Sec. 381.019. PUBLIC TESTIMONY
- Sec. 381.020. DOCUMENTS; PUBLIC PROPERTY
- Sec. 381.021. COPIES OF DOCUMENTS, PROCEEDINGS
- Sec. 381.022. CONFIDENTIAL INFORMATION
- Sec. 381.023. SEAL

## SUBTITLE C. AIR QUALITY

## CHAPTER 381. ORGANIZATION OF TEXAS AIR CONTROL BOARD

## Sec. 381.001. DEFINITIONS. In this chapter:

- (1) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.
- (2) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such concentration and of such duration:
  - (A) that are or tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or
  - (B) that interfere with the normal use and enjoyment of animal life, vegetation, or property.
- (3) "Board" means the Texas Air Control Board.
- (4) "Executive director" means the executive director of the board. (V.A.C.S. Art. 4477-5, Secs. 1.03(1), (3), (4), (5).)

Sec. 381.002. BOARD AS PRINCIPAL AUTHORITY. The Texas Air Control Board is the state air pollution control agency. The board is the principal authority in this state on matters relating to the quality of the state's air resources and for setting standards, criteria, levels, and emission limits for air content and pollution control. (V.A.C.S. Art. 4477-5, Secs. 1.05, 2.01.)

Sec. 381.003. COMPOSITION OF BOARD. (a) The board is composed of the following nine members appointed by the governor with the advice and consent of the senate:

- (1) one professional engineer with at least 10 years' experience in the practice of that profession, including work in air control;
- (2) one physician licensed to practice medicine in this state who is currently engaged in general practice in this state and who has experience in the field of industrial medicine;
- (3) one person who has been actively engaged in the management of a private manufacturing or industrial concern for at least 10 years preceding the person's appointment;
- (4) one agricultural engineer with at least 10 years' experience in that profession; and
- (5) five members of the public, at least one of whom has demonstrated involvement in efforts to safeguard the environment.



(b) Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(c) The official board records must contain the date each member's certificate of appointment is issued by the secretary of state, the date the member takes the oath of office, the name of the person who administers the oath, the date the member's term begins, and the date the term expires. (V.A.C.S. Art. 4477-5, Secs. 2.02(a), 2.021, 2.04(c).)

**Sec. 381.004. APPLICATION OF SUNSET ACT.** The board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 1991. (V.A.C.S. Art. 4477-5, Sec. 2.01a (part).)

**Sec. 381.005. RESTRICTIONS ON BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT.** (a) A person is not eligible for appointment or service as a public member if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the board or receiving funds from the board;

(2) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the board or receiving funds from the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board.

(b) A public member may not derive a significant portion of the member's income from a person subject to the board's permits or enforcement orders.

(c) An officer, employee, or paid consultant of a trade association for an industry regulated by the board may not be a member or employee of the board.

(d) A person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association for an industry regulated by the board may not be a board member or a board employee Grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(e) A person may not serve as a board member 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 board's operation. (V.A.C.S. Art. 4477-5, Secs. 2.02(b), 2.022, 2.023, 2.04(d).)

**Sec. 381.006. TERMS.** Board members serve for staggered six-year terms, with the terms of three members expiring September 1 of each odd-numbered year. (V.A.C.S. Art. 4477-5, Sec. 2.03 (part).)

**Sec. 381.007. OFFICERS.** (a) The governor shall designate a chairman from among the board members. The chairman serves at the will of the governor.

(b) The board shall elect a vice-chairman to serve a two-year term beginning February 1 of each odd-numbered year. (V.A.C.S. Art. 4477-5, Sec. 2.06.)

**Sec. 381.008. REMOVAL OF BOARD MEMBER.** (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment or maintain during service on the board the qualifications required by Section 381.003(a);

(2) is not eligible for appointment to or service on the board as provided by Section 381.005(a);

(3) violates a prohibition established by Section 381.005(c), (d), or (e);

(4) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the board.

(b) The validity of a board action 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 chairman of the board of the ground. The chairman shall then notify the governor that a potential ground for removal exists.

(d) The board shall maintain public records sufficient to show continuing eligibility for board membership under this chapter. (V.A.C.S. Art. 4477-5, Sec. 2.041.)

Sec. 381.009. VACANCY. (a) The governor's appointment to fill a vacancy on the board shall be made in the same manner as the appointment of the person vacating the office.

(b) A person appointed to fill a vacancy serves for the unexpired term. (V.A.C.S. Art. 4477-5, Sec. 2.04(b) (part).)

Sec. 381.010. PER DIEM; REIMBURSEMENT FOR EXPENSES. (a) A board member is not entitled to a salary for duties performed as a board member.

(b) A member is entitled to receive:

(1) \$25 for each day the member attends a meeting or hearing or is on authorized board business, including time spent in travelling to and from the place of the meeting, hearing, or other authorized business; and

(2) reimbursement for travel and other necessary expenses incurred in performing official duties, as evidenced by vouchers approved by the executive director of the board. (V.A.C.S. Art. 4477-5, Sec. 2.05.)

Sec. 381.011. BOARD MEETINGS. (a) The chairman, or in the chairman's absence the vice-chairman, shall preside at all board meetings. In the absence of both of those officers, the board members present may select one of their number to serve as chairman for the meeting.

(b) The board shall have regular meetings at times specified by a majority vote of the board.

(c) The chairman shall call a special meeting on written request signed by at least two board members and may call a special meeting at any other time. (V.A.C.S. Art. 4477-5, Secs. 2.07(a), (b), (c).)

Sec. 381.012. EXECUTIVE DIRECTOR. (a) The board shall employ an executive director.

(b) The executive director shall administer air pollution control activities for the board and shall:

(1) keep full and accurate minutes of all board transactions and proceedings;

(2) be the custodian of all files and records of the board;

(3) prepare and recommend to the board:

(A) plans and procedures, including rules, necessary to carry out the purposes of this chapter; and

(B) proposals on administrative procedures not inconsistent with this chapter;

(4) supervise employees of the board; and

(5) investigate and present complaints.

(c) The executive director or the executive director's representative shall:

(1) attend all board meetings; and

(2) handle correspondence, make inspections and investigations, and obtain, assemble, or prepare reports and data as the board may direct or authorize. (V.A.C.S. Art. 4477-5, Secs. 2.08(a), (b) (part), (c) (part).)

Sec. 381.013. PERSONNEL. (a) The executive director or the executive director's designee shall develop an intra-agency career ladder program, one part of which requires the intra-agency posting of all nonentry level 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 measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

(c) The board shall provide to its members and employees, as often as is necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of an equal employment opportunity program under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(e) A policy statement prepared under Subsection (d) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

(f) The governor shall deliver a biennial report to the legislature based on the information in the policy statement. The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 4477-5, Secs. 2.091, 2.092, 2.093(a), (b) (part), 2.094.)

Sec. 381.014. FEES. Except as specifically authorized by this chapter or Chapter 382, the board or the executive director may not charge a fee for performing a duty or function under this chapter or Chapter 382. (V.A.C.S. Art. 4477-5, Sec. 2.16.)

Sec. 381.015. STAFF SERVICES. (a) The board shall provide the basic personnel and necessary laboratory and other facilities as required to carry out this chapter and Chapter 382.

(b) The board, as necessary to carry out this chapter and Chapter 382, may:

(1) by agreement secure the services it considers necessary from any other state agency or department and may arrange for compensation for the services; and

(2) employ, prescribe the powers and duties of, and compensate, within appropriations available for that purpose, professional consultants, technical assistants, and employees on a full-time or part-time basis.

(c) A state agency, including a state educational institution or experimental station, shall provide assistance to the board on its request. (V.A.C.S. Art. 4477-5, Sec. 2.09.)

Sec. 381.016. FINANCES; FUND. (a) The board may apply for, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties. The board shall show in its records the source of all money or other things of value received by the board under this section from sources other than public sources.

(b) Money received by the board under this section shall be deposited to the credit of a fund in the state treasury. The board may use the fund for salaries, wages, professional and consulting fees, travel expenses, equipment, and other necessary expenses incurred in carrying out its duties under this chapter as provided by legislative appropriation.

(c) The state auditor shall audit the board's financial transactions at least once each biennium. (V.A.C.S. Art. 4477-5, Secs. 2.11, 2.12, 2.18.)

Sec. 381.017. REPORTS. (a) The board shall make a biennial written report to the governor and the legislature and shall include in the report a statement of its activities.

(b) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The report must be in

the form and reported in the time provided by the General Appropriations Act. (V.A.C.S. Art. 4477-5, Sec. 2.15.)

Sec. 381.018. **PUBLIC INTEREST INFORMATION AND COMPLAINTS.** (a) The board shall prepare information of public interest describing the board's functions and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board shall keep an information file about each complaint filed with the board relating to a permit holder or entity regulated by the board.

(c) If a written complaint is filed with the board relating to a permit holder or entity regulated by the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the complaint's status unless notice would jeopardize an undercover investigation. (V.A.C.S. Art. 4477-5, Secs. 2.19, 2.20, 2.21.)

Sec. 381.019. **PUBLIC TESTIMONY.** 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 board's jurisdiction. (V.A.C.S. Art. 4477-5, Sec. 2.22.)

Sec. 381.020. **DOCUMENTS; PUBLIC PROPERTY.** All information, documents, and data collected by the board in performing its duties are state property. Subject to the limitations of Section 381.022, all board records are public records open to inspection by any person during regular office hours. (V.A.C.S. Art. 4477-5, Sec. 2.13.)

Sec. 381.021. **COPIES OF DOCUMENTS, PROCEEDINGS.** (a) Subject to the limitations of Section 381.022, on the application of any person, the board shall furnish certified or other copies of any proceeding or other official act of record, or of any map, paper, or document filed with the board.

(b) A certified copy with the board seal and the signature of the board's chairman or executive director is admissible as evidence in any court or administrative proceeding.

(c) The board may furnish certified or other copies to a person without charge when furnishing the copies serves a public purpose. (V.A.C.S. Art. 4477-5, Sec. 2.14 (part).)

Sec. 381.022. **CONFIDENTIAL INFORMATION.** A member, employee, or agent of the board may not disclose information submitted to the board relating to secret processes or methods of manufacture or production that is identified as confidential when submitted. (V.A.C.S. Art. 4477-5, Sec. 1.07.)

Sec. 381.023. **SEAL.** The board shall adopt a seal. (V.A.C.S. Art. 4477-5, Sec. 2.17.)

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## CHAPTER 382. CLEAN AIR ACT

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 382.001. **SHORT TITLE.** This chapter may be cited as the Texas Clean Air Act. (V.A.C.S. Art. 4477-5, Sec. 1.01.)

Sec. 382.002. **POLICY AND PURPOSE.** (a) The policy of this state and the purpose of this chapter are to safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants, consistent with the protection of public health, general welfare, and physical property, including the esthetic enjoyment of air resources by the public and the maintenance of adequate visibility.

(b) It is intended that this chapter be vigorously enforced and that violations of this chapter or any rule or order of the Texas Air Control Board result in expeditious initiation of enforcement actions as provided by this chapter. (V.A.C.S. Art. 4477-5, Sec. 1.02.)

Sec. 382.003. **DEFINITIONS.** In this chapter:

(1) "Air contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural.

(2) "Air pollution" means the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that:

(A) are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property; or

(B) interfere with the normal use and enjoyment of animal life, vegetation, or property.

(3) "Board" means the Texas Air Control Board.

(4) "Executive director" means the executive director of the board.

(5) "Facility" means a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. A mine, quarry, or road is not considered to be a facility.

(6) "Local government" means a health district established under Chapter 121, a county, or a municipality.

(7) "Modification" means any physical change in, or change in the method of operation of, a stationary source in a manner that increases the amount of any air pollutant emitted by the source into the atmosphere or that results in the emission of any air pollutant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air pollutant emitted; or

(B) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere.

(8) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(9) "Source" means a point of origin of air contaminants, whether privately or publicly owned or operated. (V.A.C.S. Art. 4477-5, Secs. 1.03 (part), 3.31.)

Sec. 382.004. **EFFECT ON PRIVATE REMEDIES.** This chapter does not affect the right of a private person to pursue a common law remedy available to abate or recover damages for a condition of pollution or other nuisance, or for both abatement and recovery of damages. (V.A.C.S. Art. 4477-5, Sec. 1.06.)

Sec. 382.005. **REMEDIES SUPPLEMENTAL.** The remedies provided by this chapter to prevent, abate, or penalize violations of the board's rules, orders, or permits or the causing of or contributing to air pollution are supplemental to other causes of actions and remedies available to the state at common law or by other statutes. (V.A.C.S. Art. 4477-5, Sec. 4.042.)

[Sections 382.006-382.010 reserved for expansion]

#### **SUBCHAPTER B. POWERS AND DUTIES OF BOARD**

Sec. 382.011. **GENERAL POWERS AND DUTIES.** (a) The board shall:

- (1) administer this chapter;
- (2) establish the level of quality to be maintained in the state's air; and
- (3) control the quality of the state's air.

(b) The board shall seek to accomplish the purposes of this chapter through the control of air contaminants by all practical and economically feasible methods.

(c) The board has the powers necessary or convenient to carry out its responsibilities. (V.A.C.S. Art. 4477-5, Sec. 3.01.)

Sec. 382.012. **STATE AIR CONTROL PLAN.** The board shall prepare and develop a general, comprehensive plan for the proper control of the state's air. (V.A.C.S. Art. 4477-5, Sec. 3.02.)

Sec. 382.013. **AIR QUALITY CONTROL REGIONS.** The board may designate air quality control regions based on jurisdictional boundaries, urban-industrial concentrations, and other factors, including atmospheric areas, necessary to provide adequate implementation of air quality standards. (V.A.C.S. Art. 4477-5, Sec. 3.18.)

Sec. 382.014. **EMISSION INVENTORY.** The board may require a person whose activities cause emissions of air contaminants to submit information to enable the board to develop an inventory of emissions of air contaminants in this state. (V.A.C.S. Art. 4477-5, Secs. 3.03, 3.28(h) (part).)

Sec. 382.015. **POWER TO ENTER PROPERTY.** (a) A member, employee, or agent of the board may enter public or private property, other than property designed for and used exclusively as a private residence housing not more than three families, at a reasonable time to inspect and investigate conditions relating to emissions of air contaminants to or the concentration of air contaminants in the atmosphere.

(b) A member, employee, or agent who enters private property that has management in residence shall:

- (1) notify the management, or the person then in charge, of the member's, employee's, or agent's presence; and
- (2) show proper credentials.

(c) A member, employee, or agent who enters private property shall observe that establishment's rules concerning safety, internal security, and fire protection.

(d) The board is entitled to the remedies provided by Sections 382.082-382.085 if a member, employee, or agent is refused the right to enter public or private property as provided by this section. (V.A.C.S. Art. 4477-5, Sec. 3.05.)

Sec. 382.016. **MONITORING REQUIREMENTS; EXAMINATION OF RECORDS.** (a) The board may prescribe reasonable requirements for:

(1) measuring and monitoring the emissions of air contaminants from a source or from an activity causing or resulting in the emission of air contaminants subject to the board's jurisdiction under this chapter; and

(2) the owner or operator of the source to make and maintain records on the measuring and monitoring of emissions.

(b) A member, employee, or agent of the board may examine during regular business hours any records or memoranda relating to the operation of any air pollution or emission control equipment or facility, or relating to emission of air contaminants. This subsection does not authorize the examination of records or memoranda relating to the operation of equipment or a facility on property designed for and used exclusively as a private residence housing not more than three families. (V.A.C.S. Art. 4477-5, Sec. 3.06.)

Sec. 382.017. RULES. (a) The board may adopt rules. The board shall hold a public hearing before adopting a rule consistent with the policy and purposes of this chapter.

(b) If the rule will have statewide effect, notice of the date, time, place, and purpose of the hearing shall be published one time at least 20 days before the scheduled date of the hearing in at least three newspapers, the combined circulation of which will, in the board's judgment, give reasonable circulation throughout the state. If the rule will have effect in only a part of the state, the notice shall be published one time at least 20 days before the scheduled date of the hearing in a newspaper of general circulation in the area to be affected.

(c) Any person may appear and be heard at a hearing to adopt a rule. The executive director shall make a record of the names and addresses of the persons appearing at the hearing. A person heard or represented at the hearing or requesting notice of the board's action shall be sent by mail written notice of the board's action.

(d) The terms and provisions of a rule adopted by the board may differentiate among particular conditions, particular sources, and particular areas of the state. In adopting a rule, the board shall recognize that the quantity or characteristic of air contaminants or the duration of their presence in the atmosphere may cause a need for air control in one area of the state but not in other areas. In this connection, the board shall consider:

(1) the factors found by it to be proper and just, including existing physical conditions, topography, population, and prevailing wind direction and velocity; and

(2) the fact that a rule and the degrees of conformance with the rule that may be proper for an essentially residential area of the state may not be proper for a highly developed industrial area or a relatively unpopulated area.

(e) Except as provided by Sections 382.018-382.021, the board by rule may not specify:

(1) a particular method to be used to control or abate air pollution;

(2) the type, design, or method of installation of equipment to be used to control or abate air pollution; or

(3) the type, design, method of installation, or type of construction of a manufacturing process or other kind of equipment. (V.A.C.S. Art. 4477-5, Secs. 3.09(a) (part), (b) (part), (c); 3.10(a), (b).)

Sec. 382.018. OUTDOOR BURNING OF WASTE AND COMBUSTIBLE MATERIAL. The board by rule may control and prohibit the outdoor burning of waste and combustible material and may include requirements concerning the particular method to be used to control or abate the emission of air contaminants resulting from that burning. (V.A.C.S. Art. 4477-5, Sec. 3.10(c).)

Sec. 382.019. METHODS USED TO CONTROL AND REDUCE EMISSIONS FROM LAND VEHICLES. (a) The board by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

(b) A rule adopted under this section must be consistent with any federal law relating to the control of emissions from the vehicles covered.

(c) The board may not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification, or other approval of any feature or



equipment designed to control emissions from motor vehicles if that feature or equipment has been certified, approved, or otherwise authorized under federal law.

(d) The board or any other state agency may not adopt a rule requiring the use of Stage II vapor recovery systems that control motor vehicle refueling emissions at a gasoline dispensing facility in this state until the United States Environmental Protection Agency determines that the use of the system is required for compliance with the federal Clean Air Act (42 U.S.C. 7401 et seq.). (V.A.C.S. Art. 4477-5, Sec. 3.10(d).)

**Sec. 382.020. CONTROL OF EMISSIONS FROM FACILITIES THAT HANDLE CERTAIN AGRICULTURAL PRODUCTS.** (a) The board, when it determines that the control of air pollution is necessary, shall adopt rules concerning the control of emissions of particulate matter from plants at which grain, seed, legumes, or vegetable fibers are handled, loaded, unloaded, dried, manufactured, or processed according to a formula derived from the process weight of the materials entering the process.

(b) A person affected by a rule adopted under this section may use:

(1) the process weight method to control and measure the emissions from the plant; or

(2) any other method selected by that person that the board or the executive director, if authorized by the board, finds will provide adequate emission control efficiency and measurement. (V.A.C.S. Art. 4477-5, Sec. 3.10(e).)

**Sec. 382.021. SAMPLING METHODS AND PROCEDURES.** (a) The board may prescribe the sampling methods and procedures to be used in determining violations of and compliance with the board's rules, variances, and orders, including:

(1) ambient air sampling;

(2) stack-sampling;

(3) visual observation; or

(4) any other sampling method or procedure generally recognized in the field of air pollution control.

(b) The board may prescribe new sampling methods and procedures if:

(1) in the board's judgment, existing methods or procedures are not adequate to meet the needs and objectives of the board's rules, variances, and orders; and

(2) the scientific applicability of the new methods or procedures can be satisfactorily demonstrated to the board. (V.A.C.S. Art. 4477-5, Sec. 3.10(f).)

**Sec. 382.022. INVESTIGATIONS.** The executive director may make or require the making of investigations:

(1) that the executive director considers advisable in administering this chapter and the board's rules, orders, and determinations, including investigations of violations and general air pollution problems or conditions; or

(2) as requested or directed by the board. (V.A.C.S. Art. 4477-5, Sec. 3.20(a).)

**Sec. 382.023. ORDERS.** (a) The board may issue orders and make determinations as necessary to carry out the purposes of this chapter. Orders authorized by this chapter may be issued only by the board unless expressly provided by this chapter.

(b) If it appears that this chapter or a board rule, order, or determination is being violated, the board, or the executive director if authorized by the board or this chapter, may proceed under Section 382.082-382.084, or hold a public hearing and issue orders on the alleged violation, or take any other action authorized by this chapter as the facts may warrant.

(c) In addition to the notice required by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the board or the executive director shall give notice to such other interested persons as the board or the executive director may designate. (V.A.C.S. Art. 4477-5, Secs. 3.12(a), 3.20(b), (c) (part).)

**Sec. 382.024. FACTORS IN ISSUING ORDERS AND DETERMINATIONS.** In issuing an order and making a determination, the board shall consider the facts and circumstances bearing on the reasonableness of emissions, including:

- (1) the character and degree of injury to or interference with the public's health and physical property;
- (2) the source's social and economic value;
- (3) the question of priority of location in the area involved; and
- (4) the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the source. (V.A.C.S. Art. 4477-5, Sec. 3.13.)

Sec. 382.025. **ORDERS RELATING TO CONTROLLING AIR POLLUTION.** (a) If the board determines that air pollution exists, the board may order any action indicated by the circumstances to control the condition.

(b) The board shall grant to the owner or operator of a source time to comply with its orders as provided for by board rules. Those rules must provide for time for compliance gauged to the general situations that the hearings on proposed rules indicate are necessary. (V.A.C.S. Art. 4477-5, Sec. 3.12(b).)

Sec. 382.026. **ORDERS ISSUED UNDER EMERGENCIES.** (a) When it appears to the board or the executive director that there exists a generalized condition of air pollution that creates an emergency requiring immediate action to protect human health or safety, the board or the executive director shall, with the governor's concurrence, order any person causing or contributing to the air pollution immediately to reduce or discontinue the emission of air contaminants.

(b) If the board or the executive director finds that emissions from one or more sources are causing imminent danger to human health or safety, but that there is not a generalized condition of air pollution under Subsection (a), the board or the executive director may order the persons responsible for the emissions immediately to reduce or discontinue the emissions.

(c) An order issued under this section must set a time and place of a hearing to be held before the board as soon after the order is issued as practicable.

(d) Section 382.031, relating to notice of a hearing, does not apply to a hearing under this section, but a general notice of the hearing shall be given that is, in the judgment of the board or the executive director, practicable under the circumstances. The board shall affirm, modify, or set aside the order not later than 24 hours after the hearing begins and without adjournment of the hearing.

(e) This section does not limit any power that the governor or other officer may have to declare an emergency and to act on the basis of that declaration if the power is conferred by law or inheres in the office. (V.A.C.S. Art. 4477-5, Sec. 3.14.)

Sec. 382.027. **PROHIBITION ON BOARD ACTION RELATING TO AIR CONDITIONS EXISTING SOLELY IN COMMERCIAL AND INDUSTRIAL FACILITIES.** (a) The board may not adopt a rule, determination, or order that:

(1) relates to air conditions existing solely within buildings and structures used for commercial and industrial plants, works, or shops if the source of the offending air contaminants is under the control of the person who owns or operates the plants, works, or shops; or

(2) affects the relations between employers and their employees relating to or arising out of an air condition from a source under the control of the person who owns or operates the plants, works, or shops.

(b) This section does not limit or restrict the authority or powers granted to the board under Sections 382.018 and 382.021. (V.A.C.S. Art. 4477-5, Sec. 3.11.)

Sec. 382.028. **VARIANCES.** (a) This chapter does not prohibit the granting of a variance.

(b) A variance is an exceptional remedy that may be granted only on demonstration that compliance with a provision of this chapter or board rule or order results in an arbitrary and unreasonable taking of property. (V.A.C.S. Art. 4477-5, Sec. 3.29(c).)

Sec. 382.029. **HEARING POWERS.** The board may call and hold hearings, administer oaths, receive evidence at a hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to a hearing, and make

findings of fact and decisions relating to administering this chapter or the rules, orders, or other actions of the board. (V.A.C.S. Art. 4477-5, Sec. 3.15.)

**Sec. 382.030. DELEGATION OF HEARING POWERS.** (a) The board may delegate the authority to hold hearings called by the board to:

- (1) one or more board members;
- (2) the executive director; or
- (3) one or more board employees.

(b) Except for hearings required to be held before the board under Section 382.026, the board may authorize the executive director to:

- (1) call and hold a hearing on any subject on which the board may hold a hearing; and
- (2) delegate the authority to hold any hearing called by the executive director to one or more board employees.

(c) The board may establish the qualifications for individuals to whom the board or the executive director delegates the authority to hold hearings.

(d) An individual holding a hearing under this section may administer oaths and receive evidence at the hearing and shall report the hearing in the manner prescribed by the board. (V.A.C.S. Art. 4477-5, Sec. 3.16.)

**Sec. 382.031. NOTICE OF HEARINGS.** (a) Notice of a hearing under this chapter shall be published at least once in a newspaper regularly published or with general circulation in each county in which, because of the county's geographic relation to the subject matter of the hearing, the board has reason to believe persons reside who may be affected by any action taken as a result of the hearing. The notice must be published not less than 20 days before the date set for the hearing.

(b) Notice of the hearing must describe briefly and in summary form the purpose of the hearing and the date, time, and place of the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed to the person at the person's most recent address known to the board not less than 20 days before the date set for the hearing. If the party is not an individual, the notice may be given to an officer, agent, or legal representative of the party.

(d) The hearing body shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing new notice. If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the hearing body at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed by Subsection (c) at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting. In this subsection, "hearing body" means the individual or individuals that hold a hearing under this section.

(e) This section applies to all hearings held under this chapter except as otherwise specified by Section 382.017, 382.026, or 382.063. (V.A.C.S. Art. 4477-5, Sec. 3.17.)

**Sec. 382.032. APPEAL OF BOARD ACTION.** (a) A person affected by a ruling, order, decision, or other act of the board may appeal the action by filing a petition in a district court of Travis County.

(b) The petition must be filed within 30 days after the date of the board's action or, in the case of a ruling, order, or decision, within 30 days after the effective date of the ruling, order, or decision.

(c) Service of citation on the board must be accomplished within 30 days after the date on which the petition is filed. Citation may be served on the executive director or any board member.

(d) The plaintiff shall pursue the action with reasonable diligence. If the plaintiff does not prosecute the action within one year after the date on which the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit

on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(e) In an appeal of a board action other than cancellation or suspension of a variance, the issue is whether the action is invalid, arbitrary, or unreasonable.

(f) An appeal of the cancellation or suspension of a variance must be tried in the same manner as appeals from the justice court to the county court. (V.A.C.S. Art. 4477-5, Sec. 6.01.)

Sec. 382.033. **CONTRACTS; INSTRUMENTS.** The board may execute contracts and instruments that are necessary or convenient to perform its powers or duties. (V.A.C.S. Art. 4477-5, Sec. 3.08.)

Sec. 382.034. **RESEARCH AND INVESTIGATIONS.** The board shall conduct or require any research and investigations it considers advisable and necessary to perform its duties under this chapter. (V.A.C.S. Art. 4477-5, Sec. 3.04.)

Sec. 382.035. **MEMORANDUM OF UNDERSTANDING.** The board by rule shall adopt any memorandum of understanding between the board and another state agency. (V.A.C.S. Art. 4477-5, Sec. 3.101.)

Sec. 382.036. **COOPERATION AND ASSISTANCE.** The board shall:

(1) encourage voluntary cooperation by persons or affected groups in restoring and preserving the purity of the state's air;

(2) encourage and conduct studies, investigations, and research concerning air quality control;

(3) collect and disseminate information on air quality control;

(4) advise, consult, and cooperate with other state agencies, political subdivisions of the state, industries, other states, the federal government, and interested persons or groups concerning matters of common interest in air quality control; and

(5) represent the state in all matters relating to air quality plans, procedures, or negotiations for interstate compacts. (V.A.C.S. Art. 4477-5, Sec. 3.19.)

Sec. 382.037. **MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM FOR HARRIS COUNTY.** (a) The board, with the assistance and cooperation of the Department of Public Safety and the State Department of Highways and Public Transportation, shall develop a program of motor vehicle inspections and maintenance in Harris County.

(b) The board shall cooperate with any legislative committee appointed to monitor the progress made in satisfying this section. (V.A.C.S. Art. 4477-5, Secs. 3.30(d) (part), (e).)

[Sections 382.038-382.050 reserved for expansion]

#### SUBCHAPTER C. PERMITS

Sec. 382.051. **CONSTRUCTION PERMIT.** (a) Before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants, the person planning the construction or modification must obtain a construction permit from the board.

(b) The board may issue special permits for certain facilities.

(c) A person applying for a construction permit or special permit shall submit to the board:

(1) a permit application;

(2) copies of all plans and specifications necessary to determine if the proposed construction will comply with applicable air control standards and the intent of this chapter; and

(3) any other information the board considers necessary.

(d) The board shall grant within a reasonable time a permit to construct or modify a facility if from the information available to the board or from information presented at a hearing, if a hearing is held under Section 382.056(d), the board finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the proposed facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(e) If the board finds that the emissions from the proposed facility will contravene the standards under Subsection (d) or will contravene the intent of this chapter, the board may not grant the permit or a special permit and shall set out in a report to the applicant its specific objections to the submitted plans of the proposed facility.

(f) If the person applying for a permit or a special permit makes the alterations in the person's plans and specifications to meet the board's specific objections, the board shall grant the permit or a special permit. If the person fails or refuses to alter the plans and specifications, the board may not grant the permit or special permit. The board may refuse to accept a person's new application until board objections to the plans previously submitted by that person are rectified.

(g) This section does not apply to a person who has executed a contract or begun construction for an addition, alteration, or modification to a new or an existing facility on or before August 30, 1971. To qualify for an exemption under this subsection, a contract may not have a beginning construction date later than February 29, 1972. (V.A.C.S. Art. 4477-5, Secs. 3.27(a) (part), (d), (e), (f), (j).)

**Sec. 382.052. PERMIT TO CONSTRUCT OR MODIFY FACILITY WITHIN 3,000 FEET OF SCHOOL.** In considering the issuance of a permit to construct or modify a facility within 3,000 feet of an elementary, junior high, or senior high school, the board shall consider possible adverse short-term or long-term side effects of air contaminants or nuisance odors from the facility on the individuals attending the school facilities. (V.A.C.S. Art. 4477-5, Sec. 3.27(b).)

**Sec. 382.053. PROHIBITION ON ISSUANCE OF CONSTRUCTION PERMIT FOR LEAD SMELTING PLANT AT CERTAIN LOCATIONS.** (a) The board may not grant a construction permit for a lead smelting plant at a site:

(1) located within 3,000 feet of an individual's residence; and

(2) at which lead smelting operations have not been conducted before August 31, 1987.

(b) This section does not apply to:

(1) a modification of a lead smelting plant in operation on August 31, 1987;

(2) a lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead each hour; or

(3) a lead smelting plant that, when the plant began operation, was located more than 3,000 feet from the nearest residence.

(c) In this section, "lead smelting plant" means a facility operated as a smelter for processing lead. (V.A.C.S. Art. 4477-5, Sec. 3.27(k).)

**Sec. 382.054. OPERATING PERMIT.** (a) The person in charge of a facility for which a construction permit has been issued shall apply for an operating permit not later than the 60th day after the date on which the facility begins operation. The board may require the submission of monitoring data to demonstrate compliance with applicable rules and with this chapter in support of an operating permit application. If start-up or testing requires more than 60 days, the board may extend the 60-day period.

(b) The board shall issue the operating permit within a reasonable time if:

(1) all stipulations of the construction permit are met; and

(2) the operation of the facility will not contravene the intent of this chapter or air pollution control standards set by the board.

(c) If the board determines that the operation of the facility will contravene the intent of this chapter or air pollution control standards set by the board, the board may not

grant the operating permit and shall set out in a report to the applicant the specific objections that the board finds to the facility.

(d) The board may not accept a new application from a person for an operating permit for a facility until the previous objections submitted by the board concerning that facility are rectified. (V.A.C.S. Art. 4477-5, Secs. 3.28(a), (b), (c), (d).)

Sec. 382.055. REVIEW OF OPERATING PERMIT. (a) An operating permit is subject to review every 15 years.

(b) The board by rule shall establish:

(1) a deadline by which the holder of an operating permit must submit an application for review of the permit;

(2) the general requirements that must be met by the applicant; and

(3) the procedures for reviewing and acting on review applications.

(c) No less than 180 days before the expiration of the 15th year after the date on which an operating permit is issued or continued under this chapter, the board shall provide written notice to the permit holder, by registered or certified mail, that the permit is scheduled for review in accordance with this section. The notice must include a description of the procedure for filing a review application and the information to be included in the application.

(d) In determining whether and under which conditions an operating permit should be continued, the board shall consider, at a minimum:

(1) whether the facility is or has been in substantial compliance with this chapter and the terms of the existing permit; and

(2) the condition and effectiveness of existing emission control equipment and practices.

(e) The board shall impose as a condition for continuance of an operating permit those requirements determined to be economically reasonable and technically practicable considering the age of the facility and the effect of its emissions on the surrounding area. During the review, the board may not impose requirements less stringent than those of the existing permit unless the board determines that a proposed change will meet the requirements of Section 382.051.

(f) No later than 180 days after the date on which the review application is filed, the board shall continue the permit or, if the board determines that the facility will not meet the requirements for continuing the operating permit, shall:

(1) set out in a report to the applicant the basis for the board's determination; and

(2) establish a schedule, to which the applicant must adhere in meeting the board's requirements, that:

(A) includes a final date for meeting the board's requirements; and

(B) requires completion of that action as expeditiously as possible.

(g) If the applicant meets the board's requirements in accordance with the schedule, the board shall continue the permit. If the applicant does not meet those requirements in accordance with the schedule, the applicant must show in a contested case proceeding why the permit should not expire immediately. The applicant's operating permit is effective until:

(1) the final date specified by the board's report to the applicant;

(2) the existing permit is continued; or

(3) the date specified by a board order issued following a contested case proceeding held under this section.

(h) If the holder of an operating permit to whom the board has mailed notice of this section does not apply for review of that permit by the date specified by the board under this section, the permit expires 15 years after the date on which the permit is issued or, if the permit has been continued, the date on which the permit is last continued.

(i) This section does not affect the board's authority to begin enforcement action under Sections 382.082–382.084. (V.A.C.S. Art. 4477–5, Sec. 3.28(g) (part).)

**Sec. 382.056. NOTICE OF INTENT TO OBTAIN PERMIT OR PERMIT REVIEW; HEARING.** (a) An applicant for a construction permit or special permit under Section 382.051 or a permit review under Section 382.055 shall publish notice of intent to obtain the permit or permit review. The applicant shall publish the notice at least once in a newspaper of general circulation in the county in which the facility is located or is proposed to be located. The board by rule shall prescribe when notice must be published and may require publication of additional notice.

(b) The notice must include:

- (1) a description of the location or proposed location of the facility;
- (2) a statement that a person who may be affected by emissions of air contaminants from the facility or proposed facility is entitled to request a hearing from the board;
- (3) a description of the manner in which the board may be contacted for further information; and
- (4) any other information the board by rule requires.

(c) At the site of a facility or proposed facility for which a permit application or permit review application is submitted, the applicant shall place a sign declaring the filing of an application for a permit or permit review for a facility at the site and stating the manner in which the board may be contacted for further information. The board shall adopt any rule necessary to carry out this subsection.

(d) The board or its delegate shall hold a public hearing on the permit application or permit review application before granting the permit or continuance if a person who may be affected by the emissions, or a member of the legislature from the general area in which the facility or proposed facility is located, requests a hearing within the period set by board rule. The board is not required to hold a hearing if the basis of a request by a person who may be affected is determined to be unreasonable. (V.A.C.S. Art. 4477–5, Sec. 3.271(a), (b), (c) (part).)

**Sec. 382.057. EXEMPTION.** The board by rule may exempt from the requirements of Sections 382.051–382.055 and Section 382.060 certain types of facilities if it is found on investigation that such facilities or types of facilities will not make a significant contribution of air contaminants to the atmosphere. (V.A.C.S. Art. 4477–5, Sec. 3.27(a) (part).)

**Sec. 382.058. LIMITATION ON BOARD EXEMPTION FOR CONSTRUCTION OF CERTAIN CONCRETE PLANTS.** (a) A person may not begin construction on any concrete plant that performs wet batching, dry batching, or central mixing under an exemption adopted by the board under Section 382.057 unless the person has complied with the notice and opportunity for hearing provisions under Section 382.056.

(b) This section does not apply to a concrete plant located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.

(c) For purposes of this section, only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing under Section 382.056(d) as a person who may be affected. (V.A.C.S. Art. 4477–5, Sec. 3.27(c).)

**Sec. 382.059. REVOCATION OF PERMIT OR EXEMPTION.** (a) The board may revoke a permit or exemption issued under this chapter if the board determines that:

- (1) any of the terms of the permit or exemption are being violated; or
- (2) emissions from the proposed facility will contravene air pollution control standards set by the board or will contravene the intent of this chapter.

(b) The board may:

(1) begin proceedings to revoke a permit if a violation at a proposed facility is continued after 180 days following the date on which the notice of violation is provided under Section 382.082; and

(2) consider good faith efforts to correct the violation in deciding whether to revoke a permit or exemption. (V.A.C.S. Art. 4477–5, Secs. 3.27(g), 3.28(e).)

Sec. 382.060. REGISTRATION OF CERTAIN FACILITIES. (a) Each facility operating without a permit because it was constructed or construction on it had begun before the board's permitting program was implemented must be registered with the board.

(b) This section does not apply to oil and gas production and distribution facilities that do not constitute major facilities or stationary sources as defined by board rule. The board shall exempt from this section other facilities or types of facilities under Section 382.057.

(c) The person in charge of the facility shall pay any fees in connection with registration established by the board under Section 382.062. For purposes of this section, a registrant may treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) The board may require any information it determines is necessary in conjunction with the registration of the facilities.

(e) This section does not apply to:

- (1) a facility affected by Section 382.020;
- (2) a livestock confinement facility;
- (3) a facility used solely in conjunction with the operation of a farm or ranch; or
- (4) a facility of the size and type that would meet the requirements for a special permit under Section 382.051. (V.A.C.S. Art. 4477-5, Sec. 3.28(h) (part).)

Sec. 382.061. DELEGATION OF POWERS AND DUTIES. The board may delegate to the executive director the powers and duties under Sections 382.051-382.055, 382.057, 382.059, and 382.060. An applicant or a person affected by a decision of the executive director may appeal to the board any decision made by the executive director under those sections. (V.A.C.S. Art. 4477-5, Sec. 3.27(i).)

Sec. 382.062. FEES. (a) The board shall adopt, charge, and collect a fee for:

- (1) each application for:
  - (A) a permit, permit amendment or revision, or special permit submitted under Section 382.051;
  - (B) a registration submitted under Section 382.060; and
  - (C) a permit review under Section 382.055; and
- (2) inspections performed to enforce this chapter or rules adopted by the board under this chapter.

(b) The board may adopt rules relating to charging and collecting a fee for an exemption from a construction permit authorized by board rule and for a variance.

(c) For purposes of the fees, the board shall treat two or more facilities that compose an integrated system or process as a single facility if a structure, device, item of equipment, or enclosure that constitutes or contains a given stationary source operates in conjunction with and is functionally integrated with one or more other similar structures, devices, items of equipment, or enclosures.

(d) A fee assessed under this section may not be less than \$50 or more than \$50,000.

(e) The board by rule shall establish the fees in amounts sufficient to recover:

- (1) the reasonable costs to review and act on a variance application and enforce the terms and conditions of the variance; and
- (2) not less than 50 percent of the board's actual annual expenditures to:
  - (A) review and act on permits or special permits;
  - (B) amend and review permits;
  - (C) inspect permitted, exempted, specially permitted, and registered facilities; and
  - (D) enforce the rules and orders adopted and permits, special permits, and exemptions issued under this chapter. (V.A.C.S. Art. 4477-5, Sec. 3.29 as added Acts 69th



Leg., R.S., Ch. 239, 1985; Secs. 3.29(a), (b) as added Acts 69th Leg., R.S., Ch. 637, 1985.)

**Sec. 382.063. ISSUANCE OF EMERGENCY ORDER BECAUSE OF CATASTROPHE.** (a) The board or the executive director, on delegation of authority from the board, by emergency order may authorize immediate action for the addition, replacement, or repair of facilities or control equipment necessitated by a catastrophe occurring in this state, and the emission of air contaminants during the addition, replacement, or repair of those facilities, if the actions and emissions are otherwise precluded under this chapter.

(b) An order issued under this section must:

(1) be limited to a reasonable time specified by the order;

(2) authorize action only on:

(A) property on which the catastrophe occurred; or

(B) other property that is owned by the owner or operator of the damaged facility and that produces the same intermediates, products, or by-products; and

(3) contain a schedule for submission of a complete application under Section 382.051.

(c) Under Subsection (b)(2)(B), the person applying for an emergency order must demonstrate that there will be no more than a de minimis increase in the predicted concentration of the air contaminants at or beyond the property line of the other property. The board shall review and act on an application submitted as provided by Subsection (b)(3) without regard to construction activity under an order under this section.

(d) To receive an emergency order under this section, a person must submit a sworn application to the board or executive director. The application must contain any information the board requires and:

(1) a description of the catastrophe;

(2) a statement that:

(A) the construction and emissions are essential to prevent loss of life, serious injury, severe property damage, or severe economic loss not attributable to the applicant's actions and are necessary for the addition, replacement, or repair of a facility or control equipment necessitated by the catastrophe;

(B) there are no practicable alternatives to the proposed construction and emissions; and

(C) the emissions will not cause or contribute to air pollution;

(3) an estimate of the dates on which the proposed construction or emissions, or both, will begin and end;

(4) an estimate of the date on which the facility will begin operation; and

(5) a description of the quantity and type of air contaminants proposed to be emitted.

(e) The board or executive director may issue an emergency order under this section after providing the notice and opportunity for hearing that the board or executive director considers practicable under the circumstances. If the board requires notice and hearing before issuing the order, it shall give notice not later than the 10th day before the date set for the hearing.

(f) Notice of the issuance of an emergency order shall be provided in accordance with board rules.

(g) If the board or executive director issues an emergency order under this section without a hearing, the order shall set a time and place for a hearing to be held before the board or its designee as soon after the emergency order is issued as practicable.

(h) Section 382.031, relating to notice of a hearing, does not apply to a hearing on an emergency order, but such general notice of the hearing shall be given that in the judgment of the board or the executive director is practicable under the circumstances.

(i) At or following the hearing, the board shall affirm, modify, or set aside the emergency order. A hearing on an emergency order shall be conducted in accordance

with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and board rules.

(j) In this section, "catastrophe" means an unforeseen event, including an act of God, an act of war, severe weather, explosions, fire, or similar occurrences beyond the reasonable control of the operator that makes a facility or its functionally related appurtenances inoperable. (V.A.C.S. Art. 4477-5, Sec. 3.272.)

[Sections 382.064-382.080 reserved for expansion]

#### SUBCHAPTER D. PENALTIES AND ENFORCEMENT

Sec. 382.081. **ENFORCEMENT PROCEEDINGS.** The board, or the executive director after notification to the board, may cause legal proceedings to be instituted in a court of competent jurisdiction to compel compliance with this chapter or the board's rules, orders, or other decisions. (V.A.C.S. Art. 4477-5, Sec. 3.07.)

Sec. 382.082. **ENFORCEMENT BY SUIT; NOTICE AND ORDERS.** (a) If the executive director finds that a person has violated, is violating, or is threatening to violate any provision of this chapter or of any board rule or order, the executive director shall within five days notify that person of the apparent violation.

(b) The board or the executive director may cause a suit to be instituted in a district court for:

- (1) injunctive relief to restrain the person from continuing the violation or threat of violation; or
- (2) the assessment and recovery of a civil penalty as provided by Section 382.085(c); or
- (3) both injunctive relief and civil penalty.

(c) Notwithstanding Subsection (b), if the apparent violation or threat of violation of a nonclerical requirement continues later than the 30th day after the date on which notice is received under Subsection (a), the executive director shall institute proceedings under Section 382.023(b) to issue an appropriate order providing for compliance within 180 days of the notice of the violation.

(d) Under Subsection (c) if the board determines that good faith efforts to correct the violation have been made, the board may adopt an order under Section 382.023(b) providing for compliance later than the 180th day after issuance of the notice under Subsection (a). It is intended that "good faith effort" be strictly interpreted by the board while giving due consideration to economic reasonableness and technical practicability.

(e) Notwithstanding Subsection (b), if a violation of an order issued under Subsection (c) continues later than the 180th day after the date on which the original notice of violation is received, the board or executive director shall:

- (1) institute a suit, as provided by Subsection (b) for civil penalties and appropriate injunctive relief;
- (2) begin an action under Section 382.059 to revoke a permit or exemption;
- (3) begin an action for administrative penalties under Section 382.088; or
- (4) pursue any combination of the remedies under this subsection.

(f) At the request of the board or the executive director, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, recovery of the civil penalty, or both. (V.A.C.S. Art. 4477-5, Secs. 4.02(a) (part), (b).)

Sec. 382.083. **EMERGENCY SUIT.** If an apparent violation or threat of violation of this chapter or a rule or order of the board would materially affect human health and safety, a suit under Section 382.082 shall be immediately instituted. (V.A.C.S. Art. 4477-5, Sec. 4.02(a) (part).)

Sec. 382.084. **INJUNCTION.** (a) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any board rule or order, a district court shall grant the injunctive relief warranted by the facts.

(b) The court shall grant, without a bond or other undertaking by the board, any prohibiting or mandatory injunctions the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(c) The board or the executive director may seek an injunction or cause a suit for injunctive relief to be instituted to stop:

(1) work on a facility that is:

(A) being done without a construction permit, special permit, or exemption required under this chapter; or

(B) in violation of the terms of a permit, special permit, or exemption issued under this chapter; and

(2) the operation of a facility that:

(A) is operating without an operating permit required under this chapter; or

(B) is operating in violation of the terms of an operating permit issued under this chapter. (V.A.C.S. Art. 4477-5, Secs. 3.27(h), 3.28(f), 4.02(a) (part), (c); 4.04(b) (part).)

**Sec. 382.085. UNAUTHORIZED EMISSIONS PROHIBITED; CIVIL PENALTY.** (a) Except as authorized by a board rule or order, a person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity that causes or contributes to, or that will cause or contribute to, air pollution.

(b) A person may not cause, suffer, allow, or permit the emission of any air contaminant or the performance of any activity in violation of this chapter or of any board rule or order.

(c) A person who violates any provision of this chapter or any board rule or order is subject to a civil penalty of not less than \$50 or more than \$25,000 for each day of violation and for each act of violation, as the court or jury considers proper.

(d) The state is entitled to half of a civil penalty recovered in a suit brought under this chapter by one or more local governments. The remainder shall be equally divided among the local governments that first brought the suit. (V.A.C.S. Art. 4477-5, Secs. 4.01; 4.02(a) (part); 4.04(f).)

**Sec. 382.086. VENUE AND PROCEDURE.** (a) A suit for injunctive relief, for recovery of a civil penalty, or for both may be brought in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(b) An action brought under this chapter takes precedence over other cases of a different nature on the docket of the appellate court. (V.A.C.S. Art. 4477-5, Secs. 4.04(a), (c).)

**Sec. 382.087. REPORT ON ENFORCEMENT ACTIONS TAKEN.** (a) The agency shall prepare a monthly report on enforcement actions taken and the resolution of those actions.

(b) The report must be an agenda item for board discussion at each regularly scheduled meeting.

(c) If an enforcement action involves a suit filed for injunctive relief or civil penalties or both, the report must state the actual or projected time for resolution of the suit.

(d) Copies of the report and minutes of the meeting reflecting action taken by the board relating to the report shall be filed with the governor and the attorney general. (V.A.C.S. Art. 4477-5, Sec. 4.02(d).)

**Sec. 382.088. ADMINISTRATIVE PENALTY.** (a) A person may be assessed a civil penalty as provided by this section if the person violates this chapter or a rule or order adopted or permit issued under this chapter.

(b) The penalty for each violation may not exceed \$10,000 a day for each violation. Each day that a continuing violation occurs may be considered a separate violation.

(c) In determining the amount of the penalty, the board shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard to the public health or safety;

- (2) the history of previous violations;
  - (3) the amount necessary to deter future violations;
  - (4) efforts to correct the violation; and
  - (5) any other matters that justice may require.
- (d) If the executive director, after an investigation, concludes that a violation has occurred, the executive director may issue a preliminary report:
- (1) stating the facts that support the conclusion;
  - (2) recommending that a civil penalty under this section be imposed; and
  - (3) recommending the amount of the penalty.
- (e) Not later than the 10th day after the date on which the report is issued, the executive director shall give written notice of the report to the person charged. The notice must include:
- (1) a brief summary of the charges;
  - (2) a statement of the recommended penalty amount; and
  - (3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.
- (f) Not later than the 20th day after the date on which notice is received, the person charged may give to the board written consent to the executive director's report, including the recommended penalty, or make a written request for a hearing.
- (g) If the person charged with the violation consents to the penalty recommended by the executive director or does not respond to the notice on time, the board by order shall assess that penalty or order a hearing to be held on the recommendations in the executive director's report. If the board assesses the penalty recommended by the report, the board shall give written notice to the person charged of its decision and the person charged shall pay the penalty.
- (h) If the person charged requests or the board orders a hearing, the executive director shall order a hearing. The hearing shall be held by a hearing examiner designated by the board. The hearing examiner shall make findings of fact and promptly issue to the board a written decision as to the occurrence of the violation and a recommendation on the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and the recommendations of the hearing examiner, the board by order may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).
- (i) The board shall give notice of its decision to the person charged, and if the board finds that a violation occurred and a penalty has been assessed, the board shall:
- (1) give to the person charged written notice of:
    - (A) the board's findings;
    - (B) the amount of the penalty; and
    - (C) the person's right to judicial review of the board's order; and
  - (2) publish notice of those decisions in the Texas Register within 10 days. (V.A.C.S. Art. 4477-5, Secs. 4.041(a), (b), (c), (d), (e), (f), (g), (h), (i).)
- Sec. 382.089. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which the order issued under Section 382.088 is final, the person charged shall pay the penalty in full or file a petition for judicial review.
- (b) If the person files a petition for judicial review of the amount of the penalty, the fact of the violation, or both, the person, within the time provided by Subsection (a), shall:
- (1) send the amount to the board for placement in an escrow account; or
  - (2) post with the board a supersedeas bond in a form approved by the board for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(c) A person who fails to comply with Subsection (b) waives the right to judicial review. If the person charged does not send the money or post the bond, the board or the executive director may forward the matter to the attorney general for enforcement.

(d) Judicial review of the order or decision of the board assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) If the penalty under Section 382.088 is reduced or not assessed, the board shall:

(1) remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(f) The accrued interest on amounts remitted by the board under Subsection (e) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the board under Subsection (a) and ending on the date the penalty is remitted.

(g) Payment of an administrative penalty under this section is full and complete satisfaction of the violation for which the administrative penalty is assessed and precludes any other civil or criminal penalty for the same violation. (V.A.C.S. Art. 4477-5, Secs. 4.041(j) (part), (k), (l), (m), (o).)

Sec. 382.090. PENALTY MAY NOT BE IMPOSED FOR VIOLATION UNDER CERTAIN CONDITIONS. A penalty that would otherwise be imposed by this chapter on a person who violates this chapter or a rule, variance, determination, or order issued under this chapter may not be imposed on a person if the violation is caused by an act of God or a war, strike, riot, or other catastrophe. (V.A.C.S. Art. 4477-5, Sec. 4.05.)

Sec. 382.091. UNAUTHORIZED EMISSIONS PROHIBITED; CRIMINAL PENALTY. (a) A person may not cause or permit the emission of an air contaminant that causes or that will cause air pollution unless the emission is made in compliance with a variance or other order issued by the board.

(b) A person commits an offense if the person violates this section. An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$1,000.

(c) Each day a violation occurs is a separate offense.

(d) Venue for prosecution of an alleged violation is in the county in which the violation is alleged to have occurred.

(e) In this section, "person" means an individual or a private corporation. (V.A.C.S. Art. 4477-5b, Secs. 1 (part), 2, 3, 4, 6.)

[Sections 382.092-382.110 reserved for expansion]

## SURCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

Sec. 382.111. INSPECTIONS; POWER TO ENTER PROPERTY. (a) A local government has the same power and is subject to the same restrictions as the board under Section 382.015 to inspect the air and to enter public or private property in its territorial jurisdiction to determine if:

(1) the level of air contaminants in an area in its territorial jurisdiction and the emissions from a source meet the levels set by:

(A) the board; or

(B) a municipality's governing body under Section 382.113; or

(2) a person is complying with this chapter or a rule, variance, or order issued by the board.

(b) A local government shall send the results of its inspections to the board when requested by the board. (V.A.C.S. Art. 4477-5, Sec. 5.01.)

Sec. 382.112. **RECOMMENDATIONS TO BOARD.** A local government may make recommendations to the board concerning a rule, determination, variance, or order of the board that affects an area in the local government's territorial jurisdiction. The board shall give maximum consideration to a local government's recommendations. (V.A.C.S. Art. 4477-5, Sec. 5.02.)

Sec. 382.113. **AUTHORITY OF MUNICIPALITIES.** (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the board's rules or orders.

(b) An ordinance enacted by a municipality must be consistent with this chapter and the board's rules and orders and may not make unlawful a condition or act approved or authorized under this chapter or the board's rules or orders. (V.A.C.S. Art. 4477-5, Sec. 5.05.)

Sec. 382.114. **ENFORCEMENT BY LOCAL GOVERNMENTS.** (a) If it appears that a violation or threat of violation of Section 382.085 or of a board rule, variance, or order has occurred or is occurring in a local government's jurisdiction, excluding its extraterritorial jurisdiction, the local government, in the same manner as the board under Sections 382.082-382.084, may bring suit through the local government's attorney for injunctive relief, civil penalties, or both, against the person who committed, is committing, or is threatening to commit the violation.

(b) The court shall grant, without a bond or other undertaking by the local government, any prohibitory or mandatory injunctions the facts may warrant, including temporary restraining orders after notice and hearing, temporary injunctions, and permanent injunctions.

(c) A local government may not exercise the enforcement power provided under this section unless its governing body adopts a resolution authorizing the exercise of the power.

(d) In a suit brought by a local government under this section, the board is a necessary and indispensable party. (V.A.C.S. Art. 4477-5, Secs. 4.03, 4.04(b) (part), 5.03.)

Sec. 382.115. **COOPERATIVE AGREEMENTS.** A local government may execute cooperative agreements with the board or other local governments:

(1) to provide for the performance of air quality management, inspection, and enforcement functions and to provide technical aid and educational services to a party to the agreement; and

(2) for the transfer of money or property from a party to the agreement to another party to the agreement for the purpose of air quality management, inspection, enforcement, technical aid, and education. (V.A.C.S. Art. 4477-5, Sec. 5.04.)

## CHAPTER 383. CLEAN AIR FINANCING ACT

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**CHAPTER 383. CLEAN AIR FINANCING ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 383.001. **SHORT TITLE.** This chapter may be cited as the Clean Air Financing Act. (V.A.C.S. Art. 4477–5a, Sec. 1.)

Sec. 383.002. **POLICY AND PURPOSE.** (a) The policy of the state and the purpose of this chapter are to:

- (1) safeguard state air resources from emissions of air contaminants and other pollution;
- (2) protect public health, general welfare, physical property, and the esthetic enjoyment of air resources by the public; and
- (3) maintain adequate visibility.

(b) It is the policy of the state that the control of air pollution is essential to the well-being and survival of state inhabitants and the protection of the environment. The control, prevention, and abatement of air pollution will conserve and develop state natural resources, within the meaning of Article XVI, Section 59(a), of the Texas Constitution, by preventing further damage to the environment. (V.A.C.S. Art. 4477–5a, Secs. 2(a) (part), (b) (part).)

Sec. 383.003. **DEFINITIONS.** In this chapter:

- (1) “Air contaminant” has the meaning assigned by Section 382.003 (Texas Clean Air Act).
- (2) “Air pollution” has the meaning assigned by Section 382.003 (Texas Clean Air Act).
- (3) “Board” means the Texas Air Control Board.
- (4) “Bond” includes a note.
- (5) “Coastal basin” means an area that:

(A) is defined and designated as a coastal basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(6) "Control facility" means a facility that has been certified by the board, or by its executive secretary if the board authorizes, as being designed to reduce or eliminate air pollution.

(7) "Disposal system" has the meaning assigned by Section 30.003(10), Water Code.

(8) "District" means a district or authority created under Article XVI, Section 59, or Article III, Section 52, of the Texas Constitution, but does not include a district or authority located entirely within a river authority unless the district or authority:

(A) has all or part of at least two municipalities within its boundaries;

(B) is governed by Chapter 56, 60, 61, 62, or 63, Water Code; or

(C) is created for the primary purpose of navigation of its coastal and inland waters.

(9) "Issuer" means a municipality, county, or district.

(10) "Real property" means land, a structure, a franchise or interest in land, water, land under water, riparian rights, air rights, or another thing or right pertaining to that property, including an easement, right-of-way, use, lease, license, or other incorporeal hereditament, or an estate, interest, or legal or equitable right, including a term for years or lien on that property because of a judgment, mortgage, or other reason.

(11) "Resolution" means the action, including an order or ordinance, that authorizes bonds and that is taken by the governing body of an issuer.

(12) "River authority" has the meaning assigned by Section 30.003(4), Water Code.

(13) "River basin" means an area that:

(A) is defined and designated as a river basin as of April 26, 1973, by the Texas Water Development Board, and as a separate unit that has the purpose of water development and interwatershed transfers; and

(B) has boundaries determined by a contour map filed in the office of the Texas Water Development Board.

(14) "Security agreement" means a trust indenture or other instrument securing bonds. (V.A.C.S. Art. 4477-5a, Sec. 3 (part).)

Sec. 383.004. CERTIFICATION OF CONTROL FACILITY BY BOARD. The board may prescribe necessary criteria and procedures for certifying a control facility and may limit certification to confirmation that a proposed facility is intended to control air pollution. Certification of a control facility's adequacy or expected performance or of other specifications is not necessary. (V.A.C.S. Art. 4477-5a, Sec. 14.)

Sec. 383.005. ADOPTION OF ALTERNATE PROCEDURE. If a court holds that a procedure under this chapter violates the United States Constitution or Texas Constitution, an issuer by resolution may provide an alternate procedure that conforms to those constitutions. (V.A.C.S. Art. 4477-5a, Sec. 15 (part).)

Sec. 383.006. EFFECT OF CHAPTER ON OTHER LAW. (a) This chapter does not limit the authority of the board, a district, or a local government in performing a power or duty provided by other law. This chapter does not limit the authority of the board or a local government to adopt and enforce rules or carry out duties under Chapter 382 (Texas Clean Air Act).

(b) Chapter 382 (Texas Clean Air Act) shall be enforced without regard to ownership of a control facility financed under this chapter.

(c) This chapter does not affect the right of a private person to pursue, against a person who contracts with an issuer under this chapter, a common-law remedy to abate or recover damages for a condition of pollution or other nuisance. A person purchasing or



using a control facility under contract with an issuer may not assert the defense of sovereign immunity because of the issuer's ownership of the control facility.

(d) An issuer may use other law not in conflict with this chapter to the extent convenient or necessary to carry out a power or authority expressly or impliedly granted by this chapter. (V.A.C.S. Art. 4477-5a, Sec. 13 (part).)

[Sections 383.007-383.010 reserved for expansion]

#### **SUBCHAPTER B. OPERATION OF CONTROL FACILITY**

**Sec. 383.011. AUTHORITY TO ACQUIRE AND TRANSFER PROPERTY.** (a) An issuer may acquire, construct, and improve a control facility and may acquire real property as the issuer considers appropriate for the control facility.

(b) An issuer may enter into a lease or other contract under which another person uses or acquires the issuer's control facility. An issuer may sell a control facility, by installment payments or otherwise, to any person on conditions the issuer considers desirable. (V.A.C.S. Art. 4477-5a, Sec. 4(a) (part).)

**Sec. 383.012. LOCATION OF CONTROL FACILITY.** (a) A control facility may be located on the property of any person.

(b) A control facility of a municipality must be located in whole or in part within:

(1) the boundaries of the municipality; or

(2) the municipality's extraterritorial jurisdiction, as determined under Chapter 42, Local Government Code.

(c) A control facility of a river authority may be located outside the river authority's boundaries if it is located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries. A control facility of a river authority may be located anywhere in the state if it is financed at the same time and with the same bond issue as a control facility located within the river authority's boundaries or located in whole or in part within the river authority's river basin or a coastal basin adjoining the river authority's boundaries.

(d) A control facility of a county or a district other than a river authority must be located in whole or in part within the county's or district's boundaries. (V.A.C.S. Art. 4477-5a, Secs. 4(a) (part), (b), (c), (d).)

**Sec. 383.013. CONTRACTS.** (a) A lease or other contract entered into under this chapter may be for the term agreed to by the parties. The lease or other contract may provide that it continues in effect until specified bonds or refunding bonds issued in place of the specified bonds are fully paid.

(b) The provisions of Article 5160, Revised Statutes, that relate to performance and payment bonds apply to a construction contract let by an issuer, except that an issuer is not required to receive construction bids on a project.

(c) The Bond and Warrant Law of 1931 (Article 2368a, Vernon's Texas Civil Statutes) and any other law requiring competitive bids do not apply to a construction contract for a project authorized by this chapter. (V.A.C.S. Art. 4477-5a, Secs. 9, 11.)

**Sec. 383.014. COST OF CERTAIN REQUIRED ALTERATIONS.** The relocation, raising, lowering, rerouting, changing of grade, or altering of construction of a highway, railroad, electric transmission line, telegraph or telephone property or facility, or pipeline made necessary by the actions of an issuer shall be accomplished at the sole expense of the issuer, who shall pay the cost of the required activity as necessary to provide comparable replacement, minus the net salvage value of any replaced facility. The issuer shall pay that amount from the proceeds of bonds issued to finance a control facility. (V.A.C.S. Art. 4477-5a, Sec. 12.)

**Sec. 383.015. TAXATION.** (a) An issuer is not required to pay a tax or other assessment on a control facility or part of a control facility.

(b) Bonds issued under this chapter, the transfer of the bonds, and income from the bonds are exempt from taxation in this state.

(c) This chapter does not affect state law relating to an ad valorem tax imposed on a person who is not a public agency or political subdivision or on an interest held by such a person. A control facility purchased or used under this chapter is subject to ad valorem taxation payable by the person contracting with the issuer for the facility's purchase or use as if the contract created a leasehold. (V.A.C.S. Art. 4477-5a, Sec. 2(a) (part).)

[Sections 383.016-383.020 reserved for expansion]

#### SUBCHAPTER C. BONDS

Sec. 383.021. **AUTHORITY TO ISSUE.** (a) An issuer may issue negotiable bonds, payable from revenues of the issuer, to pay costs related to the acquisition, construction, or improvement of a control facility, including:

- (1) the cost of real property acquired for the control facility;
- (2) finance charges;
- (3) interest before and during construction and for a period the issuer finds reasonable after completion of construction;
- (4) expenses incurred for architectural, engineering, and legal services;
- (5) expenses incurred for plans, specifications, surveys, and estimates;
- (6) expenses incurred in placing the control facility in operation;
- (7) expenses of administration; and
- (8) other expenses necessary or incident to the acquisition, construction, or improvement.

(b) The bonds may be issued in more than one series and from time to time as required to carry out the purposes of this chapter.

(c) Pending issuance of definitive bonds, the issuer may authorize the delivery of negotiable interim bonds eligible for exchange or substitution by use of the definitive bonds.

(d) An issuer may not issue bonds to acquire an existing control facility solely for the purpose of leasing or selling it back to the person from whom it was acquired or to another person controlled by that person, unless the control facility is to be substantially improved before it is leased or sold back to such a person. (V.A.C.S. Art. 4477-5a, Secs. 3(3); 5(a), (c).)

Sec. 383.022. **FORM AND PROCEDURE.** (a) Bonds under this chapter must be authorized by resolution. The bonds must:

- (1) be signed by the presiding officer or assistant presiding officer of the governing body;
- (2) be attested by the secretary of the governing body; and
- (3) have the seal of the issuer impressed, printed, or lithographed on the bonds.

(b) The bonds may have the characteristics and bear the designation determined by the governing body of the issuer, except that the designation must include for each control facility to be financed with the bonds:

- (1) the name of each person using or purchasing the control facility;
- (2) the name of each person guaranteeing the contractual obligations of each person using or purchasing the control facility; or
- (3) a statement, if applicable, that a group of persons will be using or purchasing the control facility.

(c) The governing body may authorize a required signature to be printed or lithographed on the bonds. The issuer may adopt or use the signature of a person who has

been an officer, regardless of whether the person is an officer when the bonds are delivered to a purchaser. (V.A.C.S. Art. 4477-5a, Sec. 5(b) (part).)

Sec. 383.023. **TERMS.** Bonds issued under this chapter must mature serially or otherwise not more than 40 years after they are issued. The bonds may:

- (1) bear interest at a rate and be sold at a price or under terms that the governing body of the issuer determines to be the most advantageous reasonably obtainable;
- (2) be made callable before maturity at times and prices prescribed in the resolution authorizing the bonds;
- (3) be in coupon form; and
- (4) be registrable as to principal or as to principal and interest. (V.A.C.S. Art. 4477-5a, Sec. 5(b) (part).)

Sec. 383.024. **APPROVAL AND REGISTRATION.** (a) An issuer shall submit bonds that have been authorized by its governing body, including refunding bonds and the record relating to the bond issuance, to the attorney general for examination as to their validity. If the bonds state that they are secured by a pledge of proceeds of a lease or other contract previously entered into by the issuer, the issuer may submit the contract with the bonds.

(b) If the bonds have been authorized in accordance with state law and any contract has been made in accordance with state law, the attorney general shall approve the bonds and contract and the comptroller shall register the bonds.

(c) Following approval and registration, the bonds and contract are incontestable. (V.A.C.S. Art. 4477-5a, Sec. 8.)

Sec. 383.025. **PLEDGE OF REVENUE AS SECURITY; ELECTION.** (a) An issuer's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of all or part of the revenues of the issuer derived from:

- (1) the use or sale of a control facility or disposal system; or
- (2) services rendered by a disposal system.

(b) Except as provided by Section 383.026, before a municipality or county issues bonds secured under Subsection (a), the municipality or county must publish notice of its intention to issue the bonds at least once in a newspaper of general circulation within the boundaries of the municipality or county. Not later than 30 days after the date of the publication, not less than 10 percent of the qualified voters of the municipality or county may file a petition with the clerk or secretary of the governing body requesting the governing body to order an election on the issuance of the bonds. On the filing of the petition, the governing body shall order an election to be held in the municipality or county to determine whether the bonds may be issued as indicated in the notice. The governing body shall set the date of the election in accordance with Section 41.001, Election Code. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds. If a petition is not filed within the period provided by this subsection, the governing body may issue the bonds without an election.

(c) The governing body shall fix and periodically revise payments under a lease or other contract for the use or sale of a control facility so that the payments and other pledged revenue will be sufficient to pay the bonds and interest on the bonds as they mature and become due and to maintain reserve or other funds as provided by the resolution or security agreement. The governing body may direct the investment of money in the funds created by the resolution or security agreement. (V.A.C.S. Art. 4477-5a, Secs. 5(d)(1), (e), (i)(1).)

Sec. 383.026. **PLEDGE OF OTHER UTILITY REVENUE; ELECTION.** (a) In addition to the security under Section 383.025, a municipality's or county's bonds may be secured, as specified by the resolution or a security agreement, by a pledge of other utility revenue of the municipality or county.

(b) Before issuing bonds secured by other utility revenue, the governing body must order an election to determine whether the bonds may be issued. The governing body

shall set the date of the election in accordance with Section 41.001, Election Code. The manner of holding the election is governed by Chapter 1, Title 22, Revised Statutes. If the majority of voters who vote at the election approve the issuance of the bonds, the governing body may issue the bonds. (V.A.C.S. Art. 4477-5a, Secs. 5(d)(2), (i)(2).)

Sec. 383.027. SECURITY MAY APPLY TO ADDITIONAL BONDS. A pledge under Section 383.025 or 383.026 may reserve the right, under conditions specified by the pledge, to issue additional bonds to be on a parity with or subordinate to the bonds secured by the pledge. Bonds issued under this chapter may be combined in the same issue with bonds issued for other purposes authorized by law. (V.A.C.S. Art. 4477-5a, Sec. 5(d)(3).)

Sec. 383.028. TRUSTS AS SECURITY. (a) The governing body may additionally secure bonds, including refunding bonds, by a trust indenture under which the trustee may be a bank having trust powers located inside or outside the state.

(b) Regardless of any mortgage, deed of trust lien, or security interest under Section 383.029, the trust indenture may:

(1) contain any provision that the governing body prescribes for the security of the bonds and the preservation of the trust estate;

(2) provide for amendment or modification of the trust indenture;

(3) condition the right to spend the issuer's money or sell an issuer's control facility on approval of a registered professional engineer selected as provided by the trust indenture;

(4) contain provisions governing issuance of bonds to replace lost, stolen, or mutilated bonds; and

(5) otherwise provide for protecting and enforcing a bondholder's rights and remedies as is reasonable, proper, and lawful. (V.A.C.S. Art. 4477-5a, Sec. 7 (part).)

Sec. 383.029. OTHER SECURITY. (a) The bonds may be additionally secured by a mortgage, deed of trust lien, or security interest in a designated control facility of the governing body and all property and rights appurtenant to the control facility.

(b) The mortgage, deed of trust lien, or security interest may give the trustee the power to operate the control facility, sell the control facility to pay the debt, or take any other action to secure the bonds.

(c) A purchaser at a sale under a mortgage or deed of trust lien is the absolute owner of the control facility and rights purchased. (V.A.C.S. Art. 4477-5a, Sec. 7 (part).)

Sec. 383.030. ACTION BY BONDHOLDERS. (a) The resolution or a security agreement may provide that on default in the payment of principal of or interest on the bonds, or threatened default under conditions stated in the resolution or security agreement, and on petition of the holders of outstanding bonds, a court of competent jurisdiction may appoint a receiver to collect and receive pledged income.

(b) The resolution or security agreement may limit or qualify the rights of less than all of the holders of outstanding bonds payable from the same source to institute or prosecute litigation affecting the issuer's property or income. (V.A.C.S. Art. 4477-5a, Sec. 5(g).)

Sec. 383.031. INVESTMENT AND USE OF PROCEEDS. (a) The governing body may set aside amounts from the proceeds of the sale of bonds for payment into an interest and sinking fund and reserve funds and may provide for this in the resolution or a security agreement. All expenses of issuing and selling the bonds must be paid from the proceeds of the sale of the bonds.

(b) Proceeds from the sale of bonds may be invested in:

(1) direct or indirect obligations of the United States government or an agency of the United States government that mature in a manner specified by the resolution or a security agreement; or

(2) certificates of deposit of a bank or trust company if the deposits are secured by obligations described by Subdivision (1).

(c) A bank or trust company with trust powers may be designated as depository for proceeds of bonds or of lease or other contract revenue. The bank or trust company shall

furnish indemnifying bonds or pledge securities as required by the issuer to secure the deposits. (V.A.C.S. Art. 4477-5a, Sec. 5(f).)

**Sec. 383.032. REFUNDING BONDS.** (a) A governing body may issue refunding bonds to refund the principal of, interest on, and any redemption premium applicable to outstanding bonds. The refunding bonds may:

- (1) refund more than one series of outstanding bonds and combine the revenue pledged to the outstanding bonds for the security of the refunding bonds; and
- (2) be secured by other or additional revenues and deed of trust liens.

(b) The provisions of this chapter relating to issuance of bonds, security for bonds, approval by the attorney general, and remedies of bondholders apply to refunding bonds.

(c) The comptroller shall register refunding bonds:

- (1) on the surrender and cancellation of the original bonds; or
- (2) without surrender and cancellation of the original bonds if:

(A) the resolution authorizing the refunding bonds provides that their proceeds be deposited in the bank where the original bonds are payable; and

(B) the refunding bonds are issued in an amount sufficient to pay the principal of, interest on, and any redemption premium applicable to the original bonds up to their option date or maturity date. (V.A.C.S. Art. 4477-5a, Sec. 6.)

**Sec. 383.033. LEGAL INVESTMENTS; SECURITY FOR DEPOSITS.** (a) Bonds issued under this chapter are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee; and
- (8) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) The bonds may secure the deposits of public funds of the state or a municipality, county, school district, or other political corporation or subdivision of the state. The bonds are lawful and sufficient security for those deposits in an amount up to their face value, if accompanied by all appurtenant unmatured coupons. (V.A.C.S. Art. 4477-5a, Sec. 10.)

**Sec. 383.034. BONDS NOT GENERAL OBLIGATION.** The bonds are special obligations payable solely from revenues pledged to their payment and are not general obligations of the governing body, the issuer, or the state. A bondholder may not demand payment from money obtained from a tax or other revenue of the issuer, excluding revenues pledged to the payment of the bonds. (V.A.C.S. Art. 4477-5a, Sec. 5(h).)

[Chapters 384-400 reserved for expansion]

**SUBTITLE D. NUCLEAR AND RADIOACTIVE MATERIALS**

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### CHAPTER 401. RADIOACTIVE MATERIALS AND OTHER SOURCES OF RADIATION

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 401.001. **POLICY.** In furtherance of the state's responsibility to protect occupational and public health and safety and the environment, it is the policy of the state to institute and maintain:

- (1) a regulatory program for sources of radiation that provides for:
  - (A) compatibility with federal standards and regulatory programs;
  - (B) a single, effective regulatory system in the state; and
  - (C) a regulatory system that is to the degree possible compatible with other states' systems; and

(2) a program that permits development and use of sources of radiation for peaceful purposes consistent with public health and safety and environmental protection. (V.A.C.S. Art. 4590f, Sec. 1.)

Sec. 401.002. **PURPOSE.** It is the purpose of this chapter to carry out the policies stated in Section 401.001 by providing a program to:

- (1) ensure effective regulation of sources of radiation for protection of the occupational and public health and safety and the environment;
- (2) promote an orderly regulatory pattern in the state, among the states, and between the federal government and the state, and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to minimize regulatory duplication;
- (3) establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and
- (4) permit maximum use of sources of radiation consistent with public health and safety and environmental protection. (V.A.C.S. Art. 4590f, Sec. 2.)

Sec. 401.003. **DEFINITIONS.** In this chapter:

- (1) "Advisory board" means the radiation advisory board.
- (2) "Board" means the Texas Board of Health.



(3) "By-product material" means:

(A) a radioactive material, other than special nuclear material, that is produced in or made radioactive by exposure to radiation incident to the process of producing or using special nuclear material; and

(B) tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes, and other tailings having similar radiological characteristics.

(4) "Commission" means the United States Nuclear Regulatory Commission.

(5) "Commissioner" means the commissioner of health.

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

(7) "Director" means the director of the radiation control program.

(8) "Disposal" means isolation or removal of radioactive waste from mankind and mankind's environment without intent to retrieve that radioactive waste later. The term does not include emissions and discharges under department rules.

(9) "Electronic product" means a manufactured product or device or component part of a manufactured product or device that has an electronic circuit that during operation can generate or emit a physical field of radiation.

(10) "Fund" means the radiation and perpetual care fund.

(11) "General license" means a license issued under department rules for which an application is not required to be filed to transfer, acquire, own, possess, or use quantities of or devices or equipment that make use of by-product, source, special nuclear, or other radioactive material.

(12) "Local government" means a municipality, county, special district, or other political subdivision of the state.

(13) "Person" includes a legal successor to or representative, agent, or agency of any person but does not include the commission and federal agencies the commission licenses or exempts.

(14) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which nuclear or radioactive material is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(15) "Processing" means the storage, extraction of material, transfer, volume reduction, compaction, or other separation and preparation of radioactive waste for reuse or disposal, including a treatment or activity that renders the waste less hazardous, safer for transport, or amenable to recovery, storage, or disposal.

(16) "Radiation" means one or more of the following:

(A) gamma-rays and X-rays, alpha and beta particles, and other atomic or nuclear particles or rays;

(B) stimulated emission of radiation from an electronic device to energy density levels that could reasonably cause bodily harm; or

(C) sonic, ultrasonic, or infrasonic waves emitted from an electronic device or resulting from the operation of an electronic circuit in an electronic device in the energy range to reasonably cause detectable bodily harm.

(17) "Radioactive material" means a naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(18) "Radioactive waste" means radioactive material, other than by-product material defined by Subdivision (3)(B) or uranium ore, that:

(A) is discarded or unwanted and is not exempt by department rule adopted under Section 401.106; or

(B) would require processing before it could have a beneficial reuse.

(19) "Registration" includes:

(A) notice to the department of the service or use of an electronic product; and

(B) registration under Section 401.105.

(20) "Source material" means:

(A) uranium, thorium, or other material that the governor by order declares to be source material after the commission has determined the material to be source material; or

(B) ore that contains one or more of the materials listed in Subdivision (A) to the degree of concentration that the governor by order declares to be source material after the commission has determined the material to be of a degree of concentration to be source material.

(21) "Source of radiation" means radioactive material or a device or equipment that emits or is capable of producing radiation intentionally or incidentally.

(22) "Special nuclear material" means:

(A) plutonium, uranium 233, uranium enriched in the isotope 233 or the isotope 235, and any other material other than source material that the governor by order declares to be special nuclear material after the commission determines the material to be special nuclear material; or

(B) material other than source material that is artificially enriched by any of the materials listed in Subdivision (A).

(23) "Specific license" means a license, issued pursuant to an application, to use, manufacture, produce, transfer, receive, acquire, own, possess, process, or dispose of quantities of or devices or equipment using by-product, source, special nuclear, or other radioactive material. (V.A.C.S. Art. 4590f, Sec. 3 (part).)

[Sections 401.004–401.010 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 401.011. RADIATION CONTROL AGENCY. (a) The Texas Department of Health is the Texas Radiation Control Agency.

(b) The department shall exercise the powers and duties under this chapter for the protection of the occupational health and safety and the environment. (V.A.C.S. Art. 4590f, Secs. 4(a), (d) (part).)

Sec. 401.012. DESIGNATION OF DIRECTOR. The commissioner shall designate the director of the radiation control program. (V.A.C.S. Art. 4590f, Sec. 4(b) (part).)

Sec. 401.013. DUTIES OF DIRECTOR. The director shall perform the department's functions under this chapter other than the issuance of licenses under Subchapter F. (V.A.C.S. Art. 4590f, Sec. 4(b) (part).)

Sec. 401.014. EMPLOYEES. The department may employ, compensate, and prescribe the powers and duties of persons as necessary to carry out this chapter. (V.A.C.S. Art. 4590f, Sec. 4(c) (part).)

Sec. 401.015. RADIATION ADVISORY BOARD. (a) The radiation advisory board is composed of the following 18 members appointed by the governor:

(1) one representative from industry who is trained in nuclear physics, science, or nuclear engineering;

(2) one representative from labor;

(3) one representative from agriculture;

(4) one representative from the insurance industry;

(5) one individual who is engaged in the use and application of nuclear physics in medicine;

(6) one representative from public safety;

(7) one hospital administrator;

(8) one individual licensed by the Texas State Board of Medical Examiners who specializes in nuclear medicine;

(9) one individual licensed by the Texas State Board of Medical Examiners who specializes in pathology;

(10) one individual licensed by the Texas State Board of Medical Examiners who specializes in radiology;

(11) one representative from the nuclear utility industry;

(12) one representative from the radioactive waste processing industry;

(13) one representative from the petroleum well-servicing industry;

(14) one health physicist;

(15) one individual licensed by the State Board of Dental Examiners;

(16) one representative from the uranium mining industry; and

(17) two representatives of the public.

(b) Advisory board members serve for staggered six-year terms.

(c) A person is not eligible to be appointed as a representative of the public on the advisory board if that person or that person's spouse is:

(1) engaged in an occupation in the health care field; or

(2) employed by, participates in the management of, or has a financial interest, other than as a consumer, in part of the nuclear utility industry or in a business entity or other organization that is licensed under Subchapter F or Subchapter G. (V.A.C.S. Art. 4590f, Sec. 5(a) (part).)

**Sec. 401.016. OFFICERS.** The advisory board shall elect from its members a chairman, vice-chairman, and secretary. (V.A.C.S. Art. 4590f, Sec. 5(b)(4) (part).)

**Sec. 401.017. SALARY; EXPENSES.** A member of the advisory board is not entitled to receive a salary for service on the advisory board but may be reimbursed for actual expenses incurred in attending advisory board meetings or for engaging in authorized advisory board business. (V.A.C.S. Art. 4590f, Sec. 5(a) (part).)

**Sec. 401.018. MEETINGS.** (a) The advisory board shall meet quarterly on dates set by the advisory board.

(b) The advisory board shall hold special meetings that may be called by the commissioner or by three advisory board members.

(c) Advisory board meetings may be held at any designated place in the state determined by the commissioner to best serve the purpose for which the meeting is called.

(d) Each member of the advisory board shall be given timely notice of each advisory board meeting.

(e) A record must be kept of each advisory board meeting. (V.A.C.S. Art. 4590f, Sec. 5(b)(4) (part).)

**Sec. 401.019. ADVISORY BOARD DUTIES.** The advisory board shall:

(1) review and evaluate state radiation policies and programs;

(2) make recommendations to the department and furnish technical advice that may be required on matters relating to development, use, and regulation of sources of radiation; and

(3) review proposed department rules and guidelines relating to regulation of sources of radiation and recommend changes in proposed or existing rules and guidelines relating to those matters. (V.A.C.S. Art. 4590f, Secs. 5(b)(1), (2), (3).)

[Sections 401.020–401.050 reserved for expansion]

## SUBCHAPTER C. POWERS AND DUTIES

Sec. 401.051. **ADOPTION OF RULES AND GUIDELINES.** The board may adopt rules and guidelines relating to control of sources of radiation. (V.A.C.S. Art. 4590f, Sec. 11(a) (part).)

Sec. 401.052. **RULES AND GUIDELINES FOR TRANSPORTATION AND ROUTING.** The board shall adopt rules and guidelines that provide for transportation and routing of radioactive material in this state. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.053. **CLASSIFICATION SYSTEM FOR RADIOACTIVE WASTE.** The department may establish a classification system for radioactive waste that is based on radiological, chemical, and biological characteristics and on physical state so that radioactive waste can be managed safely and compatibly. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.054. **NOTICE AND HEARING.** (a) The department shall provide notice and an opportunity for a hearing as provided by the department's formal hearing procedures and the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), on written request of a person affected by any of the following procedures:

- (1) the denial, suspension, or revocation of a license or registration;
- (2) the determination of compliance with or the grant of exemptions from a department rule or order; or
- (3) the grant or amendment of a specific license.

(b) This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter. (V.A.C.S. Art. 4590f, Secs. 11(b), (c).)

Sec. 401.055. **ORDERS.** The department shall issue and modify necessary orders in connection with proceedings under this chapter. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.056. **EMERGENCY ORDERS.** (a) If the department finds an emergency exists that requires immediate action to protect the public health and safety and the environment, the department, without notice or hearing, may issue an order stating the existence of the emergency and requiring that action be taken at the department's direction to meet the emergency.

(b) The emergency order is effective immediately.

(c) A person to whom an emergency order is directed shall comply immediately with that order.

(d) The department shall provide a person to whom an emergency order is directed an opportunity for a hearing on written application to the department not later than the 30th day following the date of the emergency order.

(e) The department shall hold a requested hearing not earlier than the 11th day and not later than the 20th day following the date of receipt of the hearing application.

(f) The department shall continue, modify, or revoke an emergency order based on the hearing. (V.A.C.S. Art. 4590f, Secs. 11(d), 11A(h), 11B(f).)

Sec. 401.057. **RECORDS.** (a) The department shall require each person who possesses or uses a source of radiation to maintain:

- (1) records relating to the use, receipt, storage, transfer, or disposal of that source of radiation;
- (2) appropriate records that show the radiation exposure of each individual for whom personnel monitoring is required by department rules, licenses, registrations, and orders; and
- (3) other records the department requires.

(b) The board by rule may provide exemptions to the records requirements under Subsections (a)(1) and (3).

(c) Copies of records required to be maintained under Subsection (a) shall be submitted to the department on request.

(d) A person who possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at any time the employee has received exposure that exceeds the maximum permissible levels provided by board rules and on termination of employment. The person shall furnish to an employee on request a copy of the employee's annual exposure record. (V.A.C.S. Art. 4590f, Secs. 3(h), 8.)

**Sec. 401.058. INFORMATION.** (a) The department shall collect and disseminate information relating to the control and transportation of sources of radiation.

(b) The department, as part of the collection and dissemination of information, shall maintain:

(1) a file of license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(2) a file of registrants possessing sources of radiation requiring registration under this chapter and any administrative or judicial action relating to those registrants;

(3) a file of pending and adopted rules and guidelines relating to regulation of sources of radiation and proceedings relating to those rules and guidelines; and

(4) a file of:

(A) known locations in this state at which radioactive material has been disposed of and at which soil and facilities are contaminated; and

(B) information on inspection reports relating to the radioactive material disposed of and radiation levels at those locations. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.059. PROGRAM DEVELOPMENT.** (a) The department shall develop programs to evaluate hazards associated with the use of sources of radiation.

(b) The department shall develop programs with due regard for compatibility with federal programs for the regulation of sources of radiation. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.060. STUDIES, INVESTIGATIONS, ETC.** The department shall encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.061. RADIOACTIVE WASTE STUDIES.** The department shall conduct studies of the need for radioactive waste processing and disposal facilities and technologies as the department considers necessary for minimizing the risks to the public and the environment from radioactive waste management. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.062. TRAINING PROGRAMS.** (a) The department may institute training programs to qualify personnel to carry out this chapter.

(b) The department may make those personnel available to participate in a program of the federal government, another state, or an interstate agency to carry out this chapter's purposes. (V.A.C.S. Art. 4590f, Sec. 10(b).)

**Sec. 401.063. GENERAL INSPECTION AUTHORITY.** (a) The department or its representative may enter public or private property at reasonable times to determine whether there is compliance with this chapter and the department's rules, licenses, registrations, and orders under this chapter.

(b) The department or its representative may enter an area under the jurisdiction of the federal government only with the concurrence of the federal government or its designated representative. (V.A.C.S. Art. 4590f, Sec. 7(a).)

**Sec. 401.064. INSPECTION OF X-RAY EQUIPMENT.** (a) The board shall adopt rules relating to the frequency of department inspections of electronic products.

(b) In adopting the rules, the board shall consider the threat to human health and safety that the electronic products may present.

(c) The board shall adopt an inspection interval of five years for routine inspections of electronic products that present a minimal threat to human health and safety. (V.A.C.S. Art. 4590f, Sec. 7(c).)

Sec. 401.065. **INSPECTION AGREEMENTS.** The department, with the approval of the governor, may enter into an agreement with the federal government, another state, or an interstate agency under which the state, in cooperation with the other parties to the agreement, performs inspections or other functions relating to the control of sources of radiation. (V.A.C.S. Art. 4590f, Sec. 10(a).)

Sec. 401.066. **SURVEILLANCE PLANS.** The department shall prepare and update emergency and environmental surveillance plans for fixed nuclear facilities in this state. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.067. **LOCAL GOVERNMENT INSPECTIONS.** (a) An agent or employee of a local government may examine and copy during regular business hours records relating to activities licensed under Subchapter F. Examinations and copying of records must be done at the local government's expense and subject to limitations in the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) Records copied under this section are public records unless the record's owner shows to the satisfaction of the director that the records if made public will divulge trade secrets. On such a showing, the department shall consider the copied records confidential.

(c) A local government agent or employee may not enter private property that has management in residence unless the agent or employee notifies the management, or person in charge, of the agent's or employee's presence and exhibits proper credentials. The agent or employee shall observe the rules of the establishment being inspected relating to safety, internal security, and fire protection. (V.A.C.S. Art. 4590f, Sec. 7(b).)

Sec. 401.068. **IMPOUNDING SOURCES OF RADIATION.** The department, in an emergency, may impound or order impounded sources of radiation that are in the possession of a person who is not equipped to observe or fails to observe this chapter or department rules. (V.A.C.S. Art. 4590f, Sec. 14.)

Sec. 401.069. **MEMORANDUM OF UNDERSTANDING.** The board must adopt as a rule any memorandum of understanding between the department and another state agency. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.070. **RELATIONSHIP WITH OTHER ENTITIES.** The department shall advise, consult, and cooperate with other state agencies, the federal government, other states, interstate agencies, local governments, and groups concerned with the control and transportation of sources of radiation. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.071. **FEDERAL-STATE AGREEMENT.** (a) The governor, on behalf of the state, may enter into an agreement with the federal government that provides for discontinuing certain responsibilities of the federal government relating to sources of radiation and assumption by the state of those responsibilities.

(b) A person who possesses, on the effective date of an agreement under Subsection (a), a license issued by the federal government is considered to possess a license under this chapter that expires on the earlier of:

- (1) the 91st day after the date on which an expiration notice for the license is received from the department; or
- (2) the expiration date specified in the federal license. (V.A.C.S. Art. 4590f, Sec. 9.)

[Sections 401.072–401.100 reserved for expansion]

#### SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 401.101. **LICENSE AND REGISTRATION REQUIREMENT.** A person may not use, manufacture, produce, transport, transfer, receive, acquire, own, possess, process, or dispose of a source of radiation unless that person has a license, registration, or

exemption from the department as provided by this chapter. (V.A.C.S. Art. 4590f, Sec. 13.)

Sec. 401.102. **APPLICATION TO NUCLEAR REACTOR FACILITIES.** Nuclear reactor facilities licensed by the commission are not required to be licensed or registered under this chapter. (V.A.C.S. Art. 4590f, Sec. 4(b) (part).)

Sec. 401.103. **RULES AND GUIDELINES FOR LICENSING AND REGISTRATION.** (a) The board shall adopt rules and guidelines that provide for licensing and registration for the control and transportation of sources of radiation.

(b) In adopting rules and guidelines, the board shall consider the compatibility of those rules and guidelines with federal regulatory programs. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.104. **LICENSING AND REGISTRATION RULES.** (a) The board by rule shall provide for the general or specific licensing of:

- (1) radioactive material; or
- (2) devices or equipment using radioactive material.

(b) The board shall provide in those rules for the issuance, amendment, suspension, and revocation of licenses.

(c) The board may require the registration or licensing of other sources of radiation. (V.A.C.S. Art. 4590f, Secs. 6(a) (part), 6(b).)

Sec. 401.105. **RECOGNITION OF OTHER LICENSES.** The board by rule may recognize other federal or state licenses the board considers desirable, subject to registration requirements the board may prescribe. (V.A.C.S. Art. 4590f, Sec. 6(d).)

Sec. 401.106. **EXEMPTION FROM LICENSING OR REGISTRATION REQUIREMENTS.** The board by rule may exempt a source of radiation or a kind of use or user from the licensing or registration requirements provided by this chapter if the board finds that the exemption of that source of radiation or kind of use or user will not constitute a significant risk to the public health and safety and the environment. (V.A.C.S. Art. 4590f, Sec. 6(c).)

Sec. 401.107. **LICENSE APPLICATION.** (a) An application for a specific license must be in writing and must state the information that the board by rule determines to be necessary to decide the technical, insurance, and financial qualifications or any other of the applicant's qualifications the board considers reasonable or necessary to protect the occupational and public health and safety and the environment.

(b) The department at any time after an application is filed, and if the application is for a renewal, before the expiration of the license, may require further written statements and may make inspections the department considers necessary to determine if the license should be granted or denied or if the current license should be modified, suspended, or revoked.

(c) The applicant or license holder shall sign each license application and each statement, and the department may require the applicant or license holder to make the application or statement under oath. (V.A.C.S. Art. 4590f, Sec. 6(a)(1).)

Sec. 401.108. **FINANCIAL QUALIFICATIONS.** (a) Before a license is issued or renewed, the applicant shall demonstrate to the department that the applicant is financially qualified to conduct the licensed activity, including any required decontamination, decommissioning, reclamation, and disposal.

(b) A license holder shall submit to the department, at intervals required by department rules or the license, proof of the license holder's financial qualifications.

(c) The department shall reevaluate every five years the qualifications and security provided by a license holder under Subchapter F or Subchapter G. The reevaluation may coincide with license renewal procedures if renewal and reevaluation occur in the same year. (V.A.C.S. Art. 4590f, Sec. 6(e).)

Sec. 401.109. **SECURITY.** (a) The department may require a license holder to provide security acceptable to the department to assure performance of the license holder's obligations under this chapter.

(b) The amount and type of security required shall be determined under the department's rules in accordance with criteria that include:

(1) the need for and scope of decontamination, decommissioning, reclamation, or disposal activity reasonably required to protect the public health and safety and the environment;

(2) reasonable estimates of the cost of decontamination, decommissioning, reclamation, and disposal as provided by Section 401.303; and

(3) the cost of perpetual maintenance and surveillance, if any.

(c) In this section "security" includes:

(1) a cash deposit;

(2) a surety bond;

(3) a certificate of deposit;

(4) an irrevocable letter of credit;

(5) a deposit of government securities; and

(6) other security acceptable to the department. (V.A.C.S. Art. 4590f, Secs. 3(l), 6(f), (g).)

Sec. 401.110. DETERMINATION ON LICENSE. In making a determination whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, the department may consider those aspects of an applicant's or license holder's background that bear materially on the ability to fulfill the obligations of licensure, including technical competence and the applicant's or license holder's record in areas involving radiation. (V.A.C.S. Art. 4590f, Sec. 6(h).)

Sec. 401.111. CRITERIA FOR CERTAIN UNSUITABLE NEW SITES. (a) The board, in adopting rules for the issuance of licenses for new sites for processing or disposal of radioactive waste from other persons, shall adopt criteria for the designation of unsuitable sites, including:

(1) flood hazard areas;

(2) areas with characteristics of discharge from or recharge of a groundwater aquifer system; or

(3) areas in which soil conditions make spill cleanup impracticable.

(b) The board shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology, and other appropriate state agencies in developing proposed rules. The board by rule shall:

(1) require selection of sites in areas in which natural conditions minimize potential contamination of surface water and groundwater; and

(2) prohibit issuance of licenses for unsuitable sites as defined by the rules. (V.A.C.S. Art. 4590f, Sec. 6(a)(7).)

Sec. 401.112. RADIOACTIVE WASTE PROCESSING LICENSE APPLICATION AND CONSIDERATIONS. (a) The department, in making a licensing decision on a specific license application to process or dispose of radioactive waste from other persons, shall consider:

(1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;

(2) compatibility with present uses of land near the site;

(3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of radioactive material;

(4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;

(5) the applicant's qualifications, including financial, technical, and past operating practices;

(6) background monitoring plans for the proposed site;



- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of radioactive material;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and
- (17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, ground-water, and vegetation.

(b) An applicant for the specific license must submit with the application information necessary for the department to consider the factors under Subsection (a).

(c) The board by rule shall provide specific criteria for the different types of licensed radioactive waste activities for the listed factors and may include additional factors and criteria that the board determines necessary for full consideration of a license. (V.A.C.S. Art. 4590f, Secs. 6(a)(5), (6).)

**Sec. 401.113. ENVIRONMENTAL ANALYSIS.** (a) Before a hearing under Section 401.114 begins, the department shall prepare or have prepared a written analysis of the effect on the environment of a proposed licensed activity that the department determines has a significant effect on the human environment.

(b) The department shall make the analysis available to the public not later than the 31st day before the date of a hearing under Section 401.114.

(c) The analysis must include:

(1) an assessment of radiological and nonradiological effects of the activity on the public health;

(2) an assessment of any effect on a waterway or groundwater resulting from the activity;

(3) consideration of alternatives to the activities to be conducted under the license; and

(4) consideration of the long-term effects associated with activities, including decommissioning, decontamination, and reclamation impacts, including the management of radioactive waste, to be conducted under the license. (V.A.C.S. Art. 4590f, Sec. 11B(c).)

**Sec. 401.114. NOTICE AND HEARING.** (a) Before the department grants or renews a license to process or dispose of radioactive waste from other persons, the department shall give notice and shall provide an opportunity for a public hearing in the manner provided by the department's formal hearing procedure and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) In addition to other notice, the department shall publish notice of the hearing in the manner provided by Chapter 313, Government Code, in the county in which the proposed facility is to be located. The notice shall state the subject and the time, place, and date of the hearing.

(c) The department shall mail, by certified mail in the manner provided by the department's rules, written notice to each person who owns property adjacent to the proposed site. The notice must be mailed not later than the 31st day before the date of the hearing and must include the same information that is in the published notice. If true, the department or the applicant must certify that the notice was mailed as required

by this subsection, and at the hearing the certificate is conclusive evidence of the mailing. (V.A.C.S. Art. 4590f, Sec. 11B(a).)

Sec. 401.115. **LICENSES FROM OTHER AGENCIES.** A holder of a license to operate a facility to process or dispose of radioactive waste may not operate the facility until the holder has obtained all other required licenses or permits from other agencies. (V.A.C.S. Art. 4590f, Sec. 6(a)(8).)

Sec. 401.116. **LICENSE AMENDMENT.** (a) An amendment to a license to process or dispose of radioactive waste from other persons may take effect immediately.

(b) The department shall publish notice of the license amendment once in the Texas Register and in a newspaper of general circulation in the county in which the licensed activity is located and shall give notice to any person who has notified the department, in advance, of the desire to receive notice of proposed amendment of the license.

(c) Notice under this section must include:

- (1) the identity of the license holder;
- (2) identification of the license; and
- (3) a short and plain statement of the license amendment's substance.

(d) The department shall give notice and hold a hearing to consider the license amendment if a person affected files a written complaint with the department before the 31st day after the date on which notice is published under Subsection (b). The department shall give notice of the hearing as provided by Section 401.114. (V.A.C.S. Art. 4590f, Sec. 11B(b).)

Sec. 401.117. **CONSTRUCTION LIMITATION.** The department shall prohibit major construction relating to activities to be permitted under a license to process or dispose of radioactive waste from other persons until the requirements in Sections 401.113 and 401.114 are completed. (V.A.C.S. Art. 4590f, Sec. 11B(d).)

Sec. 401.118. **LICENSE FORM AND CONTENT.** (a) The board shall prescribe the form and the terms for each license.

(b) Each license is subject to amendment, revision, or modification by rule or order. (V.A.C.S. Art. 4590f, Secs. 6(a)(2), (4).)

Sec. 401.119. **LICENSE TRANSFER.** A license may be assigned only to a person qualified under department rules. (V.A.C.S. Art. 4590f, Sec. 6(a)(3).)

[Sections 401.120–401.150 reserved for expansion]

#### SUBCHAPTER E. MANAGEMENT OF RADIOACTIVE WASTE

Sec. 401.151. **COMPATIBILITY WITH FEDERAL STANDARDS.** The department shall assure that the management of radioactive waste is compatible with applicable commission standards. (V.A.C.S. Art. 4590f, Sec. 11B(e).)

Sec. 401.152. **CORRECTIVE ACTION AND MEASURES.** (a) If the department, under procedures provided by Section 401.056, finds that radioactive waste threatens the public health and safety and the environment and that the license holder managing the radioactive waste is unable to remove the threat, the department by order may require any action, including a corrective measure, that is necessary to remove the threat.

(b) The department shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the license holder;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the fund the amount necessary to pay the costs. (V.A.C.S. Art. 4590f, Sec. 12B.)

**Sec. 401.153. PROCESSING OF OUT-OF-STATE LOW-LEVEL RADIOACTIVE WASTE.** (a) The board by rule may prohibit a licensed radioactive waste processor from accepting for processing low-level radioactive waste generated outside this state.

(b) A rule adopted under this section may not take effect before the 24th month preceding the opening date of a low-level radioactive waste disposal site authorized under Chapter 402, and expires on the date that the disposal site opens. (V.A.C.S. Art. 4590f, Sec. 19.)

[Sections 401.154–401.200 reserved for expansion]

**SUBCHAPTER F. SPECIAL PROVISIONS CONCERNING  
RADIOACTIVE WASTE DISPOSAL**

**Sec. 401.201. REGULATION OF RADIOACTIVE WASTE DISPOSAL.** The department shall directly regulate the disposal of radioactive waste. The person making the disposal shall comply with department rules. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.202. LICENSING AUTHORITY.** The board or the commissioner, if designated by the board, shall issue licenses under this subchapter. (V.A.C.S. Art. 4590f, Sec. 4(b) (part).)

**Sec. 401.203. LICENSE RESTRICTED TO PUBLIC ENTITY.** A radioactive waste disposal license may be issued only to a public entity specifically authorized by law for radioactive waste disposal. (V.A.C.S. Art. 4590f, Sec. 6(a)(9).)

**Sec. 401.204. ACQUISITION OF PROPERTY.** An application for a license to dispose of radioactive waste from other persons may not be considered unless the applicant has acquired the title to and any interest in land and buildings as required by department rule. (V.A.C.S. Art. 4590f, Sec. 6B(a)(2).)

**Sec. 401.205. RESPONSIBILITIES OF PERSONS LICENSED TO DISPOSE OF RADIOACTIVE WASTE.** A person who is licensed to dispose of radioactive waste from other persons shall:

(1) arrange for and pay the costs of management, control, stabilization, and disposal of radioactive waste and the decommissioning of the licensed activity;

(2) convey to the state when the license is issued all right, title, and interest in land and buildings acquired under department rules, together with requisite rights of access to that property; and

(3) formally acknowledge before termination of the license the conveyance to the state of the right, title, and interest in radioactive waste located on the property conveyed. (V.A.C.S. Art. 4590f, Secs. 6B(a)(1), (3), (4).)

**Sec. 401.206. RESIDENT INSPECTOR.** (a) The holder of a license to dispose of radioactive waste from other persons shall reimburse the department for the salary and other expenses of a resident inspector employed by the department.

(b) The department may require that the license holder provide facilities at a disposal site for the resident inspector. (V.A.C.S. Art. 4590f, Sec. 6B(g).)

**Sec. 401.207. OUT-OF-STATE WASTE.** A license holder may not accept radioactive waste generated in another state for processing or disposal under a license issued by the department unless the waste is:

(1) accepted under a compact to which the state is a contracting party;

(2) from a state having an operating radioactive waste disposal site at which that state is willing to accept radioactive waste generated in this state; or

(3) generated from manufactured sources or devices originating in this state. (V.A.C.S. Art. 4590f, Sec. 6B(b).)

**Sec. 401.208. LIMITATION ON CERTAIN RADIOACTIVE WASTE DISPOSAL.** (a) A license holder may not accept for disposal under a license issued by the department:

(1) high-level radioactive waste as defined by Title 10, Code of Federal Regulations;

(2) irradiated reactor fuel; or

(3) radioactive waste that contains 10 or more nanocuries per gram of transuranics.

(b) The board by rule shall adopt special criteria for the disposal of radioactive waste with a half-life greater than 35 years and radioactive waste that contains less than 10 nanocuries per gram of transuranics. (V.A.C.S. Art. 4590f, Sec. 6B(c).)

Sec. 401.209. ACQUISITION AND OPERATION OF RADIOACTIVE WASTE DISPOSAL SITES. (a) The department may acquire the fee simple title in land, affected mineral rights, and buildings at which radioactive waste can be or is being disposed of in a manner consistent with public health and safety and the environment.

(b) Property acquired under this section may be used only for disposing of radioactive waste until the department determines that another use would not endanger the health, safety, or general welfare of the public or the environment.

(c) The department may lease property acquired under this section for operating disposal sites for radioactive waste.

(d) The right, title, and interest in radioactive waste accepted for disposal at property and facilities acquired under this section are the property of the state and shall be administered and controlled in the name of the state. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.210. TRANSFER COSTS OF PROPERTY. Radioactive waste and land and buildings transferred to the state under this chapter shall be transferred to the state without cost, other than administrative and legal costs incurred in making the transfer. (V.A.C.S. Art. 4590f, Sec. 6B(f).)

Sec. 401.211. LIABILITY. The transfer to the state of the title to radioactive waste and land and buildings does not relieve a license holder of liability for any fraudulent or negligent acts performed before the transfer or while the radioactive waste or land and buildings are in the possession and control of the license holder. (V.A.C.S. Art. 4590f, Sec. 6B(e).)

Sec. 401.212. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. The department may undertake monitoring, maintenance, and emergency measures that are necessary to protect the public health and safety and the environment in connection with radioactive waste and property for which it has assumed custody. (V.A.C.S. Art. 4590f, Sec. 6B(d).)

Sec. 401.213. INTERSTATE COMPACTS. The department shall cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, to develop regional sites that divide among the states the disposal burden of radioactive waste generated in the region. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

[Sections 401.214–401.260 reserved for expansion]

#### SUBCHAPTER G. SPECIAL PROVISIONS CONCERNING BY-PRODUCT MATERIAL

Sec. 401.261. SUBCHAPTER APPLICATION. A reference in this subchapter to by-product material includes only that by-product material defined by Section 401.003(3)(B). (New.)

Sec. 401.262. MANAGEMENT OF CERTAIN BY-PRODUCT MATERIAL. The department shall assure that by-product material is managed in compliance with the commission's applicable standards. (V.A.C.S. Art. 4590f, Sec. 11A(g).)

Sec. 401.263. ENVIRONMENTAL ANALYSIS. (a) If the department is considering the issuance or renewal of a license to process materials that produce by-product materials and determines that the license will have a significant impact on the human environment, the department shall prepare or have prepared a written environmental analysis.

(b) The analysis must include:

(1) an assessment of the radiological and nonradiological effects of the licensed activity on the public health;

(2) an assessment of any effect of the licensed activity on a waterway or groundwater;

(3) consideration of alternatives to the licensed activity, including alternative sites and engineering methods; and

(4) consideration of decommissioning, decontamination, reclamation, and other long-term effects associated with a licensed activity, including management of by-product material.

(c) The department shall give notice of the analysis as provided by agency rule and shall make the analysis available to the public for written comment not later than the 31st day before the date of the hearing on the license.

(d) After notice is given, the department shall provide an opportunity for written comments by persons affected.

(e) The analysis shall be included as part of the record of the department's proceedings.

(f) The department shall prohibit major construction with respect to an activity that is to be licensed until the requirements of Subsections (a), (b), (c), and (e) are completed. (V.A.C.S. Art. 4590f, Secs. 11A(a), (b) (part), (c) (part), (f).)

**Sec. 401.264. NOTICE AND HEARING.** (a) The department shall provide an opportunity for a public hearing on an environmental analysis to determine whether to issue or renew a license to process materials that produce by-product materials in the manner provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and permit appearances with or without counsel and the examination and cross-examination of witnesses under oath.

(b) A person affected may become a party to a proceeding on a determination that the person possesses a justiciable interest in the result of the proceeding.

(c) The department shall make a record of the proceedings and provide a transcript of the hearing on request of, and payment for, the transcript or provision of a sufficient deposit to assure payment by any person requesting the transcript.

(d) The department shall provide an opportunity to obtain a written determination of action to be taken. The determination must be based on evidence presented to the department and include findings. The written determination is available to the public.

(e) The determination is subject to judicial review. (V.A.C.S. Art. 4590f, Secs. 11A(b) (part), (c) (part), (d), (e).)

**Sec. 401.265. CONDITIONS OF CERTAIN BY-PRODUCT MATERIAL LICENSES.** The department shall prescribe conditions in a radioactive material license issued or renewed for an activity that results in production of by-product material to minimize or, if possible, eliminate the need for long-term maintenance and monitoring before the termination of the license, including conditions that:

(1) the license holder will comply with decontamination, decommissioning, reclamation, and disposal standards that are prescribed by the board and that are equivalent to or more stringent than the commission's standards for sites at which those ores were processed and at which the by-product material is deposited; and

(2) the ownership of a disposal site, other than a disposal well covered by a permit issued under Chapter 27, Water Code, and the by-product material resulting from the licensed activity are transferred, subject to Sections 401.266-401.269, to:

(A) the state; or

(B) the federal government if the state declines to acquire the site, the by-product material, or both the site and the by-product material. (V.A.C.S. Art. 4590f, Sec. 6A(a).)

**Sec. 401.266. TRANSFER OF LAND REQUIRED.** (a) The board by rule may require or the department by order may require that before a license covering land used for the disposal of by-product material is terminated, the land, including any affected interests in the land, must be transferred to the federal government or to the state unless:

(1) the commission determines before the license terminates that the transfer of title to the land and the by-product material is unnecessary to protect the public health, safety, or welfare or to minimize danger to life or property; or

(2) the land is held in trust by the federal government for an Indian tribe, is owned by an Indian tribe subject to a restriction against alienation imposed by the federal government, is owned by the federal government, or is owned by the state.

(b) By-product material transferred to the state under this section shall be transferred without cost to the state, other than administrative and legal costs incurred in making the transfer. (V.A.C.S. Art. 4590f, Secs. 6A(b), (f).)

Sec. 401.267. ACQUISITION OF CERTAIN BY-PRODUCT MATERIALS AND SITES. The department may acquire by-product material and fee simple title in land, affected mineral rights, and buildings at which that by-product material is disposed of and abandoned so that the by-product material and property can be managed in a manner consistent with public health, safety, and the environment. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

Sec. 401.268. LIABILITY. The transfer of the title to by-product material, land, and buildings under Section 401.267 does not relieve a license holder of liability for fraudulent or negligent acts performed before the transfer. (V.A.C.S. Art. 4590f, Sec. 6A(e).)

Sec. 401.269. MONITORING, MAINTENANCE, AND EMERGENCY MEASURES. (a) The department may undertake monitoring, maintenance, and emergency measures in connection with by-product material and property for which it has assumed custody under Section 401.267 that are necessary to protect the public health and safety and the environment.

(b) The department shall maintain the by-product material and property transferred to it in a manner that will protect the public health and safety and the environment. (V.A.C.S. Art. 4590f, Secs. 6A(c), (d).)

Sec. 401.270. CORRECTIVE ACTION AND MEASURES. (a) If the department finds that by-product material or the operation by which that by-product material is derived threatens the public health and safety and the environment and that the license holder is unable to correct or remove the threat, the department by order may require any action, including a corrective measure, that is necessary to correct or remove the threat.

(b) The department shall use the security provided by the license holder to pay the costs of actions that are taken or that are to be taken under this section. The department shall send to the comptroller a copy of its order together with necessary written requests authorizing the comptroller to:

- (1) enforce security supplied by the licensee;
- (2) convert an amount of security into cash, as necessary; and
- (3) disburse from the security in the fund the amount necessary to pay the costs. (V.A.C.S. Art. 4590f, Sec. 12A.)

[Sections 401.271–401.300 reserved for expansion]

#### SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 401.301. LICENSE AND REGISTRATION FEES. (a) The department may collect a fee for each license and registration.

(b) The board by rule shall set the fee in an amount that may not exceed the actual expenses annually incurred to:

- (1) process applications for licenses or registrations;
- (2) amend or renew licenses or registrations;
- (3) make inspections of license holders and registrants; and
- (4) enforce this chapter and rules, orders, licenses, and registrations under this chapter. (V.A.C.S. Art. 4590f, Secs. 17(a), (b).)

**Sec. 401.302. NUCLEAR REACTOR AND FIXED NUCLEAR FACILITY FEE.** (a) The department may set and collect an annual fee from the operator of each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material.

(b) The amount of fees collected may not exceed the actual expenses that arise from emergency planning and implementation and environmental surveillance activities. (V.A.C.S. Art. 4590f, Sec. 18 (part).)

**Sec. 401.303. PAYMENT FOR MAINTENANCE, SURVEILLANCE, OR OTHER CARE.** (a) The department may require a license holder to pay annually to the department an amount determined by the department if continuing or perpetual maintenance, surveillance, or other care is required after termination of a licensed activity.

(b) The department annually shall review the license holder's payments under this section to determine if the payment schedule is adequate for the maintenance and surveillance that the licensed activity requires or may require in the future.

(c) The department may review estimates of costs that are required to be incurred under this chapter in accordance with the need, nature, and cost of decontamination, stabilization, decommissioning, reclamation, and disposal activity and the maintenance and surveillance required for public health and safety and the environment.

(d) The department shall set the charges for maintenance and perpetual care at amounts consistent with existing technology.

(e) The department may not impose charges that exceed the amount that the department projects to be required for maintenance, surveillance, and other necessary care required after the licensed activity is terminated.

(f) An increase in costs may not be applied retroactively but may apply to increases in subsequent annual payments.

(g) If a license holder satisfies the obligations under this chapter, the department shall have the comptroller promptly refund to the license holder from the fund the excess of the amount of all payments made by the license holder to the department and the investment earnings of those payments over the amount determined to be required for the continuing maintenance and surveillance of land, buildings, and radioactive material conveyed to the state. (V.A.C.S. Art. 4590f, Secs. 16(e), (f), (g), (h).)

**Sec. 401.304. ACCEPTANCE AND ADMINISTRATION OF FUNDS.** The department may accept and administer conditional or other loans, grants, gifts, or other funds from the federal government or other sources to carry out its functions. (V.A.C.S. Art. 4590f, Sec. 4(d) (part).)

**Sec. 401.305. RADIATION AND PERPETUAL CARE FUND.** (a) The radiation and perpetual care fund is in the state treasury.

(b) The department shall deposit to the credit of the fund money and security it receives under this chapter, other than fees collected under Sections 401.301 and 401.302.

(c) Money and security in the fund may be administered by the department only for the decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive material for the protection of the public health and safety and the environment under this chapter and for refunds under Section 401.303.

(d) Money and security in the fund may not be used for normal operating expenses of the department. (V.A.C.S. Art. 4590f, Secs. 4(d) (part); 16(a), (b), (c), (d).)

[Sections 401.306–401.340 reserved for expansion]

#### **SUBCHAPTER I. COURT PROCEEDINGS**

**Sec. 401.341. JUDICIAL REVIEW.** A person who is affected by a final decision of the department and who has exhausted all administrative remedies available in the department is entitled to judicial review under the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4590f, Sec. 11(e) (part).)

Sec. 401.342. **SUIT BY ATTORNEY GENERAL.** (a) The attorney general, at the request of the department, shall institute an action in a district court in Travis County or in any county in which a violation occurs or is about to occur if in the department's judgment a person has engaged in or is about to engage in an act or practice that violates or will violate this chapter or a rule, license, registration, or order adopted or issued under this chapter. The attorney general may determine the court in which suit will be instituted.

(b) The attorney general may petition the court for:

(1) an order enjoining the act or practice or an order directing compliance and reimbursement of the fund, if applicable;

(2) civil penalties as provided by Section 401.381; or

(3) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person engaged in or is about to engage in any of the acts or practices. (V.A.C.S. Art. 4590f, Sec. 12.)

Sec. 401.343. **RECOVERY OF SECURITY.** (a) The department shall seek reimbursement, either by a department order or a suit filed by the attorney general at the department's request, of security from the fund used by the department to pay for actions, including corrective measures, to remedy spills or contamination by radioactive material resulting from a violation of this chapter or a rule, license, registration, or order adopted or issued under this chapter.

(b) On request by the department, the attorney general shall file suit to recover security under this section. (V.A.C.S. Art. 4590f, Sec. 15B.)

[Sections 401.344–401.380 reserved for expansion]

#### SUBCHAPTER J. ENFORCEMENT

Sec. 401.381. **GENERAL CIVIL PENALTIES.** (a) A person who violates this chapter, a department rule or order, or a license or registration condition is subject to a civil penalty of not less than \$100 or more than \$25,000 for each violation and for each day that a continuing violation occurs.

(b) The attorney general may file suit to recover a civil penalty under this section in a district court in Travis County or in the county in which the violation occurred. If the attorney general seeks to recover civil penalties for violations that have occurred in more than one county, the attorney general may join all of the violations in one suit and may file the suit either in a district court in Travis County or in a district court in a county in which at least one of the violations occurred.

(c) The civil penalty provided by this section is cumulative of any other remedy provided by law. (V.A.C.S. Art. 4590f, Sec. 15.)

Sec. 401.382. **GENERAL CRIMINAL PENALTY.** (a) A person commits an offense if the person intentionally or knowingly violates a provision of this chapter other than the offense described by Section 401.383.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4590f, Sec. 15A(a).)

Sec. 401.383. **CRIMINAL PENALTY FOR CERTAIN ACTS RELATED TO RADIOACTIVE WASTE.** (a) A person commits an offense if the person intentionally or knowingly receives, processes, concentrates, stores, transports, or disposes of radioactive waste without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor, unless it is shown at the trial of the person that the person has been previously convicted of an offense under this section, in which event the offense is punishable by a fine of not less than \$2,000 or more than \$100,000, confinement in the county jail for not more than one year, or both. (V.A.C.S. Art. 4590f, Sec. 15A(b).)



**Sec. 401.384. ADMINISTRATIVE PENALTY.** (a) The department may assess a civil penalty as provided by this section and Sections 401.385–401.391 against a person who violates this chapter, a rule or order adopted under this chapter, or a condition of a license or registration issued under this chapter.

(b) The penalty for each violation may not exceed \$10,000 a day for a person who violates this chapter or a rule, order, license, or registration issued under this chapter. Each day a violation continues may be considered a separate violation.

(c) In determining the amount of the penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the public health or safety;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice requires. (V.A.C.S. Art. 4590f, Secs. 15C(a), (b), (c), (d) (part).)

**Sec. 401.385. PRELIMINARY REPORT OF VIOLATION.** If the department, after an investigation, concludes that a violation has occurred, the department may issue a preliminary report:

(1) stating the facts that support the conclusion;

(2) recommending that a civil penalty under Section 401.384 be imposed; and

(3) recommending the amount of the penalty, which shall be based on the seriousness of the violation as determined from the facts surrounding the violation. (V.A.C.S. Art. 4590f, Sec. 15C(d) (part).)

**Sec. 401.386. NOTICE OF PRELIMINARY REPORT.** (a) The department shall give written notice of the preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued.

(b) The notice must include:

(1) a brief summary of the charges;

(2) a statement of the recommended penalty amount; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is sent, the person charged may consent in writing to the report, including the recommended penalty, or make a written request for a hearing. (V.A.C.S. Art. 4590f, Secs. 15C(e), (f).)

**Sec. 401.387. CONSENT TO PENALTY.** (a) If the person charged with the violation consents to the penalty recommended by the department or does not respond to the notice on time, the commissioner or the commissioner's designee by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the report.

(b) If the commissioner or the commissioner's designee assesses the recommended penalty, the department shall give written notice to the person charged of the decision and that person must pay the penalty. (V.A.C.S. Art. 4590f, Sec. 15C(g).)

**Sec. 401.388. HEARING AND DECISION.** (a) If the person charged requests a hearing, the commissioner shall order a hearing and shall give notice of that hearing.

(b) The hearing shall be held by a hearing examiner designated by the commissioner.

(c) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation of the amount of the proposed penalty if a penalty is warranted.

(d) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may find that a violation has occurred and assess a civil penalty or may find that no violation occurred.

(e) All proceedings under Subsections (a)-(d) are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) The commissioner shall give notice to the person charged of the commissioner's decision, and if the commissioner finds that a violation has occurred and a civil penalty has been assessed, the commissioner shall give to the person charged written notice of:

(1) the commissioner's findings;

(2) the amount of the penalty; and

(3) the person's right to judicial review of the commissioner's order. (V.A.C.S. Art. 4590f, Secs. 15C(h), (i).)

Sec. 401.389. DISPOSITION OF PENALTY; JUDICIAL REVIEW. (a) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the penalty shall pay the full amount of the penalty or file a petition for judicial review.

(b) If the person seeks judicial review of the violation, the amount of the penalty, or both, the person, within the time provided by Subsection (a), shall:

(1) send the amount of the penalty to the commissioner for placement in an escrow account; or

(2) post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until judicial review of the order or decision is final.

(c) A person who fails to comply with Subsection (b) waives the right to judicial review.

(d) The commissioner may request enforcement by the attorney general if the person charged fails to comply with this section.

(e) Judicial review of the order or decision of the commissioner assessing the penalty shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4590f, Secs. 15C(j) (part), (k), (l).)

Sec. 401.390. REMITTING PENALTY PAYMENTS; RELEASING BONDS. (a) If a penalty is reduced or not assessed, the commissioner shall:

(1) remit to the person charged the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if a supersedeas bond has been posted.

(b) Accrued interest on amounts remitted by the commissioner shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid to the commissioner under Section 401.389(a) and ending on the date the penalty is remitted. (V.A.C.S. Art. 4590f, Sec. 15C(m).)

Sec. 401.391. LOCAL GOVERNMENT ACCESS TO RECORDS; PENALTY. (a) A person who denies to a local government access to records as required by this chapter is liable for a civil penalty of not less than \$100 or more than \$1,000 for each violation.

(b) The local government may bring suit in a district court in the county in which access to records is denied to:

(1) obtain an order for access to the records;

(2) recover a civil penalty; or

(3) obtain both the order and the civil penalty.

(c) A civil penalty recovered under this section shall be paid to the local government. (V.A.C.S. Art. 4590f, Secs. 12C(a), (b).)

Sec. 401.392. INVESTIGATION AND PROSECUTION OF CERTAIN VIOLATIONS.

(a) A local government or person affected may file with the department a written complaint and may request an investigation of an alleged violation by a person who holds a radioactive materials license for an activity that results in the production of by-product

material as defined by Section 401.003(3)(B) or a license to dispose of radioactive waste from other persons.

(b) The department shall reply to the complaint in writing not later than the 60th day after the complaint is received and shall provide a copy of any investigation report relevant to the complaint together with a determination of whether the alleged violation was committed.

(c) A local government or person affected may bring suit in a court of competent jurisdiction in the county in which the alleged violation occurred or is about to occur, if the department does not have a suit filed before the 121st day after the date on which the written complaint is filed under Subsection (a).

(d) A penalty collected in a suit under this section must be paid to the state. If the suit is brought by a local government or person affected, the court shall include in any final judgment in favor of the local government or person affected an award to cover reasonable costs and attorney's fees. (V.A.C.S. Art. 4590f, Secs. 12C(c), (d).)

**CHAPTER 402. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY**

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- Sec. 402.001. SHORT TITLE
- Sec. 402.002. FINDINGS; PURPOSE
- Sec. 402.003. DEFINITIONS

[Sections 402.004–402.010 reserved for expansion]

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- Sec. 402.011. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY
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- Sec. 402.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL IMPACT ASSISTANCE
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- Sec. 402.271. AUTHORITY'S EXPENSES
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**CHAPTER 402. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 402.001. **SHORT TITLE.** This chapter may be cited as the Texas Low-Level Radioactive Waste Disposal Authority Act. (V.A.C.S. Art. 4590f-1, Sec. 1.02.)

Sec. 402.002. **FINDINGS; PURPOSE.** (a) Low-level radioactive waste is generated as a by-product of medical, research, and industrial activities and through the operation of nuclear power plants. Loss of capability to dispose of low-level radioactive waste would threaten the health and welfare of the citizens of this state and would ultimately lead to the loss of the benefits of those activities that are dependent on reliable facilities for low-level radioactive waste disposal.

(b) This state is currently dependent on low-level radioactive waste disposal sites in other states. Events have demonstrated that the availability of those sites for low-level radioactive waste disposal is increasingly uncertain and as a consequence, medical institutions, research facilities, and industries in this state could be adversely affected.

(c) The purpose of this chapter is to establish the Texas Low-Level Radioactive Waste Disposal Authority with responsibility for assuring necessary disposal capability for

specific categories of low-level radioactive waste generated in this state. (V.A.C.S. Art. 4590f-1, Sec. 1.01.)

Sec. 402.003. DEFINITIONS. In this chapter:

(1) "Affected political subdivision" means a municipality, county, hospital district, school district, water district, or other political subdivision of this state that may reasonably be expected to incur expenses in connection with additional fire, police, education, utility, public access, and other governmental services, public works projects, and planning that are required by that political subdivision as a result of the construction and operation of a disposal site in or adjacent to the political subdivision.

(2) "Authority" means the Texas Low-Level Radioactive Waste Disposal Authority.

(3) "Board" means the board of directors of the authority.

(4) "Contract operator" means a political subdivision or agency of the state with which the authority has entered into a contract under Section 402.212.

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

(6) "Disposal site" means the property and facilities acquired, constructed, and owned by the authority at which low-level waste can be processed and disposed of permanently.

(7) "Low-level waste" means radioactive material that has a half-life of 35 years or less or fewer than 10 nanocuries per gram of transuranics, and may include radioactive material not excluded by this subdivision with a half-life of more than 35 years if special criteria for disposal of that waste are established by the department. The term does not include irradiated reactor fuel and high-level radioactive waste as defined by Title 10, Code of Federal Regulations.

(8) "Management" means establishing, adopting, and entering into and assuring compliance with the general policies, rules, and contracts that govern the operation of a disposal site.

(9) "Operation" means the control, supervision, and implementation of the actual physical activities involved in the receipt, processing, packaging, storage, disposal, and monitoring of low-level waste at a disposal site, the maintenance of a disposal site, and any other responsibilities designated by the board as part of the operation.

(10) "Person" includes a legal successor to or representative, agent, or agency of any person.

(11) "Radioactive material" means solid, liquid, or gaseous material, whether occurring naturally or produced artificially, that emits radiation spontaneously.

(12) "Rangeland and wildlife management plan" means a plan that applies rangeland and wildlife habitat management techniques to land located in the vicinity of a disposal site so that the natural productivity and economic value of the land are enhanced. (V.A.C.S. Art. 4590f-1, Sec. 1.03 (part); New.)

[Sections 402.004-402.010 reserved for expansion]

## SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 402.011. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY. (a) The Texas Low-Level Radioactive Waste Disposal Authority is a state agency created under Article XVI, Section 59(a), of the Texas Constitution.

(b) The authority has statewide jurisdiction. (V.A.C.S. Art. 4590f-1, Secs. 2.01, 2.02.)

Sec. 402.012. APPLICATION OF SUNSET ACT. The authority is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the authority is abolished and this chapter expires September 1, 1993. (V.A.C.S. Art. 4590f-1, Sec. 2.19.)

Sec. 402.013. BOARD OF DIRECTORS. (a) A board of directors composed of six members shall manage and control the authority and administer and implement this chapter.

(b) The governor shall appoint the following members of the board with the advice and consent of the senate:

- (1) one medical doctor licensed to practice medicine in this state;
- (2) one certified health physicist;
- (3) one attorney licensed to practice law in this state;
- (4) one geologist; and
- (5) two persons who represent the public.

(c) After a disposal site is selected under Section 402.090, the governor shall appoint to the board, at the earliest opportunity, at least one representative of the public as a representative of local interests. A representative of the public appointed to represent local interests must be a resident of the county in which the selected site is located. (V.A.C.S. Art. 4590f-1, Secs. 2.03(a), (b), (d).)

Sec. 402.014. **SPECIAL LIMITATIONS ON PUBLIC MEMBERS.** A member of the board who represents the public or a person related within the second degree by affinity or within the third degree by consanguinity to that member may not be an employee of or otherwise have a financial interest in any person who has a contract with or who uses the services of a site in the United States for storing, processing, or disposing of low-level waste. (V.A.C.S. Art. 4590f-1, Sec. 2.03(c).)

Sec. 402.015. **TERM OF OFFICE.** Board members serve for staggered six-year terms, with the terms of two members expiring February 1 of each odd-numbered year. (V.A.C.S. Art. 4590f-1, Sec. 2.04(a).)

Sec. 402.016. **VACANCY.** A vacancy on the board shall be filled for the unexpired term in the manner provided by Section 402.013(b) for selection of board members. (V.A.C.S. Art. 4590f-1, Sec. 2.04(b).)

Sec. 402.017. **ORGANIZATION OF BOARD.** Every two years after board members are regularly appointed and have qualified for office by taking the oath, the board shall meet at the authority's central office, organize by selecting officers, and begin to discharge its duties. (V.A.C.S. Art. 4590f-1, Sec. 2.08.)

Sec. 402.018. **OFFICERS.** (a) At the first meeting after new members are regularly appointed to the board, the members of the board shall select from their members a chairman, vice-chairman, and secretary who serve for two-year terms.

(b) The chairman shall preside at meetings of the board, and in the chairman's absence, the vice-chairman shall preside.

(c) The chairman, vice-chairman, and secretary shall perform the duties and may exercise the powers specifically given to them by this chapter or by orders of the board. (V.A.C.S. Art. 4590f-1, Sec. 2.07.)

Sec. 402.019. **COMPENSATION.** A board member is entitled to compensation as provided by the authority's budget. (V.A.C.S. Art. 4590f-1, Sec. 2.06.)

Sec. 402.020. **AUTHORITY OFFICES.** The board shall maintain:

- (1) a central office in the city of Austin for conducting the authority's business; and
- (2) an authority office at each disposal site under construction or operated under this chapter. (V.A.C.S. Art. 4590f-1, Sec. 2.12.)

Sec. 402.021. **BOARD MEETINGS.** (a) The board shall hold regular quarterly meetings on dates established by board rule and shall hold special meetings at the call of the chairman or on the written request of one board member to the chairman.

(b) The board shall hold an annual meeting with officials of a county in which a disposal site is located and with representatives of affected political subdivisions to discuss concerns relating to that disposal site. (V.A.C.S. Art. 4590f-1, Sec. 2.13.)

Sec. 402.022. **OFFICIAL ACTS.** To be valid, an official act must receive the affirmative vote of a majority of the board members. (V.A.C.S. Art. 4590f-1, Sec. 2.09 (part).)

Sec. 402.023. **MINUTES AND RECORDS.** (a) The board shall keep a complete written account of its meetings and other proceedings and shall preserve its minutes, contracts, plans, notices, accounts, receipts, and records of all kinds in a secure manner.

(b) Minutes, contracts, plans, notices, accounts, receipts, and other records are the property of the authority and are subject to public inspection. (V.A.C.S. Art. 4590f-1, Sec. 2.14.)

Sec. 402.024. GENERAL MANAGER. (a) The board shall employ a general manager to be the chief administrative officer of the authority. The board may delegate to the general manager the authority to manage and operate the affairs of the authority subject only to orders of the board.

(b) The general manager shall execute a bond in an amount determined by the board, payable to the authority, and conditioned on the faithful performance of the general manager's duties. The authority shall pay for the bond.

(c) The general manager is entitled to compensation as provided by the authority's budget. (V.A.C.S. Art. 4590f-1, Sec. 2.10.)

Sec. 402.025. AUTHORITY EMPLOYEES. (a) The general manager may employ persons necessary for the proper handling of the business and operation of the authority.

(b) The board shall determine the terms of employment. (V.A.C.S. Art. 4590f-1, Sec. 2.11.)

Sec. 402.026. SEAL. The board shall adopt a seal for the authority. (V.A.C.S. Art. 4590f-1, Sec. 2.18.)

Sec. 402.027. CONTRACTS. The chairman shall execute and the secretary shall attest to any contracts under this chapter in the name of the authority. (V.A.C.S. Art. 4590f-1, Sec. 2.15.)

Sec. 402.028. CONTRACTS OVER \$5,000. (a) If the estimated amount of a proposed contract for the purchase of materials, machinery, equipment, or supplies is more than \$5,000, the board shall ask for competitive bids as provided by Subchapter B, Chapter 271, Local Government Code.

(b) This section does not apply to purchases of property from public agencies or to contracts for personal or professional services. (V.A.C.S. Art. 4590f-1, Sec. 3.19.)

Sec. 402.029. SUITS. (a) The authority, through the board, may sue and be sued in the name of the authority in any court of this state.

(b) In a suit against the authority, citation may be served on the general manager. (V.A.C.S. Art. 4590f-1, Sec. 2.16.)

Sec. 402.030. PAYMENT OF JUDGMENT. A court of this state that renders a money judgment against the authority may require the board to pay the judgment from fees collected under this chapter. (V.A.C.S. Art. 4590f-1, Sec. 2.17.)

Sec. 402.031. CITIZENS ADVISORY COMMITTEE. (a) The board shall create a citizens advisory committee to perform oversight functions over a disposal site.

(b) The committee shall begin to perform its functions not earlier than the 30th day after the date on which construction of the disposal site begins.

(c) Each affected political subdivision may appoint one person to the committee for a four-year term.

(d) The committee may:

(1) conduct independent monitoring of disposal site activities as authorized by guidelines adopted by the board;

(2) make recommendations to the board concerning operations at the disposal site; and

(3) execute any other review and monitoring functions as recommended by the committee and approved by the board.

(e) Reasonable notice as provided by board rules must be given to the manager of a disposal site before a committee member enters a disposal site to exercise any function authorized by this section. (V.A.C.S. Art. 4590f-1, Sec. 3.29.)

[Sections 402.032–402.050 reserved for expansion]



**SUBCHAPTER C. POWERS AND DUTIES**

**Sec. 402.051. JURISDICTION OVER DISPOSAL SITE.** The authority has jurisdiction over site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites. (V.A.C.S. Art. 4590f-1, Sec. 3.01.)

**Sec. 402.052. DEVELOPMENT AND OPERATION OF DISPOSAL SITE.** The authority shall develop and operate one disposal site for the disposal of low-level waste in this state. (V.A.C.S. Art. 4590f-1, Sec. 3.04(a).)

**Sec. 402.053. GENERAL POWERS.** To carry out this chapter, the authority may:

(1) apply for, receive, accept, and administer gifts, grants, and other funds available from any source;

(2) contract with the federal government, the state, interstate agencies, local governmental entities, and private entities to carry out this chapter and rules, standards, and orders adopted under this chapter;

(3) conduct, request, and participate in studies, investigations, and research relating to selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites and disposal of low-level waste; and

(4) advise, consult, and cooperate with the federal government, the state, interstate agencies, local governmental entities in this state, and private entities. (V.A.C.S. Art. 4590f-1, Sec. 3.02.)

**Sec. 402.054. RULES, STANDARDS, AND ORDERS.** The board may adopt rules, standards, and orders necessary to properly carry out this chapter and to protect the public health and safety and the environment from the authority's activities. (V.A.C.S. Art. 4590f-1, Sec. 3.03(a).)

**Sec. 402.055. PENALTY FOR VIOLATION OF RULE, STANDARD, OR ORDER.** (a) The board may set reasonable civil penalties for the violation of a rule, standard, or order.

(b) A penalty under this section may not exceed \$1,000.

(c) A penalty adopted by the board under this section is in addition to any other penalty provided by state law and may be enforced by complaint filed by the attorney general in a court of appropriate jurisdiction in Travis County. (V.A.C.S. Art. 4590f-1, Secs. 3.03(b), (c).)

**Sec. 402.056. DETERMINATION OF AFFECTED POLITICAL SUBDIVISION.** The board shall adopt criteria to determine if a political subdivision is an affected political subdivision for purposes of this chapter. (V.A.C.S. Art. 4590f-1, Sec. 3.30.)

**Sec. 402.057. REPORTS TO LEGISLATURE.** Not later than the 60th day before the date each regular legislative session convenes, the authority shall submit to the appropriate legislative committees a biennial report that serves as a basis for periodic oversight hearings on the authority's operations and on the status of interstate compacts and agreements. (V.A.C.S. Art. 4590f-1, Sec. 3.26(a).)

**Sec. 402.058. HEALTH SURVEILLANCE SURVEY.** The board, in cooperation with the department and local public health officials, shall study the feasibility of developing a health surveillance survey for the population located in the vicinity of a disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.27.)

[Sections 402.059–402.080 reserved for expansion]

**SUBCHAPTER D. DISPOSAL SITE SELECTION AND ACQUISITION**

**Sec. 402.081. DISPOSAL SITE SELECTION STUDIES.** The authority shall make studies or contract for studies to be made of the future requirements for disposal of low-level waste in this state and to determine the areas of the state that are relatively more suitable than others for low-level waste disposal activities. (V.A.C.S. Art. 4590f-1, Secs. 3.05(a), (c).)

**Sec. 402.082. STUDY CRITERIA.** Studies required under Section 402.081 must consider:

(1) the volume of low-level waste generated by type and source categories for the expected life of the disposal site, including waste that may be generated from the decommissioning of nuclear power plants located in this state;

(2) geology;

(3) topography;

(4) transportation and access;

(5) meteorology;

(6) population density;

(7) surface and subsurface hydrology;

(8) flora and fauna;

(9) current land use;

(10) criteria established by the department for disposal site selection;

(11) the proximity of the disposal site to sources of low-level waste, including related transportation costs, to the extent that the proximity and transportation costs do not interfere with selection of a suitable disposal site for protecting public health and the environment;

(12) other disposal site characteristics that may need study on a preliminary basis and for which detailed study would be required to prepare an application or license required for disposal site operation; and

(13) alternative management techniques, including aboveground isolation facilities, waste processing and reduction at the site of waste generation and at an authority management site, and waste recycling. (V.A.C.S. Art. 4590f-1, Sec. 3.05(b).)

Sec. 402.083. CHOOSING SITES FOR FURTHER ANALYSIS. On completion of the studies required by Section 402.081, the board shall choose at least two potential disposal sites for further analysis. (V.A.C.S. Art. 4590f-1, Sec. 3.06(a).)

Sec. 402.084. EVALUATION OF POTENTIAL SITES. (a) For each potential disposal site under Section 402.083, the authority shall evaluate or contract for the evaluation of:

(1) preoperating costs;

(2) operating costs;

(3) maintenance costs;

(4) costs of decommissioning and extended care; and

(5) socioeconomic, environmental, and public health impacts associated with the site.

(b) The socioeconomic impacts to be evaluated include fire, police, education, utility, public works, public access, planning, and other governmental services and assumed and perceived risks of the disposal sites and disposal activities.

(c) Public officials and members of local boards or governing bodies of local political subdivisions of the state in which a potential disposal site is located shall be invited to participate in appropriate evaluation activities. (V.A.C.S. Art. 4590f-1, Secs. 3.06(b), (c), (d).)

Sec. 402.085. SITE PROPOSAL. On receiving the results of the studies and evaluations required by Sections 402.081, 402.084, and 402.087, the board shall propose a site that appears to be the most suitable for a disposal site and shall hold a public hearing to consider whether that site should be selected as the disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07(a) (part).)

Sec. 402.086. REPORT AND INFORMATIONAL SEMINARS. (a) Before the board gives notice of the hearing on the proposed disposal site, the authority shall prepare a report that includes:

(1) detailed information regarding all aspects of the disposal site selection process;

(2) criteria for disposal site selection as established by the appropriate licensing authority; and

(3) summaries of the studies required under Section 402.081 and the evaluations required under Section 402.084.

(b) The authority shall make the report available to the public.

(c) The authority may contract for the distribution of the report and may hold or contract with other persons to hold informational seminars for the public. (V.A.C.S. Art. 4590f-1, Sec. 3.07(b).)

Sec. 402.087. **MEDIATION.** (a) The authority may appoint a mediator to consider the views of parties interested in the selection of a disposal site.

(b) The mediator may conduct a series of meetings with delegates from groups of interested parties. The delegates are selected according to criteria established by the board.

(c) Mediation meetings may be held in the counties in which the potential disposal sites are located and shall be held before the public hearing required by Section 402.085.

(d) The mediator shall prepare a report and submit it to the board before the board gives notice of the public hearing. (V.A.C.S. Art. 4590f-1, Sec. 3.07(e).)

Sec. 402.088. **HEARING.** (a) A hearing under Section 402.085 shall be held at the county courthouse of the county in which the proposed disposal site is located.

(b) The board shall give notice of the hearing on the proposed disposal site by publishing notice in English in a newspaper published in the county in which the proposed disposal site is to be located. The notice must be published at least once each week for four consecutive weeks beginning not later than the 31st day before the date set for the hearing.

(c) If a newspaper is not published in the county or if no newspaper in the county will publish the notice, the board shall post written notice of the hearing in three public places in the county. The board shall post one of the notices at the door of the county courthouse. The notices must be posted for at least 30 consecutive days preceding the date set for the hearing. (V.A.C.S. Art. 4590f-1, Sec. 3.07(a) (part).)

Sec. 402.089. **BOARD DETERMINATION; RESTRICTIONS ON SELECTION NEAR RESERVOIR.** (a) The board shall determine if the proposed disposal site should be selected after a thorough consideration of:

- (1) the studies and evaluations relating to site selection;
- (2) the criteria required to be used in those studies; and
- (3) testimony and evidence presented at the hearing.

(b) The board may not select a disposal site under this subchapter that is within 20 miles upstream or up-drainage from the maximum elevation of the surface of a reservoir project that:

- (1) has been constructed or is under construction by the United States Bureau of Reclamation or the United States Corps of Engineers; or
- (2) has been approved for construction by the Texas Water Development Board as part of the state water plan under Subchapter C, Chapter 16, Water Code. (V.A.C.S. Art. 4590f-1, Secs. 3.07(c) (part), (g).)

Sec. 402.090. **ORDER DESIGNATING SITE.** If the board selects a proposed disposal site as the disposal site, the board by order shall designate the site as the disposal site and shall issue a final report. (V.A.C.S. Art. 4590f-1, Sec. 3.07(c) (part).)

Sec. 402.091. **REJECTION OF PROPOSED SITE.** (a) If the board determines that a proposed disposal site should not be selected, the board shall issue an order rejecting the site and shall call another hearing to consider another proposed disposal site that appears suitable from the studies and evaluations.

(b) The board shall continue to follow the procedures of disposal site selection under this subchapter until a suitable disposal site is selected. (V.A.C.S. Art. 4590f-1, Sec. 3.07(c) (part).)

Sec. 402.092. FINAL REPORT. The authority shall submit to the governor and to the legislature for informational purposes a copy of the final report and order selecting a disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07(d).)

Sec. 402.093. PROCEEDING NOT A CONTESTED CASE. A proceeding under Sections 402.085-402.092 is not a contested case as defined by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4590f-1, Sec. 3.07(f).)

Sec. 402.094. ACQUISITION OF PROPERTY. (a) The authority may acquire by gift, grant, or purchase any land, easements, rights-of-way, and other property interests necessary to construct and operate a disposal site.

(b) The authority must acquire the fee simple title to all land and property that is a part of the licensed disposal site.

(c) The authority may lease property on terms and conditions the board determines advantageous to the authority, but land that is part of a licensed disposal site may not be leased. (V.A.C.S. Art. 4590f-1, Secs. 3.09(a), (b), (c).)

[Sections 402.095-402.120 reserved for expansion]

#### SUBCHAPTER E. SCHOOL AND UNIVERSITY LAND

Sec. 402.121. PREFERENCE TO SCHOOL OR UNIVERSITY LAND. In selecting a disposal site, the authority shall give preference to a suitable site located on land dedicated to the permanent school fund or the permanent university fund over other equally suitable sites. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(a).)

Sec. 402.122. ENTRY ON AND INVESTIGATION OF SCHOOL OR UNIVERSITY LAND. The authority may enter and investigate land dedicated to the permanent school fund or the permanent university fund to determine the suitability of the land for a disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(b).)

Sec. 402.123. PROCEDURE FOR SELECTION AND SALE OF SCHOOL OR UNIVERSITY LAND. (a) If the board determines that a suitable disposal site can be located on land dedicated to the permanent school fund or permanent university fund and issues an order selecting that site as a proposed disposal site, the School Land Board or the board of regents of The University of Texas System, as appropriate, shall authorize the authority to enter on the land to conduct a detailed technical characterization of the proposed disposal site.

(b) Notwithstanding any other law, if the board determines at the completion of the characterization period and the completion of studies required by Subchapter D that the land should be purchased for the proposed disposal site, the School Land Board or the board of regents of The University of Texas System, as appropriate, shall have the land and any minerals in the land appraised and shall sell the land to the authority at the appraised value. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(d) (part).)

Sec. 402.124. PURCHASE OF SCHOOL OR UNIVERSITY LAND. (a) The authority may enter into an agreement to purchase a fee interest in land dedicated to the permanent school fund or the permanent university fund by paying fair consideration in kind or money to the appropriate fund.

(b) The authority may enter into an agreement to purchase one or more parcels of land dedicated to the permanent school fund or the permanent university fund of a size the board considers appropriate for purposes of a disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(c).)

Sec. 402.125. TITLE TO SCHOOL OR UNIVERSITY LAND. (a) The School Land Board or the board of regents of The University of Texas System, as appropriate, shall convey to the authority all title and interest to the surface and minerals in land sold under Section 402.123.

(b) This section and Section 402.123 apply only to land actually required for the licensed disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(d) (part).)

Sec. 402.126. **RANGELAND AND WILDLIFE MANAGEMENT PLAN.** (a) To implement a rangeland and wildlife management plan, the authority may lease from the School Land Board or the board of regents of The University of Texas System property that is dedicated to the permanent school fund or the permanent university fund and that is proximate to a disposal site. Land leased for a rangeland and wildlife management plan may not exceed 65,000 acres.

(b) The authority shall lease from the School Land Board on the School Land Board's terms and conditions the land determined by the School Land Board as necessary to serve as a buffer for the disposal site. Land leased under this subsection shall be used by the authority to implement a rangeland and wildlife management plan. (V.A.C.S. Art. 4590f-1, Secs. 3.07A(e), (f) (part); 3.09(d).)

Sec. 402.127. **FINDING BY BOARD OF REGENTS BEFORE SALE OR LEASE.** Before the board of regents of The University of Texas System enters into an agreement with the authority to sell or lease permanent university fund land to the authority, the board of regents must enter in its records a finding that the site to be sold or leased for low-level waste disposal will not interfere with the potential siting of the Superconducting Super Colliding Particle Accelerator Project. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(g).)

Sec. 402.128. **APPLICABLE STANDARDS.** The Texas Board of Health, the commissioner of health, or the authority may not lessen any standards for the siting, construction, or operation of the disposal site because the site is located on state-owned land dedicated to the permanent school fund or the permanent university fund. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(h).)

Sec. 402.129. **REPORT TO GOVERNOR AND LEGISLATURE ON SITING.** If the board determines that a suitable disposal site cannot be located on land dedicated to the permanent school fund or the permanent university fund, the authority shall prepare and submit to the governor and the legislature a report listing the land considered and the reasons that none of the land is considered to be suitable. (V.A.C.S. Art. 4590f-1, Sec. 3.07A(i).)

[Sections 402.130–402.150 reserved for expansion]

#### **SUBCHAPTER F. LICENSES AND AUTHORIZATIONS**

Sec. 402.151. **PREPARATIONS FOR OBTAINING LICENSES AND AUTHORIZATIONS.** After selection of the disposal site, the board shall direct the general manager to prepare necessary applications, disposal plans, and other material for obtaining licenses and other authorizations for the disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.07(c) (part).)

Sec. 402.152. **APPLICATIONS FOR LICENSES AND AUTHORIZATIONS.** The authority shall submit to each federal and state agency from which it must obtain licenses and other types of authorization to construct and operate a disposal site the necessary applications and information to obtain those licenses and authorizations. (V.A.C.S. Art. 4590f-1, Sec. 3.08(a).)

Sec. 402.153. **COOPERATION WITH OTHER AGENCIES.** The authority shall cooperate with appropriate federal and state agencies in the licensing and authorization process and shall supply any additional information and material requested by those agencies. (V.A.C.S. Art. 4590f-1, Sec. 3.08(b) (part).)

Sec. 402.154. **TECHNIQUES FOR MANAGING LOW-LEVEL WASTE.** (a) As a condition for obtaining a license, the authority must submit to the Texas Board of Health or its designee evidence relating to the reasonableness of any technique to be practiced at the proposed disposal site for managing low-level waste.

(b) Before determining the techniques to be used for managing low-level waste, the authority shall study alternative techniques, including:

(1) waste processing and reduction at the site of waste generation and at the disposal site; and

(2) the use of aboveground isolation facilities. (V.A.C.S. Art. 4590f-1, Sec. 3.08(b) (part).)

Sec. 402.155. **DENIAL OF LICENSE APPLICATION.** If the authority's application for a license for the proposed disposal site is denied, the board shall select an alternative disposal site in the manner provided by Subchapter D for the selection of the original proposed disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.08(c).)

Sec. 402.156. **FINANCIAL SECURITY.** (a) The authority shall provide financial security in the form and manner required by federal and state agencies under federal and state law and rules.

(b) The authority shall provide supplemental financial security as required by any federal or state agency. (V.A.C.S. Art. 4590f-1, Sec. 3.08(d).)

[Sections 402.157-402.180 reserved for expansion]

#### SUBCHAPTER G. DISPOSAL SITE CONSTRUCTION

Sec. 402.181. **DISPOSAL SITE CONSTRUCTION.** (a) The authority shall construct all works and facilities on the disposal site and shall make improvements necessary to prepare for disposal and to permanently dispose of low-level waste.

(b) Preparation and construction of works and facilities at the disposal site must be done in a manner that complies with rules and standards adopted by federal and state agencies for disposal sites and with the authority's disposal plans. (V.A.C.S. Art. 4590f-1, Sec. 3.10.)

Sec. 402.182. **DESIGN OF FACILITIES.** The board shall ensure that the design of facilities for low-level waste disposal incorporates, as far as possible, safeguards against hazards resulting from local meteorological conditions, including phenomena such as hurricanes, tornados, earthquakes, earth tremors, violent storms, and susceptibility to flooding. (V.A.C.S. Art. 4590f-1, Sec. 3.28.)

Sec. 402.183. **CONSTRUCTION CONTRACTS.** (a) The authority may contract with any person to construct any part of the works, facilities, and improvements at the disposal site.

(b) The contract must specifically provide for termination by the authority if the contractor fails to comply with federal and state standards and rules or with the authority's disposal plans.

(c) If practicable, a person who contracts with the authority shall obtain necessary supplies, equipment, and material for use under that contract from sources located in the county in which the disposal site is located and shall employ required personnel from that county. (V.A.C.S. Art. 4590f-1, Sec. 3.11.)

Sec. 402.184. **CONSTRUCTION CONTRACT BIDS.** The authority may enter into a construction contract requiring an expenditure of more than \$5,000 only after competitive bidding as provided by Subchapter B, Chapter 271, Local Government Code. (V.A.C.S. Art. 4590f-1, Sec. 3.12.)

Sec. 402.185. **CHANGE ORDERS.** (a) After a construction contract is awarded, if the authority determines that additional work is needed or if the character or type of work, facilities, or improvements should be changed, the board may authorize change orders to the contract on terms the board approves.

(b) A change made under this section may not increase or decrease the total cost of the contract by more than 25 percent. (V.A.C.S. Art. 4590f-1, Sec. 3.13.)

Sec. 402.186. **CONSTRUCTION CONTRACT ATTACHMENTS.** A construction contract must contain or have attached to it the specifications, plans, and details for work included in the contract. The work must be done according to those specifications and plans under the supervision of the authority. (V.A.C.S. Art. 4590f-1, Sec. 3.14.)

Sec. 402.187. **EXECUTION AND AVAILABILITY OF CONSTRUCTION CONTRACTS.** (a) A construction contract must be in writing and signed by a representative of the authority and the contractor.

(b) The authority shall keep the contract in its records and shall make the contract available for public inspection. (V.A.C.S. Art. 4590f-1, Sec. 3.15.)

**Sec. 402.188. CONTRACTOR'S BOND.** (a) A contractor must execute a bond:

- (1) in an amount determined by the board but not to exceed the contract price;
- (2) payable to the authority and approved by the board; and
- (3) conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond must provide that if the contractor defaults on the contract, the contractor will pay to the authority all damages sustained as a result of the default.

(c) The authority shall deposit the bond in its depository and keep a copy of the bond in the authority's central office. (V.A.C.S. Art. 4590f-1, Sec. 3.16.)

**Sec. 402.189. MONITORING CONSTRUCTION WORK.** (a) The board has control of construction being done for the authority under contract and shall determine if the contract is being fulfilled.

(b) The board shall have the construction work inspected by engineers, inspectors, and other personnel of the authority.

(c) During the progress of the construction work, the engineers, inspectors, and other personnel performing the inspections shall submit to the board written reports that show whether the contractor is complying with the contract.

(d) The engineers, inspectors, and other personnel shall submit to the board, on completion of construction work, a final detailed written report including information necessary to show whether the contractor has fully complied with the contract. (V.A.C.S. Art. 4590f-1, Sec. 3.17.)

**Sec. 402.190. PAYMENT FOR CONSTRUCTION WORK.** (a) The authority shall make progress payments under construction contracts monthly as the work proceeds or at more frequent intervals as determined by the board.

(b) If requested by the board, the contractor shall furnish an analysis of the total contract price showing the amount included for each principal category of the work in such detail as requested to provide a basis for determining progress payments.

(c) The authority shall retain 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the board, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, the board may authorize any of the remaining progress payments to be made in full. If the work is substantially complete, the board, if it finds the amount retained to be in excess of the amount adequate for the protection of the authority, may release to the contractor all or a portion of the excess amount.

(d) On completion and acceptance of each separate project, work, or other division of the contract, for which the price is stated separately in the contract, payment may be made without retention of a percentage.

(e) When construction work is completed according to the terms of the contract, the board shall draw a warrant on the depository to pay any balance due on the contract. (V.A.C.S. Art. 4590f-1, Secs. 3.18(b), (c), (d), (e), (f).)

[Sections 402.191–402.210 reserved for expansion]

#### **SUBCHAPTER H. MANAGEMENT AND OPERATION OF DISPOSAL SITE**

**Sec. 402.211. MANAGEMENT AND OPERATION OF DISPOSAL SITE.** The board shall manage and, if necessary, operate the disposal sites under this chapter. The management and operation must be in compliance with laws, rules, and standards of federal and state agencies that have jurisdiction over disposal sites. The board shall take any action necessary under this chapter to manage and operate the disposal sites in a manner that will protect the public health and safety and the environment. (V.A.C.S. Art. 4590f-1, Secs. 3.20(a), (c).)

**Sec. 402.212. CONTRACT FOR OPERATION OF DISPOSAL SITE.** (a) The board may contract with a political subdivision or agency of the state to perform the overall

operation of a disposal site but may not contract with a private entity to perform that operation.

(b) The board by rule shall establish criteria for determining the competence of a political subdivision or agency of the state to perform the overall operation of a disposal site.

(c) A contract under this section may not relieve the authority of its management responsibility under this chapter. (V.A.C.S. Art. 4590f-1, Sec. 3.20(b).)

Sec. 402.213. CONTRACT AUTHORITY OF BOARD. In contracting with a contract operator, the board may:

(1) select the contract operator before it obtains the license for the disposal site so that the board may allow the contract operator to advise and consult with the board, general manager, and staff of the authority on the design and disposal plans for the site;

(2) require the contract operator to make all tests, keep all records, and prepare all reports required by licenses issued for disposal site operations;

(3) require standards of performance;

(4) require posting of a bond or other financial security by the contract operator to ensure safe operation and decommissioning of the disposal site; and

(5) establish other requirements necessary to assure that the disposal site is properly operated and that the public health and safety and the environment are protected. (V.A.C.S. Art. 4590f-1, Sec. 3.20(g).)

Sec. 402.214. PROVISIONS OF OPERATION CONTRACT. A contract to operate a disposal site must specify that:

(1) the board retains management authority over the disposal site and may monitor and inspect any part of the site and operations on the site at any time;

(2) the contract operator must operate the disposal site in a manner that complies with the law and licenses regulating operations at the site that are issued by the department and the federal government;

(3) the contract operator must comply with rules adopted by the board that govern operation of the disposal site; and

(4) the contract is subject to termination after notice and hearing if the contract operator fails to comply with a license issued for the disposal site by the department or by the federal government, fails to comply with the rules of the authority, or fails to comply with the contract. (V.A.C.S. Art. 4590f-1, Sec. 3.20(f).)

Sec. 402.215. ON-SITE OPERATOR. (a) An on-site operator who is responsible for all operations at the disposal site shall supervise each disposal site.

(b) The general manager shall employ the on-site operator at a disposal site operated by the authority.

(c) If the authority contracts for the overall operation of a disposal site, the on-site operator must be a representative of the contract operator. (V.A.C.S. Art. 4590f-1, Sec. 3.20(d).)

Sec. 402.216. RULES RELATING TO DISPOSAL SITE. (a) The board shall adopt rules governing:

(1) the operation of disposal sites;

(2) acceptance of low-level waste;

(3) maintenance and monitoring of disposal sites; and

(4) activities relating to the management and operation of disposal sites.

(b) Rules adopted under this section may not be less stringent than those adopted by the Texas Board of Health. (V.A.C.S. Art. 4590f-1, Sec. 3.20(e).)

Sec. 402.217. DISPOSAL SITE ACTIVITIES. (a) The authority may adopt any methods and techniques for permanent disposal that comply with federal and state standards



for low-level waste disposal and that protect the public health and safety and the environment.

(b) The authority may provide facilities at disposal sites for processing and packaging low-level waste for disposal. (V.A.C.S. Art. 4590f-1, Sec. 3.23 (part).)

**Sec. 402.218. ACCEPTANCE OF LOW-LEVEL WASTE.** Subject to limitations provided by Section 402.219, each disposal site shall accept for disposal all low-level waste that is presented to it and that is properly processed and packaged. (V.A.C.S. Art. 4590f-1, Sec. 3.21(a)(1).)

**Sec. 402.219. LIMITATIONS ON WASTE DISPOSAL.** (a) A disposal site may accept only low-level waste that is generated in this state.

(b) The board by rule shall exclude from a disposal site certain types of low-level waste that are incompatible with disposal operations. (V.A.C.S. Art. 4590f-1, Sec. 3.22.)

**Sec. 402.220. EMERGENCY RESPONSE.** (a) To protect the public health and safety and the environment, the board, after notice and hearing, shall adopt an emergency response plan for each disposal site to be implemented if the disposal site becomes a threat to the public health or safety or to the environment.

(b) The authority shall cooperate with and seek the cooperation of federal and state agencies responsible for regulating disposal sites and of federal, state, and local agencies engaged in disaster relief activities. (V.A.C.S. Art. 4590f-1, Sec. 3.24.)

**Sec. 402.221. PACKAGING OF RADIOACTIVE WASTE.** (a) The Texas Board of Health shall adopt rules relating to the packaging of radioactive waste.

(b) An inspector employed by the department shall inspect all packaged radioactive waste before it is transported to a permanent disposal site in this state.

(c) The department shall charge a reasonable fee for the inspection in an amount not to exceed the cost of inspection. (V.A.C.S. Art. 4590f-1, Sec. 3.21(a)(2).)

**Sec. 402.222. SHIPMENT OF LOW-LEVEL WASTE.** (a) On arrival of a shipment of low-level waste at a disposal site, the on-site operator or the operator's agent must determine that the waste complies with all laws, rules, and standards relating to processing and packaging of low-level waste before the waste is accepted for disposal at the disposal site.

(b) A person making a shipment of low-level waste that is in excess of 75 cubic feet shall give the on-site operator of the disposal site written notice of the shipment at least 72 hours before shipment to the disposal site begins. The written notice must contain information required by the board. (V.A.C.S. Art. 4590f-1, Secs. 3.21(b), (c).)

**Sec. 402.223. IMPROPERLY PROCESSED OR PACKAGED LOW-LEVEL WASTE.** (a) If low-level waste that is not properly processed or packaged arrives at a disposal site, the on-site operator or the operator's agent shall properly process and package the waste for disposal and charge the person making the shipment the fee required by Section 402.274.

(b) The on-site operator or the operator's agent shall report to the federal and state agencies that establish rules and standards for processing, packaging, and transporting low-level waste any person who delivers to a disposal site low-level waste that is not properly processed or packaged. (V.A.C.S. Art. 4590f-1, Secs. 3.21(d), (e).)

**Sec. 402.224. MIXED WASTE.** (a) An on-site operator who accepts mixed waste at a disposal site shall comply with Chapter 361 (Solid Waste Disposal Act), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), and this chapter.

(b) In this section, "mixed waste" means a combination of hazardous waste as defined by Chapter 361 (Solid Waste Disposal Act) and low-level waste. (V.A.C.S. Art. 4590f-1, Sec. 3.21(f).)

**Sec. 402.225. BELOWGROUND DISPOSAL RESTRICTED.** Low-level waste may not be disposed of in a landfill below the natural level of a disposal site unless:

(1) federal or state regulatory programs for low-level waste preclude or recommend against aboveground disposal, or the authority has by rule determined that below-ground disposal provides greater protection than aboveground disposal for public health

and the environment for the period for which the low-level waste will continue to pose a hazard to public health and the environment;

(2) the low-level waste is contained within a reinforced concrete barrier or within containment structures made of materials technologically equivalent or superior to reinforced concrete; and

(3) the low-level waste is contained in such a manner that it can be monitored and retrieved. (V.A.C.S. Art. 4590f-1, Sec. 3.05(d).)

Sec. 402.226. **SHALLOW LAND BURIAL PROHIBITED.** (a) The authority may not use shallow land burial or improved shallow land burial as the disposal technique at the licensed disposal site.

(b) In this section, "shallow land burial" and "improved shallow land burial" mean disposal of low-level waste in an earthen trench as the low-level waste is received from the generator. (V.A.C.S. Art. 4590f-1, Sec. 3.05(e).)

Sec. 402.227. **PUBLIC UTILITY STORAGE FACILITIES.** Each public utility that operates or constructs a nuclear power reactor in this state shall provide storage facilities at the reactor site sufficient to store the low-level waste generated by five years of normal operations. (V.A.C.S. Art. 4590f-1, Sec. 3.04(b).)

Sec. 402.228. **DECOMMISSIONING AND CLOSING DISPOSAL SITE.** (a) On a finding by the board, after notice and hearing, that a disposal site should be closed, the authority and the contract operator, if any, shall decommission the disposal site in compliance with federal and state law, rules, and standards and with rules and plans of the authority.

(b) On completion of decommissioning activities and receipt of necessary approval from federal and state agencies, the board shall, if required by law, transfer to the department fee simple title to the disposal site. (V.A.C.S. Art. 4590f-1, Sec. 3.25.)

[Sections 402.229–402.250 reserved for expansion]

#### SUBCHAPTER I. IMPACT ASSISTANCE

Sec. 402.251. **LOW-LEVEL RADIOACTIVE WASTE DISPOSAL IMPACT ASSISTANCE.** The citizen's advisory committee shall coordinate and make recommendations to the board concerning requests from affected political subdivisions for assistance to compensate for impacts associated with the disposal site and allocations of impact assistance funds. (V.A.C.S. Art. 4590f-1, Sec. 4.04(a).)

Sec. 402.252. **RULES FOR IMPACT ASSISTANCE.** The committee shall adopt rules establishing:

(1) criteria for determining the adverse effect that the construction and operation of a disposal site will have on affected political subdivisions;

(2) priorities of needs for affected political subdivisions; and

(3) methods for monitoring the uses and effectiveness of impact assistance funds allocated to affected political subdivisions under this chapter. (V.A.C.S. Art. 4590f-1, Sec. 4.04(b).)

Sec. 402.253. **IMPACT ASSISTANCE ALLOCATION.** (a) The committee shall annually prepare and recommend to the board for final approval a budget that allocates impact assistance funds to affected political subdivisions.

(b) The committee shall allocate to each affected political subdivision the amount required for impact assistance as provided by this subchapter.

(c) Each affected political subdivision must show impact on it by providing adequate supporting information to the committee.

(d) Except as provided by Subsection (e), an affected political subdivision may not receive as impact assistance more than the amount equal to the product of the amount designated by the board under this chapter as available for impact assistance allocation

and the ratio of each affected political subdivision's assessed tax valuation to the total assessed tax valuation of all the affected political subdivisions.

(e) If the amount determined for an affected political subdivision under Subsection (d) is less than the actual amount that the affected political subdivision shows to be required for impact assistance, the committee may allocate to the affected political subdivision an amount that exceeds the determined amount if all affected political subdivisions do not qualify for their maximum allocations permitted under Subsection (d). (V.A.C.S. Art. 4590f-1, Secs. 4.04(c), (d), (e).)

Sec. 402.254. EXEMPTION OF FUNDS FROM REVIEW. Impact assistance funds received by affected political subdivisions under this subchapter are not loans or grants-in-aid subject to review by a regional planning commission under Chapter 391, Local Government Code. (V.A.C.S. Art. 4590f-1, Sec. 4.04(f).)

[Sections 402.255–402.270 reserved for expansion]

#### SUBCHAPTER J. FINANCIAL PROVISIONS

Sec. 402.271. AUTHORITY'S EXPENSES. The authority's expenses shall be paid from fees authorized and collected under this subchapter and appropriations made by the legislature. (V.A.C.S. Art. 4590f-1, Sec. 4.01.)

Sec. 402.272. WASTE DISPOSAL FEES. (a) The board shall have collected a waste disposal fee to be paid by each person who delivers low-level waste to the authority for disposal.

(b) The board by rule shall adopt and periodically revise waste disposal fees according to a schedule that is based on the volume of low-level waste delivered for disposal and the relative hazard presented by each type of low-level waste that is delivered to the disposal site.

(c) In determining relative hazard, the board shall consider the radioactive, physical, and chemical properties of each type of low-level waste. (V.A.C.S. Art. 4590f-1, Secs. 4.02(a), (b).)

Sec. 402.273. WASTE DISPOSAL FEE CRITERIA. (a) Waste disposal fees adopted by the board must be sufficient to:

- (1) allow the authority to recover operating and maintenance costs;
- (2) allow the authority to recover expenses incurred before beginning operation of the disposal site amortized over a period of not more than 20 years beginning on the first day of operation of the disposal site;
- (3) provide an amount necessary to meet future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;
- (4) provide an amount to compensate for impacts associated with the disposal site;
- (5) provide an amount sufficient to fund, in whole or in part, a rangeland and wildlife management plan; and
- (6) provide an amount necessary to pay licensing fees and to provide security required by the department under law and department rules.

(b) The amount required by Subsection (a)(4) and designated by the board as available for impact assistance allocation under this chapter may not be less than 10 percent of the annual gross receipts from waste received at the disposal site and may not exceed \$300,000 a year for each generator of low-level waste. However, during periods of unusual volume generation caused by unscheduled refueling, unplanned outages, special maintenance, or system decontamination and decommissioning, the amount payable by the affected generator may not exceed \$500,000 a year for two consecutive years. (V.A.C.S. Art. 4590f-1, Secs. 4.02(c), (d).)

Sec. 402.274. PROCESSING AND PACKAGING FEES. The board by rule shall adopt and periodically revise processing and packaging fees according to a schedule that is based on the volume of improperly processed or packaged low-level waste delivered for

disposal and on the cost to the authority for properly processing and packaging the low-level waste in compliance with federal and state standards. (V.A.C.S. Art. 4590f-1, Sec. 4.03.)

Sec. 402.275. LOW-LEVEL WASTE ACCOUNT. (a) The low-level waste account is an account in the general revenue fund.

(b) The account is an interest-bearing account.

(c) Waste disposal fees, processing and packaging fees, civil penalties, payments to the State of Texas under Public Law 99-240, and other receipts collected by the authority under this chapter shall be deposited to the credit of the low-level waste account.

(d) Except as provided by Subsection (e), money in the low-level waste account may be used to pay:

(1) operating and maintenance costs of the authority;

(2) reimbursement to the general revenue fund for expenses incurred by the state before the first day of operation of the disposal site and for any other maintenance and operating expenses paid by appropriation from the general revenue fund;

(3) future costs of decommissioning, closing, and postclosure maintenance and surveillance of the disposal site;

(4) licensing fees and to provide security required by the department;

(5) money judgments rendered against the authority that are directed by a court of this state to be paid from this account;

(6) expenses associated with implementation of the rangeland and wildlife management plan;

(7) impact assistance funds allocated to affected political subdivisions; and

(8) expenses for any other purpose, including purposes unrelated to low-level waste disposal, as determined in the General Appropriations Act.

(e) Payments to this state under Public Law 99-240 may be used only for the purposes stated in the federal law. (V.A.C.S. Art. 4590f-1, Sec. 4.05.)

[Chapters 403-430 reserved for expansion]

## TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

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#### CHAPTER 431. TEXAS FOOD, DRUG, AND COSMETIC ACT

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### TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

#### SUBTITLE A. FOOD AND DRUG HEALTH REGULATIONS

#### CHAPTER 431. TEXAS FOOD, DRUG, AND COSMETIC ACT

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. **SHORT TITLE.** This chapter may be cited as the Texas Food, Drug, and Cosmetic Act. (V.A.C.S. Art. 4476–5, Sec. 1.)

Sec. 431.002. **DEFINITIONS.** In this chapter:

(1) “Advertising” means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) “Animal feed,” as used in Subdivision (23), in Section 512 of the Federal Act, and in provisions of this chapter referring to those paragraphs or sections, means an article intended for use as food for animals other than man as a substantial source of nutrients

in the diet of the animals. The term is not limited to a mixture intended to be the sole ration of the animals.

(3) "Authorized agent" means an employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

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

(5)(A) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; and

(ii) when added or applied to a food, drug, or cosmetic, or to the human body or any part of the human body, is capable, alone or through reaction with other substance, of imparting color. The term does not include any material exempted under the federal Act.

(B) "Color" includes black, white, and intermediate grays.

(C) Paragraph (A) does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest.

(6) "Commissioner" means the commissioner of health.

(7) "Consumer commodity," except as otherwise provided by this subdivision, means any food, drug, device, or cosmetic, as those terms are defined by this chapter or by the federal Act, and any other article, product, or commodity of any kind or class that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or for use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and that usually is consumed or expended in the course of the consumption or use. The term does not include:

(A) a meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(B) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136), or Section 8, Virus-Serum-Toxin Act (21 U.S.C. 158);

(C) a drug subject to the provisions of Section 431.113(c)(1) or 431.112(k), or Section 503(b)(1) or 506 of the federal Act;

(D) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 205(e)); or

(E) a commodity subject to the provisions of Chapter 61, Agriculture Code, relating to the inspection, labeling, and sale of agricultural and vegetable seed.

(8) "Contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(9) "Cosmetic" means articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of the human body for cleaning, beautifying, promoting attractiveness, or altering the appearance, and articles intended for use as a component of those articles. The term does not include soap.

(10) "Counterfeit drug" means a drug, or the container or labeling of a drug, that, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug, and that falsely purports or is represented to be the product of, or to have been packed or distributed by, the other drug manufacturer, processor, packer, or distributor.

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

(12) "Device," except when used in Sections 431.003, 431.021(l), 431.082(g), 431.112(c) and 431.142(c), means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolism for the achievement of any of its principal intended purposes.

(13) "Drug" means articles recognized in the official United States Pharmacopoeia National Formulary, or any supplement to it, articles designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, articles, other than food, intended to affect the structure or any function of the body of man or other animals, and articles intended for use as a component of any article specified in this subdivision. The term does not include devices or their components, parts, or accessories.

(14) "Federal Act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.).

(15) "Food" means:

(A) articles used for food or drink for man;

(B) chewing gum; and

(C) articles used for components of any such article.

(16) "Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any use), if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;

(C) a color additive;

(D) any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, Pub. L. No. 85-929, 52 Stat. 1041 (codified as amended in various sections of 21 U.S.C.), pursuant to the federal Act, the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of 1907 (21 U.S.C. 603); or

(E) a new animal drug.

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

(18) "Immediate container" does not include package liners.

(19) "Infant formula" means a food that is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.



(20) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information that appears on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any, of the retail package of the article, or is easily legible through the outside container or wrapper.

(21) "Labeling" means all labels and other written, printed, or graphic matter that is on an article or any of the containers or wrappers that accompany the article.

(22) "Manufacture" means the process of combining or purifying food and packaging food for sale to a consumer at wholesale or retail.

(23) "New animal drug" means any drug intended for use for animals other than man, including any drug intended for use in animal feed:

(A) the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of animal drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling of the drug (except that such an unrecognized drug is not deemed to be a "new animal drug" if at any time before June 25, 1938, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use);

(B) the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under those conditions, has become recognized but that has not, otherwise than in the investigations, been used to a material extent or for a material time under those conditions; or

(C) is composed wholly or partly of penicillin, streptomycin, chloratetracycline, chloramphenicol, or bacitracin, or any derivative of those substances, unless:

(i) a published order of the secretary is in effect that declares the drug not to be a new animal drug on the grounds that the requirement of certification of batches of the drug, as provided by Section 512(n) of the federal Act, is not necessary to ensure that the objectives specified in Section 512(n)(3) of that Act are achieved; and

(ii) Paragraph (A) or (B) of this subdivision does not apply to the drug.

(24) "New drug" means:

(A) any drug, except a new animal drug, the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof (except that such an unrecognized drug is not a "new drug" if at any time before May 26, 1985, it was subject to the Food and Drug Act of June 30, 1906, and if at that time its labeling contained the same representations concerning the conditions of its use); or

(B) any drug, except a new animal drug, the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions.

(25) "Official compendium" means the official United States Pharmacopoeia National Formulary, or any supplement to it.

(26) "Package" means any container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers. The term includes wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. The term does not include:

(A) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(B) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings do not bear printed matter relating to any particular commodity; or

(C) containers subject to the provisions of the Standard Barrel Act (Apple Barrels) (15 U.S.C. 231, 21 U.S.C. 20) or the Standard Barrel Act (Fruits and Vegetables) (15 U.S.C. 234-236).

(27) "Person" includes individual, partnership, corporation, and association.

(28) "Pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is a "pesticide" within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u)), as now in force or as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

(29) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(30) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(31) "Saccharin" includes calcium saccharin, sodium saccharin, and ammonium saccharin.

(32) "Safe" refers to the health of humans or animals.

(33) "Secretary" means the secretary of the United States Department of Health and Human Services. (V.A.C.S. Art. 4476-5, Secs. 2(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (14), (15), (17), (18), (19), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (30), (31), (32), (33), (34), (35); 28(e) (part), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985, editorially relettered as (f).)

Sec. 431.003. ARTICLE MISBRANDED BECAUSE OF MISLEADING LABELING OR ADVERTISING. If an article is alleged to be misbranded because the labeling or advertising is misleading, then in determining whether the labeling or advertising is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination of these, but also the extent to which the labeling or advertising fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling or advertising thereof, or under such conditions of use as are customary or usual. (V.A.C.S. Art. 4476-5, Sec. 2(11).)

Sec. 431.004. REPRESENTATION OF DRUG AS ANTISEPTIC. The representation of a drug, in its labeling, as an antiseptic shall be considered to be a representation that the drug is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. (V.A.C.S. Art. 4476-5, Sec. 2(13).)

Sec. 431.005. PROVISIONS REGARDING SALE OF FOOD, DRUGS, DEVICES, OR COSMETICS. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment. (V.A.C.S. Art. 4476-5, Sec. 2(16).)

[Sections 431.006-431.020 reserved for expansion]

#### SUBCHAPTER B. PROHIBITED ACTS

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(1) are engaged in the packaging or labeling of such commodities; or

(2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

(e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

(f) the dissemination of any false advertisement;

(g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042–431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

(h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

(i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

(j) the removal or disposal of a detained or embargoed article in violation of Section 431.048;

(k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

(l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

(2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

(3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

(m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042–431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained; or

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act. (V.A.C.S. Art. 4476–5, Sec. 3.)

[Sections 431.022–431.040 reserved for expansion]

**SUBCHAPTER C. ENFORCEMENT**

**Sec. 431.041. DEFINITION.** In this subchapter, "detained or embargoed article" means a food, drug, device, cosmetic, or consumer commodity that has been detained or embargoed under Section 431.048. (New.)

**Sec. 431.042. INSPECTION.** (a) To enforce this chapter, the commissioner, an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge:

(1) enter at reasonable times an establishment, including a factory or warehouse, in which a food, drug, device, or cosmetic is manufactured, processed, packed, or held for introduction into commerce or held after the introduction;

(2) enter a vehicle being used to transport or hold the food, drug, device, or cosmetic in commerce; or

(3) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the establishment or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of this chapter.

(b) The inspection of an establishment, including a factory, warehouse, or consulting laboratory, in which a prescription drug or restricted device is manufactured, processed, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the drug or device:

(1) is adulterated or misbranded;

(2) may not be manufactured, introduced into commerce, sold, or offered for sale under this chapter; or

(3) is otherwise in violation of this chapter.

(c) An inspection under Subsection (b) may not extend to:

(1) financial data;

(2) sales data other than shipment data;

(3) pricing data;

(4) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under this chapter;

(5) research data other than data:

(A) relating to new drugs, antibiotic drugs, and devices; and

(B) subject to reporting and inspection under regulations issued under Section 505(i) or (j), 507(d) or (g), 519, or 520(g) of the federal Act; or

(6) data relating to other drugs or devices that, in the case of a new drug, would be subject to reporting or inspection under regulations issued under Section 505(j) of the federal Act.

(d) An inspection under Subsection (b) shall be started and completed with reasonable promptness.

(e) This section does not apply to:

(1) a pharmacy that:

(A) complies with the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes);

(B) regularly engages in dispensing prescription drugs or devices on prescriptions of practitioners licensed to administer the drugs or devices to their patients in the course of their professional practice; and

(C) does not, through a subsidiary or otherwise, manufacture, prepare, propagate, compound, or process a drug or device for sale other than in the regular course of its business of dispensing or selling drugs or devices at retail;

(2) a practitioner licensed to prescribe or administer a drug who manufactures, prepares, propagates, compounds, or processes the drug solely for use in the course of the practitioner's professional practice;

(3) a practitioner licensed to prescribe or use a device who manufactures or processes the device solely for use in the course of the practitioner's professional practice; or

(4) a person who manufactures, prepares, propagates, compounds, or processes a drug or manufactures or processes a device solely for use in research, teaching, or chemical analysis and not for sale.

(f) The board may exempt a class of persons from inspection under this section if the board finds that inspection as applied to the class is not necessary for the protection of the public health.

(g) An authorized agent or health authority who makes an inspection under this section to enforce the provisions of this chapter applicable to infant formula shall be permitted, at all reasonable times, to have access to and to copy and verify records:

(1) in order to determine whether the infant formula manufactured or held in the inspected facility meets the requirements of this chapter; or

(2) that are required by this chapter.

(h) An authorized agent or health authority who makes an inspection of an establishment, including a factory or warehouse, and obtains a sample during or on completion of the inspection and before leaving the establishment, shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample. (V.A.C.S. Art. 4476-5, Secs. 25(a), (b), (c), (d).)

Sec. 431.043. ACCESS TO RECORDS. A person who is required to maintain records under this chapter or Section 519 or 520(g) of the federal Act or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records. (V.A.C.S. Art. 4476-5, Sec. 25(e).)

Sec. 431.044. ACCESS TO RECORDS SHOWING MOVEMENT IN COMMERCE. (a) To enforce this chapter, a carrier engaged in commerce or other person receiving a food, drug, device, or cosmetic in commerce or holding a food, drug, device, or cosmetic received in commerce shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times to have access to and to copy all records showing:

(1) the movement in commerce of the food, drug, device, or cosmetic;

(2) the holding of the food, drug, device, or cosmetic after movement in commerce; and

(3) the quantity, shipper, and consignee of the food, drug, device, or cosmetic.

(b) The carrier or other person may not refuse access to and copying of the requested record if the request is accompanied by a written statement that specifies the nature or kind of food, drug, device, or cosmetic to which the request relates.

(c) Evidence obtained under this section or evidence that is directly or indirectly derived from the evidence obtained under this section may not be used in a criminal prosecution of the person from whom the evidence is obtained.

(d) A carrier is not subject to other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a food, drug, device, or cosmetic in the usual course of business as a carrier. (V.A.C.S. Art. 4476-5, Sec. 25(f).)

Sec. 431.045. EMERGENCY ORDER. (a) The commissioner or a person designated by the commissioner may issue an emergency order, either mandatory or prohibitory in nature, in relation to the manufacture of a food, drug, device, or cosmetic in the department's jurisdiction if the commissioner or the person designated by the commissioner determines that:

(1) the manufacture of the food, drug, device, or cosmetic creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or a person designated by the commissioner may issue the emergency order without notice and hearing if the commissioner or a person designated by the commissioner determines this is practicable under the circumstances.

(c) If an emergency order is issued without a hearing, the department shall determine a time and place for a hearing at which the emergency order is affirmed, modified, or set aside. The hearing shall be held under departmental rules.

(d) This section prevails over Sections 11.013 and 12.001. (V.A.C.S. Art. 4476-5, Sec. 24(f), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

Sec. 431.046. VIOLATION OF RULES. A violation of a rule adopted under this chapter is a violation of this chapter. (V.A.C.S. Art. 4476-5, Sec. 24(a) (part), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

Sec. 431.047. VIOLATION; INJUNCTION. (a) The commissioner, an authorized agent, or a health authority may petition the district court for a temporary restraining order to restrain a continuing violation of Subchapter B or a threat of a continuing violation of Subchapter B if the commissioner, authorized agent, or health authority finds that:

(1) a person has violated, is violating, or is threatening to violate Subchapter B; and

(2) the violation or threatened violation creates an immediate threat to the health and safety of the public.

(b) A district court, on petition of the commissioner, an authorized agent, or a health authority, and on a finding by the court that a person is violating or threatening to violate Subchapter B shall grant any injunctive relief warranted by the facts.

(c) Venue for a suit brought under this section is in the county in which the violation or threat of violation is alleged to have occurred or in Travis County. (V.A.C.S. Art. 4476-5, Sec. 4.)

Sec. 431.048. DETAINED OR EMBARGOED ARTICLE. (a) The commissioner or an authorized agent shall affix to an article that is a food, drug, device, cosmetic, or consumer commodity a tag or other appropriate marking that gives notice that the article is, or is suspected of being, adulterated or misbranded and that the article has been detained or embargoed if the commissioner or the authorized agent finds or has probable cause to believe that the article:

(1) is adulterated;

(2) is misbranded so that the article is dangerous or fraudulent under this chapter; or

(3) violates Section 431.084, 431.114, or 431.115.

(b) The tag or marking on a detained or embargoed article must warn all persons not to remove the article from the premises or dispose of the article by sale or otherwise until permission for removal or disposal is given by the commissioner, the authorized agent, or a court.

(c) A person may not remove a detained or embargoed article from the premises or dispose of it by sale or otherwise without permission of the commissioner, the authorized agent, or a court. The commissioner or the authorized agent may permit perishable goods to be moved to a place suitable for proper storage.

(d) The commissioner or an authorized agent shall remove the tag or other marking from an embargoed or detained article if the commissioner or an authorized agent finds that the article is not adulterated or misbranded. (V.A.C.S. Art. 4476-5, Secs. 6(a), (c) (part).)

Sec. 431.049. REMOVAL ORDER FOR DETAINED OR EMBARGOED ARTICLE.

(a) The commissioner may, before or in conjunction with the affixing of an appropriate marking for a detained or embargoed article, order the claimant of the article or the claimant's agent to remove the article to a secure area approved by the commissioner or an authorized agent if the article is on display for sale to any member of the public.

(b) The removal order must be in writing and signed by the commissioner.

(c) The removal order remains in effect until the order:

- (1) expires on its own terms;
- (2) is withdrawn by the commissioner; or

(3) is removed by a court in an order denying condemnation of the article in accordance with Section 431.050.

(d) The commissioner may remove the article if the claimant of the article or the claimant's agent does not carry out the removal order in a timely manner.

(e) The claimant of the article or the claimant's agent shall pay the costs of the removal and storage of the article. (V.A.C.S. Art. 4476-5, Sec. 6(b).)

Sec. 431.050. CONDEMNATION. An action for the condemnation of an article may be brought before a court in whose jurisdiction the article is located, detained, or embargoed if the article is adulterated, misbranded, or in violation of Section 431.084, 431.114, or 431.115. (V.A.C.S. Art. 4476-5, Sec. 6(c) (part).)

Sec. 431.051. DESTRUCTION OF ARTICLE. (a) A court shall order the destruction of a sampled article or a detained or embargoed article if the court finds that the article is adulterated or misbranded.

(b) After entry of the court's order, an authorized agent shall supervise the destruction of the article.

(c) The claimant of the article shall pay the cost of the destruction of the article.

(d) The court shall tax against the claimant of the article or the claimant's agent all court costs and fees, and storage and other proper expenses. (V.A.C.S. Art. 4476-5, Sec. 6(d) (part).)

Sec. 431.052. CORRECTION BY PROPER LABELING OR PROCESSING. (a) A court may order the delivery of a sampled article or a detained or embargoed article that is adulterated or misbranded to the claimant of the article for labeling or processing under the supervision of an agent of the commissioner or an authorized agent if:

- (1) the decree has been entered in the suit;
- (2) the costs, fees, and expenses of the suit have been paid;
- (3) the adulteration or misbranding can be corrected by proper labeling or processing; and

(4) a good and sufficient bond, conditioned on the correction of the adulteration or misbranding by proper labeling or processing, has been executed.

(b) The claimant shall pay the costs of the supervision.

(c) The court shall order that the article be returned to the claimant and the bond discharged on the representation to the court by the commissioner or an authorized agent that the article no longer violates this chapter and that the expenses of the supervision are paid. (V.A.C.S. Art. 4476-5, Sec. 6(d) (part).)

Sec. 431.053. CONDEMNATION OF PERISHABLE ARTICLES. (a) The commissioner or an authorized agent shall immediately condemn or render by any means unsalable as human food an article that is a nuisance under Subsection (b) and that the commissioner or authorized agent finds in any room, building, or other structure or in a vehicle.

(b) Any meat, seafood, poultry, vegetable, fruit, or other perishable article is a nuisance if it:

- (1) is unsound;
- (2) contains a filthy, decomposed, or putrid substance; or
- (3) may be poisonous or deleterious to health or otherwise unsafe. (V.A.C.S. Art. 4476-5, Sec. 6(e).)

Sec. 431.054. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates Subchapter B or an order adopted or registration issued under this chapter.

(b) In determining the amount of the penalty, the commissioner shall consider:



- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public; and
- (4) the person's demonstrated good faith.

(c) The penalty may not exceed \$25,000 a day for each violation.

(d) Each day a violation continues may be considered a separate violation. (V.A.C.S. Art. 4476-5, Secs. 5A(a), (b), (c).)

**Sec. 431.055. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE.** (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty that may be warranted.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty that may be warranted.

(d) After making a determination under this section that a penalty is to be assessed against a person, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding. (V.A.C.S. Art. 4476-5, Secs. 5A(d), (e), (f), (g), (h).)

**Sec. 431.056. PAYMENT OF ADMINISTRATIVE PENALTY.** (a) Not later than the 30th day after the date an order finding that a violation has occurred is issued, the commissioner shall inform the person against whom the order is issued of the amount of the penalty for the violation.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

- (1) pay the penalty in full; or
- (2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:
  - (A) send the amount of the penalty to the commissioner for placement in an escrow account; or
  - (B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty. (V.A.C.S. Art. 4476-5, Secs. 5A(i), (j), (l).)

**Sec. 431.057. REFUND OF ADMINISTRATIVE PENALTY.** Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

- (1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or
- (2) execute a release of the bond if the person has posted a bond. (V.A.C.S. Art. 4476-5, Sec. 5A(k).)

**Sec. 431.058. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL.** The attorney general at the request of the commissioner may bring a civil action to recover an administrative penalty under this subchapter. (V.A.C.S. Art. 4476-5, Sec. 5A(n).)

**Sec. 431.059. CRIMINAL PENALTY; DEFENSES.** (a) A person commits an offense if the person violates any of the provisions of Section 431.021 relating to unlawful or prohibited acts. An offense under this subsection is a Class A misdemeanor.

(b) A person is not subject to the penalties of Subsection (a):

(1) for having received an article in commerce and having delivered or offered delivery of the article, if the delivery or offer was made in good faith, unless the person refuses to furnish on request of the commissioner, an authorized agent, or a health authority, the name and address of the person from whom the article was received and copies of any documents relating to the receipt of the article;

(2) for having violated Section 431.021(a) or (e) if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom the person received in good faith the article, to the effect that:

(A) in the case of an alleged violation of Section 431.021(a), the article is not adulterated or misbranded within the meaning of this chapter; and

(B) in the case of an alleged violation of Section 431.021(e), the article is not an article that may not, under the provisions of Section 404 or 405 of the federal Act or Section 431.084 or 431.114, be introduced into commerce;

(3) for having violated Section 431.021, if the violation exists because the article is adulterated by reason of containing a color additive not from a batch certified in accordance with regulations promulgated under the federal Act, if the person establishes a guaranty or undertaking signed by, and containing the name and address of, the manufacturer of the color additive, to the effect that the color additive was from a batch certified in accordance with the applicable regulations promulgated under the federal Act;

(4) for having violated Section 431.021(b), (c), or (k) by failure to comply with Section 431.112(j) with respect to an article received in commerce to which neither Section 503(a) nor Section 503(b)(1) of the federal Act applies if the delivery or offered delivery was made in good faith and the labeling at the time of the delivery or offer contained the same directions for use and warning statements as were contained in the labeling at the same time of the receipt of the article; or

(5) for having violated Section 431.021(l)(2) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing would result in a drug being a counterfeit drug, or for having violated Section 431.021(l)(3) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

(c) A publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, is not liable under this section for the dissemination of the false advertisement, unless the person has refused, on the request of the commissioner to furnish the commissioner the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in this state who caused the person to disseminate the advertisement.

(d) A person is not subject to the penalties of Subsection (a) for a violation of Section 431.021 involving misbranded food if the violation exists solely because the food is misbranded under Section 431.082 because of its advertising, and a person is not subject to the penalties of Subsection (a) for such a violation unless the violation is committed with the intent to defraud or mislead. (V.A.C.S. Art. 4476-5, Sec. 5.)

Sec. 431.060. INITIATION OF PROCEEDINGS. The attorney general, or a district, county, or municipal attorney to whom the commissioner, an authorized agent, or a health authority reports a violation of this chapter, shall initiate and prosecute appropriate proceedings without delay. (V.A.C.S. Art. 4476-5, Sec. 7.)

Sec. 431.061. MINOR VIOLATION. This chapter does not require the commissioner, an authorized agent, or a health authority to report for prosecution or the institution of proceedings under this chapter a minor violation of this chapter if the commissioner, authorized agent, or health authority believes that the public interest is adequately served by a suitable written notice or warning. (V.A.C.S. Art. 4476-5, Sec. 8.)

[Sections 431.062-431.080 reserved for expansion]

SUBCHAPTER D. FOOD

Sec. 431.081. ADULTERATED FOOD. A food shall be deemed to be adulterated:

(a) if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance the food shall not be considered adulterated under this subdivision if the quantity of the substance in the food does not ordinarily render it injurious to health; or

(2) it:

(A) bears or contains any added poisonous or added deleterious substance, other than one that is a pesticide chemical in or on a raw agricultural commodity, a food additive, a color additive, or a new animal drug which is unsafe within the meaning of Section 431.161; or

(B) is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 431.161(a); or

(C) is, or it bears or contains, any food additive which is unsafe within the meaning of Section 431.161(a); provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 431.161(a), and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section 431.161 and Section 409 of the federal Act, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food, when ready to eat, is not greater than the tolerance prescribed for the raw agricultural commodity; or

(D) is, or it bears or contains, a new animal drug, or a conversion product of a new animal drug, that is unsafe under Section 512 of the federal Act; or

(3) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for foods; or

(4) it has been produced, prepared, packed or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) it is, in whole or in part, the product of a diseased animal, an animal which has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse; or

(6) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect in accordance with Section 409 of the federal Act;

(b) if:

(1) any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(2) any substance has been substituted wholly or in part therefor; or

(3) damage or inferiority has been concealed in any manner; or

(4) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is; or

(5) it contains saccharin, dulcin, glucin, or other sugar substitutes except in dietary foods, and when so used shall be declared; or

(6) it be fresh meat and it contains any chemical substance containing sulphites, sulphur dioxide, or any other chemical preservative which is not approved by the United States Bureau of Animal Industry or by rules of the board;

(c) if it is, or it bears or contains, a color additive that is unsafe under Section 431.161(a); or

(d) if it is confectionery and:

(1) has any nonnutritive object partially or completely imbedded in it; provided, that this subdivision does not apply if, in accordance with rules of the board, the object is of practical, functional value to the confectionery product and would not render the product injurious or hazardous to health;

(2) bears or contains any alcohol, other than alcohol not in excess of five percent by volume. Any confectionery that bears or contains any alcohol in excess of one-half of one percent by volume derived solely from the use of flavoring extracts and less than five percent by volume:

(A) may not be sold to persons under the legal age necessary to consume an alcoholic beverage in this state;

(B) must be labeled with a conspicuous, readily legible statement that reads, "Sale of this product to a person under the legal age necessary to consume an alcoholic beverage is prohibited";

(C) may not be sold in a form containing liquid alcohol such that it is capable of use for beverage purposes as that term is used in the Alcoholic Beverage Code;

(D) may not be sold through a vending machine;

(E) must be labeled with a conspicuous, readily legible statement that the product contains not more than five percent alcohol by volume; and

(F) may not be sold in a business establishment which derives less than 50 percent of its gross sales from the sale of confectioneries; or

(3) bears or contains any nonnutritive substance; provided, that this subdivision does not apply to a nonnutritive substance that is in or on the confectionery by reason of its use for a practical, functional purpose in the manufacture, packaging, or storage of the confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of this chapter; and provided further, that the board may for the purpose of avoiding or resolving uncertainty as to the application of this subdivision, adopt rules allowing or prohibiting the use of particular nonnutritive substances. (V.A.C.S. Art. 4476-5, Sec. 10.)

Sec. 431.082. MISBRANDED FOOD. A food shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular or fails to conform with the requirements of Section 431.181;

(b) if, in the case of a food to which Section 411 of the federal Act applies, its advertising is false or misleading in a material respect or its labeling is in violation of Section 411(b)(2) of the federal Act;

(c) if it is offered for sale under the name of another food;

(d) if it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" and immediately thereafter the name of the food imitated;

(e) if its container is so made, formed, or filled as to be misleading;

(f) if in package form unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer, or distributor; and

(2) an accurate statement, in a uniform location on the principal display panel of the label, of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under this subsection reasonable variations shall be permitted, and exemptions as to small packages shall be established, by rules adopted by the board;

(g) if any word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(h) if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or rules of the board as provided by Section 431.245, unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by those regulations or rules, the common names of optional ingredients, other than spices, flavoring, and coloring, present in such food;

(i) if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by federal regulations or rules of the board as provided by Section 431.245, and its quality falls below such standard unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by federal regulations or rules of the board as provided by Section 431.245, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as those regulations or rules specify, a statement that it falls below such standard;

(j) if it is not subject to the provisions of Subsection (h), unless its label bears:

(1) the common or usual name of the food, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; provided that, to the extent that compliance with the requirements of this subdivision is impractical or results in deception or unfair competition, exemptions shall be established by rules of the board;

(k) if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by rule prescribed, as necessary in order to fully inform purchasers as to its value for such uses; or

(l) if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided that, to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by rules of the board. The provisions of this subsection and Subsections (h) and (j) with respect to artificial coloring do not apply in the case of butter, cheese, and ice cream. (V.A.C.S. Art. 4476-5, Sec. 11.)

**Sec. 431.083. FOOD LABELING EXEMPTIONS.** (a) The board shall adopt rules exempting from any labeling requirement of this chapter:

(1) small open containers of fresh fruits and fresh vegetables; and

(2) food that is in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed, on conditions that the food is not adulterated or misbranded under the provisions of this chapter when removed from the processing, labeling, or repacking establishment.

(b) Food labeling exemptions adopted under the federal Act apply to food in this state except as modified or rejected by rules adopted by the board. (V.A.C.S. Art. 4476-5, Sec. 13.)

**Sec. 431.084. EMERGENCY PERMITS FOR FOODS CONTAMINATED WITH MICROORGANISMS.** (a) The commissioner shall provide for the issuance of temporary permits to a manufacturer, processor, or packer of a class of food in any locality that

provides conditions for the manufacture, processing, or packing for the class of food as necessary to protect the public health only if the commissioner finds after investigation that:

- (1) the distribution in this state of a class of food may, because the food is contaminated with microorganisms during the manufacture, processing, or packing of the food in any locality, be injurious to health; and
  - (2) the injurious nature of the food cannot be adequately determined after the food has entered commerce.
- (b) The board by rule shall establish standards and procedures for the enforcement of this section.
- (c) During the period for which permits are issued for a class of food determined by the commissioner to be injurious under Subsection (a), a person may not introduce or deliver for introduction into commerce the food unless the person is a manufacturer, processor, or packer who has a permit issued by the commissioner as authorized by rules adopted under this section.
- (d) The commissioner may immediately suspend a permit issued under this section if a condition of the permit is violated. An immediate suspension is effective on notice to the permit holder.
- (e) A holder of a permit that has been suspended may at any time apply for the reinstatement of the permit. Immediately after a hearing and an inspection of the permit holder's establishment, the commissioner shall reinstate the permit if adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.
- (f) A permit holder shall provide access to the permit holder's factory or establishment to an authorized agent to allow the agent to determine whether the permit holder complies with the conditions of the permit. Denial of access is grounds for suspension of the permit until the permit holder freely provides the access. (V.A.C.S. Art. 4476-5, Sec. 12.)

[Sections 431.085-431.110 reserved for expansion]

#### SUBCHAPTER E. DRUGS AND DEVICES

Sec. 431.111. ADULTERATED DRUG OR DEVICE. A drug or device shall be deemed to be adulterated:

- (a)(1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or
- (2)(A) if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or
- (B) if it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess; or
- (3) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
- (4) if it:
  - (A) bears or contains, for purposes of coloring only, a color additive that is unsafe under Section 431.161(a); or
  - (B) is a color additive, the intended use of which in or on drugs or devices is for purposes of coloring only, and is unsafe under Section 431.161(a); or
- (5) if it is a new animal drug that is unsafe under Section 512 of the federal Act;

(b) if it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standards set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under the authority of the federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standards of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standards is plainly stated on its label. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary;

(c) if it is not subject to the provision of Paragraph (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess;

(d) if it is a drug and any substance has been:

(1) mixed or packed therewith so as to reduce its quality or strength; or

(2) substituted wholly or in part therefor;

(e) if it is, or purports to be or is represented as, a device that is subject to a performance standard established under Section 514 of the federal Act, unless the device is in all respects in conformity with the standard;

(f) if it is a banned device;

(g) if it is a device and the methods used in, or the facilities or controls used for its manufacture, packing, storage, or installations are not in conformity with applicable requirements under Section 520(f)(1) of the federal Act or an applicable condition as prescribed by an order under Section 520(f)(2) of the federal Act; or

(h) if it is a device for which an exemption has been granted under Section 520(g) of the federal Act for investigational use and the person who was granted the exemption or any investigator who uses the device under the exemption fails to comply with a requirement prescribed by or under that section. (V.A.C.S. Art. 4476-5, Sec. 15.)

**Sec. 431.112. MISBRANDED DRUG OR DEVICE.** A drug or device shall be deemed to be misbranded:

(a)(1) if its labeling is false or misleading in any particular; or

(2) if its labeling or packaging fails to conform with the requirements of Section 431.181.

(b) if in a package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the secretary under the federal Act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative, after investigation, has been found to be designated as habit forming, by regulations issued by the secretary under Section 502(d) of the federal Act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement, "Warning: May be habit forming";

(e)(1) if it is a drug, unless:

(A) its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in Subdivision (3)) of the drug, if any; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subparagraph shall apply only to prescription drugs; and

(B) for any prescription drug the established name of the drug or ingredient, as the case may be, on the label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of Paragraph (A)(ii) or this paragraph is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(2) if it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name (as defined in Subdivision (4)) prominently printed in type at least half as large as that used thereon for any proprietary name or designation for such device, except that to the extent compliance with this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the secretary under the federal Act;

(3) as used in Subdivision (1), the term "established name," with respect to a drug or ingredient thereof, means:

(A) the applicable official name designated pursuant to Section 508 of the federal Act; or

(B) if there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then the common or usual name, if any, of such drug or of such ingredient; provided further, that where Paragraph (B) applies to an article recognized in the United States Pharmacopoeia National Formulary, the official title used in the United States Pharmacopoeia National Formulary shall apply;

(4) as used in Subdivision (2), the term "established name" with respect to a device means:

(A) the applicable official name of the device designated pursuant to Section 508 of the federal Act;

(B) if there is no such name and such device is an article recognized in an official compendium, then the official title thereof in such compendium; or

(C) if neither Paragraph (A) nor Paragraph (B) applies, then any common or usual name of such device;

(f) unless its labeling bears:

(1) adequate directions for use; and

(2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or durations of administration or application, in such manner and form, as are necessary for the protection of users unless the drug or device has been exempted from those requirements by the regulations adopted by the secretary;



(g) if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein unless the method of packing has been modified with the consent of the secretary. Whenever a drug is recognized in the United States Pharmacopoeia National Formulary, it shall be subject to the requirements of the United States Pharmacopoeia National Formulary with respect to packaging and labeling. If there is an inconsistency between the requirements of this subsection and those of Subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of Subsection (e) prevail;

(h) if it has been found by the secretary to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health;

(i) if:

(1) it is a drug and its container is so made, formed, or filled as to be misleading; or

(2) it is an imitation of another drug; or

(3) it is offered for sale under the name of another drug;

(j) if it is dangerous to health when used in the dosage, or manner or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(k) if it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 506 of the federal Act; and

(2) such certificate or release is in effect with respect to such drug;

(l) if it is, or purports to be, or is represented as a drug (except a drug for use in animals other than man) composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless:

(1) it is from a batch with respect to which a certificate or release has been issued pursuant to Section 507 of the federal Act; and

(2) the certificate or release is in effect with respect to the drug; provided, that this subdivision shall not apply to any drug or class of drugs exempted by regulations promulgated under Section 507(c) or (d) of the federal Act;

(m) if it is a color additive, the intended use of which is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, as may be contained in rules issued under Section 431.161(b);

(n) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(1) the established name as defined in Subsection (e), printed prominently and in type at least half as large as that used for any trade or brand name;

(2) the formula showing quantitatively each ingredient of the drug to the extent required for labels under Subsection (e); and

(3) other information in brief summary relating to side effects, contraindications, and effectiveness as required in regulations issued under Section 701(e) of the federal Act;

(o) if it was manufactured, prepared, propagated, compounded, or processed in an establishment in this state not registered under Section 510 of the federal Act, if it was not included in a list required by Section 510(j) of the federal Act, if a notice or other information respecting it was not provided as required by that section or Section 510(k) of the federal Act, or if it does not bear symbols from the uniform system for

identification of devices prescribed under Section 510(e) of the federal Act as required by regulation;

(p) if it is a drug and its packaging or labeling is in violation of an applicable regulation issued under Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (21 U.S.C. 1472 or 1473);

(q) if a trademark, trade name, or other identifying mark, imprint or device of another, or any likeness of the foregoing has been placed thereon or on its container with intent to defraud;

(r) in the case of any restricted device distributed or offered for sale in this state, if:

(1) its advertising is false or misleading in any particular; or

(2) it is sold, distributed, or used in violation of regulations prescribed under Subsection (e);

(s) in the case of any restricted device distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued by the manufacturer, packer, or distributor with respect to that device:

(1) a true statement of the device's established name as defined in Section 502(e) of the federal Act, printed prominently and in type at least half as large as that used for any trade or brand name thereof; and

(2) a brief statement of the intended uses of the device and relevant warnings, precautions, side effects, and contraindications and in the case of specific devices made subject to regulations issued under the federal Act, a full description of the components of such device or the formula showing quantitatively each ingredient of such device to the extent required in regulations under the federal Act;

(t) if it is a device subject to a performance standard established under Section 514 of the federal Act, unless it bears such labeling as may be prescribed in such performance standard; or

(u) if it is a device and there was a failure or refusal:

(1) to comply with any requirement prescribed under Section 518 of the federal Act respecting the device; or

(2) to furnish material required by or under Section 519 of the federal Act respecting the device. (V.A.C.S. Art. 4476-5, Sec. 16.)

Sec. 431.113. EXEMPTION FOR CERTAIN DRUGS AND DEVICES. (a) The board is directed to adopt rules exempting from any labeling or packaging requirement of this chapter drugs and devices that are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packaged on condition that such drugs and devices are not adulterated or misbranded under the provisions of this chapter on removal from such processing, labeling, or repacking establishment.

(b) Drugs and device labeling or packaging exemptions adopted under the federal Act shall apply to drugs and devices in this state except insofar as modified or rejected by rules of the board.

(c)(1) A drug intended for use by man that:

(A) is a habit-forming drug to which Section 431.112(d) applies; or

(B) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(C) is limited by an approved application under Section 505 of the federal Act to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only:

(i) on a written prescription of a practitioner licensed by law to administer such drug; or

(ii) on an oral prescription of such practitioner that is reduced promptly to writing and filed by the pharmacist; or

(iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act that results in a drug being misbranded while held for sale.

(2) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of Section 431.112, except Sections 431.112(a)(1), (i)(2), (i)(3), (k), and (l), and the packaging requirements of Sections 431.112(g), (h), and (p), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drugs dispensed in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of Subdivision (1).

(3) The board may, by rule, remove drugs subject to Section 431.112(d) and Section 505 of the federal Act from the requirements of Subdivision (1) when such requirements are not necessary for the protection of the public health.

(4) A drug that is subject to Subdivision (1) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription," or "Caution: State Law Prohibits Dispensing Without Prescription." A drug to which Subdivision (1) does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence. (V.A.C.S. Art. 4476-5, Sec. 17.)

Sec. 431.114. NEW DRUGS. (a) A person shall not sell, deliver, offer for sale, hold for sale or give away any new drug unless:

(1) an application with respect thereto has been approved and the approval has not been withdrawn under Section 505 of the federal Act; and

(2) a copy of the letter of approval or approvability issued by the Federal Food and Drug Administration is on file with the commissioner if the product is manufactured in this state.

(b) A person shall not use in or on human beings or animals a new drug or new animal drug limited to investigational use unless the person has filed with the Federal Food and Drug Administration a completed and signed "Notice of claimed investigational exemption for a new drug" form in accordance with 21 C.F.R. 312.1 (1980) and the exemption has not been terminated. The drug shall be plainly labeled in compliance with Section 505(i) or 507(d) of the federal Act.

(c) This section shall not apply:

(1) to any drug that is not a new drug as defined in the federal Act; or

(2) to any drug that is licensed under the Public Health Services Act of July 1, 1944 (42 U.S.C. 201 et seq.), or under the Virus-Serum-Toxin Act (21 U.S.C. 151-158); or

(3) to any drug approved by the commissioner by the authority of any law, including this section. (V.A.C.S. Art. 4476-5, Sec. 18.)

Sec. 431.115. NEW ANIMAL DRUGS. (a) A new animal drug shall, with respect to any particular use or intended use of the drug, be deemed unsafe for the purposes of this chapter unless:

(1) there is in effect an approval of an application filed pursuant to Section 512(b) of the federal Act with respect to the use or intended use of the drug; and

(2) the drug, its labeling, and the use conforms to the approved application.

(b) A new animal drug shall not be deemed unsafe for the purposes of this chapter if the article is for investigational use and conforms to the terms of an exemption in effect with respect thereto under Section 512(j) of the federal Act.

(c) This section does not apply to any drug approved by the commissioner by the authority of any law, including Section 431.112. (V.A.C.S. Art. 4476-5, Sec. 19.)

[Sections 431.116-431.140 reserved for expansion]

#### SUBCHAPTER F. COSMETICS

Sec. 431.141. ADULTERATED COSMETIC. A cosmetic shall be deemed to be adulterated:

(a) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual; provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon; "Caution: This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness"; and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this subsection and Subsection (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(b) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

(c) if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(d) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(e) if it is not a hair dye and it is, or it bears or contains, a color additive that is unsafe within the meaning of Section 431.161(a). (V.A.C.S. Art. 4476-5, Sec. 20.)

Sec. 431.142. MISBRANDED COSMETIC. A cosmetic shall be deemed to be misbranded:

(a) if:

(1) its labeling is false or misleading in any particular; and

(2) its labeling or packaging fails to conform with the requirements of Section 431.181;

(b) if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count, which statement shall be separately and accurately stated in a uniform location on the principal display panel of the label; provided, that under Subdivision (2) reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by rules adopted by the board;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it is a color additive, unless its packaging and labeling are in conformity with the packaging and labeling requirements, applicable to the color additive, prescribed under Section 706 of the federal Act. This subsection shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes; or

(f) if its packaging or labeling is in violation of an applicable regulation issued pursuant to Section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472 or 1473).

(g) The board shall adopt rules exempting from any labeling requirement of this chapter cosmetics that are in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, on condition that the cosmetics are not adulterated or misbranded under the provisions of this chapter on removal from the processing, labeling, or repacking establishment. Cosmetic labeling exemptions adopted under the federal Act shall apply to cosmetics in this state except insofar as modified or rejected by rules adopted by the board. (V.A.C.S. Art. 4476-5, Sec. 21.)

[Sections 431.143-431.160 reserved for expansion]

#### SUBCHAPTER G. POISONOUS OR DELETERIOUS SUBSTANCES

Sec. 431.161. POISONOUS OR DELETERIOUS SUBSTANCES. (a) Any poisonous or deleterious substance, food additive, pesticide chemical in or on a raw agricultural commodity, or color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of Section 431.081(a)(2) with respect to any food, Section 431.111(a) with respect to any drug or device, or Section 431.141 with respect to any cosmetic. However, if a rule adopted under Section 431.181 or Subsection (b) is in effect that limits the quantity of that substance, and if the use or intended use of that substance conforms to the terms prescribed by the rule, a food, drug, or cosmetic shall not, by reason of bearing or containing that substance in accordance with the rules, be considered adulterated within the meaning of Section 431.081(a)(1), 431.111, or 431.141.

(b) The board, whenever public health or other considerations in the state so require or on the petition of an interested party, may adopt rules prescribing tolerances for any added, poisonous, or deleterious substances, food additives, pesticide chemicals in or on raw agricultural commodities, or color additives, including zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities. The rule may prescribe the conditions under which a food additive or a color additive may be safely used and may prescribe exemptions if the food additive or color additive is to be used solely for investigational or experimental purposes. Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor. A person petitioning for the adoption of a rule shall establish by data submitted to the board that a necessity exists for the rule and that its effect will not be detrimental to the public health. If the data furnished by the petitioner are not sufficient to allow the board to determine whether the rules should be adopted, the board may require additional data to be submitted. The petitioner's failure to comply with the request is sufficient grounds to deny the request. In adopting rules relating to those substances, the board shall consider, among other relevant factors, the following information furnished by the petitioner, if any:

(1) the name and all pertinent information concerning the substance, including, if available, its chemical identity and composition, a statement of the conditions of the proposed use, directions, recommendations, and suggestions, specimens of proposed labeling, all relevant data bearing on the physical or other technical effect, and the quantity required to produce that effect;

(2) the probable composition of any substance formed in or on a food, drug, or cosmetic resulting from the use of that substance;

(3) the probable consumption of that substance in the diet of man and animals, taking into account any chemically or pharmacologically related substance in the diet;

(4) safety factors that, in the opinion of experts qualified by scientific training and experience to evaluate the safety of those substances for the use or uses for which they

are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(5) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(A) that substance in or on an article;

(B) any substance formed in or on an article because of the use of that substance; and

(C) the pure substance and all intermediates and impurities; and

(6) facts supporting a contention that the proposed use of that substance will serve a useful purpose.

(c) Notwithstanding Sections 11.013 and 12.001, the commissioner may adopt emergency rules under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to establish tolerance levels of poisonous or deleterious substances in food. (V.A.C.S. Art. 4476-5, Sec. 14.)

[Sections 431.162-431.180 reserved for expansion]

#### SUBCHAPTER H. FAIR PACKAGING AND LABELING; FALSE ADVERTISING

Sec. 431.181. FAIR PACKAGING AND LABELING. (a) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) and the regulations promulgated pursuant thereto; provided, that consumer commodities exempted from the requirements of Section 4 of the Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (a), but nothing in this subsection shall prohibit supplemental statements at other places on the package describing in nondeceptive terms the net quantity of contents; provided, that the supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(d) Whenever the board determines that rules containing prohibitions or requirements other than those prescribed by Subsection (a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the board shall adopt with respect to that commodity rules effective to:

(1) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(2) regulate the placement on any package containing any commodity, or on any label affixed to the commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of Section 431.002(15)) bear:

(A) the common or usual name of the consumer commodity, if any; and

(B) in case the consumer commodity consists of two or more ingredients, the common or usual name of each ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional slack-fill of packages containing consumer commodities. For the purpose of this subdivision, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than:

(A) protection of the contents of the package; or

(B) the requirements of the machine used for enclosing the contents in the package. (V.A.C.S. Art. 4476-5, Sec. 22.)

**Sec. 431.182. FALSE ADVERTISEMENT.** An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular. (V.A.C.S. Art. 4476-5, Sec. 23(a).)

**Sec. 431.183. FALSE ADVERTISEMENT OF DRUG OR DEVICE.** (a) An advertisement of a drug or device is false if the advertisement represents that the drug or device affects:

- (1) infectious and parasitic diseases;
- (2) neoplasms;
- (3) endocrine, nutritional, and metabolic diseases and immunity disorders;
- (4) diseases of blood and blood-forming organs;
- (5) mental disorders;
- (6) diseases of the nervous system and sense organs;
- (7) diseases of the circulatory system;
- (8) diseases of the respiratory system;
- (9) diseases of the digestive system;
- (10) diseases of the genitourinary system;
- (11) complications of pregnancy, childbirth, and the puerperium;
- (12) diseases of the skin and subcutaneous tissue;
- (13) diseases of the musculoskeletal system and connective tissue;
- (14) congenital anomalies;
- (15) certain conditions originating in the perinatal period;
- (16) symptoms, signs, and ill-defined conditions; or
- (17) injury and poisoning.

(b) Subsection (a) does not apply to an advertisement of a drug or device if the advertisement does not violate Section 431.183(a) and is disseminated:

- (1) to the public for self-medication and is consistent with the labeling claims permitted by the federal Food and Drug Administration;
- (2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or
- (3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the drug or device.

(c) The board by rule shall authorize the advertisement of a drug having a curative or therapeutic effect for a disease listed under Subsection (a) if the board determines that an advance in medical science has made any type of self-medication safe for the disease. The board may impose conditions and restrictions on the advertisement of the drug necessary in the interest of public health.

(d) This section does not indicate that self-medication for a disease other than a disease listed under Subsection (a) is safe or effective. (V.A.C.S. Art. 4476-5, Sec. 23(b).)

[Sections 431.184-431.200 reserved for expansion]

## SUBCHAPTER I. WHOLESALE DRUG DISTRIBUTORS

Sec. 431.201. DEFINITIONS. In this subchapter:

(1) "Wholesale distribution" means distribution to a person other than a consumer or patient, and includes distribution by a manufacturer, repacker, own label distributor, jobber, or wholesaler.

(2) "Place of business" means each location at which a drug for wholesale distribution is located. (V.A.C.S. Art. 4476-5, Secs. 27(a) (part), (b) (part).)

Sec. 431.202. REGISTRATION STATEMENT REQUIRED; CRIMINAL PENALTY.

(a) A person may not engage in wholesale distribution of drugs in this state unless the person has filed with the commissioner a signed and verified registration statement on a form furnished by the commissioner.

(b) The registration statement must be filed annually.

(c) A person commits an offense if the person does not comply with this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 4476-5, Secs. 27(a) (part), (b) (part), (c) (part), (h).)

Sec. 431.203. CONTENTS OF REGISTRATION STATEMENT. The registration statement must contain:

(1) the name under which the business is conducted;

(2) the address of each place of business in this state that is registered;

(3) the name and residence address of:

(A) the proprietor, if the business is a proprietorship;

(B) all partners, if the business is a partnership; or

(C) all principals, if the business is an association;

(4) the date and place of incorporation, if the business is a corporation;

(5) the names and residence addresses of the individuals in an administrative capacity showing:

(A) the managing proprietor, if the business is a proprietorship;

(B) the managing partner, if the business is a partnership;

(C) the officers and directors, if the business is a corporation; or

(D) the persons in a managerial capacity, if the business is an association; and

(6) the residence address of an individual in charge of each place of business in this state. (V.A.C.S. Art. 4476-5, Sec. 27(b) (part).)

Sec. 431.204. FEES. (a) The board shall collect fees for:

(1) a registration that is filed or renewed;

(2) a registration that is amended, including a notification of a change in the location of a registered place of business required under Section 431.206; and

(3) an inspection performed in enforcing this subchapter and rules adopted under this subchapter.

(b) The board may charge annual fees.

(c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:

(1) reviewing and acting on a registration;

(2) amending and renewing a registration;

(3) inspecting a registered facility; and

(4) implementing and enforcing this subchapter, including a rule or order adopted or a registration issued under this subchapter.

(d) Fees collected under this section shall be deposited to the credit of the food and drug registration fee account of the general revenue fund and may be appropriated to the



department only to carry out this chapter. (V.A.C.S. Art. 4476-5, Secs. 27(d), (e) (part), (i).)

Sec. 431.205. **EXPIRATION DATE.** (a) The board by rule may provide that registrations expire on different dates during the year.

(b) If the board changes a registration expiration date, the board shall prorate the registration fee payable on or before September 1 so that the registrant is required to pay only that portion of the fee that is allocable to the number of months during which the registration is valid.

(c) The total renewal registration fee is payable when the registration is renewed on the new expiration date. (V.A.C.S. Art. 4476-5, Sec. 27(c) (part).)

Sec. 431.206. **CHANGE OF LOCATION OF PLACE OF BUSINESS.** The registrant shall notify the commissioner in writing of a change in the location of a registered place of business, including the address of the new location, and the name and residence address of the individual in charge of the business at the new location. (V.A.C.S. Art. 4476-5, Sec. 27(e) (part).)

Sec. 431.207. **REFUSAL TO REGISTER; SUSPENSION OR REVOCATION OF REGISTRATION.** (a) The commissioner may refuse an application to register, or may suspend or revoke a registration if the applicant or registrant:

- (1) has been convicted of a felony or misdemeanor that involves moral turpitude;
- (2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;
- (3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;
- (4) is an association, partnership, or corporation and the managing officer has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs; or
- (5) has not complied with this chapter.

(b) The commissioner may refuse an application to register, or may suspend or revoke a registration if the commissioner determines from evidence presented during a hearing that the applicant or registrant:

- (1) has sold counterfeit drugs and medicines;
- (2) has violated Chapter 481 (Texas Controlled Substances Act) or 483 (Dangerous Drugs); or
- (3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or registrant to maintain.

(c) The refusal to register an applicant or the suspension or revocation of a registration by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5, Secs. 27(f), (g).)

[Sections 431.208-431.220 reserved for expansion]

#### **SUBCHAPTER J. FOOD MANUFACTURERS**

Sec. 431.221. **APPLICABILITY TO CERTAIN PERSONS.** (a) In this chapter, "manufacture" means the process of combining or purifying food and packaging food for sale to a consumer at wholesale or retail.

(b) Any person, firm, or corporation that represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and

address on the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section.

(c) This subchapter does not apply to a person, firm, or corporation that harvests, packages, washes, or ships raw fruits or vegetables. (V.A.C.S. Art. 4476-5, Sec. 28(e), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985, editorially relettered as (f).)

Sec. 431.222. **REGISTRATION REQUIRED; CRIMINAL PENALTY.** (a) A manufacturer of food in this state shall register annually with the department each establishment that the manufacturer operates in this state and pay a fee for each establishment.

(b) The registration statement must be signed and verified and filed on a form furnished by the department.

(c) A person commits an offense if the person does not comply with this section. An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 4476-5, Sec. 28(a), (b) (part), (i), as added by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985, editorially relettered as (j).)

Sec. 431.223. **CONTENTS OF REGISTRATION STATEMENT.** The registration statement must contain:

- (1) the name under which the business is conducted;
- (2) the address of each place of business in this state that is registered;
- (3) the name of:
  - (A) the proprietor, if the business is a sole proprietorship;
  - (B) all partners, if the business is a partnership; or
  - (C) all principals, if the business is an association;
- (4) the date and place of incorporation and the name and address of its registered agent in this state, if the business is a corporation; and
- (5) the names of the individuals in an administrative capacity, showing:
  - (A) the managing proprietor, if the business is a sole proprietorship;
  - (B) the managing partner, if the business is a partnership;
  - (C) the officers and directors, if the business is a corporation; or
  - (D) the persons in a managerial capacity, if the business is an association. (V.A.C.S. Art. 4476-5, Sec. 28(b) (part).)

Sec. 431.224. **FEES.** (a) The board shall collect fees for:

- (1) a registration that is filed, renewed, or amended; and
  - (2) an inspection performed to enforce this subchapter and rules adopted under this subchapter.
- (b) The board may charge annual fees.
- (c) The board by rule shall set the fees in amounts that allow the department to recover at least 50 percent of the annual expenditures of state funds by the department in:
- (1) reviewing and acting on a registration;
  - (2) amending and renewing a registration;
  - (3) inspecting a registered facility; and
  - (4) implementing and enforcing this subchapter, including a rule or order adopted or a registration issued under this subchapter.
- (d) The department shall use not less than one-half of registration fees collected for inspecting a registered facility or enforcing this subchapter, and the remainder for the administration of this subchapter. (V.A.C.S. Art. 4476-5, Secs. 28(3); 28(4) as added by Sec. 84, Ch. 239, Acts 69th Leg., R.S., 1985, editorially relettered as (d).)

Sec. 431.225. **EXPIRATION DATE.** (a) The board by rule may provide that registrations expire on different dates during the year.

(b) The department shall prorate registration fees for the months of a year in which a registration expiration date is changed. (V.A.C.S. Art. 4476-5, Sec. 28(5), as added by Sec. 84, Ch. 239, Acts 69th Leg., R.S., 1985, editorially relettered as (e).)

**Sec. 431.226. REFUSAL TO REGISTER; SUSPENSION OR REVOCATION OF REGISTRATION.** (a) The commissioner may refuse an application to register, or may suspend or revoke a registration.

(b) The board by rule shall establish minimum standards for granting and maintaining a registration.

(c) The refusal or the suspension or revocation of a registration by the commissioner and the appeal from that action are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5, Secs. 28(g), (h), as added by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985, editorially relettered as (h), (i).)

[Sections 431.227-431.240 reserved for expansion]

**SUBCHAPTER K. GENERAL ADMINISTRATIVE PROVISIONS AND  
RULEMAKING AUTHORITY**

**Sec. 431.241. RULEMAKING AUTHORITY.** (a) The board may adopt rules for the efficient enforcement of this chapter.

(b) The board may conform its rules, if practicable, with regulations adopted under the federal Act. (V.A.C.S. Art. 4476-5, Sec. 20(a) (part), as amended by Sec. 3, Art. 5, Ch. 931, Acts 69th Leg., R.S., 1985, editorially renumbered as 24(a); 24(a) (part), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

**Sec. 431.242. CONTESTED CASE HEARINGS AND APPEALS.** A hearing under this chapter or an appeal from a final administrative decision shall be conducted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5, Sec. 24(b), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

**Sec. 431.243. PERSONS TO CONDUCT HEARINGS.** The commissioner or an officer, agent, or employee designated by the commissioner shall conduct a hearing authorized or required under this chapter. (V.A.C.S. Art. 4476-5, Sec. 20(b), as amended by Sec. 3, Art. 5, Ch. 931, Acts 69th Leg., R.S., 1985, editorially renumbered as 24(b).)

**Sec. 431.244. FEDERAL REGULATION'S ADOPTED AS STATE RULES.** (a) A regulation adopted by the secretary under the federal Act concerning pesticide chemicals, food additives, color additives, special dietary use, infant formula, bottled water, or vended bottled water is a rule for the purposes of this chapter, unless the board modifies or rejects the rule.

(b) A regulation adopted under the Fair Packaging and Labeling Act (15 U.S.C. 1451 et seq.) is a rule for the purposes of this chapter, unless the board modifies or rejects the rule. The board may not adopt a rule that conflicts with the labeling requirements for the net quantity of contents required under Section 4 of the Fair Packaging and Labeling Act (15 U.S.C. 1453) and the regulations adopted under that Act.

(c) A federal regulation that this section provides as a rule for the purposes of this chapter is effective:

(1) on the date that the regulation becomes effective as a federal regulation; and

(2) whether or not the department has fulfilled the rulemaking provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If the board modifies or rejects a federal regulation, the board shall comply with the rulemaking provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5, Secs. 24(c), (d), (e), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

Sec. 431.245. DEFINITION OR STANDARD OF IDENTITY, QUALITY, OR FILL OF CONTAINER. (a) A definition or standard of identity, quality, or fill of container of the federal Act is a definition or standard of identity, quality, or fill of container in this chapter, except as modified by board rules.

(b) The board by rule may establish definitions and standards of identity, quality, and fill of container for a food if:

(1) a federal regulation does not apply to the food; and

(2) the board determines that adopting the rules will promote honest and fair dealing in the interest of consumers.

(c) A temporary permit granted for interstate shipment of an experimental pack of food that varies from the requirements of federal definitions and standards of identity is automatically effective in this state under the conditions of the permit.

(d) The commissioner may issue additional permits if the commissioner determines that:

(1) it is necessary for the completion of an otherwise adequate investigation; and

(2) the interests of consumers are safeguarded.

(e) A permit issued under Subsection (d) is subject to the terms and conditions of board rules. (V.A.C.S. Art. 4476-5, Sec. 9.)

Sec. 431.246. REMOVAL OF ADULTERATED ITEM FROM STORES. The board shall adopt rules that provide a system for removing adulterated items from the shelves of a grocery store or other retail establishment selling those items. (V.A.C.S. Art. 4476-5, Sec. 20(d), as amended by Sec. 3, Art. 5, Ch. 931, Acts 69th Leg., R.S., 1985, editorially renumbered as 24(d).)

Sec. 431.247. DELEGATION OF POWERS OR DUTIES. (a) The board by rule may delegate a power or duty imposed on the commissioner by this chapter to a designee of the board, including the power or duty to issue an emergency rule, an emergency manufacturing permit, or an order or to render a final administrative decision.

(b) A health authority may, unless otherwise restricted by law, delegate a power or duty imposed on the health authority by this chapter to an employee of the local health department, the local health unit, or the public health district in which the health authority serves. (V.A.C.S. Art. 4476-5, Secs. 24(h), (i), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

Sec. 431.248. MEMORANDUM OF UNDERSTANDING WITH DEPARTMENT OF AGRICULTURE. (a) The department and the Department of Agriculture shall execute a memorandum of understanding that:

(1) requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and

(2) specifies how each agency will assist the other in performing its duties regarding pesticides in food.

(b) The department and the Department of Agriculture shall adopt the memorandum of understanding as a rule.

(c) The department and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding. (V.A.C.S. Art. 4476-5, Sec. 24(g), as amended by Sec. 1, Ch. 913, Acts 69th Leg., R.S., 1985.)

Sec. 431.249. DISSEMINATION OF INFORMATION. (a) The commissioner may publish reports summarizing the judgments, decrees, and court orders rendered under this chapter, including the nature and disposition of the charge.

(b) The commissioner may disseminate information regarding a food, drug, device, or cosmetic in a situation that the commissioner determines to involve imminent danger to health or gross deception of consumers.

(c) This section does not prohibit the commissioner from collecting, reporting, and illustrating the results of an investigation by the commissioner. (V.A.C.S. Art. 4476-5, Sec. 26.)

**CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT**

- Sec. 432.001. SHORT TITLE
- Sec. 432.002. PURPOSE
- Sec. 432.003. DEFINITIONS
- Sec. 432.004. EXEMPTIONS
- Sec. 432.005. LICENSE REQUIRED
- Sec. 432.006. LICENSE APPLICATION
- Sec. 432.007. ISSUANCE OF LICENSE
- Sec. 432.008. LICENSE RENEWAL
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- Sec. 432.010. FUND
- Sec. 432.011. MINIMUM STANDARDS
- Sec. 432.012. POWERS OF DEPARTMENT
- Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE
- Sec. 432.014. REINSTATEMENT OF LICENSE
- Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS
- Sec. 432.016. MUNICIPAL REGULATION
- Sec. 432.017. USE OF SALVAGE WAREHOUSE
- Sec. 432.018. CIVIL PENALTY
- Sec. 432.019. CRIMINAL PENALTY

**CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT**

Sec. 432.001. **SHORT TITLE.** This chapter may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act. (V.A.C.S. Art. 4476-5e, Sec. 1.)

Sec. 432.002. **PURPOSE.** The purpose of this chapter is to protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics. (V.A.C.S. Art. 4476-5e, Sec. 2.)

Sec. 432.003. **DEFINITIONS.** In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.
- (4) "Department" means the Texas Department of Health.
- (5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.
- (6) "Distressed merchandise" means any food, drug, device, or cosmetic that:
  - (A) has lost its label or is otherwise unidentified;
  - (B) has been subjected to prolonged or improper storage;
  - (C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation; or
  - (D) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.
- (7) "Drug" means an article or substance, other than a device, that is:
  - (A) recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, the official National Formulary, or a supplement to any of those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.

(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned. (V.A.C.S. Art. 4476-5e, Sec. 4 (part).)

Sec. 432.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who, in the normal course of business, reconditions the items manufactured, distributed, or processed by or for that person and not purchased by that person solely for the purpose of reconditioning and sale;

(2) a common carrier, or the common carrier's agent, who disposes of or otherwise transfers undamaged or distressed food, drugs, devices, or cosmetics to a person who is exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under Chapter 76, Civil Practice and Remedies Code (Good Faith Donor Act), but that does not recondition the food.

(b) In this chapter, a pharmacist licensed under the law of this state is not considered a manufacturer when the pharmacist fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in the pharmacist's professional capacity. (V.A.C.S. Art. 4476-5e, Secs. 4 (part), 7.)

Sec. 432.005. LICENSE REQUIRED. (a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department. (V.A.C.S. Art. 4476-5e, Sec. 6(a).)

**Sec. 432.006. LICENSE APPLICATION.** An applicant for a salvage broker license or salvage operator license must:

- (1) file a license application on a form prescribed by the department;
- (2) pay a nonrefundable license fee to the department; and
- (3) cooperate with the department in any required preclicensing inspections. (V.A.C.S. Art. 4476-5e, Sec. 8(a).)

**Sec. 432.007. ISSUANCE OF LICENSE.** (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by the board.

(b) A license issued under this chapter expires one year after the date of issuance.

(c) A separate license is required for each salvage establishment.

(d) A license may not be transferred from one person to another or from one location to another.

(e) A salvage operator or salvage broker shall display the license in accordance with board rules. (V.A.C.S. Art. 4476-5e, Secs. 6(b), (c), (d); 8(b), (c), (d).)

**Sec. 432.008. LICENSE RENEWAL.** (a) A license holder under this chapter may renew the license by filing with the department, before the expiration date of the current license, a renewal application on a form prescribed by the department, accompanied by a nonrefundable renewal fee.

(b) After an inspection to determine the license holder's compliance with the rules adopted by the board, the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee. (V.A.C.S. Art. 4476-5e, Sec. 9.)

**Sec. 432.009. FEES.** (a) The board shall adopt, charge, and collect fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the rules adopted under this chapter. The board may charge the fees annually.

(b) The board by rule shall set the fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

- (1) review and act on licenses;
- (2) amend and renew licenses;
- (3) inspect establishments operated by license holders; and
- (4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

(c) A nonprofit organization is exempt from the payment of a fee imposed under this chapter. (V.A.C.S. Art. 4476-5e, Secs. 9A, 17.)

**Sec. 432.010. FUND.** A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the food, drug, device, and cosmetic salvage fund. The fund may be used only to implement this chapter. (V.A.C.S. Art. 4476-5e, Sec. 15.)

**Sec. 432.011. MINIMUM STANDARDS.** The board shall adopt rules prescribing minimum standards or related requirements for:

- (1) the operation of salvage establishments and salvage warehouses; and
- (2) qualifications for licenses issued under this chapter. (V.A.C.S. Art. 4476-5e, Sec. 5(a).)

**Sec. 432.012. POWERS OF DEPARTMENT.** The department may:

- (1) enter into contracts or agreements necessary to implement this chapter;
- (2) conduct inspections and secure samples;

(3) establish and maintain educational programs for salvage operators and salvage brokers; and

(4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state. (V.A.C.S. Art. 4476-5e, Sec. 5(b).)

Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke the license of an applicant or license holder who fails to comply with this chapter or the rules adopted under this chapter.

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the board for the emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) govern a hearing before the department for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing. (V.A.C.S. Art. 4476-5e, Sec. 10.)

Sec. 432.014. REINSTATEMENT OF LICENSE. (a) Not later than the 30th day after the date of the denial or emergency suspension, a person whose license application has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating the license.

(b) The department shall perform the reinspection not later than the 10th day after the date of receipt of a written request for reinspection from the applicant or license holder. (V.A.C.S. Art. 4476-5e, Sec. 11.)

Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or otherwise traffic in distressed or salvaged merchandise in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this chapter. (V.A.C.S. Art. 4476-5e, Sec. 12.)

Sec. 432.016. MUNICIPAL REGULATION. A municipality by ordinance may regulate salvage operators, salvage brokers, and salvage establishments. An ordinance may be stricter than the minimum standards established under this chapter or by rules adopted under this chapter, but it may not be less strict. (V.A.C.S. Art. 4476-5e, Sec. 13.)

Sec. 432.017. USE OF SALVAGE WAREHOUSE. A person may not use a salvage warehouse to recondition merchandise or to sell to consumers. (V.A.C.S. Art. 4476-5e, Sec. 4 (part).)

Sec. 432.018. CIVIL PENALTY. If a person violates this chapter or a rule or order adopted or license issued under this chapter, the commissioner may assess a civil penalty against that person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act). (V.A.C.S. Art. 4476-5e, Sec. 18.)

Sec. 432.019. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a salvage establishment or acts as a salvage broker without a license issued under this chapter.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 4476-5e, Sec. 14.)

## CHAPTER 433. TEXAS MEAT AND POULTRY INSPECTION ACT

### SUBCHAPTER A. GENERAL PROVISIONS

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## CHAPTER 433. TEXAS MEAT AND POULTRY INSPECTION ACT

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 433.001. **SHORT TITLE.** This chapter may be cited as the Texas Meat and Poultry Inspection Act. (V.A.C.S. Art. 4476–7, Sec. 411.)

Sec. 433.002. **POLICY.** (a) Meat and meat food products are an important source of the nation's total food supply. It is essential in the public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, unadulterated, and properly marked, labeled, and packaged. Unwholesome, adulterated, or misbranded meat or meat food products:

- (1) injure the public welfare;
- (2) destroy markets for wholesome, unadulterated, and properly labeled and packaged meat and meat food products;
- (3) cause losses to livestock producers and processors of meat and meat food products;
- (4) cause injury to consumers; and
- (5) can be sold at lower prices and compete unfairly with wholesome, unadulterated, and properly labeled and packaged articles, to the detriment of consumers and the public.

(b) Regulation by the commissioner and cooperation by this state and the United States as provided by this chapter are appropriate to protect the health and welfare of consumers and otherwise accomplish the purposes of this chapter. (V.A.C.S. Art. 4476–7, Sec. 2.)

Sec. 433.003. **DEFINITIONS.** In this chapter:

- (1) "Animal food manufacturer" means a person in the business of manufacturing or processing animal food any part of which is derived from a carcass, or a part or product of a carcass, of livestock.
- (2) "Capable of use as human food" means:
  - (A) not naturally inedible by humans; or
  - (B) not denatured or otherwise identified as required by rule of the commissioner to deter its use as human food.
- (3) "Color additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).
- (4) "Commissioner" means the commissioner of health.

(5) "Exotic animal" means a member of a species of game not indigenous to this state, including an axis deer, nilga antelope, red sheep, or other cloven-hooved ruminant animal.

(6) "Food additive" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(7) "Inedible animal product" means a product, other than a meat food product, any part of which is made from a carcass, or a part or product of a carcass, of livestock.

(8) "Interstate commerce" means commerce between this state and:

(A) another state of the United States; or

(B) a foreign country.

(9) "Label" means a display of written, printed, or other graphic matter on the product or the immediate container, other than a package liner, of an article.

(10) "Labeling" means:

(A) a label; or

(B) other written, printed, or graphic material on an article or any container or wrapper of an article, or accompanying an article.

(11) "Livestock" means cattle, sheep, swine, goats, horses, mules, other equines, poultry, domestic rabbits, exotic animals, or domesticated game birds.

(12) "Meat broker" means a person in the business of buying or selling, on commission, carcasses, parts of carcasses, meat, or meat food products of livestock, or otherwise negotiating purchases or sales of those articles other than for the person's own account or as an employee of another person.

(13) "Meat food product" means a product that is capable of use as human food and that is made in whole or part from meat or other portion of the carcass of livestock, except a product that:

(A) contains meat or other portions of the carcass only in a relatively small proportion or that historically has not been considered by consumers as a product of the meat food industry; and

(B) is exempted from the definition of meat food product by the commissioner under conditions that the commissioner prescribes to assure that the meat or other portions of the carcass contained in the product are unadulterated and that the product is not represented as a meat food product.

(14) "Official certificate" means a certificate prescribed by rule of the commissioner for issuance by an inspector or other person performing official functions under this chapter.

(15) "Official marking device" means a device prescribed or authorized by the commissioner for use in applying an official mark.

(16) "Official establishment" means an establishment designated by the commissioner at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under this chapter.

(17) "Official inspection legend" means a symbol prescribed by rule of the commissioner showing that an article was inspected and passed as provided by this chapter.

(18) "Official mark" means the official inspection legend or other symbol prescribed by rule of the commissioner to identify the status of an article or animal under this chapter.

(19) "Pesticide chemical" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(20) "Poultry" means a live or dead domesticated bird.

(21) "Poultry product" means a poultry carcass, part of a poultry carcass, or a product any part of which is made from a poultry carcass or part of a poultry carcass, except a product that:

(A) contains poultry ingredients only in a relatively small proportion or that historically has not been considered by consumers as a product of the poultry food industry; and

(B) is exempted from the definition of poultry product by the commissioner under conditions that the commissioner prescribes to assure that the poultry ingredients in the product are unadulterated and that the product is not represented as a poultry product.

(22) "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, stuffed, or manufactured or processed in any other manner.

(23) "Processing establishment" means a slaughtering, packing, meat-canning, or rendering establishment or a similar establishment.

(24) "Raw agricultural commodity" has the meaning given by the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(25) "Renderer" means a person in the business of rendering carcasses, or parts or products of carcasses, of livestock, other than rendering conducted under inspection under Subchapter B. (V.A.C.S. Art. 4476-7, Sec. 1 (part); New.)

Sec. 433.004. ADULTERATION. A carcass, part of a carcass, meat, or a meat food product is adulterated if:

(1) it bears or contains a poisonous or deleterious substance that may render it injurious to health unless:

(A) the substance is not an added substance; and

(B) the quantity of the substance in or on the article does not ordinarily render it injurious to health;

(2) it bears or contains, because of administration of a substance to a live animal or otherwise, an added poisonous or deleterious substance that the commissioner believes makes the article unfit for human food, other than a:

(A) pesticide chemical in or on a raw agricultural commodity;

(B) food additive; or

(C) color additive;

(3) any part of it is a raw agricultural commodity that bears or contains a pesticide chemical that is unsafe under Section 408, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 346a);

(4) it bears or contains a food additive that is unsafe under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348) or a color additive that is unsafe for purposes of Section 706 of that Act (21 U.S.C. Section 376);

(5) it is not adulterated under Subdivision (3) or (4), but use of the pesticide chemical, food additive, or color additive that the article bears or contains is prohibited by rule of the commissioner in establishments at which inspection is maintained under Subchapter B;

(6) any part of it consists of a filthy, putrid, or decomposed substance or is for another reason unsound, unhealthy, unwholesome, or otherwise unfit for human food;

(7) it is prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;

(8) any part of it is the product of an animal, including an exotic animal, that has died in a manner other than slaughter;

(9) any part of its container is composed of a poisonous or deleterious substance that may render the contents injurious to health;

(10) it is intentionally subjected to radiation, unless the use of the radiation is in conformity with a regulation or exemption under Section 409, Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 348);

(11) any part of a valuable constituent is omitted or abstracted from it, or a substance is substituted for all or part of it;

- (12) damage or inferiority is concealed;
- (13) a substance has been added to or mixed or packed with it in a manner that:
  - (A) increases its bulk or weight;
  - (B) reduces its quality or strength; or
  - (C) makes it appear better or of greater value than it is; or

(14) it is margarine containing animal fat and any part of the raw material used in it consists of a filthy, putrid, or decomposed substance. (V.A.C.S. Art. 4476-7, Sec. 1 (part).)

**Sec. 433.005. MISBRANDING.** (a) A livestock or poultry product is misbranded if:

- (1) any part of its labeling is false or misleading;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food, unless its label bears, in prominent type of uniform size, the word "imitation" immediately followed by the name of the food imitated;
- (4) its container is made, formed, or filled so as to be misleading;
- (5) except as provided by Subsection (b), it does not bear a label showing:
  - (A) the manufacturer's, packer's, or distributor's name and place of business; and
  - (B) an accurate statement of the quantity of the product by weight, measure, or numerical count;
- (6) a word, statement, or other information required by or under the authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling in sufficient terms and with sufficient conspicuousness, compared with other words, statements, designs, or devices in the label or labeling, to make it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by rule of the commissioner under Section 433.043 unless:
  - (A) it conforms to the definition and standard; or
  - (B) its label bears:
    - (i) the name of the food specified in the definition and standard; and
    - (ii) to the extent required by rule of the commissioner, the common names of optional ingredients present in the food, other than spices, flavoring, and coloring;
- (8) it purports to be or is represented as a food for which a standard of fill of container has been prescribed by rule of the commissioner under Section 433.043 and the food does not meet the standard of fill of container, unless its label bears, in the manner and form prescribed by rule of the commissioner, a statement that it does not meet the standard;
- (9) except as provided by Subsection (c), it does not purport to be or is not represented as a food for which a standard of identity or composition has been prescribed by rule of the commissioner unless its label bears:
  - (A) any common or usual name of the food; and
  - (B) if it is fabricated from two or more ingredients, the common or usual name of each ingredient;
- (10) it purports to be or is represented for special dietary uses and its label does not bear the information concerning its vitamin, mineral, and other dietary properties that the commissioner, after consultation with the United States Secretary of Agriculture, has determined and prescribed by rule to be necessary to fully inform purchasers of its value for those uses;
- (11) it bears or contains artificial flavoring, artificial coloring, or a chemical preservative unless it bears labeling stating that fact, except as otherwise prescribed by rule of

the commissioner for situations in which compliance with this subdivision is impracticable; or

(12) it does not bear on itself or its container, as prescribed by rule of the commissioner:

(A) the inspection legend and establishment number of the establishment in which the product was prepared; and

(B) notwithstanding any other provision of this section, other information the commissioner by rule requires to assure that the product will not have false or misleading labeling and that the public will be informed of the manner of handling required to keep the product in wholesome condition.

(b) The commissioner may adopt rules:

(1) exempting from Subsection (a)(5) livestock products not in containers; and

(2) providing reasonable variations from Subsection (a)(5)(B) and exempting from that subsection small packages of livestock products or poultry products.

(c) For products subject to Subsection (a)(9), the commissioner may authorize the designation of spices, flavorings, and colorings without naming them. The commissioner may adopt rules establishing exemptions from Subsection (a)(9)(B) to the extent that compliance with that subsection is impracticable or would result in deception or unfair competition. (V.A.C.S. Art. 4476-7, Sec. 1 (part).)

Sec. 433.006. **PERSONAL USE EXEMPTION.** The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of carcasses, parts of carcasses, meat, and meat food products at establishments conducting those operations do not apply to the slaughtering of animals by a person on the person's own premises, or the preparation and transportation in intrastate commerce of those articles by the person exclusively for use by the person or the person's household, nonpaying guests, or employees. The adulteration and misbranding provisions of this chapter, other than the requirement of an inspection legend, apply to those articles. (V.A.C.S. Art. 4476-7, Sec. 15.)

Sec. 433.007. **CONSTRUCTION WITH OTHER LAW.** (a) This chapter prevails over any other law, including Chapter 431 (Texas Food, Drug, and Cosmetic Act), to the extent of any conflict.

(b) This chapter applies to a person, establishment, animal, or article regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.) only to the extent provided by those Acts. (V.A.C.S. Art. 4476-7, Secs. 409, 413.)

Sec. 433.008. **RULES.** (a) The commissioner shall adopt rules necessary for the efficient execution of this chapter.

(b) The commissioner shall adopt and use federal rules, regulations, and procedures for meat and poultry inspection, as applicable. (V.A.C.S. Art. 4476-7, Sec. 13 (part).)

Sec. 433.009. **FEEES.** The Texas Department of Health may collect fees for overtime and special services rendered to establishments, and may collect a fee for services required to be performed under this chapter relating to the inspection of animals, birds, or products that are not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). The Texas Board of Health by rule shall set the inspection fee in an amount sufficient to recover the department's costs of providing those services. (V.A.C.S. Art. 4477-6, Secs. 410(a) (part), (b) (part).)

[Sections 433.010-433.020 reserved for expansion]

#### SUBCHAPTER B. INSPECTION AND OTHER REGULATION

Sec. 433.021. **INSPECTION BEFORE SLAUGHTER.** (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the commissioner, through livestock inspectors, shall examine and inspect each livestock animal before it is allowed

to enter a processing establishment in this state in which slaughtering and preparation of meat and meat food products of livestock are conducted solely for intrastate commerce.

(b) Any livestock animal found on inspection to show symptoms of disease shall be set apart and slaughtered separately from other livestock. The carcass of the animal shall be carefully examined and inspected as provided by rule of the commissioner. (V.A.C.S. Art. 4476-7, Sec. 3.)

**Sec. 433.022. INSPECTION OF CARCASSES.** (a) To prevent the use in intrastate commerce of adulterated meat and meat food products, the commissioner, through livestock inspectors, shall inspect each livestock carcass or part of a carcass capable of use as human food that is to be prepared at a processing establishment in this state in which those articles are prepared solely for intrastate commerce. If a carcass or part of a carcass is brought into the processing establishment, the inspection shall be made before a carcass or part of a carcass is allowed to enter a department in which it is to be treated and prepared for meat food products. The commissioner shall also inspect products that have left a processing establishment and are returned to a processing establishment in which inspection is maintained.

(b) The inspector shall mark, stamp, tag, or label a carcass or part of a carcass found on inspection to be unadulterated as "inspected and passed," and one found adulterated as "inspected and condemned."

(c) If an inspector considers a subsequent inspection necessary, the inspector may reinspect any carcass or part of a carcass and condemn it if it has become adulterated.

(d) The processing establishment, in the presence of an inspector, shall destroy for food purposes each condemned carcass or part of a carcass. If the establishment fails to destroy a condemned carcass or part of a carcass, the commissioner may remove the inspectors from the establishment.

(e) The commissioner may limit the entry of carcasses, parts of carcasses, meat, or meat food products into an establishment in which inspection under this chapter is maintained, under conditions the commissioner prescribes to assure that entry of the article into the establishment is consistent with the purposes of this chapter. (V.A.C.S. Art. 4476-7, Secs. 4, 5.)

**Sec. 433.023. INVESTIGATION OF DISEASE FINDINGS; QUARANTINE.** (a) The commissioner may investigate a disease finding by a livestock inspector if the commissioner determines that the investigation is in the best interest of public health.

(b) If a disease adverse to the public health is found under this chapter, the commissioner may quarantine the premises where an animal is located that is afflicted with any stage of a disease that may be transmitted to man or other animals. A quarantined animal may be removed from a quarantined area only on permission from and under supervision by the commissioner. (V.A.C.S. Art. 4476-7, Sec. 4a.)

**Sec. 433.024. INSPECTION OF PROCESSING ESTABLISHMENTS.** (a) The commissioner, through sanitation experts and other competent inspectors, shall inspect each processing establishment in which livestock is slaughtered and meat and meat food products of the livestock are prepared solely for intrastate commerce as necessary to obtain information about the establishment's sanitary conditions.

(b) The commissioner shall adopt rules governing sanitation maintenance in a processing establishment.

(c) If sanitary conditions of a processing establishment render meat or meat food products adulterated, the commissioner shall prohibit the meat or meat food products from being labeled, marked, stamped, or tagged as "Texas inspected and passed." (V.A.C.S. Art. 4476-7, Sec. 8.)

**Sec. 433.025. INSPECTION OF MEAT FOOD PRODUCTS.** (a) To prevent the use in intrastate commerce of adulterated meat food products, the commissioner, through inspectors, shall examine and inspect all meat food products prepared in a processing establishment solely for intrastate commerce. To make the examination and inspection, an inspector shall be given access at all times to each part of the establishment, regardless of whether the establishment is being operated.

(b) The inspector shall mark, stamp, tag, or label products found unadulterated as "Texas inspected and passed" and those found adulterated as "Texas inspected and condemned."

(c) The establishment shall, in the manner provided for condemned livestock or carcasses, destroy for food purposes each condemned meat food product. If the establishment does not destroy a condemned meat food product, the commissioner may remove inspectors from the establishment. (V.A.C.S. Art. 4476-7, Sec. 6.)

Sec. 433.026. NIGHT INSPECTION; HOURS OF OPERATION. (a) The commissioner shall provide for inspection at night of livestock slaughtered at night and food products prepared at night for the purposes of intrastate commerce.

(b) If the commissioner determines that a person's operating hours are capricious or unnecessarily difficult, the commissioner may set the person's time and duration of operation. (V.A.C.S. Art. 4476-7, Sec. 9.)

Sec. 433.027. INSPECTORS. (a) The commissioner shall appoint the inspectors of livestock that is subject to inspection under this chapter, and of carcasses, parts of carcasses, meat, meat food products, and sanitary conditions of establishments in which meat and meat food products are prepared. An inspector is an employee of the Texas Department of Health and is under supervision of the chief officer in charge of inspection.

(b) The commissioner shall designate at least one state inspector for each state representative district.

(c) The chief officer in charge of inspection is a person designated by the commissioner as responsible for animal health as it relates to public health. The chief officer in charge of inspection must be licensed to practice veterinary medicine in this state or must be eligible for such a license when employed and must obtain the license not later than two years after the date of employment. The chief officer in charge of inspection is directly responsible to the commissioner.

(d) An inspector shall perform the duties provided by this chapter and rules of the commissioner. An inspection or examination must be performed as provided by rules of the commissioner.

(e) An inspector may not stamp, mark, tag, or label a carcass, part of a carcass, or a meat food product unless it has been inspected and found unadulterated. (V.A.C.S. Art. 4476-7, Secs. 1 (part), 13 (part), 408.)

Sec. 433.028. REFUSAL TO INSPECT. (a) The commissioner may withdraw or refuse to provide inspection service under this subchapter from an establishment for the period the commissioner determines necessary to carry out the purposes of this chapter if the commissioner determines after opportunity for hearing that the applicant for or recipient of the service is unfit to engage in a business requiring inspection under this subchapter because the applicant or recipient, or a person responsibly connected with the applicant or recipient, has been convicted in a federal or state court of a felony or more than one violation of another law based on:

(1) acquiring, handling, or distributing unwholesome, mislabeled, or deceptively packaged food; or

(2) fraud in connection with a transaction in food.

(b) The commissioner's determination and order under this section is final unless, not later than the 30th day after the effective date of the order, the affected applicant or recipient files an application for judicial review in the appropriate court as provided by Section 433.082. Judicial review of the order is on the record from which the determination and order was made.

(c) This section does not affect the provisions of this subchapter relating to withdrawal of inspection services from establishments failing to maintain sanitary conditions or to destroy condemned carcasses, parts of carcasses, meat, or meat food products.

(d) For the purposes of this section, a person is responsibly connected with the business if the person is a partner, officer, director, holder or owner of 10 percent or more of the business's voting stock, or managerial or executive employee. (V.A.C.S. Art. 4476-7, Sec. 401.)



**Sec. 433.029. ARTICLES NOT INTENDED FOR HUMAN CONSUMPTION.** (a) Under this subchapter, the commissioner may not inspect an establishment for the slaughter of livestock or the preparation of carcasses, parts of carcasses, or products of livestock if the articles are not intended for use as human food. Before offered for sale or transportation in intrastate commerce, those articles, unless naturally inedible by humans, shall be denatured or identified as provided by rule of the commissioner to deter their use for human food.

(b) A person may not buy, sell, transport, offer for sale or transportation, or receive for transportation in intrastate commerce a carcass, part of a carcass, meat, or a meat food product that is not intended for use as human food unless the article is naturally inedible by humans, denatured, or identified as required by rule of the commissioner. (V.A.C.S. Art. 4476-7, Sec. 201.)

**Sec. 433.030. DETENTION.** (a) A representative of the commissioner may detain a carcass, part of a carcass, meat, a meat food product of livestock, a product exempted from the definition of meat food product, or a dead, dying, disabled, or diseased livestock animal if the representative finds the article on premises where it is held for purposes of intrastate commerce, or during or after distribution in intrastate commerce, and there is reason to believe that the article:

- (1) is adulterated or misbranded and is capable of use as human food; or
- (2) has not been inspected as required by, or has been or is intended to be distributed in violation of:
  - (A) this subchapter;
  - (B) the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.);
  - (C) the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.); or
  - (D) the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) An article may be detained for not more than 20 days and only pending action under Section 433.031 or notification of a federal authority having jurisdiction over the article.

(c) A person may not move a detained article from the place where it is detained until the article is released by the commissioner's representative.

(d) The commissioner's representative may require that each official mark be removed from the article before it is released, unless the commissioner determines that the article is eligible to bear the official mark. (V.A.C.S. Art. 4476-7, Sec. 402.)

**Sec. 433.031. SEIZURE.** (a) A carcass, part of a carcass, meat, or a meat food product of livestock, or a dead, dying, disabled, or diseased livestock animal, that is being transported in intrastate commerce or held for sale after transportation in intrastate commerce may be proceeded against, seized, and condemned if the article:

- (1) is or has been prepared, sold, transported, or otherwise distributed or offered or received for distribution in violation of this chapter;
- (2) is capable of use as human food and is adulterated or misbranded; or
- (3) is otherwise in violation of this chapter.

(b) An action against an article under this section must be on a complaint in the proper court in the county in which the article is found. To the extent possible, the law governing admiralty cases applies to a case under this section, except that:

- (1) either party may demand trial by jury of an issue of fact in the case; and
- (2) the proceedings must be brought by and in the name of this state.

(c) After entry of the decree, a condemned article shall be destroyed or sold as the court directs. If the article is sold, the proceeds, minus court costs, court fees, and storage and other proper expenses, shall be deposited in the state treasury. An article may not be sold in violation of this chapter, the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), or the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). On execution and delivery of a good and sufficient bond conditioned that the article will not be disposed of in violation of this chapter or federal law, the court may direct the article

to be delivered to its owner by the commissioner's representative subject to supervision as necessary to ensure compliance with applicable laws.

(d) If a decree of condemnation is entered against the article and it is released under bond or destroyed, the court shall award court costs, court fees, and storage and other proper expenses against any person intervening as claimant of the article. (V.A.C.S. Art. 4476-7, Sec. 403(a).)

Sec. 433.032. STORAGE AND HANDLING. (a) The commissioner may adopt rules prescribing conditions under which carcasses, parts of carcasses, meat, and meat food products of livestock must be stored and handled by a person in the business of buying, selling, freezing, storing, or transporting those articles in or for intrastate commerce if the commissioner considers the rules necessary to prevent adulterated or misbranded articles from being delivered to a consumer.

(b) A person may not violate a rule adopted under this section. (V.A.C.S. Art. 4476-7, Sec. 16.)

Sec. 433.033. EQUINE PRODUCTS. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by rule of the commissioner, to show the kind of animal from which the article was derived. The commissioner may require an establishment at which inspection is maintained under this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared. (V.A.C.S. Art. 4476-7, Sec. 12.)

Sec. 433.034. RECORDS. (a) A person engaged for intrastate commerce in any of the following business activities shall keep records of each of the person's business transactions:

- (1) slaughtering livestock;
- (2) preparing, freezing, packaging, or labeling a livestock carcass or a part or product of a livestock carcass for use as human food or animal food;
- (3) transporting, storing, buying, or selling, as a meat broker, wholesaler, or otherwise, a livestock carcass or a part or product of a livestock carcass;
- (4) rendering; or
- (5) buying, selling, or transporting dead, dying, disabled, or diseased livestock, or a part of a carcass of a livestock animal that died in a manner other than slaughter.

(b) On notice by the commissioner's representative, a person required to keep records shall at all reasonable times give the commissioner's representative and any representative of the United States Secretary of Agriculture accompanying the commissioner's representative:

- (1) access to the person's place of business; and
- (2) an opportunity to:
  - (A) examine the facilities, inventory, and records;
  - (B) copy the records required by this section; and
  - (C) take a reasonable sample of the inventory, on payment of the fair market value of the sample.

(c) The person shall maintain a record required by this section for the period the commissioner by rule prescribes. (V.A.C.S. Art. 4476-7, Secs. 202(a), (b).)

Sec. 433.035. INSPECTION AND OTHER REGULATION OF EXOTIC ANIMALS IN INTERSTATE COMMERCE. (a) The commissioner has the same rights of examination, inspection, condemnation, and detention of live exotic animals and carcasses, parts of carcasses, meat, and meat food products of exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to exotic animals slaughtered and prepared for shipment in intrastate commerce.

(b) The commissioner has the same rights of inspection of establishments handling exotic animals slaughtered and prepared for shipment in interstate commerce as the commissioner has with respect to establishments handling exotic animals slaughtered and prepared for intrastate commerce.

(c) The record-keeping requirements of Section 433.034 that apply to persons slaughtering, preparing, buying, selling, transporting, storing, or rendering in intrastate commerce apply to persons performing similar functions with exotic animals in interstate commerce.

(d) A rulemaking power of the commissioner relating to animals in intrastate commerce applies to exotic animals in interstate commerce. (V.A.C.S. Art. 4476-7, Secs. 2A, 202(c).)

[Sections 433.036-433.040 reserved for expansion]

#### **SUBCHAPTER C. LABELING AND OTHER STANDARDS**

**Sec. 433.041. LABELING PASSED PRODUCTS.** (a) When meat or a meat food product prepared for intrastate commerce that has been inspected as provided by this chapter and marked "Texas inspected and passed" is placed or packed in a container or covering in an establishment in which inspection is performed under this chapter, the person preparing the product shall attach a label to the container or covering stating that the contents have been "Texas inspected and passed" under this chapter. The inspector shall supervise the attachment of the label and the sealing or enclosing of the meat or meat food product in the container or covering.

(b) When an inspected carcass, part of a carcass, meat, or a meat food product is found to be unadulterated and leaves the establishment, it must bear legible information on itself or its container, as the commissioner requires, that is necessary to prevent it from being misbranded. (V.A.C.S. Art. 4476-7, Secs. 7(a), (b).)

**Sec. 433.042. SALE OF MISLABELED ARTICLES PROHIBITED.** A person may not sell an article subject to this chapter or offer the article for sale, in intrastate commerce, under a false or misleading name or other marking or in a container of a misleading form or size. An established trade name, other marking and labeling, or a container that is not false or misleading and that is approved by the commissioner is permitted. (V.A.C.S. Art. 4476-7, Sec. 7(d).)

**Sec. 433.043. STANDARDS OF LABELING, COMPOSITION, AND FILL.** (a) If the commissioner determines that standards are necessary to protect the public, the commissioner may prescribe:

(1) the style and type size that must be used for material required to be incorporated in labeling to avoid false or misleading labeling of an article subject to this subchapter or Subchapter B; and

(2) subject to Subsection (b), a definition or standard of identity or composition or a standard of fill of container for an article subject to this subchapter.

(b) A standard prescribed under Subsection (a)(2) must be consistent with standards established under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.), the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.), and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). To avoid inconsistency, the commissioner shall consult with the United States Secretary of Agriculture before prescribing the standard. (V.A.C.S. Art. 4476-7, Sec. 7(c).)

**Sec. 433.044. ORDER TO CEASE FALSE OR MISLEADING PRACTICE.** (a) If the commissioner has reason to believe that a marking or labeling or the size or form of a container in use or proposed for use in relation to an article subject to this subchapter is false or misleading, the commissioner may prohibit the use until the marking, labeling, or container is modified in the manner the commissioner prescribes to prevent it from being false or misleading.

(b) The person using or proposing to use the marking, labeling, or container may request a hearing by the commissioner. The commissioner may prohibit the use pending a final determination by the commissioner. (V.A.C.S. Art. 4476-7, Sec. 7(e) (part).)

Sec. 433.045. PROTECTION OF OFFICIAL DEVICE, MARK, AND CERTIFICATE. A person may not:

(1) cast, print, lithograph, or make in any other manner, except as authorized by the commissioner:

(A) a device containing or label bearing an official mark or a simulation of an official mark; or

(B) a form of official certificate or simulation of an official certificate;

(2) forge an official device, mark, or certificate;

(3) without the commissioner's authorization, use, alter, detach, deface, or destroy an official device, mark, or certificate or use a simulation of an official device, mark, or certificate;

(4) detach, deface, destroy, or fail to use an official device, mark, or certificate, in violation of a rule of the commissioner;

(5) knowingly possess, without promptly notifying the commissioner or the commissioner's representative:

(A) an official device;

(B) a counterfeit, simulated, forged, or improperly altered official certificate; or

(C) a device, label, animal carcass, or part or product of an animal carcass, bearing a counterfeit, simulated, forged, or improperly altered official mark;

(6) knowingly make a false statement in a shipper's certificate or other certificate provided for by rule of the commissioner; or

(7) knowingly represent that an article has been inspected and passed, when it has not, or is exempted, when it is not. (V.A.C.S. Art. 4476-7, Sec. 11.)

[Sections 433.046-433.050 reserved for expansion]

#### SUBCHAPTER D. MISCELLANEOUS PROHIBITIONS

Sec. 433.051. SLAUGHTER OR PREPARATION NOT IN COMPLIANCE WITH CHAPTER. A person, at an establishment preparing articles only for intrastate commerce, may not slaughter a livestock animal or prepare a carcass, part of a carcass, meat, or a meat food product of a livestock animal, capable of use as human food, except in compliance with this chapter. (V.A.C.S. Art. 4476-7, Sec. 10 (part).)

Sec. 433.052. SALE, RECEIPT, OR TRANSPORTATION OF ARTICLES NOT IN COMPLIANCE WITH CHAPTER. A person may not:

(1) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, livestock or a carcass, part of a carcass, meat, or a meat food product of livestock that is:

(A) capable of use as human food and is adulterated or misbranded when sold, offered, transported, or received for transportation; or

(B) required to be inspected by this chapter but has not been inspected and passed; or

(2) perform an act with respect to livestock or a carcass, part of a carcass, meat, or a meat food product of livestock, while the article is being transported in intrastate commerce or held for sale after transportation in intrastate commerce, that causes or is intended to cause the article to be adulterated or misbranded. (V.A.C.S. Art. 4476-7, Sec. 10 (part).)

Sec. 433.053. SALE, RECEIPT, OR TRANSPORTATION OF POULTRY. A person may not sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce or from an official establishment, slaughtered poultry from which blood, feathers, feet, head, or viscera have not been removed as provided by rule of the commissioner, except as authorized by rule of the commissioner. (V.A.C.S. Art. 4476-7, Sec. 10 (part).)

**Sec. 433.054. DEAD, DYING, DISABLED, AND DISEASED ANIMALS; ANIMALS DYING IN MANNER OTHER THAN SLAUGHTER.** (a) If registration is required by rule of the commissioner, a person may not engage in any of the following businesses, in or for intrastate commerce, unless the person has registered with the commissioner:

- (1) meat brokering or rendering;
- (2) manufacturing animal food;
- (3) wholesaling or warehousing for the public livestock or any part of a carcass of livestock, regardless of whether it is intended for human food; or
- (4) buying, selling, or transporting dead, dying, disabled, or diseased livestock or part of a carcass of livestock.

(b) A registration must include the person's name, each of the person's places of business, and each trade name under which the person does business.

(c) A person may not engage in the business of selling, buying, or transporting in intrastate commerce dead, dying, disabled, or diseased livestock or part of the carcass of livestock that died otherwise than by slaughter unless the transaction or transportation complies with rules adopted by the commissioner to assure that the animals or unwholesome parts or products of the animals are not used for human food. (V.A.C.S. Art. 4476-7, Secs. 203 (part), 204 (part).)

**Sec. 433.055. MISCELLANEOUS PROHIBITIONS APPLICABLE TO EXOTIC ANIMALS IN INTERSTATE COMMERCE.** The prohibitions of Sections 433.051-433.054 that apply to intrastate commerce also apply to exotic animals in interstate commerce. (V.A.C.S. Art. 4476-7, Secs. 10 (part), 203 (part), 204 (part).)

**Sec. 433.056. INEDIBLE ANIMAL PRODUCTS.** A person in the business of buying, selling, or transporting, in intrastate commerce, may not offer an inedible animal product for sale unless:

- (1) the sale is for further sterilization processing; or
- (2) the product has been processed in a manner that prevents the survival of disease-producing organisms or deleterious substances in the processed material. (V.A.C.S. Art. 4476-7, Sec. 205.)

[Sections 433.057-433.070 reserved for expansion]

#### **SUBCHAPTER E. COOPERATION WITH FEDERAL GOVERNMENT**

**Sec. 433.071. RESPONSIBLE AGENCY.** (a) The Texas Department of Health is the state agency responsible for cooperating with the United States Secretary of Agriculture under Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454).

(b) The department shall cooperate with the secretary of agriculture in developing and administering the meat and poultry inspection program of this state under this chapter in a manner that will achieve the purposes of this chapter and federal law and that will ensure that the requirements will be at least equal to those imposed under Titles I and IV, Federal Meat Inspection Act (21 U.S.C. Sections 601 et seq. and 671 et seq.), and Sections 1-4, 6-10, and 12-22, Federal Poultry Products Inspection Act (21 U.S.C. Sections 451-453, 455-459, and 461-467b), not later than the dates prescribed by federal law. (V.A.C.S. Art. 4476-7, Sec. 301(a).)

**Sec. 433.072. ADVISORY COMMITTEES.** The commissioner may recommend to the United States Secretary of Agriculture state officials or employees for appointment to advisory committees provided for by Section 301, Federal Meat Inspection Act (21 U.S.C. Section 661), and Section 5, Federal Poultry Products Inspection Act (21 U.S.C. Section 454). The commissioner shall serve as the representative of the governor for consultation with the secretary of agriculture under those Acts unless the governor selects another representative. (V.A.C.S. Art. 4476-7, Sec. 301(c).)

**Sec. 433.073. TECHNICAL AND LABORATORY ASSISTANCE AND TRAINING PROGRAM.** The commissioner may accept from the United States Secretary of Agriculture:

- (1) advisory assistance in planning and otherwise developing the state program;
- (2) technical and laboratory assistance;
- (3) training, including necessary curricular and instructional materials and equipment; and
- (4) financial and other aid for administration of the program. (V.A.C.S. Art. 4476-7, Sec. 301(b) (part).)

Sec. 433.074. FINANCING. The commissioner may spend state funds appropriated for administration of this chapter to pay 50 percent of the estimated total cost of cooperation with the federal government under this subchapter, and all of the costs of performing services in relation to the inspection of animals or products not regulated under the Federal Meat Inspection Act (21 U.S.C. Section 601 et seq.) or the Federal Poultry Products Inspection Act (21 U.S.C. Section 451 et seq.). (V.A.C.S. Art. 4476-7, Sec. 301(b) (part).)

[Sections 433.075-433.080 reserved for expansion]

#### SUBCHAPTER F. ENFORCEMENT

Sec. 433.081. GENERAL CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this chapter for which this chapter does not provide another criminal penalty.

(b) Except as provided by Subsection (c), an offense under this section is punishable by a fine of not more than \$1,000, imprisonment for not more than one year, or both.

(c) If an offense under this section involves intent to defraud or a distribution or attempted distribution of an adulterated article, except adulteration described by Section 433.004(11), (12), or (13), the offense is punishable by a fine of not more than \$10,000, imprisonment for not more than three years, or both.

(d) A person does not commit an offense under this section by receiving for transportation an article in violation of this chapter if the receipt is in good faith and if the person furnishes, on request of a representative of the commission:

- (1) the name and address of the person from whom the article is received; and
- (2) any document pertaining to the delivery of the article.

(e) This chapter does not require the commissioner to report for prosecution, or for institution of complaint or injunction proceedings, a minor violation of this chapter if the commissioner believes that the public interest will be adequately served by a suitable written warning notice. (V.A.C.S. Art. 4476-7, Sec. 406.)

Sec. 433.082. JURISDICTION FOR VIOLATION. The district court has jurisdiction of:

- (1) an action to enforce and to prevent and restrain a violation of this chapter; and
- (2) any other case arising under this chapter. (V.A.C.S. Art. 4476-7, Sec. 404.)

Sec. 433.083. INVESTIGATION BY COMMISSIONER. The commissioner may investigate and gather and compile information concerning the organization, business, conduct, practices, and management of a person engaged in intrastate commerce and the person's relation to other persons. (V.A.C.S. Art. 4476-7, Sec. 407(a) (part).)

Sec. 433.084. EVIDENCE AND TESTIMONY. (a) For the purposes of this chapter, the commissioner at all reasonable times shall be given access to documentary evidence of a person being investigated or proceeded against to examine or copy the evidence. The commissioner by subpoena may require the attendance and testimony of a witness and the production of documentary evidence relating to a matter under investigation, at a designated place of hearing in a county in which the witness resides, is employed, or has a place of business.

(b) The commissioner may sign subpoenas, administer oaths and affirmations, examine witnesses, and receive evidence. On disobedience of a subpoena, the commissioner may request the district court to require attendance and testimony of a witness and the

production of documentary evidence, and the district court having jurisdiction over the inquiry may order the compliance. Failure to obey the court's order is punishable as contempt. (V.A.C.S. Art. 4476-7, Sec. 407(b) (part).)

Sec. 433.085. **REPORT TO COMMISSIONER.** The commissioner, by general or special order, may require a person engaged in intrastate commerce to file with the commissioner an annual report, special report, or both, or answers in writing to specific questions furnishing the commissioner information that the commissioner requires concerning the person's organization, business, conduct, practices, management, and relation to other persons filing written answers and reports. The commissioner may prescribe the form of the report or answers, require the report or answers to be given under oath, and prescribe a reasonable deadline for filing the report or answers, subject to the granting of additional time by the commissioner. (V.A.C.S. Art. 4476-7, Sec. 407(a) (part).)

Sec. 433.086. **MANDAMUS TO COMPEL COMPLIANCE.** On application of the attorney general at the request of the commissioner, the district court may issue a writ of mandamus ordering a person to comply with this chapter or an order of the commissioner under this chapter. (V.A.C.S. Art. 4476-7, Sec. 407(b) (part).)

Sec. 433.087. **DEPOSITIONS.** (a) The commissioner may order testimony to be taken before a person designated by the commissioner and having power to administer oaths at any stage of a proceeding or investigation under this chapter. A person may be compelled to appear and depose or produce documentary evidence at a deposition in the same manner as a witness may be compelled to appear and testify and produce documentary evidence before the commissioner under this chapter.

(b) The person taking the deposition shall transcribe or supervise the transcription of the testimony. The transcript must be signed by the person deposed. (V.A.C.S. Art. 4476-7, Sec. 407(b) (part).)

Sec. 433.088. **COMPENSATION OF WITNESS OR REPORTER.** A witness summoned before the commissioner is entitled to the same fees and mileage paid a witness in a state court. A witness whose deposition is taken and the person taking the deposition are each entitled to the same fees paid for similar services in a state court. (V.A.C.S. Art. 4476-7, Sec. 407(b) (part).)

Sec. 433.089. **IMMUNITY.** (a) A person is not excused from attending and testifying or producing documentary evidence before the commissioner or in obedience to the commissioner's subpoena, whether signed by the commissioner or the commissioner's delegate, or in a cause or proceeding based on or growing out of an alleged violation of this chapter, on the ground that the required testimony or evidence may tend to incriminate the person or subject the person to penalty or forfeiture.

(b) A person may not be prosecuted or subjected to a penalty or forfeiture for or because of a transaction or matter concerning which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination.

(c) The person testifying under this section is not exempt from prosecution and punishment for perjury committed in that testimony. (V.A.C.S. Art. 4476-7, Sec. 407(b) (part).)

Sec. 433.090. **CONTEMPT.** (a) A person commits an offense if the person neglects or refuses to attend and testify or answer a lawful inquiry or to produce documentary evidence, if the person has the power to do so, in obedience to a subpoena or lawful requirement of the commissioner.

(b) An offense under this section is punishable by a fine of not less than \$1,000 or more than \$5,000, imprisonment for not more than one year, or both. (V.A.C.S. Art. 4476-7, Sec. 407(c) (part).)

Sec. 433.091. **FALSE REPORT; FAILURE TO REPORT; CRIMINAL PENALTY.** (a) A person commits an offense if the person intentionally:

(1) makes or causes to be made a false entry in an account, record, or memorandum kept by a person subject to this chapter;

(2) neglects or fails to make or cause to be made full entries in an account, record, or memorandum kept by a person subject to this chapter of all facts and transactions pertaining to the person's business;

(3) removes from the jurisdiction of this state or mutilates, alters, or otherwise falsifies documentary evidence of a person subject to this chapter; or

(4) refuses to submit to the commissioner or to the commissioner's authorized agent, for inspection and copying, documentary evidence in the person's possession or control of a person subject to this chapter.

(b) An offense under this section is punishable by a fine of not less than \$1,000 or more than \$5,000, imprisonment for not more than three years, or both. (V.A.C.S. Art. 4476-7, Sec. 407(c) (part).)

Sec. 433.092. **FAILURE TO REPORT; CIVIL PENALTY.** (a) If a person required by this chapter to file an annual or special report does not file the report before the deadline for filing set by the commissioner and the failure continues for 30 days after notice of the default, the person forfeits to the state \$100 for each day the failure continues.

(b) An amount due under this section is payable to the state treasury and is recoverable in a civil suit in the name of the state brought in the district court of the county in which the person's principal office is located or in which the person does business.

(c) Each district attorney, under the direction of the attorney general, shall prosecute for the recovery of an amount due under this section. (V.A.C.S. Art. 4476-7, Sec. 401(c) (part).)

Sec. 433.093. **UNLAWFUL DISCLOSURE; CRIMINAL PENALTY.** (a) A state officer or employee commits an offense if the officer or employee makes public information obtained by the commissioner without the approval of the commissioner.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$5,000, imprisonment for not more than one year, or both. (V.A.C.S. Art. 4476-7, Sec. 407(c) (part).)

#### CHAPTER 434. PUBLIC HEALTH PROVISIONS RELATING TO PRODUCTION OF BAKED GOODS

##### SUBCHAPTER A. BAKERIES

Sec. 434.001. **DEFINITION**

Sec. 434.002. **BAKERY REQUIREMENTS**

Sec. 434.003. **SANITARY REQUIREMENTS**

Sec. 434.004. **WHOLESOME INGREDIENTS REQUIRED**

Sec. 434.005. **REQUIREMENTS FOR TRANSPORTATION OF BAKERY PRODUCTS**

Sec. 434.006. **STORAGE RECEPTACLE REQUIREMENTS**

Sec. 434.007. **WEIGHT STANDARDS FOR BREAD LOAVES**

Sec. 434.008. **CRIMINAL PENALTY**

[Sections 434.009-434.020 reserved for expansion]

##### SUBCHAPTER B. ADULTERATED INGREDIENTS

Sec. 434.021. **BAKING POWDER**

Sec. 434.022. **SELF-RISING FLOUR**

#### CHAPTER 434. PUBLIC HEALTH PROVISIONS RELATING TO PRODUCTION OF BAKED GOODS

##### SUBCHAPTER A. BAKERIES

Sec. 434.001. **DEFINITION.** In this subchapter "bakery" means a business producing, preparing, storing, or displaying bakery products intended for sale for human consumption. (V.A.C.S. Art. 4476-1a, Rule 1 (part).)

Sec. 434.002. **BAKERY REQUIREMENTS.** (a) A building used or occupied as a bakery shall be clean and properly lighted, drained, and ventilated.



(b) A bakery shall have adequate plumbing and drainage facilities, including suitable wash sinks and restroom facilities. Restroom facilities shall be separate from the rooms in which the bakery products are produced or handled. Each wash sink area and restroom facility shall be clean, sanitary, well lit, and ventilated.

(c) The floors, walls, and ceilings of a room in which dough is mixed or handled, pastry is prepared for baking, or bakery products or the ingredients of those products are otherwise handled or stored shall be clean, wholesome, and sanitary. Each opening into the room, including a window or door, shall be properly screened or otherwise protected to exclude flies.

(d) A showcase, shelf, or other place from which bakery products are sold shall at all times be clean, wholesome, covered, properly ventilated, and protected from dust and flies.

(e) A workroom may not be used for purposes other than those directly connected with the preparation, baking, storage, or handling of food. A workroom may not be used as a washing, sleeping, or living room and shall at all times be kept separate and closed from living and sleeping rooms.

(f) Each bakery shall provide, separate from the workrooms, a dressing room for the changing and hanging of wearing apparel. Each dressing room shall be kept clean at all times. (V.A.C.S. Art. 4476-1a, Rules 1 (part), 3 (part).)

**Sec. 434.003. SANITARY REQUIREMENTS.** (a) A person may not sit or lie on any table, bench, trough, or shelf intended for dough or bakery products.

(b) Animals or fowl may not be kept or allowed in any bakery or other place where bakery products are produced or stored.

(c) A person engaged in the preparation or handling of bakery products shall wash the person's arms and hands thoroughly before beginning the preparation, mixing, or handling of ingredients used in baking. A bakery shall provide sufficient soap, washbasins, and clean towels for that purpose.

(d) A person may not use tobacco in any form in any room in which a bakery product is manufactured, wrapped, or prepared for sale.

(e) A person with a communicable disease may not work in a bakery, handle any product in the bakery, or deliver a product from the bakery. (V.A.C.S. Art. 4476-1a, Rule 2.)

**Sec. 434.004. WHOLESOME INGREDIENTS REQUIRED.** (a) Materials used in the production or preparation of bakery products shall be stored, handled, and maintained in a manner that protects the materials from spoiling and contamination. Materials may not be used if spoiled, contaminated, or otherwise likely to make the bakery product unwholesome or unfit as food.

(b) The ingredients used in the production of bakery products and the sale or offering for sale of those products shall comply with the laws relating to the adulteration and misbranding of food. Ingredients may not be used that may make the bakery product injurious to health. (V.A.C.S. Art. 4476-1a, Rule 4.)

**Sec. 434.005. REQUIREMENTS FOR TRANSPORTATION OF BAKERY PRODUCTS.** A vehicle, box, basket, or other receptacle in which bakery products are transported shall at all times be kept clean and free from dust, flies, or other contaminants. (V.A.C.S. Art. 4476-1a, Rule 3 (part).)

**Sec. 434.006. STORAGE RECEPTACLE REQUIREMENTS.** (a) A box or other receptacle for the storage or receipt of bakery products shall be:

- (1) constructed and placed to be free from contamination from streets, alleys, and sidewalks;
- (2) raised at least 10 inches above the level of the street or sidewalk; and
- (3) clean and sanitary.

(b) Bread may not be placed in a storage box with other food except other bakery products.

(c) A storage box shall be equipped with a private lock and shall be kept locked except when opened to receive or remove bakery products or when being cleaned. (V.A.C.S. Art. 4476-1a, Rule 3 (part).)

Sec. 434.007. **WEIGHT STANDARDS FOR BREAD LOAVES.** (a) Loaves of bread made by persons in the business of wholesaling and retailing bread must comply with the weight standards in this section.

(b) The standard weights for a loaf of bread are:

- (1) one pound;
- (2) 1½ pounds; or
- (3) any other multiple of one pound.

(c) This section does not prohibit the sale of bread slices in properly labeled packages weighing eight ounces or less.

(d) Variations in the weight standard may not exceed one ounce a pound within 24 hours after baking.

(e) This section does not affect the authority of the Department of Agriculture under Subchapter B, Chapter 13, Agriculture Code. (V.A.C.S. Art. 4476-1a, Rule 5.)

Sec. 434.008. **CRIMINAL PENALTY.** (a) A person who violates this subchapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than \$25 or more than \$200. (V.A.C.S. Art. 4476-1a (part).)

[Sections 434.009–434.020 reserved for expansion]

#### SUBCHAPTER B. ADULTERATED INGREDIENTS

Sec. 434.021. **BAKING POWDER.** Baking powder that contains less than 10 percent of available carbon dioxide is adulterated. (V.A.C.S. Art. 4475 (part).)

Sec. 434.022. **SELF-RISING FLOUR.** (a) In this section, “self-rising flour” means a combination of flour, salt, and chemical leavening ingredients. The flour must be at least of the “straight” grade, and the chemical leavening ingredients must be bicarbonate of soda and:

- (1) calcium acid phosphate;
- (2) sodium aluminum sulphate;
- (3) cream of tartar;
- (4) tartaric acid; or
- (5) a combination of those ingredients.

(b) A self-rising flour or other compound by that name must produce when sold not less than one-half percent by weight of available carbon dioxide gas and may not contain more than 3½ percent chemical leavening ingredients.

(c) A self-rising flour or other compound by that name that does not meet the requirements of Subsection (b) is adulterated. (V.A.C.S. Art. 4476 (part).)

#### CHAPTER 435. DAIRY PRODUCTS

##### SUBCHAPTER A. MILK GRADING

Sec. 435.001. **DEFINITIONS**

Sec. 435.002. **GRADING OF MILK AND MILK PRODUCTS**

Sec. 435.003. **GRADE “A” MILK SPECIFICATIONS**

Sec. 435.004. **INSPECTION OF MILK AND MILK PRODUCTS BY BOARD**

Sec. 435.005. **INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES**

Sec. 435.006. **PERMIT TO USE GRADE “A” LABEL**

Sec. 435.007. **USE OF MISLEADING LABEL**

Sec. 435.008. **MILK FOR RESALE**

- Sec. 435.009. FEES
- Sec. 435.010. RECORDS
- Sec. 435.011. HEARING ON APPLICATION OF RULE OR DENIAL OF PERMIT
- Sec. 435.012. REVOCATION OF PERMIT
- Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED
- Sec. 435.014. CRIMINAL PENALTY

[Sections 435.015–435.020 reserved for expansion]

**SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK**

- Sec. 435.021. ADULTERATED MILK
- Sec. 435.022. IMPORTED MILK
- Sec. 435.023. SKIM MILK

**CHAPTER 435. DAIRY PRODUCTS**

**SUBCHAPTER A. MILK GRADING**

Sec. 435.001. DEFINITIONS. In this subchapter: (1) "Board" means the Texas Board of Health.

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

(3) "Person" means an individual, plant operator, partnership, corporation, company, firm, trustee, or association. (V.A.C.S. Art. 165-3, Sec. 1 (part); New.)

Sec. 435.002. GRADING OF MILK AND MILK PRODUCTS. (a) The board may supervise and regulate the grading and labeling of milk and milk products according to the standards, specifications, and requirements it adopts for each grade and in conformity with this subchapter.

(b) The board shall mail a printed copy of each rule or specification it adopts to each county and municipal health authority. (V.A.C.S. Art. 165-3, Secs. 2A (part), 6(a) (part).)

Sec. 435.003. GRADE "A" MILK SPECIFICATIONS. (a) The board by rule may:

(1) define what constitutes Grade "A" raw milk, Grade "A" raw milk products, Grade "A" pasteurized milk, and Grade "A" pasteurized milk products; and

(2) provide specifications for the production and handling of milk and milk products listed in Subdivision (1) according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.

(b) The rules must be based on and consistent with the most recent federal definitions, specifications, rules, and regulations relating to milk and milk products. (V.A.C.S. Art. 165-3, Sec. 2(a).)

Sec. 435.004. INSPECTION OF MILK AND MILK PRODUCTS BY BOARD. (a) The board or its representative shall sample, test, or inspect Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization delivered to a milk plant or other place of delivery.

(b) Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization that come from beyond the limits of state inspection shall be sampled, tested, or inspected to determine if department standards and requirements for milk and milk products are met.

(c) Sampling, testing, and inspection of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk for pasteurization shall include, in addition to any other tests that may be required, tests for:

- (1) plate count or direct microscopic count;
- (2) antibiotics;
- (3) sediments;
- (4) phosphatase; and

(5) water and any elements foreign to the natural contents of Grade "A" pasteurized milk and milk products and Grade "A" raw milk and milk products for pasteurization.

(d) In this section, "milk plant" means a place where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution. (V.A.C.S. Art. 165-3, Secs. 1 (part), 7A.)

Sec. 435.005. INSPECTION OF MILK AND MILK PRODUCTS BY OTHER ENTITIES. (a) The board may contract with a county or municipality to act as the agent of the board to inspect milk and milk products and to perform other regulatory functions necessary to enforce this subchapter.

(b) A municipality, county, or other political subdivision may test and inspect milk or milk products. In the absence of a contract under Subsection (a), the municipality, county, or other political subdivision must pay the cost of the test or inspection. (V.A.C.S. Art. 165-3, Secs. 2(c), (d).)

Sec. 435.006. PERMIT TO USE GRADE "A" LABEL. (a) A person who desires to use a Grade "A" label in representing, publishing, or advertising milk or milk products offered for sale or to be sold in this state must apply to the board or the board's representative for a permit.

(b) After receiving the application, the board or the board's representative may determine and award the grade of milk or milk products offered for sale by each applicant according to the specifications for grades established under this chapter.

(c) The board shall maintain a list of the names of all applicants to whom the board has awarded permission to use a Grade "A" label and remove from the list the name of a person whose permit is revoked. (V.A.C.S. Art. 165-3, Sec. 3.)

Sec. 435.007. USE OF MISLEADING LABEL. (a) A person may not use a label, device, or design marked Grade "A," or any other grade, statement, device, or design related to the safety, sanitary quality, or food value, on milk or milk products produced, offered for sale, or sold in this state that is misleading or does not conform to the requirements of this subchapter.

(b) A person may not represent, publish, label, or advertise milk or milk products as being Grade "A" unless the milk or milk products are:

(1) produced or processed by a person having a permit to use a Grade "A" label as provided by this subchapter; and

(2) produced, treated, and handled in accordance with the specifications and requirements adopted by the board for Grade "A" milk and milk products.

(c) A person may not sell to a consumer milk or a milk product labeled Grade "A" that has not been produced or processed by a person who has a Grade "A" permit under this subchapter. (V.A.C.S. Art. 165-3, Secs. 4(a), (b), (c).)

Sec. 435.008. MILK FOR RESALE. A person is not required to hold a permit to resell or offer for resale in the same container any milk or milk products that are represented or advertised as a grade of milk or milk products and that are purchased from a person holding a permit authorizing that representation or advertisement. (V.A.C.S. Art. 165-3, Sec. 5.)

Sec. 435.009. FEES. (a) A political subdivision or agency of this state, other than the department, may not impose a fee on milk or a milk product, or on a person for the movement, distribution, or sale of milk or a milk product.

(b) The department shall impose the following fees only:

(1) a permit fee of \$50 a year for a producer dairy farm;

(2) a permit fee of \$200 a year for a processing or bottling plant;

(3) a permit fee of \$200 a year for a receiving and transfer station;

(4) a permit fee of \$100 a year for a milk transport tanker;

(5) a fee of one cent for each 100 pounds of milk or milk products processed and distributed in this state by a processing or bottling plant in this state, or processed by an out-of-state processing or bottling plant and sold in this state; and

(6) a fee for the actual cost of analyzing samples of milk or milk products for an out-of-state processing or bottling plant.

(c) The board shall adopt rules to assess and collect the fees imposed by Subsections (b)(5) and (6) monthly, quarterly, semiannually, or annually according to amounts due by the plant. Monthly fees shall be assessed and collected in accordance with board rules.

(d) Annual permits issued under this chapter must be renewed not later than September 1 of each year.

(e) The department shall prorate fees paid for permits issued under this chapter after the beginning of a permit year.

(f) In this section:

(1) "Dairy farm" means a place where one or more cows or goats are kept and from which milk or milk products are provided, sold, or offered for sale to a milk plant or transfer station.

(2) "Transfer station" means a place where milk or milk products are transferred directly from one transport tank to another. (V.A.C.S. Art. 165-3, Secs. 1 (part), 2(b), (e), (f) (part).)

Sec. 435.010. RECORDS. The board by rule shall establish minimum standards for recordkeeping by persons required to pay a fee under this subchapter. Those persons shall make the records available to the department on request. (V.A.C.S. Art. 165-3, Sec. 2(f) (part).)

Sec. 435.011. HEARING ON APPLICATION OF RULE OR DENIAL OF PERMIT. The board shall establish a procedure by which a person aggrieved by the application of a board rule or the denial of a permit may receive a hearing on that action under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 165-3, Sec. 6(b).)

Sec. 435.012. REVOCATION OF PERMIT. (a) The department may revoke a permit if the permit holder fails to make timely payment of the monthly fees required under Section 435.009.

(b) The board and its representative may revoke and regrade permits if on inspection the board or its representative finds that the use of the grade label does not conform to the specifications or requirements adopted by the board under this chapter. (V.A.C.S. Art. 165-3, Secs. 2(g) (part), 6(a) (part).)

Sec. 435.013. MUNICIPAL REGULATION AUTHORIZED. A municipality by ordinance may allow only pasteurized milk and pasteurized milk products to be sold at retail in that municipality. (V.A.C.S. Art. 165-3, Sec. 4(d).)

Sec. 435.014. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$25 or more than \$200.

(c) Each violation constitutes a separate offense. (V.A.C.S. Art. 165-3, Sec. 8.)

[Sections 435.015-435.020 reserved for expansion]

#### **SUBCHAPTER B. SPECIAL REQUIREMENTS; SALE OF MILK**

Sec. 435.021. ADULTERATED MILK. A person, including the person's agent, may not sell or offer for sale or exchange:

- (1) unwholesome, watered, adulterated, or impure milk;
- (2) swill milk;
- (3) colostrum;
- (4) milk from cows fed garbage, swill, or other putrid or harmful substances;
- (5) milk from sick or diseased cows; or

(6) milk from cows kept in connection with a family in which a family member has an infectious disease. (V.A.C.S. Art. 4474 (part).)

Sec. 435.022. IMPORTED MILK. (a) In this section:

(1) "Political subdivision" means a county or municipality or a school, junior college, water, hospital, reclamation, or other special-purpose district.

(2) "State agency" means an agency, department, board, or commission of the state or a state eleemosynary, educational, rehabilitative, correctional, or custodial facility.

(b) A state agency or political subdivision may not purchase milk, cream, butter, or cheese, or a product consisting largely of one or more of those items, that has been imported from outside the United States.

(c) This section does not apply to the purchase of milk powder if domestic milk powder is not readily available in the normal course of business. (V.A.C.S. Art. 4476-6b.)

Sec. 435.023. SKIM MILK. Skim milk may be sold only from a container on which "skim milk" is distinctly printed in letters not less than one inch long. (V.A.C.S. Art. 4474 (part).)

#### CHAPTER 436. AQUATIC LIFE

##### SUBCHAPTER A. TAKING AQUATIC LIFE FROM PROHIBITED AREAS

Sec. 436.001. DEFINITIONS

Sec. 436.002. APPLICABILITY OF SUBCHAPTER

Sec. 436.003. DECLARATION OF PROHIBITED AREAS

Sec. 436.004. TAKING, OFFERING, OR SELLING AQUATIC LIFE FROM PROHIBITED AREAS; CRIMINAL PENALTY

Sec. 436.005. DISPOSITION OF AQUATIC LIFE

[Sections 436.006-436.010 reserved for expansion]

##### SUBCHAPTER B. SHELLFISH

Sec. 436.011. DEFINITIONS

Sec. 436.012. DECLARATION OF POLLUTED AREAS

Sec. 436.013. RULES

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Sec. 436.016. PERFORMANCE BOND

Sec. 436.017. PURIFICATION OF SHELLFISH

Sec. 436.018. PROHIBITION AGAINST TAKING SHELLFISH FROM POLLUTED AREA

Sec. 436.019. TRANSPLANTING SHELLFISH

Sec. 436.020. PROHIBITION AGAINST UNLAWFULLY OPERATING SHELLFISH PLANT

Sec. 436.021. PROHIBITION AGAINST SALE OF IMPROPERLY HANDLED SHELLFISH

Sec. 436.022. PROHIBITION AGAINST SALE OF SHELLFISH FROM IMPROPER FACILITIES

Sec. 436.023. PROHIBITION AGAINST SALE OF SHELLFISH WITHOUT CERTIFICATE NUMBER

Sec. 436.024. CRIMINAL PENALTY

Sec. 436.025. DISPOSITION OF UNFIT OR UNLAWFUL SHELLFISH

Sec. 436.026. ENFORCEMENT

[Sections 436.027-436.040 reserved for expansion]

##### SUBCHAPTER C. CRABMEAT PRODUCTION

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Sec. 436.050. APPEAL OF DEPARTMENT DECISION  
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Sec. 436.052. CRIMINAL PENALTY

**CHAPTER 436. AQUATIC LIFE**

**SUBCHAPTER A. TAKING AQUATIC LIFE FROM PROHIBITED AREAS**

Sec. 436.001. DEFINITIONS. In this subchapter:

- (1) "Aquatic life" means animals and plants that live in water.
- (2) "Board" means the Texas Board of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Department" means the Texas Department of Health.
- (5) "Public water" means all bodies of water that are the property of the state under Section 1.011, Parks and Wildlife Code.

(6) "Sale" means the transfer of ownership or the right of possession of an item to a person for consideration and includes barter. (V.A.C.S. Art. 4477-1c, Secs. 1 (part), 2(a).)

Sec. 436.002. APPLICABILITY OF SUBCHAPTER. This subchapter does not apply to oysters, clams, and mussels, or to the taking, selling, or offering or holding for sale of oysters, clams, and mussels from a polluted area to which Subchapter B applies. (V.A.C.S. Art. 4477-1c, Secs. 1(1) (part), 2(b).)

Sec. 436.003. DECLARATION OF PROHIBITED AREAS. (a) The commissioner by order shall declare any public water to be a prohibited area if:

- (1) the commissioner finds, according to a sanitary, chemical, or bacteriological survey, that the area contains aquatic life that is unfit for human consumption; or
  - (2) aquatic life from a prohibited area may have been transferred to that public water.
- (b) The commissioner's order closes the prohibited area to the taking of aquatic life for the period the commissioner considers advisable.
- (c) The commissioner shall modify or revoke an order in accordance with the results of a sanitary, chemical, or bacteriological survey conducted by the department. The commissioner shall file the order in the department's office and shall furnish without charge a copy of the order describing prohibited areas to any interested person.
- (d) The commissioner shall conspicuously outline prohibited areas on maps and shall furnish the maps without charge to any interested person. The failure of a person to avail himself of that information does not relieve that person from liability under this subchapter. (V.A.C.S. Art. 4477-1c, Sec. 3.)

Sec. 436.004. TAKING, OFFERING, OR SELLING AQUATIC LIFE FROM PROHIBITED AREAS; CRIMINAL PENALTY. (a) A person commits an offense if the person takes, sells, or offers or holds for sale or human consumption any aquatic life from an area declared by the commissioner to be a prohibited area.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$500.

(c) Each day of a continuing violation constitutes a separate offense.

(d) Commissioned law enforcement officers of the Parks and Wildlife Department shall enforce this section. (V.A.C.S. Art. 4477-1c, Secs. 4, 6.)

Sec. 436.005. DISPOSITION OF AQUATIC LIFE. (a) Aquatic life taken from a prohibited area and offered or held for sale or human consumption is subject to immediate condemnation, seizure, and confiscation by the commissioner or the commissioner's agents.

(b) The aquatic life shall be held or destroyed or otherwise disposed of as directed by the commissioner. (V.A.C.S. Art. 4477-1c, Sec. 5.)

[Sections 436.006–436.010 reserved for expansion]

#### SUBCHAPTER B. SHELLFISH

Sec. 436.011. DEFINITIONS. In this subchapter:

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

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

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

(4) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.

(5) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell. (Parks and Wildlife Code, Sec. 76.201.)

Sec. 436.012. DECLARATION OF POLLUTED AREAS. (a) The commissioner by order shall declare to be polluted any area within the jurisdiction of the state that the commissioner finds is a polluted area.

(b) The commissioner shall close to the taking of shellfish for the period the commissioner considers advisable any water to which shellfish from a polluted area may have been transferred.

(c) The commissioner shall modify or revoke an order in accordance with the results of sanitary and bacteriological surveys conducted by the department. The commissioner shall file the order in the department's office and shall furnish without charge a copy of the order describing polluted areas to any interested person.

(d) The commissioner shall conspicuously outline polluted areas on maps, and shall furnish the maps without charge to any interested person. The failure of a person to avail himself of that information does not relieve that person from liability under this subchapter. (Parks and Wildlife Code, Sec. 76.202.)

Sec. 436.013. RULES. (a) The board shall adopt rules establishing specifications for shellfish plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.

(b) The board may adopt rules necessary for the efficient enforcement of this subchapter.

(c) A rule adopted under this subchapter takes effect three months after the date on which the rule is adopted.

(d) The board shall furnish without charge printed copies of the rules to any interested person on request. (Parks and Wildlife Code, Secs. 76.203(a), (c), (d), (e).)

Sec. 436.014. COMPLIANCE WITH RULES. (a) The commissioner shall allow a shellfish plant a reasonable time to comply with a rule after its adoption, but that time may not exceed six months after the date on which the rule is adopted unless an extension is granted.

(b) The commissioner may grant an extension to a plant on a showing that more time is reasonably required for compliance. (Parks and Wildlife Code, Sec. 76.212.)

Sec. 436.015. INSPECTION OF SHELLFISH PLANT. (a) The commissioner or the commissioner's agent shall inspect each shellfish plant and the practices followed in handling and packaging shellfish. The commissioner shall issue a certificate attesting to



compliance with the rules adopted under this subchapter to each operator who the commissioner finds is in compliance with the rules.

(b) The commissioner or the commissioner's agent may reinspect a plant at any time and shall revoke the operator's certificate if:

(1) the operator refuses to allow an inspection of the plant or free access to the plant at a reasonable hour; or

(2) the commissioner finds that the plant is not being operated in compliance with the rules adopted under this subchapter. (Parks and Wildlife Code, Sec. 76.204.)

**Sec. 436.016. PERFORMANCE BOND.** (a) The commissioner may require a person holding a shellfish plant certificate to post and maintain with the commissioner a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner, if reasonably necessary to ensure that the certificate holder will comply with the requirements imposed under this subchapter.

(b) If the certificate holder fails to comply with the requirements of this subchapter, the certificate holder or the certificate holder's surety forfeits to the commissioner an amount not to exceed \$1,000. (Parks and Wildlife Code, Sec. 76.215.)

**Sec. 436.017. PURIFICATION OF SHELLFISH.** (a) The commissioner may allow purification by artificial means of shellfish taken from polluted areas, subject to the rules adopted by the board and under the supervision the commissioner considers necessary to protect public health.

(b) A shellfish plant operator may employ off-duty peace officers to monitor the taking of shellfish from polluted areas as provided by the rules adopted to implement Subsection (a). In this subsection, "peace officer" includes those persons listed in Article 2.12, Code of Criminal Procedure. (Parks and Wildlife Code, Secs. 76.207, 76.213.)

**Sec. 436.018. PROHIBITION AGAINST TAKING SHELLFISH FROM POLLUTED AREA.** A person may not take, sell, or offer or hold for sale any shellfish from a polluted area without complying with the rules adopted by the board to ensure that the shellfish have been purified. (Parks and Wildlife Code, Sec. 76.205.)

**Sec. 436.019. TRANSPLANTING SHELLFISH.** (a) Section 436.018 does not prohibit the transplanting of shellfish from polluted water if permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by that department.

(b) The Parks and Wildlife Department shall furnish a copy of the transplant permit to the commissioner before transplanting activities begin. (Parks and Wildlife Code, Sec. 76.206.)

**Sec. 436.020. PROHIBITION AGAINST UNLAWFULLY OPERATING SHELLFISH PLANT.** A person may not operate a shellfish plant for the handling and packaging of shellfish without a certificate issued by the commissioner for each plant or place of business. (Parks and Wildlife Code, Sec. 76.210.)

**Sec. 436.021. PROHIBITION AGAINST SALE OF IMPROPERLY HANDLED SHELLFISH.** A person may not sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with the specifications adopted by the board. (Parks and Wildlife Code, Sec. 76.208.)

**Sec. 436.022. PROHIBITION AGAINST SALE OF SHELLFISH FROM IMPROPER FACILITIES.** A person may not sell or offer or hold for sale any shellfish from facilities for the packaging and handling of shellfish that do not comply with the specifications adopted by the board. (Parks and Wildlife Code, Sec. 76.209.)

**Sec. 436.023. PROHIBITION AGAINST SALE OF SHELLFISH WITHOUT CERTIFICATE NUMBER.** (a) A person may not sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry issued by the Food and Drug Administration.

(b) This section does not apply to the sale for on-premise consumption of shellfish removed from a certified container. (Parks and Wildlife Code, Sec. 76.211.)

Sec. 436.024. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this subchapter or a rule adopted under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000, confinement in jail for not more than 180 days, or both.

(c) Each day of a continuing violation constitutes a separate offense. (Parks and Wildlife Code, Secs. 76.203(f), 76.216.)

Sec. 436.025. DISPOSITION OF UNFIT OR UNLAWFUL SHELLFISH. (a) Shellfish held or offered for sale at retail or for human consumption are subject to immediate condemnation, seizure, and confiscation by the commissioner or the commissioner's agents if the shellfish:

(1) have not been handled and packaged in accordance with specifications adopted by the board;

(2) are not in a certified container; or

(3) are otherwise found by the commissioner to be unfit for human consumption.

(b) The shellfish shall be held or destroyed or disposed of as directed by the commissioner. (Parks and Wildlife Code, Sec. 76.214.)

Sec. 436.026. ENFORCEMENT. (a) The commissioner and the commissioner's representatives, with assistance from officers of the Parks and Wildlife Department as determined by the executive director of that department, shall enforce this subchapter, other than Section 436.018.

(b) Commissioned officers of the Parks and Wildlife Department shall enforce Section 436.018. (Parks and Wildlife Code, Sec. 76.213.)

[Sections 436.027–436.040 reserved for expansion]

#### SUBCHAPTER C. CRABMEAT PRODUCTION

Sec. 436.041. DEFINITIONS. In this subchapter:

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

(2) "Crabmeat" means the edible meat of steamed or cooked crabs that has not been processed, other than by picking, packing, and chilling.

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

(4) "Pasteurization plant" means a plant in which crabmeat is heat-treated, without complete sterilization, to improve the keeping qualities of the meat.

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

(6) "Picking plant" means a place in which crabs are steamed or cooked and edible meat from the crabs is picked. (V.A.C.S. Art. 4476–8, Sec. 1 (part).)

Sec. 436.042. LICENSE REQUIRED. (a) A person may not operate a picking or pasteurization plant unless the person has a license for that plant.

(b) A person must submit a license application to the department for each plant.

(c) A separate license is required for each plant. (V.A.C.S. Art. 4476–8, Secs. 4 (part), 5(b) (part), 6 (part).)

Sec. 436.043. INSPECTIONS. When an application has been properly filed with the department, the department shall inspect all properties identified in the application, all buildings and equipment on the property, and the operating procedures under which the product is processed. (V.A.C.S. Art. 4476–8, Sec. 6 (part).)

Sec. 436.044. LICENSE ISSUANCE. (a) The department shall issue a serially numbered license to a person who operates a plant that conforms to the requirements of this subchapter and board rules.

(b) A license is nontransferable and expires August 31 of each year.

(c) A person who operates a picking or pasteurization plant must annually apply for a new license for each plant. (V.A.C.S. Art. 4476-8, Secs. 3, 4 (part), 6 (part).)

Sec. 436.045. **RULES.** The board shall adopt rules for the picking, pasteurizing, storing, transporting, and selling of crabmeat to ensure a wholesome product. (V.A.C.S. Art. 4476-8, Sec. 2 (part).)

Sec. 436.046. **COMPLIANCE WITH BOARD RULES.** Crabmeat from this state or from plants outside this state must comply with the board rules as provided by this subchapter. The department may seize and condemn crabmeat that does not comply with board rules. (V.A.C.S. Art. 4476-8, Sec. 12.)

Sec. 436.047. **ADULTERATED OR SUBSTANDARD CRABMEAT.** (a) A person may not process, transport, store for sale, possess with the intent to sell, offer or expose for sale, or sell any crabmeat for human consumption that is adulterated or that is packed or pasteurized in violation of this subchapter or a rule adopted under this subchapter.

(b) The possession of adulterated crabmeat by a person licensed under this subchapter is presumptive evidence of intent to sell the crabmeat for human consumption.

(c) Crabmeat is adulterated if:

(1) any substance has been substituted in whole or in part for the crabmeat;

(2) the crabmeat consists in whole or in part of any filthy, putrid, or decomposed substance, or the crabmeat is for any other reason unsound, unwholesome, unhealthful, or otherwise unfit for human consumption;

(3) the crabmeat has been prepared, packed, or held under unsanitary conditions that, in the department's judgment, may have contaminated the crabmeat with filth or may have made it injurious to health; or

(4) the crabmeat container is composed, in whole or in part, of any poisonous or deleterious substance that may make the contents injurious to health. (V.A.C.S. Art. 4476-8, Secs. 9, 10.)

Sec. 436.048. **LABELING OF CRABMEAT CONTAINERS.** (a) A container of crabmeat must be conspicuously labeled in a manner approved by the department. Stamping with ink is not permitted.

(b) The label must contain:

(1) the proper designation of the content of the container;

(2) the name and address of the picking plant in which the product was produced or the name and address of the distributor;

(3) the presence of any chemical, if any is allowed;

(4) the license number of the picking plant preceded by the state abbreviation plainly and conspicuously marked on the body of the container;

(5) the net weight of the contents; and

(6) any other information pertinent to the public health required by the department.

(c) If a label contains the name and address of the distributor, the name and address must be:

(1) preceded by the words "packed for" or "distributed by"; and

(2) followed by the word "distributor."

(d) A label may not bear a false or misleading statement.

(e) In this section, "label" means a display of written, printed, or other graphic matter on the immediate container, excluding package liners, of an article. (V.A.C.S. Art. 4476-8, Secs. 1 (part), 11.)

Sec. 436.049. **REVOCATION OF LICENSE.** (a) If the department finds that a provision of this subchapter has been violated by a license holder or that a violation has occurred or is occurring on any premises for which a license is issued, the department shall notify the license holder in writing of the nature of the violation and direct that the violation cease.

(b) The department may revoke the license of a license holder who refuses or fails to comply in the time and manner set forth in the notice. (V.A.C.S. Art. 4476-8, Sec. 7 (part).)

Sec. 436.050. APPEAL OF DEPARTMENT DECISION. An applicant for a license or a license holder who is aggrieved by a decision of the department in failing to issue or in revoking a license may appeal that decision to a district court in:

(1) the county in which the property identified in the application or license is located; or

(2) Travis County. (V.A.C.S. Art. 4476-8, Sec. 8.)

Sec. 436.051. PROSECUTION; INJUNCTION. (a) At the request of the health authority, the district or county attorney shall prosecute a person charged with a violation of this subchapter or a rule issued under this subchapter.

(b) In an appropriate proceeding, a district court may prohibit a repetition or continuance of an offense. At the request of the health authority, the district or county attorney shall bring a suit to enjoin a violation of this subchapter or a rule issued under this subchapter. (V.A.C.S. Art. 4476-8, Sec. 13(b).)

Sec. 436.052. CRIMINAL PENALTY. (a) A person commits an offense if the person violates a provision of this subchapter or a rule adopted under this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$25 or more than \$200.

(c) Each violation constitutes a separate offense. (V.A.C.S. Art. 4476-8, Sec. 13(a).)

#### CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

Sec. 437.001. DEFINITIONS

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT

Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT

Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT

Sec. 437.005. PUBLIC HEARING

Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED

Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT

Sec. 437.008. PERMIT RENEWAL

Sec. 437.009. INSPECTIONS

Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER

Sec. 437.012. FEES

Sec. 437.013. AUDITED STATEMENT

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT

Sec. 437.015. INJUNCTION

Sec. 437.016. CRIMINAL PENALTY

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE

#### CHAPTER 437. REGULATION OF FOOD SERVICE ESTABLISHMENTS, RETAIL FOOD STORES, MOBILE FOOD UNITS, AND ROADSIDE FOOD VENDORS

Sec. 437.001. DEFINITIONS. In this chapter, "food," "food service establishment," "retail food store," "mobile food unit," and "roadside food vendor" have the meanings assigned to those terms by rules adopted by the Texas Board of Health under Chapter 431 (Texas Food, Drug, and Cosmetic Act). (V.A.C.S. Art. 4476-5g, Sec. 1.)

Sec. 437.002. ENFORCEMENT OF STATE LAW BY COUNTY OR PUBLIC HEALTH DISTRICT. (a) A county or public health district may enforce state law and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors.

(b) This chapter does not authorize a county or public health district to adopt orders establishing standards for the operation of food service establishments, retail food stores, mobile food units, or roadside food vendors. (V.A.C.S. Art. 4476-5g, Secs. 2(a), (b).)

**Sec. 437.003. COUNTY AUTHORITY TO REQUIRE PERMIT.** To enforce state law and rules adopted under state law, the commissioners court of a county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the county. (V.A.C.S. Art. 4476-5g, Sec. 3(a).)

**Sec. 437.004. PUBLIC HEALTH DISTRICT AUTHORITY TO REQUIRE PERMIT.** (a) A public health district that is established by at least one county and one or more municipalities in the county by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in the district to obtain a permit from the district.

(b) If the public health district has an administrative board, the administrative board must adopt the order in accordance with its procedures.

(c) If the district does not have an administrative board, the governing body of each member of the district must adopt the order. The order is effective throughout the public health district on the 30th day after the first date on which the governing bodies of all members have adopted the order.

(d) This chapter does not restrict the authority of a municipality that is a member of a public health district to adopt ordinances or administer a permit system concerning food service establishments, retail food stores, mobile food units, and roadside food vendors. (V.A.C.S. Art. 4476-5g, Secs. 2(c); 3(b).)

**Sec. 437.005. PUBLIC HEARING.** (a) A commissioners court, governing body, or administrative board, as applicable, may adopt an order under Section 437.003 or 437.004 only after conducting a public hearing on the proposed order.

(b) At least two weeks' public notice must be given before a public hearing may be held.

(c) The notice must be published in a newspaper of general circulation in the county or public health district on three consecutive days and be printed in 10 point bold-faced type. (V.A.C.S. Art. 4476-5g, Sec. 3(c).)

**Sec. 437.006. MORE THAN ONE PERMIT PROHIBITED.** A food service establishment or retail food store may not be required under this chapter to obtain more than one permit for each location. (V.A.C.S. Art. 4476-5g, Sec. 3(d).)

**Sec. 437.007. NONPROFIT ORGANIZATIONS EXEMPT.** A county or public health district may not require a nonprofit organization to obtain a permit. (V.A.C.S. Art. 4476-5g, Sec. 4.)

**Sec. 437.008. PERMIT RENEWAL.** A county or public health district may require the annual renewal of a permit. (V.A.C.S. Art. 4476-5g, Sec. 8.)

**Sec. 437.009. INSPECTIONS.** Authorized agents or employees of a county or public health district may enter the premises of a food service establishment, retail food store, mobile food unit, or roadside food vendor under the county's or district's jurisdiction during normal operating hours to conduct inspections to determine compliance with state law, rules adopted under state law, and orders adopted by the county or district. (V.A.C.S. Art. 4476-5g, Sec. 10.)

**Sec. 437.010. SUBMISSION OF PLANS AND SUBSEQUENT INSPECTION.** (a) Before issuing a permit, a county or public health district may require an applicant to provide plans of the food preparation, storage, and sales areas to determine if the applicant is in compliance with state law and rules adopted under state law governing the applicant.

(b) The county or public health district may deny the permit after initial inspection only if the applicant is not in compliance with the plans approved by the county or district.

(c) If the county or public health district finds on inspection that an applicant is not in compliance with state law and rules adopted under state law, the county or public health district may reinspect the applicant at a later date to determine if the applicant is in compliance. (V.A.C.S. Art. 4476-5g, Sec. 6.)

Sec. 437.011. INSPECTION OF EXISTING ENTITIES ON ADOPTION OF ORDER. (a) When a county or public health district requires a permit, the county or district shall make an initial inspection of the facilities of any existing entity applying for the permit.

(b) An existing entity is entitled to continue to operate pending its initial inspection.

(c) If the county or public health district determines on inspection that an entity does not meet the standards established by state law or rules adopted under state law, the county or district may start revocation proceedings as if the entity had obtained a permit. (V.A.C.S. Art. 4476-5g, Sec. 7.)

Sec. 437.012. FEES. (a) A county or public health district may require the payment of a fee for issuing or renewing a permit.

(b) The fee for issuing or renewing a permit may not exceed \$150 or the highest fee charged by a municipality in the county or public health district, whichever amount is less.

(c) Fees collected by a county under this chapter shall be deposited to the credit of a special fund of the county. Fees collected by a public health district under this chapter shall be deposited to the credit of a special fund created by the cooperative agreement under which the district operates.

(d) Fees deposited as provided by this section may be spent only for conducting inspections required by this chapter and issuing permits. (V.A.C.S. Art. 4476-5g, Secs. 9(a)-(c).)

Sec. 437.013. AUDITED STATEMENT. (a) A county or public health district shall file an audited statement with the Texas Department of Health on or before January 15 of each year.

(b) The statement must include the receipts of funds collected under this chapter, all expenditures of funds, and fund balances.

(c) A county or public health district that fails to timely file the statement may not require the payment of a fee for issuing or renewing a permit until the statement is filed. (V.A.C.S. Art. 4476-5g, Secs. 9(d), (e).)

Sec. 437.014. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A county or public health district may refuse to issue a permit or may suspend or revoke a permit if the county or district finds that the food service establishment, retail food store, mobile food unit, or roadside food vendor is not in compliance with state law, rules adopted under state law, or orders adopted by the county or district.

(b) A permit may be denied, suspended, or revoked only after notice and an opportunity for a hearing.

(c) A county or public health district that requires a permit to operate a food service establishment, retail food store, mobile food unit, or roadside food vendor shall adopt procedures for denying, suspending, or revoking a permit that afford due process to the applicant or permit holder. (V.A.C.S. Art. 4476-5g, Sec. 11.)

Sec. 437.015. INJUNCTION. A city attorney, county attorney, or district attorney may sue in district court to enjoin a food service establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit if a permit is required. (V.A.C.S. Art. 4476-5g, Sec. 12.)

Sec. 437.016. CRIMINAL PENALTY. (a) A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by the county or public health district in which the entity is operating.

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

(c) Each day on which a violation occurs constitutes a separate offense. (V.A.C.S. Art. 4476-5g, Sec. 13.)

Sec. 437.017. CONFLICT WITH ALCOHOLIC BEVERAGE CODE. The Alcoholic Beverage Code and rules adopted by the Alcoholic Beverage Commission control to the extent of a conflict between this chapter or an order adopted under this chapter. (V.A.C.S. Art. 4476-5g, Sec. 5 (part).)

**CHAPTER 438. PUBLIC HEALTH MEASURES RELATING TO FOOD**

**SUBCHAPTER A. UNPACKAGED FOODS**

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[Sections 438.007–438.010 reserved for expansion]

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[Sections 438.038–438.040 reserved for expansion]

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- Sec. 438.041. DEFINITION**
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- Sec. 438.046. LIST OF ACCREDITED PROGRAMS**
- Sec. 438.047. FEES**

[Sections 438.048–438.050 reserved for expansion]

**SUBCHAPTER E. SIGNS DEPICTING HEIMLICH MANEUVER**

- Sec. 438.051. SIGNS REQUIRED**
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- Sec. 438.053. SIGNS IN ENGLISH AND SPANISH**

[Sections 438.054–438.060 reserved for expansion]

**SUBCHAPTER F. FOOD INSPECTIONS**

- Sec. 438.061. FOOD INSPECTIONS BY TYPE A GENERAL-LAW MUNICIPALITY**

## CHAPTER 438. PUBLIC HEALTH MEASURES RELATING TO FOOD

## SUBCHAPTER A. UNPACKAGED FOODS

Sec. 438.001. DEFINITIONS. In this subchapter:

(1) "Gravity feed type container" means a self-service container in which food is dispensed by operating a mechanism that permits the food to drop into a receptacle.

(2) "Scoop utensil type container" means a self-service container from which food is dispensed by using a utensil provided with the container.

(3) "Unpackaged food" means food that is:

(A) not in individual packaging or wrapping;

(B) offered for sale by a retail food store; and

(C) sold in bulk from a container that permits a customer to dispense the food directly into a receptacle. (V.A.C.S. Art. 4476-5d, Sec. 1.)

Sec. 438.002. EXEMPTIONS. This subchapter does not apply to:

(1) a beverage;

(2) fresh fruit or vegetables;

(3) food that is intended to be shelled or cooked before consumption; or

(4) food, such as milk products, eggs, meat, poultry, fish, or shellfish, that is capable of supporting rapid and progressive growth of infectious or toxic microorganisms. (V.A.C.S. Art. 4476-5d, Sec. 2.)

Sec. 438.003. SALE FROM SELF-SERVICE CONTAINERS. (a) A person may sell unpackaged food that is displayed and sold in bulk from a self-service container if:

(1) the self-service container has a tight-fitting lid that is securely attached to the container; and

(2) the container, lid, and any utensil are constructed of nontoxic materials that provide for easy cleaning and proper repair.

(b) The lid of a gravity feed type container shall be kept closed except when the container is being serviced or refilled.

(c) The lid of a scoop utensil type container shall be kept closed except during customer service. The container must have a utensil, equipped with a handle, to be used in dispensing the food.

(d) The seller shall:

(1) keep the container, lid, and any utensil sanitary to prevent spoilage and insect infestation; and

(2) post in the immediate display area a conspicuous sign that instructs the customer on the proper procedure for dispensing the food. (V.A.C.S. Art. 4476-5d, Sec. 3.)

Sec. 438.004. STRICTER RULES. (a) The Texas Board of Health by rule may establish requirements stricter than the requirements prescribed by Section 438.003 for the display and sale of unpackaged foods if the transmission of a disease infestation or contamination is directly related to a method of displaying and selling unpackaged food authorized by this subchapter.

(b) The stricter requirement must be:

(1) adopted according to laboratory evidence supporting the specific relationship between the disease infestation or contamination and the method of dispensing the unpackaged food; and

(2) applied uniformly to all nonexempted food sources and dispensing methods. (V.A.C.S. Art. 4476-5d, Sec. 4.)

Sec. 438.005. SALE OF UNPACKAGED FOOD; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally sells unpackaged food in a manner that does not comply with Section 438.003 or a rule adopted under Section 438.004.



(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4476-5d, Sec. 5.)

Sec. 438.006. **EFFECT ON OTHER LAWS.** (a) This subchapter supersedes an ordinance or rule adopted by a political subdivision to regulate the method of dispensing unpackaged food.

(b) This subchapter does not affect an ordinance or rule adopted and enforced by a political subdivision to require the maintenance of sanitary conditions in the sale of unpackaged food dispensed in a manner authorized by this subchapter. (V.A.C.S. Art. 4476-5d, Sec. 6.)

[Sections 438.007-438.010 reserved for expansion]

**SUBCHAPTER B. CLEANING AND STERILIZATION OF FOOD SERVICE ITEMS**

Sec. 438.011. **DEFINITIONS.** In this subchapter:

(1) "Dish" includes a vessel of any shape or size, made of any type of material, commonly used in eating or drinking.

(2) "Food factory" includes a place in which, as a business, food is manufactured or prepared for human consumption.

(3) "Receptacle" includes a vessel, tray, pot, pan, or other article used for holding food.

(4) "Utensil" includes a vessel or article of any shape or size, made of any material, commonly used in preparing, holding, storing, transporting, serving, or eating food. (V.A.C.S. Art. 4476-9, Sec. 1 (part).)

Sec. 438.012. **USE OF UNCLEAN DISHES.** A person who operates or manages a food factory may not use or keep for use a dish or utensil or a food-grinding machine or implement that after its previous use has not been cleaned in the manner required by Section 438.013(a). (V.A.C.S. Art. 4476-9, Sec. 5 (part).)

Sec. 438.013. **CLEANING DISHES, RECEPTACLES, AND UTENSILS.** (a) A person who operates or manages a hotel, cafe, restaurant, dining car, drugstore, soda fountain, meat market, bakery, confectionery, liquor dispensary, or other establishment where food or drink is served to the public may not furnish to a person a dish, receptacle, or utensil that after its previous use has not been washed in warm water containing soap or alkali cleanser until the item is clean to the sight and touch.

(b) A dish or utensil that has been cleaned or polished with a poisonous substance may not be offered for use to a person or used in the manufacturing of food unless all traces of the poisonous substance have been removed from the dish or utensil.

(c) In this section, "liquor dispensary" means a place where beer, ale, wine, or any other alcoholic beverage is stored, prepared, labeled, bottled, served, or handled. (V.A.C.S. Art. 4476-9, Secs. 1 (part), 2 (part), 6.)

Sec. 438.014. **STERILIZATION OF FOOD SERVICE ITEMS.** (a) After cleaning dishes, receptacles, utensils, food-grinding machines, and implements as required by Section 438.012 or 438.013, the items shall be:

(1) placed in a wire cage and immersed in a still bath of clear water for at least:

(A) three minutes in water heated to a minimum temperature of 170 degrees Fahrenheit; or

(B) two minutes in water heated to a minimum temperature of 180 degrees Fahrenheit;

(2) immersed for at least two minutes in a lukewarm chlorine bath made up at a strength of 100 parts per milliliter or more of hypochlorites and not reduced to less than 50 parts per milliliter available chlorine, or a concentration of equal bacteriacidal strength if chloramines are used; or

(3) sterilized by any other chemical method approved by the Texas Board of Health.

(b) A three-compartment vat shall be used to sterilize dishes, receptacles, and utensils if a chlorine solution is used. The first compartment of the vat shall be used for washing, the second compartment for plain rinsing, and the third compartment for chlorine immersion. A satisfactory rinsing or spraying device may be substituted for the second rinsing compartment on an existing installation.

(c) The same chlorine solution may not be used as bacteriacidal treatment for more than one day.

(d) After sterilization, all dishes, receptacles, and utensils shall be stored in a manner that protects the food service items from contaminants.

(e) Subsections (a)–(d) do not apply to an establishment that uses electrically operated dishwashing and glasswashing machines that clean and sterilize mechanically. (V.A.C.S. Art. 4476–9, Secs. 2 (part), 5 (part).)

Sec. 438.015. **USE OF DAMAGED DISHES, RECEPTACLES, OR UTENSILS.** A public eating or drinking establishment or a person who operates or manages a food factory may not use or keep for use a dish, receptacle, or utensil that is made or damaged in a manner that makes cleaning or sterilizing the item impossible or doubtful. (V.A.C.S. Art. 4476–9, Secs. 3, 5 (part).)

Sec. 438.016. **NAPKINS.** A napkin, cloth, or other article used by a person shall be laundered or sterilized before it is furnished for use to another person. (V.A.C.S. Art. 4476–9, Sec. 4(a).)

Sec. 438.017. **PROTECTION OF OTHER FOOD SERVICE ITEMS.** (a) A paper receptacle, ice cream cone, or other single service utensil to be used for serving food or drink shall be kept in a sanitary manner, protected from dust, flies, and other contaminants.

(b) A napkin, straw, toothpick, or other article may not be offered for the use of a person unless the article has been securely protected from dust, dirt, insects, rodents, and, as necessary and by all reasonable means, other contaminants. (V.A.C.S. Art. 4476–9, Secs. 2 (part), 4(b).)

Sec. 438.018. **CRIMINAL PENALTY.** (a) A person commits an offense if the person violates this subchapter.

(b) An offense under this subchapter is punishable by a fine of not less than \$5 or more than \$100. (V.A.C.S. Art. 4476–9, Sec. 7.)

[Sections 438.019–438.030 reserved for expansion]

#### SUBCHAPTER C. FOOD SERVICE EMPLOYEES

Sec. 438.031. **DEFINITION.** In this subchapter, “food” includes simple, mixed, or compounded articles used for food, drink, flavoring, confectionery, and condiment for human consumption. (V.A.C.S. Art. 4476–10, Sec. 5.)

Sec. 438.032. **INFECTED PERSONS; FOOD HANDLING PROHIBITED.** (a) A person may not handle food, utensils, dishes, or serving implements that are for public sale or for the consumption or use by another if the person:

- (1) is infected with a disease that is transmissible through the handling of food;
- (2) resides in a household in which there is a transmissible case of a communicable disease that may be food borne;
- (3) is known to be a carrier of the organisms causing a communicable disease that may be food borne; or
- (4) has a local infection that is commonly transmitted through the handling of food.

(b) A person, firm, corporation, or organization operating or managing a public eating place or vehicle or other place where food is manufactured, processed, prepared, dispensed, or handled in a manner or under circumstances that would permit the probable transmission of disease from a handler to a consumer may not employ a person described in Subsection (a) to handle the food, utensils, dishes, or serving implements. (V.A.C.S. Art. 4476–10, Secs. 1, 2.)

Sec. 438.033. **PHYSICAL EXAMINATION; DOCTOR'S CERTIFICATE.** (a) On the request of an employer, the Texas Board of Health or the board's representative, or the local health authority or the local health authority's representative, a person employed or seeking employment in an activity regulated under Section 438.032:

(1) shall be examined by a licensed physician; and

(2) must receive a certificate signed by the physician stating that the examination has been performed and that to the best of the physician's knowledge the person examined did not have on the date of the examination a transmissible condition of a communicable disease or a local infection commonly transmitted through the handling of food.

(b) The examination must be actual and thorough and conducted with practical scientific procedures to determine the existence of a communicable disease that may be transmitted through the handling of food. (V.A.C.S. Art. 4476-10, Sec. 3.)

Sec. 438.034. **EMPLOYEE CLEANLINESS.** A person handling food or unsealed food containers shall:

(1) maintain personal cleanliness;

(2) wear clean outer garments;

(3) keep the person's hands clean; and

(4) wash the person's hands with soap and water after each visit to the toilet. (V.A.C.S. Art. 4476-10, Sec. 4 (part).)

Sec. 438.035. **USE OF UNLAUNDERED TOWELS.** A person at a place where food for public consumption is handled or sold may not use a towel unless the towel has been thoroughly laundered after it has been previously used by another person. (V.A.C.S. Art. 4476-10, Sec. 4 (part).)

Sec. 438.036. **CRIMINAL PENALTY.** (a) A person, firm, corporation, or organization commits an offense if the person, firm, corporation, or organization violates this subchapter.

(b) An offense under this section is punishable by a fine of not less than \$10 or more than \$200.

(c) Each day of a violation constitutes a separate offense. (V.A.C.S. Art. 4476-10, Sec. 7.)

Sec. 438.037. **MUNICIPAL ORDINANCES.** This subchapter does not affect the authority granted under Article XI, Section 5, of the Texas Constitution, Article 1175, Revised Statutes, Subchapter F of this chapter, and the applicable chapters of the Local Government Code to a Type A general-law municipality or a home-rule municipality to adopt an ordinance relating to this subchapter. (V.A.C.S. Art. 4476-10, Sec. 6.)

[Sections 438.038-438.040 reserved for expansion]

#### SUBCHAPTER D. FOOD SERVICE PROGRAMS

Sec. 438.041. **DEFINITION.** In this subchapter, "department" means the Texas Department of Health. (V.A.C.S. Art. 4476-10b, Sec. 1.)

Sec. 438.042. **DUTIES OF BOARD.** The Texas Board of Health shall adopt standards and procedures for the accreditation of education and training programs for persons employed in the food service industry. (V.A.C.S. Art. 4476-10b, Sec. 2.)

Sec. 438.043. **REQUIREMENTS FOR ACCREDITATION.** (a) The department may not accredit an education or training program unless the program includes:

(1) four hours of training on the subject of food, including:

(A) a description of food-borne disease and its cause and prevention; and

(B) protection of food in location, receipt, storage, preparation, service, and transportation;

(2) four hours of training on the subject of food service facilities, including:

(A) waste disposal and sanitary plumbing and water;

- (B) cleaning and sanitization of dishes and utensils;
  - (C) storage of equipment and utensils;
  - (D) housekeeping procedures and schedules;
  - (E) proper handling of nonfood supplies, including single service items, linens, and toxic materials; and
  - (F) cleanliness of the physical plant, including building construction, ventilation, lighting, pest control, and general safety of the environment;
- (3) two hours of training on the subject of sanitary habits for food handlers, including:
- (A) personal hygiene, including proper dress, handwashing, personal habits, and illness;
  - (B) food handling practices, including minimum handling and proper use of food service utensils; and
  - (C) operational problems, including identification and correction of commonly occurring deficiencies; and
- (4) four hours of training on the subject of management in the food service industry, including:
- (A) self-inspection promotion and techniques;
  - (B) motivation, including safety, the economics of safe food handling, and planning to meet sanitation guidelines; and
  - (C) personnel training, including management responsibility, resources, and methods.
- (b) In addition to the course requirements in Subsection (a), the department shall require that, to receive accreditation, a course include an examination of at least one hour to allow the instructor to evaluate the students' comprehension of the subject matter covered.
- (c) The department shall ensure that each accredited program may be presented in not less than 15 hours. (V.A.C.S. Art. 4476-10b, Sec. 3.)
- Sec. 438.044. APPLICATION FOR ACCREDITATION. (a) A person seeking accreditation for an education or training program must apply to the department for accreditation. The applicant must demonstrate to the department the contents of the course.
- (b) The department shall accredit a course that meets the minimum requirements of this subchapter. (V.A.C.S. Art. 4476-10b, Sec. 4.)
- Sec. 438.045. AUDIT OF EDUCATION AND TRAINING PROGRAMS. The department shall conduct a regular audit of each program accredited under this subchapter to ensure compliance with this subchapter. (V.A.C.S. Art. 4476-10b, Sec. 5 (part).)
- Sec. 438.046. LIST OF ACCREDITED PROGRAMS. The department shall maintain a registry of course programs accredited under this subchapter. (V.A.C.S. Art. 4476-10b, Sec. 5 (part).)
- Sec. 438.047. FEES. The department shall charge an application fee and an audit fee sufficient to cover the entire cost of accreditation, audit, and maintenance of the registry. (V.A.C.S. Art. 4476-10b, Sec. 6.)

[Sections 438.048-438.050 reserved for expansion]

#### SUBCHAPTER E. SIGNS DEPICTING HEIMLICH MANEUVER

Sec. 438.051. SIGNS REQUIRED. A food service establishment at which space for eating is designed or designated must post in a place conspicuous to employees or customers a sign that depicts the Heimlich maneuver for dislodging food from a choking person. (V.A.C.S. Art. 4476-10c, Sec. 1 (part).)

Sec. 438.052. DESIGN REQUIREMENTS. The Texas Board of Health by rule shall specify the design, size, and graphics of a sign required by this subchapter. (V.A.C.S. Art. 4476-10c, Sec. 1 (part), 2.)

**Sec. 438.053. SIGNS IN ENGLISH AND SPANISH.** A sign required by this subchapter must be printed in English and Spanish. (V.A.C.S. Art. 4476-10c, Sec. 3.)

[Sections 438.054-438.060 reserved for expansion]

**SUBCHAPTER F. FOOD INSPECTIONS**

**Sec. 438.061. FOOD INSPECTIONS BY TYPE A GENERAL-LAW MUNICIPALITY.**

(a) The governing body of a Type A general-law municipality may regulate the inspection of beef, pork, flour, meal, salt, and other provisions.

(b) The governing body of a Type A general-law municipality may appoint weighers, gaugers, and inspectors, and may prescribe their duties and regulate their fees. (V.A.C.S. Art. 1015, Subdiv. (5).)

**CHAPTER 439. MANUFACTURE AND DISTRIBUTION OF CERTAIN DRUGS**

**SUBCHAPTER A. LAETRILE**

**Sec. 439.001. DEFINITION**

**Sec. 439.002. MANUFACTURE AND SALE**

**Sec. 439.003. PRESCRIPTION AND ADMINISTRATION**

**Sec. 439.004. REGULATION BY HEALTH CARE FACILITY**

**Sec. 439.005. RECORDS; DISCIPLINARY ACTIONS**

[Sections 439.006-439.010 reserved for expansion]

**SUBCHAPTER B. DIMETHYL SULFOXIDE**

**Sec. 439.011. DEFINITION**

**Sec. 439.012. MANUFACTURE AND SALE**

**Sec. 439.013. PRESCRIPTION, ADMINISTRATION, AND DISPENSATION**

**Sec. 439.014. REGULATION BY HEALTH CARE FACILITY**

**Sec. 439.015. RECORDS; DISCIPLINARY ACTIONS**

**Sec. 439.016. MISREPRESENTATION; CRIMINAL PENALTY**

**Sec. 439.017. RESTRICTIONS ON MANUFACTURE, DISTRIBUTION, AND SALE; CRIMINAL PENALTY**

[Sections 439.018-439.020 reserved for expansion]

**SUBCHAPTER C. PRESERVATION AND DISTRIBUTION OF CERTAIN UNUSED DRUGS**

**Sec. 439.021. SHIPMENT TO FOREIGN COUNTRIES**

**Sec. 439.022. ADMINISTRATION**

**Sec. 439.023. CONTRACTS; FUNDS**

**CHAPTER 439. MANUFACTURE AND DISTRIBUTION OF CERTAIN DRUGS**

**SUBCHAPTER A. LAETRILE**

**Sec. 439.001. DEFINITION.** In this chapter, "laetrile" means amygdalin. (New.)

**Sec. 439.002. MANUFACTURE AND SALE.** Laetrile may be manufactured in this state in accordance with Chapter 431 (Texas Food, Drug and Cosmetic Act) and may be sold in this state for distribution by licensed physicians. (V.A.C.S. Art. 4476-5a, Sec. 1(a).)

**Sec. 439.003. PRESCRIPTION AND ADMINISTRATION.** (a) A licensed physician may prescribe or administer laetrile in the treatment of cancer.

(b) A physician is not subject to disciplinary action by the Texas State Board of Medical Examiners for prescribing or administering laetrile to a patient under the physician's care

who has requested the substance unless that board makes a formal finding that the substance is harmful.

(c) A finding under Subsection (b) must be made in a hearing conducted as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5a, Secs. 1(b), (d).)

Sec. 439.004. REGULATION BY HEALTH CARE FACILITY. (a) A hospital or other health care facility may not forbid or restrict the use of laetrile when it is requested by a patient and prescribed or administered by a physician unless the Texas Board of Health finds that the substance is harmful as prescribed or administered by the physician.

(b) A finding under Subsection (a) must be made after a hearing conducted as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-5a, Sec. 1(c).)

Sec. 439.005. RECORDS; DISCIPLINARY ACTIONS. (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of laetrile. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving laetrile, and the reason for the disposal of laetrile to that person.

(b) The Texas State Board of Medical Examiners may suspend, cancel, or revoke the license of any physician who:

- (1) fails to keep complete and accurate records of purchases and disposals of laetrile;
- (2) prescribes or dispenses laetrile to a person known to be a habitual user of narcotic or dangerous drugs or to a person who the physician should have known was a habitual user of narcotic or dangerous drugs;
- (3) uses any advertising that tends to mislead or deceive the public; or
- (4) is unable to practice medicine with reasonable skill and safety to patients because of any mental or physical condition, including age, illness, or drunkenness, or because of excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) Subsection (b)(2) does not apply to a person being treated by the physician for narcotic use after the physician notifies the Texas State Board of Medical Examiners in writing of the name and address of the patient being treated. (V.A.C.S. Art. 4476-5a, Sec. 2.)

[Sections 439.006-439.010 reserved for expansion]

#### SUBCHAPTER B. DIMETHYL SULFOXIDE

Sec. 439.011. DEFINITION. In this subchapter, "DMSO" means sterile and pyrogen-free dimethyl sulfoxide. (V.A.C.S. Art. 4476-5b, Sec. 1.)

Sec. 439.012. MANUFACTURE AND SALE. DMSO may be manufactured in this state and may be sold in this state for human use when prescribed or administered by a licensed physician or dispensed by a licensed pharmacist as prescribed by a licensed physician. (V.A.C.S. Art. 4476-5b, Sec. 2.)

Sec. 439.013. PRESCRIPTION, ADMINISTRATION, AND DISPENSATION. (a) Except as prohibited by Subsection (b), a licensed physician may prescribe or administer DMSO.

(b) A physician may not prescribe or administer DMSO in a formulation not approved for human use by the Food and Drug Administration of the United States Department of Health and Human Services unless the physician:

- (1) provides a written statement to the patient informing the patient that DMSO, in the formulation to be prescribed or administered, has not been approved for human use by the United States Food and Drug Administration; and
- (2) informs the patient of the alternative methods of treatment for the patient's disorder and the potential of alternative methods for cure.

(c) A licensed pharmacist may dispense DMSO on the written prescription of a licensed physician. (V.A.C.S. Art. 4476-5b, Secs. 3, 6.)

**Sec. 439.014. REGULATION BY HEALTH CARE FACILITY.** (a) A hospital or health care facility may not forbid or restrict the use of DMSO prescribed or administered by a licensed physician having staff privileges at that hospital or facility unless the hospital or facility:

(1) makes a formal finding that the DMSO as prescribed or administered by the physician is or will be harmful to the patient; or

(2) determines that the prescription or administration of DMSO creates an immediate danger to the public.

(b) A hospital or health care facility that forbids or restricts the use of DMSO under Subsection (a)(2) shall conduct a hearing on the restriction or prohibition as soon as practicable after its determination. (V.A.C.S. Art. 4476-5b, Sec. 5.)

**Sec. 439.015. RECORDS; DISCIPLINARY ACTIONS.** (a) A physician shall keep records of the physician's purchases and disposals, including sales and dispensations, of DMSO. The records shall include the date of each purchase or disposal by the physician, the name and address of the person receiving DMSO, and the reason for the disposal of DMSO to that person.

(b) The Texas State Board of Medical Examiners may suspend, cancel, or revoke the license of any physician who:

(1) fails to keep complete and accurate records of purchases and disposals of DMSO in a formulation not approved for human use; or

(2) prescribes or administers DMSO in a manner that has been proven, in a formal hearing held by the board, to be harmful to the patient.

(c) The Texas State Board of Medical Examiners may temporarily suspend the license of a physician who prescribes or administers DMSO in a manner that, in the board's opinion, creates an immediate danger to the public. The board must conduct a hearing on the temporary suspension as soon as practicable after the suspension. (V.A.C.S. Art. 4476-5b, Sec. 4.)

**Sec. 439.016. MISREPRESENTATION; CRIMINAL PENALTY.** (a) A person commits an offense if, in connection with advertising or promoting the sale of DMSO, the person knowingly or intentionally represents DMSO as a cure for any human disease, ailment, or disorder.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-5b, Secs. 7(a), (c).)

**Sec. 439.017. RESTRICTIONS ON MANUFACTURE, DISTRIBUTION, AND SALE; CRIMINAL PENALTY.** (a) A person commits an offense if the person manufactures, distributes, or sells a dimethyl sulfoxide formulation that is not sterile and pyrogen-free unless the substance is packaged in a container with a label that includes:

(1) information about the concentration of the dimethyl sulfoxide; and

(2) the following statement: "Avoid contact with your skin. This dimethyl sulfoxide is not sterile and pyrogen-free DMSO approved for human use. It may contain harmful impurities that can be absorbed through the skin. Dimethyl sulfoxide is a potent solvent that may have adverse effects on fabrics, plastics, and other materials."

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-5b, Secs. 7(b), (c).)

[Sections 439.018-439.020 reserved for expansion]

#### **SUBCHAPTER C. PRESERVATION AND DISTRIBUTION OF CERTAIN UNUSED DRUGS**

**Sec. 439.021. SHIPMENT TO FOREIGN COUNTRIES.** (a) A consulting pharmacist of a nursing home may select, from a supply of drugs due for destruction, certain drugs to be used for shipment to a foreign country as provided by this subchapter.

(b) The supply of drugs due for destruction are those drugs accumulated because of the death of a resident of the nursing home or because a physician has ordered the use of the drug to be discontinued.

(c) Quarterly, before the drugs are destroyed, the consulting pharmacist may, in the pharmacist's professional judgment, select the drugs to be used under this subchapter and seal them in a box for shipment.

(d) The consulting pharmacist shall account to the Texas Department of Health for all drugs selected for shipment under this subchapter.

(e) This subchapter does not apply if the unused drug is a controlled substance as defined by Chapter 481 (Texas Controlled Substances Act). (V.A.C.S. Art. 4476-5f, Sec. 1.)

Sec. 439.022. ADMINISTRATION. (a) The Texas Board of Health shall adopt rules consistent with federal and state law to implement this subchapter, including rules relating to:

(1) the packaging and inventory of drugs for shipment;

(2) the manner of shipment of the drugs from original shipment under this subchapter until the final destination; and

(3) safeguards to ensure the proper handling of and accounting for all drugs shipped.

(b) The Texas Board of Health by rule shall determine, in consultation with the United States Department of State and other appropriate federal agencies, the foreign countries to receive the drugs.

(c) The salvaging of drugs under this subchapter is not subject to Chapter 431 (Texas Food, Drug and Cosmetic Act). (V.A.C.S. Art. 4476-5f, Sec. 2.)

Sec. 439.023. CONTRACTS; FUNDS. (a) The Texas Department of Health may contract with other entities, including local governments and civic organizations, to implement this subchapter.

(b) The department may accept gifts, grants, and any other funds to implement this subchapter. (V.A.C.S. Art. 4476-5f, Sec. 3.)

[Chapters 440-460 reserved for expansion]

## SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS

### CHAPTER 461. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE

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**SUBTITLE B. ALCOHOL AND SUBSTANCE ABUSE PROGRAMS**

**CHAPTER 461. TEXAS COMMISSION ON ALCOHOL AND DRUG ABUSE**

**Sec. 461.001. POLICY.** Alcohol and drug abuse are preventable and treatable illnesses and public health problems affecting the general welfare and the economy of the state. The legislature recognizes the need for proper and sufficient facilities, programs, and procedures for prevention, intervention, treatment, and rehabilitation. It is the policy of this state that an alcohol or drug abuser shall be offered a continuum of services that will enable the person to lead a normal life as a productive member of society. (V.A.C.S. Art. 5561c-2, Sec. 1.01 (part).)

**Sec. 461.002. DEFINITIONS.** In this chapter:

(1) "Alcohol abuse" means the excessive use of alcohol in a manner that interferes, but not chronically, with:

- (A) physical or psychological functioning;
- (B) social adaptation;
- (C) educational performance; or
- (D) occupational functioning.

(2) "Alcoholic" means a person suffering from alcoholism.

(3) "Alcoholism" means:

- (A) a loss of self-control with respect to the use of alcohol;
- (B) a pathological use of alcohol that chronically impairs social or occupational functioning; or
- (C) a physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.

(4) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(5) "Drug abuse" means misuse or abuse of any controlled substance for other than appropriate and duly prescribed medicinal purposes.

(6) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychological or physical dependence, or both, arising from administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychological effects or to avoid the discomfort of its absence.

(7) "Intervention" means the interruption of the onset or progression of substance abuse or dependence in the early stages.

(8) "Prevention" means the reduction of a person's risk of abusing or becoming addicted to alcohol or drugs.

(9) "Rehabilitation" means the reestablishment of the social and vocational life of a substance-free person.

(10) "Treatment" means the initiation and maintenance of a person's substance-free status. (V.A.C.S. Art. 5561c-2, Secs. 1.03(1)-(3), (5)-(7), (8) (part), (9) (part), (10) (part), (11) (part).)

**Sec. 461.003. COMPOSITION OF COMMISSION.** (a) The purpose of this chapter is to prevent broken homes and the loss of lives by creating the Texas Commission on Alcohol and Drug Abuse.

(b) The commission is composed of nine members appointed by the governor with the advice and consent of the senate.

(c) Appointments to the commission shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointees. (V.A.C.S. Art. 5561c-2, Secs. 1.01 (part); 1.04(a), (c).)

Sec. 461.004. APPLICATION OF SUNSET ACT. The 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 expires September 1, 1997. (V.A.C.S. Art. 5561c-2, Sec. 1.05.)

Sec. 461.005. RESTRICTIONS ON COMMISSION APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. (a) A person is not eligible for appointment or service as a commission member if the person or the person's spouse:

(1) is licensed by an occupational regulatory agency in the field of alcoholism or drug abuse;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving funds from the commission;

(3) owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the commission or receiving funds from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the commission.

(b) An officer, employee, or paid consultant of an association that is primarily interested in the provision of services or in other matters relating to alcohol or drug abuse may not be a member or employee of the commission.

(c) A person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of an association described by Subsection (b) may not be a commission member or a commission employee grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

(d) A person may not serve as a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a provider of alcohol or drug abuse services. (V.A.C.S. Art. 5561c-2, Secs. 1.04(b), 1.08.)

Sec. 461.006. TERMS. Commission members serve for staggered six-year terms, with the terms of three members expiring every other year. (V.A.C.S. Art. 5561c-2, Sec. 1.04(d).)

Sec. 461.007. OFFICERS. (a) The governor shall annually appoint one commission member as chairman.

(b) The members of the commission shall annually elect one member as vice-chairman. The members may elect one member as secretary or designate the executive director of the commission as secretary. (V.A.C.S. Art. 5561c-2, Sec. 1.07.)

Sec. 461.008. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission if a member:

(1) is not eligible for appointment to the commission at the time of appointment as provided by Section 461.005(a);

(2) is not eligible to serve on the commission as provided by Section 461.005(a);

(3) violates a prohibition established by Section 461.005(b), (c), or (d);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 5561c-2, Sec. 1.06.)

**Sec. 461.009. PER DIEM; REIMBURSEMENT FOR EXPENSES.** A commission member is entitled to receive:

(1) the compensatory per diem authorized by the General Appropriations Act for each day spent in performing the member's official duties; and

(2) reimbursement for travel expenses and other necessary expenses incurred in performing official duties. (V.A.C.S. Art. 5561c-2, Sec. 1.09(c).)

**Sec. 461.010. MEETINGS; TRAVEL.** (a) The commission shall meet at least quarterly at the call of the chairman or at the request of five members. The commission may not meet for more than 24 days in a fiscal year.

(b) The commission may authorize its members to travel in this state and in other states to perform commission duties under this chapter. (V.A.C.S. Art. 5561c-2, Secs. 1.09(a), (b).)

**Sec. 461.011. PERSONNEL.** (a) The commission shall employ an executive director, and the executive director shall hire other necessary employees.

(b) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

(c) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

(d) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(e) The executive director or the executive director's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;

(2) a comprehensive analysis of the commission work force that meets federal and state guidelines; and

(3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance and reasonable methods to appropriately address those areas of significant underutilization.

(f) A policy statement prepared under Subsection (e) must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor.

(g) The governor shall submit a biennial report to the legislature based on the information received under Subsection (f)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

(h) The commission shall develop and implement policies that clearly separate the respective responsibilities of the commission and the staff of the commission. (V.A.C.S. Art. 5561c-2, Sec. 1.10.)

**Sec. 461.012. POWERS AND DUTIES.** (a) The commission shall:

(1) provide for research and study of the problems of substance abuse in this state and seek to focus public attention on those problems through public information and education programs;

(2) plan, develop, coordinate, evaluate, and implement constructive methods and programs for the prevention, intervention, treatment, and rehabilitation of substance abuse, alcoholism, and drug dependence in cooperation with federal and state agencies,

local governments, organizations, and persons, and provide technical assistance, funds, and consultation services for statewide and community-based services;

(3) cooperate with and enlist the assistance of:

- (A) other state, federal, and local agencies;
- (B) hospitals and clinics;
- (C) public health, welfare, and criminal justice system authorities;
- (D) educational and medical agencies and organizations; and
- (E) other related public and private groups and persons;

(4) expand drug, inhalant, and alcohol abuse services for children when funds are available because of the long-term benefits of those services to the state and its citizens;

(5) sponsor, promote, and conduct educational programs on the prevention and treatment of substance abuse, alcoholism, and drug dependence, and maintain a public information clearinghouse to purchase and provide books, literature, audiovisuals, and other educational material for the programs;

(6) sponsor, promote, and conduct training programs for persons delivering prevention, intervention, treatment, and rehabilitation services and for persons in the criminal justice system or otherwise in a position to identify substance abusers, alcoholics, drug-dependent persons, and their families in need of service;

(7) require programs rendering services to substance abusers, alcoholics, and drug-dependent persons to safeguard those persons' legal rights of citizenship and maintain the confidentiality of client records as required by state and federal law;

(8) maximize the use of available funds for direct services rather than administrative services;

(9) consistently monitor the expenditure of funds and the provision of services by all grant and contract recipients to assure that the services are effective and properly staffed and meet the standards adopted under this chapter;

(10) make the monitoring reports prepared under Subdivision (9) a matter of public record;

(11) license treatment facilities under Chapter 464;

(12) use funds appropriated to the commission to carry out this chapter and maximize the overall state allotment of federal funds;

(13) develop and implement policies that will provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the commission's jurisdiction;

(14) establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals; and

(15) adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

(b) The commission may establish regional alcohol advisory committees consistent with the 24 state planning regions.

(c) The commission may appoint advisory committees to assist the commission in performing its duties. State advisory committee members are entitled to receive the per diem and travel expense allowance authorized by the General Appropriations Act for state employees. (V.A.C.S. Art. 5561c-2, Secs. 1.01 (part), 1.03 (part), 1.04(e), 1.12, 1.14.)

Sec. 461.013. EDUCATION AND RESEARCH PROGRAMS CONCERNING CONTROLLED SUBSTANCES. (a) In this section, "controlled substances" means those substances designated as controlled substances by Chapter 481 (Texas Controlled Substances Act).

(b) The commission, in cooperation with other appropriate state agencies, shall carry out educational programs designed to prevent or deter misuse and abuse of controlled substances. In connection with those programs the commission may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid those groups in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of problems that exist and ways to combat those problems; and

(6) assist in educating and training state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(c) The commission shall encourage research on misuse and abuse of controlled substances. In connection with research, and in furtherance of the enforcement of Chapter 481 (Texas Controlled Substances Act), the executive director may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(A) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of Chapter 481 (Texas Controlled Substances Act);

(B) determine patterns and social effects of misuse and abuse of controlled substances; and

(C) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of controlled substances; and

(3) contract with public agencies, institutions of higher education, and private organizations or individuals to conduct research, demonstrations, or special projects that bear directly on misuse and abuse of controlled substances. (V.A.C.S. Art. 4476-15, Secs. 5.12(a), (b).)

Sec. 461.014. FINANCES. (a) The commission may accept gifts and grants.

(b) All money paid to the commission under this chapter shall be deposited in the state treasury and may be used only to administer this chapter.

(c) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The state auditor shall audit the financial transactions of the commission at least once each biennium.

(e) The commission is the state agency to:

(1) receive and administer federal funds for alcohol and drug abuse, including applying for, administering, and disbursing funds under the Drug Abuse Office and Treatment Act of 1972 (21 U.S.C. Section 1101 et seq.); and

(2) prescribe all necessary policies relating to alcohol and drug abuse.

(f) An organization or other entity is not eligible for a grant of state funds from the commission unless the organization or entity provides matching funds equal to at least five percent of the total grant of state funds from the commission. The commission may

waive that requirement if the commission determines that the requirement may jeopardize the provision of needed services.

(g) In allocating grant funds, the commission shall consider the state facility hospitalization rate of substance abusers who are from the service area of the entity requesting the grant. An organization or other entity is not eligible for a grant of state funds for a treatment or rehabilitation program unless the program will, at a minimum, reduce state facility hospitalization of substance abusers by a percentage established by the commission. (V.A.C.S. Arts. 4476-15, Sec. 5.11; 5561c-2, Sec. 1.11.)

Sec. 461.015. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) The commission by rule shall establish methods by which consumers and service recipients can be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission. The commission may provide for that notification:

(1) on each registration form, application, or written contract for services of a person or entity regulated or authorized by this chapter;

(2) on a sign that is prominently displayed in the place of business of each person or entity regulated or authorized by this chapter; or

(3) in a bill for service provided by a person or entity regulated or authorized by this chapter.

(c) If a written complaint is filed with the commission relating to a licensee or entity regulated by the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) The commission shall keep an information file about each complaint filed with the commission relating to a licensee or entity funded or regulated by the commission. (V.A.C.S. Art. 5561c-2, Sec. 1.13.)

Sec. 461.016. COOPERATION WITH COMMISSION. (a) Each department, agency, officer, and employee of the state, when requested by the commission, shall cooperate with the commission in appropriate activities to implement this chapter.

(b) This section does not give the commission control over existing facilities, institutions, or agencies or require the facilities, institutions, or agencies to serve the commission in a manner that is inconsistent with their functions, the authority of their offices, or the laws and rules governing their activities.

(c) This section does not authorize the commission to use a private institution or agency without its consent or to pay a private institution or agency for services that a public institution or agency is willing and able to provide. (V.A.C.S. Art. 5561c-2, Sec. 1.15.)

## CHAPTER 462. TREATMENT OF ALCOHOLICS

### SUBCHAPTER A. EMERGENCY DETENTION

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Sec. 462.002. APPLICATION FOR EMERGENCY DETENTION

Sec. 462.003. MAGISTRATE'S ORDER FOR EMERGENCY DETENTION

Sec. 462.004. PRELIMINARY EXAMINATION

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Sec. 462.007. RIGHTS OF PERSON APPREHENDED OR DETAINED

[Sections 462.008-462.020 reserved for expansion]

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- Sec. 462.023. APPLICATION FOR COURT-ORDERED TREATMENT
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- Sec. 462.029. RELEASE FROM COURT-ORDERED TREATMENT
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[Sections 462.032–462.050 reserved for expansion]

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- Sec. 462.051. ELIGIBILITY FOR VOLUNTARY ADMISSION TO STATE HOSPITAL
- Sec. 462.052. ADMISSION TO STATE HOSPITAL; CERTIFICATION
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[Sections 462.056–462.080 reserved for expansion]

**SUBCHAPTER D. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD**

- Sec. 462.081. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD; CRIMINAL PENALTY
- Sec. 462.082. CONFLICTING OFFENSES

**CHAPTER 462. TREATMENT OF ALCOHOLICS**

**SUBCHAPTER A. EMERGENCY DETENTION**

Sec. 462.001. DEFINITIONS. In this subchapter:

(1) "Alcoholic" means a person suffering from alcoholism.

(2) "Alcoholism" means:

(A) a loss of self-control with respect to the use of alcohol;

(B) a pathological use of alcohol that chronically impairs social or occupational functioning; or

(C) a physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.

(3) "Approved treatment program" means a substance abuse treatment facility approved by the Texas Commission on Alcohol and Drug Abuse to carry out a specific provision of this chapter.

(4) "Treatment" means the initiation and maintenance of a person's substance-free status. (V.A.C.S. Art. 5561c-2, Secs. 1.03(2)-(4), (11).)

Sec. 462.002. APPLICATION FOR EMERGENCY DETENTION. (a) Any adult may execute an application for emergency detention of another person.

(b) The application must be in writing and must state:

(1) that the applicant has reason to believe and does believe that the person who is the subject of the application is an alcoholic;

(2) that the applicant has reason to believe and does believe that the person evidences a substantial risk of serious harm to himself or others, describing the specific risk of harm;

(3) that the applicant has reason to believe and does believe that the risk of harm is imminent unless the person is immediately restrained;

(4) that the applicant's beliefs are based on specific recent behavior, overt acts, attempts, or threats, which must be described in detail; and

(5) the relationship, if any, of the applicant to the person.

(c) The application may be accompanied by any relevant information.

(d) The applicant must personally present the application to a magistrate. (V.A.C.S. Art. 5561c-2, Secs. 2.01(a), (b), (c) (part).)

**Sec. 462.003. MAGISTRATE'S ORDER FOR EMERGENCY DETENTION.** (a) The magistrate receiving the application for emergency detention shall examine the application and may interview the applicant.

(b) The magistrate shall deny the application unless the magistrate finds there is reasonable cause to believe that:

(1) the person who is the subject of the application is an alcoholic;

(2) the person evidences a substantial risk of serious harm to himself or others;

(3) the risk of harm is imminent unless the person is immediately restrained; and

(4) necessary restraint cannot be accomplished without emergency detention.

(c) If the magistrate finds that the person meets the criteria for emergency detention specified by Subsection (b), the magistrate shall issue a warrant for the immediate apprehension and transportation of the person to an approved treatment program, if one is readily available, or to another appropriate facility, for a preliminary examination by a physician.

(d) The warrant and copies of the application for the warrant shall be immediately transmitted to the approved treatment program. (V.A.C.S. Art. 5561c-2, Secs. 2.01(c) (part), (d), (e) (part).)

**Sec. 462.004. PRELIMINARY EXAMINATION.** (a) A physician shall conduct a preliminary examination of the apprehended person as soon as possible within 24 hours after the time of apprehension.

(b) The person shall be released when the preliminary examination is completed unless the examining physician or the physician's designee provides a written opinion that the person meets the criteria specified by Section 462.003(b).

(c) A person released under Subsection (b) is entitled to reasonably prompt return to the location of apprehension or other suitable place unless the person is arrested or objects to the return. (V.A.C.S. Art. 5561c-2, Secs. 2.01(e) (part), (f).)

**Sec. 462.005. DETENTION PERIOD.** (a) Unless a written order for further detention is obtained, a person apprehended under this subchapter may be detained for not more than 24 hours after the time that the person is presented to the facility.

(b) If the 24-hour period ends on a Saturday, Sunday, or legal holiday, the maximum period of detention is extended until noon on the next day that is not a Saturday, Sunday, or legal holiday. (V.A.C.S. Art. 5561c-2, Sec. 2.01(g).)

**Sec. 462.006. RELEASE FROM EMERGENCY DETENTION.** (a) A person detained under this subchapter shall be released if the administrator of the approved treatment program or the administrator's designee determines during the emergency detention period that any of the criteria specified by Section 462.003(b) no longer apply.

(b) Arrangements shall be made for the person's return to the location of apprehension or other suitable place unless the person is arrested or objects to the return. (V.A.C.S. Art. 5561c-2, Sec. 2.02.)

**Sec. 462.007. RIGHTS OF PERSON APPREHENDED OR DETAINED.** (a) A person who is apprehended or detained under this subchapter has the right:

(1) to be advised of the location of detention, the reasons for detention, and the fact that detention could result in a longer period of involuntary commitment;



(2) to contact an attorney of the person's choice and to a reasonable opportunity to contact that attorney;

(3) to be transported to the location of apprehension or other suitable place if the person is not admitted for emergency detention, unless the person is arrested or objects to the return;

(4) to be released if the administrator of the approved treatment program or the administrator's designee determines that any of the criteria for emergency detention specified by Section 462.003(b) no longer apply; and

(5) to be advised that communications to an alcoholism treatment professional may be used in proceedings for further detention.

(b) Within 24 hours after the time of admission, a person apprehended or detained under this subchapter shall be advised, orally, in writing, and in simple, nontechnical terms, of the rights provided by this section. (V.A.C.S. Art. 5561c-2, Sec. 2.03.)

[Sections 462.008–462.020 reserved for expansion]

#### **SUBCHAPTER B. COURT-ORDERED TREATMENT**

**Sec. 462.021. DEFINITIONS.** In this subchapter:

(1) "Alcohol abuse" means the excessive use of alcohol in a manner that interferes, but not chronically, with:

- (A) physical or psychological functioning;
- (B) social adaptation;
- (C) educational performance; or
- (D) occupational functioning.

(2) "Alcoholic" means a person suffering from alcoholism.

(3) "Alcoholism" means:

- (A) a loss of self-control with respect to the use of alcohol;
- (B) a pathological use of alcohol that chronically impairs social or occupational functioning; or
- (C) a physiological dependence on alcohol as evidenced by tolerance or withdrawal symptoms.

(4) "Approved treatment program" means a substance abuse treatment facility approved by the commission to carry out a specific provision of this chapter.

(5) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(6) "Treatment" means the initiation and maintenance of a person's substance-free status. (V.A.C.S. Art. 5561c-2, Secs. 1.03(1)-(5), (11).)

**Sec. 462.022. COURT-ORDERED TREATMENT; JURISDICTION.** A proceeding for court-ordered treatment under this subchapter shall be held in the court of the county exercising the jurisdiction of a probate court in alcoholism matters. (V.A.C.S. Art. 5561c-2, Sec. 3.01.)

**Sec. 462.023. APPLICATION FOR COURT-ORDERED TREATMENT.** (a) A county or district attorney or any other adult may file a sworn application for court-ordered treatment of another person.

(b) The application must be filed with the county clerk in the county in which the proposed patient resides, is found, or is receiving treatment services by court order.

(c) On the request of a proposed patient or the proposed patient's attorney, the court may, for good cause shown, transfer the application to the county in which the proposed patient resides if the application was originally filed in a different county.

(d) The application must be styled using the initials of the proposed patient and not the proposed patient's full name.

(e) The application must be in writing and must state the following based on the applicant's information and belief:

(1) the proposed patient's name and address, including the county in which the proposed patient resides;

(2) a statement that the proposed patient is an alcoholic and as a result the proposed patient:

(A) is likely to cause serious harm to himself or others; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment; and

(3) a statement that the proposed patient is not charged with a criminal offense that involves an act, attempt, or threat of serious bodily injury to another person.

(f) Subsection (e)(3) does not apply if the proposed patient is a juvenile alleged to be a child engaged in delinquent conduct or conduct indicating a need for supervision as defined by Section 51.03, Family Code. (V.A.C.S. Art. 5561c-2, Secs. 3.02(a)-(c).)

Sec. 462.024. LIBERTY OR CUSTODY PENDING ORDER; PROBABLE CAUSE HEARING. (a) Pending the court order, the judge may order a peace officer or other designated person to take the proposed patient to an approved facility or other suitable place for detention if:

(1) a certificate of medical examination for alcoholism is filed showing that the proposed patient has been examined within five days of the date on which the certificate is filed; and

(2) the certificate states the opinion of the examining physician that the proposed patient is an alcoholic who:

(A) is likely to cause serious harm to himself or others if not immediately restrained; or

(B) will continue to suffer abnormal mental, emotional, or physical distress, will continue to deteriorate in ability to function independently if not treated, and is unable to make a rational and informed choice as to whether to submit to treatment.

(b) The court shall set a probable cause hearing to be held within 72 hours after the time detention begins if the proposed patient is detained under this section and the proposed patient does not waive the right to the hearing. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the probable cause hearing shall be held on the next day that is not a Saturday, Sunday, or legal holiday. (V.A.C.S. Art. 5561c-2, Secs. 3.02(e), (f).)

Sec. 462.025. HEARING ON COURT-ORDERED TREATMENT. (a) When an application for court-ordered treatment is filed, the court shall set a date for a hearing on the merits to be held not earlier than the sixth or later than the 14th day after the date on which the application is filed.

(b) Immediately after the judge sets the date for the hearing, the clerk shall give written notice of the hearing and a copy of the application to the proposed patient and the proposed patient's attorney in the manner directed by the court.

(c) The court shall appoint an attorney to represent the proposed patient if the proposed patient is not represented by an attorney of the proposed patient's choice.

(d) The court shall inform relatives of the proposed patient and other persons to appear at the hearing to give evidence in the cause.

(e) The judge may, in the judge's discretion or on request, require the proposed patient to be examined by a physician. The court shall consider the results of the examination at the hearing.

(f) The court may hear the cause at the designated time and with or without an answer by the proposed patient or the presence of the proposed patient if:

(1) the notice is received not later than the fourth day before the date of the hearing; and

(2) the proposed patient is represented by an attorney, if the proposed patient has not waived the right to legal counsel. (V.A.C.S. Art. 5561c-2, Sec. 3.02(d).)

**Sec. 462.026. COURT ORDER AND PLACE OF TREATMENT.** (a) The court shall commit the proposed patient to an approved treatment program for not more than 90 days if:

(1) the proposed patient admits the allegations of the application; or

(2) at the hearing on the merits, the court finds that the material allegations in the application have been proved by clear and convincing evidence.

(b) Except as provided by Subsection (c), the court may not commit the proposed patient directly to a state mental health facility if the Texas Board of Mental Health and Mental Retardation has designated a single portal authority for the area. In that case, the court may commit the proposed patient to:

(1) a facility operated by the single portal authority;

(2) a program licensed by the commission; or

(3) a federal hospital.

(c) If the single portal authority lacks the local resources to care for the patient, the authority may transfer the patient to a state mental health facility or, at the request of the authority, the court may commit the patient directly to a state mental health facility. (V.A.C.S. Art. 5561c-2, Secs. 3.02(g), (h).)

**Sec. 462.027. APPEAL.** (a) The appeal of an order requiring court-ordered treatment must be filed in the court of appeals for the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order is signed.

(c) When the notice of appeal is filed, the clerk shall immediately send a certified transcript of the proceedings to the court of appeals.

(d) The trial judge may stay the order and release the person from custody pending the appeal if the judge determines that the person does not meet the criteria for protective custody specified by Section 462.024(a). The judge may require an appearance bond in an amount determined by the court.

(e) An appeal under this section shall be advanced on the docket and given a preferential setting over all other cases in the court of appeals and the supreme court. The courts may suspend any rule concerning the time for filing briefs and docketing cases. (V.A.C.S. Art. 5561c-2, Sec. 3.03.)

**Sec. 462.028. HABEAS CORPUS.** This subchapter does not abridge the right of any person to a writ of habeas corpus. (V.A.C.S. Art. 5561c-2, Sec. 3.04.)

**Sec. 462.029. RELEASE FROM COURT-ORDERED TREATMENT.** (a) The administrator of a facility to which a person has been committed for treatment shall discharge the person when the court order expires.

(b) The administrator may discharge a patient before the court order expires if the administrator determines that the patient no longer meets the criteria for court-ordered treatment.

(c) If a person is discharged under Subsection (b), the court order terminates and the person may not be compelled to submit to involuntary treatment unless a new order is issued in accordance with this subchapter.

(d) When a person is discharged under this section, the administrator shall prepare a certificate of discharge and file that certificate with the court that issued the order. (V.A.C.S. Art. 5561c-2, Sec. 3.05.)

**Sec. 462.030. COSTS.** (a) The laws relating to payment of costs of commitment and support and to obtaining reimbursement of actual costs for court-ordered mental health services apply to each item of expense incurred by the state in connection with the

commitment, care, custody, treatment, and rehabilitation of a person receiving care and treatment under this subchapter.

(b) A person admitted to an approved treatment program who has sufficient funds shall pay for the person's maintenance at the same rate charged to other patients for maintenance at the facility.

(c) Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), applies to a person admitted to a state hospital under this subchapter. (V.A.C.S. Art. 5561c-2, Sec. 3.06.)

Sec. 462.031. COMMITMENT BY COURTS IN CRIMINAL PROCEEDINGS; ALTERNATIVE SENTENCING. (a) The judge of a court with jurisdiction of misdemeanor cases may remand the defendant to an approved treatment program for care and treatment for not more than 90 days, instead of incarceration or fine, if:

- (1) the court or a jury has found the defendant guilty of an offense;
- (2) the court finds that the offense resulted from or was related to the defendant's alcohol abuse;
- (3) an approved treatment program is available to treat the defendant; and
- (4) the treatment program agrees in writing to admit the defendant under this section.

(b) A defendant who, in the opinion of the court, is mentally ill is not eligible for sentencing under this section.

(c) The court's sentencing order is a final conviction, and the order may be appealed in the same manner as appeals are made from other judgments of that court.

(d) A juvenile court may remand a child to an approved treatment program for care and treatment for not more than 90 days after the date on which the child is remanded if:

- (1) the court finds that the child has engaged in delinquent conduct or conduct indicating a need for supervision and that the conduct resulted from or was related to the child's alcohol abuse;
- (2) an approved treatment program is available to treat the child; and
- (3) the program agrees in writing to receive the child under this section. (V.A.C.S. Art. 5561c-2, Secs. 3.07(a), (b), (c) (part).)

[Sections 462.032-462.050 reserved for expansion]

#### SUBCHAPTER C. VOLUNTARY ADMISSION TO STATE HOSPITAL

Sec. 462.051. ELIGIBILITY FOR VOLUNTARY ADMISSION TO STATE HOSPITAL. A person is eligible to be admitted to, and cared for and treated in, a state hospital authorized by law to care for and treat mentally ill persons if the person:

- (1) is a resident of this state at the time of application for admission to a state hospital under this subchapter;
- (2) is an alcoholic; and
- (3) is not charged with a criminal offense at the time of application. (V.A.C.S. Art. 3196c, Sec. 2.)

Sec. 462.052. ADMISSION TO STATE HOSPITAL; CERTIFICATION. Except as provided by Section 462.053, the superintendent of a state hospital shall admit to the hospital for care and treatment an alcoholic who voluntarily applies for admission if the hospital:

- (1) has available facilities; and
- (2) receives written statements from a reputable citizen of this state who is a recovered alcoholic and from a reputable practicing physician licensed to practice medicine in this state certifying, to the best of each certifier's knowledge and belief, that the applicant is an alcoholic in need of hospitalization and treatment. (V.A.C.S. Art. 3196c, Sec. 3 (part).)

**Sec. 462.053. DENIAL OF ADMISSION.** (a) The superintendent of a state hospital may refuse to admit a voluntary applicant to a state hospital if:

- (1) the applicant has been a patient receiving treatment solely for alcoholism in a state hospital;
- (2) the applicant was released from that hospital within the 12 months preceding the date of application; and
- (3) the superintendent determines that no useful purpose would be served by admitting the applicant.

(b) An applicant may not be admitted to a state hospital under this subchapter if, at the time of the application, the hospital has a waiting list of mental patients committed to the hospital. (V.A.C.S. Art. 3196c, Sec. 3 (part).)

**Sec. 462.054. COSTS.** (a) A person may not be denied admission to, and care and treatment in, a state hospital because of the person's financial inability to pay for the person's maintenance if the person is otherwise eligible for admission under this subchapter.

(b) A person admitted to a state hospital under this subchapter who has sufficient funds shall pay for the person's maintenance at the same rate charged to other patients for maintenance at the hospital.

(c) Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), applies to any person admitted to a state hospital under this subchapter. (V.A.C.S. Art. 3196c, Sec. 5.)

**Sec. 462.055. CONSENT TO DETENTION; RELEASE.** (a) A person admitted to a state hospital under this subchapter is considered to have voluntarily consented to detention in the hospital for 10 days after the date of admission and waives any right to be released from the hospital before that period expires.

(b) Except as provided by Subsection (c), a person admitted to a state hospital under this subchapter shall be cared for, treated, and detained as a patient in the hospital for at least 10 but not more than 90 days after the date of admission.

(c) A person admitted to a state hospital under this subchapter may be released before the 10-day period expires if the superintendent determines that the release is in the person's best interest.

(d) When a patient is released from a state hospital under this section, the superintendent of the hospital shall notify each person, other than a licensed physician, who certified the patient for admission. (V.A.C.S. Art. 3196c, Sec. 4.)

[Sections 462.056–462.080 reserved for expansion]

#### **SUBCHAPTER D. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD**

**Sec. 462.081. CONTRIBUTING TO DELINQUENCY OF HABITUAL DRUNKARD;  
CRIMINAL PENALTY.** (a) In this section, "delinquency" means any act that tends to debase or injure the morals, health, or welfare of a habitual drunkard, and includes:

- (1) drinking intoxicating liquor;
- (2) entering or remaining in any bawdy house, assignation house, disorderly house, roadhouse, hotel, or public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade;
- (3) entering a place where intoxicating liquors are kept, drunk, used, or sold;
- (4) associating with thieves and immoral persons;
- (5) causing a habitual drunkard to leave home or to leave the custody of the drunkard's parents, guardian, or person acting for the drunkard's parents or guardian without first receiving their consent or against their will; or

(6) causing the habitual drunkard, by undue influence, to unlawfully cohabit with a person known by the actor to be a habitual drunkard.

(b) A person commits an offense if the person, by any act or in any manner, encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of a habitual drunkard, regardless of the drunkard's previous convictions.

(c) An offense under this section is punishable by a fine of not more than \$500, confinement in jail for not more than one year, or both. (V.A.C.S. Art. 2338-1a(a) (part).)

Sec. 462.082. CONFLICTING OFFENSES. To the extent of any conflict, the offenses prescribed by the Penal Code or other law enacted after June 9, 1949, prevail over the offense prescribed by Section 462.081. (V.A.C.S. Art. 2338-1a(b).)

## CHAPTER 463. TREATMENT OF DRUG-DEPENDENT PERSONS

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[Sections 463.002-463.010 reserved for expansion]

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- Sec. 463.053. NEW TRIAL
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- Sec. 463.081. ELIGIBILITY FOR VOLUNTARY ADMISSION TO STATE HOSPITAL
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- Sec. 463.101. CONSENT TO MEDICAL TREATMENT FOR DRUG USE
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- Sec. 463.121. CONTRIBUTING TO DELINQUENCY OF NARCOTIC ADDICT; CRIMINAL PENALTY
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**CHAPTER 463. TREATMENT OF DRUG-DEPENDENT PERSONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 463.001. DEFINITIONS. In this subchapter:

(1) "Certificate" means a sworn certificate of medical examination for drug dependency executed under this chapter.

(2) "Commissioner" means the commissioner of mental health and mental retardation.

(3) "Controlled substance" means a toxic inhalant or any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).

(4) "Department" means the Texas Department of Mental Health and Mental Retardation.

(5) "Drug dependence" means a state characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychological effects or to avoid the discomfort of its absence.

(6) "Drug-dependent person" means a person who uses a controlled substance and who is psychologically or physically dependent, or both, because of the use.

(7) "Legal holiday" means a state holiday specified by Article 4591, Revised Statutes, or an officially declared county holiday.

(8) "Mental health authority" means the agency designated by the commissioner to direct, operate, facilitate, or coordinate services to mentally ill or drug-dependent persons in a state service area.

(9) "Mental health facility" includes:

(A) an inpatient or outpatient mental health facility operated by the department, an entity designated by the department to provide mental health services, a political subdivision of the state, or any other legal entity;

(B) a community mental health and mental retardation center established under Section 3.01, Texas Mental Health and Mental Retardation Act (Article 5547-203, Vernon's Texas Civil Statutes), that provides mental health services; or

(C) the identifiable part of a general hospital that provides diagnosis, treatment, and care for mentally ill or drug-dependent persons.

(10) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the person who inhales the substance. (V.A.C.S. Art. 5561c-1, Sec. 1(b) (part).)

[Sections 463.002-463.010 reserved for expansion]

#### SUBCHAPTER B. PROTECTIVE CUSTODY PENDING COMMITMENT

Sec. 463.011. LIBERTY OR CUSTODY PENDING COMMITMENT HEARING. A person for whom an application for extended commitment has been filed under Subchapter C may not be detained pending the hearing on the application under Subchapter C unless the person is a patient in a mental health facility or detention is allowed under this subchapter. (V.A.C.S. Art. 5561c-1, Sec. 4.)

Sec. 463.012. PROTECTIVE CUSTODY ORDER. (a) The judge of a court in which an application for the extended commitment of a person is pending or, if the judge is absent, a magistrate designated by the judge, may on motion issue an order of protective custody of the person if the judge or magistrate determines that:

(1) a physician has stated the physician's opinion that the proposed patient is drug dependent and has given a detailed basis for that opinion; and

(2) the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained pending the commitment hearing.

(b) The judge's or magistrate's determination may be made solely on the basis of the application and the certificate filed with the motion if the judge or magistrate determines that the conclusions of the applicant and of the certifying physician are adequately supported by the information in the application and certificate. The judge or magistrate may take further evidence if the judge or magistrate concludes that a fair determination of the matter cannot be made on the basis of the application and certificate.

(c) The order of protective custody must direct a peace officer or other designated person to:

(1) take the proposed patient into protective custody; and

(2) immediately transport the proposed patient to a designated inpatient mental health facility or other suitable place for detention pending the probable cause hearing under this subchapter. (V.A.C.S. Art. 5561c-1, Secs. 17(a) (part), (b), (c), (d) (part).)

Sec. 463.013. MOTION FOR ORDER OF PROTECTIVE CUSTODY; CERTIFICATE.

(a) A county or district attorney only may file a motion for an order of protective custody under Section 463.012.

(b) The motion must state that the county or district attorney has reason to believe and does believe, from representations of a credible person, the conduct of the proposed patient, or the circumstances under which the proposed patient is found, that the proposed patient meets the criteria authorizing the court to order protective custody under Section 463.012(a).

(c) The motion must be accompanied by at least one certificate completed by a physician who has examined the proposed patient within five days before the date on which the motion is filed. The certificate must include:



(1) the information required by Section 463.043(a); and

(2) the physician's opinion and the detailed basis for that opinion concerning whether the proposed patient presents a substantial risk of serious harm to himself or others if not immediately restrained. (V.A.C.S. Art. 5561c-1, Sec. 17(a) (part).)

Sec. 463.014. **MENTAL HEALTH FACILITY REQUIREMENTS.** (a) The extent to which a mental health facility is required to detain a person under Section 463.012(c)(2) pending the probable cause hearing shall be based on the commissioner's determination that the facility has sufficient resources to perform the necessary services.

(b) A person may not be detained in a private mental health facility without first obtaining the consent of the head of the facility. (V.A.C.S. Art. 5561c-1, Sec. 17(d) (part).)

Sec. 463.015. **APPOINTMENT OF ATTORNEY AD LITEM; NOTICE OF HEARING.** (a) When a protective custody order is signed, the judge or designated magistrate shall simultaneously appoint an attorney ad litem to represent a proposed patient who does not have an attorney.

(b) Within a reasonable time before the probable cause hearing, the court that orders protective custody shall serve the proposed patient and the proposed patient's attorney with written notice stating:

(1) that the proposed patient has been placed under an order of protective custody;

(2) the reasons the order was issued; and

(3) the time and place of the hearing to establish probable cause to believe that the proposed patient is a drug-dependent person who presents a substantial risk of serious harm to himself or others such that the proposed patient cannot be at liberty pending the hearing on extended commitment. (V.A.C.S. Art. 5561c-1, Sec. 18.)

Sec. 463.016. **TIME FOR PROBABLE CAUSE HEARING.** (a) A hearing to determine probable cause for protective custody shall be held not later than 72 hours after the hour on which detention begins under an order of protective custody.

(b) If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the hearing must be held on the next day that is not a Saturday, Sunday, or legal holiday.

(c) The judge or magistrate may issue a written order declaring an emergency and delaying the probable cause hearing for not more than 24 hours if extremely hazardous weather conditions exist. (V.A.C.S. Art. 5561c-1, Sec. 19(a) (part).)

Sec. 463.017. **PROBABLE CAUSE HEARING.** (a) The probable cause hearing shall be held before a magistrate or, at the discretion of the judge, a master appointed by the judge.

(b) The proposed patient and the proposed patient's attorney are entitled to appear at the hearing and present evidence to challenge the allegation that the proposed patient presents a substantial risk of serious harm to himself or others.

(c) The magistrate or master may consider evidence, including letters, affidavits, and other material, that may not be admissible or sufficient in an extended commitment hearing.

(d) The state may prove its case on the physician's certificate filed in support of the initial detention.

(e) A master who presides over a hearing under this section is entitled to receive reasonable compensation. (V.A.C.S. Art. 5561c-1, Sec. 19(a) (part).)

Sec. 463.018. **ORDER FOR RELEASE OR DETENTION AFTER PROBABLE CAUSE HEARING.** (a) The magistrate or master shall order the proposed patient's release if, after the hearing, the magistrate or master determines that no probable cause exists to believe that the proposed patient presents a substantial risk of serious harm to himself or others.

(b) Arrangements must be made for the proposed patient's return to the location of apprehension, the proposed patient's place of residence in this state, or other suitable place if the proposed patient is released after a probable cause hearing.

(c) The proposed patient shall continue to be detained as prescribed by Sections 463.020 and 463.021 if, after the hearing, the magistrate or master determines that an adequate factual basis exists for probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself or others such that the proposed patient cannot be at liberty pending the commitment hearing.

(d) If protective custody is continued, the magistrate or master shall arrange for the patient to be returned to the mental health facility or other suitable place, along with copies of the certificate, affidavits, and other material submitted as evidence, and the notification of probable cause hearing prescribed by Section 463.019. (V.A.C.S. Art. 5561c-1, Sec. 19(b) (part).)

Sec. 463.019. NOTIFICATION OF PROBABLE CAUSE HEARING. (a) The notification of probable cause hearing must state substantially the following:

(Style of Case)

NOTIFICATION OF PROBABLE CAUSE HEARING

On this the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the undersigned hearing officer heard evidence concerning the need for protective custody of \_\_\_\_\_  
(proposed patient)

(hereinafter referred to as "proposed patient"). The proposed patient was given the opportunity to challenge the allegations that he presents a substantial risk of serious harm to self or others.

The proposed patient and his attorney \_\_\_\_\_ have been given  
(attorney)  
written notice that the proposed patient was placed under an order of protective custody and the reasons for such order on \_\_\_\_\_  
(date of notice)

I have examined the certificate of medical examination for drug dependency and \_\_\_\_\_

(other evidence considered)

Based upon this evidence, I find that there is probable cause to believe that the proposed patient presents a substantial risk of serious harm to himself (yes \_\_\_\_ or no \_\_\_\_ ) or others (yes \_\_\_\_ or no \_\_\_\_ ) such that he cannot be at liberty pending final hearing because \_\_\_\_\_

(reasons for finding; type of risk found)

(b) A copy of the notification of probable cause hearing and the supporting evidence shall be filed with the court that entered the original order of protective custody under Section 463.012. (V.A.C.S. Art. 5561c-1, Sec. 19(b) (part).)

Sec. 463.020. DETENTION PENDING COMMITMENT HEARING. (a) Except as provided by this section, the head of a facility in which a proposed patient is detained under an order of protective custody, or the facility head's designee, shall detain the proposed patient pending the commitment hearing.

(b) The head of a facility in which a proposed patient is detained under an order of protective custody shall immediately release the proposed patient from custody if the facility head does not receive notice that a probable cause hearing has been held not later than the 72nd hour after the hour on which detention begins, excluding Saturdays, Sundays, and legal holidays, unless the probable cause hearing is delayed under Section 463.016(c).

(c) The head of a facility shall release the proposed patient if:

(1) an order of extended commitment is not entered under Section 463.051 by the court within the time provided by Section 463.045(a), or if a continuance has been granted within the time provided by Section 463.045(b); or

(2) the head of the facility or the facility head's designee determines that the proposed patient does not meet the criteria for protective custody specified by Section 463.012(a). (V.A.C.S. Art. 5561c-1, Secs. 20(a), (d).)

Sec. 463.021. APPROPRIATE DETENTION FACILITIES. (a) A proposed patient detained in protective custody must be detained in an appropriate inpatient mental health facility or other facility considered suitable by the mental health authority.

(b) A proposed patient may not be detained in protective custody in a nonmedical facility used for the detention of a person charged with or convicted of a crime except because of and during an extreme emergency.

(c) Except as provided by this subsection, a proposed patient may not be detained in a nonmedical facility for more than 72 hours. If the 72-hour period ends on a Saturday, Sunday, or legal holiday, the proposed patient may be detained in a nonmedical facility until the first succeeding day that is not a Saturday, Sunday, or legal holiday. The facility shall detain the person for an additional 24 hours if a written order is made as provided by Section 463.016(c) for the delay of a probable cause hearing.

(d) If a proposed patient is held in protective custody in a nonmedical facility during an emergency, the county health authority shall ensure that the proposed patient receives proper care and medical attention. (V.A.C.S. Art. 5561c-1, Secs. 20(b), (c).)

[Sections 463.022–463.040 reserved for expansion]

**SUBCHAPTER C. COMMITMENT OF DRUG-DEPENDENT PERSON TO  
MENTAL HEALTH FACILITY**

Sec. 463.041. DEFINITION. In this subchapter, “single portal authority” means a mental health authority designated as a single portal authority by the board. (V.A.C.S. Art. 5561c-1, Sec. 1(b) (part).)

Sec. 463.042. APPLICATION FOR EXTENDED COMMITMENT. (a) A county or district attorney or other adult may file a sworn, written application for the extended commitment of a drug-dependent person to a mental health facility for not more than six months.

(b) The application must be filed in the county court or statutory county court having probate jurisdiction in the county in which the proposed patient resides or is found.

(c) The application must be styled “THE STATE OF TEXAS, FOR THE BEST INTEREST AND PROTECTION OF \_\_\_\_\_, A DRUG-DEPENDENT PERSON.” The application must be styled using the initials of the proposed patient and not the proposed patient’s full name.

(d) The application must contain the following information according to the applicant’s information and belief:

(1) the proposed patient’s name and address, including the county in which the proposed patient resides;

(2) a statement that the proposed patient is a drug-dependent person and requires hospitalization in a mental health facility for the proposed patient’s welfare and protection or for the protection of others; and

(3) a statement that the proposed patient is not currently charged with a criminal offense. (V.A.C.S. Art. 5561c-1, Sec. 2(a).)

Sec. 463.043. PHYSICIAN’S CERTIFICATE FILED WITH APPLICATION. (a) Except as provided by Subsection (b), the application must be accompanied by a certificate of a physician who examined the proposed patient within five days preceding the date on which the application was filed. The examining physician must date and sign the certificate and must state in the certificate:

(1) the examining physician’s name and address;

(2) the name and address of the person examined;

(3) the date and place of the examination;

(4) the period, if any, during which the proposed patient has been under the examining physician’s care;

(5) an accurate description of the treatment, if any, given by or administered under the direction of the examining physician; and

(6) the examining physician's opinion and the detailed basis for that opinion concerning whether:

(A) the proposed patient is drug dependent; and

(B) hospitalization in a mental health facility is necessary for the proposed patient's welfare and protection or for the protection of others.

(b) On the motion of the county or district attorney or other applicant, or on the court's own motion, the judge may approve the filing of an application without an accompanying certificate if good cause is shown. When the application is filed, the judge shall immediately appoint physicians to examine the proposed patient and to file the required number of certificates.

(c) If the judge is absent, a magistrate designated by the judge may act for the judge. (V.A.C.S. Art. 5561c-1, Secs. 2(b), (c) (part).)

Sec. 463.044. **CERTIFICATES REQUIRED.** (a) Before a hearing on an application for extended commitment may be held, at least two certificates completed by physicians who have examined the proposed patient within 30 days before the date on which the hearing is held must be on file with the court. At least one of the certificates must be completed by a psychiatrist if a psychiatrist is available in the county.

(b) If fewer than two certificates are on file, the judge or designated magistrate shall appoint physicians to examine the proposed patient and to file the necessary certificates.

(c) The judge or designated magistrate may order the proposed patient to submit to the examinations required under this section or Section 463.043 and may issue a warrant for a peace officer to take the proposed patient into custody for the examinations. (V.A.C.S. Art. 5561c-1, Secs. 2(c) (part), 3(a).)

Sec. 463.045. **TIME FOR COMMITMENT HEARING; CONTINUANCE.** (a) When an application for extended commitment is filed as provided by Section 463.043, the judge or designated magistrate shall set a date for a commitment hearing to be held not later than the 14th day after the date on which the application is filed.

(b) The court may grant one or more continuances if the parties agree or on a showing of good cause. However, the hearing must be held not later than the 30th day after the date on which the original application is filed. (V.A.C.S. Art. 5561c-1, Secs. 2(d) (part), 3(f).)

Sec. 463.046. **ATTORNEY AD LITEM; ATTORNEY ACCESS TO PATIENT'S FILES.** (a) The court shall appoint an attorney ad litem to represent the proposed patient unless the proposed patient retains an attorney of his own choosing.

(b) The proposed patient's attorney shall be furnished with all records and papers in the case and is entitled to access to all hospital and doctors' records relating to the proposed patient. (V.A.C.S. Art. 5561c-1, Secs. 2(d) (part), (e).)

Sec. 463.047. **JURY.** (a) The hearing shall be held before a jury unless the proposed patient and the proposed patient's attorney waive the right to a trial by jury.

(b) The waiver must be in writing, under oath, and signed by the proposed patient and the proposed patient's attorney.

(c) The waiver may be signed and filed at any time after the application for extended commitment and the notice of hearing are served on the proposed patient. (V.A.C.S. Art. 5561c-1, Sec. 3(b).)

Sec. 463.048. **BURDEN OF PROOF; HEARING EVIDENCE.** (a) The state must prove each issue by clear and convincing evidence.

(b) The court shall have a record of the proceedings made.

(c) A proposed patient may not be committed to a mental health facility under this subchapter except on competent medical or psychiatric testimony.

(d) The proposed patient and the proposed patient's attorney may waive the right to cross-examine witnesses at the hearing. If the proposed patient and the proposed

patient's attorney waive that right, the court may admit as evidence the certificates filed with the court. A certificate admitted as evidence is competent medical or psychiatric testimony relating to the information stated in the certificate, and the court may make its findings solely from the certificates admitted as evidence. (V.A.C.S. Art. 5561c-1, Secs. 3(c), (d); 5.)

**Sec. 463.049. TRANSFER.** If the hearing is to be held in a county court and the judge of the county court is not a licensed attorney, the county judge shall, on the filing of a request by the proposed patient or the proposed patient's attorney, transfer the hearing to a statutory county court having probate jurisdiction or to a district court. The receiving court shall conduct the hearing as if the application had been originally filed with that court. (V.A.C.S. Art. 5561c-1, Sec. 3(e).)

**Sec. 463.050. FINDINGS.** (a) The court or the jury, as appropriate, shall determine whether the proposed patient is a drug-dependent person.

(b) The court or the jury, as appropriate, shall include in its findings determinations as to whether the proposed patient requires hospitalization in a mental health facility for the proposed patient's welfare and protection or for the protection of others.

(c) The court shall enter on its docket the findings of the court or jury on those issues. (V.A.C.S. Art. 5561c-1, Sec. 6.)

**Sec. 463.051. ORDER FOR RELEASE OR COMMITMENT.** (a) The court shall enter an order denying the application and releasing the proposed patient if the court or the jury, as appropriate, finds that the proposed patient is not a drug-dependent person.

(b) If the court or the jury, as appropriate, finds that the proposed patient is a drug-dependent person and should be hospitalized for the proposed patient's welfare and protection or for the protection of others, the court shall order that the proposed patient be committed as a patient to a mental health facility:

(1) for six months;

(2) for a specified period shorter than six months if the parties agree to the period and the court finds that commitment for the period is in the best interest of the proposed patient; or

(3) until the proposed patient is discharged by the head of the mental health facility. (V.A.C.S. Art. 5561c-1, Secs. 7(a), (b), (f).)

**Sec. 463.052. ORDER FOR OUTPATIENT CARE OR SERVICES.** (a) If the court or the jury, as appropriate, finds that the proposed patient is a drug-dependent person but should not be hospitalized, the court shall dismiss the jury, if any, and hear additional evidence relating to alternative settings for outpatient care or services.

(b) After hearing the evidence, the judge may order the proposed patient to participate in appropriate outpatient care or services for six months or a shorter period specified in accordance with Section 463.051(b)(2). The outpatient care or services may include community substance abuse programs and services provided by a private psychiatrist or psychologist.

(c) An order issued under Subsection (b) must identify the individual responsible for the outpatient care or services. Not later than the 14th day after the date on which the order is issued, that individual shall submit to the court a general program of treatment to be incorporated into the court's order. On application by the patient or individual responsible for the patient's care or services, the court may modify the order or waive the requirements before the end of the commitment period.

(d) If a patient does not comply with the order, the individual responsible for the patient's care or treatment shall notify the court in writing of the patient's noncompliance.

(e) On receipt of the notice or on the court's motion, the court may issue to the patient an order commanding the patient to appear before the court and show cause why the patient should not be held in contempt of court. Notice of the show cause order shall be served on the patient as provided by Rule 21a, Texas Rules of Civil Procedure, not later than the 10th day before the date on which the hearing on the order is held. (V.A.C.S. Art. 5561c-1, Secs. 7(c), (d), (e).)

Sec. 463.053. NEW TRIAL. (a) The judge, for good cause shown, may set aside a commitment order and grant a new trial not later than the second day after the date on which the judge entered the order.

(b) A motion for new trial is not a prerequisite to an appeal from the order of the county court. (V.A.C.S. Art. 5561c-1, Sec. 8.)

Sec. 463.054. APPEAL. (a) An appeal of a commitment order issued under this subchapter must be filed in the court of appeals having jurisdiction in the county in which the order is issued.

(b) Notice of appeal must be filed not later than the 10th day after the date on which the order being appealed was signed.

(c) When the notice of appeal is filed, the clerk shall send immediately a certified transcript of the proceedings to the court of appeals.

(d) The hearing judge may stay the commitment order and release the person from custody if the judge determines while the appeal is pending that the person does not meet the criteria for protective custody specified by Section 463.012(a). The judge may require an appearance bond in an amount determined by the judge. (V.A.C.S. Art. 5561c-1, Sec. 9.)

Sec. 463.055. PLACE OF COMMITMENT. (a) In an order for commitment, the judge shall commit the patient to:

(1) the single portal authority facility for the area, or if the department has not designated a single portal authority for the area, to a specified state mental health facility;

(2) a private mental health facility; or

(3) a federal agency operating a mental health facility.

(b) If the single portal authority lacks the local resources to care for the patient, the authority may transfer the patient to a state mental health facility or, at the request of the authority, the court may commit the patient directly to a state mental health facility. (V.A.C.S. Art. 5561c-1, Sec. 10.)

Sec. 463.056. COMMITMENT TO PRIVATE MENTAL HEALTH FACILITY. The court may order the patient to be committed to a private mental health facility on:

(1) an application signed by the patient or by the patient's guardian requesting that the patient be placed in a designated private mental health facility at the expense of the patient or the guardian; and

(2) a written statement by the head of the private mental health facility that the facility is equipped to accept responsibility for the patient in accordance with this subchapter. (V.A.C.S. Art. 5561c-1, Sec. 11 (part).)

Sec. 463.057. COMMITMENT TO FEDERAL AGENCY. (a) If the court receives written notice from a federal agency operating a mental health facility that facilities are available and that a patient is eligible for care or treatment in the facility, the court may order the patient to be committed to the federal agency and place the patient in the agency's custody for transportation to the mental health facility.

(b) A patient admitted under court order to a mental health facility operated by a federal agency in or outside this state is subject to the agency's rules.

(c) The head of the mental health facility operated by the federal agency has the same authority and responsibility concerning the patient as the head of a state mental health facility.

(d) The appropriate courts of this state retain jurisdiction to inquire at any time into:

(1) the mental condition of a patient committed to a federal agency; and

(2) the necessity of the patient's continued commitment. (V.A.C.S. Art. 5561c-1, Sec. 12.)

Sec. 463.058. PATIENT TRANSPORT. (a) The court shall require a sheriff to transport the patient to the mental health facility to which the patient is committed unless the court requires:

(1) a relative or other responsible person with a proper interest in the patient's welfare to transport the patient to the mental health facility; or

(2) the head of the mental health facility to transport the patient to the facility if the head of the facility advises the court that facility personnel are available for that purpose.

(b) A female patient shall be accompanied by a female attendant.

(c) A patient may not be transported in a marked police or sheriff's car or accompanied by officers in uniform if other means are available. (V.A.C.S. Art. 5561c-1, Secs. 13, 15.)

**Sec. 463.059. DUTIES OF CLERK CONCERNING PATIENT TRANSPORT.** (a) The court shall direct the clerk of the court to issue a writ of commitment in duplicate directed to the person required to transport the patient commanding that person to take charge of the patient and to transport the patient to the designated mental health facility.

(b) The clerk of the court shall prepare a certified transcript of the proceedings in the commitment hearing and shall send the transcript to the head of the mental health facility to which the patient is committed. The clerk shall send with the transcript any available information concerning the medical, social, and economic status and history of the patient and the patient's family. (V.A.C.S. Art. 5561c-1, Sec. 14.)

**Sec. 463.060. RECEIPT OF PATIENT.** When the head of the mental health facility receives a copy of the writ of commitment and admits the patient, the facility head shall:

(1) give the person transporting the patient a written statement acknowledging acceptance of the patient and of any personal property belonging to the patient; and

(2) file a copy of the statement with the clerk of the committing court. (V.A.C.S. Art. 5561c-1, Sec. 16.)

[Sections 463.061–463.070 reserved for expansion]

#### **SUBCHAPTER D. COSTS, LIABILITY, AND VIOLATIONS: EXTENDED COMMITMENTS AND PROTECTIVE CUSTODY**

**Sec. 463.071. COSTS RELATING TO DETENTION OR COMMITMENT.** (a) A county that enters an order of commitment or detention under Subchapter B or C is liable for payment of the costs of any proceedings related to that order, including:

(1) court-appointed attorney's fees;

(2) physician examination fees;

(3) compensation for language or sign interpreters;

(4) compensation for masters;

(5) expenses of detention in a county or state-owned facility before commitment; and

(6) expenses of transporting the patient to a hearing or to a mental health facility.

(b) For any cost the county actually pays that relates to an order of commitment or detention, the county is entitled to reimbursement from:

(1) the patient;

(2) the applicant; or

(3) any person or estate liable for the patient's support while the patient is in a state mental health facility.

(c) On motion by the county or district attorney or on the court's own motion, the court may require an applicant to file a cost bond with the court.

(d) Unless the patient or a person responsible for the patient is able to pay the following costs, the state shall pay the cost of:

(1) transporting a released patient to the patient's home; or

(2) returning to a mental health facility a patient who is absent without permission.

(e) The county or the state may not pay any cost relating to an order of commitment or detention, including court costs, for a patient committed to a private mental health facility. (V.A.C.S. Art. 5561c-1, Secs. 11 (part), 21.)

Sec. 463.072. IMMUNITY FROM LIABILITY. (a) A person is not civilly or criminally liable for an act done in good faith, reasonably, and without malice in connection with:

- (1) the examination, certification, apprehension, custody, transportation, detention, treatment, or release of a patient or proposed patient; or
- (2) any act required or authorized by Subchapter B or C.

(b) A physician who performs a medical examination or provides information to a court in a court proceeding under Subchapter B or C is an officer of the court and is not civilly or criminally liable for any act committed in connection with the examination or provision of information if the physician acted without malice. (V.A.C.S. Art. 5561c-1, Sec. 22.)

Sec. 463.073. UNWARRANTED COMMITMENT; CRIMINAL PENALTY. (a) A person commits an offense if the person causes, conspires with another to cause, or assists another to cause the commitment of an individual to a mental health facility and the person knows that the commitment is not warranted.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5561c-1, Sec. 23.)

Sec. 463.074. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates any provision of Subchapter B or C.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5561c-1, Sec. 24.)

Sec. 463.075. PROSECUTION OF VIOLATION. The appropriate county or district attorney shall prosecute an offense under this subchapter. (V.A.C.S. Art. 5561c-1, Sec. 25.)

[Sections 463.076–463.080 reserved for expansion]

#### SUBCHAPTER E. VOLUNTARY ADMISSION TO STATE HOSPITAL

Sec. 463.081. ELIGIBILITY FOR VOLUNTARY ADMISSION TO STATE HOSPITAL. A person is eligible to be admitted to, and cared for and treated in, a state hospital under the jurisdiction of the department if the person:

- (1) is a resident of this state at the time of application for admission to a state hospital under this subchapter; and
- (2) is addicted to the use of narcotic drugs. (V.A.C.S. Art. 3196c-1, Sec. 1.)

Sec. 463.082. ADMISSION TO STATE HOSPITAL; CERTIFICATION. (a) The department may admit a person eligible for admission to a state hospital for care and treatment if:

- (1) the hospital has available facilities;
- (2) the person voluntarily applies for admission to the hospital; and
- (3) the person's narcotic drug addiction is certified in accordance with Subsection (b).

(b) The certification under this section must be a written statement made by a reputable, practicing physician licensed to practice medicine in this state that, to the best of the physician's knowledge and belief, the applicant is a narcotic drug addict in need of hospitalization and treatment. (V.A.C.S. Art. 3196c-1, Sec. 2 (part).)

Sec. 463.083. DENIAL OF ADMISSION. The department may refuse to admit a voluntary applicant to a state hospital if:

- (1) the applicant has been a patient receiving treatment solely for drug addiction in a state hospital;
- (2) the applicant was released from that hospital; and
- (3) the department determines that no useful purpose would be served by admitting the applicant. (V.A.C.S. Art. 3196c-1, Sec. 2 (part).)



**Sec. 463.084. COSTS OF TREATMENT.** (a) A person may not be denied admission to, and care and treatment in, a state hospital because of the person's financial inability to pay for the person's maintenance if the person is otherwise eligible for admission under this subchapter.

(b) A person admitted to a state hospital under this subchapter who has sufficient funds shall be required to pay for the person's maintenance at the same rate charged to other patients for maintenance at the hospital.

(c) Chapter 152, Acts of the 45th Legislature, Regular Session, 1937 (Article 3196a, Vernon's Texas Civil Statutes), applies to any person admitted to a state hospital under this subchapter. (V.A.C.S. Art. 3196c-1, Sec. 4.)

**Sec. 463.085. TREATMENT AND RELEASE.** (a) A person admitted to a state hospital under this subchapter may be treated in the hospital until the person is cured as determined by the medical authorities of the hospital or until the superintendent of the hospital determines that further treatment will not likely be beneficial.

(b) A person admitted to a state hospital under this subchapter shall be released from the hospital at any time on the person's request.

(c) A person admitted to a state hospital under this subchapter is considered to have voluntarily consented to detention in the hospital and waives any right to be released from the hospital before the expiration of the period provided by this section. (V.A.C.S. Art. 3196c-1, Sec. 3 (part).)

**Sec. 463.086. COMMITMENT OF CHILD TO STATE HOSPITAL.** (a) A juvenile court may order a child to be committed to the custody of the department for treatment in a state hospital if:

(1) the child is declared a delinquent child because of the child's habitual use of or addiction to narcotic drugs, or if the judge of the juvenile court finds that a delinquent child under the jurisdiction of the court is addicted to the use of narcotic drugs;

(2) the hospital has available facilities; and

(3) the department consents to admitting the child to the hospital.

(b) A child committed under Subsection (a) shall remain in the state hospital until the hospital medical authorities certify that the child is cured or that further treatment will not likely be beneficial.

(c) The delinquent child remains subject to the jurisdiction and orders of the committing court while the child is confined in the hospital. The child shall be remanded to the court when discharged from the hospital. (V.A.C.S. Art. 3196c-1, Sec. 5.)

[Sections 463.087-463.100 reserved for expansion]

#### **SUBCHAPTER F. TREATMENT OF CHILDREN FOR DRUG ABUSE**

**Sec. 463.101. CONSENT TO MEDICAL TREATMENT FOR DRUG USE.** (a) A person 13 years of age or older may consent to examination and treatment by a licensed physician for any drug addiction, drug dependency, or any other condition directly related to drug use.

(b) A physician who is legally qualified to practice medicine in this state is not liable for the examination and treatment of a person who consents under this section, except for the physician's own acts of negligence. (V.A.C.S. Art. 4447i.)

**Sec. 463.102. COMMITMENT OF CHILD TO APPROVED TREATMENT PROGRAM.** (a) If a juvenile court finds that a child has engaged in delinquent conduct or conduct indicating a need for supervision resulting from or related to the child's drug abuse, the court may remand the child to an approved treatment program for care and treatment for not more than 90 days after the date on which the child is remanded if:

(1) an approved treatment program is available to treat the child; and

(2) the program agrees in writing to receive the child under this section.

(b) In this section:

(1) "Approved treatment program" means a substance abuse treatment facility approved by the Texas Commission on Alcohol and Drug Abuse to carry out a specific provision of this chapter.

(2) "Drug abuse" means misuse or abuse of any controlled substance for other than appropriate and duly prescribed medicinal purposes. (V.A.C.S. Art. 5561c-2, Secs. 1.03 (part); 3.07(c) (part).)

[Sections 463.103-463.120 reserved for expansion]

#### SUBCHAPTER G. CONTRIBUTING TO NARCOTIC ADDICTION

Sec. 463.121. CONTRIBUTING TO DELINQUENCY OF NARCOTIC ADDICT; CRIMINAL PENALTY. (a) In this section, "delinquency" means any act that tends to debase or injure the morals, health, or welfare of a narcotic addict, and includes:

- (1) drinking intoxicating liquor;
- (2) going into or remaining in any bawdy house, assignation house, disorderly house, roadhouse, hotel, or public dance hall where prostitutes, gamblers, or thieves are permitted to enter and ply their trade;
- (3) going into a place where intoxicating liquors are kept, drunk, used, or sold;
- (4) associating with thieves and immoral persons;
- (5) causing a narcotic addict to leave home or to leave the custody of the addict's parents, guardian, or person acting for the addict's parent or guardian without first receiving that person's consent or against that person's will; or
- (6) causing the addict, by undue influence, to unlawfully cohabit with a person known by the actor to be a narcotic addict.

(b) A person commits an offense if the person, by any act or in any manner, encourages, causes, acts in conjunction with, or contributes to the delinquency, dependency, or neglect of a narcotic addict, regardless of the addict's previous convictions.

(c) An offense under this section is punishable by a fine of not more than \$500, confinement in jail for not more than one year, or both. (V.A.C.S. Art. 2338-1a(a) (part).)

Sec. 463.122. CONFLICTING OFFENSES. To the extent of any conflict, the offenses defined by the Penal Code or other law enacted after June 9, 1949, prevail over the offense defined by Section 463.121. (V.A.C.S. Art. 2338-1a(b).)

#### CHAPTER 464. FACILITIES TREATING ALCOHOLICS AND DRUG-DEPENDENT PERSONS

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**CHAPTER 464. FACILITIES TREATING ALCOHOLICS AND  
DRUG-DEPENDENT PERSONS**

**SUBCHAPTER A. REGULATION OF CHEMICAL DEPENDENCY  
TREATMENT FACILITIES**

**Sec. 464.001. DEFINITIONS.** In this subchapter:

- (1) "Chemical dependency" means:
  - (A) abuse of alcohol or a controlled substance;
  - (B) psychological or physical dependence on alcohol or a controlled substance; or
  - (C) addiction to alcohol or a controlled substance.
- (2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.
- (3) "Controlled substance" means a toxic inhalant or any substance designated as a controlled substance by Chapter 481 (Texas Controlled Substances Act).
- (4) "Toxic inhalant" means a gaseous substance that is inhaled by a person to produce a desired physical or psychological effect and that may cause personal injury or illness to the inhaler.
- (5) "Treatment" means a planned and organized program designed to initiate and promote a person's chemical-free status or to maintain the person free of illegal drugs.
- (6) "Treatment facility" means:
  - (A) a public or private hospital;
  - (B) a detoxification facility;
  - (C) a primary care facility;
  - (D) an intensive care facility;
  - (E) a long-term care facility;
  - (F) an outpatient care facility;
  - (G) a community mental health center;
  - (H) a health maintenance organization;
  - (I) a recovery center;
  - (J) a halfway house;
  - (K) an ambulatory care facility; or
  - (L) any other facility required to be licensed and approved by the commission.(V.A.C.S. Art. 5561cc, Sec. 1 (part).)

**Sec. 464.002. LICENSE REQUIRED.** A person may not operate a treatment facility or a structured program that treats chemically dependent persons without a license issued under this subchapter. (V.A.C.S. Art. 5561cc, Sec. 2(a).)

**Sec. 464.003. EXEMPTIONS.** This subchapter does not apply to:

- (1) a facility maintained or operated by the federal government;
- (2) a facility operated by the state, including a facility licensed or operated by the Texas Department of Mental Health and Mental Retardation;
- (3) a boarding home or shelter that provides only food and lodging, peer support, or other personal services that are not represented as chemical dependency services if the home or shelter is licensed by another state agency or provides services without cost to the residents or a third party payor;
- (4) an educational program for intoxicated drivers; or
- (5) the individual office of a private, licensed health care practitioner who personally renders private individual or group episodic counseling in the practitioner's own name and in the practitioner's office but who does not purport to offer a structured chemical dependency program. (V.A.C.S. Art. 5561cc, Secs. 1 (part), 2(b).)

Sec. 464.004. LICENSE APPLICATION AND ISSUANCE. (a) To receive a license to operate a treatment facility to treat chemically dependent persons, a person must:

- (1) file a written application on a form prescribed by the commission; and
- (2) cooperate with the inspection of the facility.

(b) The commission shall issue a license to an applicant:

- (1) whose application meets the content requirements of the commission; and
- (2) who receives approval of the facility after at least one on-site inspection.

(c) The license is issued only for the person named in the license and not the legal successors of that person.

(d) The license expires one year after the date on which the license is issued. (V.A.C.S. Art. 5561cc, Secs. 1 (part), 3, 4, 5(a).)

Sec. 464.005. LICENSE RENEWAL. (a) The commission shall provide renewal application forms and information relating to renewal procedures to each license holder.

(b) The commission may require an inspection before renewing a license. (V.A.C.S. Art. 5561cc, Secs. 5(b), (c).)

Sec. 464.006. INSPECTIONS. The commission or its representative may enter the premises of a treatment facility at reasonable times to make an inspection the commission considers necessary. (V.A.C.S. Art. 5561cc, Sec. 6(a).)

Sec. 464.007. APPLICATION AND INSPECTION FEES. (a) The commission shall charge nonrefundable application and inspection fees for a license or renewal license or for certifying a facility to receive court commitments.

(b) If the General Appropriations Act does not specify the amount of the fee, the commission shall establish reasonable fees to administer this subchapter in amounts necessary for the fees to cover at least 50 percent of the costs of the licensing program.

(c) The commission may not maintain unnecessary fund balances. (V.A.C.S. Art. 4476-15, Sec. 5.12(c) (part); Art. 5561cc, Sec. 10 (part).)

Sec. 464.008. ALCOHOL AND DRUG ABUSE TREATMENT LICENSURE FUND. All application and inspection fees collected by the commission under this subchapter shall be deposited in the state treasury to the credit of the alcohol and drug abuse treatment licensure fund. Money in the fund may be appropriated only to the commission to administer and enforce this subchapter. (V.A.C.S. Art. 4476-15, Sec. 5.12(c) (part); Art. 5561cc, Sec. 10 (part).)

Sec. 464.009. RULES AND STANDARDS. (a) The commission shall license treatment facilities in a manner consistent with state and federal law and rules, including commission licensing standards.

(b) The commission shall adopt rules for:

- (1) the organizational structure of a treatment facility, including the governing authority of the facility, board authority, organization, fiscal and policy responsibilities, supervisory lines of authority, and staffing;

(2) the program conducted by a facility, including services to be provided, admission criteria, client rights, and standards for medication, nutrition, and emergency situations;

(3) the clinical and fiscal records kept by a facility;

(4) the general physical plant requirements for a facility, including environmental considerations, fire protection, safety, and other conditions to ensure the health and comfort of the clients; and

(5) any other aspects of chemical dependency treatment as necessary to protect the client, including standards required by federal or state law.

(c) The commission shall adopt rules to protect the rights of individuals receiving services from a treatment facility and to maintain the confidentiality of client records as required by state and federal law.

(d) The commission by rule may not restrict competitive bidding or advertising by a facility regulated by the commission except to prohibit false, misleading, or deceptive practices by the facility. However, those rules may not:

(1) restrict the facility's use of any medium for advertising;

(2) restrict in an advertisement the personal appearance of a person representing the facility or the use of that person's voice;

(3) regulate the size or duration of an advertisement by the facility; or

(4) restrict the facility's advertisement under a trade name. (V.A.C.S. Art. 4476-15, Sec. 5.12(c) (part); Art. 5561cc, Secs. 7(a), (b), 12.)

**Sec. 464.010. REPORTS OF ABUSE OR NEGLECT.** (a) An owner or employee of a treatment facility or any other person who believes that a client's physical or mental health or welfare has been, is, or will be adversely affected by abuse or neglect caused by any person shall report the facts underlying that belief to the commission. This requirement is in addition to the requirement prescribed by Chapter 34, Family Code.

(b) The commission by rule shall prescribe procedures for the investigation of reports under Subsection (a) and for coordination with law enforcement agencies or other agencies.

(c) An individual who in good faith reports to the commission under this section is immune from civil or criminal liability based on the report. That immunity extends to participation in a judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect.

(d) The commission may request the attorney general's office to file a petition for temporary care and protection of a client of a treatment facility if it appears that immediate removal of the client is necessary to prevent further abuse.

(e) All records made by the commission during its investigation are confidential and may not be released except that the release may be made:

(1) on court order;

(2) on written request and consent of the person under investigation or that person's authorized attorney; or

(3) as provided by Section 464.011. (V.A.C.S. Art. 5561cc, Secs. 13(a), (b), (c), (d), (e) (part).)

**Sec. 464.011. DISCLOSURE OF COMMISSION RECORDS.** The commission may make its licensure and investigatory records available to a state or federal agency on written request by the agency's representative if the agency agrees not to disclose information that could identify a client in violation of the law. (V.A.C.S. Art. 5561cc, Sec. 13(e) (part).)

**Sec. 464.012. METHADONE PROGRAMS; TREATMENT GOALS.** (a) Treatment of narcotic addiction by a licensed methadone program is a specialty area with federal rules unique to the provision of maintenance treatment. The treatment model is medical.

(b) Short-term treatment goals may emphasize personal and public health, crime prevention, reintegration into the work force, and stabilization. Attaining abstinence is a

long-term goal, subject to a medical determination of appropriateness and prognosis. (V.A.C.S. Art. 5561cc, Sec. 16.)

**Sec. 464.013. COMMISSION INTERACTION WITH TEXAS DEPARTMENT OF HEALTH AND OTHER AGENCIES.** (a) Sections 464.007, 464.008, and 464.009 do not affect the powers and duties of the Texas Department of Health under Chapter 466. The commission by rule may recognize and defer to rules adopted by the Texas Board of Health under Chapter 466. The commission and the Texas Department of Health may enter into any agreements necessary to implement this subsection.

(b) The commission may enter into interagency agreements necessary to prevent duplication in regulatory activities by other agencies and to conserve state resources in relation to its on-site inspections under this subchapter. (V.A.C.S. Art. 4476-15, Sec. 5.12(d); Art. 5561cc, Secs. 6(b), 7(c).)

**Sec. 464.014. DENIAL, REVOCATION, OR NONRENEWAL OF LICENSE.** (a) The executive director of the commission may deny, revoke, or refuse to renew a license if the applicant, license holder, or owner, director, administrator, or clinical staff member of the facility:

(1) has a documented history of client abuse or neglect; or

(2) fails to comply with this subchapter or with a rule of the commission adopted under this subchapter.

(b) The denial, revocation, or nonrenewal takes effect on the 30th day after the date on which the notice was mailed unless:

(1) the commission secures an injunction under Section 464.015; or

(2) an administrative appeal is requested.

(c) If an administrative appeal is requested, the effective date of the commission's original decision must be postponed to allow the person whose license was denied, revoked, or not renewed to participate in the appeal. The commission shall provide an opportunity for the affected person to present additional evidence or testimony to the commission.

(d) A person whose license is denied, revoked, or not renewed is entitled to:

(1) appeal that decision at a hearing before the commission or a hearings officer appointed by the commission; and

(2) receive notice of the date, time, and place of the hearing not later than the 15th day before the date of the hearing.

(e) A request for a hearing must be received by the commission not later than the 15th day after the date on which the notice of denial, revocation, or nonrenewal is mailed to the applicant or license holder.

(f) The commission may restrict attendance at an appeals hearing to the parties and their agents.

(g) If a license is denied, revoked, or not renewed after a hearing, the commission shall send to the applicant or license holder a copy of the commission's findings and grounds for the decision.

(h) An order denying, revoking, or refusing to renew a license takes effect on the 31st day after the date on which the applicant or license holder receives final notice of the denial, revocation, or nonrenewal.

(i) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to a judicial review of a commission appeals hearing under this subchapter. (V.A.C.S. Art. 5561cc, Secs. 8(a), (b), (c) (part), (d), (e), (f), (g), (h).)

**Sec. 464.015. INJUNCTION.** (a) The commission may petition a district court to restrain a person or facility that violates the standards or licensing requirements provided under this subchapter in a manner that causes immediate threat to the health and safety of individual clients.

(b) A suit for injunctive relief must be brought in Travis County.

(c) A district court, on petition of the commission and on a finding by the court that a person or facility is violating this subchapter, shall grant any injunctive relief warranted by the facts.

(d) The court granting the requested relief shall order the person or facility to reimburse the commission for all costs of investigation and litigation, including reasonable attorney's fees, reasonable investigative expenses, and civil administrative costs.

(e) At the request of the commission, the attorney general shall institute and conduct a suit authorized by Subsection (a) in the name of this state. (V.A.C.S. Art. 5561cc, Sec. 9.)

**Sec. 464.016. CRIMINAL PENALTY.** (a) A person commits an offense if the person establishes, conducts, manages, or operates a treatment facility without a license. Each day of violation constitutes a separate offense.

(b) A person commits an offense if the person intentionally, maliciously, or recklessly makes a false report under Section 464.010.

(c) A person commits an offense if the person:

- (1) has reasonable grounds to believe that abuse or neglect is occurring;
- (2) is under a legal duty to report the abuse or neglect; and
- (3) does not report the abuse or neglect.

(d) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5561cc, Sec. 14.)

**Sec. 464.017. CIVIL PENALTY.** (a) A person or facility is subject to a civil penalty of not less than \$10 or more than \$200 for each day of violation and for each act of violation of this subchapter or a rule adopted under this subchapter.

(b) The commission may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 464.015; or
- (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(c) At the request of the commission, the attorney general shall institute and conduct the suit authorized by Subsection (b) in the name of this state.

(d) The civil penalty authorized by this section is in addition to any other civil, administrative, or criminal penalty provided by law.

(e) Penalties collected under this section shall be deposited to the credit of the alcohol and drug abuse treatment licensure fund. (V.A.C.S. Art. 5561cc, Sec. 15.)

[Sections 464.018–464.030 reserved for expansion]

#### **SUBCHAPTER B. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS AND CENTERS**

**Sec. 464.031. DEFINITIONS.** In this subchapter:

(1) "Alcoholism program or center" means a public or private alcoholism prevention, intervention, treatment, or rehabilitation program or center.

(2) "Commission" means the Texas Commission on Alcohol and Drug Abuse. (New.)

**Sec. 464.032. COUNTY CONTRACTS WITH ALCOHOLISM PROGRAMS OR CENTERS.** (a) A county or a group of counties acting together may contract with an alcoholism program or center to provide prevention, treatment, and rehabilitation services to persons suffering from alcoholism or at risk of becoming alcoholics.

(b) The county or group of counties may contract only with a program or center included in a list submitted under Section 464.034. (V.A.C.S. Art. 2372ee, Secs. 1, 4(a).)

**Sec. 464.033. APPLICATION FOR CONTRACT.** (a) To be eligible to contract with a county, an alcoholism program or center providing prevention or intervention services must submit an application to the regional alcoholism advisory committee established by

the commission to serve the area in which the program or center is located or in which the program or center will provide services.

(b) To be eligible to contract with a county, an alcoholism program or center providing treatment or rehabilitation services must:

- (1) submit an application as provided by Subsection (a); and
- (2) be licensed by the commission.

(c) A regional alcoholism advisory committee shall adopt rules governing the procedure for submitting an application. (V.A.C.S. Art. 2372ee, Sec. 2.)

Sec. 464.034. REVIEW OF CONTRACT APPLICATIONS; LIST. (a) A regional alcoholism advisory committee shall:

- (1) review each application received; and
- (2) rank the applications using guidelines established by the commission for reviewing funding applications.

(b) At least twice each year, each regional alcoholism advisory committee shall submit a ranked list of all applications received during the preceding six months to each county in the region the committee serves. (V.A.C.S. Art. 2372ee, Sec. 3.)

Sec. 464.035. PAYMENT OF CONTRACT AMOUNTS. To pay for services provided under a contract with an alcoholism program or center, the commissioners court by order may dedicate for payment to the program or center a percentage of the money received by the county as fines for alcohol-related offenses under Article 6701/-1, Revised Statutes. (V.A.C.S. Art. 2372ee, Sec. 4(b).)

#### CHAPTER 465. R. B. McALLISTER DRUG TREATMENT PROGRAM

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 465.001. SHORT TITLE

Sec. 465.002. DEFINITIONS

[Sections 465.003-465.010 reserved for expansion]

##### SUBCHAPTER B. PROGRAM ORGANIZATION, OBJECTIVE, AND STANDARDS

Sec. 465.011. PROGRAM

Sec. 465.012. TREATMENT SERVICES

Sec. 465.013. TREATMENT OBJECTIVE

Sec. 465.014. INFORMATION AND PREVENTION SERVICES

Sec. 465.015. DUTIES OF EXECUTIVE DIRECTOR

Sec. 465.016. RULES; DELEGATION OF DIRECTOR'S FUNCTIONS

[Sections 465.017-465.020 reserved for expansion]

##### SUBCHAPTER C. VOLUNTARY TREATMENT

Sec. 465.021. APPLICATION FOR VOLUNTARY TREATMENT

Sec. 465.022. OUTREACH SERVICES

[Sections 465.023-465.030 reserved for expansion]

##### SUBCHAPTER D. TREATMENT AND CIVIL COMMITMENT OF PERSONS CHARGED WITH CRIMINAL OFFENSES

Sec. 465.031. APPLICABILITY TO PROCEDURES FOR REFERRAL OF PERSONS CHARGED WITH CRIMINAL OFFENSE

Sec. 465.032. STATE INTERAGENCY COOPERATION

Sec. 465.033. TREATMENT OF PERSONS IN CUSTODY

Sec. 465.034. TREATMENT OF DRUG-DEPENDENT PERSONS ON CONDITIONAL RELEASE



[Sections 465.035–465.040 reserved for expansion]

**SUBCHAPTER E. EMERGENCY TREATMENT AND REFERRAL OF PERSONS  
NOT CHARGED WITH CRIMINAL OFFENSES**

- Sec. 465.041. **APPLICABILITY TO PERSONS WITH NO CRIMINAL CHARGE PENDING**  
Sec. 465.042. **EMERGENCY TREATMENT FOR PERSONS UNDER INFLUENCE OF  
CONTROLLED SUBSTANCES**  
Sec. 465.043. **EMERGENCY TREATMENT FOR PERSONS INCAPACITATED BY  
CONTROLLED SUBSTANCES**  
Sec. 465.044. **RELEASE AND CONDITIONAL REFERRAL TO TREATMENT SERVICES  
BY LAW ENFORCEMENT OFFICERS**

[Sections 465.045–465.050 reserved for expansion]

**SUBCHAPTER F. APPLICABILITY TO SPECIFIC GROUPS**

- Sec. 465.051. **SERVICES FOR GOVERNMENTAL AND PRIVATE EMPLOYEES**  
Sec. 465.052. **SERVICES FOR MENTALLY ILL DRUG-DEPENDENT PERSONS**  
Sec. 465.053. **SERVICES FOR JUVENILES**

**CHAPTER 465. R. B. McALLISTER DRUG TREATMENT PROGRAM**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 465.001. **SHORT TITLE.** This chapter may be cited as the R. B. McAllister Drug Treatment Program Act. (V.A.C.S. Art. 4476–15a, Sec. 100.)

Sec. 465.002. **DEFINITIONS.** In this chapter:

- (1) "Commission" means the Texas Commission on Alcohol and Drug Abuse.
- (2) "Controlled substance":
  - (A) has the meaning assigned by Chapter 481 (Texas Controlled Substances Act); or
  - (B) means a toxic inhalant as that term is defined by the executive director.
- (3) "Criminal justice system" means law enforcement officials, district attorneys, county attorneys, courts, and the Texas Department of Corrections.
- (4) "Day care services" means treatment services provided for a part-time resident in a treatment facility.
- (5) "Drug-dependent person" means a person who is using a controlled substance and who is in a state of psychological or physical dependence, or both, arising from the administration of a controlled substance. Drug dependence is characterized by behavioral and other responses that include a strong compulsion to take a controlled substance in order to experience its psychological effects or to avoid the discomfort of its absence.
- (6) "Executive director" means the executive director of the commission or the executive director's designee.
- (7) "Nearest relative" means the following persons in the order of priority stated:
  - (A) a person's legal guardian;
  - (B) a person's spouse;
  - (C) a person's adult issue, whether natural or adopted;
  - (D) a person's parent;
  - (E) a person's adult sibling; or
  - (F) any other person with whom the person is residing, whether related or not.
- (8) "Outpatient services" means treatment services provided to a client who is not a resident of a treatment facility.

(9) "Person incapacitated by a controlled substance" means a person who needs treatment as a result of the effects of one or more controlled substances and:

(A) is unconscious of the person's need for treatment; or

(B) is incapable of making a rational decision with respect to the person's need for treatment because the person's judgment has been impaired.

(10) "Prevention" means a constructive process designed to inhibit or reduce physical, mental, emotional, or social impairment that results in or from the abuse of licit or illicit chemical substances by promoting a person's personal and social growth toward full human potential.

(11) "Private facility" means a facility providing treatment services that is not operated by the federal, state, or local government, regardless of whether the facility receives public funds or operates for profit.

(12) "Public facility" means a facility providing treatment services that is operated by the federal, state, or local government.

(13) "Residential services" means treatment services provided for a full-time resident in a treatment facility.

(14) "Treatment" means emergency services for drug-dependent persons, persons incapacitated by controlled substances, or persons under the influence of controlled substances and also means the full range of residential, day care, and outpatient services for drug-dependent persons designed to help those persons gain control over or eliminate their dependence on controlled substances and to become productive, functioning members of the community. The term includes diagnostic evaluation, medical services, psychiatric services, psychological services, social services, drug maintenance services, vocational rehabilitation, job training, career counseling, educational guidance, informational guidance, family counseling, and recreational services.

(15) "Treatment facility" means a public or private facility to which the executive director has authorized public agencies to refer persons for treatment. (V.A.C.S. Art. 4476-15a, Sec. 101 (part); New.)

[Sections 465.003-465.010 reserved for expansion]

#### SUBCHAPTER B. PROGRAM ORGANIZATION, OBJECTIVE, AND STANDARDS

Sec. 465.011. PROGRAM. (a) The executive director shall establish and supervise a treatment program. Within funds appropriated to the commission, the executive director shall provide integrated health, education, information, and welfare services through appropriate public and private facilities to persons who seek the services voluntarily or who are referred from public or private agencies.

(b) The program must include, to the extent practicable, a comprehensive range of treatment services in each locality. Based in whole or in part on the estimated number and location of actual and potential drug-dependent persons in designated council of government regions, the executive director shall determine the number, location, and types of services included in the treatment program and the amount of public resources allocated to the program.

(c) In developing the program, the executive director shall give particular attention to the potential drug problem in rural areas.

(d) In establishing and supervising the program, the executive director may contact any person, agency, organization, or institution for services or for the use of any facility or personnel.

(e) The executive director shall use and coordinate treatment facilities and resources for the program, using community mental health centers and nonprofit organizations when practicable.

(f) The executive director shall coordinate efforts with the Texas Rehabilitation Commission, Texas Department of Human Services, Texas Department of Health, Texas Adult Probation Commission, Texas Department of Mental Health and Mental Retardation,

councils of government, and other appropriate agencies. (V.A.C.S. Art. 4476-15a, Secs. 201, 204(a).)

**Sec. 465.012. TREATMENT SERVICES.** (a) The treatment program must include:

- (1) residential services for short-term and long-term treatment; and
- (2) day care and outpatient services.

(b) Residential services for persons who are not incarcerated under sentence may not be provided at a correctional institution unless other facilities are not available. If those services are provided at a correctional institution because of the unavailability of other facilities, the recipient of the services shall be segregated from persons incarcerated under sentence.

(c) The executive director shall give priority to day care and outpatient services. Those services must be community based and readily accessible to patients and may involve clinics, social centers, vocational rehabilitation and job referral facilities, welfare centers, and supportive residential facilities such as foster homes and halfway houses. (V.A.C.S. Art. 4476-15a, Sec. 206.)

**Sec. 465.013. TREATMENT OBJECTIVE.** (a) The primary purpose of treatment under this chapter is to enable a drug-dependent person to live as a productive, functioning member of the community.

(b) Treatment under this chapter must be designed to help drug-dependent persons overcome dependence on controlled substances.

(c) Treatment may be designed to maintain or control a person's drug dependence through approved drug maintenance services that:

- (1) conform to applicable state and federal laws; and
- (2) are limited to persons who consent to that treatment. (V.A.C.S. Art. 4476-15a, Sec. 207.)

**Sec. 465.014. INFORMATION AND PREVENTION SERVICES.** The executive director shall develop prevention services that include:

- (1) information to promote public awareness about controlled substances, inhalants, and treatment services for drug dependence;
- (2) education designed to promote:
  - (A) a deeper understanding of drug use, drug abuse, and the problems of drug abuse; and
  - (B) the support, participation, and cooperation of selected groups in drug abuse prevention education;
- (3) intervention services for persons who do not require treatment but who are risking drug dependence and are not being adequately served by the standard social service institutions; and
- (4) alternatives to drug abuse through the development of public activities that promote positive growth and fulfillment. (V.A.C.S. Art. 4476-15a, Sec. 203.)

**Sec. 465.015. DUTIES OF EXECUTIVE DIRECTOR.** The executive director shall:

- (1) prescribe by rule those controlled substances that pose a substantial risk of severe psychological or physical dependence and the types of drug dependence for which treatment is feasible and available under this chapter;
- (2) require programs receiving funds under this chapter to meet standards established by the commission;
- (3) prepare, publish, and distribute throughout the state as often as necessary a list of all treatment facilities the director finds to conform to the established standards;
- (4) periodically notify the courts of the treatment facilities in their respective jurisdictions and of the types of services offered at each facility;
- (5) continuously evaluate the services provided by program treatment facilities funded under this chapter to assure that the services are effective, humanely operated, and properly staffed and meet the standards established under this chapter;

- (6) make the evaluations conducted under Subdivision (5) public records;
- (7) use funds appropriated under this chapter to carry out this chapter, Chapter 481 (Texas Controlled Substances Act), and the Drug Abuse Office and Treatment Act of 1972 (Pub. L. No. 92-255);
- (8) use funds to provide matching funds for local programs and to increase the overall state allotment of federal funds;
- (9) develop, encourage, and evaluate public and private plans and services to discourage the improper use of controlled substances, giving special attention to developing programs, in cooperation with the schools, public health agencies, courts, and other public and private agencies, to discourage the improper use of controlled substances by juveniles and young adults;
- (10) provide, to the extent practicable, technical assistance and advice to public and private agencies in this state and outside this state on services designed to treat drug-dependent persons;
- (11) conduct, in cooperation with the United States Department of Justice, the United States Department of Health and Human Services, the police, the courts, and other public and private agencies, a program for educating policemen, prosecuting attorneys, court personnel, the judiciary, probation and parole officers, corrections officials, and other criminal justice personnel on the causes, effects, and treatment of drug dependence; and
- (12) develop and conduct, in cooperation with the Texas Department of Human Services and the Texas Rehabilitation Commission, services for educating all personnel of those agencies on the causes, effects, and treatment of drug dependence. (V.A.C.S. Art. 4476-15a, Secs. 202, 205.)

Sec. 465.016. RULES; DELEGATION OF DIRECTOR'S FUNCTIONS. (a) The executive director may adopt rules to implement this chapter and may designate a state officer or employee to perform any functions under this chapter.

(b) An order or rule adopted under a law affected by this chapter, in effect on September 1, 1979, and not in conflict with this chapter continues in effect until modified, superseded, or repealed. (V.A.C.S. Art. 4476-15a, Secs. 604, 701.)

[Sections 465.017-465.020 reserved for expansion]

#### SUBCHAPTER C. VOLUNTARY TREATMENT

Sec. 465.021. APPLICATION FOR VOLUNTARY TREATMENT. (a) An adult or a minor who needs emergency services as a result of using a controlled substance may apply directly to a treatment facility.

(b) An adult or a minor who considers himself drug dependent may apply directly to a treatment facility.

(c) A private physician may refer a person to a treatment facility if:

- (1) the physician diagnoses the person as drug dependent;
- (2) the physician determines that the physician is unable to provide adequate treatment to the person; and
- (3) the person consents to the referral. (V.A.C.S. Art. 4476-15a, Secs. 301(a), (b).)

Sec. 465.022. OUTREACH SERVICES. The executive director shall make the efforts necessary to develop outreach services that identify drug-dependent persons and encourage application for treatment under this chapter. (V.A.C.S. Art. 4476-15a, Sec. 301(c).)

[Sections 465.023-465.030 reserved for expansion]

**SUBCHAPTER D. TREATMENT AND CIVIL COMMITMENT OF PERSONS  
CHARGED WITH CRIMINAL OFFENSES**

**Sec. 465.031. APPLICABILITY TO PROCEDURES FOR REFERRAL OF PERSONS CHARGED WITH CRIMINAL OFFENSE.** This subchapter applies to state policies regarding referral procedures between the criminal justice system and the executive director that apply to a person from the time the person is first taken into police custody for the purpose of being charged with a crime under the laws of this state until the charge is dismissed or, if the person is convicted, until the person's sentence is finally discharged. (V.A.C.S. Art. 4476-15a, Sec. 401.)

**Sec. 465.032. STATE INTERAGENCY COOPERATION.** The executive director may facilitate referral of persons from the criminal justice system under the terms of bail, probation, conditional discharge, parole, or other conditional release that is not inconsistent with medical or clinical judgment or in conflict with this chapter or applicable federal rules or standards. (V.A.C.S. Art. 4476-15a, Sec. 402.)

**Sec. 465.033. TREATMENT OF PERSONS IN CUSTODY.** (a) The executive director may develop emergency treatment resources for persons in police custody who appear to be:

- (1) incapacitated by controlled substances;
- (2) under the influence of controlled substances and in need of medical attention; or
- (3) drug dependent and undergoing withdrawal or experiencing medical complications.

(b) The executive director and the director of the Texas Department of Corrections may establish appropriate treatment in the correctional institutions of this state. (V.A.C.S. Art. 4476-15a, Secs. 204(b), 403.)

**Sec. 465.034. TREATMENT OF DRUG-DEPENDENT PERSONS ON CONDITIONAL RELEASE.** (a) The Board of Pardons and Paroles and the director of the Texas Department of Corrections may refer a person who is or was drug dependent to a treatment facility established under this chapter if the facility is available when the person is placed on work release, parole, or other conditional release.

(b) A person who is released from a correctional institution on the condition that the person participate in a treatment program established under this chapter may be required to submit to periodic urinalysis or other medically accepted means of detecting the presence of a controlled substance in the body. If, in the judgment of the physician in charge of the person's treatment, the person fails to conform to the conditions of treatment, the court or the Board of Pardons and Paroles shall decide whether to retain, restrict, or revoke parole or other conditional release, whichever is most consistent with both the treatment of the person and the safety of the community.

(c) The Board of Pardons and Paroles and the director of the Texas Department of Corrections may transfer an offender placed on conditional release from one day care or outpatient treatment facility to another if required for effective treatment.

(d) The executive director shall report periodically to the Board of Pardons and Paroles and the director of the Texas Department of Corrections on compliance with the conditions of treatment by persons participating in the program under this section. (V.A.C.S. Art. 4476-15a, Sec. 404.)

[Sections 465.035-465.040 reserved for expansion]

**SUBCHAPTER E. EMERGENCY TREATMENT AND REFERRAL OF PERSONS  
NOT CHARGED WITH CRIMINAL OFFENSES**

**Sec. 465.041. APPLICABILITY TO PERSONS WITH NO CRIMINAL CHARGE PENDING.** This subchapter applies to a person against whom no criminal charge is pending under the laws of this state or for whom any sentence previously assessed has been finally discharged. (V.A.C.S. Art. 4476-15a, Sec. 501.)

**Sec. 465.042. EMERGENCY TREATMENT FOR PERSONS UNDER INFLUENCE OF CONTROLLED SUBSTANCES.** (a) When, in the judgment of a law enforcement officer, a person is under the influence of a controlled substance in a public place and needs emergency treatment, the person may be taken to the person's home or to a treatment facility.

(b) If a person is taken to a treatment facility and the physician in charge of emergency services confirms the need for treatment, the person shall, with the person's consent, be admitted or referred to another treatment facility. If the person is admitted, reasonable efforts shall be made to notify the person's nearest relative. If the person is referred to another treatment facility, reasonable efforts shall be made to provide transportation to that facility. Medical assistance may be provided to a person who is neither admitted nor referred.

(c) A person admitted to a treatment facility under this section may be detained until emergency treatment is completed but may not be detained without the person's consent for more than 24 hours after admission. (V.A.C.S. Art. 4476-15a, Sec. 502.)

**Sec. 465.043. EMERGENCY TREATMENT FOR PERSONS INCAPACITATED BY CONTROLLED SUBSTANCES.** (a) If a law enforcement officer or public health officer is notified by an interested person that another person appears incapacitated by a controlled substance, the officer may take the person to a treatment facility for emergency treatment.

(b) A person may be taken to and detained at a treatment facility for emergency treatment if:

(1) in the judgment of a law enforcement officer, the person appears incapacitated by a controlled substance in a public place; or

(2) in the judgment of a public health officer, the person appears incapacitated by a controlled substance in a treatment facility.

(c) A law enforcement officer or public health officer, by detaining the person in or taking the person to a treatment facility, takes a person into protective custody, and the officer shall make every effort to protect the person's health and safety. Protective custody under this section is not an arrest, and an entry or other record may not be made to indicate that a person who is taken into protective custody has been arrested for or charged with a criminal offense.

(d) A person taken to a treatment facility under Subsection (a) or (b) shall be examined as soon as practicable by the physician in charge of emergency services. If the physician determines that the person is incapacitated by a controlled substance, the person shall be admitted as a client or referred to another treatment facility. If the person is admitted, the person's nearest relative shall be notified as soon as practicable. If the person is referred to another treatment facility, the referring facility shall arrange for the person's transportation. If the physician determines that the person is not incapacitated by a controlled substance and does not admit or refer the person for treatment under Section 465.042, the person may be taken to the person's home.

(e) A person admitted to a treatment facility under this section may be required to remain until the person is no longer incapacitated by a controlled substance, except that the person may not be detained for more than 48 hours. This subsection does not apply to a court-ordered commitment to the executive director for treatment under this chapter when the commitment is made under other applicable law.

(f) A law enforcement officer, public health officer, or physician is not criminally or civilly liable for an act undertaken in the good faith conduct of the officer's or physician's official functions under this section. (V.A.C.S. Art. 4476-15a, Secs. 101(2), 503.)

**Sec. 465.044. RELEASE AND CONDITIONAL REFERRAL TO TREATMENT SERVICES BY LAW ENFORCEMENT OFFICERS.** (a) This section applies to a person who has been apprehended, either with or without a warrant, for a violation of Section 481.115, 481.120, or 481.125 (Texas Controlled Substances Act).

(b) With the consent of the person, a police officer or other law enforcement officer may take the person before a magistrate instead of normal criminal processing and may refer the person for treatment with the approval of the magistrate.

(c) If the person agrees to participate in treatment under Subsection (b), the police officer may:

- (1) release the person unconditionally; or
- (2) issue a conditional citation for the offense for which the person was apprehended to be returned to the police department in 90 days and to be dismissed if the person has participated satisfactorily in the treatment program.

(d) A person's agreement to participate in treatment under Subsection (b) may not be used against the person in any criminal proceeding, and the agreement does not waive any rights that the person has in any criminal proceeding brought later on the original offense.

(e) If, in the judgment of the person or agency supervising the treatment program, a person who has been issued a citation under Subsection (c) fails to participate satisfactorily in the program or if the person fails to appear on the return date of the citation, a warrant shall issue for the person's arrest on the original offense unless the person is already in police custody. Timeliness of the person's initial appearance before the court on the original offense must be determined on the basis of the return date of the citation.

(f) The police department shall record all dispositions under Subsections (b) and (c) as detentions and not as arrests. Those records are confidential and may not be used except to determine whether a person is given the benefit of this section on apprehension at a later time. (V.A.C.S. Art. 4476-15a, Sec. 504.)

[Sections 465.045-465.050 reserved for expansion]

#### **SUBCHAPTER F. APPLICABILITY TO SPECIFIC GROUPS**

**Sec. 465.051. SERVICES FOR GOVERNMENTAL AND PRIVATE EMPLOYEES.** (a) The executive director may develop and maintain, in cooperation with other state and local agencies, appropriate services consistent with this chapter for the prevention and treatment of drug dependence among state and local employees.

(b) A drug-dependent employee of this state or of a political subdivision of this state shall be granted the same employment and other benefits as a person afflicted with a serious illness while undergoing treatment under Subchapter C or E. The employee may not be denied pension, retirement, medical, or other rights because of the employee's drug dependence. However, acceptance of appropriate treatment may be made a condition of continued employment.

(c) The executive director shall encourage private industry to develop treatment services in this state. (V.A.C.S. Art. 4476-15a, Sec. 601.)

**Sec. 465.052. SERVICES FOR MENTALLY ILL DRUG-DEPENDENT PERSONS.** The services provided under this chapter shall be made available to a mentally ill, drug-dependent person. (V.A.C.S. Art. 4476-15a, Sec. 602.)

**Sec. 465.053. SERVICES FOR JUVENILES.** (a) Except as provided by Subsection (b), Subchapters C, D, and E apply to a juvenile.

(b) This chapter does not take precedence over any provision of the Family Code relating to juveniles unless expressly stated in this chapter. (V.A.C.S. Art. 4476-15a, Sec. 603.)

#### **CHAPTER 466. REGULATION OF SYNTHETIC NARCOTIC DRUGS IN TREATMENT OF DRUG-DEPENDENT PERSONS**

**Sec. 466.001. DEFINITIONS**

**Sec. 466.002. POWERS AND DUTIES OF BOARD AND DEPARTMENT**

**Sec. 466.003. PERMIT REQUIRED**

**Sec. 466.004. APPLICATION FOR PERMIT; FEES**

- Sec. 466.005. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT
- Sec. 466.006. DEPARTMENT REPRESENTATION; APPEAL COSTS
- Sec. 466.007. INJUNCTION
- Sec. 466.008. PROGRAMS
- Sec. 466.009. CRIMINAL PENALTY
- Sec. 466.010. CIVIL PENALTY

CHAPTER 466. REGULATION OF SYNTHETIC NARCOTIC DRUGS IN  
TREATMENT OF DRUG-DEPENDENT PERSONS

Sec. 466.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health. (V.A.C.S. Art. 4476-11, Sec. 2(a) (part).)

Sec. 466.002. POWERS AND DUTIES OF BOARD AND DEPARTMENT. (a) The board shall adopt and the department shall administer and enforce rules and standards they consider necessary to ensure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons.

(b) To ensure compliance with this chapter and rules and standards adopted under this chapter, the department may:

- (1) require that an applicant or a permit holder make annual, periodical, and special reports that the department determines are necessary;
- (2) require that an applicant or permit holder keep records that the department determines are necessary; and
- (3) make investigations that the department determines are necessary. (V.A.C.S. Art. 4476-11, Secs. 2(a) (part), 8, 9.)

Sec. 466.003. PERMIT REQUIRED. A person may not prescribe or administer a synthetic narcotic drug to a person for the purpose of treating drug dependency without a permit issued under this chapter. (V.A.C.S. Art. 4476-11, Sec. 1.)

Sec. 466.004. APPLICATION FOR PERMIT; FEES. (a) A physician licensed by the Texas State Board of Medical Examiners or a public or private institution organized and operated under the laws of this state for the purpose of providing health services may apply to the department on forms approved by the department for a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons.

(b) The department shall issue a permit to an applicant who qualifies under rules and standards adopted by the department.

(c) A permit issued under this section is valid until suspended or revoked by the department or surrendered to the department by the permit holder.

(d) The board shall collect fees for each permit application submitted under this section and for inspections performed in enforcing this chapter and rules adopted under this chapter. The board may collect those fees annually.

(e) The board shall adopt rules that set the fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

- (1) review and act on permit applications;
- (2) amend permits;
- (3) inspect facilities operated by permit holders; and
- (4) implement and enforce this chapter and rules, standards, and orders adopted and permits issued under this chapter. (V.A.C.S. Art. 4476-11, Sec. 4.)

Sec. 466.005. DENIAL, SUSPENSION, OR REVOCATION OF PERMIT. The department may deny, suspend, or revoke the permit of an applicant or permit holder who has



violated or failed to comply with a requirement of this chapter or a rule adopted under this chapter if the department has given the applicant or permit holder:

- (1) notice of noncompliance;
- (2) reasonable opportunity to comply; and
- (3) an opportunity for hearing before denying, suspending, or revoking the permit. (V.A.C.S. Art. 4476–11, Sec. 6(a) (part).)

**Sec. 466.006. DEPARTMENT REPRESENTATION; APPEAL COSTS.** (a) An applicant or permit holder may appeal the denial, suspension, or revocation of a permit.

(b) The attorney general shall represent the department in the district court of Travis County in any case involving the department's decision to deny, suspend, or revoke a permit.

(c) Except as provided by a rule adopted under Section 19(f), Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes), if the court affirms the decision of the department, the applicant or permit holder shall pay the costs of appeal. If the court does not affirm the decision of the department, the department shall pay the costs of appeal. (V.A.C.S. Art. 4476–11, Secs. 7(a) (part); (d).)

**Sec. 466.007. INJUNCTION.** (a) The department may maintain an action in the name of the state for an injunction or other process to restrain a violation of this chapter or a rule or standard adopted under this chapter.

(b) For cause shown, the district court of Travis County has jurisdiction to restrain a violation of this chapter or a rule or standard adopted under this chapter. (V.A.C.S. Art. 4476–11, Sec. 10.)

**Sec. 466.008. PROGRAMS.** (a) The Texas Department of Mental Health and Mental Retardation shall promote and develop comprehensive programs for drug-dependent persons, including maintenance treatment programs that involve supplying synthetic narcotic drugs to drug-dependent persons.

(b) The programs provided by Subsection (a) shall be implemented through state hospitals and grants-in-aid to boards of trustees of community mental health and mental retardation centers. (V.A.C.S. Art. 4476–11, Sec. 5.)

**Sec. 466.009. CRIMINAL PENALTY.** (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$3,000, confinement in the county jail for not more than six months, or both. (V.A.C.S. Art. 4476–11, Sec. 11.)

**Sec. 466.010. CIVIL PENALTY.** If a person violates this chapter or a rule, standard, or order adopted or permit issued under this chapter, the commission may assess a civil penalty against that person as provided by Chapter 431 (Texas Food, Drug, and Cosmetic Act). (V.A.C.S. Art. 4476–11, Sec. 13.)

#### **CHAPTER 467. PEER ASSISTANCE PROGRAMS**

**Sec. 467.001. DEFINITIONS**

**Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS**

**Sec. 467.003. PROGRAMS**

**Sec. 467.004. FUNDING**

**Sec. 467.005. REPORTS**

**Sec. 467.006. ASSISTANCE TO IMPAIRED PROFESSIONALS**

**Sec. 467.007. CONFIDENTIALITY**

**Sec. 467.008. CIVIL IMMUNITY**

#### **CHAPTER 467. PEER ASSISTANCE PROGRAMS**

**Sec. 467.001. DEFINITIONS.** In this chapter:

- (1) "Approved peer assistance program" means a program that is designed to help an impaired professional and that is:

(A) established by a licensing or disciplinary authority; or

(B) approved by a licensing or disciplinary authority as meeting the criteria established by the Texas Commission on Alcohol and Drug Abuse and any additional criteria established by that licensing or disciplinary authority.

(2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.

(3) "Impaired professional" means an individual whose ability to perform a professional service is impaired by chemical dependency on drugs or alcohol or by mental illness.

(4) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(5) "Professional" means an individual who:

(A) may incorporate under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes); or

(B) is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, certified social worker, occupational therapist, speech-language pathologist, audiologist, or licensed dietitian.

(6) "Professional association" means a national or statewide association of professionals, including any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association. (V.A.C.S. Art. 5561c-3, Sec. 1; New.)

Sec. 467.002. OTHER PEER ASSISTANCE PROGRAMS. This chapter does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program. (V.A.C.S. Art. 5561c-3, Sec. 2.)

Sec. 467.003. PROGRAMS. (a) A professional association or licensing or disciplinary authority may establish a peer assistance program to identify and assist impaired professionals in accordance with the minimum criteria established by the commission and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association is not governed by or entitled to the benefits of this chapter unless the association submits evidence to the appropriate licensing or disciplinary authority showing that the association's program meets the minimum criteria established by the commission and any additional criteria established by that authority.

(c) If a licensing or disciplinary authority receives evidence showing that a peer assistance program established by a professional association meets the minimum criteria established by the commission and any additional criteria established by that authority, the authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association under this chapter if the authority determines that:

(1) the program does not comply with the criteria established by the commission or by that authority; and

(2) the professional association does not bring the program into compliance within a reasonable time, as determined by that authority. (V.A.C.S. Art. 5561c-3, Sec. 3.)

Sec. 467.004. FUNDING. (a) A licensing or disciplinary authority may add a surcharge of not more than \$1 to its license or license renewal fee to fund an approved peer assistance program. The authority must adopt the surcharge in accordance with the procedure that the authority uses to initiate and adopt an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund an approved peer assistance program.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this chapter.

(d) Money collected under this section may be used only to implement this chapter and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional. (V.A.C.S. Art. 5561c-3, Sec. 4.)

Sec. 467.005. **REPORTS.** (a) A person who knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness may report the professional's name and any relevant information to an approved peer assistance program.

(b) A person who is required by law to report an impaired professional to a licensing or disciplinary authority satisfies that requirement if the person reports the professional to an approved peer assistance program.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional who the program knows or suspects is impaired and any relevant information concerning that professional.

(d) A licensing or disciplinary authority that receives a report made under Subsection (c) shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional. (V.A.C.S. Art. 5561c-3, Sec. 5.)

Sec. 467.006. **ASSISTANCE TO IMPAIRED PROFESSIONALS.** (a) A licensing or disciplinary authority that receives an initial complaint concerning an impaired professional may:

(1) refer the professional to an approved peer assistance program; or

(2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(b) A licensing or disciplinary authority that receives a second or subsequent complaint or a report from a peer assistance program concerning an impaired professional may take the action permitted by Subsection (a) in addition to any other action the authority is otherwise authorized to take in disposing of the complaint.

(c) An approved peer assistance program that receives a report or referral under Subsection (a) or (b) or a report under Section 467.005(a) may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation. (V.A.C.S. Art. 5561c-3, Sec. 6.)

Sec. 467.007. **CONFIDENTIALITY.** (a) Any information, report, or record that an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this chapter is confidential. Except as prescribed by Subsection (b) or by Section 467.005(c), a person may not disclose that information, report, or record without written approval of the impaired professional or other interested person.

(b) Information that is confidential under Subsection (a) may be disclosed:

(1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom the authority has referred to a peer assistance program under Section 467.006(a) or (b);

(2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;

(3) to qualified personnel for bona fide research or educational purposes only after information that would identify a person is removed;

(4) to health care personnel to whom an approved peer assistance program or a licensing or disciplinary authority has referred the impaired professional; or

(5) to other health care personnel to the extent necessary to meet a health care emergency. (V.A.C.S. Art. 5561c-3, Sec. 7.)

Sec. 467.008. **CIVIL IMMUNITY.** (a) A person who in good faith reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The civil immunity provided by this section shall be liberally construed to accomplish the purposes of this chapter.

(c) The persons entitled to immunity under this section include:

- (1) an approved peer assistance program;
- (2) the professional association or licensing or disciplinary authority operating the peer assistance program;
- (3) a member, employee, or agent of the program, association, or authority;
- (4) a person who reports or provides information concerning an impaired professional;
- (5) a professional who supervises or monitors the course of treatment or rehabilitation of an impaired professional; and
- (6) a person who employs an impaired professional in connection with the professional's rehabilitation, unless the person:
  - (A) knows or should have known that the professional is incapable of performing the job functions involved; or
  - (B) fails to take reasonable precautions to monitor the professional's job performance.

(d) A professional association, licensing or disciplinary authority, program, or person acting under this chapter is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(e) The immunity provided by this section is in addition to other immunity provided by law. (V.A.C.S. Art. 5561c-3, Sec. 8.)

#### CHAPTER 468. ALCOHOL AND SUBSTANCE ABUSE SERVICES OVERSIGHT ACT

- Sec. 468.001. SHORT TITLE
- Sec. 468.002. DEFINITIONS
- Sec. 468.003. ALCOHOL AND SUBSTANCE ABUSE SERVICES OVERSIGHT COMMITTEE
- Sec. 468.004. APPLICATION OF SUNSET ACT
- Sec. 468.005. POWERS AND DUTIES OF COMMITTEE
- Sec. 468.006. PREPARATION AND SUBMISSION OF PLANS; MASTER PLAN
- Sec. 468.007. REVIEW AND DISPOSITION OF PLANS
- Sec. 468.008. EXPENDITURE OF FUNDS
- Sec. 468.009. REPORT BY GOVERNOR
- Sec. 468.010. ASSISTANCE BY COMMISSION

#### CHAPTER 468. ALCOHOL AND SUBSTANCE ABUSE SERVICES OVERSIGHT ACT

Sec. 468.001. SHORT TITLE. This chapter may be cited as the Alcohol and Substance Abuse Services Oversight Act. (V.A.C.S. Art. 5561c-2a, Sec. 1.01.)

Sec. 468.002. DEFINITIONS. In this chapter:

- (1) "Alcohol or substance abuse services" means treatment, prevention, and education services.
- (2) "Commission" means the Texas Commission on Alcohol and Drug Abuse.
- (3) "Committee" means the Alcohol and Substance Abuse Services Oversight Committee.
- (4) "State agency" means a public entity in the executive branch of state government eligible under law to receive an appropriation, but does not include the governor. (V.A.C.S. Art. 5561c-2a, Sec. 1.02.)

Sec. 468.003. ALCOHOL AND SUBSTANCE ABUSE SERVICES OVERSIGHT COMMITTEE. (a) The Alcohol and Substance Abuse Services Oversight Committee is composed of:

- (1) three members of the senate, appointed by the lieutenant governor;

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

(3) three persons appointed by the governor.

(b) A committee member serves a two-year term.

(c) The governor shall select the chairman and vice-chairman of the committee.

(d) The committee shall meet at the call of the chairman or at the request of a majority of the members.

(e) The legislature's and governor's existing staff shall staff the committee. (V.A.C.S. Art. 5561c-2a, Secs. 1.03(a), (b), (c), (d) (part).)

**Sec. 468.004. APPLICATION OF SUNSET ACT.** The committee is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that Act, the committee is abolished and this chapter expires on the date established by law for the abolishment of the commission. (V.A.C.S. Art. 5561c-2a, Sec. 1.08.)

**Sec. 468.005. POWERS AND DUTIES OF COMMITTEE.** (a) The committee is:

(1) the state authority for coordinating services and assuring financial accountability for all alcohol and substance abuse service funds spent by state agencies; and

(2) the legislative review body for federal substance abuse service funds if the legislature is not in session when legislative review of those funds is required.

(b) The committee shall:

(1) adopt necessary rules, including rules relating to:

(A) the minimum information required to be included in a plan submitted under Section 468.006;

(B) deadlines for submitting the plan; and

(C) procedures and deadlines for reviewing and evaluating the plan; and

(2) set out the duties of the commission in implementing this chapter.

(c) The committee shall develop, with the assistance of the affected state agencies, a plan for the use of federal funds received by the commission, the Central Education Agency, and the criminal justice agencies, for alcohol or substance abuse services.

(d) The committee may require a state agency that is required to submit a plan under Section 468.006 to submit to the committee financial reports, audit results, service criteria, and other necessary information. Except for overall spending patterns, information concerning expenditures for criminal law enforcement may not be included. (V.A.C.S. Art. 5561c-2a, Secs. 1.04 (part); 1.05(a), (c), (d) (part); 1.07(e).)

**Sec. 468.006. PREPARATION AND SUBMISSION OF PLANS; MASTER PLAN.** (a) A state agency that provides alcohol or substance abuse services or spends state or federal funds for alcohol or substance abuse services shall prepare and submit to the committee a plan detailing how the agency intends to provide the services or spend the funds during the next fiscal biennium.

(b) In preparing a plan for a biennium, the state agency shall conduct public meetings and take public testimony.

(c) The state agency must submit the plan required by this section in accordance with committee rules.

(d) A plan submitted by the Texas Department of Mental Health and Mental Retardation must include a designation of core services and accountability measures for community mental health or mental retardation centers.

(e) After all plans are submitted, the committee shall prepare a master plan that consolidates and coordinates the plans in an effort to limit duplication and to maximize the effective use of funds. (V.A.C.S. Art. 5561c-2a, Secs. 1.05(b) (part); 1.06.)

**Sec. 468.007. REVIEW AND DISPOSITION OF PLANS.** (a) The committee shall review and evaluate the plan submitted by each state agency and the master plan prepared by the committee. In reviewing and evaluating a plan, the committee shall consider whether the plan meets the goals of:

- (1) providing accountability for funds spent;
- (2) maximizing funds spent for services and minimizing funds spent on administrative costs;
- (3) providing community-based services; and
- (4) coordinating and planning for improved and cost-effective state services for all types of clients.

(b) The committee may approve, amend, or disapprove a plan submitted to the committee or prepare a new plan if necessary to accomplish the goals prescribed by Subsection (a). (V.A.C.S. Art. 5561c-2a, Secs. 1.04 (part); 1.07(a), (b) (part).)

Sec. 468.008. EXPENDITURE OF FUNDS. (a) After the committee has designated the manner in which an agency may spend state or federal funds for alcohol or substance abuse services, the agency may not spend those funds in a manner not approved by the committee.

(b) An agency that receives funds for substance abuse services from the governor shall include the existence of those funds in a plan required by this chapter, but the committee may not designate the manner in which the agency may spend federal substance abuse funds received and distributed by the governor. (V.A.C.S. Art. 5561c-2a, Secs. 1.07(b) (part), (c).)

Sec. 468.009. REPORT BY GOVERNOR. (a) The governor shall submit to the committee a report on all federal funds received for alcohol and substance abuse services, including funds received by the governor, and plans for their expenditure.

(b) The committee may review and comment on the plans of the governor for expenditures for alcohol and substance abuse services. (V.A.C.S. Art. 5561c-2a, Sec. 1.07(d).)

Sec. 468.010. ASSISTANCE BY COMMISSION. (a) The commission shall provide assistance to a state agency required to submit a plan under Section 468.006.

(b) The commission shall submit to the committee separate reports on each agency's plan and on the master plan prepared by the committee.

(c) The committee may:

- (1) require the commission to collect and evaluate any of the information submitted to the committee under Section 468.005(d);
- (2) require or authorize the commission to perform site visits; and
- (3) require the commission to provide clerical support and any other assistance to the committee. (V.A.C.S. Art. 5561c-2a, Secs. 1.03(d) (part); 1.05(b) (part), (d) (part).)

[Chapters 469-480 reserved for expansion]

## SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES

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**SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES**

**CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 481.001. SHORT TITLE. This chapter may be cited as the Texas Controlled Substances Act. (V.A.C.S. Art. 4476–15, Sec. 1.01.)

Sec. 481.002. DEFINITIONS. In this chapter:

(1) “Administer” means to directly apply a controlled substance by injection, inhalation, ingestion, or other means to the body of a patient or research subject by:



- (A) a practitioner or an agent of the practitioner in the presence of the practitioner;  
or
- (B) the patient or research subject at the direction and in the presence of a practitioner.
- (2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. The term does not include a common or contract carrier, public warehouseman, or employee of a carrier or warehouseman acting in the usual and lawful course of employment.
- (3) "Commissioner" means the commissioner of health or the commissioner's designee.
- (4) "Controlled premises" means:
- (A) a place where original or other records or documents required under this chapter are kept or are required to be kept; or
- (B) a place, including a factory, warehouse, other establishment, or conveyance, where a person registered under this chapter may lawfully hold, manufacture, distribute, dispense, administer, possess, or otherwise dispose of a controlled substance.
- (5) "Controlled substance" means a substance, including a drug and an immediate precursor, listed in Schedules I through V or Penalty Groups 1 through 4.
- (6) "Controlled substance analogue" means:
- (A) a substance with a chemical structure substantially similar to the chemical structure of a controlled substance in Schedule I or II or Penalty Group 1 or 2; or
- (B) a substance specifically designed to produce an effect substantially similar to, or greater than, the effect of a controlled substance in Schedule I or II or Penalty Group 1 or 2.
- (7) "Counterfeit substance" means a controlled substance that, without authorization, bears or is in a container or has a label that bears an actual or simulated trademark, trade name, or other identifying mark, imprint, number, or device of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.
- (8) "Deliver" means to transfer, actually or constructively, to another a controlled substance, counterfeit substance, or drug paraphernalia, regardless of whether there is an agency relationship. The term includes offering to sell a controlled substance, counterfeit substance, or drug paraphernalia.
- (9) "Delivery" means the act of delivering.
- (10) "Designated agent" means an individual designated under Section 481.073 to communicate a practitioner's instructions to a pharmacist.
- (11) "Director" means the director of the Department of Public Safety or an employee of the department designated by the director.
- (12) "Dispense" means the delivery of a controlled substance in the course of professional practice or research, by a practitioner or person acting under the lawful order of a practitioner, to an ultimate user or research subject. The term includes the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.
- (13) "Dispenser" means a practitioner, institutional practitioner, pharmacist, or pharmacy that dispenses a controlled substance.
- (14) "Distribute" means to deliver a controlled substance other than by administering or dispensing the substance.
- (15) "Distributor" means a person who distributes.
- (16) "Drug" means a substance, other than a device or a component, part, or accessory of a device, that is:

(A) recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to either pharmacopoeia or the formulary;

(B) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(C) intended to affect the structure or function of the body of man or animals but is not food; or

(D) intended for use as a component of a substance described by Paragraph (A), (B), or (C).

(17) "Drug paraphernalia" means equipment, a product, or material that is used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, or concealing a controlled substance in violation of this chapter or in injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. The term includes:

(A) a kit used or intended for use in planting, propagating, cultivating, growing, or harvesting a species of plant that is a controlled substance or from which a controlled substance may be derived;

(B) a kit used or intended for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(C) an isomerization device used or intended for use in increasing the potency of a species of plant that is a controlled substance;

(D) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness, or purity of a controlled substance;

(E) a scale or balance used or intended for use in weighing or measuring a controlled substance;

(F) a diluent or adulterant, such as quinine hydrochloride, mannitol, mannite, dextrose, or lactose, used or intended for use in cutting a controlled substance;

(G) a separation gin or sifter used or intended for use in removing twigs and seeds from or in otherwise cleaning or refining marihuana;

(H) a blender, bowl, container, spoon, or mixing device used or intended for use in compounding a controlled substance;

(I) a capsule, balloon, envelope, or other container used or intended for use in packaging small quantities of a controlled substance;

(J) a container or other object used or intended for use in storing or concealing a controlled substance;

(K) a hypodermic syringe, needle, or other object used or intended for use in parenterally injecting a controlled substance into the human body; and

(L) an object used or intended for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, including:

(i) a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;

(ii) a water pipe;

(iii) a carburetion tube or device;

(iv) a smoking or carburetion mask;

(v) a chamber pipe;

(vi) a carburetor pipe;

(vii) an electric pipe;

(viii) an air-driven pipe;

(ix) a chillum;

(x) a bong; or

(xi) an ice pipe or chiller.

(18) "Federal Controlled Substances Act" means the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.) or its successor statute.

(19) "Federal Drug Enforcement Administration" means the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

(20) "Hospital" means:

(A) a general or special hospital as defined by Section 241.003 (Texas Hospital Licensing Law); or

(B) an ambulatory surgical center licensed by the Texas Department of Health and approved by the federal government to perform surgery paid by Medicaid on patients admitted for a period of not more than 24 hours.

(21) "Human consumption" means the injection, inhalation, ingestion, or application of a substance to or into a human body.

(22) "Immediate precursor" means a substance the commissioner finds to be and by rule designates as being:

(A) a principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

(B) a substance that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(C) a substance the control of which is necessary to prevent, curtail, or limit the manufacture of a controlled substance.

(23) "Institutional practitioner" means an intern, resident physician, fellow, or person in an equivalent professional position who:

(A) is not licensed by the appropriate state professional licensing board;

(B) is enrolled in a bona fide professional training program in a base hospital or institutional training facility registered by the Federal Drug Enforcement Administration; and

(C) is authorized by the base hospital or institutional training facility to administer, dispense, or prescribe controlled substances.

(24) "Lawful possession" means the possession of a controlled substance that has been obtained in accordance with state or federal law.

(25) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance other than marihuana, directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes the packaging or repackaging of the substance or labeling or relabeling of its container. However, the term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

(A) by a practitioner as an incident to the practitioner's administering or dispensing a controlled substance in the course of professional practice; or

(B) by a practitioner, or by an authorized agent under the supervision of the practitioner, for or as an incident to research, teaching, or chemical analysis and not for delivery.

(26) "Marihuana" means the plant *Cannabis sativa* L., whether growing or not, the seeds of that plant, and every compound, manufacture, salt, derivative, mixture, or preparation of that plant or its seeds. The term does not include:

(A) the resin extracted from a part of the plant or a compound, manufacture, salt, derivative, mixture, or preparation of the resin;

(B) the mature stalks of the plant or fiber produced from the stalks;

(C) oil or cake made from the seeds of the plant;

- (D) a compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake; or
- (E) the sterilized seeds of the plant that are incapable of germination.
- (27) "Medical purpose" means the use of a controlled substance for relieving or curing a mental or physical disease or infirmity.
- (28) "Medication order" means an order from a practitioner to dispense a drug to a patient in a hospital for immediate administration while the patient is in the hospital or for emergency use on the patient's release from the hospital.
- (29) "Narcotic drug" means any of the following, produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (A) opium and opiates, and a salt, compound, derivative, or preparation of opium or opiates;
- (B) a salt, compound, isomer, derivative, or preparation of a salt, compound, isomer, or derivative that is chemically equivalent or identical to a substance listed in Paragraph (A) other than the isoquinoline alkaloids of opium;
- (C) opium poppy and poppy straw; or
- (D) cocaine, including:
- (i) its salts, its optical, position, or geometric isomers, and the salts of those isomers;
- (ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves; and
- (iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.
- (30) "Opiate" means a substance that has an addiction-forming or addiction-sustaining liability similar to morphine or is capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes its racemic and levorotatory forms. The term does not include, unless specifically designated as controlled under Section 481.038, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan).
- (31) "Opium poppy" means the plant of the species *Papaver somniferum* L., other than its seeds.
- (32) "Patient" means a human for whom or an animal for which a drug is administered, dispensed, delivered, or prescribed by a practitioner.
- (33) "Person" means an individual, corporation, government, business trust, estate, trust, partnership, association, or any other legal entity.
- (34) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy and who acts as an agent for a pharmacy.
- (35) "Pharmacist-in-charge" means the pharmacist designated on a pharmacy license as the pharmacist who has the authority or responsibility for the pharmacy's compliance with this chapter and other laws relating to pharmacy.
- (36) "Pharmacy" means a facility licensed by the Texas State Board of Pharmacy where a prescription for a controlled substance is received or processed in accordance with state or federal law.
- (37) "Poppy straw" means all parts, other than the seeds, of the opium poppy, after mowing.
- (38) "Possession" means actual care, custody, control, or management.
- (39) "Practitioner" means:
- (A) a physician, dentist, veterinarian, podiatrist, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze,

conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state;

(B) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or administer a controlled substance in the course of professional practice or research in this state; or

(C) a person practicing in and licensed by another state as a physician, dentist, veterinarian, or podiatrist, having a current Federal Drug Enforcement Administration registration number, who may legally prescribe Schedule II, III, IV, or V controlled substances in that state.

(40) "Prescribe" means the act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

(41) "Prescription" means an order by a practitioner to a pharmacist for a controlled substance for a particular patient that specifies:

(A) the date of issue;

(B) the name and address of the patient or, if the controlled substance is prescribed for an animal, the species of the animal and the name and address of its owner;

(C) the name and quantity of the controlled substance prescribed; and

(D) directions for the use of the drug.

(42) "Principal place of business" means a location where a person manufactures, distributes, dispenses, analyzes, or possesses a controlled substance. The term does not include a location where a practitioner dispenses a controlled substance on an outpatient basis unless the controlled substance is stored at that location.

(43) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(44) "Raw material" means a compound, material, substance, or equipment used or intended for use, alone or in any combination, in manufacturing a controlled substance.

(45) "Registrant" means a person who is registered under Section 481.063.

(46) "Substitution" means the dispensing of a drug or a brand of drug other than that which is ordered or prescribed.

(47) "Triplicate prescription form" means an official Department of Public Safety prescription form used to administer, dispense, prescribe, or deliver to an ultimate user a controlled substance listed in Schedule II.

(48) "Ultimate user" means a person who has lawfully obtained and possesses a controlled substance for the person's own use, for the use of a member of the person's household, or for administering to an animal owned by the person or by a member of the person's household. (V.A.C.S. Art. 4476-15, Secs. 1.02 (part), 2.01, 5.01(a).)

[Sections 481.003-481.030 reserved for expansion]

## **SUBCHAPTER B. SCHEDULES**

Sec. 481.031. **NOMENCLATURE.** Controlled substances listed in Schedules I through V and Penalty Groups 1 through 4 are included by whatever official, common, usual, chemical, or trade name they may be designated. (V.A.C.S. Art. 4476-15, Sec. 2.02.)

Sec. 481.032. **SCHEDULE I.** (a) Schedule I consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;

Allylprodine;

Alpha-methylfentanyl or another derivative of Fentanyl;

Benzethidine;  
Betaprodine;  
Clonitazene;  
Diampromide;  
Diethylthiambutene;  
Difenoxin;  
Dimenoxadol;  
Dimethylthiambutene;  
Dioxaphetyl butyrate;  
Dipipanone;  
Ethylmethylthiambutene;  
Etonitazene;  
Etoxeridine;  
Furethidine;  
Hydroxypethidine;  
Ketobemidone;  
Levophenacymorphan;  
Meprodine;  
Methadol;  
Moramide;  
Morpheridine;  
Noracymethadol;  
Norlevorphanol;  
Normethadone;  
Norpipanone;  
Phenadoxone;  
Phenampromide;  
Phencyclidine;  
Phenomorphane;  
Phenoperidine;  
Piritramide;  
Proheptazine;  
Properidine;  
Propiram;  
Tilidine; and  
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

Acetorphine;  
Acetyldihydrocodeine;  
Benzylmorphine;  
Codeine methylbromide;  
Codeine-N-Oxide;  
Cyprenorphine;  
Desomorphine;

Dihydromorphine;  
Drotebanol;  
Etorphine (except hydrochloride salt);  
Heroin;  
Hydromorphinol;  
Methyldesorphine;  
Methyldihydromorphine;  
Monoacetylmorphine;  
Morphine methylbromide;  
Morphine methylsulfonate;  
Morphine-N-Oxide;  
Myrophine;  
Nicocodeine;  
Nicomorphine;  
Normorphine;  
Pholcodine; and  
Thebacon;

(8) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names:  
4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);  
2, 5-dimethoxyamphetamine (some trade or other names:  
2, 5-dimethoxy-alpha-methylphenethylamine; 2, 5-DMA);  
5-methoxy-3, 4-methylenedioxy amphetamine;  
4-methoxyamphetamine (some trade or other names:  
4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);  
1-methyl-4-phenyl-1, 2, 5, 6-tetrahydro-pyridine (MPTP);  
1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);  
4-methyl-2, 5-dimethoxyamphetamine (some trade and other names:  
4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP");  
3, 4-methylene-dioxy methamphetamine (MDMA, MDM);  
3, 4-methylenedioxy amphetamine;  
3, 4, 5-trimethoxy amphetamine;  
Bufotenine (some trade and other names:  
3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol;  
N, N-dimethylserotonin;  
5-hydroxy-N, N-dimethyltryptamine; mappine);  
Diethyltryptamine (some trade and other names:  
N, N-Diethyltryptamine, DET);  
Dimethyltryptamine (some trade and other names: DMT);  
Ethylamine Analog of Phencyclidine (some trade or other names:  
N-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);  
Ibogaine (some trade or other names:

7-Ethyl-6, 6, beta, 7, 8, 9, 10, 12, 13, -octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga);

Lysergic acid diethylamide;

Marihuana;

Mescaline;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Paraheyl (some trade or other names:

3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-tri-methyl-6H-dibenzo [b,d] pyran; Synhexyl);

Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

Psilocybin;

Psilocin;

Pyrrolidine Analog of Phencyclidine (some trade or other names:

1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Synthetic equivalents of the substances contained in the plant *Cannabis*, or in the resinous extractives of that plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;

(Compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized);

Tetrahydrocannabinols; and

Thiophene Analog of Phencyclidine (some trade or other names:

1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TCP; and

(4) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant or stimulant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Fenethylamine;

Mecloqualone;

Methaqualone;

N-ethylamphetamine; and

Nitrazepam.

(b) For the purposes of Subsection (a)(3) only, the term "isomer" includes optical, position, and geometric isomers. (V.A.C.S. Art. 4476-15, Sec. 2.03.)

Sec. 481.033. SCHEDULE II. Schedule II consists of:

(1) the following substances, however produced, except those narcotic drugs listed in other schedules:

(A) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than naloxone and its salts and naltrexone and its salts, but including:

Codeine;

Ethylmorphine;



Etorphine hydrochloride;  
Granulated opium;  
Hydrocodone;  
Hydromorphone;  
Metopon;  
Morphine;  
Opium extracts;  
Opium fluid extracts;  
Oxycodone;  
Oxymorphone;  
Powdered opium;  
Raw opium;  
Thebaine; and  
Tincture of opium;

(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers; and

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves that is chemically equivalent or identical to a substance described by this subparagraph or Subparagraph (i), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(2) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alphaprodine;  
Anileridine;  
Benzitramide;  
Dextropropoxyphene, bulk (nondosage form);  
Dihydrocodeine;  
Diphenoxylate;  
Fentanyl;  
Isomethadone;  
Levomethorphan;  
Levorphanol;  
Metazocine;  
Methadone;  
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;  
Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;  
Pethidine;  
Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;  
Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;  
Phenazocine;  
Piminodine;  
Racemethorphan;  
Racemorphan; and  
Sufentanil;

(3) unless listed in another schedule and except as provided by Section 481.037, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Amphetamine, its salts, optical isomers, and salts of its optical isomers;  
Methamphetamine, including its salts, optical isomers, and salts of optical isomers;  
Methylphenidate and its salts; and  
Phenmetrazine and its salts;

(4) unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Amobarbital;  
Secobarbital; and  
Pentobarbital;

(5) unless specifically excepted or listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances:

Immediate precursor to methamphetamine:  
Phenylacetone and methylamine if possessed together with intent to manufacture methamphetamine;  
Immediate precursor to amphetamine and methamphetamine:  
Phenylacetone (some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone); and  
Immediate precursors to phencyclidine (PCP):  
1-phenylcyclohexylamine; and  
1-piperidinocyclohexanecarbonitrile (PCC).

(V.A.C.S. Art. 4476-15, Sec. 2.04.)

Sec. 481.034. SCHEDULE III. Schedule III consists of:

(1) unless listed in another schedule and except as provided by Section 481.037, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any of their salts and one or more active medicinal ingredients that are not listed in a schedule;

a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any of their salts and approved by the Food and Drug Administration for marketing only as a suppository;

a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances that are specifically listed in other schedules;

Chlorhexadol;  
Glutethimide;

Lysergic acid;  
Lysergic acid amide;  
Methypylon;  
Sulfondiethylmethane;  
Sulfonethylmethane; and  
Sulfonmethane;

(2) Nalorphine;

(3) a material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(4) unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

Benzphetamine;  
Chlorphentermine;  
Clortermine; and

Phendimetrazine. (V.A.C.S. Art. 4476-15, Secs. 2.05(a), (b), (c), (d), (f).)

**Sec. 481.035. SCHEDULE IV.** Schedule IV consists of:

(1) except as provided by Section 481.037, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Alprazolam;  
Barbital;  
Chloral betaine;  
Chloral hydrate;  
Chlordiazepoxide;

Clonazepam;  
Clorazepate;  
Diazepam;  
Ethchlorvynol;  
Ethinamate;  
Flurazepam;  
Halazepam;  
Lorazepam;  
Mebutamate;  
Meprobamate;  
Methohexital;  
Methylphenobarbital;  
Oxazepam;  
Paraldehyde;  
Pentazocine, its salts, derivatives, compounds, or mixtures;  
Petrichloral;  
Phenobarbital;  
Prazepam;  
Temazepam; and  
Triazolam;

(2) unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific designation:

Diethylpropion;  
Fenfluramine;  
Mazindol;  
Pemoline (including organometallic complexes and their chelates);  
Phentermine;  
Pipradol; and  
SPA [(-)-1-dimethylamino-1, 2-diphenylethane];

(3) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances, including the substance's salts:

Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1,  
2-diphenyl-3-methyl-2-propionoxybutane); and

(4) unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation containing limited quantities of the following narcotic drug or its salts:

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit. (V.A.C.S. Art. 4476-15, Secs. 2.06(a), (b), (d), (e), (f).)

Sec. 481.036. SCHEDULE V. Schedule V consists of a controlled substance that is a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that also contain one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

(2) not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

(3) not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

(4) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

(6) not more than 0.5 milligrams of difenoxin and not less than 25 milligrams of atropine sulfate per dosage unit. (V.A.C.S. Art. 4476-15, Sec. 2.07.)

**Sec. 481.037. EXCLUSION FROM SCHEDULES AND APPLICATION OF ACT.** (a) A nonnarcotic substance is excluded from Schedules I through V if the substance may lawfully be sold over the counter without a prescription, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

(b) The commissioner may not include in the schedules:

(1) a substance described by Subsection (a); or

(2) distilled spirits, wine, malt beverages, or tobacco.

(c) A compound, mixture, or preparation containing a stimulant substance listed in Section 481.033(3) is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a stimulant effect on the central nervous system.

(d) A compound, mixture, or preparation containing a depressant substance listed in Section 481.034(1) or 481.035(1) is excepted from the application of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportions, or concentrations that vitiate the potential for abuse of the substance having a depressant effect on the central nervous system. (V.A.C.S. Art. 4476-15, Secs. 2.05(e); 2.06(c); 2.08; 2.09(a) (part).)

**Sec. 481.038. ALTERATION OF SCHEDULES BY COMMISSIONER.** (a) The commissioner, with the approval of the Texas Board of Health, may add substances to Schedules I through V and delete or reschedule substances listed in those schedules. The commissioner shall assign a controlled substance to a schedule subject to Section 481.039.

(b) Except for alterations in schedules required by Subsection (g), the commissioner may not make an alteration in a schedule unless the commissioner holds a public hearing on the matter in Austin.

(c) The commissioner may not add a substance to the schedules if:

(1) the substance has been deleted from the schedules by the legislature; or

(2) legislation attempting to add the substance to the schedules has failed to pass when considered by a quorum of either house of the legislature.

(d) In making a determination regarding a substance, the commissioner shall consider:

(1) the actual or relative potential for its abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of its abuse;

(5) the scope, duration, and significance of its abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychological or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this chapter.

(e) After considering the factors listed in Subsection (d), the commissioner shall make findings with respect to those factors and adopt a rule controlling the substance if the commissioner finds the substance has a potential for abuse.

(f) If the commissioner designates a substance as an immediate precursor, a substance that is a precursor of the controlled precursor is not subject to control solely because it is a precursor of the controlled precursor.

(g) Except as otherwise provided by this subsection, if a substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice of that fact is given to the commissioner, the commissioner similarly shall control the substance under this chapter. After the expiration of a 30-day period beginning on the day after the date of publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, the commissioner similarly shall designate, reschedule, or delete the substance, unless the commissioner objects during the period. If the commissioner objects, the commissioner shall publish the reasons for the objection and give all interested parties an opportunity to be heard. At the conclusion of the hearing, the commissioner shall publish a decision, which is final unless altered by statute. On publication of an objection by the commissioner, control as to that particular substance under this chapter is stayed until the commissioner publishes the commissioner's decision.

(h) Not later than the 10th day after the date on which the commissioner adds, deletes, or reschedules a substance under Subsection (a), the commissioner shall give written notice of that action to the director and to each state licensing agency having jurisdiction over practitioners. (V.A.C.S. Art. 4476-15, Secs. 2.09(a) (part), (b), (c), (d), (e), (f), (g); 2.15 (part).)

Sec. 481.039. FINDINGS. (a) The commissioner shall place a substance in Schedule I if the commissioner finds that the substance:

(1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

(b) The commissioner shall place a substance in Schedule II if the commissioner finds that:

(1) the substance has a high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to severe psychological or physical dependence.

(c) The commissioner shall place a substance in Schedule III if the commissioner finds that:

(1) the substance has a potential for abuse less than that of the substances listed in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(d) The commissioner shall place a substance in Schedule IV if the commissioner finds that:

(1) the substance has a lower potential for abuse than that of the substances listed in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to a more limited physical or psychological dependence than that of the substances listed in Schedule III.

(e) The commissioner shall place a substance in Schedule V if the commissioner finds that the substance:

- (1) has a lower potential for abuse than that of the substances listed in Schedule IV;
- (2) has currently accepted medical use in treatment in the United States; and
- (3) may lead to a more limited physical or psychological dependence liability than that of the substances listed in Schedule IV. (V.A.C.S. Art. 4476-15, Secs. 2.10, 2.11, 2.12, 2.13, 2.14.)

Sec. 481.040. **PUBLICATION OF SCHEDULES.** The commissioner shall publish the schedules annually by filing a certified copy of the schedules with the secretary of state. Each published schedule must show changes, if any, made in the schedule since its latest publication. (V.A.C.S. Art. 4476-15, Sec. 2.16.)

[Sections 481.041-481.060 reserved for expansion]

**SUBCHAPTER C. REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSATION OF CONTROLLED SUBSTANCES AND CHEMICAL PRECURSORS**

Sec. 481.061. **REGISTRATION REQUIRED.** (a) A person may not manufacture, distribute, analyze, or dispense a controlled substance in this state without a registration issued under this subchapter.

(b) A person who is registered by the director to manufacture, distribute, analyze, dispense, or conduct research with a controlled substance may possess, manufacture, distribute, analyze, dispense, or conduct research with that substance to the extent authorized by the person's registration and in conformity with this chapter.

(c) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, analyzes, dispenses, or possesses a controlled substance. However, the director may not require separate registration for a practitioner engaged in research with a nonnarcotic controlled substance listed in Schedules II through V if the registrant is already registered under this subchapter in another capacity. (V.A.C.S. Art. 4476-15, Secs. 3.01(a) (part), (b), (f); 3.03(c) (part).)

Sec. 481.062. **EXEMPTIONS.** (a) The following persons are not required to register and may possess a controlled substance under this chapter:

(1) an agent or employee of a registered manufacturer, distributor, analyzer, or dispenser of the controlled substance acting in the usual course of business or employment;

(2) a common or contract carrier, a warehouseman, or an employee of a carrier or warehouseman whose possession of the controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of the controlled substance under a lawful order of a practitioner or in lawful possession of the controlled substance if it is listed in Schedule V; or

(4) if the substance is tetrahydrocannabinol or one of its derivatives:

(A) a Texas Department of Health official, a medical school researcher, or a research program participant possessing the substance as authorized under Subchapter G; or

(B) a practitioner or an ultimate user possessing the substance as a participant in a federally approved therapeutic research program that the commissioner has reviewed and found, in writing, to contain a medically responsible research protocol.

(b) The director by rule may waive the requirement for registration of certain manufacturers, distributors, or dispensers if the director finds it consistent with the public health and safety and if the attorney general of the United States has issued a similar waiver under the Federal Controlled Substances Act. (V.A.C.S. Art. 4476-15, Secs. 3.01(e), (h); 3.03(f), (g).)

Sec. 481.063. **REGISTRATION APPLICATION; ISSUANCE OR DENIAL.** (a) The director may not issue a registration to a person to manufacture, distribute, analyze, or conduct research with a controlled substance unless the director receives a consent form

signed by the person granting the director the right to inspect the person's controlled premises.

(b) The director may not issue a registration to a person to dispense a controlled substance unless the director receives a consent form signed by the person granting the director the right to inspect records as required by this chapter.

(c) The director shall register a person to manufacture, distribute, or analyze a controlled substance listed in Schedules II through V if:

(1) the person furnishes the director evidence that the person is registered for that purpose under the Federal Controlled Substances Act;

(2) the person has made proper application and paid the applicable fee; and

(3) the person has not been found by the director to have violated a provision of Subsection (e).

(d) The director shall register a person to dispense or conduct research with a controlled substance listed in Schedules II through V if the person:

(1) is a practitioner licensed under the laws of this state;

(2) has made proper application and paid the applicable fee; and

(3) has not been found by the director to have violated a provision of Subsection (e).

(e) An application for registration to manufacture, distribute, analyze, or dispense a controlled substance may be denied on a finding that the applicant:

(1) has furnished false or fraudulent material information in an application filed under this chapter;

(2) has been convicted of a felony;

(3) has had suspended or revoked a registration to manufacture, distribute, analyze, or dispense controlled substances under the Federal Controlled Substances Act;

(4) has had suspended or revoked a practitioner's license under the laws of this state;

(5) has failed to establish and maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels as provided by federal regulations or laws;

(6) has wilfully failed to maintain records required to be kept or has wilfully or unreasonably refused to allow an inspection authorized by this chapter; or

(7) has violated this chapter or a rule adopted under this chapter.

(f) The director may inspect the establishment of an applicant for registration in accordance with this chapter.

(g) A registration must be obtained annually under rules adopted by the director. (V.A.C.S. Art. 4476-15, Secs. 3.01(a) (part), (c), (d), (g); 3.03(a), (b); 3.04(a) (part).)

Sec. 481.064. RULES; REGISTRATION FEES. (a) The director may adopt reasonable rules.

(b) The director may charge an annual registration fee of not more than \$5 for the costs necessary to administer this chapter. Except as provided by Subsection (c), registrants shall pay the fees to the director.

(c) The director may authorize a contract between the Department of Public Safety and an appropriate state agency for the collection and remittance of the fees. The director by rule may provide for remittance of the fees collected by state agencies for the department.

(d) The director shall deposit the collected fees in the state treasury to the credit of the operator's and chauffeur's license fund. The fees may be used only by the Department of Public Safety in the administration of this chapter. (V.A.C.S. Art. 4476-15, Sec. 3.02.)

Sec. 481.065. AUTHORIZATION FOR CERTAIN ACTIVITIES. (a) The director may authorize the possession, distribution, planting, and cultivation of controlled substances by a person engaged in research, training animals to detect controlled substances, or designing or calibrating devices to detect controlled substances. A person who obtains an authorization under this subsection does not commit an offense involving the possession



or distribution of controlled substances to the extent that the possession or distribution is authorized.

(b) A person may conduct research with or analyze substances listed in Schedule I in this state only if the person is a practitioner registered under federal law to conduct research with or analyze those substances and the person provides the director with evidence of federal registration. (V.A.C.S. Art. 4476-15, Secs. 3.03(c) (part), (e).)

**Sec. 481.066. SUSPENSION OR REVOCATION OF REGISTRATION.** (a) A district court may suspend or revoke a registration for a cause described by Section 481.063(e). The attorney representing the state in district court or the attorney general shall file and prosecute appropriate judicial proceedings for the suspension or revocation of a registrant's registration on presentation of competent evidence by the director. A proceeding under this section may be maintained in:

- (1) the registrant's county of residence;
- (2) the county in which the registrant maintains a place of business or practice;
- (3) the county in which a wrongful act under Section 481.063(e) was committed; or
- (4) Travis County.

(b) A petition for the suspension or revocation of a registration is sufficient if it substantially complies with the following requirements:

- (1) the petitioner must be "The State of Texas";
- (2) the petition must be directed to the registrant whose license is sought to be suspended or revoked;
- (3) the petition must contain a short statement of the cause of action sufficient to give notice of the grounds on which suspension or revocation of the registration is sought;
- (4) the petition must ask for a suspension or revocation of the registration; and
- (5) the petition must be verified by the director.

(c) A court that suspends or revokes a registration may limit the suspension or revocation to the particular schedule or controlled substance within a schedule for which grounds for suspension or revocation exist.

(d) If a registration is suspended or revoked, at the time of suspension or the effective date of the revocation order the court may place under seal all controlled substances owned or possessed by the registrant. A disposition may not be made of substances under seal until the time for appeal has elapsed or until all appeals have been concluded, except that on an application the court may order the sale of perishable substances and deposit of the proceeds of the sale with the court. When a revocation order becomes final, all controlled substances may be forfeited to the state as provided under Section 481.157.

(e) The operation of a registrant in violation of this section is a public nuisance, and the director may apply to any court of competent jurisdiction for an injunction suspending the registration of the registrant.

(f) The Rules of Civil Procedure govern proceedings under this section to the extent that they do not conflict with this section.

(g) The director shall promptly notify state agencies of an order suspending or revoking a registration and the forfeiture of controlled substances. (V.A.C.S. Art. 4476-15, Secs. 3.04(a) (part), (b), (c), (d), (e), (f); 3.05.)

**Sec. 481.067. RECORDS.** (a) A person who is registered to manufacture, distribute, analyze, or dispense a controlled substance shall keep records and maintain inventories in compliance with recordkeeping and inventory requirements of federal law and with additional rules the director adopts. Records and inventories must be retained for at least two years after the date they are made.

(b) The pharmacist-in-charge of a pharmacy shall maintain the records and inventories required by this section. (V.A.C.S. Art. 4476-15, Sec. 3.06.)

**Sec. 481.068. CONFIDENTIALITY.** (a) The director may authorize a person engaged in research on the use and effects of a controlled substance to withhold the names and

other identifying characteristics of individuals who are the subjects of the research. A person who obtains the authorization may not be compelled in a civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of the research for which the authorization is obtained.

(b) Except as provided by Sections 481.074(b) and 481.075(d), a practitioner engaged in authorized medical practice or research may not be required to furnish the name or identity of a patient or research subject to the Department of Public Safety, the director of the Texas Commission on Alcohol and Drug Abuse, or any other agency, public official, or law enforcement officer. A practitioner may not be compelled in a state or local civil, criminal, administrative, legislative, or other proceeding to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

(c) The director may not provide to a federal, state, or local law enforcement agency the name or identity of a patient or research subject whose identity could not be obtained under Subsection (b). (V.A.C.S. Art. 4476-15, Secs. 3.03(d), 5.02(a) (part), (c).)

Sec. 481.069. ORDER FORMS. A registrant may distribute a controlled substance listed in Schedule I or II to another registrant only under an order form. A registrant complying with the federal law concerning order forms is in compliance with this section. (V.A.C.S. Art. 4476-15, Sec. 3.07.)

Sec. 481.070. ADMINISTERING OR DISPENSING SCHEDULE I CONTROLLED SUBSTANCE. Except as permitted by this chapter, a person may not administer or dispense a controlled substance listed in Schedule I. (V.A.C.S. Art. 4476-15, Sec. 3.08(i).)

Sec. 481.071. MEDICAL PURPOSE REQUIRED BEFORE PRESCRIBING, DISPENSING, DELIVERING, OR ADMINISTERING CONTROLLED SUBSTANCE. A practitioner defined by Section 481.002(39)(A) may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice. (V.A.C.S. Art. 4476-15, Sec. 3.08(h).)

Sec. 481.072. MEDICAL PURPOSE REQUIRED BEFORE DISTRIBUTING OR DISPENSING SCHEDULE V CONTROLLED SUBSTANCE. A person may not distribute or dispense a controlled substance listed in Schedule V except for a valid medical purpose. (V.A.C.S. Art. 4476-15, Sec. 3.08(f) (part).)

Sec. 481.073. COMMUNICATION OF PRESCRIPTIONS BY AGENT. (a) Only a practitioner defined by Section 481.002(39)(A) and an agent designated in writing by the practitioner in accordance with rules adopted by the Department of Public Safety may communicate a prescription by telephone. A pharmacy that receives a telephonically communicated prescription shall promptly write the prescription and file and retain the prescription in the manner required by this subchapter. A practitioner who designates an agent to communicate prescriptions shall maintain the written designation of the agent in the practitioner's usual place of business and shall make the designation available for inspection by investigators for the Texas State Board of Medical Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, and the Department of Public Safety. A practitioner who designates a different agent shall designate that agent in writing and maintain the designation in the same manner in which the practitioner initially designated an agent under this section.

(b) On the request of a pharmacist, a practitioner shall furnish a copy of the written designation authorized under Subsection (a).

(c) This section does not relieve a practitioner or the practitioner's designated agent from the requirement of Section 40, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes). A practitioner is personally responsible for the actions of the designated agent in communicating a prescription to a pharmacist. (V.A.C.S. Art. 4476-15, Secs. 1.02(8); 3.08(c), (e).)

Sec. 481.074. PRESCRIPTIONS. (a) A pharmacist may not:

(1) dispense or deliver a controlled substance or cause a controlled substance to be dispensed or delivered under the pharmacist's direction or supervision except under a valid prescription and in the course of professional practice; or

(2) fill a prescription that is not prepared or issued as prescribed by this chapter.

(b) Except in an emergency as defined by rule of the director or as provided by Section 481.075(g), a person may not dispense or administer a controlled substance listed in Schedule II without the written prescription of a practitioner on a form that meets the requirements of and is completed by the practitioner in accordance with Section 481.075, and if the controlled substance is to be dispensed, the practitioner must be registered under Section 481.063. In an emergency, a person may dispense or administer a controlled substance listed in Schedule II on the oral or telephonically communicated prescription of a practitioner. The person who administers or dispenses the substance shall promptly write the oral or telephonically communicated prescription and shall include in the written record of the prescription the name, address, and Federal Drug Enforcement Administration number of the prescribing practitioner, all information required to be provided by the practitioner under Section 481.075(d), and all information required to be provided by the dispensing pharmacist under Section 481.075(f). The person shall send a copy of the written record to the Department of Public Safety not later than the 30th day after the date the prescription is filled.

(c) Not later than 72 hours after authorizing an emergency oral or telephonically communicated prescription, the prescribing practitioner shall cause a written prescription, completed in the manner required by Section 481.075, to be delivered in person or mailed to the dispensing pharmacist at the pharmacy where the prescription was dispensed. The envelope of a prescription delivered by mail must be postmarked not later than 72 hours after the prescription was authorized. On receipt of the prescription, the dispensing pharmacy shall file the transcription of the telephonically communicated prescription and the pharmacy copy. The pharmacist or the pharmacy that employs the pharmacist shall send to the Department of Public Safety the department's copy not later than the 30th day after the date the prescription was dispensed.

(d) A person may not fill a prescription for a controlled substance listed in Schedule II after the end of the second day after the date on which the prescription is issued. A person may not refill a prescription for a substance listed in Schedule II.

(e) A person may not dispense a controlled substance in Schedule III or IV that is a prescription drug under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) without a written, oral, or telephonically communicated prescription of a practitioner defined by Section 481.002(39)(A), except that the practitioner may dispense the substance directly to an ultimate user. A prescription for a controlled substance listed in Schedule III or IV may not be filled or refilled later than six months after the date on which the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(f) A pharmacist may dispense a controlled substance listed in Schedule III, IV, or V under an original written prescription issued by a practitioner defined by Section 481.002(38)(C) and only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued, and a prescription authorized to be refilled on the original prescription may not be refilled more than five times.

(g) A person may not dispense a controlled substance listed in Section 481.036(1) or (2) without the prescription of a practitioner defined by Section 481.002(39)(A), except that a practitioner may dispense the substance directly to an ultimate user. A prescription issued under this subsection may not be filled or refilled later than six months after the date the prescription is issued and may not be refilled more than five times, unless the prescription is renewed by the practitioner.

(h) A practitioner or institutional practitioner may not allow a patient, on the patient's release from the hospital, to possess a controlled substance prescribed by the practitioner unless:

(1) the substance was dispensed under a medication order while the patient was admitted to the hospital;

(2) the substance is in a properly labeled container; and

(3) the patient possesses not more than a seven-day supply of the substance. (V.A.C.S. Art. 4476-15, Secs. 3.08(a) (part), (b), (d), (f) (part), (g), (j), (l), (m).)

Sec. 481.075. **TRIPPLICATE PRESCRIPTION PROGRAM.** (a) A practitioner who prescribes a controlled substance listed in Schedule II shall record the prescription on a prescription form that meets the requirements of Subsection (b). The Department of Public Safety shall issue the forms to practitioners for a fee covering the actual cost of printing and processing the forms, mailing containers, and binders and the actual cost of mailing the forms at 100 forms a package. Before delivering forms to a practitioner, the department shall print on the forms the practitioner's name, address, Department of Public Safety registration number, and Federal Drug Enforcement Administration number. A person may not obtain the prescription forms unless the person is a practitioner or an institutional practitioner.

(b) Each prescription form used to prescribe a controlled substance must be serially numbered and in triplicate, with the original copy labeled "Copy 1," the duplicate copy labeled "Copy 2," and the triplicate copy labeled "Copy 3." Each form must contain spaces for:

- (1) the date the prescription is written;
- (2) the date the prescription is filled;
- (3) the drug prescribed, the dosage, and instructions for use;
- (4) the name, address, and Federal Drug Enforcement Administration number of the dispensing pharmacy and the name of the pharmacist who fills the prescription; and
- (5) the name, address, and age of the person for whom the controlled substance is prescribed.

(c) Not more than one prescription may be recorded on a prescription form.

(d) Except for oral prescriptions prescribed under Section 481.074(b), the prescribing practitioner shall:

(1) legibly fill in, or direct a designated agent to legibly fill in, on all three copies of the form in the space provided:

- (A) the date the prescription is written;
- (B) the drug prescribed, the dosage, and instructions for use; and
- (C) the name, address, and age of the patient or, in the case of an animal, its owner, for whom the controlled substance is prescribed;

(2) sign Copies 1 and 2 of the form and give them to the person authorized to receive the prescription; and

(3) retain Copy 3 of the form with the practitioner's records for at least two years after the date the prescription is written.

(e) In the case of an oral prescription prescribed under Section 481.074(b), the prescribing practitioner shall give the dispensing pharmacy the information needed to complete the form.

(f) Each dispensing pharmacist shall:

(1) fill in on Copies 1 and 2 of the form in the space provided the information not required to be filled in by the prescribing practitioner or the Department of Public Safety;

(2) retain Copy 2 with the records of the pharmacy for at least two years; and

(3) sign Copy 1 and send it to the Department of Public Safety not later than the 30th day after the date the prescription is filled.

(g) A medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled is not required to be on a form that meets the requirements of this section.

(h) Not later than the seventh day after the date a practitioner's Department of Public Safety registration number, Federal Drug Enforcement Administration number, or license to practice has been denied, suspended, canceled, surrendered, or revoked, the practitioner

shall return to the department all forms in the practitioner's possession that are issued under Subsection (a) and have not been used for prescriptions.

(i) The director may adopt rules to implement this section and Section 481.076. (V.A.C.S. Art. 4476-15, Secs. 3.08(a) (part), (k); 3.09(a), (b), (c), (d), (e), (f), (k).)

Sec. 481.076. **TRIPPLICATE PRESCRIPTION INFORMATION.** (a) The director may not permit any person to have access to information submitted to the Department of Public Safety under Section 481.075 except:

(1) investigators for the Texas State Board of Medical Examiners, the Texas State Board of Podiatry Examiners, the State Board of Dental Examiners, the State Board of Veterinary Medical Examiners, or the Texas State Board of Pharmacy; or

(2) authorized officers of the Department of Public Safety engaged in investigation of suspected criminal violations of this chapter who obtain access with the approval of an investigator listed in Subdivision (1).

(b) An investigator listed in Subsection (a)(1) shall cooperate with and assist the authorized officers of the Department of Public Safety in obtaining information for investigations of suspected criminal violations of this chapter.

(c) The Department of Public Safety shall design a system for retrieval of information submitted to the department under this section. The department shall use automated information security techniques and devices to preclude improper access to the information. The director shall submit the system design to the Texas State Board of Pharmacy and the Texas State Board of Medical Examiners for review and approval or comment a reasonable time before implementation of the system and shall comply with the comments of those agencies unless it is unreasonable to do so.

(d) Information submitted to the Department of Public Safety under this section may be used only for drug-related criminal investigatory or evidentiary purposes or for investigatory or evidentiary purposes in connection with the functions of an agency listed in Subsection (a)(1).

(e) The Department of Public Safety shall remove from the information retrieval system, destroy, and make irretrievable the record of the identity of a patient submitted under this section to the department not later than the end of the 12th calendar month after the month in which the identity is entered into the system. However, the department may retain a patient identity that is necessary for use in a specific ongoing investigation conducted in accordance with this section until the end of the month in which the necessity for retention of the identity ends. The department shall report semiannually, based on the state fiscal year, to the Legislative Budget Board certifying that this subsection has been complied with and setting forth in detail the results of monthly audits showing that identities have been removed from the system and made irretrievable in compliance with this subsection. The department shall correct any failure to comply with this subsection as soon as practicable after discovery. A person who is responsible for a failure to comply with this subsection is subject to disciplinary action, including dismissal. (V.A.C.S. Art. 4476-15, Secs. 3.09(g), (h) (part), (i), (j).)

Sec. 481.077. **CHEMICAL PRECURSOR RECORDS AND REPORTS.** (a) Except as provided by Subsection (g), a person who sells, transfers, or otherwise furnishes any of the following precursor substances to a person shall make an accurate and legible record of the transaction and maintain the record for at least two years after the date of the transaction:

- (1) Methylamine;
- (2) Ethylamine;
- (3) D-lysergic acid;
- (4) Ergotamine tartrate;
- (5) Diethyl malonate;
- (6) Malonic acid;
- (7) Ethyl malonate;
- (8) Barbituric acid;

- (9) Piperidine;
- (10) N-acetylanthranilic acid;
- (11) Pyrrolidine;
- (12) Phenylacetic acid;
- (13) Anthranilic acid;
- (14) Morpholine;
- (15) Ephedrine;
- (16) Pseudoephedrine or norpseudoephedrine; or
- (17) Phenylpropanolamine.

(b) The director by rule may name additional substances as precursors for the purposes of recordkeeping under Subsection (a) if public health and welfare are jeopardized by evidenced proliferation of a chemical substance used in the illegal manufacture of a controlled substance.

(c) A record made under Subsection (a) must include:

- (1) the name and address of the recipient;
- (2) if the recipient is acting on behalf of a business or another person, the name and address of the business or other person;
- (3) if the recipient represents a business, the nature of the business;
- (4) the name, description, and amount of the precursor substance that was received; and

(5) if the recipient does not represent an established business, the following identifying information:

(A) the recipient's driver's license number or other official state-issued identification of the recipient that includes a photograph and the home address of the recipient, other than a post office box number;

(B) the license plate number of a motor vehicle owned or operated by the recipient; and

(C) a description, obtained from the recipient, of how the substance is to be used.

(d) A person who sells, transfers, or otherwise furnishes a substance subject to Subsection (a) shall allow a peace officer to inspect all records made in accordance with this section at any reasonable time and may not interfere with the complete inspection or copying of those records.

(e) A person who sells, transfers, or otherwise furnishes a precursor substance subject to Subsection (a) shall file a written report with the director that includes:

- (1) the name and address of the recipient;
- (2) if the recipient is acting on behalf of a business or another person, the name and address of the business or person; and
- (3) the name of the executive head and the telephone number of the business if a business is the recipient.

(f) A person who files a report under Subsection (e) and who subsequently becomes aware of a change in the information previously reported must file with the director a written notice of the change as soon as possible.

(g) This section does not apply to the sale or transfer of a nonnarcotic product that includes a precursor substance subject to Subsection (a) if the product may be sold lawfully over the counter without a prescription under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.). (V.A.C.S. Art. 4476-15, Secs. 3.11(a), (b) (part), (c), (d), (e), (f), (j).)

[Sections 481.078-481.100 reserved for expansion]

**SUBCHAPTER D. OFFENSES AND PENALTIES**

**Sec. 481.101. CRIMINAL CLASSIFICATION.** For the purpose of establishing criminal penalties for violations of this chapter, controlled substances are divided into Penalty Groups 1 through 4. (V.A.C.S. Art. 4476-15, Sec. 4.02(a).)

**Sec. 481.102. PENALTY GROUP 1.** Penalty Group 1 consists of:

(1) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alfentanil;  
Allylprodine;  
Benzethidine;  
Betaprodine;  
Clonitazene;  
Diampromide;  
Diethylthiambutene;  
Difenoxin;  
Dimenoxadol;  
Dimethylthiambutene;  
Dioxaphetyl butyrate;  
Dipipanone;  
Ethylmethylthiambutene;  
Etonitazene;  
Etoxeridine;  
Furethidine;  
Hydroxypethidine;  
Ketobemidone;  
Levophenacymorphan;  
Meprodine;  
Methadol;  
Moramide;  
Morpheridine;  
Noracymethadol;  
Norlevorphanol;  
Normethadone;  
Norpipanone;  
Phenadoxone;  
Phenampromide;  
Phenomorphane;  
Phenoperidine;  
Piritramide;  
Proheptazine;  
Properidine;  
Propiram;  
Sufentanil;  
Tilidine; and  
Trimeperidine;

(2) the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- Acetorphine;
- Acetyldihydrocodeine;
- Benzylmorphine;
- Codeine methylbromide;
- Codeine-N-Oxide;
- Cyprenorphine;
- Desomorphine;
- Dihydromorphine;
- Drotebanol;
- Etorphine, except hydrochloride salt;
- Heroin;
- Hydromorphenol;
- Methyldesorphine;
- Methyldihydromorphine;
- Monoacetylmorphine;
- Morphine methylbromide;
- Morphine methylsulfonate;
- Morphine-N-Oxide;
- Myrophine;
- Nicocodeine;
- Nicomorphine;
- Normorphine;
- Pholcodine; and
- Thebacon;

(3) the following substances, however produced, except those narcotic drugs listed in another group:

(A) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than nalmeferne, naloxone and its salts, and naltrexone and its salts, but including:

- Codeine;
- Ethylmorphine;
- Granulated opium;
- Hydrocodone;
- Hydromorphone;
- Metopon;
- Morphine;
- Opium extracts;
- Opium fluid extracts;
- Oxycodone;
- Oxymorphone;
- Powdered opium;
- Raw opium;
- Thebaine; and
- Tincture of opium;



(B) a salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by Paragraph (A), other than the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Cocaine, including:

(i) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(ii) coca leaves and a salt, compound, derivative, or preparation of coca leaves;

(iii) a salt, compound, derivative, or preparation of a salt, compound, or derivative that is chemically equivalent or identical to a substance described by Subparagraph (i) or (ii), other than decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine; and

(E) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrine alkaloids of the opium poppy;

(4) the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, if the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

Alphaprodine;

Anileridine;

Bezitramide;

Dihydrocodeine;

Diphenoxylate;

Fentanyl or alpha-methylfentanyl, or any other derivative of Fentanyl;

Isomethadone;

Levomethorphan;

Levorphanol;

Metazocine;

Methadone;

Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

Pethidine;

Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4 carboxylate;

Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

Phenazocine;

Piminodine;

Racemethorphan; and

Racemorphan;

(5) Lysergic acid diethylamide, including its salts, isomers, and salts of isomers;

(6) Methamphetamine, including its salts, optical isomers, and salts of optical isomers;

(7) Phenylacetone and methylamine, if possessed together with intent to manufacture methamphetamine; and

(8) Phencyclidine, including its salts. (V.A.C.S. Art. 4476-15, Sec. 4.02(b).)

Sec. 481.103. PENALTY GROUP 2. (a) Penalty Group 2 consists of:

(1) any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, if the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

4-bromo-2, 5-dimethoxyamphetamine (some trade or other names: 4-bromo-2, 5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2, 5-DMA);

Bufotenine (some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine);

Diethyltryptamine (some trade and other names: N, N-Diethyltryptamine, DET);

2, 5-dimethoxyamphetamine (some trade or other names:

2, 5-dimethoxy-alpha-methylphenethylamine;

2, 5-DMA);

Dimethyltryptamine (some trade and other names: DMT);

Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product (some trade or other names for Dronabinol:

(a6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-

trimethyl-3-pentyl-6H-dibenzo[b,d]

pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol);

Ethylamine Analog of Phencyclidine (some trade or other names:

N-ethyl-1-phenylcyclohexylamine,

(1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE);

Ibogaine (some trade or other names: 7-Ethyl-6, 6, beta 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5H-pyrido [1', 2':1, 2] azepino [5, 4-b] indole; tabernanthe iboga.);

Mescaline;

5-methoxy-3, 4-methylenedioxy amphetamine;

4-methoxyamphetamine (some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA);

1-methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);

1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP, PPMP);

4-methyl-2, 5-dimethoxyamphetamine (some trade and other names: 4-methyl-2, 5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP");

3,4-methylene-dioxy methamphetamine (MDMA, MDM);

3,4-methylenedioxy amphetamine;

N-ethyl-3-piperidyl benzilate;

N-methyl-3-piperidyl benzilate;

Parahexyl (some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo [b, d] pyran; Synhexyl);

1-Phenylcyclohexylamine;

1-Piperidinocyclohexane-Carbonitrile (PCC);

Psilocin;

Psilocybin;

Pyrrolidine Analog of Phencyclidine (some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP);

Tetrahydrocannabinols, other than marihuana, and synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as:

delta-1 cis or trans tetrahydrocannabinol, and their optical isomers;

delta-6 cis or trans tetrahydrocannabinol, and their optical isomers;

- delta-3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- compounds of these structures, regardless of numerical designation of atomic positions, since nomenclature of these substances is not internationally standardized;
- Thiophene Analog of Phencyclidine (some trade or other names: 1-[1-(2-thienyl)cyclohexyl] piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP); and
- 3,4,5-trimethoxy amphetamine;
- (2) Phenylacetone (some trade or other names: Phenyl-2-propanone; P-2-P, Benzy-methyl ketone, methyl benzyl ketone); and
- (3) unless specifically excepted or unless listed in another Penalty Group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant or stimulant effect on the central nervous system:

- Amphetamine, its salts, optical isomers, and salts of optical isomers;
- Etorphine Hydrochloride;
- Fenethylline and its salts;
- Mecloqualone and its salts;
- Methaqualone and its salts; and
- N-Ethylamphetamine, its salts, optical isomers, and salts of optical isomers.

- (b) For the purposes of Subsection (a)(1) only, the term "isomer" includes an optical, position, or geometric isomer. (V.A.C.S. Art. 4476-15, Sec. 4.02(c).)

Sec. 481.104. PENALTY GROUP 3. (a) Penalty Group 3 consists of:

- (1) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- Methylphenidate and its salts; and
- Phenmetrazine and its salts;

- (2) a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- a substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid not otherwise covered by this subsection;

- a compound, mixture, or preparation containing amobarbital, secobarbital, pentobarbital, or any salt of any of these, and one or more active medicinal ingredients that are not listed in any schedule;

- a suppository dosage form containing amobarbital, secobarbital, pentobarbital, or any salt of any of these drugs, and approved by the United States Food and Drug Administration for marketing only as a suppository;

- Alprazolam;
- Amobarbital;
- Bromazepam;
- Camazepam;
- Chlordiazepoxide;
- Chlorhexadol;
- Clobazam;
- Clonazepam;
- Clorazepate;
- Clotiazepam;
- Cloxazolam;
- Delorazepam;

Diazepam;  
Estazolam;  
Ethyl loflazepate;  
Fludiazepam;  
Flunitrazepam;  
Flurazepam;  
Glutethimide;  
Halazepam;  
Haloxzolam;  
Ketazolam;  
Loprazolam;  
Lorazepam;  
Lormetazepam;  
Lysergic acid, including its salts, isomers, and salts of isomers;  
Lysergic acid amide, including its salts, isomers, and salts of isomers;  
Mebutamate;  
Medazepam;  
Midazolam;  
Methypylon;  
Nimetazepam;  
Nitrazepam;  
Nordiazepam;  
Oxazepam;  
Oxazolam;  
Pentazocine, its salts, derivatives, or compounds or mixtures thereof;  
Pentobarbital;  
Pinazepam;  
Prazepam;  
Quazepam;  
Secobarbital;  
Sulfondiethylmethane;  
Sulfonethylmethane;  
Sulfonmethane;  
Temazepam;  
Tetrazepam; and  
Triazolam;

(3) Nalorphine;

(4) a material, compound, mixture, or preparation containing limited quantities of the following narcotic drugs, or any of their salts:

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) a material, compound, mixture, or preparation that contains any quantity of the following substances:

- Barbital;
- Chloral betaine;
- Chloral hydrate;
- Ethchlorvynol;
- Ethinamate;
- Methohexital;
- Meprobamate;
- Methylphenobarbital (Mephobarbital);
- Paraldehyde;
- Petrichloral; and
- Phenobarbital;

(6) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(7) unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the substance's salts, optical, position, or geometric isomers, and salts of the substance's isomers, if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- Benzphetamine;
- Chlorphentermine;
- Clortermine;
- Diethylpropion;
- Fenfluramine;
- Mazindol;
- Pemoline (including organometallic complexes and their chelates);
- Phendimetrazine;

Phentermine;

Pipradrol; and

SPA [(–)-1-dimethylamino-1,2-diphenylethane]; and

(8) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts:

Dextropropoxyphene

(Alpha-(–)-4-dimethylamino-1,

2-diphenyl-3-methyl-2-propionoxybutane).

(b) Penalty Group 3 does not include a compound, mixture, or preparation containing a stimulant substance listed in Subsection (a)(1) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a stimulant effect on the central nervous system.

(c) Penalty Group 3 does not include a compound, mixture, or preparation containing a depressant substance listed in Subsection (a)(2) or (a)(5) if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances that have a depressant effect on the central nervous system. (V.A.C.S. Art. 4476–15, Sec. 4.02(d).)

Sec. 481.105. PENALTY GROUP 4. Penalty Group 4 consists of:

(1) a compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs that includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

not more than 15 milligrams of opium per 29.5729 milliliters or per 28.35 grams; and

not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(2) unless specifically excepted or unless listed in another penalty group, a material, compound, mixture, or preparation containing the narcotic drug Buprenorphine or its salts. (V.A.C.S. Art. 4476–15, Sec. 4.02(e).)

Sec. 481.106. FIRST DEGREE FELONY. (a) An individual adjudged guilty of a felony of the first degree under this subchapter shall be punished by confinement in the Texas Department of Corrections for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$20,000. (V.A.C.S. Art. 4476–15, Sec. 4.01(b) (part).)

Sec. 481.107. REPEAT OFFENDERS. (a) If it is shown on the trial of a defendant for an offense listed under this section that the defendant has previously been convicted of a felony offense under this subchapter, on conviction the defendant shall be punished by the term of confinement and amount of fine imposed by this section.

(b) Punishment under this section, on conviction of an offense for which the punishment is otherwise imposed under Section 481.112(d)(1), 481.113(d)(1), 481.114(d)(1), 481.115(d)(1), 481.116(d)(1), 481.117(d)(1), 481.118(d)(1), 481.120(d)(1), or 481.121(d)(1), is confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000.

(c) Punishment under this section, on conviction of an offense for which the punishment is otherwise imposed under Section 481.112(d)(2), 481.113(d)(2), 481.114(d)(2), 481.115(d)(2), 481.116(d)(2), 481.117(d)(2), 481.118(d)(2), 481.120(d)(2), or 481.121(d)(2), is confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000.

(d) Punishment under this section, on conviction of an offense for which the punishment is otherwise imposed under Section 481.112(d)(3), 481.120(d)(3), or 481.121(d)(3), is confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 20 years, and a fine not to exceed \$500,000.

(e) Punishment under this section, on conviction of an offense for which the punishment is otherwise imposed under Section 481.126(b), is confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine of not less than \$100,000 or more than \$1,000,000.

(f) A person who is subject to prosecution under this section and Section 12.42, Penal Code, may be prosecuted under either section. (V.A.C.S. Art. 4476-15, Sec. 4.012.)

Sec. 481.103. PREPARATORY OFFENSES. Title 4, Penal Code, applies to Section 481.126 and offenses designated as aggravated offenses under this subchapter, except that the punishment for a preparatory offense is the same as the punishment prescribed for the offense that was the object of the preparatory offense. (V.A.C.S. Art. 4476-15, Sec. 4.011.)

Sec. 481.109. CONDITIONAL DISCHARGE. (a) A court may, with the consent of a defendant who is charged with or found guilty of an offense under this subchapter, after trial or on a plea of guilty, defer further proceedings without entering a judgment of guilt and place the defendant on probation for a period set by the court not to exceed two years. The court may place reasonable conditions on the defendant during the period of probation. This subsection does not apply to a defendant:

(1) who is charged with or found guilty of an aggravated offense under this chapter or an offense under Section 481.126;

(2) who has been previously convicted of an offense under this chapter; or

(3) who, after August 27, 1973, has been previously convicted of an offense under any statute of the United States or any state relating to a substance defined by this chapter as a controlled substance.

(b) On violation of a condition of probation imposed under this section, the court may enter an adjudication of guilt, pronounce sentence, and punish the defendant accordingly. The court may, in its discretion, dismiss the proceedings against the defendant and discharge the defendant from probation before the expiration of the maximum period prescribed for the probationary period. If during the period of probation the defendant does not violate any of the conditions of the probation, on expiration of the probationary period the court shall discharge the defendant and dismiss the proceedings against the defendant. If proceedings against a defendant are discharged and the defendant is dismissed from probation under this section, the court may not enter an adjudication of guilt against the defendant. The director shall retain a nonpublic record of the proceedings solely for use by the courts in determining whether, in subsequent proceedings, the person qualifies for conditional discharge under this section.

(c) A discharge or dismissal under this section is not a conviction for purposes of disqualifications or disabilities imposed by law for conviction of a crime and may not be used for enhancement of punishment for a repeat or habitual offender. A person may receive only one discharge and dismissal under this section.

(d) This section is not an exclusive procedure. The court may use any other procedure provided by law relating to suspension of trial or probation. (V.A.C.S. Art. 4476-15, Sec. 4.12.)

Sec. 481.110. RESENTENCING. (a) A person who has been convicted of an offense involving marihuana before August 27, 1973, may petition the court in which the person was convicted for resentencing in accordance with Section 481.120 or 481.121, whether the

person is presently serving a sentence, is on probation or parole, or has been discharged from the sentence.

(b) On receipt of the petition, the court shall notify the appropriate prosecuting official and shall set the matter for a hearing not later than the 90th day after the date the court receives the petition.

(c) At the hearing the court shall review the record of the prior conviction. The court shall resentence the petitioner in accordance with Section 481.120 or 481.121, and shall grant the petitioner credit for all time served on the original sentence before the resentencing hearing.

(d) If the time served on the original sentence exceeds the revised sentence imposed by the court, the court shall order the petitioner discharged.

(e) In resentencing the petitioner, the court may not increase the petitioner's sentence or require the petitioner to pay an additional fine.

(f) This section does not authorize the release of a person who is serving concurrent sentences for two or more offenses if after resentencing the person still has time remaining to be served on a concurrent sentence. (V.A.C.S. Art. 4476-15, Sec. 4.06.)

Sec. 481.111. EXEMPTIONS. (a) The provisions of this chapter relating to the possession and distribution of peyote do not apply to the use of peyote by a member of the Native American Church in bona fide religious ceremonies of the church. However, a person who supplies the substance to the church must register and maintain appropriate records of receipts and disbursements in accordance with rules adopted by the director. An exemption granted to a member of the Native American Church under this section does not apply to a member with less than 25 percent Indian blood.

(b) The provisions of this chapter relating to the possession of denatured sodium pentobarbital do not apply to possession by personnel of a humane society or an animal control agency for the purpose of destroying injured, sick, homeless, or unwanted animals if the humane society or animal control agency is registered with the Federal Drug Enforcement Administration. The provisions of this chapter relating to the distribution of denatured sodium pentobarbital do not apply to a person registered as required by Subchapter C, who is distributing the substance for that purpose to a humane society or an animal control agency registered with the Federal Drug Enforcement Administration.

(c) A person does not violate Section 481.113, 481.116, 481.121, or 481.125 if the person possesses or delivers tetrahydrocannabinols or their derivatives, or drug paraphernalia to be used to introduce tetrahydrocannabinols or their derivatives into the human body, for use in a federally approved therapeutic research program. (V.A.C.S. Art. 4476-15, Secs. 4.11, 7.10.)

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 200 grams;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate



weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.03.)

**Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2.** (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 2.

(b) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.031.)

**Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4.** (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.032.)

**Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1.** (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a felony of the second degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.04.)

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2.

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a felony of the third degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.041.)

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3.

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if

the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.042.)

**Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4.** (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 200 grams.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams; and

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more. (V.A.C.S. Art. 4476-15, Sec. 4.043.)

**Sec. 481.119. OFFENSE: MANUFACTURE, DELIVERY, OR POSSESSION OF MISCELLANEOUS SUBSTANCES.** (a) A person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class A misdemeanor.

(b) A person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in a schedule by an action of the commissioner under this chapter but not listed in a penalty group. An offense under this subsection is a Class B misdemeanor. (V.A.C.S. Art. 4476-15, Sec. 4.044.)

**Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA.** (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a felony of the third degree if the amount of marihuana delivered is four ounces or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is five pounds or less but more than four ounces; and

(5) a felony of the first degree if the amount of marihuana delivered is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of marihuana delivered is more than 50 pounds.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana delivered is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana delivered is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of marihuana delivered is more than 2,000 pounds. (V.A.C.S. Art. 4476-15, Sec. 4.05.)

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;

(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a felony of the third degree if the amount of marihuana possessed is five pounds or less but more than four ounces; and

(4) a felony of the second degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds.

(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of marihuana possessed is more than 50 pounds.

(d) An offense under Subsection (c) is:

(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana possessed is 200 pounds or less but more than 50 pounds;

(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana possessed is 2,000 pounds or less but more than 200 pounds; and

(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000, if the amount of marihuana possessed is more than 2,000 pounds.

(e) An offense for which the punishment is prescribed by Subsection (b) may not be considered a crime of moral turpitude. (V.A.C.S. Art. 4476-15, Sec. 4.051.)

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO MINOR. (a) Except as authorized by this chapter, a person commits an aggravated offense if the person knowingly or intentionally delivers a controlled substance listed in Penalty Group 1, 2, or 3 or knowingly or intentionally delivers marihuana and the person delivers the controlled substance or marihuana to a person:

(1) who is 17 years of age or younger;

(2) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person 17 years of age or younger;

(3) who is enrolled in an elementary or secondary school; or

(4) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person who is enrolled in an elementary or secondary school.

(b) It is an affirmative defense to prosecution under this section that:

(1) the actor was younger than 18 years of age when the offense was committed; or

(2) the actor was younger than 21 years of age when the offense was committed and delivered only marihuana in an amount less than one-fourth ounce for which the actor did not receive remuneration.

(c) An offense under this section is a felony of the first degree. (V.A.C.S. Art. 4476-15, Sec. 4.053.)

**Sec. 481.123. OFFENSE: DELIVERY, MANUFACTURE, OR POSSESSION OF CONTROLLED SUBSTANCE ANALOGUE.** (a) For the purposes of this chapter, a controlled substance analogue is considered to be a controlled substance listed in Penalty Group 1 if the analogue in whole or in part is intended for human consumption and:

(1) the chemical structure of the analogue is substantially similar to the chemical structure of a controlled substance listed in Schedule I or Penalty Group 1; or

(2) the analogue is specifically designed to produce an effect substantially similar to or greater than the effect of a controlled substance listed in Schedule I or Penalty Group 1.

(b) For the purposes of this chapter, a controlled substance analogue is considered to be a controlled substance listed in Penalty Group 2 if the analogue in whole or in part is intended for human consumption and:

(1) the chemical structure of the analogue is substantially similar to the chemical structure of a controlled substance listed in Schedule II or Penalty Group 2; or

(2) the analogue is specifically designed to produce an effect substantially similar to or greater than the effect of a controlled substance listed in Schedule II or Penalty Group 2.

(c) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described by Subsection (a).

(d) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance analogue described by Subsection (a).

(e) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance analogue described by Subsection (b).

(f) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance analogue described by Subsection (b).

(g) This section does not apply to:

(1) a controlled substance;

(2) a substance for which there is an approved new drug application under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355);

(3) a substance for which an exemption for investigational use has been granted under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), to the extent that the substance is possessed, manufactured, or delivered by a particular person under the exemption and the person's conduct with respect to the substance is in accord with the exemption; or

(4) a substance, to the extent the substance is not intended for human consumption, before an exemption under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355), takes effect with regard to the substance.

(h) For the purposes of this section, Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 355) applies to the introduction or delivery for introduction of any new drug into intrastate, interstate, or foreign commerce.

(i) An offense under Subsection (c) is punishable in the same manner as if the controlled substance analogue were a controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver under Section 481.112.

(j) An offense under Subsection (d) is punishable in the same manner as if the controlled substance analogue were a controlled substance possessed under Section 481.115.

(k) An offense under Subsection (e) is punishable in the same manner as if the controlled substance analogue were a controlled substance manufactured, delivered, or possessed with intent to manufacture or deliver under Section 481.113.

(l) An offense under Subsection (f) is punishable in the same manner as if the controlled substance analogue were a controlled substance possessed under Section 481.116. (V.A.C.S. Art. 4476-15, Sec. 3.10.)

Sec. 481.124. OFFENSE: CHEMICAL PRECURSORS. (a) A person who sells, transfers, or otherwise furnishes a precursor substance subject to Section 481.077 commits an offense if the person violates that section.

(b) An offense under this section is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under this section, in which event the offense is a felony of the third degree. (V.A.C.S. Art. 4476-15, Secs. 3.11(g), (h), (i).)

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a), in which event the offense is a Class B misdemeanor.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is a felony of the third degree.

(f) An offense under Subsection (c) is a felony of the third degree. (V.A.C.S. Art. 4476-15, Sec. 4.07.)

Sec. 481.126. OFFENSE: ILLEGAL EXPENDITURE OR INVESTMENT. (a) A person commits an offense if the person knowingly or intentionally:

(1) expends funds the person knows are derived from the commission of an offense under Section 481.112(c), 481.113(c), 481.114(c), 481.115(c), 481.116(c), 481.117(c), 481.118(c), 481.120(c), or 481.121(c); or

(2) finances or invests funds the person knows or believes are intended to further the commission of an offense listed in Subdivision (1).

(b) An offense under this section is punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine of not more than \$1,000,000 or less than \$50,000. (V.A.C.S. Art. 4476-15, Sec. 4.052.)

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person intentionally or knowingly gives, permits, or obtains unauthorized access to information submitted to the Department of Public Safety under Section 481.075.

(b) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 4476-15, Sec. 4.081.)

**Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS.** (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly or intentionally:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 481.070–481.074;

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter or required by rules adopted by the director;

(4) prints, manufactures, possesses, or produces a triplicate prescription form without the approval of the Department of Public Safety;

(5) delivers or possesses a counterfeit triplicate prescription;

(6) refuses an entry into a premise for an inspection authorized by this chapter; or

(7) refuses or fails to return a triplicate prescription form as required by Section 481.075(h).

(b) An offense under this section is a felony of the second degree, unless it is shown on the trial of a defendant that the defendant has previously been convicted under this section, in which event the offense is a felony of the first degree.

(c) If a person negligently commits an act that would otherwise be an offense under this section, the person is liable to the state for a civil penalty of not less than \$5,000 or more than \$10,000 for each act. The district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty. (V.A.C.S. Art. 4476–15, Sec. 4.08.)

**Sec. 481.129. OFFENSE: FRAUD.** (a) A person commits an offense if the person knowingly or intentionally:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance under an order form as required by Section 481.069;

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(3) uses a triplicate prescription form issued to another person to prescribe a controlled substance;

(4) possesses or attempts to possess a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form; or

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(5) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark, imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III; and

(3) a Class B misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule IV or V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a felony of the third degree if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V. (V.A.C.S. Art. 4476-15, Secs. 4.09(a), (b).)

Sec. 481.130. PENALTIES UNDER OTHER LAW. A penalty imposed for an offense under this chapter is in addition to any civil or administrative penalty or other sanction imposed by law. (V.A.C.S. Art. 4476-15, Sec. 4.10.)

[Sections 481.131-481.150 reserved for expansion]

#### SUBCHAPTER E. FORFEITURE

Sec. 481.151. ITEMS SUBJECT TO FORFEITURE. (a) The following items are subject to forfeiture under this subchapter:

(1) a controlled substance manufactured, distributed, dispensed, delivered, acquired, obtained, or possessed in violation of this chapter;

(2) raw material, a product, or equipment used or intended for use in manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance in violation of this chapter;

(3) property used or intended for use as a container for property described in Subdivision (1) or (2);

(4) a book, record, microfilm, tape, data, or research product or material, including a formula, used or intended for use in violation of this chapter;



(5) a conveyance, including an aircraft, vehicle, vessel, trailer, or railroad car, used or intended for use to transport or facilitate the transportation, sale, receipt, possession, concealment, or delivery of property described in Subdivision (1), (2), or (3);

(6) money, or a certificate of deposit, negotiable instrument, security, stock, bond, business or business investment, contractual right, real estate, personal property, or other thing of value used or intended for use in violation of Section 481.126 or derived from the sale, manufacture, distribution, dispensation, delivery, or other commercial undertaking in violation of this chapter;

(7) drug paraphernalia; and

(8) a triplicate prescription form required by this chapter to be returned to the Department of Public Safety.

(b) Property is not subject to forfeiture if the owner of the property establishes that the act that would otherwise make the property subject to forfeiture was committed without the owner's knowledge or consent. A conveyance used by a person other than the owner of the conveyance or person in charge of the conveyance is not subject to forfeiture unless the owner or other person in charge of the conveyance is a consenting party or privy to a felony under this chapter.

(c) A forfeiture of property encumbered by a security interest is subject to the interest of the secured party if the party did not have knowledge of or consent to the act that caused the property to be subject to forfeiture. (V.A.C.S. Art. 4476-15, Sec. 5.03.)

**Sec. 481.152. SEIZURE AND FORFEITURE OF PLANTS.** (a) Species of plants from which a controlled substance listed in Schedule I or II may be derived are subject to seizure and summary forfeiture to the state if:

(1) the plants have been planted or cultivated in violation of this chapter;

(2) the plants are wild growths; or

(3) the owners or cultivators of the plants are unknown.

(b) Subsection (a) does not apply to unharvested peyote growing in its natural state.

(c) If a person who occupies or controls land or premises on which the species of plants are growing fails on the demand of a peace officer to produce an appropriate registration or proof that the person is the holder of the registration, the officer may seize and forfeit the plants. (V.A.C.S. Art. 4476-15, Sec. 5.09.)

**Sec. 481.153. SEIZURE.** (a) A peace officer acting under the authority of a search warrant issued under this chapter may seize property subject to forfeiture under this subchapter.

(b) Property subject to forfeiture under this subchapter may be seized without a warrant if:

(1) the owner, operator, or agent in charge of the property consents;

(2) the seizure is incident to a search to which the owner, operator, or agent in charge of the property consents;

(3) the property has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this chapter; or

(4) the seizure was incident to a lawful arrest, lawful search, or lawful search incident to arrest. (V.A.C.S. Art. 4476-15, Sec. 5.04.)

**Sec. 481.154. NOTICE REQUIREMENTS.** (a) A forfeiture proceeding for property other than a controlled substance or raw material must be instituted not later than the 30th day after the date of the seizure.

(b) The seizing officer immediately shall file in the name of the state a notice of the seizure and intended forfeiture. The notice must be filed with the clerk of the district court in the county in which the seizure is made, or if the property is a conveyance, in any county in which the conveyance was used or intended for use to transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment of property described in Sections 481.151(a)(1)-(3). A certified copy of the notice must be served on the following persons as provided for the serving of process by citation in civil cases:

(1) the owner of the property, if the owner's address is known;  
(2) a secured party who has registered a lien or filed a financing statement as provided by law; and

(3) a lienholder or secured party or other person holding an interest in the property in the nature of a security interest if the Department of Public Safety has knowledge of the person.

(c) If the property is a motor vehicle that may be registered under the motor vehicle registration laws of this state and if there is any reasonable cause to believe that the vehicle has been registered, the officer in charge of initiating the forfeiture proceedings shall inquire of the State Department of Highways and Public Transportation as to who is the record owner of the vehicle and who, if anyone, holds any lien or security interest that affects the vehicle.

(d) If the property is a motor vehicle that is not registered in this state, the officer in charge of initiating the proceeding shall attempt to determine the name and address of the person in whose name the vehicle is licensed. If the vehicle is licensed in a state that has a certificate of title law, the officer shall inquire of the appropriate agency of that state as to who is the record owner of the vehicle and who, if anyone, holds a lien, security interest, or other instrument in the nature of a security device that affects the vehicle.

(e) If the property is of a nature that the law requires a financing statement to be filed to perfect a security interest in the property and if there is any reasonable cause to believe that a financing statement has been filed, the officer in charge of initiating the proceeding shall inquire of the appropriate official designated in Chapter 9, Business & Commerce Code, as to who is the record owner of the property and who, if anyone, has filed a financing statement affecting the property.

(f) If the property is an aircraft or part of an aircraft and if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, the officer in charge of initiating the proceedings shall inquire of the administrator of the Federal Aviation Administration as to who is the record owner of the property and who, if anyone, holds an instrument in the nature of a security device that affects the property.

(g) In the case of other property subject to forfeiture, if there is any reasonable cause to believe that an instrument in the nature of a security device affects the property, the officer in charge of initiating the proceeding shall make a good faith inquiry to identify the holder of such an instrument.

(h) If an answer to an inquiry under this section states that the record owner of the property is a person other than the person who was in possession of the property when it was seized, or states that a person holds a lien, security interest, or other interest in the nature of a security interest that affects the property, the officer in charge of initiating the proceeding shall cause that person or persons to be named a party to the proceeding and to be served with citation of the pendency of the proceeding as provided by the Texas Rules of Civil Procedure.

(i) If a person was in possession of property subject to forfeiture at the time that the property was seized, the person must be made a party to the proceeding.

(j) If no person was in possession of the property at the time that the property was seized and if the owner of the property is unknown, the officer in charge of initiating the proceeding shall file with the clerk of the court in which the proceeding is pending an affidavit stating those facts. The clerk of the court then shall issue a citation for service by publication addressed to "the Unknown Owner of . . .", filling in the blank space with a reasonably detailed description of the property subject to forfeiture. The citation must contain the other requisites prescribed in Rules 114 and 115 and be served as provided by Rule 116 of the Texas Rules of Civil Procedure.

(k) A proceeding instituted under this subchapter may not proceed to hearing unless the judge conducting the hearing is satisfied that this section has been complied with. The officer initiating the proceeding shall introduce into evidence at the hearing any answer received from an inquiry required by Subsections (c) through (g). (V.A.C.S. Art. 4476-15, Sec. 5.05.)

**Sec. 481.155. REPLEVY.** (a) Except as provided by Subsection (c), the following persons may replevy property seized under this subchapter:

- (1) the owner of the property; and
- (2) a lienholder, secured party, or other party holding an interest in the nature of a security interest affecting the property.

(b) A person seeking replevy under this section must execute a bond. The bond must be:

(1) sufficient surety in an amount double the appraised value of the property to be replevied;

(2) conditioned on the return of the property to the custody of the seizing officer on the day of a forfeiture hearing and conditioned on a promise to abide by the judgment of the court; and

(3) approved by the officer who seized the property.

(c) The following items are not subject to replevy under this section:

- (1) drug paraphernalia;
- (2) a controlled substance or raw material; and
- (3) money, a negotiable instrument, or a security that is:

(A) furnished or intended to be furnished by a person in exchange for a controlled substance in violation of this chapter; or

(B) used or intended to be used to facilitate a violation of this chapter. (V.A.C.S. Art. 4476-15, Sec. 5.06.)

**Sec. 481.156. DEPOSIT OF MONEY PENDING DISPOSITION.** (a) If money is seized by a law enforcement agency in connection with a violation of this chapter, until a final judgment is rendered concerning the violation, the state or the political subdivision of the state that employs the law enforcement agency may deposit the money in an interest-bearing bank account in the jurisdiction of the agency that made the seizure or in the county in which the money was seized.

(b) If a final judgment is rendered concerning a violation of this chapter, money seized in connection with the violation that has been placed in an interest-bearing bank account shall be distributed according to this chapter, with interest being distributed in the same manner and used for the same purpose as the principal. (V.A.C.S. Art. 4476-15, Sec. 5.082.)

**Sec. 481.157. FORFEITURE HEARING.** (a) An owner of property, other than a controlled substance or raw material, that has been seized may file a verified answer not later than the 20th day after the date of the mailing or publication of a notice of seizure. If the owner does not file an answer, the court shall hear evidence that the property is subject to forfeiture and may on motion forfeit the property to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers. Not later than the 30th day after the date an answer is filed, the court shall set a time for a hearing on the forfeiture. The court shall send a notice of the hearing to all parties. The county or district attorney in the county in which the hearing is held may represent the state. The attorney general may represent the state at the request of the county or district attorney.

(b) If the owner of the property files a verified answer denying that the property is subject to forfeiture, the burden is on the state to prove by a preponderance of the evidence that the property is subject to forfeiture. If the owner of the property does not file an answer, the notice of seizure may be introduced into evidence and is prima facie evidence that the property is subject to forfeiture.

(c) At the hearing a claimant of a right, title, or interest in the property may prove that the claimant's lien, security interest, or other interest in the nature of a security interest is bona fide and was created without knowledge or consent that the property was to be used in a manner causing the property to be subject to forfeiture.

(d) If the court determines that the property is subject to forfeiture, the judge shall on motion forfeit the property to the state or an agency of the state or to a political

subdivision of the state authorized by law to employ peace officers. For property other than a controlled substance, raw material, or drug paraphernalia, if proof at the hearing shows that the interest of a lienholder, secured party, or other person holding an interest in the property in the nature of a security interest is greater than or equal to the present value of the property, the court shall order the property released to that party. If the person's interest is less than the present value of the property and if the proof shows that the property is subject to forfeiture, the court shall order the property forfeited to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers.

(e) On the petition of the seizing officer, filed in the name of the state with the clerk of the district court of the county in which the seizure of a controlled substance or raw material is made, the district court having jurisdiction may order the controlled substance or raw material summarily forfeited, unless the lawful possession and title of the substance or material can be ascertained. If the court determines that a person had lawful possession and title of the controlled substance or raw material before it was seized, the court shall order the controlled substance or raw material returned to the person, if the person so desires. (V.A.C.S. Art. 4476-15, Sec. 5.07.)

Sec. 481.158. DISPOSITION OF MONEY OR OTHER THINGS OF VALUE. (a) If property, other than money or any property described by Section 481.159, is forfeited to the state, the court may order the property sold in the manner described by this subsection or permit the state to maintain, repair, operate, and use the property in the manner described by Subsection (e). If the court orders that the property be sold, the sheriff shall direct the sale of the property at public auction, after giving notice of the auction in the same manner as provided by law for other sheriffs' sales. The sheriff shall deliver the proceeds of a sale under this section to the district clerk, and the clerk shall dispose of the proceeds as follows:

(1) to a lienholder, secured party, or other party holding an interest in the property in the nature of a security interest, to the extent of that person's interest; and

(2) the balance, if any, after deduction of storage and court costs, to the comptroller for deposit to the credit of the general revenue fund.

(b) If anything having value, including a contractual right, is seized by an agency of the state or by an agency or office of a political subdivision of the state authorized by law to employ peace officers, and the property is subsequently forfeited to the agency or office, the agency or office may:

(1) maintain, repair, operate, and use the property in the manner described by Subsection (e); or

(2) after purchasing the interest of a lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest, deposit the item or proceeds from the sale of the item to the credit of a special fund to be administered by the agency or office.

(c) An expenditure from a fund established under Subsection (b)(2) may be used only for the investigation of an alleged violation of the criminal laws of this state, except that the director of an agency of the state may use not more than 10 percent of the amount credited to the agency's fund for the prevention of drug abuse and for the treatment of persons with drug related problems. The director of an agency or office of a political subdivision shall comply with a request of the governing body of the subdivision to deposit not more than 10 percent of the amount credited to the agency's or office's fund into the treasury of the subdivision. The governing body of the subdivision shall use funds received under this subsection for the prevention of drug abuse and the treatment of persons with drug related problems.

(d) Subsections (b) and (c) may not be construed to decrease the total salaries, expenses, and allowances that an agency or office is receiving from other sources.

(e) Property that is forfeited to the state or an agency of the state or to a political subdivision of the state authorized by law to employ peace officers and that is free from any interest of a lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest may be maintained, repaired, used, and

operated by the state, agency, or political subdivision for official purposes. If the property is subject to the interest of a lienholder, secured party, or other party who holds an interest in the property in the nature of a security interest, the department or agency receiving the property may purchase that interest so that the property may be released for official use. If property received under this subsection is a motor vehicle that may be registered under the motor vehicle registration laws of this state, the department or agency receiving the property is considered to be a purchaser, or may receive a title to the vehicle from the State Department of Highways and Public Transportation, and may use money appropriated to the department or agency for the maintenance, repair, use, and operation of the vehicle.

(f) The State Department of Highways and Public Transportation shall issue a certificate of title to a person who purchases a motor vehicle under this section if a certificate of title for the vehicle is required by law.

(g) If, at the request of the officer who seized the property, the property is stored while forfeiture proceedings are pending and if after a final hearing the property is not forfeited to the department or agency, the department or agency employing the officer shall, out of its appropriations, pay the storage charges accrued while the property was stored. (V.A.C.S. Art. 4476-15, Secs. 5.08(b), (c), (d), (e), (f).)

**Sec. 481.159. DISPOSITION OF CONTROLLED SUBSTANCE, RAW MATERIAL, OR DRUG PARAPHERNALIA.** If a district court orders the forfeiture of a controlled substance, raw material, or drug paraphernalia, the court shall also order a law enforcement agency to:

- (1) retain the property for its official purposes;
- (2) deliver the property to a government agency or department for official purposes;
- (3) deliver the property to a person authorized by the court to receive it;
- (4) deliver the property to a person authorized by the director to receive it for a purpose described by Section 481.065(a); or

(5) destroy the property that is not otherwise disposed of in the manner prescribed by Section 481.160. (V.A.C.S. Art. 4476-15, Sec. 5.08(a).)

**Sec. 481.160. DESTRUCTION OF EXCESS QUANTITIES.** (a) If a controlled substance or raw material is forfeited under Section 481.157(e), the agency to which the substance or material is forfeited may destroy the substance or material if the agency ensures that:

(1) at least five random and representative samples are taken from the total amount of controlled substance or mixture containing the controlled substance, and a sufficient quantity is preserved to provide for discovery by parties entitled to discovery;

(2) photographs are taken that reasonably demonstrate the total amount of the controlled substance or raw material; and

(3) the gross weight or liquid measure of the controlled substance or raw material is determined, either by actually weighing or measuring the substance or by estimating its weight or measurement after making dimensional measurements of the total amount seized.

(b) A representative sample, photograph, or record made under this section is admissible in civil or criminal proceedings in the same manner and to the same extent as if the total quantity of the suspected controlled substance or raw material was offered in evidence, regardless of whether the remainder of the substance has been destroyed. An inference or presumption of spoliation does not apply to a substance or material destroyed under this section. (V.A.C.S. Art. 4476-15, Sec. 5.081.)

[Sections 481.161-481.180 reserved for expansion]

#### **SUBCHAPTER F. INSPECTIONS, EVIDENCE, AND MISCELLANEOUS LAW ENFORCEMENT PROVISIONS**

**Sec. 481.181. INSPECTIONS.** (a) The director may enter controlled premises at any reasonable time and inspect the premises and items described by Subsection (b) in order to

inspect, copy, and verify the correctness of a record, report, or other document required to be made or kept under this chapter and to perform other functions under this chapter. The director shall state the purpose of the entry and present to the owner, operator, or agent in charge of the premises appropriate credentials and a written notice of inspection authority.

(b) The director may:

(1) inspect and copy a record, report, or other document required to be made or kept under this chapter;

(2) inspect, within reasonable limits and in a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished drugs, other substances, and materials, containers, labels, records, files, papers, processes, controls, and facilities as appropriate to verify a record, report, or document required to be kept under this chapter or to administer this chapter;

(3) examine and inventory stock of a controlled substance and obtain samples of the controlled substance;

(4) examine a hypodermic syringe, needle, pipe, or other instrument, device, contrivance, equipment, control, container, label, or facility relating to a possible violation of this chapter; and

(5) examine a material used, to be used, or capable of being used to dilute or adulterate a controlled substance.

(c) Unless the owner, operator, or agent in charge of the controlled premises consents in writing, the director may not inspect:

(1) financial data;

(2) sales data other than shipment data; or

(3) pricing data. (V.A.C.S. Art. 4476-15, Secs. 5.01(b), (c), (d), (e).)

Sec. 481.182. SEARCH WARRANTS. A search warrant may be issued to search for and seize a controlled substance possessed or manufactured in violation of this chapter. The application for the issuance of and the execution of a search warrant under this section must conform to applicable provisions of the Code of Criminal Procedure. (V.A.C.S. Art. 4476-15, Sec. 5.13.)

Sec. 481.183. EVIDENTIARY RULES RELATING TO DELIVERY OR DRUG PARAPHERNALIA. (a) For the purpose of establishing the delivery of a controlled substance, counterfeit substance, or drug paraphernalia, proof of an offer to sell must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

(b) In considering whether an item is drug paraphernalia under this chapter, a court or other authority shall consider, in addition to all other logically relevant factors, and subject to rules of evidence:

(1) statements by an owner or person in control of the object concerning its use;

(2) the existence of any residue of a controlled substance on the object;

(3) direct or circumstantial evidence of the intent of an owner or other person in control of the object to deliver it to a person whom the person knows or should reasonably know intends to use the object to facilitate a violation of this chapter;

(4) oral or written instructions provided with the object concerning its use;

(5) descriptive material accompanying the object that explains or depicts its use;

(6) the manner in which the object is displayed for sale;

(7) whether the owner or person in control of the object is a supplier of similar or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(9) the existence and scope of uses for the object in the community;

- (10) the physical design characteristics of the item; and
- (11) expert testimony concerning the item's use.

(c) The innocence of an owner or other person in charge of an object as to a direct violation of this chapter does not prevent a finding that the object is intended or designed for use as drug paraphernalia. (V.A.C.S. Art. 4476-15, Secs. 1.02(7) (part); 5.15.)

**Sec. 481.184. BURDEN OF PROOF; LIABILITIES.** (a) The state is not required to negate an exemption or exception provided by this chapter in a complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. A person claiming the benefit of an exemption or exception has the burden of going forward with the evidence with respect to the exemption or exception.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The presumption is subject to rebuttal by a person charged with an offense under this chapter.

(c) This chapter does not impose a liability on an authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties. (V.A.C.S. Art. 4476-15, Sec. 5.10.)

**Sec. 481.185. ARREST REPORTS.** (a) Each law enforcement agency in this state shall file monthly with the director a report of all arrests made for drug offenses and quantities of controlled substances seized during the preceding month. The agency shall make the report on a form provided by the director and shall provide the information required by the form.

(b) The director shall publish an annual summary of all drug arrests and controlled substances seized in the state. (V.A.C.S. Art. 4476-15, Sec. 5.14.)

**Sec. 481.186. COOPERATIVE ARRANGEMENTS.** (a) The director shall cooperate with federal and state agencies in discharging the director's responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. The director may:

- (1) arrange for the exchange of information among government officials concerning the use and abuse of controlled substances;
- (2) cooperate in and coordinate training programs concerning controlled substances law enforcement at local and state levels;
- (3) cooperate with the Federal Drug Enforcement Administration and state agencies by establishing a centralized unit to accept, catalog, file, and collect statistics, including records on drug-dependent persons and other controlled substance law offenders in this state and, except as provided by Section 481.068, make the information available for federal, state, and local law enforcement purposes; and
- (4) conduct programs of eradication aimed at destroying wild or illegal growth of plant species from which controlled substances may be extracted.

(b) In the exercise of regulatory functions under this chapter, the director may rely on results, information, and evidence relating to the regulatory functions of this chapter received from the Federal Drug Enforcement Administration and state agencies. (V.A.C.S. Art. 4476-15, Secs. 5.02(a) (part), (b).)

[Sections 481.187-481.200 reserved for expansion]

#### **SUBCHAPTER G. THERAPEUTIC RESEARCH PROGRAM**

**Sec. 481.201. RESEARCH PROGRAM; REVIEW BOARD.** (a) The Texas Board of Health may establish a controlled substance therapeutic research program for the supervised use of tetrahydrocannabinols for medical and research purposes to be conducted in accordance with this chapter.

(b) If the Texas Board of Health establishes the program, the board shall create a research program review board. The review board members are appointed by the Texas Board of Health and serve at the will of the board.

- (c) The review board shall be composed of:
- (1) a licensed physician certified by the American Board of Ophthalmology;
  - (2) a licensed physician certified by the American Board of Internal Medicine and certified in the subspecialty of medical oncology;
  - (3) a licensed physician certified by the American Board of Psychiatry;
  - (4) a licensed physician certified by the American Board of Surgery;
  - (5) a licensed physician certified by the American Board of Radiology; and
  - (6) a licensed attorney with experience in law pertaining to the practice of medicine.
- (d) Members serve without compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing official duties. (V.A.C.S. Art. 4476-15, Secs. 7.01, 7.02.)

Sec. 481.202. REVIEW BOARD POWERS AND DUTIES. (a) The review board shall review research proposals submitted and medical case histories of persons recommended for participation in a research program and determine which research programs and persons are most suitable for the therapy and research purposes of the program. The review board shall approve the research programs, certify program participants, and conduct periodic reviews of the research and participants.

(b) The review board, after approval of the Texas Board of Health, may seek authorization to expand the research program to include diseases not covered by this subchapter.

(c) The review board shall maintain a record of all persons in charge of approved research programs and of all persons who participate in the program as researchers or as patients.

(d) The Texas Board of Health may terminate the distribution of tetrahydrocannabinols and their derivatives to a research program as it determines necessary. (V.A.C.S. Art. 4476-15, Secs. 7.03, 7.04.)

Sec. 481.203. PATIENT PARTICIPATION. (a) A person may not be considered for participation as a recipient of tetrahydrocannabinols and their derivatives through a research program unless the person is recommended to a person in charge of an approved research program and the review board by a physician who is licensed by the Texas State Board of Medical Examiners and is attending the person.

(b) A physician may not recommend a person for the research program unless the person:

- (1) has glaucoma or cancer;
- (2) is not responding to conventional treatment for glaucoma or cancer or is experiencing severe side effects from treatment; and
- (3) has symptoms or side effects from treatment that may be alleviated by medical use of tetrahydrocannabinols or their derivatives. (V.A.C.S. Art. 4476-15, Sec. 7.05.)

Sec. 481.204. ACQUISITION AND DISTRIBUTION OF CONTROLLED SUBSTANCES. (a) The Texas Board of Health shall acquire the tetrahydrocannabinols and their derivatives for use in the research program by contracting with the National Institute on Drug Abuse to receive tetrahydrocannabinols and their derivatives that are safe for human consumption according to the regulations adopted by the institute, the Food and Drug Administration, and the Federal Drug Enforcement Administration.

(b) The Texas Board of Health shall supervise the distribution of the tetrahydrocannabinols and their derivatives to program participants. The tetrahydrocannabinols and derivatives of tetrahydrocannabinols may be distributed only by the person in charge of the research program to physicians caring for program participant patients, under rules adopted by the Texas Board of Health in such a manner as to prevent unauthorized diversion of the substances and in compliance with all requirements of the Federal Drug Enforcement Administration. The physician is responsible for dispensing the substances to patients. (V.A.C.S. Art. 4476-15, Secs. 7.06, 7.07.)

Sec. 481.205. RULES; REPORTS. (a) The Texas Board of Health shall adopt rules necessary for implementing the research program.



(b) If the Texas Board of Health establishes a program under this subchapter, the commissioner shall publish a report not later than January 1 of each odd-numbered year on the medical effectiveness of the use of tetrahydrocannabinols and their derivatives and any other medical findings of the research program. (V.A.C.S. Art. 4476-15, Secs. 7.08, 7.09.)

**CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES**

**Sec. 482.001. DEFINITIONS**

**Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY**

**Sec. 482.003. EVIDENTIARY RULES**

**Sec. 482.004. FORFEITURE**

**CHAPTER 482. SIMULATED CONTROLLED SUBSTANCES**

**Sec. 482.001. DEFINITIONS.** In this chapter:

(1) "Controlled substance" has the meaning assigned by Section 481.002 (Texas Controlled Substances Act).

(2) "Deliver" means to transfer, actually or constructively, from one person to another a simulated controlled substance, regardless of whether there is an agency relationship. The term includes offering to sell a simulated controlled substance.

(3) "Manufacture" means to make a simulated controlled substance and includes the preparation of the substance in dosage form by mixing, compounding, encapsulating, tableting, or any other process.

(4) "Simulated controlled substance" means a substance that is purported to be a controlled substance, but is chemically different from the controlled substance it is purported to be. (V.A.C.S. Art. 4476-15b, Sec. 1 (part).)

**Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

(1) acting in the discharge of the person's official duties as a peace officer;

(2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or

(3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 4476-15b, Sec. 2.)

**Sec. 482.003. EVIDENTIARY RULES.** (a) In determining whether a person has represented a simulated controlled substance to be a controlled substance in a manner

that would lead a reasonable person to believe the substance was a controlled substance, a court may consider, in addition to all other logically relevant factors, whether:

(1) the simulated controlled substance was packaged in a manner normally used for the delivery of a controlled substance;

(2) the delivery or intended delivery included an exchange of or demand for property as consideration for delivery of the substance and the amount of the consideration was substantially in excess of the reasonable value of the simulated controlled substance; and

(3) the physical appearance of the finished product containing the substance was substantially identical to a controlled substance.

(b) Proof of an offer to sell a simulated controlled substance must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree. (V.A.C.S. Art. 4476-15b, Secs. 1 (part); 3.)

Sec. 482.004. **FORFEITURE.** A simulated controlled substance seized as a result of an offense under this chapter is subject to forfeiture and disposition in the same manner as is a controlled substance under Section 481.160 (Texas Controlled Substances Act). (V.A.C.S. Art. 4476-15b, Sec. 4.)

## CHAPTER 483. DANGEROUS DRUGS

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**CHAPTER 483. DANGEROUS DRUGS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 483.001. DEFINITIONS.** In this chapter:

(1) "Anabolic steroid" means any of the following or any isomer, ester, salt, or derivative of the following that acts in the same manner on the human body:

- (A) clostebol;
- (B) dehydrochlormethyltestosterone;
- (C) ethylestrenol;
- (D) fluoxymesterone;
- (E) mesterolone;
- (F) methandienone;
- (G) methandrostenolone;
- (H) methenolone;
- (I) methyltestosterone;
- (J) nandrolone;
- (K) norethandrolone;
- (L) oxandrolone;
- (M) oxymesterone;
- (N) oxymetholone;
- (O) stanozolol; and
- (P) testosterone.

(2) "Board" means the Texas State Board of Pharmacy.

(3) "Dangerous drug" means a device or a drug that is unsafe for self-medication and that is not included in Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug, including an anabolic steroid or human growth hormone, that bears or is required to bear the legend:

(A) Caution: federal law prohibits dispensing without prescription; or

(B) Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.

(4) "Deliver" means to sell, dispense, give away, or supply in any other manner.

(5) "Dispense" means to prepare, package, compound, or label a dangerous drug in the course of professional practice for delivery under the lawful order of a practitioner to an ultimate user or the user's agent.

(6) "Manufacturer" means a person, other than a pharmacist, who manufactures dangerous drugs. The term includes a person who prepares dangerous drugs in dosage form by mixing, compounding, encapsulating, entableting, or any other process.

(7) "Patient" means:

(A) an individual for whom a dangerous drug is prescribed or to whom a dangerous drug is administered; or

(B) an owner or the agent of an owner of an animal for which a dangerous drug is prescribed or to which a dangerous drug is administered.

(8) "Person" includes an individual, corporation, partnership, and association.

(9) "Pharmacist" means a person licensed by the Texas State Board of Pharmacy to practice pharmacy.

(10) "Pharmacy" means a facility in which the practice of pharmacy occurs.

(11) "Practice of pharmacy" means the interpretation and evaluation of prescription or medication orders, the dispensing and labeling of drugs or devices, the selection of drugs and the review of drug use, the storage of prescription drugs and devices and the maintenance of prescription drug records in a pharmacy, the giving of advice or consultation if necessary or required by law about the therapeutic value, content, hazard, or use of drugs or devices, or the offer to perform or the performance of the services and transactions necessary to operate a pharmacy. In this subdivision, "device" has the meaning assigned by the Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes).

(12) "Practitioner" means a person licensed:

(A) by the Texas State Board of Medical Examiners, State Board of Dental Examiners, Texas State Board of Podiatry Examiners, or State Board of Veterinary Medical Examiners to prescribe and administer dangerous drugs;

(B) by another state in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs; or

(C) in Canada or Mexico in a health field in which, under the laws of this state, a licensee may legally prescribe dangerous drugs.

(13) "Prescription" means a written order by a practitioner, or a telephonic order by a practitioner or by an agent of the practitioner designated in writing as authorized to communicate prescriptions by telephone, to a pharmacist for a dangerous drug to be dispensed that states:

(A) the date of the order's issue;

(B) the name and address of the patient;

(C) if the drug is prescribed for an animal, the species of the animal;

(D) the name and quantity of the drug prescribed; and

(E) the directions for the use of the drug.

(14) "Warehouseman" means a person who stores dangerous drugs for others and who has no control over the disposition of the drugs except for the purpose of storage.

(15) "Wholesaler" means a person engaged in the business of distributing dangerous drugs to a person listed in Sections 483.041(c)(1)-(6). (V.A.C.S. Art. 4476-14, Sec. 2 (part).)

Sec. 483.002. RULES. The board may adopt rules for the proper administration and enforcement of this chapter. (V.A.C.S. Art. 4476-14, Sec. 15B.)

Sec. 483.003. BOARD OF HEALTH HEARINGS REGARDING CERTAIN DANGEROUS DRUGS. (a) The Texas Board of Health may hold public hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to determine whether there is compelling evidence that a dangerous drug has been abused, either by being prescribed for nontherapeutic purposes or by the ultimate user.

(b) On making that finding, the board may limit the availability of the abused drug by permitting its dispensing only on the prescription of a practitioner described by Section 483.001(12)(A) or (B). (V.A.C.S. Art. 4414b, Sec. 1.05(i)(1).)

Sec. 483.004. COMMISSIONER OF HEALTH EMERGENCY AUTHORITY RELATING TO DANGEROUS DRUGS. If the commissioner of health has compelling evidence that an immediate danger to the public health exists as a result of the prescription of a dangerous drug by practitioners described by Section 483.001(12)(C), the commissioner may use the commissioner's existing emergency authority to limit the availability of the

drug by permitting its prescription only by practitioners described by Section 483.001(12)(A) or (B). (V.A.C.S. Art. 4414b, Sec. 1.05(i)(2).)

[Sections 483.005–483.020 reserved for expansion]

**SUBCHAPTER B. DUTIES OF PHARMACISTS, PRACTITIONERS,  
AND OTHER PERSONS**

**Sec. 483.021. DETERMINATION BY PHARMACIST ON REQUEST TO DISPENSE DRUG.** A pharmacist who is requested to dispense a dangerous drug under a prescription issued by a practitioner described by Section 483.001(12)(C) shall determine, in the exercise of the pharmacist's professional judgment, that:

- (1) the prescription is authentic;
- (2) the prescription was issued under a valid patient-physician relationship; and
- (3) the prescribed drug is considered necessary for the treatment of illness. (V.A.C.S. Art. 4476–14, Sec. 3A, as added by Ch. 1122, Acts 70th Legis., R.S., 1987.)

**Sec. 483.022. PRACTITIONER'S DESIGNATION OF AGENT; PRACTITIONER'S RESPONSIBILITIES.** (a) A practitioner shall designate in writing the name of each agent authorized by the practitioner to communicate prescriptions by telephone for the practitioner. The practitioner shall maintain at the practitioner's usual place of business a list of the designated agents. The practitioner shall provide a pharmacist with a copy of the practitioner's written authorization for a specific agent on the pharmacist's request.

(b) This section does not relieve a practitioner or the practitioner's agent from the requirements of Section 40, Texas Pharmacy Act (Article 4542a–1, Vernon's Texas Civil Statutes).

(c) A practitioner remains personally responsible for the actions of an agent who communicates a prescription to a pharmacist. (V.A.C.S. Art. 4476–14, Sec. 3A, as added by Ch. 262, Acts 70th Legis., R.S., 1987.)

**Sec. 483.023. RETENTION OF PRESCRIPTIONS.** A pharmacy shall retain a prescription for a dangerous drug dispensed by the pharmacy for two years after the date of the initial dispensing or the last refilling of the prescription, whichever date is later. (V.A.C.S. Art. 4476–14, Sec. 5(c).)

**Sec. 483.024. RECORDS OF ACQUISITION OR DISPOSAL.** The following persons shall maintain a record of each acquisition and each disposal of a dangerous drug for two years after the date of the acquisition or disposal:

- (1) a pharmacy;
- (2) a practitioner;
- (3) a person who obtains a dangerous drug for lawful research, teaching, or testing purposes, but not for resale;
- (4) a hospital that obtains a dangerous drug for lawful administration by a practitioner; and
- (5) a manufacturer or wholesaler registered with the commissioner of health under Chapter 431 (Texas Food, Drug, and Cosmetic Act). (V.A.C.S. Art. 4476–14, Secs. 5(a), (b).)

**Sec. 483.025. INSPECTIONS; INVENTORIES.** A person required to keep records relating to dangerous drugs shall:

- (1) make the records available for inspection and copying at all reasonable hours by any public official or employee engaged in enforcing this chapter; and
- (2) allow the official or employee to inventory all stocks of dangerous drugs on hand. (V.A.C.S. Art. 4476–14, Sec. 6.)

**Sec. 483.026. REQUIREMENTS RELATING TO ANABOLIC STEROIDS AND HUMAN GROWTH HORMONES.** (a) This section applies to the prescription, possession, delivery, and administration of anabolic steroids or human growth hormones and is in

addition to all other requirements of this chapter concerning the manufacture, delivery, sale, prescription, possession, inventory, and recording of the inventory and sale of dangerous drugs.

(b) A practitioner may not prescribe, deliver, or administer an anabolic steroid or human growth hormone or cause an anabolic steroid or human growth hormone to be administered under the practitioner's direction or supervision except for a valid medical purpose and in the course of a professional practice. Bodybuilding, muscle enhancement, or increasing muscle bulk or strength through the use of an anabolic steroid or human growth hormone by a person who is in good health is not a valid medical purpose.

(c) A practitioner or pharmacist may not prescribe or deliver an anabolic steroid or a human growth hormone without a written prescription that meets the requirements of Section 40(g), Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), except that a practitioner may administer an anabolic steroid for a valid medical purpose in the practitioner's office without writing a prescription. (V.A.C.S. Art. 4476-14, Secs. 5A(a), (b), (c), (d).)

[Sections 483.027-483.040 reserved for expansion]

### SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 483.041. POSSESSION OF DANGEROUS DRUG. (a) A person commits an offense if the person possesses a dangerous drug, other than an anabolic steroid or human growth hormone, unless the person obtains the drug from a pharmacist acting in the manner described by Section 483.042(a)(1) or a practitioner acting in the manner described by Section 483.042(a)(2).

(b) Except as permitted by this chapter, a person commits an offense if the person possesses a dangerous drug, other than an anabolic steroid or human growth hormone, for the purpose of selling the drug.

(c) Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by the following persons or an agent or employee of the person:

(1) a pharmacy, drug store, dispensary, apothecary shop, or prescription laboratory registered by the board;

(2) a practitioner;

(3) a person who obtains a dangerous drug for lawful research, teaching, or testing, but not for resale;

(4) a hospital that obtains a dangerous drug for lawful administration by a practitioner;

(5) an officer or employee of the federal, state, or local government;

(6) a manufacturer or wholesaler registered with the commissioner of health under Chapter 481 (Texas Food, Drug, and Cosmetic Act); or

(7) a carrier or warehouseman.

(d) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 4 (part), 15(a).)

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG. (a) A person commits an offense if the person delivers or offers to deliver a dangerous drug, other than an anabolic steroid or human growth hormone:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:  
(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B);  
or

(ii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

- (i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;
- (ii) the date the prescription for the drug is dispensed;
- (iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;
- (iv) the name of the practitioner who prescribed the drug;
- (v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and
- (vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by a practitioner in the course of practice; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

- (i) the name and address of the practitioner;
- (ii) the date the drug is delivered;
- (iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and
- (iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.

(d) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 4 (part), 13 (part), 15(b).)

**Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG.** (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 4476-14, Sec. 15(d).)

**Sec. 483.044. PRESCRIBING, DELIVERING, AND ADMINISTERING STEROIDS AND GROWTH HORMONES.** (a) A person commits an offense if the person:

(1) prescribes, delivers, or administers an anabolic steroid or a human growth hormone or delivers a prescription form for an anabolic steroid or a human growth hormone to a person for human use for any purpose other than a valid medical purpose as described by Section 483.026(b) and in the course of professional practice;

(2) prescribes or delivers an anabolic steroid or a human growth hormone for human use without complying with Section 483.026(c);

(3) without a valid prescription delivers an anabolic steroid or a human growth hormone to a person for human use; or

(4) is not a practitioner or pharmacist and possesses more than 250 tablets or eight 2cc bottles of an anabolic steroid or a human growth hormone or combination of anabolic steroids and human growth hormones.

(b) Subsection (a) does not apply to:

(1) the possession of an anabolic steroid or human growth hormone in the usual course of business or practice or in the performance of official duties by a person listed in Section 483.041(c); or

(2) the delivery or offer of delivery of an anabolic steroid or human growth hormone to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) An offense under this section is a felony of the third degree unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this section, in which event the offense is a felony of the second degree. (V.A.C.S. Art. 4476-14, Secs. 4, 5A(e), (f), (g).)

Sec. 483.045. **FORGING OR ALTERING PRESCRIPTION.** (a) A person commits an offense if the person:

(1) forges a prescription or increases the prescribed quantity of a dangerous drug in a prescription;

(2) issues a prescription bearing a forged or fictitious signature;

(3) obtains or attempts to obtain a dangerous drug by using a forged, fictitious, or altered prescription;

(4) obtains or attempts to obtain a dangerous drug by means of a fictitious or fraudulent telephone call; or

(5) possesses a dangerous drug obtained by a forged, fictitious, or altered prescription or by means of a fictitious or fraudulent telephone call.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 14, 15(c).)

Sec. 483.046. **FAILURE TO RETAIN PRESCRIPTION.** (a) A pharmacist commits an offense if the pharmacist:

(1) delivers a dangerous drug under a prescription; and

(2) fails to retain the prescription as required by Section 483.023.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

Sec. 483.047. **REFILLING PRESCRIPTION WITHOUT AUTHORIZATION.** (a) A pharmacist commits an offense if the pharmacist refills a prescription unless:

(1) the prescription contains an authorization by the practitioner for the refilling of the prescription, and the pharmacist refills the prescription in the manner provided by the authorization; or

(2) at the time of refilling the prescription, the pharmacist is authorized to do so by the practitioner who issued the prescription.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

Sec. 483.048. **UNAUTHORIZED COMMUNICATION OF PRESCRIPTION.** (a) An agent of a practitioner commits an offense if the agent communicates by telephone a prescription unless the agent is designated in writing under Section 483.022 as authorized by the practitioner to communicate prescriptions by telephone.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

Sec. 483.049. **FAILURE TO MAINTAIN RECORDS.** (a) A person commits an offense if the person is required to maintain a record under Section 483.023 or 483.024 and the person fails to maintain the record in the manner required by those sections.



(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

**Sec. 483.050. REFUSAL TO PERMIT INSPECTION.** (a) A person commits an offense if the person is required to permit an inspection authorized by Section 483.025 and fails to permit the inspection in the manner required by that section.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

**Sec. 483.051. USING OR REVEALING TRADE SECRET.** (a) A person commits an offense if the person uses for the person's advantage or reveals to another person, other than to an officer or employee of the board or to a court in a judicial proceeding relevant to this chapter, information relating to dangerous drugs required to be kept under this chapter, if that information concerns a method or process subject to protection as a trade secret.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Secs. 3 (part), 15(c).)

**Sec. 483.052. VIOLATION OF OTHER PROVISION.** (a) A person commits an offense if the person violates a provision of this chapter other than a provision for which a specific offense is otherwise described by this chapter.

(b) An offense under this section is a Class B misdemeanor, unless it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this chapter, in which event the offense is a Class A misdemeanor. (V.A.C.S. Art. 4476-14, Sec. 15(c).)

[Sections 483.053-483.070 reserved for expansion]

#### **SUBCHAPTER D. CRIMINAL AND CIVIL PROCEDURE**

**Sec. 483.071. EXCEPTIONS; BURDEN OF PROOF.** (a) In a complaint, information, indictment, or other action or proceeding brought for the enforcement of this chapter, the state is not required to negate an exception, excuse, proviso, or exemption contained in this chapter.

(b) The defendant has the burden of proving the exception, excuse, proviso, or exemption. (V.A.C.S. Art. 4476-14, Sec. 12.)

**Sec. 483.072. UNCORROBORATED TESTIMONY.** A conviction under this chapter may be obtained on the uncorroborated testimony of a party to the offense. (V.A.C.S. Art. 4476-14, Sec. 11.)

**Sec. 483.073. SEARCH WARRANT.** A peace officer may apply for a search warrant to search for dangerous drugs possessed in violation of this chapter. The peace officer must apply for and execute the search warrant in the manner prescribed by the Code of Criminal Procedure. (V.A.C.S. Art. 4476-14, Sec. 15A.)

**Sec. 483.074. SEIZURE AND DESTRUCTION.** (a) A dangerous drug that is manufactured, sold, or possessed in violation of this chapter is contraband and may be seized by an officer or employee of the board or by a peace officer authorized to enforce this chapter and charged with that duty.

(b) If a dangerous drug is seized under Subsection (a), the board may direct an officer or employee of the board to destroy the drug. The officer or employee directed to destroy the drug must act in the presence of another officer or employee of the board and shall destroy the drug in any manner determined appropriate by the board.

(c) Before the dangerous drug is destroyed, an inventory of the drug must be prepared. The inventory must be accompanied by a statement that the dangerous drug is being destroyed at the direction of the board, by an officer or employee of the board, and in the presence of another officer or employee of the board. The statement must also contain the names of the persons in attendance at the time of destruction, state the capacity in which each of those persons acts, be signed by those persons, and be sworn to by those persons that the statement is correct. The statement shall be filed with the board. (V.A.C.S. Art. 4476-14, Sec. 8.)

Sec. 483.075. INJUNCTION. The board may institute an action in its own name to enjoin a violation of this chapter. (V.A.C.S. Art. 4476-14, Sec. 9 (part).)

Sec. 483.076. LEGAL REPRESENTATION OF BOARD. (a) If the board institutes a legal proceeding under this chapter, the board may be represented only by a county attorney, a district attorney, or the attorney general.

(b) The board may not employ private counsel in any legal proceeding instituted by or against the board under this chapter. (V.A.C.S. Art. 4476-14, Sec. 10.)

#### CHAPTER 484. VOLATILE CHEMICALS

Sec. 484.001. DEFINITIONS

Sec. 484.002. VOLATILE CHEMICALS

Sec. 484.003. POSSESSION AND USE; CRIMINAL PENALTY

Sec. 484.004. INHALANT PARAPHERNALIA; CRIMINAL PENALTY

Sec. 484.005. DELIVERY TO A MINOR; CRIMINAL PENALTY

Sec. 484.006. PROOF OF OFFER TO SELL OR DELIVER

#### CHAPTER 484. VOLATILE CHEMICALS

Sec. 484.001. DEFINITIONS. In this chapter:

(1) "Deliver" means to actually transfer from one person to another.

(2) "Delivery" means the act of delivering.

(3) "Inhalant paraphernalia" means equipment, products, or materials of any kind that are used or intended for use in inhaling, ingesting, or otherwise introducing into the human body a substance containing a volatile chemical, and the term includes:

(A) a can, tube, or other container that was used as the original receptacle for a volatile chemical by the manufacturer or packager of the substance; or

(B) a can, tube, balloon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension a substance containing a volatile chemical.

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

(5) "Sell" means to offer for sale, convey, exchange, barter, or trade to a consumer or user. (V.A.C.S. Art. 4476-13a, Secs. 1, 6(a).)

Sec. 484.002. VOLATILE CHEMICALS. In this chapter, the following chemicals or their isomers are volatile chemicals:

(1) toluene;

(2) hexane;

(3) trichloroethylene;

(4) acetone;

(5) ethyl acetate;

(6) methyl ethyl ketone;

(7) trichloroethane;

(8) carbon tetrachloride;

(9) methanol;

(10) methyl isobutyl ketone;

(11) methyl cellosolve acetate;

- (12) cyclohexanone;
- (13) amyl nitrite;
- (14) butyl nitrite;
- (15) chloroform;
- (16) diethyl ether;
- (17) petroleum distillate;
- (18) aliphatic hydrocarbons;
- (19) chlorinated hydrocarbons;
- (20) ketone solvent;
- (21) glycol ether solvent;
- (22) glycol ether inter solvent;
- (23) xylol or xylene; and
- (24) chlorofluorocarbons. (V.A.C.S. Art. 4476-13a, Sec. 2.)

**Sec. 484.003. POSSESSION AND USE; CRIMINAL PENALTY.** (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses a substance containing a volatile chemical with the intent to inhale, ingest, apply, or use the substance in a manner:

- (1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the substance; and
- (2) designed to:
  - (A) affect the person's central nervous system;
  - (B) create or induce a condition of intoxication, hallucination, or elation; or
  - (C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-13a, Sec. 3.)

**Sec. 484.004. INHALANT PARAPHERNALIA; CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, apply, use, or otherwise introduce into the human body a substance containing a volatile chemical in violation of Section 484.003.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-13a, Secs. 6(b), (c).)

**Sec. 484.005. DELIVERY TO A MINOR; CRIMINAL PENALTY.** (a) A person commits an offense if:

- (1) the person intentionally, knowingly, or recklessly sells or delivers a substance containing a volatile chemical to a person younger than 18 years of age; and
- (2) the substance is subject to special labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as that law existed on January 1, 1985, and the federal regulations adopted under that Act (16 C.F.R. 1500.14) and in effect on that date.

(b) It is an affirmative defense to prosecution under this section that the person to whom the substance was sold or delivered exhibited to the defendant an apparently valid Texas driver's license or an identification card issued by the Department of Public Safety, containing a physical description consistent with the person's appearance, that purported to establish that the person was 17 years of age or older.

(c) It is a defense to prosecution under this section that the person delivering the substance containing the volatile chemical was:

- (1) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, analyze, administer, or conduct research with respect to a volatile chemical in the course of professional

practice or research, and the sale or delivery was within the limits of that person's official authority; or

(2) a pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, administer, or conduct research with respect to a volatile chemical in the course of professional practice or research, and the sale or delivery was within the limits of that institution's official authority.

(d) It is an exception to the application of Subsection (a) that the substance sold or delivered was gasoline, aerosol paint, glue, or adhesive cement.

(e) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-13a, Sec. 4.)

Sec. 484.006. **PROOF OF OFFER TO SELL OR DELIVER.** Proof of an offer to sell or deliver a substance containing a volatile chemical must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree. (V.A.C.S. Art. 4476-13a, Sec. 5.)

## **CHAPTER 485. ABUSABLE GLUES AND AEROSOL PAINTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 485.001. DEFINITIONS**

[Sections 485.002-485.010 reserved for expansion]

### **SUBCHAPTER B. ADDITIVES, SALES PERMITS, AND SIGNS**

#### **Sec. 485.011. ADDITIVES**

#### **Sec. 485.012. PERMIT REQUIRED**

#### **Sec. 485.013. ISSUANCE AND RENEWAL OF PERMIT**

#### **Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION**

#### **Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT**

#### **Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS**

#### **Sec. 485.017. SIGNS**

[Sections 485.018-485.030 reserved for expansion]

### **SUBCHAPTER C. CRIMINAL PENALTIES**

#### **Sec. 485.031. POSSESSION AND USE**

#### **Sec. 485.032. MANUFACTURE AND DELIVERY**

#### **Sec. 485.033. DELIVERY TO A MINOR**

#### **Sec. 485.034. INHALANT PARAPHERNALIA**

#### **Sec. 485.035. FAILURE TO POST SIGN**

#### **Sec. 485.036. SALE WITHOUT PERMIT**

#### **Sec. 485.037. PROOF OF OFFER TO SELL**

## **CHAPTER 485. ABUSABLE GLUES AND AEROSOL PAINTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 485.001. DEFINITIONS.** In this chapter:

(1) "Abusable glue or aerosol paint" means glue or aerosol paint that is:

(A) packaged in a container holding a pint or less by volume or less than two pounds by weight; and

(B) labeled in accordance with the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and under regulations adopted under that Act.

(2) "Aerosol paint" means an aerosolized paint product, including a clear or pigmented lacquer or finish.

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

(4) "Deliver" means to make the actual or constructive transfer from one person to another of an abusable glue or aerosol paint, regardless of whether there is an agency relationship. The term includes an offering to sell an abusable glue or aerosol paint.

(5) "Delivery" means the act of delivering.

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

(7) "Glue" means an adhesive substance intended to be used to join two surfaces.

(8) "Inhalant paraphernalia" means equipment, products, or materials of any kind that are used or intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable glue or aerosol paint in violation of Section 485.031. The term includes:

(A) a can, tube, or other container used as the original receptacle for an abusable glue or aerosol paint; or

(B) a can, tube, balloon, bag, fabric, bottle, or other container used to contain, concentrate, or hold in suspension an abusable glue or aerosol paint, or vapors of the glue or paint. (V.A.C.S. Art. 4476-15, Secs. 1.02(7) (part); 4.13(e), (q); Art. 4476-15d, Sec. 1 (part).)

[Sections 485.002-485.010 reserved for expansion]

#### **SUBCHAPTER B. ADDITIVES, SALES PERMITS, AND SIGNS**

**Sec. 485.011. ADDITIVES.** (a) The commissioner by rule shall:

(1) approve and designate additive materials to be included in abusable glue or aerosol paint; and

(2) prescribe the proportions of additive materials to be placed in abusable glue or aerosol paint.

(b) The rules must be designed to safely and effectively discourage intentional abuse by inhalation of abusable glue or aerosol paint at the lowest practicable cost to the manufacturers and distributors of the glue or paint. (V.A.C.S. Art. 4476-15, Sec. 4.13(d).)

**Sec. 485.012. PERMIT REQUIRED.** A person may not sell abusable glue or aerosol paint at retail unless the person or the person's employer has, at the time of the sale, a glue and paint sales permit for the location of the sale. (V.A.C.S. Art. 4476-15d, Sec. 4(a).)

**Sec. 485.013. ISSUANCE AND RENEWAL OF PERMIT.** (a) To be eligible for the issuance or renewal of a glue and paint sales permit, a person must:

(1) have a sales tax permit that has been issued to the person;

(2) complete and return to the department an application as required by the department; and

(3) pay to the department a \$25 application fee for each location at which abusable glue and aerosol paint may be sold by the person on obtaining a glue and paint sales permit.

(b) The department shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permittee reasonable notice of permit expiration and renewal requirements.

(c) The department shall issue or deny a permit and notify the applicant of the department's action not later than the 60th day after the date on which the department receives the application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit issued or renewed under this chapter is valid for one year from the date of issuance or renewal.

(e) A permit is not valid if the permit holder has been convicted more than once in the preceding year of an offense that is committed:

- (1) at the location for which the permit is issued; and
  - (2) under Section 484.005(a), 485.031, 485.032, 485.033, or 485.034.
- (f) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(g) The department shall prepare an annual roster of permit holders. (V.A.C.S. Art. 4476-15d, Secs. 2(a), (b), (c), (d), (e), (g) (part).)

Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION. A permit holder must have the glue and paint sales permit or a copy of the permit available for inspection by the public at the place where the permit holder sells abusable glue and aerosol paint. (V.A.C.S. Art. 4476-15d, Sec. 2(f).)

Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT. A proceeding for the failure to issue or renew a glue and paint sales permit under Section 485.013 or for an appeal from that proceeding is governed by the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4476-15d, Sec. 3 (part).)

Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. (a) The department shall receive and account for all funds received under Section 485.013 and send the funds as they are received to the comptroller.

(b) The comptroller shall deposit those funds to the credit of the general revenue fund to be used to administer this chapter and to finance education projects concerning the hazards of abusable glue or aerosol paint and the prevention of inhalant abuse.

(c) The department shall enter into a memorandum of understanding with the Texas Commission on Alcohol and Drug Abuse to implement the education and prevention programs. (V.A.C.S. Art. 4476-15d, Sec. 5.)

Sec. 485.017. SIGNS. A business establishment that sells abusable glue or aerosol paint at retail shall display a conspicuous sign, in English and Spanish, that states the following:

It is unlawful for a person to sell or deliver abusable glue or aerosol paint to a person under 18 years of age. Except in limited situations, such an offense is a 3rd degree felony.

It is also unlawful for a person to abuse glue or aerosol paint by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use glue or aerosol paint in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

(V.A.C.S. Art. 4476-15, Sec. 4.13(o).)

[Sections 485.018-485.030 reserved for expansion]

#### SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 485.031. POSSESSION AND USE. (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable glue or aerosol paint with intent to inhale, ingest, apply, or use abusable glue or aerosol paint in a manner:

- (1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the glue or paint; and
- (2) designed to:
  - (A) affect the person's central nervous system;
  - (B) create or induce a condition of intoxication, hallucination, or elation; or
  - (C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-15, Secs. 4.13(m), (n).)

**Sec. 485.032. MANUFACTURE AND DELIVERY.** (a) A person commits an offense if the person intentionally manufactures, delivers, or possesses with intent to manufacture or deliver abusable glue or aerosol paint that does not contain additive material in accordance with rules adopted by the commissioner.

(b) It is an affirmative defense to prosecution under this section that the abusable glue or aerosol paint is packaged in bulk quantity containers, each of which holds at least two gallons, and is intended for ultimate use only by industrial or commercial enterprises.

(c) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 4476-15, Secs. 4.13(a), (b), (c).)

**Sec. 485.033. DELIVERY TO A MINOR.** (a) A person commits an offense if the person intentionally, knowingly, or recklessly delivers abusable glue or aerosol paint to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that the abusable glue or aerosol paint that was delivered contains additive material that effectively discourages intentional abuse by inhalation or is in compliance with rules adopted by the commissioner under Section 485.011.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable glue or aerosol paint only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the substance from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable glue or aerosol paint was delivered presented to the defendant an apparently valid Texas driver's license or an identification card, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a felony of the third degree.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer had a glue and paint sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not have a glue and paint sales permit but did have a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988. (V.A.C.S. Art. 4476-15, Secs. 4.13(f), (g), (h), (i), (j), (k), (l).)

**Sec. 485.034. INHALANT PARAPHERNALIA.** (a) A person commits an offense if the person intentionally or knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable glue or aerosol paint in violation of Section 485.031.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-15, Secs. 4.13(r), (s).)

**Sec. 485.035. FAILURE TO POST SIGN.** (a) A person commits an offense if the person sells abusable glue or aerosol paint in a business establishment and the person does not display a sign as required by Section 485.017.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4476-15, Sec. 4.13(p).)

Sec. 485.036. **SALE WITHOUT PERMIT.** (a) A person commits an offense if the person sells abusable glue or aerosol paint in violation of Section 485.012 and the purchaser is 18 years of age or older.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 4476-15d, Secs. 4(b), (c).)

Sec. 485.037. **PROOF OF OFFER TO SELL.** Proof of an offer to sell an abusable glue or aerosol paint must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree. (V.A.C.S. Art. 4476-15, Sec. 1.02(7) (part).)

[Chapters 486-500 reserved for expansion]

**SUBTITLE D. HAZARDOUS SUBSTANCES**

**CHAPTER 501. HAZARDOUS SUBSTANCES**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 501.001. **DEFINITIONS**
- Sec. 501.002. **HAZARDOUS SUBSTANCE DESCRIBED**
- Sec. 501.003. **DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS**
- Sec. 501.004. **DESIGNATION OF STRONG SENSITIZER**
- Sec. 501.005. **EXCLUSION**

[Sections 501.006-501.020 reserved for expansion]

**SUBCHAPTER B. REGULATION OF SUBSTANCES**

- Sec. 501.021. **DETERMINATION OF FLAMMABILITY**
- Sec. 501.022. **DESIGNATION OF BANNED HAZARDOUS SUBSTANCES**
- Sec. 501.023. **LABELING**
- Sec. 501.024. **REGISTRATION**
- Sec. 501.025. **RULES**

[Sections 501.026-501.030 reserved for expansion]

**SUBCHAPTER C. ENFORCEMENT**

- Sec. 501.031. **EXAMINATIONS AND INVESTIGATIONS**
- Sec. 501.032. **RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE**
- Sec. 501.033. **SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE**
- Sec. 501.034. **PROHIBITED ACTS**
- Sec. 501.035. **OFFENSES; EXCEPTIONS**

**SUBTITLE D. HAZARDOUS SUBSTANCES**

**CHAPTER 501. HAZARDOUS SUBSTANCES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 501.001. **DEFINITIONS.** In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commerce" includes the operation of a business or service establishment and other commerce in this state that is subject to the jurisdiction of this state.
- (3) "Department" means the Texas Department of Health.
- (4) "Label" means a display of written, printed, or other graphic matter:
  - (A) on the immediate container, excluding the package liner, of any substance; or
  - (B) directly on the article or on a tag or other suitable material affixed to the article, if the article is unpackaged or not packaged in an immediate container intended or suitable for delivery to the ultimate consumer.



(5) "Misbranded hazardous substance" means either of the following that does not bear a proper label required by this chapter:

(A) a hazardous substance; or

(B) a toy or other article intended for use by children that bears or contains a hazardous substance in a manner that is accessible by a child to whom the toy or other article is entrusted, intended, or packaged in a form suitable for use in a household or by children. (V.A.C.S. Art. 4476-13, Secs. 1(1), (3), (12), (13), (14); New.)

**Sec. 501.002. HAZARDOUS SUBSTANCE DESCRIBED.** (a) A hazardous substance is:

(1) a substance or mixture of substances that is toxic, corrosive, flammable, an irritant, or a strong sensitizer, or that generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) a toy or other article, other than clothing, that is intended for use by a child and that presents an electrical, mechanical, or thermal hazard; or

(3) a radioactive substance designated as a hazardous substance under Section 501.003.

(b) A substance is corrosive if, when in contact with living tissue, it causes destruction of that tissue by chemical action. A chemical action on an inanimate surface is not corrosive for the purpose of this section.

(c) An article is an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it may cause, because of its design or manufacture, personal injury or illness by electric shock.

(d) A substance is flammable if it has a flash point of 80 degrees Fahrenheit or less, as determined by the Tagliabue Open Cup Tester or other method as provided by Section 501.021.

(e) A substance is an irritant if it is noncorrosive and if, on immediate, prolonged, or repeated contact with normal living tissue, it induces a local inflammatory reaction.

(f) An article is a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article or a part or accessory of the article;

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article or a part or accessory of the article may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

(g) A substance is radioactive if it emits ionizing radiation.

(h) A substance is a strong sensitizer if, when on normal living tissue, it causes, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substance.

(i) An article is a thermal hazard if, in normal use or when subject to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness because of heat, including heat from heated parts, substances, or surfaces.

(j) A substance is toxic if it is capable of producing personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface and it is not radioactive.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 135 et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or Chapter 481 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the Atomic Energy Commission. (V.A.C.S. Art. 4476-13, Secs. 1(4) (part), (5), (7), (8), (9) (part), (10) (part), (11), (15), (16), (17).)

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The board by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the board finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health. (V.A.C.S. Art. 4476-13, Sec. 1(4) (part).)

Sec. 501.004. DESIGNATION OF STRONG SENSITIZER. Before designating a substance as a strong sensitizer, the department must determine that the substance has a significant potential for causing hypersensitivity considering the frequency of occurrence and the severity of the reaction. (V.A.C.S. Art. 4476-13, Sec. 1(9) (part).)

Sec. 501.005. EXCLUSION. This chapter does not apply to the manufacture, distribution, sale, or use of diapers. (V.A.C.S. Art. 4476-13, Sec. 7a.)

[Sections 501.006-501.020 reserved for expansion]

#### SUBCHAPTER B. REGULATION OF SUBSTANCES

Sec. 501.021. DETERMINATION OF FLAMMABILITY. (a) The board by rule shall establish the methods for determining the flammability of solids, fabrics, children's clothing, household furnishings, and the contents of self-pressurized containers that the board finds are generally applicable to those materials or containers.

(b) The department shall determine the flammability of those articles. (V.A.C.S. Art. 4476-13, Sec. 1(10) (part).)

Sec. 501.022. DESIGNATION OF BANNED HAZARDOUS SUBSTANCES. (a) The board by rule shall designate as a banned hazardous substance any article of clothing intended for the use of children that does not comply with applicable flammability standards established by the board. The board's determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The board by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The board by rule shall designate as a banned hazardous substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The board by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the board gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

(f) This section does not apply to the manufacture, sale, distribution, or use of fireworks of any class. (V.A.C.S. Art. 4476-13, Secs. 3, 9.)

**Sec. 501.023. LABELING.** (a) The department shall ensure that each hazardous substance is labeled sufficiently to inform its user of the dangers involved in using, storing, or handling the substance, of actions to be taken or avoided, and to give instructions as necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) A statement required by Subsection (a) must be located prominently and written in English in conspicuous and legible type that contrasts in typography, layout, or color with other printed matter on the label. The department may also require the statement to be written in Spanish.

(c) The statement must also appear:

(1) on the outside container or wrapper of a substance and on a container sold separately and intended for the storage of a hazardous substance unless the statement required by Subsection (a) is easily legible through the outside container or wrapper; and

(2) on all accompanying literature containing directions for use, whether written or in other form. (V.A.C.S. Art. 4476-13, Sec. 2.)

**Sec. 501.024. REGISTRATION.** (a) A person who manufactures or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state shall have on file with the department a registration statement as provided by this section.

(b) The board by rule shall prescribe the contents of the registration statement.

(c) The person must file the registration statement with the department before:

(1) beginning business in this state as a manufacturer, repacker, or distributor of a hazardous substance; and

(2) not later than September 1 of each year after the initial filing.

(d) The initial registration statement and each annual registration statement must be accompanied by a fee of \$150.

(e) The department, after notice and hearing, may refuse to register or may cancel, revoke, or suspend the registration of a person who manufactures, repacks, or distributes a hazardous substance if the person fails to make timely payment of the fee.

(f) This section does not apply to a retailer who distributes a hazardous substance to the general public unless the retailer distributes a hazardous substance made to its specifications. (V.A.C.S. Art. 4476-13, Secs. 1(18), 2A.)

**Sec. 501.025. RULES.** The board may adopt reasonable rules necessary for the efficient enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as applicable. (V.A.C.S. Art. 4476-13, Sec. 5(a).)

## SUBCHAPTER C. ENFORCEMENT

Sec. 501.031. EXAMINATIONS AND INVESTIGATIONS. (a) To enforce this chapter, an officer, employee, or agent of the department, on the presentation of appropriate credentials to the owner, operator, or agent, at reasonable times may enter a factory, warehouse, or establishment in which a hazardous substance is manufactured, processed, packaged, or held for introduction into commerce in this state or in which a hazardous substance is held after introduction into commerce, or a vehicle used to transport or hold a hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling in the factory, warehouse, establishment, or vehicle.

(b) The officer, employee, or agent of the department may obtain samples of any materials, packaging, or labeling. The officer, employee, or agent shall pay or offer to pay the owner, operator, or agent in charge for a sample and shall give a receipt describing a sample obtained. (V.A.C.S. Art. 4476-13, Sec. 4.)

Sec. 501.032. RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE. (a) For the enforcement of this chapter, a carrier engaged in commerce, a person receiving a hazardous substance in commerce, or a person holding a hazardous substance received in commerce, on request of the department shall permit a representative of the department at reasonable times to have access to and to copy all records showing the movement in commerce or the holding after movement in commerce of any hazardous substance and the quantity, consignees, and shipper of the hazardous substance.

(b) Evidence obtained under this section may not be used in the criminal prosecution of the person from whom the evidence is obtained.

(c) A carrier is not subject to the other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a hazardous substance in the usual course of the carrier's business. (V.A.C.S. Art. 4476-13, Sec. 10.)

Sec. 501.033. SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE. (a) If an authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected to be a banned or misbranded hazardous substance and that the article has been detained, and warning all persons not to remove the article from the premises or dispose of the article by sale or in any other manner until permission to do so is given by the agent or a court.

(b) The department shall petition the district court of the county in which the article is located to authorize the destruction of the article. If the court determines that the article is a banned or misbranded hazardous substance, the department shall destroy the article, and the court shall impose all court costs and fees and storage and other proper expenses against the claimant of the article. However, if the court finds that misbranding occurred in good faith and can be corrected by proper labeling, the court may direct that the article be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article is not a banned or misbranded hazardous substance, the court shall order the department to remove the tags or other markings. (V.A.C.S. Art. 4476-13, Sec. 11.)

Sec. 501.034. PROHIBITED ACTS. (a) A person may not hold or offer for sale, sell, or introduce or deliver for introduction into commerce a misbranded hazardous substance or banned hazardous substance.

(b) A person may not alter, mutilate, destroy, or remove all or part of the label of a hazardous substance, or do any other act relating to a hazardous substance, when the substance is in commerce or is held for sale, whether or not the first sale, after shipment in commerce, if the act results in the hazardous substance being a banned or misbranded hazardous substance.

(c) A person may not receive a banned or misbranded hazardous substance in commerce or deliver or offer to deliver a banned or misbranded hazardous substance for pay or otherwise.

(d) A person may not fail to permit entry or inspection as authorized by this chapter or to provide records as required by this chapter.

(e) A person may not use to his own advantage or reveal to any person other than the department or a court, if relevant to a judicial proceeding under this chapter, information acquired in an inspection authorized by this chapter and relating to a method or process that is entitled to protection as a trade secret.

(f) A person may not remove or dispose of a detained article or substance in violation of Section 501.035. (V.A.C.S. Art. 4476-13, Sec. 6.)

**Sec. 501.035. OFFENSES; EXCEPTIONS.** (a) A person commits an offense if the person intentionally, knowingly, or recklessly violates this chapter or a rule adopted under this chapter.

(b) An offense under this section is a Class B misdemeanor unless it is shown on the trial of the offense that the person's intent was to defraud another, in which event the offense is a Class A misdemeanor.

(c) This section does not apply to a person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith and if the person subsequently delivers on request:

(1) the name and address of the person from whom the substance was purchased or received; and

(2) copies of all documents, if any, relating to the original delivery of the substance to the person. (V.A.C.S. Art. 4476-13, Secs. 7, 8.)

#### **CHAPTER 502. HAZARD COMMUNICATION ACT**

- Sec. 502.001. SHORT TITLE**
- Sec. 502.002. FINDINGS; PURPOSE**
- Sec. 502.003. DEFINITIONS**
- Sec. 502.004. APPLICABILITY OF CHAPTER**
- Sec. 502.005. WORKPLACE CHEMICAL LIST**
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- Sec. 502.010. EMPLOYEE EDUCATION PROGRAM**
- Sec. 502.011. LIABILITY UNDER OTHER LAW**
- Sec. 502.012. COMPLAINTS, INVESTIGATIONS, AND PENALTIES**
- Sec. 502.013. EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES**
- Sec. 502.014. TRADE SECRETS**
- Sec. 502.015. STANDARD FOR PHYSICIAN TREATMENT**
- Sec. 502.016. RULES; FEES**

#### **CHAPTER 502. HAZARD COMMUNICATION ACT**

**Sec. 502.001. SHORT TITLE.** This chapter may be cited as the Hazard Communication Act. (V.A.C.S. Art. 5182b, Sec. 1.)

**Sec. 502.002. FINDINGS; PURPOSE.** (a) The legislature finds that:

(1) the health and safety of persons living and working in this state may be improved by providing access to information regarding hazardous chemicals to which those persons may be exposed during normal employment activities, during emergency situations, or as a result of proximity to the manufacture or use of those chemicals; and

(2) many employers in this state have established suitable information programs for their employees and that access to that information is required of all manufacturing

employers under the federal Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard.

(b) It is the intent and purpose of this chapter to assure that, if the OSHA standard is not in effect, accessibility to information regarding hazardous chemicals is provided to:

- (1) employees who may be exposed to those chemicals in manufacturing or nonmanufacturing employer workplaces;
- (2) emergency service organizations responsible for dealing with chemical hazards during an emergency; and
- (3) the commissioner to make the information available to the public through specific procedures. (V.A.C.S. Art. 5182b, Sec. 2.)

Sec. 502.003. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Chemical manufacturer" means an employer in Standard Industrial Classification (SIC) Codes 20-39 with a workplace where chemicals are produced for use or distribution.
- (3) "Chemical name" means:
  - (A) the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Service (CAS) rules of nomenclature; or
  - (B) a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.
- (4) "Commissioner" means the commissioner of health.
- (5) "Common name" means a designation of identification, such as a code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.
- (6) "Department" means the Texas Department of Health.
- (7) "Designated representative" means the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter, except that a recognized or certified collective bargaining agent is a designated representative regardless of written employee authorization.
- (8) "Distributor" means a business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to purchasers.
- (9) "Employee" means a person who may be or may have been exposed to hazardous chemicals in the person's workplace under normal operating conditions or foreseeable emergencies, and includes a person working for this state, a person working for a political subdivision of this state, or a member of a volunteer emergency service organization. The term does not include an office worker, a ground maintenance worker, security personnel, or nonresident management unless the person's job performance routinely involves potential exposure to hazardous chemicals.
- (10) "Expose" or "exposure" means that an employee is subjected to a hazardous chemical in the course of employment through any route of entry, including inhalation, ingestion, skin contact, or absorption. The term includes potential, possible, or accidental exposure.
- (11) "Fire chief" means the elected or paid administrative head of a fire department.
- (12) "Hazardous chemical" means an element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard as defined by the OSHA standard in 29 CFR Section 1910.1200(c), or a hazardous substance as defined by the OSHA standard in 29 CFR Section 1910.1200(d)(3).
- (13) "Label" means written, printed, or graphic material displayed on or affixed to a container of hazardous chemicals.
- (14) "Manufacturing employer" means an employer with a workplace classified in Standard Industrial Classification (SIC) Codes 20-39 who manufactures or uses a hazardous chemical.

(15) "Material safety data sheet" ("MSDS") means a document containing chemical hazard and safe handling information that is prepared in accordance with the requirements of the OSHA standard for that document.

(16) "Nonmanufacturing employer" or "employer" means an employer with a workplace in Standard Industrial Classification (SIC) Codes 46–49 (pipelines, transportation services, communications, and electric, gas, and sanitary services), 51 (wholesale trade, nondurable goods), 75 (automotive repair, services, and garages), 76 (miscellaneous repair services), 80 (health services), 82 (educational services), and 84 (museums, art galleries, and botanical and zoological gardens); this state and its political subdivisions; and volunteer emergency service organizations. If the OSHA standard is not in effect, "employer" also includes manufacturing employer.

(17) "OSHA standard" means the Hazard Communication Standard issued by the Occupational Safety and Health Administration and codified as 29 CFR Section 1910.1200.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means a list of hazardous chemicals developed under Section 502.005 or 29 CFR Section 1910.1200(e)(i). (V.A.C.S. Art. 5182b, Sec. 3.)

Sec. 502.004. **APPLICABILITY OF CHAPTER.** (a) If the OSHA standard is not in effect, this chapter applies to manufacturing employers and distributors.

(b) If the OSHA standard is in effect, manufacturing employers and distributors who are regulated by and complying with the OSHA standard are required to comply only with Sections 502.005(d) and (e); 502.006(a) and (d); 502.008; 502.012(d), (e), and (f); and 502.013(b), (c), (d), and (e).

(c) Nonmanufacturing employers who adopt and comply with the OSHA standard may be certified by the commissioner as being in compliance with this chapter, except for Sections 502.005(d) and (e); 502.006(a) and (d); 502.008; 502.012(d), (e), and (f); and 502.013(b), (c), (d), and (e). The commissioner shall make the certification annually.

(d) This chapter, except Sections 502.008(a) and 502.009, does not apply to a workplace where a hazardous chemical in a sealed package is received and subsequently sold or transferred in that package if:

- (1) the seal remains intact while the chemical is in the workplace; and
- (2) the chemical does not remain in the workplace longer than five working days.

(e) This chapter does not apply to the following:

(1) an article that:

(A) is formed to a specific shape or design during manufacture;

(B) has an end-use function dependent in whole or in part on the article's shape or design during end use; and

(C) does not release or otherwise result in exposure to a hazardous chemical under normal conditions of use;

(2) a product intended for personal consumption by an employee in the workplace;

(3) a retail food sale establishment or other retail trade establishment, except processing and repair areas;

(4) a food, food additive, color additive, drug, or cosmetic as those terms are defined by the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 201 et seq.) or a distilled spirit, wine, or malt beverage as those terms are defined by the federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(5) a chemical in a laboratory under the direct supervision or guidance of a technically qualified individual if:

(A) labels on incoming containers of chemicals are not removed or defaced;

(B) material safety data sheets received are maintained and made accessible to employees and students;

(C) the laboratory complies with Sections 502.008 and 502.009; and

(D) the laboratory is not used primarily to produce hazardous chemicals in bulk for commercial purposes;

(6) a product labeled in accordance with the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.);

(7) hazardous waste regulated in accordance with the federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); and

(8) radioactive waste. (V.A.C.S. Art. 5182b, Secs. 4, 17.)

Sec. 502.005. **WORKPLACE CHEMICAL LIST.** (a) An employer shall compile and maintain a workplace chemical list that contains the following information for each hazardous chemical normally used or stored in the workplace in excess of 55 gallons or 500 pounds or in excess of an amount that the board determines by rule for certain highly toxic or dangerous hazardous chemicals:

(1) the chemical name and the common name used on the MSDS and container label;

(2) the nomenclature used in identifying the chemical name; and

(3) the work area in which the hazardous chemical is normally stored or used.

(b) The employer shall update the workplace chemical list as necessary but at least once a year.

(c) The workplace chemical list may be prepared for the workplace as a whole or for each work area and must be readily available to employees and their representatives. New or newly assigned employees shall be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(d) An employer or manufacturing employer shall give the commissioner a workplace chemical list. An employer or manufacturing employer beginning operation shall give the commissioner the workplace chemical list not later than the 60th day after the date on which the employer or manufacturing employer begins operation.

(e) An employer or manufacturing employer shall maintain a workplace chemical list for at least 30 years. The employer or manufacturing employer shall send complete records to the commissioner if the business ceases to operate in this state. (V.A.C.S. Art. 5182b, Sec. 6.)

Sec. 502.006. **MATERIAL SAFETY DATA SHEET.** (a) A chemical manufacturer or distributor shall provide appropriate material safety data sheets to purchasers of hazardous chemicals in this state.

(b) An employer shall maintain the most current MSDS received from a manufacturer or distributor for each hazardous chemical purchased. If a manufacturer or distributor does not provide an MSDS for a chemical on the workplace chemical list when the chemical is received at the workplace, the employer shall request an MSDS in writing from the manufacturer or distributor in a timely manner.

(c) Material safety data sheets shall be readily available, on request, for review by employees or designated representatives.

(d) A copy of an MSDS shall be provided to the commissioner on request. The commissioner shall request an MSDS from an employer or manufacturing employer when a person requests an MSDS from the commissioner and the person's request is based on that person's review of the employer's or manufacturing employer's workplace chemical list. (V.A.C.S. Art. 5182b, Sec. 7.)

Sec. 502.007. **LABEL.** (a) A label on an incoming container of a hazardous chemical may not be removed or defaced.

(b) An employee may not be required to work with a hazardous chemical from an unlabeled container except for a portable container intended for the immediate use of the employee who performs the transfer. (V.A.C.S. Art. 5182b, Sec. 8.)



**Sec. 502.008. EMERGENCY INFORMATION.** (a) An employer or manufacturing employer who normally stores a hazardous chemical in an amount in excess of 55 gallons or 500 pounds or in excess of an amount the board determines by rule for certain highly toxic or dangerous hazardous chemicals shall provide to the fire chief of the fire department having jurisdiction over the workplace, in writing, the names and telephone numbers of knowledgeable representatives of the employer or manufacturing employer who can be contacted for further information or contacted in case of an emergency.

(b) Each employer or manufacturing employer, on request, shall provide a copy of the workplace chemical list to the fire chief. The employer shall notify the fire chief of any significant changes to the workplace chemical list.

(c) The fire chief or the fire chief's representative, on request, may conduct on-site inspections of the chemicals on the workplace chemical list for the sole purpose of planning fire department activities in case of an emergency.

(d) An employer or a manufacturing employer, on request, shall give the fire chief a copy of the MSDS for any chemical on the workplace chemical list.

(e) The fire chief shall make the workplace chemical list and MSDSs available to members of the fire department and to other personnel outside the fire department who are responsible for preplanning emergency activities. The fire chief may not otherwise distribute the information without approval of the employer or manufacturing employer. (V.A.C.S. Art. 5182b, Sec. 9.)

**Sec. 502.009. OUTREACH PROGRAM.** (a) The commissioner shall develop an outreach program that:

(1) consists of an education and training program in the form of instructional materials to assist employers in fulfilling the requirements of Section 502.010; and

(2) includes the development and distribution of a supply of informational leaflets concerning employers' duties, employee rights, the public's ability to obtain information under this chapter, the outreach program, and the effects of hazardous chemicals.

(b) The commissioner may contract with a public institution of higher education or other public or private organization to develop and implement the outreach program.

(c) The commissioner shall develop and provide to each employer a suitable form of notice providing employees with information relating to employee rights under this chapter.

(d) The commissioner shall publicize the availability of information to answer inquiries from employees, employers, or the public in this state concerning the effects of hazardous chemicals.

(e) In cooperation with the commissioner, an employer may provide an outreach program in the community. (V.A.C.S. Art. 5182b, Sec. 14.)

**Sec. 502.010. EMPLOYEE EDUCATION PROGRAM.** (a) An employer shall provide, at least once a year, an education and training program for employees who use or handle hazardous chemicals.

(b) Not later than the 30th day after an employer provides an education and training program, the employer shall report to the commissioner that the program has been provided to the employees.

(c) An employer shall provide additional instruction to employees when the potential for exposure to hazardous chemicals changes or when the employer receives new and significant information concerning the hazards of a chemical.

(d) An employer shall provide training to a new or newly assigned employee before the employee works with or in a work area containing a hazardous chemical.

(e) An employer shall keep a record of the dates of training sessions given to employees.

(f) An education and training program must include, as appropriate:

(1) information on interpreting labels and MSDSs and the relationship between those two methods of hazard communication;

(2) the location, acute and chronic effects, and safe handling of hazardous chemicals used by the employees;

(3) protective equipment and first aid treatment to be used with respect to the hazardous chemicals used by the employees; and

(4) general safety instructions on the handling, cleanup procedures, and disposal of hazardous chemicals.

(g) As part of an outreach program created in accordance with Section 502.009, the commissioner shall develop an education and training assistance program to assist employers who are unable to develop the programs because of size or other practical considerations. The program shall be made available to those employers on request. (V.A.C.S. Art. 5182b, Sec. 10.)

**Sec. 502.011. LIABILITY UNDER OTHER LAW.** Providing information to an employee does not affect:

(1) the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals;

(2) the employer's responsibility to take any action to prevent occupational disease as required under other law; or

(3) any other duty or responsibility of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under other law. (V.A.C.S. Art. 5182b, Sec. 11.)

**Sec. 502.012. COMPLAINTS, INVESTIGATIONS, AND PENALTIES.** (a) The commissioner or the commissioner's representative shall investigate in a timely manner a complaint received in writing from an employee or an employee's designated representative relating to an alleged violation of this chapter by a nonmanufacturing employer.

(b) A complaint received from an employee or an employee's designated representative relating to an alleged violation by a manufacturing employer shall be referred by the complainant to the federal Occupational Safety and Health Administration if the OSHA standard is in effect. The commissioner or the commissioner's representative shall investigate the complaint if:

(1) the OSHA standard is not in effect; or

(2) the complaint is based on a requirement of this chapter.

(c) On presentation of appropriate credentials, an officer or representative of the commissioner may enter a workplace at reasonable times to inspect and investigate complaints.

(d) An employer or manufacturing employer found to be in violation of this chapter must comply not later than the 14th day after the date of the finding. An employer or manufacturing employer that does not comply before the 15th day after the date of written notification of a violation is subject to an administrative penalty of not more than \$500 for each violation.

(e) An employer or manufacturing employer who knowingly discloses false information or negligently fails to disclose a hazard as required by this chapter is subject to a civil penalty of not more than \$5,000 for each violation.

(f) An employer or manufacturing employer who proximately causes an injury to an individual by knowingly disclosing false hazard information or knowingly failing to disclose hazard information as required by this chapter is subject to a criminal fine of not more than \$25,000.

(g) This section does not affect any other right of an employee or any other person to receive compensation for damages under other law. (V.A.C.S. Art. 5182b, Sec. 13.)

**Sec. 502.013. EMPLOYEE NOTICE; RIGHTS OF EMPLOYEES.** (a) An employer shall post adequate notice, at locations where notices are normally posted, informing employees of their rights under this chapter. If the commissioner does not prepare the notice under Section 502.009, the employer shall prepare the notice.

(b) Employees who may be exposed to hazardous chemicals shall be informed of the exposure and shall have access to the workplace chemical list and MSDSs for the

hazardous chemicals. Employees, on request, shall be provided a copy of a specific MSDS with any trade secret information deleted. In addition, employees shall receive training concerning the hazards of the chemicals and measures they can take to protect themselves from those hazards. Employees shall be provided with appropriate personal protective equipment. These rights are guaranteed.

(c) An employer or a manufacturing employer may not discharge, cause to be discharged, otherwise discipline, or in any manner discriminate against an employee because the employee has:

- (1) filed a complaint;
- (2) assisted an inspector of the department who may make or is making an inspection under Section 502.012;
- (3) instituted or caused to be instituted any proceeding under or related to this chapter;
- (4) testified or is about to testify in a proceeding under this chapter; or
- (5) exercised any rights afforded under this chapter on behalf of the employee or on behalf of others.

(d) Pay, position, seniority, or other benefits may not be lost as the result of the exercise of any right provided by this chapter.

(e) A waiver by an employee of the benefits or requirements of this chapter is void. An employer's or a manufacturing employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter. (V.A.C.S. Art. 5182b, Secs. 5, 15.)

Sec. 502.014. **TRADE SECRETS.** (a) An employer who believes that all or a part of the information required under Section 502.005 or Section 502.008(b) or (d) is a trade secret may withhold the information if:

- (1) material safety data sheets are available to employees in the area where they work;
- (2) hazard information concerning the trade secret chemicals, or an MSDS with trade secret information deleted, is provided, on request, to the fire chief and the commissioner;
- (3) all relevant information is provided to a physician diagnosing and treating a person exposed to the chemical, under requirements provided by the OSHA standard in 29 CFR Section 1910.1200(i)(2); and
- (4) the employer can substantiate the trade secret claim.

(b) The commissioner, on the commissioner's initiative or on the request of an employee, the employee's designated representative, a fire chief, or a person who made a request under Section 502.006(d), may request any or all of the data substantiating the trade secret claim to determine whether a claim made under Subsection (a) is valid.

(c) When making a determination of a trade secret claim, the commissioner shall conduct a reasonable search of available literature to determine whether the hazard information is accurate.

(d) Based on a review of the health and safety information made available by the employer and on other available information, the commissioner shall sign and add an addendum to the MSDS stating:

- (1) the commissioner's opinion that the MSDS reflects a prudent assessment of the scientific evidence regarding hazards; or
- (2) if the commissioner determines that the MSDS does not reflect such a prudent assessment, the commissioner's opinion of a prudent assessment of the scientific evidence.

(e) The commissioner shall complete the assessment not later than the 90th day after the date on which the commissioner receives the information substantiating the trade secret claim.

(f) If the commissioner receives information marked "confidential" by the employer, the commissioner shall:

(1) protect the information from disclosure; and

(2) return the information to the employer when a final determination is made.

(g) An employer whose trade secret claim is determined to be invalid under this section may petition for judicial review not later than the 30th day after the date on which the employer was notified by the commissioner that the trade secret claim is invalid. Judicial review is by trial de novo in a district court in Travis County. (V.A.C.S. Art. 5182b, Secs. 16(a) (part), (b), (c).)

Sec. 502.015. STANDARD FOR PHYSICIAN TREATMENT. For the purposes of this chapter, the requirements in the OSHA standard for physicians treating employees apply to physicians treating persons. (V.A.C.S. Art. 5182b, Sec. 16(a) (part).)

Sec. 502.016. RULES; FEES. (a) The board may adopt rules and administrative procedures reasonably necessary to carry out the purposes of this chapter.

(b) The board may authorize the collection of fees from manufacturing and nonmanufacturing employers for the filing of workplace chemical lists required by this chapter or for other community right-to-know purposes under the department's jurisdiction. The fees shall be paid annually and may not exceed \$50 for each required submission. To minimize the fees, the department by rule shall provide for consolidated filings for employers with multiple or temporary workplaces if the workplace chemical lists contain fewer than 25 items. (V.A.C.S. Art. 5182b, Secs. 12, 19.)

#### CHAPTER 503. HEALTH RISK ASSESSMENT OF TOXIC SUBSTANCES AND HARMFUL PHYSICAL AGENTS

Sec. 503.001. DEFINITIONS

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#### CHAPTER 503. HEALTH RISK ASSESSMENT OF TOXIC SUBSTANCES AND HARMFUL PHYSICAL AGENTS

Sec. 503.001. DEFINITIONS. In this chapter:

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

(2) "Committee" means the Toxic Substances Coordinating Committee.

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

(4) "Harmful physical agent" means a physical phenomenon, other than a toxic substance, that has or may have carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes:

(A) ionizing radiation, X-rays, gamma rays, ultraviolet light, or other electromagnetic radiation; and

(B) acoustical, thermal, or mechanical vibration.

(5) "Health risk assessment" means the use of objective data to characterize the potential adverse health effects that exposure to a toxic substance or a harmful physical agent may have on a person.

(6) "Toxic substance" means a substance that has or may have toxic, carcinogenic, mutagenic, teratogenic, or other harmful effects on humans, and includes a product that contains a toxic substance that poses or may pose a substantial hazard to human health. (V.A.C.S. Art. 4477-7e, Sec. 1 (part), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

**Sec. 503.002. TOXIC SUBSTANCES COORDINATING COMMITTEE.** (a) The Toxic Substances Coordinating Committee is composed of one representative from the:

- (1) department;
- (2) Department of Agriculture;
- (3) Texas Water Commission;
- (4) Parks and Wildlife Department;
- (5) Department of Public Safety;
- (6) Railroad Commission of Texas; and
- (7) Texas Air Control Board.

(b) The chief administrative officer of each agency shall appoint the agency representative to the committee. A representative serves at the will of the chief administrative officer or until the representative terminates employment with the agency, whichever occurs first.

(c) The representative of the department serves as chairman of the committee.

(d) The department shall provide administrative support to the committee. (V.A.C.S. Art. 4477-7e, Secs. 2(a), (b), (c), (e), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

**Sec. 503.003. MEETINGS; NOTICE.** (a) The committee shall meet:

- (1) at the call of the chief administrative officer of any member agency; or
- (2) at least once each quarter on a meeting date set by the committee.

(b) The committee must provide public notice of the meeting date not later than the 15th day before the date on which the committee holds the meeting.

(c) The committee shall adopt rules for the conduct of its meetings. (V.A.C.S. Art. 4477-7e, Secs. 2(d), (f), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

**Sec. 503.004. DUTIES OF COMMITTEE.** (a) The committee shall coordinate communication among member agencies concerning each agency's efforts to regulate toxic substances and harmful physical agents.

(b) The committee shall develop a plan that provides for:

- (1) intergovernmental cooperation concerning regulations to prevent and control the adverse health effects of toxic substances and harmful physical agents;
- (2) a health risk assessment of emergency responses to accidents involving toxic substances or harmful physical agents;
- (3) the coordination of agency programs relating to the prevention and control of adverse health effects resulting from exposure to toxic substances or harmful physical agents;
- (4) the establishment of an integrated system to collect and manage information relating to toxic substances and harmful physical agents; and
- (5) public education concerning the use of toxic substances and harmful physical agents and the potential adverse health effects. (V.A.C.S. Art. 4477-7e, Secs. 2(g), (h), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

**Sec. 503.005. HEALTH RISK ASSESSMENTS.** (a) In its capacity to protect the public health, the department shall coordinate health risk assessments conducted under this chapter.

(b) Each agency represented on the committee shall consult with and advise the department concerning health risk assessment activities when beginning a health risk assessment. The agency shall consult with and advise the department when taking the action in an emergency or as soon as possible after taking the action. This section does not require department approval of the agency's action or health risk assessment.

(c) Each agency represented on the committee shall use federal standards and health risk assessments, if appropriate, and avoid duplicating federal efforts. (V.A.C.S. Art. 4477-7e, Secs. 3(a) (part), (e), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

Sec. 503.006. **POWERS OF DEPARTMENT.** (a) The department may establish an information management system and may collect and evaluate information relating to the use of toxic substances and harmful physical agents.

(b) The department may enter into agreements or contracts with federal, state, or local governmental entities, planning regions, and other public or private entities to implement this chapter. (V.A.C.S. Art. 4477-7e, Secs. 3(b), (c), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

Sec. 503.007. **EFFECT ON OTHER LAWS.** This chapter does not amend or affect the regulatory activities or procedures authorized under other law. (V.A.C.S. Art. 4477-7e, Sec. 3(d), as added by Ch. 162, Acts 70th Leg., R.S., 1987.)

Sec. 503.008. **EXPIRATION OF CHAPTER.** This chapter expires September 1, 1999. (Sec. 3, Ch. 162, Acts 70th Leg., R.S., 1987.)

[Chapters 504-530 reserved for expansion]

[Chapters 531-670 reserved for Title 7, Mental Health and Mental Retardation]

## **TITLE 8. DEATH AND DISPOSITION OF THE BODY**

### **SUBTITLE A. DEATH**

#### **CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS**

##### **SUBCHAPTER A. DETERMINATION OF DEATH**

Sec. 671.001. **STANDARD USED IN DETERMINING DEATH**

Sec. 671.002. **LIMITATION OF LIABILITY**

[Sections 671.003-671.010 reserved for expansion]

##### **SUBCHAPTER B. AUTOPSY REPORTS**

Sec. 671.011. **FILING AUTOPSY REPORT**

Sec. 671.012. **COPIES OF REPORTS**

## **TITLE 8. DEATH AND DISPOSITION OF THE BODY**

### **SUBTITLE A. DEATH**

#### **CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS**

##### **SUBCHAPTER A. DETERMINATION OF DEATH**

Sec. 671.001. **STANDARD USED IN DETERMINING DEATH.** (a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated. (V.A.C.S. Art. 4447t, Sec. 1.)

Sec. 671.002. **LIMITATION OF LIABILITY.** (a) A physician who determines death in accordance with Section 671.001(b) is not liable for civil damages or subject to criminal prosecution for the physician's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions. (V.A.C.S. Art. 4447t, Secs. 2, 3.)

[Sections 671.003–671.010 reserved for expansion]

**SUBCHAPTER B. AUTOPSY REPORTS**

**Sec. 671.011. FILING AUTOPSY REPORT.** A designated physician who performs an autopsy provided for by state law shall file an autopsy report with the office designated by the autopsy order not later than the 30th day after the date of request for the autopsy unless:

(1) a required test cannot be completed within that time; and

(2) the physician certifies when the autopsy report is filed that a required test could not be completed within the 30-day limit. (V.A.C.S. Art. 4447n, Sec. 1.)

**Sec. 671.012. COPIES OF REPORTS.** A copy of an autopsy report shall be furnished to a duly authorized person on payment of a \$5 fee. (V.A.C.S. Art. 4447n, Sec. 2.)

**CHAPTER 672. NATURAL DEATH ACT**

**Sec. 672.001. SHORT TITLE**

**Sec. 672.002. DEFINITIONS**

**Sec. 672.003. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN**

**Sec. 672.004. FORM OF WRITTEN DIRECTIVE**

**Sec. 672.005. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT**

**Sec. 672.006. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE**

**Sec. 672.007. PATIENT DESIRE SUPERSEDES DIRECTIVE**

**Sec. 672.008. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION**

**Sec. 672.009. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION**

**Sec. 672.010. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE**

**Sec. 672.011. DURATION OF DIRECTIVE**

**Sec. 672.012. REVOCATION OF DIRECTIVE**

**Sec. 672.013. REEXECUTION OF DIRECTIVE**

**Sec. 672.014. EFFECT OF DIRECTIVE ON INSURANCE POLICY AND PREMIUMS**

**Sec. 672.015. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES**

**Sec. 672.016. LIMITATION OF LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE**

**Sec. 672.017. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE**

**Sec. 672.018. CRIMINAL PENALTY; PROSECUTION**

**Sec. 672.019. PREGNANT PATIENTS**

**Sec. 672.020. MERCY KILLING NOT CONDONED**

**Sec. 672.021. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED**

**CHAPTER 672. NATURAL DEATH ACT**

**Sec. 672.001. SHORT TITLE.** This chapter may be cited as the Natural Death Act. (V.A.C.S. Art. 4590h, Sec. 1.)

**Sec. 672.002. DEFINITIONS.** In this chapter:

(1) "Attending physician" means the physician who has primary responsibility for a patient's treatment and care.

(2) "Declarant" means a person who has executed or issued a directive under this chapter.

(3) "Directive" means an instruction made under Section 672.003, 672.005, or 672.006 to withhold or withdraw life-sustaining procedures in the event of a terminal condition.

(4) "Life-sustaining procedure" means a medical procedure or intervention that uses mechanical or other artificial means to sustain, restore, or supplant a vital function, and only artificially postpones the moment of death of a patient in a terminal condition whose death is imminent. The term does not include the administration of medication or the performance of a medical procedure considered to be necessary to provide comfort or care or to alleviate pain.

(5) "Physician" means a physician licensed by the Texas State Board of Medical Examiners or a properly credentialed physician who holds a commission in the United States armed forces and who is serving on active duty in this state.

(6) "Qualified patient" means a patient with a terminal condition that has been diagnosed and certified in writing by the attending physician and one other physician who have personally examined the patient.

(7) "Terminal condition" means an incurable condition caused by injury, disease, or illness that would produce death regardless of the application of life-sustaining procedures, according to reasonable medical judgment, and in which the application of life-sustaining procedures serves only to postpone the moment of the patient's death. (V.A.C.S. Art. 4590h, Secs. 2 (1)-(3), (4) (part), (5)-(7).)

Sec. 672.003. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) A competent adult may at any time execute a written directive.

(b) The declarant must sign the directive in the presence of two witnesses, and those witnesses must sign the directive.

(c) A witness may not be:

- (1) related to the declarant by blood or marriage;
- (2) entitled to any part of the declarant's estate after the declarant's death under a will or codicil executed by the declarant or by operation of law;
- (3) the attending physician;
- (4) an employee of the attending physician or health care facility in which the declarant is a patient;
- (5) a patient in a health care facility in which the declarant is a patient; or
- (6) a person who, at the time the directive is executed, has a claim against any part of the declarant's estate after the declarant's death.

(d) A declarant may include in a directive directions other than those provided by Section 672.004 and may designate in a directive a person to make a treatment decision for the declarant in the event the declarant becomes comatose, incompetent, or otherwise mentally or physically incapable of communication.

(e) A declarant shall notify the attending physician of the existence of a written directive. If the declarant is comatose, incompetent, or otherwise mentally or physically incapable of communication, another person may notify the attending physician of the existence of the written directive. The attending physician shall make the directive a part of the declarant's medical record. (V.A.C.S. Art. 4590h, Secs. 3(a), (c), (e).)

Sec. 672.004. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

#### "DIRECTIVE TO PHYSICIANS

"Directive made this \_\_\_\_\_ day of \_\_\_\_\_ (month, year).

"I \_\_\_\_\_, being of sound mind, wilfully and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth in this directive.

"1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and if the application of life-sustaining procedures would serve only to artificially postpone the moment of my



death, and if my attending physician determines that my death is imminent whether or not life-sustaining procedures are used, I direct that those procedures be withheld or withdrawn, and that I be permitted to die naturally.

"2. In the absence of my ability to give directions regarding the use of those life-sustaining procedures, it is my intention that this directive be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from that refusal.

"3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive has no effect during my pregnancy.

"4. This directive is in effect until it is revoked.

"5. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

"6. I understand that I may revoke this directive at any time.

"Signed \_\_\_\_\_  
(City, County, and State of Residence)

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage. I would not be entitled to any portion of the declarant's estate on the declarant's death. I am not the attending physician of the declarant or an employee of the attending physician or a health facility in which the declarant is a patient. I am not a patient in the health care facility in which the declarant is a patient. I have no claim against any portion of the declarant's estate on the declarant's death.

"Witness \_\_\_\_\_  
"Witness \_\_\_\_\_"

(V.A.C.S. Art. 4590h, Sec. 3(d).)

**Sec. 672.005. ISSUANCE OF NONWRITTEN DIRECTIVE BY COMPETENT ADULT QUALIFIED PATIENT.** (a) A competent qualified patient who is an adult may issue a directive by a nonwritten means of communication.

(b) A declarant must issue the nonwritten directive in the presence of the attending physician and two witnesses. The witnesses must possess the same qualifications as are required by Section 672.003(c).

(c) The physician shall make the fact of the existence of the directive a part of the declarant's medical record and the witnesses shall sign the entry in the medical record. (V.A.C.S. Art. 4590h, Sec. 3(b).)

**Sec. 672.006. EXECUTION OF DIRECTIVE ON BEHALF OF PATIENT YOUNGER THAN 18 YEARS OF AGE.** The following persons may execute a directive on behalf of a qualified patient who is younger than 18 years of age:

- (1) the patient's spouse, if the spouse is an adult;
- (2) the patient's parents; or
- (3) the patient's legal guardian. (V.A.C.S. Art. 4590h, Sec. 4D(a).)

**Sec. 672.007. PATIENT DESIRE SUPERSEDES DIRECTIVE.** The desire of a competent qualified patient, including a competent qualified patient younger than 18 years of age, supersedes the effect of a directive. (V.A.C.S. Art. 4590h, Secs. 4A (part), 4D(b).)

**Sec. 672.008. PROCEDURE WHEN DECLARANT IS INCOMPETENT OR INCAPABLE OF COMMUNICATION.** (a) This section applies when an adult qualified patient has executed or issued a directive and is comatose, incompetent, or otherwise mentally or physically incapable of communication.

(b) If the adult qualified patient has designated a person to make a treatment decision as authorized by Section 672.003(d), the attending physician and the designated person may make a treatment decision to withhold or withdraw life-sustaining procedures from the patient.

(c) If the adult qualified patient has not designated a person to make a treatment decision, the attending physician shall comply with the directive unless the physician

believes that the directive does not reflect the patient's present desire. (V.A.C.S. Art. 4590h, Secs. 4A (part), 4B.)

**Sec. 672.009. PROCEDURE WHEN PERSON HAS NOT EXECUTED OR ISSUED A DIRECTIVE AND IS INCOMPETENT OR INCAPABLE OF COMMUNICATION.** (a) If an adult qualified patient has not executed or issued a directive and is comatose, incompetent, or otherwise mentally or physically incapable of communication, the attending physician and the patient's legal guardian may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures from the patient.

(b) If the patient does not have a legal guardian, the attending physician and at least two persons, if available, of the following categories, in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining procedures:

- (1) the patient's spouse;
- (2) a majority of the patient's reasonably available adult children;
- (3) the patient's parents; or
- (4) the patient's nearest living relative.

(c) A treatment decision made under Subsection (a) or (b) must be based on knowledge of what the patient would desire, if known.

(d) A treatment decision made under Subsection (b) must be made in the presence of at least two witnesses who possess the same qualifications as are required by Section 672.003(c).

(e) The fact that an adult qualified patient has not executed or issued a directive does not create a presumption that the patient does not want a treatment decision to be made to withhold or withdraw life-sustaining procedures. (V.A.C.S. Art. 4590h, Sec. 4C.)

**Sec. 672.010. PATIENT CERTIFICATION AND PREREQUISITES FOR COMPLYING WITH DIRECTIVE.** (a) An attending physician who has been notified of the existence of a directive shall provide for the declarant's certification as a qualified patient on diagnosis of a terminal condition.

(b) Before withholding or withdrawing life-sustaining procedures from a qualified patient under this chapter, the attending physician must:

- (1) determine that the patient's death is imminent, regardless of the application of life-sustaining procedures;
- (2) note that determination in the patient's medical record; and
- (3) determine that the steps proposed to be taken are in accord with this chapter and the patient's existing desires. (V.A.C.S. Art. 4590h, Secs. 2(4) (part); 7(a), (c).)

**Sec. 672.011. DURATION OF DIRECTIVE.** A directive is effective until it is revoked as prescribed by Section 672.012. (V.A.C.S. Art. 4590h, Sec. 5 (part).)

**Sec. 672.012. REVOCATION OF DIRECTIVE.** (a) A declarant may revoke a directive at any time without regard to the declarant's mental state or competency. A directive may be revoked by:

- (1) the declarant or someone in the declarant's presence and at the declarant's direction canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;
- (2) the declarant signing and dating a written revocation that expresses the declarant's intent to revoke the directive; or
- (3) the declarant orally stating the declarant's intent to revoke the directive.

(b) A written revocation executed as prescribed by Subsection (a)(2) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or the physician's designee shall record in the patient's medical record the time and date when the physician received notice of the written revocation and shall enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(c) An oral revocation issued as prescribed by Subsection (a)(3) takes effect only when the declarant or a person acting on behalf of the declarant notifies the attending physician of the revocation. The attending physician or the physician's designee shall record in the patient's medical record the time, date, and place of the revocation, and, if different, the time, date, and place that the physician received notice of the revocation. The attending physician or the physician's designees shall also enter the word "VOID" on each page of the copy of the directive in the patient's medical record.

(d) Except as otherwise provided by this chapter, a person is not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation. (V.A.C.S. Art. 4590h, Sec. 4.)

**Sec. 672.013. REEXECUTION OF DIRECTIVE.** A declarant may at any time reexecute a directive in accordance with the procedures prescribed by Section 672.003, including reexecution after the declarant is diagnosed as having a terminal condition. (V.A.C.S. Art. 4590h, Sec. 5 (part).)

**Sec. 672.014. EFFECT OF DIRECTIVE ON INSURANCE POLICY AND PREMI-UMS.** (a) The fact that a person has executed or issued a directive under this chapter does not:

(1) restrict, inhibit, or impair in any manner the sale, procurement, or issuance of a life insurance policy to that person; or

(2) modify the terms of an existing life insurance policy.

(b) Notwithstanding the terms of any life insurance policy, the fact that life-sustaining procedures are withheld or withdrawn from an insured qualified patient under this chapter does not legally impair or invalidate that person's life insurance policy.

(c) A physician, health facility, health provider, insurer, or health care service plan may not require a person to execute or issue a directive as a condition for obtaining insurance for health care services or receiving health care services.

(d) The fact that a person has executed or issued or failed to execute or issue a directive under this chapter may not be considered in any way in establishing insurance premiums. (V.A.C.S. Art. 4590h, Secs. 8(b), (c).)

**Sec. 672.015. LIMITATION OF LIABILITY FOR WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING PROCEDURES.** (a) A physician or health facility that causes life-sustaining procedures to be withheld or withdrawn from a qualified patient in accordance with this chapter is not civilly liable for that action unless negligent.

(b) A health professional, acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this chapter is not civilly liable for that action unless negligent.

(c) A physician, or a health professional acting under the direction of a physician, who participates in withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this chapter is not criminally liable or guilty of unprofessional conduct as a result of that action unless negligent. (V.A.C.S. Art. 4590h, Sec. 6 (part).)

**Sec. 672.016. LIMITATION OF LIABILITY FOR FAILURE TO EFFECTUATE DIRECTIVE.** (a) A physician, health care facility, or health care professional who has no knowledge of a directive is not civilly or criminally liable for failing to act in accordance with the directive.

(b) A physician, or a health professional acting under the direction of a physician, is not civilly or criminally liable for failing to effectuate a qualified patient's directive.

(c) If an attending physician refuses to comply with a directive or treatment decision, the physician shall make a reasonable effort to transfer the patient to another physician. (V.A.C.S. Art. 4590h, Secs. 6 (part), 7(b).)

**Sec. 672.017. HONORING DIRECTIVE DOES NOT CONSTITUTE OFFENSE OF AIDING SUICIDE.** A person does not commit an offense under Section 22.08, Penal Code, by withholding or withdrawing life-sustaining procedures from a qualified patient in accordance with this chapter. (V.A.C.S. Art. 4590h, Sec. 8(a).)

Sec. 672.018. CRIMINAL PENALTY; PROSECUTION. (a) A person commits an offense if the person intentionally conceals, cancels, defaces, obliterates, or damages another person's directive without that person's consent. An offense under this subsection is a Class A misdemeanor.

(b) A person is subject to prosecution for criminal homicide under Chapter 19, Penal Code, if the person, with the intent to cause life-sustaining procedures to be withheld or withdrawn from another person contrary to the other person's desires, falsifies or forges a directive or intentionally conceals or withholds personal knowledge of a revocation and thereby directly causes life-sustaining procedures to be withheld or withdrawn from the other person with the result that the other person's death is hastened. (V.A.C.S. Art. 4590h, Sec. 9.)

Sec. 672.019. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining procedures under this chapter from a pregnant patient. (V.A.C.S. Art. 4590h, Sec. 4E.)

Sec. 672.020. MERCY KILLING NOT CONDONED. This chapter does not condone, authorize, or approve mercy killing or permit an affirmative or deliberate act or omission to end life except to permit the natural process of dying as provided by this chapter. (V.A.C.S. Art. 4590h, Sec. 10.)

Sec. 672.021. LEGAL RIGHT OR RESPONSIBILITY NOT AFFECTED. This chapter does not impair or supersede any legal right or responsibility a person may have to effect the withholding or withdrawal of life-sustaining procedures in a lawful manner. (V.A.C.S. Art. 4590h, Sec. 11.)

#### CHAPTER 673. SUDDEN INFANT DEATH SYNDROME

Sec. 673.001. DEFINITIONS

Sec. 673.002. AUTOPSY

Sec. 673.003. DESIGNATION OF SUDDEN INFANT DEATH SYNDROME AS PRIMARY CAUSE OF DEATH

Sec. 673.004. MODEL PROGRAM

#### CHAPTER 673. SUDDEN INFANT DEATH SYNDROME

Sec. 673.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of health.

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

Sec. 673.002. AUTOPSY. (a) The death in this state of a child younger than two years old shall be immediately reported to the justice of the peace, coroner, medical examiner, or other proper official as prescribed by law if the child dies suddenly or is found dead and if the cause of death is unknown.

(b) The justice of the peace, coroner, or medical examiner shall inform the child's legal guardian or parents that they may request an autopsy to be performed on the child and that the state will pay the reasonable costs of the autopsy.

(c) If the child's parents or legal guardian request an autopsy, the justice of the peace, coroner, or medical examiner shall arrange for the autopsy. The child's parents or legal guardian shall be promptly notified of the autopsy results.

(d) The reasonable costs of an autopsy performed under this section shall be reported to the commissioner. The commissioner shall instruct the comptroller of public accounts to pay the claim out of funds appropriated for that purpose.

(e) The commissioner shall determine if a claim for the costs of an autopsy is reasonable and proper.

(f) This section does not affect the duties of the justice of the peace, coroner, or medical examiner prescribed by other laws. (V.A.C.S. Art. 4447e-2, Sec. 1.)

Sec. 673.003. DESIGNATION OF SUDDEN INFANT DEATH SYNDROME AS PRIMARY CAUSE OF DEATH. Sudden infant death syndrome may be used as a primary

cause of death on a death certificate required by Chapter 193. (V.A.C.S. Art. 4447e-2, Sec. 2.)

Sec. 673.004. **MODEL PROGRAM.** (a) The department shall develop a model program that can be used to provide information and follow-up consultation about sudden infant death syndrome and its characteristic grief-guilt reaction. The program should humanize and maximize understanding and the handling of sudden infant death syndrome in this state.

(b) The department shall distribute the program to proper agencies, governmental bodies, officials, physicians, nurses, health professionals, and citizens.

(c) The department may appoint an advisory committee to provide assistance in developing the program. (V.A.C.S. Art. 4447e-2, Sec. 3.)

[Chapters 674–690 reserved for expansion]

**SUBTITLE B. DISPOSITION OF THE BODY**

**CHAPTER 691. ANATOMICAL BOARD OF THE STATE OF TEXAS**

**SUBCHAPTER A. ORGANIZATION OF ANATOMICAL BOARD OF THE STATE OF TEXAS**

- Sec. 691.001. **DEFINITIONS**
- Sec. 691.002. **COMPOSITION OF BOARD**
- Sec. 691.003. **APPLICATION OF SUNSET ACT**
- Sec. 691.004. **LOBBYIST RESTRICTIONS**
- Sec. 691.005. **REMOVAL OF BOARD MEMBER**
- Sec. 691.006. **REIMBURSEMENT**
- Sec. 691.007. **MINUTES; RECORDS**
- Sec. 691.008. **FEES; REPORTS; AUDITS**
- Sec. 691.009. **INFORMATION TO MEMBERS AND EMPLOYEES**
- Sec. 691.010. **PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS**

[Sections 691.011–691.020 reserved for expansion]

**SUBCHAPTER B. DONATION AND DISTRIBUTION OF BODIES**

- Sec. 691.021. **DEFINITION**
- Sec. 691.022. **GENERAL DUTIES**
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**SUBTITLE B. DISPOSITION OF THE BODY**

**CHAPTER 691. ANATOMICAL BOARD OF THE STATE OF TEXAS**

**SUBCHAPTER A. ORGANIZATION OF ANATOMICAL BOARD OF THE STATE OF TEXAS**

Sec. 691.001. **DEFINITIONS.** In this chapter:

(1) "Board" means the Anatomical Board of the State of Texas.

(2) "Body" means a human corpse. (New.)

Sec. 691.002. COMPOSITION OF BOARD. (a) The Anatomical Board of the State of Texas is composed of one representative from each school or college of chiropractic, osteopathy, medicine, or dentistry incorporated in this state.

(b) On March 1 of each odd-numbered year, the chief executive officer of each institution described by Subsection (a) shall appoint as the institution's representative on the board one professor of surgery or of basic anatomical sciences who is associated with the institution.

(c) Appointments to the board shall be made without regard to the race, creed, sex, religion, or national origin of the appointees. (V.A.C.S. Art. 4583, Secs. 1(a), (b), (d).)

Sec. 691.003. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the board is abolished September 1, 1997. (V.A.C.S. Art. 4583a.)

Sec. 691.004. LOBBYIST RESTRICTIONS. A person may not serve as 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. (V.A.C.S. Art. 4583, Sec. 1(c).)

Sec. 691.005. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 691.002(a) for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Section 691.002(a) for appointment to the board;

(3) violates a prohibition established by Section 691.004;

(4) cannot discharge the member's duties for a substantial portion of the term for which the member is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during any two calendar years, unless the absence is excused by a majority of the board members.

(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 member of the board exists.

(c) If the secretary-treasurer of the board believes that a potential ground for removal exists, the secretary-treasurer shall notify the chairman of the board of that ground. The chairman shall notify the chief executive officer of the institution represented by that member that a potential ground for removal exists. (V.A.C.S. Art. 4583, Secs. 1(e)-(h).)

Sec. 691.006. REIMBURSEMENT. A board member is not entitled to compensation but is entitled to reimbursement for actual travel expenses incurred in serving on the board. (V.A.C.S. Art. 4590.)

Sec. 691.007. MINUTES; RECORDS. (a) The board may adopt rules for its administration.

(b) The board shall keep complete minutes of its transactions.

(c) The board shall keep identification records of each body donated to or distributed by the board.

(d) A board member or a district or county attorney may at any time inspect minutes or records required under this section. (V.A.C.S. Art. 4583, Secs. 2(b), (d), (e).)

Sec. 691.008. FEES; REPORTS; AUDITS. (a) The board may set and collect reasonable and necessary fees for receiving and distributing bodies.

(b) The secretary-treasurer of the board may deposit fees collected under this section in local accounts outside the state treasury.

(c) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time are as provided by the General Appropriations Act.

(d) The state auditor shall audit the financial transactions of the board at least once during each biennium. (V.A.C.S. Art. 4589, Subsections (b)-(e).)

**Sec. 691.009. INFORMATION TO MEMBERS AND EMPLOYEES.** The board shall provide to its members and employees, as often as necessary, information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 4583, Sec. 1(h).)

**Sec. 691.010. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS.** (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which service recipients can be notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification by including the information on each written contract relating to bodies willed or donated to an entity regulated by the board or authorized by the board to receive bodies.

(c) The board shall keep an information file about each complaint filed with the board relating to its functions. If a written complaint is filed with the board relating to a person or an entity regulated by the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

(d) 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. (V.A.C.S. Art. 4583, Sec. 3.)

[Sections 691.011–691.020 reserved for expansion]

#### **SUBCHAPTER B. DONATION AND DISTRIBUTION OF BODIES**

**Sec. 691.021. DEFINITION.** In this subchapter, "political subdivision" means a municipality, county, or special district. (New.)

**Sec. 691.022. GENERAL DUTIES.** (a) The board shall distribute bodies to institutions and persons authorized to receive bodies.

(b) The board shall adopt rules to ensure that each body in the custody of the board or an institution represented on the board is treated with respect. (V.A.C.S. Art. 4583, Secs. 2(a), (c).)

**Sec. 691.023. DUTY TO DELIVER CERTAIN BODIES TO BOARD.** (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution having charge or control of a body not claimed for burial or a body required to be buried at public expense shall:

(1) notify the board or the board's representative of the body's existence when the body comes into the person's possession, charge, or control if notified in writing to do so by the board or the board's representative;

(2) deliver the body in accordance with the direction of the board; and

(3) allow the board, the board's representative, or a physician designated by the board who complies with this chapter to remove the body to be used for the advancement of medical science.

(b) If the board does not require a political subdivision or agency of the political subdivision to deliver a body under this section, the political subdivision shall pay all costs of preparation for burial, including costs of embalming. (V.A.C.S. Art. 4584 (part).)

Sec. 691.024. PERSONS WHO MAY CLAIM BODY FOR BURIAL. (a) An officer, employee, or representative of the state, of a political subdivision, or of an institution is not required to give notice or deliver a body as required by Section 691.023 if the body is claimed for burial.

(b) A relative, bona fide friend, or representative of an organization to which the deceased belonged may claim the body for burial. The person in charge of the body shall release the body to the claimant without requiring payment when the person is satisfied that the claimed relationship exists.

(c) A claimant alleging to be a bona fide friend or a representative of an organization to which the deceased belonged must present a written statement of the relationship under which the claimant qualifies as a bona fide friend or organization representative.

(d) For purposes of this section, a bona fide friend means a person who is like one of the family, and does not include:

(1) an ordinary acquaintance;

(2) an officer, employee, or representative of the state, of a political subdivision, or of an institution having charge of a body not claimed for burial or a body required to be buried at public expense;

(3) an employee of an entity listed in Subdivision (2) with which the deceased was associated; or

(4) a patient, inmate, or ward of an institution with which the deceased was associated.

(e) A person covered by Subsection (d) may qualify as a bona fide friend if the friendship existed before the deceased entered the institution. (V.A.C.S. Art. 4584 (part).)

Sec. 691.025. PROCEDURE AFTER DEATH. (a) If a body is not claimed for burial immediately after death, the body shall be embalmed within 24 hours.

(b) For 72 hours after death, the person in charge of the institution having charge or control of the body shall make due effort to find a relative of the deceased and notify the relative of the death. If the person is not able to find a relative, the person shall file with the county clerk an affidavit stating that the person has made a diligent inquiry to find a relative and stating the inquiry the person made.

(c) A body that is not claimed for burial within 48 hours after a relative receives notification shall be delivered as soon as possible to the board or the board's representative.

(d) A relative of the deceased may claim the body within 60 days after the body has been delivered to an institution or other entity authorized to receive the body. The body shall be released without charge. (V.A.C.S. Art. 4584 (part).)

Sec. 691.026. BODY OF TRAVELER. If an unclaimed body is the body of a traveler who died suddenly, the board shall direct the institution receiving the body to retain the body for six months for purposes of identification. (V.A.C.S. Art. 4584 (part).)

Sec. 691.027. AUTOPSY. Only the board may grant permission to perform an autopsy on an unclaimed body. The board may grant permission after receiving a specific request for an autopsy that shows sufficient evidence of medical urgency. (V.A.C.S. Art. 4584 (part).)

Sec. 691.028. DONATION OF BODY BY WRITTEN INSTRUMENT. (a) An adult living in this state who is of sound mind may donate his body by will or other written instrument to a medical or dental school or other donee authorized by the board to be used for the advancement of medical science.

(b) To be effective, the donor must sign the will or other written instrument and it must be witnessed by two adults. The donor is not required to use a particular form or particular words in making the donation, but the will or other instrument must clearly convey the donor's intent.

(c) Appointment of an administrator or executor or acquisition of a court order is not necessary before the body may be delivered under this chapter.



(d) A donor may revoke a donation made under this section by executing a written instrument in a manner similar to the original donation. (V.A.C.S. Art. 4584 (part).)

**Sec. 691.029. AUTHORITY TO ACCEPT BODIES FROM OUTSIDE THE STATE.** The board may receive a body transported to the board from outside this state. (V.A.C.S. Art. 4585(b).)

**Sec. 691.030. BOARD'S AUTHORITY TO DISTRIBUTE BODIES.** (a) The board or the board's representative shall distribute bodies received under this chapter to schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state, to physicians, and to other persons as provided by this section.

(b) In making the distribution, the board shall give priority to the schools and colleges that need bodies for lectures and demonstrations.

(c) If the board has remaining bodies, the board or the board's representative shall distribute those bodies to the schools and colleges proportionately and equitably according to the number of students in each school or college receiving instruction or demonstration in normal or morbid anatomy and operative surgery. The dean of each school or college shall certify that number to the board when required by the board.

(d) The board or the board's representative may, instead of receiving and distributing bodies itself, authorize a physician to receive a body directly. The board or the board's representative shall determine the number of bodies a physician may receive.

(e) The board or the board's representative may distribute to the State Board of Morticians as many bodies as necessary for use in conducting examinations. In addition, the board or the board's representative may distribute to a school of mortuary science recognized and approved by the State Board of Morticians as many bodies as the board considers necessary for use in instruction.

(f) The board may transport a body to another state if there is a shortage of bodies in that state, but only if the other state agrees to ship surplus bodies to this state when the board determines that there is a shortage in this state and if:

(1) the deceased donated his body in compliance with Section 691.028 and at the time of the donation authorized the board to transport the body outside this state; or

(2) the body was donated in compliance with Chapter 692 (Texas Anatomical Gift Act) and the person authorized to make the donation under Section 692.004 authorized the board to transport the body outside this state. (V.A.C.S. Arts. 4585(a), (c); 4585A.)

**Sec. 691.031. TRANSPORTATION OF BODIES; RECORDS.** (a) The board shall adopt rules to ensure that each body received or distributed by the board is properly transported.

(b) The board may employ a public carrier to transport bodies received or distributed by the board.

(c) Each body shall be carefully deposited and transported with the least possible public display.

(d) A person who sends a body under this chapter shall keep on permanent file a description of the body that includes the deceased's name, if known, color, sex, age, place and supposed cause of death, and any other information available for identification, such as the existence of scars or deformities.

(e) The sender shall mail or otherwise safely convey to the person or institution to whom the body is sent a copy of the description required by Subsection (d). The person or institution receiving the body shall immediately and safely transmit to the sender a receipt for the body containing the full terms of the description furnished by the sender.

(f) The sender and receiver of each body shall file the records required under this section in accordance with board rules so that the board or a district or county attorney may inspect the records at any time. (V.A.C.S. Art. 4586.)

**Sec. 691.032. COSTS OF DISTRIBUTION.** A person or institution receiving a body under this chapter shall pay in a manner specified by the board, or as otherwise agreed on, all costs incurred in distributing the body so that the state, a county, a municipality, or

an officer, employee, or representative of the state, a county, or a municipality does not incur any expense. (V.A.C.S. Art. 4589(a).)

Sec. 691.033. USE OF BODIES. (a) To further medical science, a school, college, or person designated by the board may dissect, operate on, examine, and experiment on a body distributed under this chapter.

(b) A school, college, or person shall keep a permanent record of each body received from the board or the board's representative. The record must be sufficient to identify the body and may be inspected by the board or the board's representative.

(c) A law relating to the prevention of mutilation of a body does not apply to a dissection, operation, examination, or experiment performed under this section.

(d) To aid prosecutions under Section 42.10, Penal Code, the board shall adopt rules that clearly state the activities that are authorized by the board in relation to the dissection of a body. (V.A.C.S. Arts. 4587(a), (d).)

Sec. 691.034. REGULATION OF PERSONS AND INSTITUTIONS USING BODIES. (a) The board shall inspect and may approve institutions for the receipt and use of bodies under this chapter.

(b) The board may investigate a person or institution if the board has reason to believe that the person or institution has improperly used a body.

(c) The board may suspend or revoke a person's or institution's authorization to receive and dissect bodies if the board determines that the person or institution has improperly used a body.

(d) A person or institution is entitled to a hearing before the board or a hearing examiner appointed by the board before the board may revoke the person's or institution's authorization to receive and dissect bodies. The board shall make all final decisions to suspend or revoke an authorization. (V.A.C.S. Arts. 4587(b), (c).)

Sec. 691.035. CRIMINAL PENALTY. (a) A person commits an offense if the person has a duty imposed under this chapter and refuses, neglects, or omits to perform the duty as required by this chapter.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$500. (V.A.C.S. Art. 4590.1.)

#### CHAPTER 692. TEXAS ANATOMICAL GIFT ACT

- Sec. 692.001. SHORT TITLE
- Sec. 692.002. DEFINITIONS
- Sec. 692.003. MANNER OF EXECUTING GIFT OF OWN BODY
- Sec. 692.004. PERSONS WHO MAY EXECUTE GIFT
- Sec. 692.005. PERSONS WHO MAY BECOME DONEES
- Sec. 692.006. DESIGNATION OF DONEE OR PHYSICIAN
- Sec. 692.007. DELIVERY OF DOCUMENT
- Sec. 692.008. AMENDMENT OR REVOCATION OF GIFT
- Sec. 692.009. DETERMINATION OF TIME OF DEATH
- Sec. 692.010. ACCEPTANCE OR REJECTION OF GIFT
- Sec. 692.011. EXAMINATION FOR MEDICAL ACCEPTABILITY AUTHORIZED
- Sec. 692.012. DONEE'S RIGHTS SUPERIOR
- Sec. 692.013. HOSPITAL PROTOCOL
- Sec. 692.014. HOSPITAL PROCEDURES
- Sec. 692.015. EFFECT OF OTHER LAWS
- Sec. 692.016. LIMITATION OF LIABILITY

#### CHAPTER 692. TEXAS ANATOMICAL GIFT ACT

Sec. 692.001. SHORT TITLE. This chapter may be cited as the Texas Anatomical Gift Act. (V.A.C.S. Art. 4590-2, Sec. 1.)

Sec. 692.002. DEFINITIONS. In this chapter:

(1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state to store human bodies or body parts.

(2) "Decedent" means a deceased person and includes a stillborn infant or fetus.

(3) "Donor" means a person who makes a gift of all or part of the person's body.

(4) "Eye bank" means a nonprofit corporation chartered under the laws of this state to obtain, store, and distribute donor eyes to be used by ophthalmologists for corneal transplants, research, or other medical purposes.

(5) "Hospital" means a hospital:

(A) licensed, accredited, or approved under the laws of any state; or

(B) operated by the federal government, a state government, or a political subdivision of a state government.

(6) "Part" includes an organ, tissue, eye, bone, artery, blood, other fluid, and other parts of a human body.

(7) "Physician" means a physician licensed or authorized to practice under the laws of any state.

(8) "Qualified organ or tissue procurement organization" means an organization that procures and distributes organs or tissues for transplantation, research, or other medical purposes and is:

(A) affiliated with a university or hospital; or

(B) registered to operate as a nonprofit organization in this state for the primary purpose of organ or tissue procurement. (V.A.C.S. Art. 4590-2, Secs. 2(a)-(e), (g), (i), (j).)

**Sec. 692.003. MANNER OF EXECUTING GIFT OF OWN BODY.** (a) A person who has testamentary capacity under the Texas Probate Code may give all or part of the person's body for a purpose specified by Section 692.005.

(b) A person may make a gift under this section by will or by use of a document other than a will.

(c) A gift made by will is effective on the death of the testator without the necessity of probate. If the will is not probated or if the will is declared invalid for testamentary purposes, the gift is valid to the extent to which it has been acted on in good faith.

(d) A gift made by a document other than a will is effective on the death of the donor. The document may be a card designed to be carried by the donor. To be effective, the document must be signed by the donor in the presence of two witnesses. If the donor cannot sign the document, a person may sign the document for the donor at the donor's direction and in the presence of the donor and two witnesses. The witnesses to the signing of a document under this subsection must sign the document in the presence of the donor. Delivery of the document during the donor's lifetime is not necessary to make the gift valid. (V.A.C.S. Art. 4590-2, Secs. 3(a); 5(a), (b).)

**Sec. 692.004. PERSONS WHO MAY EXECUTE GIFT.** (a) The following persons, in the following priority, may give all or any part of a decedent's body for a purpose specified by Section 692.005:

(1) the decedent's spouse;

(2) the decedent's adult child;

(3) either of the decedent's parents;

(4) the decedent's adult brother or sister;

(5) the guardian of the person of the decedent at the time of death; or

(6) any other person authorized or under an obligation to dispose of the body.

(b) A person listed in Subsection (a) may make the gift only if:

(1) a person in a higher priority class is not available at the time of death;

(2) there is no actual notice of contrary indications by the decedent; and

(3) there is no actual notice of opposition by a member of the same or a higher priority class.

(c) A person listed in Subsection (a) may make the gift after death or immediately before death. The person must make the gift by a document signed by the person or by a telegraphic, recorded telephonic, or other recorded message. (V.A.C.S. Art. 4590-2, Secs. 3(b), (c) (part); 5(e).)

Sec. 692.005. PERSONS WHO MAY BECOME DONEES. The following persons may be donees of gifts of bodies or parts:

- (1) a hospital or physician, to be used only for medical or dental education, research, therapy, transplantation, or the advancement of medical or dental science;
- (2) an accredited medical, chiropractic, or dental school, college, or university, to be used only for education, research, therapy, or the advancement of medical or dental science;
- (3) a bank or storage facility, to be used only for medical or dental education, research, therapy, transplantation, or the advancement of medical or dental science;
- (4) a person specified by a physician, to be used only for therapy or transplantation needed by the person;
- (5) an eye bank the medical activities of which are directed by a physician; or
- (6) the Anatomical Board of the State of Texas. (V.A.C.S. Art. 4590-2, Sec. 4.)

Sec. 692.006. DESIGNATION OF DONEE OR PHYSICIAN. (a) A person may make a gift to a specified donee. If the gift is not made to a specified donee, the attending physician may accept the gift as donee at the time of death or after death.

(b) If the gift is made to a specified donee who is not available at the time and place of death, the attending physician may accept the gift as donee at the time of death or after death unless the donor expressed an indication that the donor desired a different procedure.

(c) A physician who becomes a donee under Subsection (a) or (b) may not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding Section 692.009, a donor may designate in the donor's will or document of gift the physician to perform the appropriate procedures. If the donor does not designate the physician, or if the physician is not available, the donee or other person authorized to accept the gift may employ or authorize any physician to perform the appropriate procedures. (V.A.C.S. Art. 4590-2, Secs. 5(c), (d).)

Sec. 692.007. DELIVERY OF DOCUMENT. (a) If a donor makes a gift to a specified donee, the donor may deliver the will or document, or an executed copy, to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to make the gift valid.

(b) The donor may deposit the will or other document, or an executed copy, in a hospital, registry office, or bank or storage facility that accepts the document for safekeeping or to facilitate the procedures after death.

(c) On or after the donor's death and on the request of an interested party, the person in possession of the document shall produce the document for examination. (V.A.C.S. Art. 4590-2, Sec. 6.)

Sec. 692.008. AMENDMENT OR REVOCATION OF GIFT. (a) If the donor has delivered the will or other document, or executed copy, to a specified donee, the donor may amend or revoke the gift by:

- (1) executing and delivering to the donee a signed statement;
  - (2) making an oral statement in the presence of two persons that is communicated to the donee;
  - (3) making a statement to an attending physician that is communicated to the donee;
- or
- (4) executing a signed document that is found on the donor or found in the donor's effects.

(b) If the donor has not delivered the document of gift to the donee, the donor may revoke the gift in a manner prescribed by Subsection (a) or by destroying, canceling, or mutilating the document and each executed copy of the document.

(c) If the donor made the gift by will, the donor may revoke or amend the gift in a manner prescribed by Subsection (a) or in a manner prescribed for the amendment or revocation of a will. (V.A.C.S. Art. 4590-2, Sec. 7.)

**Sec. 692.009. DETERMINATION OF TIME OF DEATH.** The attending physician or, if none, the physician who certifies the death shall determine the time of death. That physician may not participate in the procedures for removing or transplanting a part. (V.A.C.S. Art. 4590-2, Sec. 8(b).)

**Sec. 692.010. ACCEPTANCE OR REJECTION OF GIFT.** (a) A donee may accept or reject a gift.

(b) If the donee or the donee's physician has actual notice of contrary indications by the decedent or has actual notice that a gift made under Section 692.004 is opposed by a member of the same or a higher priority class, the donee may not accept the gift.

(c) If a donee accepts a gift of an entire body, the decedent's surviving spouse or any other person authorized to give all or part of the body may authorize the body's embalming and have the use of the body for funeral services, subject to the terms of the gift.

(d) If a donee accepts a gift of a part, the donee shall cause the part to be removed from the body without unnecessary mutilation after death occurs and before the body is embalmed. After the part is removed, the surviving spouse, next of kin, or other person under obligation to dispose of the body has custody of the body. (V.A.C.S. Art. 4590-2, Secs. 3(c) (part); 8(a).)

**Sec. 692.011. EXAMINATION FOR MEDICAL ACCEPTABILITY AUTHORIZED.** A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the intended purposes. (V.A.C.S. Art. 4590-2, Sec. 3(d).)

**Sec. 692.012. DONEE'S RIGHTS SUPERIOR.** Except as prescribed by Section 692.015(a), a donee's rights that are created by a gift are superior to the rights of other persons. (V.A.C.S. Art. 4590-2, Sec. 3(e).)

**Sec. 692.013. HOSPITAL PROTOCOL.** (a) Each hospital shall develop a protocol for identifying potential organ and tissue donors from among those persons who die in the hospital. The hospital shall make its protocol available to the public during the hospital's normal business hours.

(b) The protocol must:

(1) provide that the hospital use appropriately trained persons to make inquiries relating to donations;

(2) encourage sensitivity to families' beliefs and circumstances in all discussions relating to the donations;

(3) establish guidelines based on accepted medical standards for determining if a person is medically suitable to donate organs or tissues; and

(4) provide for documentation of the inquiry and of its disposition in the decedent's medical records.

(c) The protocol must provide that a hospital is not required to make an inquiry under Section 692.014 if:

(1) the decedent is not medically suitable for donation based on the suitability guidelines established by the protocol;

(2) the hospital has actual notice of an objection to the donation made by:

(A) the decedent;

(B) the person authorized to make the donation under Section 692.004, according to the priority established by that section; or

(C) an unavailable member of a higher priority class; or

(3) the hospital administrator has not been notified by a qualified organ or tissue procurement organization that:

(A) there is a current medical need for organs or tissues; and

(B) the organization is available to retrieve the organs or tissues in a manner consistent with accepted medical standards. (V.A.C.S. Art. 4590-2, Secs. 8A(a) (part), (b)-(f).)

Sec. 692.014. HOSPITAL PROCEDURES. (a) In accordance with the protocol established under Section 692.013, at or near the time of notification of death, the hospital shall ask the person authorized to make an anatomical gift on behalf of the decedent under Section 692.004, according to the priority established by that section, if the decedent is a donor.

(b) If there are two or more persons in the same priority class authorized to make a gift under Section 692.004, the hospital shall ask those class members reasonably available at or near the time of notification of death.

(c) If the decedent is not a donor, the hospital shall inform the person of the option to donate the decedent's organs and tissues. If the person approves the donation, the hospital shall notify a qualified organ or tissue procurement organization of the potential donation. (V.A.C.S. Art. 4590-2, Sec. 8A(a) (part).)

Sec. 692.015. EFFECT OF OTHER LAWS. (a) This chapter is subject to the laws of this state prescribing the powers and duties relating to autopsies.

(b) Sections 692.013 and 692.014 do not affect the laws relating to notification of the medical examiner or justice of the peace of each case of reportable death. (V.A.C.S. Art. 4590-2, Secs. 8(d), 8A(g).)

Sec. 692.016. LIMITATION OF LIABILITY. (a) A person who acts in good faith in accordance with this chapter is not liable for civil damages or subject to criminal prosecution for the person's action if the prerequisites for an anatomical gift are met under the laws applicable at the time and place the gift is made.

(b) A person who acts in good faith in accordance with Sections 692.013 and 692.014 is not liable as a result of the action except in the case of the person's own negligence. For purposes of this subsection, "good faith" in determining the appropriate person authorized to make a donation under Section 692.004 means making a reasonable effort to locate and contact the member or members of the highest priority class who are available at or near the time of death. (V.A.C.S. Art. 4590-2, Secs. 8(c), 8A(h).)

## CHAPTER 693. REMOVAL OF BODY PARTS, BODY TISSUE, AND CORNEAL TISSUE

### SUBCHAPTER A. REMOVAL OF BODY PARTS OR TISSUE

Sec. 693.001. DEFINITION

Sec. 693.002. REMOVAL OF BODY PART OR TISSUE PERMITTED UNDER CERTAIN CIRCUMSTANCES

Sec. 693.003. CONSENT REQUIRED IN CERTAIN CIRCUMSTANCES

Sec. 693.004. PERSONS WHO MAY CONSENT OR OBJECT TO REMOVAL

Sec. 693.005. IMMUNITY FROM DAMAGES IN CIVIL ACTION

[Sections 693.006-693.010 reserved for expansion]

### SUBCHAPTER B. REMOVAL OF CORNEAL TISSUE

Sec. 693.011. DEFINITION

Sec. 693.012. REMOVAL OF CORNEAL TISSUE PERMITTED UNDER CERTAIN CIRCUMSTANCES

Sec. 693.013. PERSONS WHO MAY OBJECT TO REMOVAL

Sec. 693.014. IMMUNITY FROM DAMAGES IN CIVIL ACTION

[Sections 693.015–693.020 reserved for expansion]

**SUBCHAPTER C. EYE ENUCLEATION**

- Sec. 693.021. **DEFINITION**
- Sec. 693.022. **PERSONS WHO MAY ENUCLEATE EYE AS ANATOMICAL GIFT**
- Sec. 693.023. **EYE ENUCLEATION COURSE**
- Sec. 693.024. **REQUISITES OF EYE ENUCLEATION COURSE**

**CHAPTER 693. REMOVAL OF BODY PARTS, BODY TISSUE,  
AND CORNEAL TISSUE**

**SUBCHAPTER A. REMOVAL OF BODY PARTS OR TISSUE**

Sec. 693.001. **DEFINITION.** In this subchapter, “visceral organ” means the heart, kidney, liver, or other organ or tissue that requires a patient support system to maintain the viability of the organ or tissue. (V.A.C.S. Art. 4590–6, Sec. 1(c).)

Sec. 693.002. **REMOVAL OF BODY PART OR TISSUE PERMITTED UNDER CERTAIN CIRCUMSTANCES.** On a request from a Texas nonprofit medical facility that performs organ transplants or a nonprofit organization or corporation that procures organs or tissues for transplantation, the medical examiner may permit the removal of eyes, heart, skin, bone, liver, kidney, or pancreas and other tissue proven to be clinically usable for transplants or other therapy or treatment if:

- (1) the decedent from whom the body part or tissue is to be removed died under circumstances requiring an inquest by the medical examiner;
- (2) consent is given as required by Section 693.003 or, if consent is not required by that section, no objection by a person listed in Section 693.004 is known by the medical examiner; and
- (3) the removal of the body part or tissue will not interfere with the subsequent course of an investigation or autopsy. (V.A.C.S. Art. 4590–6, Sec. 1(a).)

Sec. 693.003. **CONSENT REQUIRED IN CERTAIN CIRCUMSTANCES.** (a) A medical examiner or a person acting on the authority of a medical examiner may not remove a visceral organ unless the medical examiner or person obtains the consent of a person listed in Section 693.004.

(b) If a person listed in Section 693.004 is known and available within four hours after death is pronounced, a medical examiner or a person acting on the authority of a medical examiner may not remove a nonvisceral organ or tissue unless the medical examiner or person obtains that person's consent.

(c) If a person listed in Section 693.004 cannot be identified and contacted within four hours after death is pronounced and the medical examiner determines that no reasonable likelihood exists that a person can be identified and contacted during the four-hour period, the medical examiner may permit the removal of a nonvisceral organ or tissue. (V.A.C.S. Art. 4590–6, Secs. 1(b), 2(d).)

Sec. 693.004. **PERSONS WHO MAY CONSENT OR OBJECT TO REMOVAL.** The following persons may consent or object to the removal of tissue or a body part:

- (1) the decedent's spouse;
- (2) the decedent's adult children, if there is no spouse;
- (3) the decedent's parents, if there is no spouse or adult child; or
- (4) the decedent's brothers or sisters, if there is no spouse, adult child, or parent. (V.A.C.S. Art. 4590–6, Sec. 2.)

Sec. 693.005. **IMMUNITY FROM DAMAGES IN CIVIL ACTION.** In a civil action brought by a person listed in Section 693.004 who did not object before the removal of tissue or a body part specified by Section 693.002, a medical examiner, medical facility, physician acting on permission of a medical examiner, or person assisting a physician is not liable for damages on a theory of civil recovery based on a contention that the

plaintiff's consent was required before the body part or tissue could be removed. (V.A.C.S. Art. 4590-6, Sec. 3.)

[Sections 693.006-693.010 reserved for expansion]

#### SUBCHAPTER B. REMOVAL OF CORNEAL TISSUE

Sec. 693.011. **DEFINITION.** In this subchapter, "eye bank" means a nonprofit corporation chartered under the laws of this state to obtain, store, and distribute donor eyes to be used by persons licensed to practice medicine for corneal transplants, research, or other medical purposes and the medical activities of which are directed by a person licensed to practice medicine in this state. (V.A.C.S. Art. 4590-4, Sec. 1 (part).)

Sec. 693.012. **REMOVAL OF CORNEAL TISSUE PERMITTED UNDER CERTAIN CIRCUMSTANCES.** On a request from an authorized official of an eye bank for corneal tissue, a justice of the peace or medical examiner may permit the removal of corneal tissue if:

- (1) the decedent from whom the tissue is to be removed died under circumstances requiring an inquest by the justice of the peace or medical examiner;
- (2) no objection by a person listed in Section 693.013 is known by the justice of the peace or medical examiner; and
- (3) the removal of the corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the decedent's postmortem facial appearance. (V.A.C.S. Art. 4590-4, Sec. 1 (part).)

Sec. 693.013. **PERSONS WHO MAY OBJECT TO REMOVAL.** The following persons may object to the removal of corneal tissue:

- (1) the decedent's spouse;
- (2) the decedent's adult children, if there is no spouse;
- (3) the decedent's parents, if there is no spouse or adult child; or
- (4) the decedent's brothers or sisters, if there is no spouse, adult child, or parent. (V.A.C.S. Art. 4590-4, Sec. 2.)

Sec. 693.014. **IMMUNITY FROM DAMAGES IN CIVIL ACTION.** (a) In a civil action brought by a person listed in Section 693.013 who did not object before the removal of corneal tissue, a medical examiner, justice of the peace, or eye bank official is not liable for damages on a theory of civil recovery based on a contention that the person's consent was required before the corneal tissue could be removed.

(b) Chapter 104, Civil Practice and Remedies Code, applies to a justice of the peace, medical examiner, and their personnel who remove, permit removal, or deny removal of corneal tissue under this subchapter as if the justice of the peace, medical examiner, and their personnel were state officers or employees. (V.A.C.S. Art. 4590-4, Sec. 3.)

[Sections 693.015-693.020 reserved for expansion]

#### SUBCHAPTER C. EYE ENUCLEATION

Sec. 693.021. **DEFINITION.** In this chapter, "ophthalmologist" means a person licensed to practice medicine who specializes in treating eye diseases. (V.A.C.S. Art. 4590-5, Sec. 4.)

Sec. 693.022. **PERSONS WHO MAY ENUCLEATE EYE AS ANATOMICAL GIFT.** Only the following persons may enucleate an eye that is an anatomical gift:

- (1) a licensed physician;
- (2) a licensed doctor of dental surgery or medical dentistry;
- (3) a licensed embalmer; or
- (4) a technician supervised by a physician. (V.A.C.S. Art. 4590-5, Sec. 1.)



Sec. 693.023. **EYE ENUCLEATION COURSE.** Each person, other than a licensed physician, who performs an eye enucleation must complete a course in eye enucleation taught by an ophthalmologist and must possess a certificate showing that the course has been completed. (V.A.C.S. Art. 4590-5, Sec. 2.)

Sec. 693.024. **REQUISITES OF EYE ENUCLEATION COURSE.** The course in eye enucleation prescribed by Section 693.023 must include instruction in:

- (1) the anatomy and physiology of the eye;
- (2) maintaining a sterile field during the procedure;
- (3) use of the appropriate instruments; and
- (4) procedures for the sterile removal of the corneal button and the preservation of it in a preservative fluid. (V.A.C.S. Art. 4590-5, Sec. 3.)

**CHAPTER 694. BURIAL**

Sec. 694.001. **DUTIES OF TEXAS DEPARTMENT OF HEALTH**

Sec. 694.002. **DUTY OF COMMISSIONERS COURT CONCERNING BURIAL OF PAUPERS**

Sec. 694.003. **POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL**

**CHAPTER 694. BURIAL**

Sec. 694.001. **DUTIES OF TEXAS DEPARTMENT OF HEALTH.** The Texas Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety. (V.A.C.S. Art. 4477, Rule 38a(b).)

Sec. 694.002. **DUTY OF COMMISSIONERS COURT CONCERNING BURIAL OF PAUPERS.** The commissioners court of each county shall provide for the burial of paupers. (V.A.C.S. Art. 2351, Subdiv. 7.)

Sec. 694.003. **POWER OF GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY CONCERNING BURIAL.** The governing body of a Type A general-law municipality may regulate the burial of the dead. (V.A.C.S. Art. 1015, Subdiv. 7 (part).)

[Chapters 695-710 reserved for expansion]

**SUBTITLE C. CEMETERIES**

**CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 711.001. **DEFINITIONS**

Sec. 711.002. **DISPOSITION OF REMAINS; DUTY TO INTER**

Sec. 711.003. **RECORDS OF INTERMENT**

Sec. 711.004. **REMOVAL OF REMAINS**

Sec. 711.005. **USE OF FUNDS FOR SPECIAL CARE OF PLOT IN NONPERPETUAL CARE CEMETERY**

Sec. 711.006. **LIMITATIONS ON CREMATORY CONSTRUCTION AND OPERATION**

Sec. 711.007. **NONCONFORMING OR ABANDONED CEMETERY AS A NUISANCE; ABATEMENT AND INJUNCTION**

Sec. 711.008. **LOCATION OF CEMETERY**

Sec. 711.009. **AUTHORITY OF CEMETERY KEEPER**

[Sections 711.010-711.020 reserved for expansion]

**SUBCHAPTER B. CEMETERY CORPORATIONS**

Sec. 711.021. **FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY**

- Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS  
Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NON-PROFIT CEMETERY CORPORATION  
Sec. 711.024. AUTHORITY OF NONPROFIT CEMETERY CORPORATION

[Sections 711.025–711.030 reserved for expansion]

**SUBCHAPTER C. CEMETERY ASSOCIATIONS**

- Sec. 711.031. RULES; CIVIL PENALTY  
Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED  
Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ASSOCIATION; RECORDING TITLE  
Sec. 711.034. DEDICATION  
Sec. 711.035. EFFECT OF DEDICATION  
Sec. 711.036. REMOVAL OF DEDICATION  
Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY  
Sec. 711.038. SALE OF PLOTS  
Sec. 711.039. RIGHTS OF INTERMENT IN PLOT  
Sec. 711.040. MULTIPLE OWNERS OF PLOT

[Sections 711.041–711.050 reserved for expansion]

**SUBCHAPTER D. ENFORCEMENT**

- Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE  
Sec. 711.052. CRIMINAL PENALTIES

**SUBTITLE C. CEMETERIES**

**CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Burial park" means a tract of land that is dedicated to and is used or intended to be used for interment in graves.

(2) "Cemetery" means a place that is dedicated to and that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, crematory, or crematory and columbarium.

(3) "Cemetery association" means an organization that is:

(A) an association not operated for profit or a corporation; and

(B) authorized by its articles to conduct a business for cemetery purposes.

(4) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(5) "Columbarium" means:

(A) a durable, fireproof structure or a room or other space in a durable, fireproof structure used or intended to be used to contain cremated remains; or

(B) a plot of earth containing niches.

(6) "Cremated remains" means remains after incineration in a crematory.

(7) "Cremation" means the interment of remains by reduction to cremated remains and the deposit of the cremated remains in a grave, crypt, or niche.

(8) "Crematory" means a structure containing a furnace used or intended to be used for the incineration of remains.

(9) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(10) "Crypt" means a chamber in a mausoleum of sufficient size to inter uncremated remains.

(11) "Directors" means the governing body of a cemetery association.

(12) "Entombment" means interment in a crypt.

(13) "Grave" means a space of ground that is in a burial park and that is used or intended to be used for interment in the ground.

(14) "Interment" means the permanent disposition of remains by cremation, inurnment, entombment, or burial.

(15) "Inurnment" means the placement of cremated remains in an urn and the permanent disposition of the urn in a niche.

(16) "Lawn crypt" means a subsurface concrete and reinforced steel receptacle installed in multiple units for burial of remains in a coffin.

(17) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(18) "Niche" means a recess in a columbarium used or intended to be used for interment of cremated remains.

(19) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(20) "Perpetual care" means:

(A) the maintenance in proper order of the sod, foliage, and places in which interments have been made; and

(B) the provision for the administration of perpetual care funds on the contingency that the person administering the funds does not act.

(21) "Perpetual care cemetery" means a cemetery for the benefit of which a perpetual care fund is established as provided by Chapter 712.

(22) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, or a niche or adjoining niches.

(23) "Plot owner" means a person:

(A) in whose name a plot is listed in a cemetery association office as the owner of the exclusive right of sepulture; or

(B) who holds, from a cemetery association, a conveyance or a certificate of ownership of the exclusive right of sepulture in a particular plot in the association's cemetery.

(24) "Remains" means the body of a decedent. (V.A.C.S. Art. 912a-1 (part).)

**Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER.** (a) Unless a decedent has left other directions for the disposition of the decedent's remains, the following persons, in the priority listed, have the right to control the disposition of the person's remains, shall inter the remains, and are liable for the reasonable cost of interment:

(1) the decedent's surviving spouse;

(2) the decedent's surviving children;

(3) the decedent's surviving parents; or

(4) the person in the next degree of kinship in the order named by law to inherit the estate of the deceased.

(b) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

(c) If there is no person with the duty to inter under Subsection (a) and:

- (1) an inquest is held, the person conducting the inquest shall inter the remains; and
- (2) an inquest is not held, the county in which the death occurred shall inter the remains.

(d) An individual who represents that the individual knows the identity of the decedent and, in order to procure the decedent's interment, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damage that results, directly or indirectly, from that warrant. (V.A.C.S. Art. 912a-20.)

Sec. 711.003. RECORDS OF INTERMENT. A record shall be kept of each interment in a cemetery. The record must include:

- (1) the date the remains are received;
- (2) the date the remains are interred;
- (3) the name and age of the person interred if those facts can be conveniently obtained; and
- (4) the identity of the plot, and grave, niche, or crypt in which the remains are interred. (V.A.C.S. Art. 912a-21 (part).)

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from the cemetery with the consent of the cemetery association operating the cemetery and the written consent of the following persons, in the priority listed:

- (1) the decedent's surviving spouse;
- (2) the decedent's surviving children;
- (3) the decedent's surviving parents; or
- (4) the decedent's siblings.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before the person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of the county court of the county in which the cemetery is located. Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:

- (1) the cemetery association operating the cemetery in which the remains are interred;
- (2) each person whose consent is required for removal of the remains under Subsection (a) who does not consent to the removal; and
- (3) any other person that the court requires to be served.

(d) For the purposes of Subsection (c), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by mail must be given not later than the 16th day before the date of application.

(e) Subsections (a)-(d) do not apply to the removal of remains:

- (1) from one plot to another plot in the same cemetery;
- (2) by the cemetery association from a plot for which the purchase price is past due and unpaid, to another suitable place; or
- (3) on the order of a court or person who conducts inquests.

(f) Remains may not be removed from a cemetery except on the written order of the health department having jurisdiction of the cemetery or the county court of the county in which the cemetery is located. The cemetery shall keep a duplicate copy of the order as part of its records.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:

- (1) the date the remains are removed;
- (2) the name and age at death of the decedent if those facts can be conveniently obtained;
- (3) the place to which the remains are removed; and

(4) the cemetery and plot from which the remains are removed.

(h) If the remains are not reinterred, the person who removes the remains shall make and keep a record of the disposition of the remains.

(i) A person who removes remains from a cemetery shall give the cemetery association operating the cemetery a copy of the record made as required by Subsections (g) and (h). (V.A.C.S. Arts. 912a-21 (part), 912a-22.)

**Sec. 711.005. USE OF FUNDS FOR SPECIAL CARE OF PLOT IN NONPERPETUAL CARE CEMETERY.** (a) A person may set aside a reasonable amount of money or property in trust to maintain and beautify a private block, plot, or structure in a nonperpetual care cemetery.

(b) The person must provide a written instrument stating the terms of the trust for the trustee regarding the handling and investment of the money or property and the expenditure of the income or proceeds. The instrument must require that:

(1) not more than 75 percent of the income or proceeds spent annually may be devoted to maintaining and beautifying the private block, plot, or structure designated in the instrument; and

(2) at least 25 percent of the income or proceeds spent annually must be devoted generally to maintain and beautify the cemetery in which the plot, block, or structure is located.

(c) The trustee must be a trust company or a bank with trust powers operating in this state.

(d) The trust and the administration of the trust are a discharge of a duty due from the person founding the trust to the person interred in the designated block or plot and to the public. The trust is not a perpetuity. (V.A.C.S. Art. 912a-18 (part).)

**Sec. 711.006. LIMITATIONS ON CREMATORY CONSTRUCTION AND OPERATION.** (a) A crematory may be constructed, established, or maintained only in a burial park having a columbarium, plot, or mausoleum amply equipped for interment of remains cremated at that crematory.

(b) The crematory may be in the same fireproof structure as the columbarium, plot, or mausoleum, or in a separate fireproof building in the same cemetery or burial park as the columbarium, plot, or mausoleum.

(c) Cremated remains not removed from the crematory for permanent deposit elsewhere shall be permanently interred in a grave, crypt, or niche not later than the 30th day after the date of cremation. (V.A.C.S. Art. 912a-8.)

**Sec. 711.007. NONCONFORMING OR ABANDONED CEMETERY AS A NUISANCE; ABATEMENT AND INJUNCTION.** (a) A court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:

(1) maintained, located, or used in violation of this chapter or Chapter 712; or

(2) neglected so that it is offensive to the inhabitants of the surrounding section and has no perpetual care fund regularly and legally established.

(b) The proceeding may be brought by:

(1) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;

(2) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (1); or

(3) the owner of a residence:

(A) in or near the municipality in which the cemetery is located; or

(B) in the area proscribed for the location of a cemetery by Section 711.008.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery. (V.A.C.S. Art. 912a-25.)

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b), (c), and (e), an individual, corporation, or association may not inter remains in a cemetery located:

(1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;

(2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;

(3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;

(4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or

(5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

(1) a cemetery established and operating on or before September 3, 1945; or

(2) the establishment and use of a columbarium by an organized religious society or sect as part of or attached to the principal church building owned by the society or sect.

(c) A cemetery association operating a cemetery that was used and maintained inside the limits prescribed by Subsection (a) on or before September 3, 1945, may acquire land adjacent to the cemetery for cemetery purposes if additional land is required. That land may only be used as an addition to the cemetery.

(d) Subsections (e)-(i) apply to the establishment or use of a cemetery in a county with a population of less than 200,000 that borders the Gulf of Mexico.

(e) Not later than August 31, 1989, a person who desires to establish or use a cemetery inside municipal boundaries or within the distance prohibited by Subsection (a) for that municipality may file a written application with the governing body of the municipality to establish or use the cemetery if 80 percent or more of the municipality's boundaries are contiguous with the boundaries or extraterritorial jurisdiction of another municipality.

(f) If the location of the proposed cemetery is inside the prohibited distance from more than one municipality, the person must file a written application with the governing body of each municipality.

(g) The governing body of a municipality by ordinance shall prescribe the information required in an application submitted under this subsection or Subsection (e).

(h) The governing body may grant the application if it determines that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(i) Before the person may establish or use the cemetery, the application must be granted by each municipality required to receive an application under this section. (V.A.C.S. Arts. 912a-24(a), (c).)

Sec. 711.009. AUTHORITY OF CEMETERY KEEPER. (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers and duties granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce cemetery association rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property. (V.A.C.S. Art. 912a-26 (part).)

[Sections 711.010–711.020 reserved for expansion]

**SUBCHAPTER B. CEMETERY CORPORATIONS**

**Sec. 711.021. FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY.** (a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be either:

(1) a nonprofit corporation organized in accordance with Section A or B, Article 3.01, Texas Non-Profit Corporation Act (Article 1396–3.01, Vernon's Texas Civil Statutes), or with Section 711.022; or

(2) a private corporation operated for profit.

(c) The charter of a cemetery corporation formed after May 15, 1947, must state whether the corporation:

(1) is operated for profit or not for profit; and

(2) is operating a perpetual care cemetery or a nonperpetual care cemetery.

(d) A corporation formed before September 3, 1945, under statutory authority other than Section 5, Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a–5, Vernon's Texas Civil Statutes), to maintain and operate a cemetery is governed by this chapter only to the extent that this chapter does not conflict with the charter or articles of incorporation of the corporation.

(e) This section does not apply to a corporation chartered by the state before September 3, 1945, that, under its charter, bylaws, or dedication, created a perpetual care fund and maintains that fund in accordance with the corporation's trust agreement, Chapter 712, and this chapter. The corporation may operate a perpetual care cemetery without amending the corporation's charter as if it had been incorporated under this section.

(f) This section does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or a corporation solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery belonging to this state or a county or municipality. (V.A.C.S. Art. 912a–5 (part).)

**Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS.** (a) Plot owners may organize a nonprofit corporation to receive title to land previously dedicated to cemetery purposes.

(b) The plot owners must:

(1) publish notice of the time and place of the organizational meeting in a newspaper in the county, if there is a newspaper, for 30 days before the date of the meeting; and

(2) post written notice at the cemetery of the time and place of the meeting for 30 days before the date of the meeting.

(c) A majority of the plot owners present and voting at the meeting shall decide whether to incorporate and to convey the land to the corporation.

(d) If the plot owners vote to incorporate, at the same meeting they shall select from the plot owners a board of directors to be named in the charter. (V.A.C.S. Art. 912a–7.)

**Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NON-PROFIT CEMETERY CORPORATION.** (a) A person who purchases a plot from a nonprofit cemetery corporation is a shareholder of the corporation. The person may vote in the election of corporate officers and on other matters to the same extent as a stockholder in another corporation.

(b) An owner of a plot in a cemetery operated by a nonprofit corporation is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, whether the owner acquired title to the plot from the corporation or before the corporation was organized. (V.A.C.S. Art. 912a-6 (part).)

Sec. 711.024. **AUTHORITY OF NONPROFIT CEMETERY CORPORATION.** A nonprofit cemetery corporation organized by plot owners may divide cemetery property into lots and subdivisions for cemetery purposes and charge assessments on the property for the purposes of general improvement and maintenance. (V.A.C.S. Art. 912a-6 (part).)

[Sections 711.025–711.030 reserved for expansion]

#### SUBCHAPTER C. CEMETERY ASSOCIATIONS

Sec. 711.031. **RULES; CIVIL PENALTY.** (a) A cemetery association may adopt and enforce rules:

- (1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the association;
- (2) to restrict the use of cemetery property;
- (3) to regulate the placement, uniformity, class, and kind of markers, monuments, effigies, and other structures in any part of the cemetery;
- (4) to regulate the planting and care of plants in the cemetery;
- (5) to prevent the interment of remains not entitled to be interred in the cemetery;
- (6) to prevent the use of a plot for a purpose that violates association restrictions;
- (7) to regulate the conduct of persons on cemetery property and to prevent improper meetings at the cemetery; and
- (8) for other purposes the directors consider necessary for the proper conduct of association business, and for the protection of the premises and the principles, plans, and ideals on which the cemetery was organized.

(b) Rules adopted under this section must be plainly printed or typed and maintained for inspection in the association's office or another place in the cemetery prescribed by the directors.

(c) The directors may prescribe a penalty for the violation of a rule adopted under this section. The association may recover the amount of the penalty in a civil action. (V.A.C.S. Art. 912a-14.)

Sec. 711.032. **DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED.** (a) A cemetery association may not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent.

(b) A provision of a contract entered into by a cemetery association or of a deed or certificate of ownership granted or issued by a cemetery association that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void. (V.A.C.S. Art. 912a-34.)

Sec. 711.033. **PROPERTY ACQUISITION BY CEMETERY ASSOCIATION; RECORDING TITLE.** (a) A cemetery association may acquire by purchase, donation, or devise property consisting of land, a mausoleum, a crematory and columbarium, or other property in which remains may be interred under law.

(b) A cemetery association that acquires property may record the association's title to the property with the county clerk of the county in which the property is located if the association president and secretary or other authorized officer acknowledge a declaration executed by the association that describes the property and declares the association's intention to use the property or a part of the property for interment purposes.

(c) Filing under Subsection (b) is constructive notice as of the date of the filing of the use of the property for interment.



(d) A cemetery association may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose. (V.A.C.S. Art. 912a-9.)

**Sec. 711.034. DEDICATION.** (a) A cemetery association that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into sections, blocks, lots, avenues, walks, or other subdivisions, and make a map or plat of the property showing the subdivisions, with descriptive names or numbers; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property, delineating sections, halls, rooms, corridors, elevators, or other divisions of the property, with descriptive names and numbers.

(b) The cemetery association shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery association shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or association officers;

(2) signed by the association president or vice-president and by the secretary of the association, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under this section dedicates the property for cemetery purposes and is constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. If a change is made, the association shall file an amended map or plat.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in county deed records. (V.A.C.S. Art. 912a-10 (part).)

**Sec. 711.035. EFFECT OF DEDICATION.** (a) Property may be dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the association, nonuse by the association, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

(1) the directors of the cemetery association that owns or operates the cemetery; or

(2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

(1) is exempt from public improvements assessments and public taxation; and

(2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section 711.007. (V.A.C.S. Arts. 912a-10 (part), 912a-11(a) (part).)

Sec. 711.036. REMOVAL OF DEDICATION. (a) A district court of the county in which a dedicated cemetery is located may, by order, remove the dedication if:

(1) all the remains have been removed from the cemetery; or

(2) no interments were made in the cemetery and the cemetery is not used or necessary for interment purposes.

(b) A proceeding may be brought by:

(1) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;

(2) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (1); or

(3) the owner of property situated so that its value is affected by the cemetery.

(c) The court may order the removal of the dedication of a cemetery on notice and proof satisfactory to the court.

(d) The district court in a county in which a dedicated cemetery is located may, in a proceeding brought by the affected political subdivision, remove the dedication from property lying in the path of proposed construction of or on a highway, thoroughfare, road, or street if:

(1) the United States, this state, a county, a municipality, or another governmental subdivision of this state determines that a new highway, thoroughfare, road, or street will be constructed along a proposed route or that an existing highway, thoroughfare, road, or street will be widened;

(2) the determination is a matter of public record; and

(3) after the determination, property lying in the path of the proposed route is dedicated for cemetery purposes.

(e) Dedication of property for cemetery purposes under the circumstances described by Subsection (d) is presumed to be made in fraud of the rights of the public and for the sole purpose of enhancing the value of property to be condemned. (V.A.C.S. Arts. 912a-11(a) (part), (b).)

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery association by contract may incur indebtedness as required to conduct the association's business and may secure the indebtedness by mortgage, deed of trust, or other lien against association property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes. (V.A.C.S. Art. 912a-23.)

Sec. 711.038. SALE OF PLOTS. (a) A cemetery association may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section 711.034; and

(2) subject to the rules of the cemetery association and the restrictions in the instrument of conveyance.

(b) A conveyance of the exclusive right of sepulture by a cemetery association must be signed by the association president or vice-president and the association secretary or other officers authorized by the association.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the association's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership may not be divided without the consent of the cemetery association.

(e) A person is not required to be licensed to sell a plot in a dedicated cemetery. (V.A.C.S. Arts. 912a-12 (part), 912a-13 (part).)

**Sec. 711.039. RIGHTS OF INTERMENT IN PLOT.** (a) A plot in which the exclusive right of sepulture is conveyed is presumed to be the separate property of the person named as grantee in the instrument of conveyance.

(b) The spouse of a person to whom the exclusive right of sepulture in a plot is conveyed has a vested right of interment of the spouse's remains in the plot while the spouse is married to the plot owner or if the spouse is married to the plot owner at the time of the owner's death.

(c) An attempted conveyance or other action without the joinder or written, attached consent of the spouse of the plot owner does not divest the spouse of the vested right of interment.

(d) The vested right of interment is terminated:

(1) on the final decree of divorce between the plot owner and the owner's former spouse unless the decree provides otherwise; or

(2) when the remains of the person having the vested right are interred elsewhere.

(e) Unless a plot owner who has the exclusive right of sepulture in a plot and who is interred in that plot has made a specific disposition of the plot by express reference to the plot in the owner's will or by written declaration filed and recorded in the office of the cemetery association:

(1) a grave, niche, or crypt in the plot shall be reserved for the surviving spouse of the plot owner; and

(2) the owner's children, in order of need, may be interred in any remaining graves, niches, or crypts of the plot without the consent of a person claiming an interest in the plot.

(f) The surviving spouse or a child of an interred plot owner may each waive his right of interment in the plot in favor of a relative of the owner or relative of the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.

(g) The exclusive right of sepulture in an unused grave, niche, or crypt of a plot in which the plot owner has been interred may be conveyed only by:

(1) the surviving spouse, if any, and children of the owner; or

(2) the surviving spouse, if any, and the heirs-at-law of the owner, if there is no surviving child of the owner.

(h) Unless a deceased plot owner who has the exclusive right of sepulture in a plot and who is not interred in the plot has made specific disposition of the plot by express reference to the plot in a will or by written declaration filed and recorded in the office of the cemetery association, the exclusive right of sepulture in the plot, except the one grave, niche, or crypt reserved for the surviving spouse, vests on the death of the owner in the owner's heirs-at-law and may be conveyed by them. (V.A.C.S. Arts. 912a-12 (part), 912a-13 (part).)

**Sec. 711.040. MULTIPLE OWNERS OF PLOT.** Two or more owners of a plot may designate a person to represent the plot and file with the cemetery association written notice of the designation. If notice is not filed, the cemetery association may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot. (V.A.C.S. Art. 912a-13 (part).)

[Sections 711.041-711.050 reserved for expansion]

#### **SUBCHAPTER D. ENFORCEMENT**

**Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE.** (a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 91st day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 91st day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in the district court of any county in which the violation occurred. (V.A.C.S. Art. 912a-26a (part).)

Sec. 711.052. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment; or

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery operator for the represented purpose.

(b) An officer, agent, or employee of a cemetery or cemetery association commits an offense if the officer, agent, or employee pays or offers to pay a commission, rebate, or gratuity to a funeral director or the funeral director's employee or an employee of the cemetery or cemetery association.

(c) A cemetery association or an officer or employee of the association commits an offense if the association, officer, or employee offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed \$500; or

(2) if the defendant is an individual, by a fine not to exceed \$500, confinement in the county jail for a term not to exceed six months, or both. (V.A.C.S. Art. 912a-26a (part).)

## CHAPTER 712. PERPETUAL CARE CEMETERIES

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**CHAPTER 712. PERPETUAL CARE CEMETERIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

- (1) "Banking department" means the Banking Department of Texas.
- (2) "Commissioner" means the Banking Commissioner of Texas.
- (3) "Fund" means a cemetery perpetual care trust fund.
- (4) "Trustee" means the trustee of a cemetery perpetual care trust fund. (V.A.C.S. Art. 912a-1; New.)

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

- (1) a family, fraternal, or community cemetery;
- (2) an association of plot owners not operated for profit;
- (3) a church, a religious society or denomination, or a corporation solely administering the temporalities of a church or religious society or denomination. (V.A.C.S. Art. 912a-2 (part).)

Sec. 712.003. INCORPORATION REQUIRED; MINIMUM CAPITAL. (a) A perpetual care cemetery may not be organized unless the cemetery files with the secretary of state articles of incorporation showing:

- (1) subscriptions and payment in cash of the cemetery's full capital stock;
- (2) the location of the cemetery property; and
- (3) a certificate showing the deposit of the cemetery's perpetual care and maintenance guarantee fund in accordance with Section 712.004.

(b) A perpetual care cemetery must have a minimum capital of:

- (1) \$15,000, if the cemetery serves a municipality with a population of less than 15,000;
- (2) \$30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or
- (3) \$50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) This section does not apply to a cemetery corporation chartered before September 5, 1955, except that a corporation that amends its charter must comply with the minimum requirements of this section. (V.A.C.S. Art. 912a-28.)

Sec. 712.004. PERPETUAL CARE AND MAINTENANCE GUARANTEE FUND REQUIRED. (a) Before obtaining a corporate charter, a perpetual care cemetery must

establish a minimum perpetual care and maintenance guarantee fund by depositing in cash with the trustee:

- (1) \$15,000, if the cemetery has capital stock of \$15,000;
- (2) \$30,000, if the cemetery has capital stock of \$30,000; or
- (3) \$50,000, if the cemetery has capital stock of \$50,000 or more.

(b) The guarantee fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

(c) The amount of deposit required by law to be placed in trust for the perpetual care and maintenance of the cemetery from the receipts for the sale of a plot may, on the sale, be credited against the original perpetual care and maintenance guarantee fund until the amount of the credits equals the amount of the original deposit. After credits for that amount have been taken, the corporation shall deposit in the perpetual care trust fund the minimum amount required by law and any additional amount required by the rules, trust agreement, or contract of the cemetery association for the cemetery's perpetual care and maintenance.

(d) This section does not apply to a cemetery corporation chartered before September 3, 1945, except that a corporation that amends its charter must comply with the minimum requirements of this section. (V.A.C.S. Art. 912a-29.)

**Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF CEMETERY CORPORATION.** (a) If a corporation chartered under Section 712.003 does not begin actual operation under the charter for six months after the charter is granted and delivered, the commissioner shall cancel the charter and serve notice of the cancellation on the association by registered letter, addressed to the association's address.

(b) The commissioner may rescind the order of cancellation on:

- (1) the application of the directors;
- (2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed \$500;
- (3) the execution and delivery to the commissioner of an agreement to begin actual operation not later than one month after the date of the agreement; and
- (4) a proper showing by the trustee that the money of the fund is on deposit.

(c) If the corporation does not begin active operation as agreed, the commissioner by order shall set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated property is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to incorporators who signed the articles of incorporation. (V.A.C.S. Art. 912a-30.)

**Sec. 712.006. MAINTENANCE OF RECORDS AND FUNDS; AVAILABILITY FOR EXAMINATION.** (a) A perpetual care cemetery doing business in this state shall maintain the cemetery's books, accounting records, and funds in this state.

(b) The records and funds must be available for examination by the banking department at all times. (V.A.C.S. Art. 912a-32 (part).)

**Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED.** (a) A perpetual care cemetery shall post a sign in a conspicuous place in all offices in which sales are conducted or, if there is no office, at or near the cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following, in the manner and order stated:

- (1) "Perpetual Care Cemetery," in a minimum of 48-point black type;
- (2) the names of the cemetery officers and directors; and
- (3) the name of the bank or trust company entrusted with the fund.

(c) A perpetual care cemetery must include the following statement in each certificate of ownership, sales contract, or conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to keep the sod in repair and all places where interments have been made in order and to care for trees and shrubs planted by the cemetery."

(V.A.C.S. Art. 912a-16.)

[Sections 712.008-712.020 reserved for expansion]

**SUBCHAPTER B. PERPETUAL CARE TRUST FUND**

**Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND.** (a) A cemetery association that maintains, operates, or conducts a perpetual care cemetery in this state, including a permanent maintenance or free care cemetery, shall have a perpetual care trust fund established with a trust company or a bank with trust powers. The trust company or bank may not have more than one director who is also a director of the cemetery association.

(b) If there is no trust company or bank with trust powers that is qualified and willing to accept the trust funds at the regular fees established by the Texas Trust Code (Section 111.001 et seq., Property Code) and that is located in the county in which the cemetery association is located, the fund may be established with a board of trustees composed of three or more persons, no two trustees of which are also directors.

(c) The principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the principal separate from all other funds.

(d) In establishing a fund, the association may adopt plans for the general care, maintenance, and embellishment of the cemetery.

(e) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(f) A cemetery association that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(g) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the person contributing to the fund to persons interred and to be interred in the cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the cemetery from becoming a place of disorder, reproach, and desolation in the community in which the cemetery is located. (V.A.C.S. Arts. 912a-2 (part), 912a-15 (part).)

**Sec. 712.022. ESTABLISHMENT OF FUND BY NONPERPETUAL CARE CEMETERY.** (a) A cemetery association authorized by law to operate a cemetery as a perpetual care cemetery but not doing so may do so if the association:

(1) notifies the commissioner; and

(2) establishes a fund as provided by Section 712.021 in the amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date of the cemetery's first sale of burial space; or

(B) the minimum amount provided by Section 712.004.

(b) If the amount of the fund is the minimum amount provided by Section 712.004, the cemetery association is entitled to a credit against amounts required by this chapter to be paid by the association into the fund. The amount of the total credits permitted is equal to the difference between the amount computed under Subsection (a)(2)(A) and the amount computed under Subsection (a)(2)(B). (V.A.C.S. Art. 912a-15 (part).)

Sec. 712.023. **VALIDITY OF CONTRIBUTIONS.** A contribution for general perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument creating the trust; or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property. (V.A.C.S. Art. 912a-15 (part).)

Sec. 712.024. **AMENDMENT OF TRUST AGREEMENT.** A cemetery association and the trustee of the fund providing perpetual care for the association's cemetery may, by agreement, amend the perpetual care trust agreement to include any provision that is consistent with this chapter. (V.A.C.S. Art. 912a-15 (part).)

Sec. 712.025. **USE OF FUND INCOME.** (a) Fund income may be applied in the manner the directors determine to be for the best interest of the cemetery and may be used only for the perpetual care described by resolution, bylaw, or other action or instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the cemetery.

(b) Fund income may not be used for improvement or embellishment of unsold property to be offered for sale. (V.A.C.S. Arts. 912a-15 (part), 912a-17 (part).)

Sec. 712.026. **SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE.** (a) If the directors do not generally care for and maintain the part of the cemetery entitled to perpetual care, the district court of the county in which the cemetery is located may:

(1) by injunction compel the directors to expend the net fund income as required by this chapter; or

(2) appoint a receiver to take charge of the fund and expend the net fund income as required by this chapter.

(b) The suit for relief under this section must be brought by at least five plot owners whose plots in the cemetery are entitled to perpetual care. (V.A.C.S. Art. 912a-15 (part).)

Sec. 712.027. **INVESTMENT OF FUND.** (a) A trustee shall invest and manage the investment of the fund principal in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) The fund may not be invested without the written approval of an active officer of the cemetery association or a majority of its directors. An investment must be made at not more than the prevailing market value of the securities at the time of acquisition. (V.A.C.S. Arts. 912a-15 (part), 912a-17 (part).)

Sec. 712.028. **AMOUNT OF FUND DEPOSITS FROM SALES.** (a) A perpetual care cemetery shall deposit in the fund an amount that is at least:

(1) \$1 a square foot of ground area disposed of or sold as perpetual care property;

(2) \$70 for each crypt interment right for mausoleum interment or lawn crypt interment disposed of or sold as perpetual care property, or \$35 for each crypt interment right if that crypt is accessible only through another crypt; and

(3) \$20 for each niche interment right for columbarium interment disposed of or sold.

(b) A cemetery may not operate as a perpetual care cemetery, including a permanent maintenance or free care cemetery; unless the cemetery complies with this section and Section 712.029. (V.A.C.S. Art. 912a-15 (part).)

Sec. 712.029. **ACCOUNTING FOR AND DEPOSITING AMOUNTS; CIVIL PENALTY.** (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser.

(b) On the sale of burial space, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) If the purchase price is payable in installments, each amount paid must be applied first to the balance not required to be deposited in the fund, and the remainder, on receipt by the seller, shall be deposited in the fund.



(d) A seller of a plot shall deposit in the fund the required amount not later than the 10th day after the end of the month in which the amount is received.

(e) A seller who violates Subsection (d) is liable for a penalty of \$10 a day for each day of violation. The commissioner shall collect the penalty.

(f) If the seller refuses to pay the penalty, the commissioner shall report the refusal to the attorney general, who shall bring suit to recover the penalty, costs, and other relief requested by the attorney general as proper and necessary. (V.A.C.S. Art. 912a-15 (part).)

**Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF BURIAL SPACE IN PERPETUAL CARE CEMETERY.** (a) A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the purpose of the cemetery, including:

- (1) the improvement or embellishment of any part of the cemetery;
- (2) the erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the cemetery;
- (3) planting or cultivating plants in or around the cemetery; or
- (4) taking special care of or embellishing a burial plot, section, or building in the cemetery.

(b) Not more than 75 percent of the property's proceeds or income may be devoted to maintaining and beautifying the private block, plot, or structure for which the transfer is made.

(c) At least 25 percent of the property's proceeds or income must be devoted generally to maintaining and beautifying the cemetery in which the block, plot, or structure is located. (V.A.C.S. Art. 912a-18 (part).)

[Sections 712.031-712.040 reserved for expansion]

#### **SUBCHAPTER C. REGULATION AND ENFORCEMENT**

**Sec. 712.041. STATEMENT OF FUNDS.** (a) A perpetual care cemetery shall file in the cemetery's office and with the commissioner a statement in duplicate that shows:

- (1) the principal amount of its fund;
- (2) the amount of the fund invested in bonds and other securities;
- (3) the amount of fund cash on hand;
- (4) any other item that shows the financial condition of the fund;
- (5) the number of crypts, niches, and square feet of grave space sold or disposed of under perpetual care before and after March 15, 1934, listed separately; and
- (6) the number of crypts, niches, and square feet of grave space sold or disposed of under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.

(b) The association president and secretary, or two principal officers, shall verify the information on the statement.

(c) The association shall revise and post and file the statement on or before March 1 of each year.

(d) Not later than the 30th day after the date on which the statement is filed with the commissioner, a copy of the statement shall be published in at least one newspaper of general circulation in the county in which the cemetery is located. (V.A.C.S. Art. 912a-2 (part).)

**Sec. 712.042. FEES.** (a) On filing the statement of funds under Section 712.041, the cemetery shall pay the commissioner:

- (1) \$50, if the cemetery serves a municipality with a population of 25,000 or less; or
- (2) \$100, if the cemetery serves a municipality with a population of more than 25,000.

(b) The banking department shall receive and disburse revenues collected under this chapter in accordance with Article 12, Chapter I, The Texas Banking Code of 1943 (Article 342-112, Vernon's Texas Civil Statutes), for:

(1) the administration and enforcement of the law relating to the operation of funds; and

(2) investigations on department initiative, or on complaints made by others, regarding the operation of a perpetual care cemetery and the creation, investment, and expenditure of funds.

(c) A reasonable part of the amount that the banking department transfers each year of the biennium to the general revenue fund to cover the cost of government services rendered by other departments may consist of revenues collected under this chapter. (V.A.C.S. Art. 912a-3.)

Sec. 712.043. **ADDITIONAL FUND REPORT.** The commissioner may require, as often as the commissioner determines necessary, a trustee to make under oath a detailed report of the condition of the fund. The report must include:

(1) a detailed description of fund assets;

(2) a description of securities held by the fund;

(3) if a security held by the fund is a lien, a description of the property against which the lien is taken;

(4) each security's acquisition cost;

(5) each security's market value at the time of acquisition;

(6) each security's current market value;

(7) each security's status with reference to default;

(8) a statement that a security is not encumbered by debt;

(9) a statement that none of the fund assets are loans to the cemetery for which the fund is established or to an officer or director of the cemetery; and

(10) any other information the commissioner determines is pertinent. (V.A.C.S. Art. 912a-4 (part).)

Sec. 712.044. **AUDIT OF FUND RECORDS; AUDIT FEES AND EXPENSES.** (a) The commissioner shall examine the records of a perpetual care cemetery association annually or as often as necessary.

(b) An association that is examined under this section shall pay to the commissioner for the regular examination:

(1) not more than \$100 a day or part of a day for each examiner or not more than a total of \$400 for the entire examination, if the association's annual deposits to the association's fund as required by law are less than \$7,500; or

(2) not more than \$200 a day or part of a day for each examiner or not more than a total of \$800 for the entire examination, if the association's annual deposits to the association's fund as required by law are \$7,500 or more.

(c) If the examiner determines that the conditions of the association necessitate additional examination or a prolonged audit to ascertain the association's status, the association shall pay the total expense of the additional examination or audit. (V.A.C.S. Art. 912a-31.)

Sec. 712.045. **FAILURE TO FILE STATEMENT; CIVIL PENALTY.** (a) A cemetery association that does not file a statement of funds and a publication of the statement with the commissioner as required by Section 712.041 is liable for a penalty of \$5 a day for each day of failure. The commissioner shall collect the penalty.

(b) If the association does not pay the penalty, the commissioner shall notify the attorney general, who shall bring suit to recover the penalty and for other relief requested by the attorney general as proper and necessary. (V.A.C.S. Art. 912a-33.)

Sec. 712.046. **PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE.** (a) If a cemetery corporation does not file with the commissioner a statement of funds on

or before March 1 or pay the filing fee required by this chapter, the commissioner shall notify the attorney general. The failure to report is prima facie evidence that the fund does not comply with the law.

(b) If the commissioner finds that a fund does not comply with the law or if a trustee does not file a report required by the commissioner under Section 712.043 within 30 days after the date of the request, the commissioner shall notify the trustee and the cemetery for which the fund was established, in addition to the attorney general.

(c) If within 90 days after the date of the notice the attorney general is not notified by the commissioner that the violation has been corrected, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in the district court of any county in which the cemetery is operated. (V.A.C.S. Arts. 912a-2 (part), 912a-4 (part).)

**Sec. 712.047. RECEIVERSHIP; APPOINTMENT AND DUTIES OF RECEIVER.** (a) If a trustee does not comply with this chapter, the attorney general shall apply to the district court of the county in which the cemetery is operated for proper legal writs to require a report of the fund.

(b) If the fund is misappropriated by the trustee and is not handled as required by law, the attorney general shall apply to the court for the appointment by the court of a receiver to take custody of the fund for the benefit of the cestui que trust.

(c) The receiver may bring suit against the defaulting trustee as necessary to require a full accounting and restoration of the fund.

(d) If a perpetual care cemetery is placed in receivership, the receiver shall make deposits in the fund from the proceeds of the liquidation of the cemetery to meet the minimum deposit amounts required by law for the fund. A deficit in the fund below the minimum requirements is a preferred claim against any cemetery assets in the receiver's possession and takes precedence over all claims except vendor's liens on cemetery property.

(e) The receiver may deliver any residue to a trustee selected by the cemetery corporation in accordance with this chapter. (V.A.C.S. Arts. 912a-4 (part), 912a-19.)

**Sec. 712.048. CRIMINAL PENALTIES.** (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this subtitle, represents that the plot is under perpetual care;

(2) violates Section 712.041;

(3) invests funds in violation of Section 712.027; or

(4) does not post notice as required by Section 712.007.

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

(1) a fine not to exceed \$500; or

(2) if the defendant is an individual, by a fine not to exceed \$500, confinement in the county jail for a term not to exceed six months, or both. (V.A.C.S. Art. 912a-26a (part).)

## **CHAPTER 713. LOCAL REGULATION OF CEMETERIES**

### **SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES**

**Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED**

**Sec. 713.002. LOCAL TRUST FOR CEMETERY**

**Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES**

**Sec. 713.004. USE OF FUNDS**

**Sec. 713.005. DEPOSIT RECORDS**

**Sec. 713.006. TAX**

- Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE  
Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES  
Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY  
Sec. 713.010. PRIVATE CARE OF GRAVES

[Sections 713.011–713.020 reserved for expansion]

**SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES**

- Sec. 713.021. COUNTY TRUST FOR CEMETERY  
Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY  
Sec. 713.023. USE OF FUNDS  
Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE  
Sec. 713.025. PRIVATE CARE OF GRAVES  
Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS  
Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS  
Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS  
Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUND FOR VETERANS

**CHAPTER 713. LOCAL REGULATION OF CEMETERIES**

**SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES**

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a Type A general-law municipality may:

- (1) purchase, establish, and regulate a cemetery; and
- (2) enclose and improve a cemetery owned by the municipality. (V.A.C.S. Art. 1015, Subdivs. 7 (part), 14.)

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual. (V.A.C.S. Art. 969c, Secs. 1, 8 (part).)

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

- (1) the depositor's name;
- (2) the amount and purpose of the deposit;
- (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and

(4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally. (V.A.C.S. Art. 969c, Secs. 2, 2A.)

**Sec. 713.004. USE OF FUNDS.** (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally. (V.A.C.S. Art. 969c, Sec. 4.)

**Sec. 713.005. DEPOSIT RECORDS.** (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

- (1) the name of the depositor, listed in alphabetical order;
- (2) the purpose and amount of the deposit;
- (3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;
- (4) the condition and status of the trust imposed; and
- (5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county. (V.A.C.S. Art. 969c, Secs. 3, 5.)

**Sec. 713.006. TAX.** (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each \$100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits. (V.A.C.S. Art. 969c, Sec. 7a.)

**Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE.** The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

- (1) the occasion demands the appointment; or
- (2) a vacancy occurs. (V.A.C.S. Art. 969c, Sec. 7.)

**Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES.** The governing body of a municipality with a population of at least 120,000 but not more than 128,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery. (V.A.C.S. Art. 969c-1.)

**Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY.** (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the

county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare.

(c) A district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall:

- (1) remove or repair any fences, walls, or other improvements;
- (2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and
- (3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

- (1) a perpetual care cemetery incorporated under the laws of this state; or
- (2) a private family cemetery. (V.A.C.S. Art. 969c-2, Secs. 1, 2, 3, 4 (part), 5, 6 (part).)

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the third degree by affinity or consanguinity to a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules. (V.A.C.S. Art. 969c, Sec. 6; Art. 969c-2, Sec. 4 (part).)

[Sections 713.011-713.020 reserved for expansion]

#### SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund. (V.A.C.S. Art. 2351f-1, Sec. 1.)

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

(1) the amount and purpose of the gift; and

(2) other information determined necessary by the trustee. (V.A.C.S. Art. 2351f-1, Secs. 2, 3.)

**Sec. 713.023. USE OF FUNDS.** (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county. (V.A.C.S. Art. 2351f-1, Secs. 4, 5.)

**Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE.** If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust. (V.A.C.S. Art. 2351f-1, Sec. 7.)

**Sec. 713.025. PRIVATE CARE OF GRAVES.** This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

(1) has an interest in the grave or burial lot; or

(2) is related within the third degree by affinity or consanguinity to a decedent interred in a cemetery maintained by a trustee under this subchapter. (V.A.C.S. Art. 2351f-1, Sec. 6.)

**Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS.** (a) Except as provided by Sections 713.027 and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries." (V.A.C.S. Art. 2351f-1, Secs. 8, 9.)

**Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS.** (a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property. (V.A.C.S. Art. 2351f-2.)

**Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS.** (a) For purposes of historical preservation or public health, safety, or welfare, a commissioners

court may use public funds, county employees, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization. (V.A.C.S. Art. 2351f-3.)

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge. (V.A.C.S. Art. 2372i.)

#### CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY

Sec. 714.003. ABANDONED LOTS IN PRIVATE CEMETERIES

Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000

#### CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY. (a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

(1) less than two feet below the surface of the ground if the container is not made of an impermeable material; or

(2) less than 1½ feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. (V.A.C.S. Art. 931b-1.)

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY. (a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance. (V.A.C.S. Art. 930a-1, Sec. 1.)

Sec. 714.003. ABANDONED LOTS IN PRIVATE CEMETERIES. (a) The ownership or right of sepulture in an unoccupied lot or a part of a lot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization



reverts to the cemetery on a finding by a court that the lot or part of the lot is abandoned. A cemetery may convey title to a lot or part of a lot that has reverted to the cemetery.

(b) A lot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

- (1) maintain the lot in a condition consistent with other lots in the cemetery; or
- (2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

- (1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the lot; and
- (2) paying the cemetery for any past due maintenance charges on the lot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a lot or a part of a lot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim to the lot owner or, if the owner is deceased or his address is unknown, to the owner's successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition of an abandoned cemetery lot, including court costs and legal fees, a cemetery shall deposit the funds from the sale of the lot into an account to be used solely for the perpetual care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization described by Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)).

(3) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state. (V.A.C.S. Art. 931c.)

**Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000.** (a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care. (V.A.C.S. Art. 930a-1, Sec. 2.)

[Chapters 715-750 reserved for expansion]

## SUBTITLE A. PUBLIC SAFETY

## CHAPTER 751. MASS GATHERINGS

- Sec. 751.001. SHORT TITLE
- Sec. 751.002. DEFINITIONS
- Sec. 751.003. PERMIT REQUIREMENT
- Sec. 751.004. APPLICATION PROCEDURE
- Sec. 751.005. INVESTIGATION
- Sec. 751.006. HEARING
- Sec. 751.007. FINDINGS AND DECISION OF COUNTY JUDGE
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## TITLE 9. SAFETY

## SUBTITLE A. PUBLIC SAFETY

## CHAPTER 751. MASS GATHERINGS

Sec. 751.001. SHORT TITLE. This chapter may be cited as the Texas Mass Gatherings Act. (V.A.C.S. Art. 9002, Sec. 1.)

Sec. 751.002. DEFINITIONS. In this chapter:

(1) "Mass gathering" means a gathering that is held outside the limits of a municipality and that attracts or is expected to attract more than 5,000 persons who will remain at the meeting location for more than 12 continuous hours.

(2) "Person" means an individual, group of individuals, firm, corporation, partnership, or association.

(3) "Promote" includes organize, manage, finance, or hold.

(4) "Promoter" means a person who promotes a mass gathering. (V.A.C.S. Art. 9002, Sec. 2 (part).)

Sec. 751.003. PERMIT REQUIREMENT. A person may not promote a mass gathering without a permit issued under this chapter. (V.A.C.S. Art. 9002, Sec. 3 (part).)

Sec. 751.004. APPLICATION PROCEDURE. (a) At least 45 days before the date on which a mass gathering will be held, the promoter shall file a permit application with the county judge of the county in which the mass gathering will be held.

(b) The application must include:

(1) the promoter's name and address;

(2) a financial statement that reflects the funds being supplied to finance the mass gathering and each person supplying the funds;

(3) the name and address of the owner of the property on which the mass gathering will be held;

(4) a certified copy of the agreement between the promoter and the property owner;

(5) the location and a description of the property on which the mass gathering will be held;

(6) the dates and times that the mass gathering will be held;

(7) the maximum number of persons the promoter will allow to attend the mass gathering and the plan the promoter intends to use to limit attendance to that number;

(8) the name and address of each performer who has agreed to appear at the mass gathering and the name and address of each performer's agent;

(9) a description of each agreement between the promoter and a performer;

(10) a description of each step the promoter has taken to ensure that minimum standards of sanitation and health will be maintained during the mass gathering;

(11) a description of all preparations being made to provide traffic control, to ensure that the mass gathering will be conducted in an orderly manner, and to protect the physical safety of the persons who attend the mass gathering;

(12) a description of the preparations made to provide adequate medical and nursing care; and

(13) a description of the preparations made to supervise minors who may attend the mass gathering. (V.A.C.S. Art. 9002, Sec. 4.)

Sec. 751.005. INVESTIGATION. (a) After a permit application is filed with the county judge, the county judge shall send a copy of the application to the county health authority and the sheriff.

(b) The county health authority shall inquire into preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the county health authority shall submit to the county judge a report stating whether the health authority believes that the minimum standards of health and sanitation prescribed by state and local laws, rules, and orders will be maintained.

(c) The sheriff shall investigate preparations for the mass gathering. At least five days before the date on which the hearing prescribed by Section 751.006 is held, the sheriff shall submit to the county judge a report stating whether the sheriff believes that the minimum standards for ensuring public safety and order that are prescribed by state and local laws, rules, and orders will be maintained.

(d) The county judge may conduct any additional investigation that the judge considers necessary.

(e) The county health authority and sheriff shall be available at the hearing prescribed by Section 751.006 to give testimony relating to their reports. (V.A.C.S. Art. 9002, Sec. 5.)

Sec. 751.006. HEARING. (a) Not later than the 10th day before the date on which a mass gathering will begin, the county judge shall hold a hearing on the application. The county judge shall set the date and time of the hearing.

(b) Notice of the time and place of the hearing shall be given to the promoter and to each person who has an interest in whether the permit is granted or denied.

(c) At the hearing, any person may appear and testify for or against granting the permit. (V.A.C.S. Art. 9002, Sec. 6.)

Sec. 751.007. FINDINGS AND DECISION OF COUNTY JUDGE. (a) After the completion of the hearing prescribed by Section 751.006, the county judge shall enter his findings in the record and shall either grant or deny the permit.

(b) The county judge may deny the permit if he finds that:

(1) the application contains false or misleading information or omits required information;

(2) the promoter's financial backing is insufficient to ensure that the mass gathering will be conducted in the manner stated in the application;

(3) the location selected for the mass gathering is inadequate for the purpose for which it will be used;

(4) the promoter has not made adequate preparations to limit the number of persons attending the mass gathering or to provide adequate supervision for minors attending the mass gathering;

(5) the promoter does not have assurance that scheduled performers will appear;

(6) the preparations for the mass gathering do not ensure that minimum standards of sanitation and health will be maintained;

(7) the preparations for the mass gathering do not ensure that the mass gathering will be conducted in an orderly manner and that the physical safety of persons attending will be protected;

(8) adequate arrangements for traffic control have not been provided; or

(9) adequate medical and nursing care will not be available. (V.A.C.S. Art. 9002, Sec. 7.)

Sec. 751.008. **PERMIT REVOCATION.** (a) The county judge may revoke a permit issued under this chapter if the county judge finds that preparations for the mass gathering will not be completed by the time the mass gathering will begin or that the permit was obtained by fraud or misrepresentation.

(b) The county judge must give notice to the promoter that the permit will be revoked at least 24 hours before the revocation. If requested by the promoter, the county judge shall hold a hearing on the revocation. (V.A.C.S. Art. 9002, Sec. 8.)

Sec. 751.009. **APPEAL.** A promoter or a person affected by the action of a county judge in granting, denying, or revoking a permit may appeal that action to a district court having jurisdiction in the county in which the mass gathering will be held. (V.A.C.S. Art. 9002, Sec. 9.)

Sec. 751.010. **RULES.** (a) After notice and a public hearing, the Texas Board of Health shall adopt rules relating to minimum standards of health and sanitation to be maintained at mass gatherings.

(b) After notice and a public hearing, the Department of Public Safety shall adopt rules relating to minimum standards that must be maintained at a mass gathering to protect public safety and maintain order. (V.A.C.S. Art. 9002, Sec. 10.)

Sec. 751.011. **CRIMINAL PENALTY.** (a) A person commits an offense if the person violates Section 751.003.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than 90 days, or both. (V.A.C.S. Art. 9002, Sec. 11.)

#### CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES

Sec. 752.001. **DEFINITIONS**

Sec. 752.002. **EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES**

Sec. 752.003. **TEMPORARY CLEARANCE OF LINES**

Sec. 752.004. **RESTRICTION ON ACTIVITIES NEAR LINES**

Sec. 752.005. **RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES**

Sec. 752.006. **RESTRICTION ON OPERATION OF CERTAIN MACHINERY OR EQUIPMENT**

Sec. 752.007. **CRIMINAL PENALTY**

Sec. 752.008. **LIABILITY FOR DAMAGES**

#### CHAPTER 752. HIGH VOLTAGE OVERHEAD LINES

Sec. 752.001. **DEFINITIONS.** In this chapter:

(1) "High voltage" means more than 600 volts measured between conductors or between a conductor and the ground.

(2) "Overhead line" means a bare or insulated electrical conductor installed above ground but does not include a conductor that is de-energized and grounded or that is enclosed in a rigid metallic conduit. (V.A.C.S. Art. 1436c, Secs. 1(1), (2).)

Sec. 752.002. **EXEMPTION FOR CERTAIN EMPLOYEES AND ACTIVITIES.** (a) This chapter does not apply to the construction, reconstruction, operation, or maintenance by an authorized person of overhead electrical or communication circuits or conductors and their supporting structures and associated equipment that are part of a rail transportation system, an electrical generating, transmission, or distribution system, or a communication system.

(b) In this section, "authorized person" means:

(1) an employee of a light and power company, an electric cooperative, or a municipality working on his employer's electrical system;

(2) an employee of a transportation system working on the system's electrical circuits;

(3) an employee of a communication utility;

(4) an employee of a state, county, or municipal agency that has authorized circuit construction on the poles or structures that belong to an electric power company, an electric cooperative, a municipal or transportation system, or a communication system;

(5) an employee of an industrial plant who works on the plant's electrical system; or

(6) an employee of an electrical or communications contractor who is working under the contractor's supervision. (V.A.C.S. Art. 1436c, Secs. 1(3), 2.)

**Sec. 752.003. TEMPORARY CLEARANCE OF LINES.** (a) A person, firm, corporation, or association responsible for temporary work or a temporary activity or function closer to a high voltage overhead line than the distances prescribed by this chapter must notify the operator of the line at least 48 hours before the work begins.

(b) A person, firm, corporation, or association may not begin the work, activity, or function under this section until the person, firm, corporation, or association responsible for the work, activity, or function and the owner or operator, or both, of the high voltage overhead line have negotiated a satisfactory mutual arrangement to provide temporary de-energization and grounding, temporary relocation or raising of the line, or temporary mechanical barriers to separate and prevent contact between the line and the material or equipment or the person performing the work, activity, or function.

(c) The person, firm, corporation, or association responsible for the work, activity, or function shall pay the operator of the high voltage overhead line the actual expense incurred by the operator in providing the clearance prescribed in the agreement. The operator may require payment in advance and is not required to provide the clearance until the person, firm, corporation, or association responsible for the work, activity, or function makes the payment.

(d) If the actual expense of providing the clearance is less than the amount paid, the operator of the high voltage overhead line shall refund the surplus amount. (V.A.C.S. Art. 1436c, Sec. 6.)

**Sec. 752.004. RESTRICTION ON ACTIVITIES NEAR LINES.** (a) Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not perform a function or activity on land, a building, a highway, or other premises if at any time it is possible that the person performing the function or activity may:

(1) move or be placed within six feet of a high voltage overhead line while performing the function or activity; or

(2) bring any part of a tool, equipment, machine, or material within six feet of a high voltage overhead line while performing the function or activity.

(b) A person, firm, corporation, or association may not require an employee to perform a function or activity prohibited by Subsection (a). (V.A.C.S. Art. 1436c, Sec. 3.)

**Sec. 752.005. RESTRICTION ON OPERATION OF MACHINERY AND PLACEMENT OF STRUCTURES NEAR LINES.** Unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association, either individually or through an agent or employee, may not:

(1) erect, install, transport, or store all or any part of a house, building, or other structure within six feet of a high voltage overhead line;

(2) install, operate, transport, handle, or store all or any part of a tool, machine, or equipment within six feet of a high voltage overhead line; or

(3) transport, handle, or store all or any part of supplies or materials within six feet of a high voltage overhead line. (V.A.C.S. Art. 1436c, Sec. 4.)

**Sec. 752.006. RESTRICTION ON OPERATION OF CERTAIN MACHINERY OR EQUIPMENT.** (a) A person, firm, corporation, or association, individually, through an

agent or employee, or as an agent or employee, may not operate a crane, derrick, power shovel, drilling rig, hayloader, haystacker, mechanical cotton picker, pile driver, hoisting equipment, or similar apparatus any part of which is capable of vertical, lateral, or swinging motion unless:

- (1) a warning sign is posted and maintained as prescribed by Subsections (b) and (c);
  - (2) an insulated cage-type guard or protective device is installed about the boom or arm of the equipment, except a backhoe or dipper; and
  - (3) each lifting line, if the equipment includes a lifting hook device, is equipped with an insulator link on the lift hook connection.
- (b) The warning sign required by Subsection (a)(1) must be a weather-resistant sign of not less than five inches by seven inches with a yellow background and black lettering that reads:

**"WARNING—UNLAWFUL TO OPERATE THIS EQUIPMENT WITHIN TEN FEET OF HIGH VOLTAGE LINES."**

(c) The warning sign must be legible at 12 feet and placed:

- (1) within the equipment so that it is readily visible to the equipment operator while at the equipment controls; and
- (2) on the outside of the equipment in the number and location necessary to make it readily visible to a mechanic or other person engaged in the work.

(d) Notwithstanding the distance limitations prescribed by Sections 752.004 and 752.005, unless a person, firm, corporation, or association effectively guards against danger by contact with the line as prescribed by Section 752.003, the person, firm, corporation, or association may not operate all or any part of a machine or equipment described by this section within 10 feet of a high voltage overhead line. (V.A.C.S. Art. 1436c, Secs. 1(4), 5, 5A.)

Sec. 752.007. **CRIMINAL PENALTY.** (a) A person, firm, corporation, or association or an agent or employee of a person, firm, corporation, or association commits an offense if the person, firm, corporation, association, agent, or employee violates this chapter.

(b) An offense under this section is punishable by a fine of not less than \$100 or more than \$1,000, confinement in jail for not more than one year, or both. (V.A.C.S. Art. 1436c, Sec. 7(a).)

Sec. 752.008. **LIABILITY FOR DAMAGES.** If a violation of this chapter results in physical or electrical contact with a high voltage overhead line, the person, firm, corporation, or association that committed the violation is liable to the owner or operator of the line for all damages to the facilities and for all liability that the owner or operator incurs as a result of the contact. (V.A.C.S. Art. 1436c, Sec. 7(b).)

#### CHAPTER 753. FLAMMABLE LIQUIDS

- Sec. 753.001. **DEFINITIONS**
- Sec. 753.002. **MOBILE SERVICE UNITS**
- Sec. 753.003. **FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS**
- Sec. 753.004. **STORAGE TANKS**
- Sec. 753.005. **VEHICLE REGULATIONS**
- Sec. 753.006. **UNIFORMITY AND CONFORMITY**
- Sec. 753.007. **PUBLIC HEARING**
- Sec. 753.008. **ENFORCEMENT**
- Sec. 753.009. **INJUNCTIVE RELIEF**
- Sec. 753.010. **CIVIL PENALTY**
- Sec. 753.011. **CRIMINAL PENALTY**

#### CHAPTER 753. FLAMMABLE LIQUIDS

Sec. 753.001. **DEFINITIONS.** In this chapter and in the rules adopted under this chapter:

- (1) "Board" means the State Board of Insurance.

(2) "Bulk plant" means that portion of a property operated in conjunction with a retail service station where flammable liquids are received by tank vessel, tank car, or tank vehicle and are stored or blended in bulk for distribution by tank car, tank vehicle, or container.

(3) "Flammable liquid" means a liquid having a flash point below 140° Fahrenheit and having a vapor pressure of not more than 40 pounds per square inch (absolute) at 100° Fahrenheit. The term does not include a liquefied petroleum gas.

(4) "Mobile service unit" means a vehicle, tank truck, or other mobile device from which a flammable liquid used as motor fuel may be dispensed as an act of retail sale into the fuel tank of a motor vehicle parked on an off-street parking facility.

(5) "Person" means an individual, firm, association, corporation, or other private entity.

(6) "Retail service station" means that portion of a property where a flammable liquid used as motor fuel is stored and dispensed as an act of retail sale from fixed equipment into the fuel tank of a motor vehicle. (V.A.C.S. Art. 9201, Secs. 1, 2(d) (part).)

**Sec. 753.002. MOBILE SERVICE UNITS.** (a) The board shall adopt rules for the safe movement and operation of mobile service units and the safe dispensing of flammable liquids by mobile service units.

(b) A municipality may require a license for the operation of each mobile service unit in the municipality and may charge a reasonable license fee. (V.A.C.S. Art. 9201, Sec. 2(d) (part).)

**Sec. 753.003. FLAMMABLE LIQUID AT RETAIL SERVICE STATIONS.** (a) The board shall adopt rules for the safe storage, handling, and use of flammable liquids at retail service stations.

(b) The rules must substantially conform to the published standards of the National Fire Protection Association in effect on September 1, 1969, for the storage, handling, and use of flammable liquids at retail service stations.

(c) This chapter or a rule adopted under this chapter does not prohibit or permit the prohibition of a self-service gasoline station operation if the station requires that an attendant be on the station premises. (V.A.C.S. Art. 9201, Secs. 2(a), (b), (c).)

**Sec. 753.004. STORAGE TANKS.** (a) Flammable liquids may not be stored at a retail service station in a tank that has a gross capacity of more than 60 gallons above the surface of the ground. The individual or combined capacity or size of an underground flammable liquid tank at a retail service station may not be limited.

(b) A retail service station may operate in conjunction with a bulk plant that has aboveground storage tanks if:

(1) there are separate underground tanks having a capacity of not less than 550 gallons each for final storage and dispensing of flammable liquids into motor vehicle fuel tanks; and

(2) any piping that connects the bulk plant storage tanks with the retail service station's underground tanks is equipped with a valve that is within the control of the retail service station operator and that is kept closed and locked when the underground tanks are not being filled.

(c) Each aboveground tank at a bulk plant that is operated in conjunction with a retail service station that is on the same or contiguous property must be equipped with emergency vents of the types and capacities prescribed by standards of the National Fire Protection Association. (V.A.C.S. Art. 9201, Sec. 4.)

**Sec. 753.005. VEHICLE REGULATIONS.** The size and weight of and load carried by a vehicle used to transport or deliver flammable liquid from a point of origin to a point of destination may not be limited unless the limitation is in accordance with an applicable state motor vehicle and highway law and a municipal or county ordinance or rule in effect on September 1, 1969. (V.A.C.S. Art. 9201, Sec. 7.)

Sec. 753.006. **UNIFORMITY AND CONFORMITY.** (a) A county or municipality may not enact or enforce an ordinance or rule that is inconsistent with this chapter or the board's rules unless allowed by this chapter.

(b) If a municipality by ordinance adopted rules relating to mobile service units not later than 180 days after the board adopted rules relating to mobile service units and the rules adopted by the municipality are more restrictive than the board's rules, the rules are not invalid under Subsection (a).

(c) This chapter does not invalidate a municipal or county ordinance or rule that was in effect on September 1, 1969, and that relates to the storage of flammable liquids or relates to or prohibits mobile service units.

(d) The board rules must provide that a facility that is in service before the effective date of an applicable rule and that is not in strict conformity with the rule may continue in service if the facility does not constitute a distinct hazard to life or property. The rules may delineate the type of nonconformities that should be considered distinctly hazardous and the nonconformities that should be evaluated in light of local conditions. The rules must provide that a person who owns a facility affected by the rules receives reasonable notice of intent to evaluate the need for compliance and the time and place at which the person may appear to offer evidence on that issue. (V.A.C.S. Art. 9201, Secs. 2(d) (part), 5, 8 (part).)

Sec. 753.007. **PUBLIC HEARING.** The board may not adopt, amend, or repeal a rule under this chapter until after a public hearing. (V.A.C.S. Art. 9201, Sec. 6(a).)

Sec. 753.008. **ENFORCEMENT.** Under the board's supervision, the state fire marshal and each county fire marshal and municipal fire marshal shall enforce this chapter and the rules adopted under this chapter. (V.A.C.S. Art. 9201, Sec. 3.)

Sec. 753.009. **INJUNCTIVE RELIEF.** (a) The board may bring suit against a person who appears to be violating or threatening to violate a rule adopted under this chapter to restrain the person from violating or continuing to violate the rule.

(b) The suit shall be brought in the district court having jurisdiction in the county in which the violation or threat of violation occurs. At the board's request, the attorney general shall represent the board.

(c) In the suit, the court may grant the board any prohibitory or mandatory injunction the facts warrant, including a temporary restraining order, temporary injunction, or permanent injunction. The court may grant the relief without requiring a bond or other undertaking. (V.A.C.S. Art. 9201, Secs. 12(a), (b).)

Sec. 753.010. **CIVIL PENALTY.** (a) A person who violates a rule adopted under this chapter is liable to the state for a civil penalty of not more than \$100 for each day the person violates the rule.

(b) The civil penalty is recoverable in a district court in:

- (1) Travis County;
- (2) the county in which the person resides; or
- (3) the county in which the violation occurs.

(c) At the board's request, the attorney general shall institute and conduct a suit in the name of the state to recover the penalty.

(d) The civil penalty provided by this section may be in addition to or in lieu of the criminal penalty prescribed by Section 753.011. (V.A.C.S. Art. 9201, Sec. 11.)

Sec. 753.011. **CRIMINAL PENALTY.** (a) A person who is engaged in the business of storing, selling, or handling flammable liquids commits an offense if the person violates a rule adopted under this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000, confinement in the county jail for not more than 60 days, or both.

(c) Each day a person continues to violate a rule adopted under this chapter constitutes a separate offense. (V.A.C.S. Art. 9201, Sec. 10.)



**CHAPTER 754. PASSENGER ELEVATORS**

- Sec. 754.001. SAFETY DEVICE REQUIREMENT FOR PASSENGER ELEVATORS**
- Sec. 754.002. REVIEW OF DESIGNS**
- Sec. 754.003. CRIMINAL PENALTY**

**CHAPTER 754. PASSENGER ELEVATORS**

**Sec. 754.001. SAFETY DEVICE REQUIREMENT FOR PASSENGER ELEVATORS.**  
(a) A person may not operate a passenger elevator in a building located in this state unless the elevator is equipped with a device that will prevent the elevator's movement if the elevator's door or gate is open.

(b) Installation of a device, the design of which has been approved by the National Bureau of Standards or by the Industrial Accident Board, is prima facie evidence that the person has complied with this section. (V.A.C.S. Art. 6145a.)

**Sec. 754.002. REVIEW OF DESIGNS.** (a) The Industrial Accident Board shall inspect and approve or disapprove each model, drawing, or design of an elevator safety device submitted to the board in Austin under Section 754.001.

(b) The board shall charge a \$10 fee to inspect and approve or disapprove the model, drawing, or design. (V.A.C.S. Art. 6145b.)

**Sec. 754.003. CRIMINAL PENALTY.** (a) An individual, a member of a partnership, or a director, president, general manager, employee, agent, trustee, or receiver of a corporation that owns, leases, or is in charge of a building in which a passenger elevator is operated commits an offense if the elevator is operated and is not equipped with a safety device as prescribed by Section 754.001.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$5 or more than \$25.

(c) Each day a passenger elevator is operated without a safety device as prescribed by Section 754.001 constitutes a separate offense. (V.A.C.S. Art. 6145c.)

**CHAPTER 755. BOILERS**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 755.001. DEFINITIONS**

[Sections 755.002–755.010 reserved for expansion]

**SUBCHAPTER B. BOARD OF BOILER RULES**

- Sec. 755.011. COMPOSITION OF BOARD**
- Sec. 755.012. TERMS**
- Sec. 755.013. CHAIRMAN**
- Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY**
- Sec. 755.015. COMPENSATION**
- Sec. 755.016. MEETINGS**
- Sec. 755.017. POWERS AND DUTIES**
- Sec. 755.018. MAJORITY VOTE REQUIRED**

[Sections 755.019–755.020 reserved for expansion]

**SUBCHAPTER C. BOILER REGISTRATION AND INSPECTION**

- Sec. 755.021. REGISTRATION AND CERTIFICATE**
- Sec. 755.022. EXEMPTIONS FOR CERTAIN BOILERS**
- Sec. 755.023. APPOINTMENT OF INSPECTORS AND OTHER PERSONNEL**
- Sec. 755.024. AUTHORIZED INSPECTORS**
- Sec. 755.025. INSPECTION**
- Sec. 755.026. EXTENSIONS**
- Sec. 755.027. REPORTS BY INSPECTION AGENCY; JOINT INSPECTIONS**

- Sec. 755.028. SPECIAL INSPECTIONS
- Sec. 755.029. CERTIFICATE OF OPERATION
- Sec. 755.030. FEES
- Sec. 755.031. CERTIFICATE REVOCATION
- Sec. 755.032. RULES

[Sections 755.033–755.040 reserved for expansion]

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

- Sec. 755.041. REGULATION OF UNSAFE BOILERS
- Sec. 755.042. PROSECUTION; INJUNCTION
- Sec. 755.043. GENERAL CRIMINAL PENALTY
- Sec. 755.044. CRIMINAL PENALTY FOR INTERFERENCE WITH ENFORCEMENT
- Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION
- Sec. 755.046. AFFIDAVIT OF ORDERS

CHAPTER 755. BOILERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 755.001. DEFINITIONS. In this chapter:

- (1) "Alteration" means a substantial change in an original design.
- (2) "Board" means the board of boiler rules.
- (3) "Boiler" means:
  - (A) a heating boiler;
  - (B) a nuclear boiler;
  - (C) a power boiler; or
  - (D) an unfired steam boiler.
- (4) "Certificate inspection" means a boiler inspection, the report of which is used by the chief inspector to decide whether to issue a certificate of operation.
- (5) "Certificate of operation" means a certificate issued by the commissioner to allow the operation of a boiler.
- (6) "Commissioner" means the commissioner of the Texas Department of Labor and Standards.
- (7) "Department" means the Texas Department of Labor and Standards.
- (8) "External inspection" means an inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.
- (9) "Heating boiler" means a steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.
- (10) "High-temperature water boiler" means a water boiler designed for operation at pressures exceeding 160 pounds per square inch or temperatures exceeding 250 degrees Fahrenheit.
- (11) "Hot water heating boiler" means a boiler designed for operation at a pressure not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.
- (12) "Hot water supply boiler" means a boiler designed for operation at pressures not exceeding 160 pounds per square inch or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet if the boiler's:
  - (A) heat input exceeds 200,000 British thermal units per hour;
  - (B) water temperature exceeds 210 degrees Fahrenheit; or
  - (C) nominal water-containing capacity exceeds 120 gallons.

(13) "Inspection agency" means an authorized inspection agency providing inspection services.

(14) "Inspector" means the chief inspector, a deputy inspector, or an authorized inspector.

(15) "Internal inspection" means a complete and thorough inspection of the interior of a boiler as construction allows.

(16) "Nuclear boiler" means a nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and storage tanks, that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(17) "Portable power boiler" means a boiler primarily intended for use at a temporary location.

(18) "Power boiler" means a high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch.

(19) "Repair" means the work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

(20) "Steam heating boiler" means a boiler designed for operation at pressures not exceeding 15 pounds per square inch.

(21) "Unfired steam boiler" means a steam generating system that includes:

(A) evaporators;

(B) heat exchangers; or

(C) vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products. (V.A.C.S. Art. 5221c, Sec. 1 (part); New.)

[Sections 755.002–755.010 reserved for expansion]

#### **SUBCHAPTER B. BOARD OF BOILER RULES**

**Sec. 755.011. COMPOSITION OF BOARD.** (a) The Board of Boiler Rules is in the department.

(b) The board is composed of the following nine members appointed by the commissioner:

(1) three members representing persons who own or use boilers in this state;

(2) three members representing companies that insure boilers in this state;

(3) one member representing boiler manufacturers or installers;

(4) one member who is a mechanical engineer and a member of the faculty of a recognized college of engineering in this state; and

(5) one member representing a labor union.

(c) A member must have experience with boilers. To the extent possible, at least four members should be professional engineers registered in this state.

(d) The commissioner serves as an ex officio board member. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

**Sec. 755.012. TERMS.** Board members serve for staggered six-year terms, with the terms of three members expiring January 31 of each odd-numbered year. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

**Sec. 755.013. CHAIRMAN.** The chief inspector serves as chairman of the board. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

**Sec. 755.014. REMOVAL OF BOARD MEMBERS; VACANCY.** (a) The commissioner may remove a board member for inefficiency or neglect of official duty.

(b) A board member's office becomes vacant on the resignation, death, suspension, or incapacity of the member. The commissioner shall appoint, in the same manner as the original appointment, a person to serve for the remainder of the unexpired term. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

Sec. 755.015. **COMPENSATION.** A board member may not receive a salary but is entitled to reimbursement for actual expenses incurred in performing board duties. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

Sec. 755.016. **MEETINGS.** The board shall meet at least twice each year at the call of the chairman at a place designated by the board. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

Sec. 755.017. **POWERS AND DUTIES.** The board shall advise the commissioner in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

Sec. 755.018. **MAJORITY VOTE REQUIRED.** A board decision is not effective unless supported by the vote of at least five board members. (V.A.C.S. Art. 5221c, Sec. 2a (part).)

[Sections 755.019–755.020 reserved for expansion]

### SUBCHAPTER C. BOILER REGISTRATION AND INSPECTION

Sec. 755.021. **REGISTRATION AND CERTIFICATE.** Except as provided by Section 755.022, each boiler operated in this state must:

- (1) be registered with the department; and
- (2) have qualified for a current certificate of operation. (V.A.C.S. Art. 5221c, Sec. 2 (part).)

Sec. 755.022. **EXEMPTIONS FOR CERTAIN BOILERS.** (a) This chapter does not apply to:

- (1) boilers owned or operated by the federal government; or
- (2) pressure vessels or unfired steam boilers, other than steam drums of unfired steam boilers.

(b) Heating boilers used to heat buildings that are exclusively for residential use and that have accommodations for not more than four families are exempt from Sections 755.025, 755.027, 755.029, and 755.030. (V.A.C.S. Art. 5221c, Secs. 3, 8a.)

Sec. 755.023. **APPOINTMENT OF INSPECTORS AND OTHER PERSONNEL.** (a) The commissioner shall appoint a chief inspector of boilers to administer the boiler program. The chief inspector must:

- (1) be a resident of this state and a citizen of the United States;
- (2) have at least five years' experience in the construction, installation, inspection, operation, maintenance, or repair of boilers; and
- (3) pass a written examination that demonstrates the necessary ability to judge the safety of boilers.

(b) The chief inspector may not have a commercial interest in the manufacture, ownership, insurance, or agency of boilers or boiler appurtenances.

(c) As needed, the commissioner shall appoint persons with qualifications similar to those of the chief inspector to serve as deputy inspectors.

(d) The commissioner may employ clerical assistants as necessary to carry out this chapter. (V.A.C.S. Art. 5221c, Sec. 8.)

Sec. 755.024. **AUTHORIZED INSPECTORS.** (a) To be an authorized inspector, a person must obtain a commission as a boiler inspector from the commissioner and must be continuously employed by an inspection agency.

(b) The commissioner, by written examination, shall determine the qualifications of an applicant for a commission to be an authorized inspector.

(c) After proper investigation, the commissioner may accept an inspection commission issued to a person by any other jurisdiction that has a written examination equal to that of this state.

(d) For good cause, the commissioner may rescind a commission issued by this state. (V.A.C.S. Art. 5221c, Sec. 10 (part).)

Sec. 755.025. INSPECTION. (a) The commissioner shall require each boiler to be inspected internally and externally as provided by this section. The commissioner may provide that the inspection be performed by any inspector.

(b) Power boilers must receive an annual certificate inspection and an annual external inspection.

(c) Steam heating boilers and hot water heating boilers must receive a certificate inspection biennially.

(d) Hot water supply boilers and potable water heaters must receive a certificate inspection triennially.

(e) A portable power boiler must be inspected externally each time the boiler is moved to a new location and must receive an internal inspection at least annually.

(f) The commissioner shall designate the manner of inspection for nuclear boilers, the form of the inspection report, and the information to be reported. The commissioner and the owner of a nuclear boiler shall establish the intervals of inspection for the boiler.

(g) The commissioner may authorize the inspection of a boiler at any reasonable time if the commissioner determines that the boiler may be in an unsafe condition. The commissioner shall notify the inspection agency that insures that boiler and request the authorized inspector employed by that agency to participate with the chief inspector or a deputy inspector in a joint inspection of the boiler not later than the 20th day after the date on which the commissioner notifies the inspection agency. An additional charge may not be made for the joint inspection. (V.A.C.S. Art. 5221c, Secs. 4 (part), 4b, 5 (part), 10 (part).)

Sec. 755.026. EXTENSIONS. (a) With the approval of the commissioner and the inspection agency that has jurisdiction for that boiler, the interval between internal inspections of a boiler may be extended to a period not exceeding a total of 24 months for power boilers. For other unfired steam boilers, the inspection interval may be extended to the next scheduled downtime of that boiler, but not exceeding a total of 60 months.

(b) The interval between internal inspections of a boiler may be extended only if:

(1) continuous water treatment under competent and experienced supervision to control and limit corrosion and deposits has been in effect since its last internal inspection;

(2) the last internal and current external inspection of the boiler indicates that the interval may safely be extended; and

(3) accurate and complete records are available that show:

(A) that since the last internal inspection samples of boiler water have been taken or monitored at regular intervals not exceeding 24 hours of operation and that the water condition in the boiler is satisfactorily controlled;

(B) the dates that the boiler was out of service since the last internal inspection and the reasons that the boiler was taken out of service; and

(C) the nature of the repairs made to the boiler and the reasons that those repairs were made.

(c) The commissioner and the inspection agency may grant an additional extension for a period not exceeding 120 days to the inspection interval covered by the boiler's certificate of operation on receipt of a request for extension stating that an emergency exists. Before the extension may be granted, the inspection agency must make an external inspection of the boiler, and the conditions imposed under Subsection (b) must be met.

(d) If an extended period between internal inspections is approved by the commissioner and the inspection agency, the commissioner shall issue a new certificate of operation for the extended period of operation. (V.A.C.S. Art. 5221c, Sec. 4a.)

Sec. 755.027. **REPORTS BY INSPECTION AGENCY; JOINT INSPECTIONS.** (a) Not later than the 30th day after the date on which a certificate inspection is performed by an authorized inspector, the inspection agency employing the authorized inspector shall file a report with the commissioner stating:

- (1) the condition of the boiler;
- (2) the location of the boiler;
- (3) the date of the inspection; and
- (4) the name of the inspector.

(b) A boiler inspected by an authorized inspector is exempt from other inspections and inspection fees under this chapter, other than an inspection authorized under Section 755.025(g).

(c) An inspection agency shall notify the commissioner in writing of the cancellation or expiration of any insurance policy issued by that agency to cover a boiler located in this state, and shall include in the notice the reason for the cancellation or expiration. The notice must state the date the policy was issued and the date on which the cancellation or expiration takes effect. (V.A.C.S. Art. 5221c, Sec. 5 (part).)

Sec. 755.028. **SPECIAL INSPECTIONS.** The commissioner may provide a special inspection service to the owners, operators, and manufacturers of boilers. The service may include surveys required for certification to construct, assemble, or repair boilers or pressure vessels. (V.A.C.S. Art. 5221c, Sec. 6 (part).)

Sec. 755.029. **CERTIFICATE OF OPERATION.** (a) The commissioner shall issue to the owner or operator of a boiler a certificate of operation for the boiler if:

- (1) it is found after a certificate inspection to be in a safe condition for operation; and
- (2) the owner or operator has paid the appropriate fees.

(b) The certificate of operation is valid for not longer than the interval required for certificate inspections of that boiler.

(c) A certificate of operation must be posted under glass in a conspicuous place on or near the boiler for which it is issued. (V.A.C.S. Art. 5221c, Secs. 2 (part), 4 (part), 5 (part), 11(a) (part).)

Sec. 755.030. **FEES.** (a) The commissioner may set and collect fees for:

- (1) boiler inspections, including fees for special inspections;
- (2) the issuance of certificates of operation; and
- (3) the administration of examinations required under this chapter.

(b) The commissioner, with the advice of the board, shall set fees under this chapter in amounts necessary to defray the costs of administering this chapter. The fee for a certificate of operation may not exceed \$15.

(c) The fees, travel, and per diem collected under this section may be appropriated only to the boiler inspection division. (V.A.C.S. Art. 5221c, Secs. 5 (part), 11(a) (part), (b), (c) (part), (d).)

Sec. 755.031. **CERTIFICATE REVOCATION.** The commissioner may revoke a certificate of operation after good cause is shown. (V.A.C.S. Art. 5221c, Sec. 2 (part).)

Sec. 755.032. **RULES.** (a) The commissioner may adopt and enforce rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

(b) The commissioner may adopt rules establishing inspection procedures for the use of nondestructive examination equipment to comply with the inspection requirements under Section 755.025.

(c) The commissioner may exchange information, including data on experience, with other authorities that inspect boilers to obtain information necessary to adopt rules.

(d) The commissioner or a department employee may not prescribe the make, brand, or kind of boilers to purchase. (V.A.C.S. Art. 5221c, Sec. 6 (part).)

[Sections 755.033–755.040 reserved for expansion]

**SUBCHAPTER D. ENFORCEMENT AND PENALTIES**

**Sec. 755.041. REGULATION OF UNSAFE BOILERS.** (a) If an inspection shows that a boiler is unsafe, the chief inspector or any deputy inspector shall issue a written preliminary order requiring repairs and alterations as necessary to make the boiler safe for use. The inspector may also order discontinuing the use of the boiler until the repairs and alterations are made or the unsafe conditions are remedied.

(b) On written request, an owner or operator who does not comply with a preliminary order is entitled to a hearing before the commissioner to show cause for not enforcing the preliminary order. If, after the hearing, the commissioner determines that the boiler is unsafe and that the preliminary order should be enforced, or that other acts are necessary to make the boiler safe, the commissioner may order or confirm the withholding of the certificate of operation for that boiler, and may impose additional requirements as necessary for the repair or alteration of the boiler or the correction of the unsafe conditions.

(c) The chief inspector may issue a temporary certificate of operation for a period not to exceed 30 days pending the completion of the replacement or repairs.

(d) This section does not limit the commissioner's authority under Section 755.028 or 755.032.

(e) A boiler that cannot be made safe for use shall be condemned and the use of that boiler prohibited. (V.A.C.S. Art. 5221c, Secs. 1 (part), 4 (part).)

**Sec. 755.042. PROSECUTION; INJUNCTION.** (a) A prosecution may not be maintained if the issuance or renewal of a certificate of operation has been requested for a boiler but has not been acted on. However, the commissioner may petition a district court for an injunction to restrain the operation of the boiler until the condition restraining its use is corrected and a certificate of operation is issued if the commissioner determines that the operation of the boiler without a certificate of operation constitutes a serious menace to the life and safety of the persons in or about the premises. The attorney general or the district or county attorney may bring the suit, and venue is in the county in which the boiler is located. It is not necessary for the prosecutor to verify the pleadings or for the state to execute a bond.

(b) The commissioner's affidavit that a certificate of operation or an application for a certificate does not exist for a boiler, and the affidavit of the chief inspector or a deputy inspector that the operation of the boiler constitutes a menace to the life and safety of persons in or about the premises, are sufficient proof to warrant the immediate issuance of a temporary restraining order. (V.A.C.S. Art. 5221c, Sec. 2 (part).)

**Sec. 755.043. GENERAL CRIMINAL PENALTY.** (a) A person, firm, or corporation commits an offense if:

(1) the person, firm, or corporation owns a boiler in this state, has the custody, management, use, or operation of a boiler in this state, or is otherwise subject to this chapter or a rule adopted under this chapter; and

(2) the person, firm, or corporation violates this chapter, a rule adopted under this chapter, or an order issued by the commissioner or a regularly employed inspector authorized to enforce this chapter and rules and orders.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200, confinement in the county jail for not more than 60 days, or both. (V.A.C.S. Art. 5221c, Sec. 12.)

**Sec. 755.044. CRIMINAL PENALTY FOR INTERFERENCE WITH ENFORCEMENT.** (a) This section applies to a person who is:

(1) the owner, manager, superintendent, or other person in charge or control of a factory, mill, workshop, mine, store, business, or public or private work;

(2) the lessee or operator of such a facility; or

(3) the owner or lessee of any place in which a boiler subject to inspection under this chapter is located.

(b) A person commits an offense if the person:

(1) refuses to allow an official or employee of the department to enter the premises on which a boiler subject to inspection under this chapter is located and to remain for a period as is reasonably necessary;

(2) hinders the official or employee in any way; or

(3) otherwise prevents the official or employee from implementing this chapter.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 60 days, or both. (V.A.C.S. Art. 5221c, Sec. 13.)

Sec. 755.045. NOTICE OF RULE OR ORDER REQUIRED BEFORE PROSECUTION. A criminal action may not be maintained against any person relating to the violation of a rule adopted or an order issued under this chapter until the commissioner gives notice of the rule or order. (V.A.C.S. Art. 5221c, Sec. 14.)

Sec. 755.046. AFFIDAVIT OF ORDERS. An affidavit is admissible as evidence in any civil or criminal action involving an order adopted by the commissioner and the publication of the order, without further proof of the order's issuance or publication or of the contents of the order, if the affidavit:

(1) is issued under the seal of the commissioner;

(2) is executed by the commissioner, the chief inspector, or a deputy inspector;

(3) states the terms of the order;

(4) states that the order was issued and published; and

(5) states that the order was in effect during the period specified by the affidavit. (V.A.C.S. Art. 5221c, Sec. 15.)

#### CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS

##### SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY

Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY

[Sections 756.003–756.010 reserved for expansion]

##### SUBCHAPTER B. REFRIGERATORS AND OTHER CONTAINERS

Sec. 756.011. TYPES OF REFRIGERATORS AND CONTAINERS COVERED

Sec. 756.012. LEAVING REFRIGERATOR OR CONTAINER ACCESSIBLE TO CHILDREN

Sec. 756.013. CRIMINAL PENALTY

[Sections 756.014–756.020 reserved for expansion]

##### SUBCHAPTER C. TRENCH SAFETY

Sec. 756.021. TRENCH EXCAVATION IN MUNICIPALITY OR EXTRA TERRITORIAL JURISDICTION

Sec. 756.022. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION

#### CHAPTER 756. MISCELLANEOUS HAZARDOUS CONDITIONS

##### SUBCHAPTER A. COVERING WELLS, CISTERNS, AND HOLES

Sec. 756.001. COVERING LARGE WELL OR CISTERN; CRIMINAL PENALTY. (a) The owner or operator of a well or cistern that is at least 10 feet deep and not less than 10 inches nor more than six feet in diameter shall keep it entirely covered at all times except when the owner or operator is actually using the well or cistern.



(b) The cover required by this section must be capable of sustaining at least 200 pounds of weight.

(c) A person commits an offense if the person fails to cover a well or cistern as required by this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500. (V.A.C.S. Art. 9202, Secs. 1, 2.)

**Sec. 756.002. COVERING OR PLUGGING SMALL WELL OR HOLE; CRIMINAL PENALTY.** (a) A person who drills, digs, or otherwise creates or causes to be drilled, dug, or otherwise created a well or hole that is at least 10 feet deep and less than 10 inches in diameter may not abandon the hole unless the person first:

(1) completely fills the well or hole from its total depth to the surface; or

(2) plugs the well or hole with a permanent plug not less than 10 feet from the surface and completely fills the well or hole from the plug to the surface.

(b) A person commits an offense if the person abandons a well or hole in violation of this section. An offense under this subsection is a misdemeanor punishable by a fine of not less than \$100 or more than \$500. (V.A.C.S. Art. 9202, Secs. 1a (part), 2.)

[Sections 756.003–756.010 reserved for expansion]

#### **SUBCHAPTER B. REFRIGERATORS AND OTHER CONTAINERS**

**Sec. 756.011. TYPES OF REFRIGERATORS AND CONTAINERS COVERED.** This subchapter applies only to a refrigerator, ice box, or other airtight or semi-airtight container that has:

(1) a capacity of at least 1½ cubic feet;

(2) an opening of at least 50 square inches; and

(3) a door or lid equipped with a latch or other fastening device capable of securing the door or lid shut. (V.A.C.S. Art. 9203, Sec. 1 (part).)

**Sec. 756.012. LEAVING REFRIGERATOR OR CONTAINER ACCESSIBLE TO CHILDREN.** (a) A person may not place a container described by Section 756.011 outside of a structure or in a warehouse, storage room, or unoccupied or abandoned structure so that the container is accessible to children.

(b) A person may not permit a container described by Section 756.011 to remain in an area specified by Subsection (a) so that the container is accessible to children. (V.A.C.S. Art. 9203, Sec. 1 (part).)

**Sec. 756.013. CRIMINAL PENALTY.** (a) A person commits an offense if the person violates Section 756.012.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$5 or more than \$200.

(c) Each day of a continuing violation constitutes a separate offense. (V.A.C.S. Art. 9203, Sec. 2.)

[Sections 756.014–756.020 reserved for expansion]

#### **SUBCHAPTER C. TRENCH SAFETY**

**Sec. 756.021. TRENCH EXCAVATION IN MUNICIPALITY OR EXTRATERRITORIAL JURISDICTION.** (a) The bid documents and the contract for a construction project that includes a trench excavation exceeding a depth of five feet and that is located in a municipality or the extraterritorial jurisdiction of a municipality must include detailed plans and specifications for trench safety systems that:

(1) meet Occupational Safety and Health Administration standards; and

(2) provide a pay item for those trench safety systems.

(b) A municipality that has a building code must include the bid document and contract requirements specified by Subsection (a) in its municipal building code.

- (c) Subsection (a) does not apply to a contract entered into by a person subject to:
- (1) the safety standards adopted under Article 6053-1, Revised Statutes; and
  - (2) the administrative penalty provisions of Article 6053-2, Revised Statutes. (V.A. C.S. Art. 1015q.)

**Sec. 756.022. TRENCH EXCAVATION FOR POLITICAL SUBDIVISION.** (a) On a project for a political subdivision of the state in which trench excavation will exceed a depth of five feet, the bid documents and the contract must include:

- (1) detailed plans and specifications for adequate safety systems that meet Occupational Safety and Health Administration standards; and
- (2) requirements for a safety program for a trench system.

(b) This section does not apply to a person subject to:

- (1) the safety standards adopted under Article 6053-1, Revised Statutes; and
- (2) the administrative penalty provisions of Article 6053-2, Revised Statutes. (V.A. C.S. Art. 2368a.6.)

[Chapters 757-770 reserved for expansion]

#### **SUBTITLE B. EMERGENCIES**

### **CHAPTER 771. STATE ADMINISTRATION OF EMERGENCY COMMUNICATIONS**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **Sec. 771.001. DEFINITIONS**

[Sections 771.002-771.030 reserved for expansion]

#### **SUBCHAPTER B. ADVISORY COMMISSION ON STATE EMERGENCY COMMUNICATIONS**

- Sec. 771.031. COMPOSITION OF COMMISSION**  
**Sec. 771.032. APPLICATION OF SUNSET ACT**  
**Sec. 771.033. CHAIRMAN; MEETINGS**  
**Sec. 771.034. EXPENSES**  
**Sec. 771.035. STAFF**

[Sections 771.036-771.050 reserved for expansion]

#### **SUBCHAPTER C. ADMINISTRATION OF STATE EMERGENCY COMMUNICATIONS**

- Sec. 771.051. POWERS AND DUTIES OF ADVISORY COMMISSION**  
**Sec. 771.052. AGENCY COOPERATION**  
**Sec. 771.053. LIABILITY OF SERVICE PROVIDERS AND CERTAIN PUBLIC OFFICERS**  
**Sec. 771.054. EFFECT OF CHAPTER ON EMERGENCY COMMUNICATION DISTRICTS**  
**Sec. 771.055. DEVELOPMENT OF REGIONAL PLANS**  
**Sec. 771.056. SUBMISSION OF PLAN TO COMMISSION**  
**Sec. 771.057. AMENDMENT OF PLAN**  
**Sec. 771.058. OPTIONAL PARTICIPATION IN PLAN**  
**Sec. 771.059. DEADLINE FOR STATEWIDE 9-1-1 SERVICE**

[Sections 771.060-771.070 reserved for expansion]

#### **SUBCHAPTER D. FINANCING STATE EMERGENCY COMMUNICATIONS**

- Sec. 771.071. EMERGENCY SERVICE FEE**  
**Sec. 771.072. EQUALIZATION SURCHARGE**  
**Sec. 771.073. COLLECTION OF FEES AND SURCHARGES**  
**Sec. 771.074. EXEMPTION**

**Sec. 771.075. USE OF REVENUE**  
**Sec. 771.076. AUDITS**

**SUBTITLE B. EMERGENCIES**

**CHAPTER 771. STATE ADMINISTRATION OF EMERGENCY COMMUNICATIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 771.001. DEFINITIONS.** In this chapter:

(1) "Advisory commission" means the Advisory Commission on State Emergency Communications.

(2) "Emergency communication district" means:

(A) a public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or

(B) a district created under Subchapter B, C, or D, Chapter 772.

(3) "Intrastate long distance service provider" means a telecommunications carrier providing intrastate long distance service, as defined by the advisory commission.

(4) "Local exchange service provider" means a telecommunications carrier providing telecommunications service in a local exchange service area under a certificate of public convenience and necessity issued by the Public Utility Commission of Texas.

(5) "9-1-1 service" means a telecommunications service that provides the user of the public telephone system the ability to reach a public safety answering point by dialing the digits 9-1-1.

(6) "Public agency" means the state, a municipality, a county, an emergency communication district, a regional planning commission, or any other political subdivision or district that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, 9-1-1, or other emergency services.

(7) "Public safety agency" means the division of a public agency that provides fire-fighting, police, medical, or other emergency services, or a private entity that provides emergency medical or ambulance services.

(8) "Public safety answering point" means a continuously operated communications facility that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9-1-1 calls to appropriate public safety agencies.

(9) "Regional planning commission" means a commission established under Chapter 391, Local Government Code. (V.A.C.S. Art. 1432f, Sec. 1.)

[Sections 771.002-771.030 reserved for expansion]

**SUBCHAPTER B. ADVISORY COMMISSION ON STATE  
EMERGENCY COMMUNICATIONS**

**Sec. 771.031. COMPOSITION OF COMMISSION.** (a) The Advisory Commission on State Emergency Communications is composed of:

(1) eight members appointed by the governor;

(2) two members appointed by the lieutenant governor;

(3) two members appointed by the speaker of the house of representatives;

(4) the executive director of the Texas Advisory Commission on Intergovernmental Relations or the executive director's designee;

(5) the commissioner of health or the commissioner's designee;

(6) the public safety director of the Department of Public Safety or the public safety director's designee;

(7) the executive director of the Criminal Justice Policy Council or the executive director's designee; and

(8) the executive director of the major association representing regional planning commissions or the executive director's designee.

(b) The governor shall appoint one representative from each of the three local exchange carriers that serve the most local access lines in the state, one person who is a member of the governing body of a municipality, one person who is a member of a county commissioners court, and one person who is a director of an emergency communication district described by Section 771.001(2)(B).

(c) The major association representing municipal governments shall present to the governor a list of at least three eligible candidates for the position on the advisory commission to be filled by a member of a municipal governing body. The major association representing county governments shall present to the governor a list of at least three eligible candidates for the position on the advisory commission to be filled by a member of a county commissioners court. The governor shall consider those recommendations but is not required to select a person recommended.

(d) Appointed members of the advisory commission serve staggered terms of six years, with the terms of four members expiring September 1 of each odd-numbered year.

(e) A vacancy in an appointed position on the advisory commission shall be filled in the same manner as the position of the member whose departure created the vacancy. (V.A.C.S. Art. 1432f, Secs. 2(a) (part), (b), (f).)

Sec. 771.032. APPLICATION OF SUNSET ACT. The 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 expires September 1, 1999. (V.A.C.S. Art. 1432f, Sec. 2(g).)

Sec. 771.033. CHAIRMAN; MEETINGS. (a) The advisory commission shall appoint a chairman from among its members at the first meeting of the commission after the biennial appointment of commission members.

(b) The advisory commission shall meet in Austin and at other places fixed by the commission at the call of the chairman. (V.A.C.S. Art. 1432f, Secs. 2(a) (part), (c) (part).)

Sec. 771.034. EXPENSES. The expenses of a member of the advisory commission shall be paid as provided by the General Appropriations Act. (V.A.C.S. Art. 1432f, Sec. 2(e).)

Sec. 771.035. STAFF. The advisory commission may employ persons as necessary to carry out its functions. (V.A.C.S. Art. 1432f, Sec. 2(d).)

[Sections 771.036–771.050 reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATION OF STATE EMERGENCY COMMUNICATIONS

Sec. 771.051. POWERS AND DUTIES OF ADVISORY COMMISSION. The advisory commission shall:

(1) administer the implementation of statewide 9–1–1 service;

(2) develop minimum performance standards for equipment and operation of 9–1–1 service to be followed in developing regional plans under Section 771.055, including requirements that the plans provide for:

(A) automatic number identification by which the telephone number of the caller is automatically identified at the public safety answering point receiving the call; and

(B) other features the commission considers appropriate;

(3) examine and approve or disapprove regional plans as provided by Section 771.056;

(4) recommend minimum training standards and provide assistance in the establishment and operation of 9-1-1 service; and

(5) allocate money to prepare and operate regional plans as provided by Section 771.056. (V.A.C.S. Art. 1432f, Sec. 3.)

**Sec. 771.052. AGENCY COOPERATION.** Each public agency and regional planning commission shall cooperate with the advisory commission to the fullest extent possible. (V.A.C.S. Art. 1432f, Sec. 4(a).)

**Sec. 771.053. LIABILITY OF SERVICE PROVIDERS AND CERTAIN PUBLIC OFFICERS.** (a) A service provider of telecommunications service involved in providing 9-1-1 service, a manufacturer of equipment used in providing 9-1-1 service, or an officer or employee of a service provider of telecommunications service involved in providing 9-1-1 service is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(b) A member of the advisory commission or of the governing body of a public agency is not liable for any claim, damage, or loss arising from the provision of 9-1-1 service unless the act or omission causing the claim, damage, or loss violates a statute or ordinance applicable to the action. (V.A.C.S. Art. 1432f, Sec. 4(b).)

**Sec. 771.054. EFFECT OF CHAPTER ON EMERGENCY COMMUNICATION DISTRICTS.** Except as expressly provided by this chapter, this chapter does not affect the existence or operation of an emergency communication district or prevent the addition of territory to the area served by an emergency communication district as provided by law. (V.A.C.S. Art. 1432f, Sec. 4(c).)

**Sec. 771.055. DEVELOPMENT OF REGIONAL PLANS.** (a) Each regional planning commission shall develop a plan for the establishment and operation of 9-1-1 service throughout the region that the regional planning commission serves. The service must meet the standards established by the advisory commission.

(b) The plan must include a description of how the service is to be administered. The service may be administered by an emergency communication district, municipality, or county, by a combination formed by interlocal contract, or by other appropriate means as determined by the regional planning commission. In a region in which one or more emergency communication districts exist, a preference shall be given to administration by those districts and expansion of the area served by those districts.

(c) A regional plan must include a description of how money allocated to the region under this chapter is to be allocated in the region.

(d) In a region in which one or more emergency communication districts exist, if a district chooses to participate in the plan, the district shall assist in the development of the plan. (V.A.C.S. Art. 1432f, Secs. 5(a), (b), (c), (d) (part).)

**Sec. 771.056. SUBMISSION OF PLAN TO COMMISSION.** (a) The regional planning commission shall submit a regional plan to the advisory commission for approval or disapproval.

(b) In making its determination, the advisory commission shall consider whether the plan satisfies the standards established by the advisory commission under this chapter, the cost and effectiveness of the plan, and the appropriateness of the plan in the establishment of statewide 9-1-1 service.

(c) If the advisory commission disapproves the plan, it shall specify the reasons for disapproval and set a deadline for submission of a modified plan.

(d) If the advisory commission approves the plan, it shall allocate to the region from the money collected under Section 771.072 the amount that the advisory commission considers appropriate to operate 9-1-1 service in the region according to the plan. (V.A.C.S. Art. 1432f, Sec. 5(e).)

**Sec. 771.057. AMENDMENT OF PLAN.** A regional plan may be amended according to the procedure determined by the advisory commission. (V.A.C.S. Art. 1432f, Sec. 5(g).)

Sec. 771.058. **OPTIONAL PARTICIPATION IN PLAN.** (a) In a county with a population of 120,000 or less, the county or another public agency, other than the state, located in the county is not required to participate in the regional plan applicable to the regional planning commission in which it is located, and the fee or surcharge imposed under this chapter may not be charged to a customer in the county or territory of the public agency other than the county, unless the county or other public agency chooses to participate in the plan by resolution of its governing body.

(b) On approval by the advisory commission, an emergency communication district may choose to participate in the regional plan applicable to the regional planning commission region in which the district is located. An emergency communication district described by Section 771.001(2)(A) may choose to participate in the regional plan by resolution of its governing body or by adoption of an ordinance. An emergency communication district described by Section 771.001(2)(B) may choose to participate in the regional plan by order of the district's board after a public hearing held in the manner required for a public hearing on the continuation of the district under the law governing the district. Following the adoption of the resolution, ordinance, or order and approval by the advisory commission, the regional planning commission shall amend the regional plan to take into account the participation of the emergency communication district.

(c) Participation in the regional plan by an emergency communication district does not affect the organization or operation of the district, except that the district may not collect an emergency communication fee or other special fee for 9-1-1 service not permitted by this chapter. Participation by the district in the plan does not affect the district's authority to set its own fees in the territory under its jurisdiction on January 1, 1988. (V.A.C.S. Art. 1432f, Secs. 5(d) (part), (f), (h).)

Sec. 771.059. **DEADLINE FOR STATEWIDE 9-1-1 SERVICE.** Before September 1, 1995, all parts of the state must be covered by 9-1-1 service. (Ch. 236, Acts 70th Leg., R.S., 1987, Sec. 9 (part).)

[Sections 771.060-771.070 reserved for expansion]

#### SUBCHAPTER D. FINANCING STATE EMERGENCY COMMUNICATIONS

Sec. 771.071. **EMERGENCY SERVICE FEE.** (a) Except as otherwise provided by this subchapter, the advisory commission may impose a 9-1-1 emergency service fee on each local exchange access line or equivalent local exchange access line, including lines of customers in an area served by an emergency communication district participating in the applicable regional plan. The fee may not be imposed on a line to coin-operated public telephone equipment or to public telephone equipment operated by coin or by card reader. For purposes of this section, the advisory commission shall determine what constitutes an equivalent local exchange access line.

(b) The amount of the fee may not exceed 50 cents a month for each line.

(c) The advisory commission may set the fee in a different amount in each regional planning commission region based on the cost of providing 9-1-1 service to each region.

(d) The fee does not apply to an emergency communication district not participating in the applicable regional plan. A customer in an area served by an emergency communication district not participating in the regional plan may not be charged a fee under this section. Money collected under this section may not be allocated to an emergency communication district not participating in the applicable regional plan.

(e) A local exchange service provider shall collect the fees imposed on its customers under this section. Not later than the 60th day after the last day of the month in which the fees are collected, the local exchange service provider shall deliver the fees to the regional planning commission or other public agency designated by the regional planning commission and located in the area served by the regional planning commission.

(f) The regional planning commission or designated public agency shall distribute the fees to the public agencies in the county for use in providing 9-1-1 service. (V.A.C.S. Art. 1432f, Sec. 6(a).)

**Sec. 771.072. EQUALIZATION SURCHARGE.** (a) In addition to the fee imposed under Section 771.071, the advisory commission may impose a 9-1-1 equalization surcharge on each customer receiving intrastate long-distance service, including customers in an area served by an emergency communication district, even if the district is not participating in the regional plan.

(b) The amount of the surcharge may not exceed one-half of one percent of the charges for intrastate long-distance service, as defined by the commission.

(c) An intrastate long-distance service provider shall collect the surcharge imposed on its customers under this section and shall deliver the surcharges to the advisory commission not later than the 60th day after the last day of the month in which the surcharges are collected.

(d) The advisory commission periodically shall allocate the surcharges to each regional planning commission or other public agency designated by the regional planning commission for use in carrying out the regional plans provided for by this chapter. The allocations to the regional planning commissions are not required to be equal, but should be made to carry out the policy of this chapter to implement 9-1-1 service statewide. Money collected under this section may be allocated to an emergency communication district regardless of whether the district is participating in the applicable regional plan.

(e) The advisory commission shall manage the surcharges outside the state treasury until they are allocated to regional planning commissions. The advisory commission may retain from the surcharges the amount necessary for the commission to carry out its duties under this chapter. (V.A.C.S. Art. 1432f, Sec. 6(b).)

**Sec. 771.073. COLLECTION OF FEES AND SURCHARGES.** (a) A customer on which a fee or surcharge is imposed under this subchapter is liable for the fee or surcharge in the same manner as the customer is liable for the charges for services provided by the service provider. The service provider shall collect the fees and surcharges in the same manner it collects those charges for service, except that the service provider is not required to take legal action to enforce the collection of the fees or surcharges. A fee or surcharge must be stated separately on the customer's bill.

(b) The regional planning commission or a public agency designated by the regional planning commission may establish collection procedures and recover the cost of collection from the customer liable for the fee or surcharge. The regional planning commission or designated public agency may institute legal proceedings to collect a fee or surcharge and in those proceedings is entitled to recover from the customer court costs, attorney's fees, and an interest on the amount delinquent. The interest is computed at an annual rate of 12 percent beginning on the date the fee or surcharge becomes due.

(c) A service provider may not disconnect services for nonpayment of a fee or surcharge imposed under this subchapter.

(d) A service provider collecting fees or surcharges under this subchapter may retain as an administrative fee an amount equal to two percent of the total amount collected. (V.A.C.S. Art. 1432f, Secs. 6(c) (part), (d).)

**Sec. 771.074. EXEMPTION.** A fee or surcharge authorized by this subchapter may not be imposed on or collected from the state. (V.A.C.S. Art. 1432f, Sec. 6(c) (part).)

**Sec. 771.075. USE OF REVENUE.** Except as provided by Section 771.072(e) or 771.073(d), fees and surcharges collected under this subchapter may be used only for planning, development, and provision of 9-1-1 service as approved by the advisory commission. (V.A.C.S. Art. 1432f, Sec. 6(c) (part).)

**Sec. 771.076. AUDITS.** (a) The advisory commission may require at its own expense that an audit be conducted of a service provider collecting fees or surcharges under this subchapter or of a public agency receiving money under this chapter.

(b) The audit of a service provider must be limited to the collection and remittance of money collected under this subchapter. The audit of a public agency must be limited to the collection, remittance, and expenditure of money collected under this subchapter. (V.A.C.S. Art. 1432f, Sec. 6(e).)

CHAPTER 772. LOCAL ADMINISTRATION OF EMERGENCY COMMUNICATIONS

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Sec. 772.001. DEFINITIONS

[Sections 772.002–772.100 reserved for expansion]

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- Sec. 772.211. PRIMARY EMERGENCY TELEPHONE NUMBER
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- Sec. 772.226. APPROVAL AND REGISTRATION OF BONDS
- Sec. 772.227. REFUNDING BONDS
- Sec. 772.228. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS
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**SUBCHAPTER D. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH  
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- Sec. 772.309. BUDGET; ANNUAL REPORT; AUDIT
- Sec. 772.310. ESTABLISHMENT OF 9-1-1 SERVICE
- Sec. 772.311. PRIMARY EMERGENCY TELEPHONE NUMBER
- Sec. 772.312. TRANSMITTING REQUESTS FOR EMERGENCY AID
- Sec. 772.313. POWERS OF DISTRICT
- Sec. 772.314. 9-1-1 EMERGENCY SERVICE FEE
- Sec. 772.315. COLLECTION OF FEE
- Sec. 772.316. DISTRICT DEPOSITORY
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- Sec. 772.318. NUMBER AND LOCATION IDENTIFICATION
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- Sec. 772.322. REPAYMENT OF BONDS
- Sec. 772.323. ADDITIONAL SECURITY FOR BONDS
- Sec. 772.324. FORM OF BONDS
- Sec. 772.325. PROVISIONS OF BONDS
- Sec. 772.326. APPROVAL AND REGISTRATION OF BONDS
- Sec. 772.327. REFUNDING BONDS
- Sec. 772.328. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS
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- Sec. 772.401. DEFINITION
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- Sec. 772.403. IMPLEMENTATION OF 9-1-1 SERVICE AND FEE
- Sec. 772.404. COLLECTION OF FEE
- Sec. 772.405. AUDIT OF SERVICE PROVIDER

## CHAPTER 772. LOCAL ADMINISTRATION OF EMERGENCY COMMUNICATIONS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 772.001. DEFINITIONS. In this chapter:

(1) "Automatic location identification" means a feature corresponding to automatic number identification by which the number provided by the automatic number identification feature is matched with the address or location of the telephone from which the call is made and is presented to the public safety answering point along with the number in a computerized 9-1-1 system.

(2) "Automatic number identification" means a feature that enables a service supplier to identify the telephone number of a caller and that operates by forwarding the caller's telephone number to the public safety answering point, where the data is received by equipment that translates it into a visual display.

(3) "Base rate" means the rate or rates billed by a service supplier, as stated in the service supplier's charges approved by the appropriate regulatory authority, that represent the service supplier's recurring charges for local exchange access lines or their equivalent, exclusive of all taxes, fees, license costs, or similar charges.

(4) "Dispatch method" means the method of responding to a telephone request for emergency service by which a public safety answering point decides on the proper action to be taken and dispatches, when necessary, the appropriate emergency service unit.

(5) "Local exchange access lines" means all types of lines or trunks that connect a service user to the service supplier's local telephone exchange office.

(6) "9-1-1 service" means a telecommunications service through which the user of a public telephone system has the ability to reach a public safety answering point by dialing the digits 9-1-1.

(7) "9-1-1 system" means a system of processing emergency 9-1-1 calls.

(8) "Participating jurisdiction" means a public agency that by vote consents to receive 9-1-1 service from an emergency communication district.

(9) "Principal service supplier" means the entity that provides the most central office lines to an emergency communication district.

(10) "Private safety entity" means a private entity that provides emergency fire-fighting, ambulance, or medical services.

(11) "Public agency" means a municipality or county in this state that provides or has authority to provide fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(12) "Public safety agency" means the division of a public agency that provides fire-fighting, law enforcement, ambulance, medical, or other emergency services.

(13) "Public safety answering point" means a communications facility that:

(A) is operated continuously;

(B) is assigned the responsibility to receive 9-1-1 calls and, as appropriate, to dispatch emergency response services directly or to transfer or relay emergency 9-1-1 calls to other public safety agencies;

(C) is the first point of reception by a public safety agency of a 9-1-1 call; and

(D) serves the jurisdictions in which it is located or other participating jurisdictions.

(14) "Relay method" means the method of responding to a telephone request for emergency service by which a public safety answering point notes pertinent information and relays that information to the appropriate public safety agency or other provider of emergency services for appropriate action.

(15) "Selective routing" means the feature provided with computerized 9-1-1 service by which 9-1-1 calls are automatically routed to the answering point serving the place from which the call originates.

(16) "Service supplier" means an entity providing local exchange access lines to a service user in an emergency communication district.

(17) "Service user" means a person that is provided local exchange access lines in an emergency communication district.

(18) "Transfer method" means the method of responding to a telephone request for emergency service by which a public safety answering point transfers the call directly to the appropriate public safety agency or other provider of emergency services for appropriate action.

(19) "Data base" means the information stored in a management system that is a system of manual procedures and computer programs used to create, store, and update the data required for the selective routing and automatic location identification features in the provision of computerized 9-1-1 service. (V.A.C.S. Art. 1432c, Sec. 3 (part); Art. 1432d, Sec. 3 (part); Art. 1432e, Sec. 3 (part).)

[Sections 772.002-772.100 reserved for expansion]

**SUBCHAPTER B. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER TWO MILLION**

**Sec. 772.101. SHORT TITLE.** This subchapter may be cited as the 9-1-1 Emergency Number Act. (V.A.C.S. Art. 1432c, Sec. 1.)

**Sec. 772.102. PURPOSE.** It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of the units to develop and improve emergency communication procedures and facilities in a manner that makes possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly. (V.A.C.S. Art. 1432c, Sec. 2.)

**Sec. 772.103. DEFINITIONS.** In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "District" means a communication district created under this subchapter.

(3) "Principal municipality" means the municipality with the largest population in a county. (V.A.C.S. Art. 1432c, Sec. 3 (part).)

**Sec. 772.104. APPLICATION OF SUBCHAPTER.** This subchapter applies to a county with a population of more than two million and the adjacent territory described by Section 772.105 in which a district was created under Chapter 97, Acts of the 68th Legislature, Regular Session, 1983, before January 1, 1988. (V.A.C.S. Art. 1432c, Secs. 4(a), 4A.)

**Sec. 772.105. TERRITORY OF DISTRICT.** (a) The territory of a district consists of:

(1) the territory of the county for which the district is established; and

(2) for each municipality partially located in the county for which the district is established, the territory of that municipality located in another county.

(b) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district. (V.A.C.S. Art. 1432c, Secs. 4(a) (part), (b).)

Sec. 772.106. BOARD OF MANAGERS. (a) The district is governed by a board of managers consisting of:

- (1) one member appointed by the commissioners court of the county;
- (2) two members appointed by the mayor of the principal municipality, with approval of the city council;
- (3) one member appointed jointly by the volunteer fire departments operating in whole or part in the district, with the selection process coordinated by the county fire marshal;
- (4) one member appointed jointly by the municipalities other than the principal municipality that are participating jurisdictions; and
- (5) one member appointed by the principal service supplier.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) Board members are appointed for staggered terms of two years, with three members' terms expiring each year.

(d) A board member may be removed from office at will by the entity that appointed the member.

(e) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(f) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(g) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(h) The director of the district or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer or other member presiding at the meeting shall read and sign the record and the secretary shall attest the record.

(i) A majority of the voting members of the board constitutes a quorum.

(j) Voting members of the board may meet in executive session in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 1432c, Secs. 5(a) (part), (b) (part), (c) (part), (d), (e), (f), (g).)

Sec. 772.107. POWERS AND DUTIES OF BOARD. (a) The board shall name, control, and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system. (V.A.C.S. Art. 1432c, Secs. 5(a) (part), (c) (part).)

Sec. 772.108. DIRECTOR OF DISTRICT. (a) The board shall appoint a director of the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the board considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board. (V.A.C.S. Art. 1432c, Sec. 6(a).)

**Sec. 772.109. BUDGET; ANNUAL REPORT; AUDIT.** (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must be approved by the board and then presented to and approved by the commissioners court of the county for which the district is established and the governing body of the principal municipality. A revision of the budget must be approved by the same entities in the same manner as the budget.

(b) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to all participating public agencies in writing a sworn statement of all money received by the district and how the money was disbursed or otherwise disposed of during the preceding fiscal year. The report must show in detail the operations of the district for the period covered by the report.

(c) The board shall perform an independent financial audit of the district annually. (V.A.C.S. Art. 1432c, Sec. 6(b).)

**Sec. 772.110. ESTABLISHMENT OF 9-1-1 SERVICE.** (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features or equivalent state-of-the-art technology:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification; or
- (6) selective routing.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district under this subchapter must be computerized.

(e) 9-1-1 service is mandatory for each individual telephone subscriber in the district and is not an optional service under any definitions of terms relating to telephone service. (V.A.C.S. Art. 1432c, Secs. 3 (part), 7.)

**Sec. 772.111. PRIMARY EMERGENCY TELEPHONE NUMBER.** The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls. (V.A.C.S. Art. 1432c, Sec. 8.)

**Sec. 772.112. TRANSMITTING REQUESTS FOR EMERGENCY AID.** (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.

(b) A public safety answering point may transmit emergency response requests to private safety entities.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services. (V.A.C.S. Art. 1432c, Sec. 9.)

Sec. 772.113. **POWERS OF DISTRICT.** (a) The district is a public body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may receive federal, state, county, or municipal funds and private funds and may spend those funds for the purpose of this subchapter. The board shall determine the method and sources of funding for the district. (V.A.C.S. Art. 1432c, Secs. 11(a) (part), (b).)

Sec. 772.114. **9-1-1 EMERGENCY SERVICE FEE.** (a) The board may impose a 9-1-1 emergency service fee on service users in the district if authorized to do so by a majority of the votes cast in the election to confirm the creation of the district and by a majority vote of the governing body of each participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single entity at a single location. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed three percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district as required by this subsection or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, at a later date, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district under Section 772.105(b) when the territory becomes part of the district. (V.A.C.S. Art. 1432c, Secs. 10(b) (part), (c); 11(a) (part); 12 (part); 13(a) (part), (c) (part).)

Sec. 772.115. **COLLECTION OF FEE.** (a) Each billed service user is liable for the fee imposed under Section 772.114 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier.

(b) The amount collected by a service supplier from the fee is due quarterly. The service supplier shall remit the amount collected in a calendar quarter to the district not later than the 60th day after the last day of the calendar quarter. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) A service supplier shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records with respect to the collection and remittance of the fees.

(d) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(e) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(f) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If legal proceedings are established, the court may award the district court costs, attorney's fees, and interest to be paid by the nonpaying service user. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due. (V.A.C.S. Art. 1432c, Secs. 11 (part), 13(a) (part), (b), (c) (part).)

**Sec. 772.116. DISTRICT DEPOSITORY.** (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified. (V.A.C.S. Art. 1432c, Sec. 13(d).)

**Sec. 772.117. ALLOWABLE EXPENSES.** Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary. (V.A.C.S. Art. 1432c, Sec. 12 (part).)

**Sec. 772.118. NUMBER AND LOCATION IDENTIFICATION.** (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscribers and the address associated with the number.

(b) Information furnished under this section is confidential and is not available for public inspection.

(c) A service provider is not liable to any person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsection (a). (V.A.C.S. Art. 1432c, Sec. 14.)

**Sec. 772.119. PUBLIC REVIEW.** (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee. (V.A.C.S. Art. 1432c, Secs. 15(a), (b), (c), (e).)

**Sec. 772.120. DISSOLUTION PROCEDURES.** (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the principal part of the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee by

the county after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court by order may adopt the rules necessary to administer this section. (V.A.C.S. Art. 1432c, Sec. 15(d).)

**Sec. 772.121. ISSUANCE OF BONDS.** The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; or

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions. (V.A.C.S. Art. 1432c, Sec. 16.)

**Sec. 772.122. REPAYMENT OF BONDS.** The board may provide for the payment of principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources. (V.A.C.S. Art. 1432c, Sec. 17.)

**Sec. 772.123. ADDITIONAL SECURITY FOR BONDS.** (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may contain provisions prescribed by the board for the security of the bonds and the preservation of the trust estate, may make provisions for amendment or modification, and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them. (V.A.C.S. Art. 1432c, Sec. 18.)

**Sec. 772.124. FORM OF BONDS.** (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance. (V.A.C.S. Art. 1432c, Sec. 19.)

**Sec. 772.125. PROVISIONS OF BONDS.** (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds, and may make additional covenants with respect to the bonds, the pledged revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.



(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds. (V.A.C.S. Art. 1432c, Sec. 20.)

**Sec. 772.126. APPROVAL AND REGISTRATION OF BONDS.** (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes. (V.A.C.S. Art. 1432c, Sec. 21.)

**Sec. 772.127. REFUNDING BONDS.** (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general in the same manner as the district's other bonds and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of the state. (V.A.C.S. Art. 1432c, Sec. 22.)

**Sec. 772.128. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.** (a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons. (V.A.C.S. Art. 1432c, Secs. 23, 24.)

Sec. 772.129. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state. (V.A.C.S. Art. 1432c, Sec. 25.)

[Sections 772.130–772.200 reserved for expansion]

#### SUBCHAPTER C. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES WITH POPULATION OVER 860,000

Sec. 772.201. SHORT TITLE. This subchapter may be cited as the Emergency Communication District Act. (V.A.C.S. Art. 1432d, Sec. 1.)

Sec. 772.202. PURPOSE. It is the purpose of this subchapter to establish the number 9–1–1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9–1–1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly. (V.A.C.S. Art. 1432d, Sec. 2.)

Sec. 772.203. DEFINITIONS. In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter. (V.A.C.S. Art. 1432d, Sec. 3 (part).)

Sec. 772.204. APPLICATION OF SUBCHAPTER. This subchapter applies to a county with a population of more than 860,000 in which an emergency communication district was created under Chapter 7, Acts of the 68th Legislature, 2nd Called Session, 1984, before January 1, 1988. (V.A.C.S. Art. 1432d, Secs. 4(a), 5 (part).)

Sec. 772.205. ADDITIONAL TERRITORY. (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in the county for which the district is created or a public agency located in whole or part in a county adjoining the county for which the district is created, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements. (V.A.C.S. Art. 1432d, Secs. 4(b), 27.)

Sec. 772.206. BOARD OF MANAGERS. (a) A district is governed by a board of managers consisting of:

(1) one member appointed by the commissioners court of the county for which the district is established;

(2) two members appointed by the governing body of the most populous municipality located entirely in the county for which the district is established, if that municipality has a population of more than 150,000;

(3) one member appointed by the governing body of the second most populous municipality located entirely in the county for which the district is established;

(4) one member appointed as provided by this section to represent the other municipalities located in whole or part in the district; and

(5) one member appointed by the principal service supplier.

(b) The board member appointed by the principal service supplier is a nonvoting member.

(c) The board member appointed under Subsection (a)(4) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member. The governing bodies of those municipalities, by agreement of their presiding officers, shall set the time and place to meet and the procedures for selecting the board member.

(d) Board members are appointed for staggered terms of two years, with three members' terms expiring each year.

(e) A board member may be removed from office at will by the entity that appointed the member.

(f) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(g) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(h) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(i) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(j) Voting members of the board may meet in executive session in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 1432d, Secs. 3 (part); 6(a), (b), (c) (part), (d), (f), (g), (h), (i).)

**Sec. 772.207. POWERS AND DUTIES OF BOARD.** (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system. (V.A.C.S. Art. 1432d, Sec. 6(e).)

**Sec. 772.208. DIRECTOR OF DISTRICT.** (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board. (V.A.C.S. Art. 1432d, Sec. 7(a).)

Sec. 772.209. BUDGET; ANNUAL REPORT; AUDIT. (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

- (1) be approved by the board;
- (2) be presented to and approved by the commissioners court of the county in which the majority of the district is located;
- (3) be presented to and approved by the governing body of the most populous municipality located entirely in the county for which the district is established, if that municipality has a population of more than 150,000;
- (4) be presented to and approved by the governing body of the second most populous municipality located entirely within the county for which the district is established; and
- (5) be presented to the governing body of each other participating jurisdiction and approved by those jurisdictions as provided by Subsection (b).

(b) For purposes of Subsection (a)(5), the proposed budget must be approved by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the proposed budget must be approved by a majority of the governing bodies of the other participating jurisdictions.

(c) A revision of the budget must be approved in the same manner as the budget.

(d) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must state in detail the operations of the district for the fiscal year covered by the report.

(e) The board shall have an independent financial audit of the district performed annually. (V.A.C.S. Art. 1432d, Secs. 3 (part); 7(b).)

Sec. 772.210. ESTABLISHMENT OF 9-1-1 SERVICE. (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

- (1) the transfer method;
- (2) the relay method;
- (3) the dispatch method;
- (4) automatic number identification;
- (5) automatic location identification;
- (6) selective routing; or
- (7) any equivalent method.

(b) A district shall provide 9-1-1 service using one or both of the following plans:

(1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or

(2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.

(c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.

(d) The district shall recommend minimum standards for a 9-1-1 system. A 9-1-1 system in a district created under this subchapter must be computerized. (V.A.C.S. Art. 1432d, Secs. 3 (part), 8.)

Sec. 772.211. PRIMARY EMERGENCY TELEPHONE NUMBER. The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls. (V.A.C.S. Art. 1432d, Sec. 9.)

**Sec. 772.212. TRANSMITTING REQUESTS FOR EMERGENCY AID.** (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services, such as poison control, suicide prevention, and civil defense, with the approval of the board and the consent of the participating jurisdiction.

(b) A public safety answering point may transmit emergency response requests to private safety entities, with the approval of the board and the consent of the participating jurisdiction.

(c) With the consent of a participating jurisdiction, a privately owned automatic intrusion alarm or other privately owned automatic alerting device may be installed to cause the number 9-1-1 to be dialed in order to gain access to emergency services. (V.A.C.S. Art. 1432d, Sec. 10.)

**Sec. 772.213. POWERS OF DISTRICT.** (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.

(b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district. (V.A.C.S. Art. 1432d, Sec. 12(a) (part), (b).)

**Sec. 772.214. 9-1-1 EMERGENCY SERVICE FEE.** (a) The board may impose a 9-1-1 emergency service fee on service users in the district.

(b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single entity at a single location. The fee must have uniform application and must be imposed in each participating jurisdiction.

(c) The rate of the fee may not exceed three percent of the monthly base rate charged a service user by the principal service supplier in the participating jurisdiction.

(d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue received from the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money received by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date the board approves making the public agency a participating jurisdiction. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district. (V.A.C.S. Art. 1432d, Secs. 11(b), (c); 12(a) (part); 13 (part); 14(a) (part), (c) (part).)

**Sec. 772.215. COLLECTION OF FEE.** (a) Each billed service user is liable for the fee imposed under Section 772.214 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than

the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) A service supplier shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records with respect to the collection and remittance of the fees.

(d) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(e) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(f) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due. (V.A.C.S. Art. 1432d, Secs. 12(a) (part); 14(a) (part), (b), (c) (part).)

Sec. 772.216. DISTRICT DEPOSITORY. (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified. (V.A.C.S. Art. 1432d, Sec. 14(d).)

Sec. 772.217. ALLOWABLE EXPENSES. Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other related answering points that the board considers necessary. (V.A.C.S. Art. 1432d, Sec. 13 (part).)

Sec. 772.218. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish for each call the telephone number of the subscriber and the address associated with the number.

(b) Information furnished under this section is confidential and is not available for public inspection.

(c) A service provider is not liable to any person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsection (a). (V.A.C.S. Art. 1432d, Sec. 15.)

Sec. 772.219. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerk. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee. (V.A.C.S. Art. 1432d, Secs. 16(a), (b), (c), (e).)

Sec. 772.220. **DISSOLUTION PROCEDURES.** (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire the outstanding bonded indebtedness of the district, the commissioners court shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding bonded indebtedness of the district.

(b) The commissioners court shall retire the district's indebtedness to the extent practicable according to the terms of the bonds and the terms of the orders and resolutions authorizing issuance of the bonds.

(c) The commissioners court by order may adopt the rules necessary to administer this section. (V.A.C.S. Art. 1432d, Sec. 16(d).)

Sec. 772.221. **ISSUANCE OF BONDS.** The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions. (V.A.C.S. Art. 1432d, Sec. 17.)

Sec. 772.222. **REPAYMENT OF BONDS.** The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources. (V.A.C.S. Art. 1432d, Sec. 18.)

Sec. 772.223. **ADDITIONAL SECURITY FOR BONDS.** (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical properties of the district and rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them. (V.A.C.S. Art. 1432d, Sec. 19.)

Sec. 772.224. **FORM OF BONDS.** (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance. (V.A.C.S. Art. 1432d, Sec. 20.)

Sec. 772.225. **PROVISIONS OF BONDS.** (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the

bonds, the pledged revenues, and the operation and maintenance of any facilities, the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds. (V.A.C.S. Art. 1432d, Sec. 21.)

Sec. 772.226. APPROVAL AND REGISTRATION OF BONDS. (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes. (V.A.C.S. Art. 1432d, Sec. 22.)

Sec. 772.227. REFUNDING BONDS. (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.226 and shall be registered by the comptroller on the surrender and cancellation of the bonds being refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)-(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state. (V.A.C.S. Art. 1432d, Sec. 23.)

Sec. 772.228. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;



(8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons. (V.A.C.S. Art. 1432d, Secs. 24, 25.)

Sec. 772.229. **TAX STATUS OF BONDS.** Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state. (V.A.C.S. Art. 1432d, Sec. 26.)

[Sections 772.230–772.300 reserved for expansion]

**SUBCHAPTER D. EMERGENCY COMMUNICATION DISTRICTS: COUNTIES  
WITH POPULATION OVER 20,000**

Sec. 772.301. **SHORT TITLE.** This subchapter may be cited as the Emergency Telephone Number Act. (V.A.C.S. Art. 1432e, Sec. 1.)

Sec. 772.302. **PURPOSE.** It is the purpose of this subchapter to establish the number 9-1-1 as the primary emergency telephone number for use by certain local governments in this state and to encourage units of local government and combinations of those units to develop and improve emergency communication procedures and facilities in a manner that will make possible the quick response to any person calling the telephone number 9-1-1 seeking police, fire, medical, rescue, and other emergency services. To this purpose the legislature finds that:

(1) it is in the public interest to shorten the time required for a citizen to request and receive emergency aid;

(2) there exist thousands of different emergency telephone numbers throughout the state, and telephone exchange boundaries and central office service areas do not necessarily correspond to public safety and political boundaries;

(3) a dominant part of the state's population is located in rapidly expanding metropolitan areas that generally cross the boundary lines of local jurisdictions and often extend into two or more counties; and

(4) provision of a single, primary three-digit emergency number through which emergency services can be quickly and efficiently obtained would provide a significant contribution to law enforcement and other public safety efforts by making it less difficult to notify public safety personnel quickly. (V.A.C.S. Art. 1432e, Sec. 2.)

Sec. 772.303. **DEFINITIONS.** In this subchapter:

(1) "Board" means the board of managers of a district.

(2) "Director" means the director of communication for a district.

(3) "District" means an emergency communication district created under this subchapter. (V.A.C.S. Art. 1432e, Sec. 3 (part).)

Sec. 772.304. **APPLICATION OF SUBCHAPTER.** (a) This subchapter applies only to a county with a population of more than 20,000 or to a group of two or more contiguous counties each with a population of 20,000 or more in which an emergency communication district was created under Chapter 288, Acts of the 69th Legislature, Regular Session, 1985, before January 1, 1988.

(b) This subchapter does not affect the authority of a public agency to operate under another law authorizing the creation of a district in which 9-1-1 service is provided. (V.A.C.S. Art. 1432e, Secs. 4(a), (c); 5 (part), 28.)

Sec. 772.305. **ADDITIONAL TERRITORY.** (a) If a municipality that is part of a district annexes territory that is not part of the district, the annexed territory becomes part of the district.

(b) A public agency located in whole or part in a county adjoining the district, by resolution adopted by its governing body and approved by the board of the district, may become part of the district and subject to its benefits and requirements. (V.A.C.S. Art. 1432e, Secs. 4(b), 27.)

Sec. 772.306. **BOARD OF MANAGERS.** (a) A district is governed by a board of managers.

(b) If the most populous municipality in the district has a population of more than 140,000, the board consists of:

(1) one member for each county in the district appointed by the commissioners court of each county;

(2) two members appointed by the governing body of the most populous municipality in the district;

(3) one member appointed by the governing body of the second most populous municipality in the district;

(4) one member appointed as provided by this section to represent the other municipalities located in whole or part in the district; and

(5) one member appointed by the principal service supplier.

(c) If Subsection (b) does not apply to a district, the board consists of:

(1) the following members representing the county or counties in the district:

(A) if the district contains only one county, two members appointed by the commissioners court of the county;

(B) if the district originally contained only one county but contains more than one county when the appointment is made, two members appointed by the commissioners court of the county in which the district was originally located, and one member appointed by the commissioners court of each other county in the district; or

(C) if the district originally contained more than one county and the district contains more than one county when the appointment is made, one member appointed by the commissioners court of each county in the district;

(2) two members appointed jointly by all the participating municipalities located in whole or part in the district;

(3) one member appointed jointly by the volunteer fire departments operating wholly or partly in the district, with the appointment process coordinated by the county fire marshal or marshals of the county or counties in the district; and

(4) one member appointed by the principal service supplier.

(d) The board member appointed by the principal service supplier is a nonvoting member. If the board is appointed under Subsection (c), the principal service supplier may waive its right to appoint the board member and designate another service supplier serving all or part of the district to make the appointment.

(e) The board member appointed under Subsection (b)(4) is appointed by the mayor's council established to administer urban development block grant funds, if one exists in the district. Otherwise, the member is appointed by the other members of the board on the advice and recommendation of the governing bodies of all the municipalities represented by the member.

(f) The initial board members appointed by municipalities under Subsection (c)(2) are appointed by all the municipalities located in whole or part in the district.

(g) Board members are appointed for staggered terms of two years, with as near as possible to one-half of the members' terms expiring each year.

(h) A board member may be removed from office at will by the entity that appointed the member.

(i) A vacancy on the board shall be filled for the remainder of the term in the manner provided for the original appointment to that position.

(j) Board members serve without compensation. The district shall pay all expenses necessarily incurred by the board in performing its functions under this subchapter.

(k) The board may appoint from among its membership a presiding officer and any other officers it considers necessary.

(l) The director or a board member may be appointed as secretary of the board. The board shall require the secretary to keep suitable records of all proceedings of each board meeting. After each meeting the presiding officer at the meeting shall read and sign the record and the secretary shall attest the record.

(m) Voting members of the board may meet in executive session in accordance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 1432e, Secs. 3 (part); 6(a), (b), (c) (part), (d), (f), (g), (h), (i).)

**Sec. 772.307. POWERS AND DUTIES OF BOARD.** (a) The board shall control and manage the district.

(b) The board may adopt rules for the operation of the district.

(c) The board may contract with any public or private entity to carry out the purposes of this subchapter, including the operation of a 9-1-1 system. (V.A.C.S. Art. 1432e, Sec. 6(e).)

**Sec. 772.308. DIRECTOR OF DISTRICT.** (a) The board shall appoint a director of communication for the district and shall establish the director's compensation. The director must be qualified by training and experience for the position.

(b) The board may remove the director at any time.

(c) With the board's approval, the director may employ any experts, employees, or consultants that the director considers necessary to carry out the purposes of this subchapter.

(d) The director shall perform all duties that the board requires and shall supervise as general manager the operations of the district subject to any limitations prescribed by the board. (V.A.C.S. Art. 1432e, Sec. 7(a).)

**Sec. 772.309. BUDGET; ANNUAL REPORT; AUDIT.** (a) The director shall prepare under the direction of the board an annual budget for the district. To be effective, the budget must:

(1) be approved by the board;

(2) be presented to and approved by the commissioners court of each county in the district;

(3) be presented to and approved by the governing body of the most populous municipality in the district, if that municipality has a population of more than 140,000; and

(4) be presented to the governing body of each other participating jurisdiction and approved by a majority of those jurisdictions.

(b) A revision of the budget must be approved in the same manner as the budget.

(c) As soon as practicable after the end of each district fiscal year, the director shall prepare and present to the board and to each participating jurisdiction in writing a sworn statement of all money received by the district and how the money was used during the preceding fiscal year. The report must show in detail the operations of the district for the fiscal year covered by the report.

(d) The board shall have an independent financial audit of the district performed annually. (V.A.C.S. Art. 1432e, Secs. 3 (part), 7(b).)

**Sec. 772.310. ESTABLISHMENT OF 9-1-1 SERVICE.** (a) A district shall provide 9-1-1 service to each participating jurisdiction through one or a combination of the following methods and features:

(1) the transfer method;

- (2) the relay method;
  - (3) the dispatch method;
  - (4) automatic number identification;
  - (5) automatic location identification;
  - (6) selective routing; or
  - (7) any equivalent method.
- (b) A district shall provide 9-1-1 service using one or both of the following plans:
- (1) the district may design, implement, and operate a 9-1-1 system for each participating jurisdiction with the consent of the jurisdiction; or
  - (2) the district may design, implement, and operate a 9-1-1 system for two or more participating jurisdictions with the consent of each of those jurisdictions if a joint operation would be more economically feasible than separate systems for each jurisdiction.
- (c) Under either plan authorized by Subsection (b), the final plans for the particular system must have the approval of each participating jurisdiction covered by the system.
- (d) The district shall recommend minimum standards for a 9-1-1 system. (V.A.C.S. Art. 1432e, Sec. 8.)
- Sec. 772.311. **PRIMARY EMERGENCY TELEPHONE NUMBER.** The digits 9-1-1 are the primary emergency telephone number in a district. A public safety agency whose services are available through a 9-1-1 system may maintain a separate number or numbers for emergencies and shall maintain a separate number or numbers for nonemergency telephone calls. (V.A.C.S. Art. 1432e, Sec. 9.)
- Sec. 772.312. **TRANSMITTING REQUESTS FOR EMERGENCY AID.** (a) A 9-1-1 system established under this subchapter must be capable of transmitting requests for fire-fighting, law enforcement, ambulance, and medical services to a public safety agency or agencies that provide the requested service at the place from which the call originates. A 9-1-1 system may also provide for transmitting requests for other emergency services such as poison control, suicide prevention, and civil defense.
- (b) A public safety answering point may transmit emergency response requests to private safety entities. (V.A.C.S. Art. 1432e, Sec. 10.)
- Sec. 772.313. **POWERS OF DISTRICT.** (a) The district is a body corporate and politic, exercising public and essential governmental functions and having all the powers necessary or convenient to carry out the purposes and provisions of this subchapter, including the capacity to sue or be sued.
- (b) To fund the district, the district may apply for, accept, and receive federal, state, county, or municipal funds and private funds and may spend those funds for the purposes of this subchapter. The board shall determine the method and sources of funding for the district. (V.A.C.S. Art. 1432e, Sec. 12(a) (part), (b).)
- Sec. 772.314. **9-1-1 EMERGENCY SERVICE FEE.** (a) The board may impose a 9-1-1 emergency service fee on service users in the district.
- (b) The fee may be imposed only on the base rate charge or its equivalent, excluding charges for coin-operated telephone equipment. The fee may not be imposed on more than 100 local exchange access lines or their equivalent for a single entity at a single location. The fee must have uniform application and must be imposed in each participating jurisdiction.
- (c) The rate of the fee may not exceed six percent of the monthly base rate in a service year charged a service user by the principal service supplier in the participating jurisdiction. For purposes of this subsection, the jurisdiction of the county is the unincorporated area of the county.
- (d) The board shall set the amount of the fee each year as part of the annual budget. The board shall notify each service supplier of a change in the amount of the fee not later than the 91st day before the date the change takes effect.

(e) In imposing the fee, the board shall attempt to match the district's revenues to its operating expenditures and to provide reasonable reserves for contingencies and for the purchase and installation of 9-1-1 emergency service equipment. If the revenue generated by the fee exceeds the amount of money needed to fund the district, the board by resolution shall reduce the rate of the fee to an amount adequate to fund the district or suspend the imposition of the fee. If the board suspends the imposition of the fee, the board by resolution may reinstitute the fee if money generated by the district is not adequate to fund the district.

(f) In a public agency whose governing body at a later date votes to receive 9-1-1 service from the district, the fee is imposed beginning on the date specified by the board. The board may charge the incoming agency an additional amount of money to cover the initial cost of providing 9-1-1 service to that agency. The fee authorized to be charged in a district applies to new territory added to the district when the territory becomes part of the district.

(g) For the purposes of this section, the jurisdiction of the county is the unincorporated area of the county. (V.A.C.S. Art. 1432e, Secs. 11(b), (c); 12(a) (part); 13 (part); 14(a) (part), (c) (part).)

**Sec. 772.315. COLLECTION OF FEE.** (a) Each billed service user is liable for the fee imposed under Section 772.314 until the fee is paid to the service supplier. The fee must be added to and stated separately in the service user's bill from the service supplier. The service supplier shall collect the fee at the same time as the service charge to the service user in accordance with the regular billing practice of the service supplier.

(b) The amount collected by a service supplier from the fee is due monthly. The service supplier shall remit the amount collected in a calendar month to the district not later than the 60th day after the last day of the calendar month. With each payment the service supplier shall file a return in a form prescribed by the board.

(c) A service supplier shall maintain records of the amount of fees it collects for at least two years after the date of collection. The board may require at the board's expense an annual audit of a service supplier's books and records with respect to the collection and remittance of the fees.

(d) A service supplier is entitled to retain an administrative fee from the amount of fees it collects. The amount of the administrative fee is two percent of the amount of fees it collects under this section.

(e) A service supplier is not required to take any legal action to enforce the collection of the 9-1-1 emergency service fee. However, the service supplier shall provide the district with an annual certificate of delinquency that includes the amount of all delinquent fees and the name and address of each nonpaying service user. The certificate of delinquency is prima facie evidence that a fee included in the certificate is delinquent. A service user account is considered delinquent if the fee is not paid to the service supplier before the 31st day after the payment due date stated on the user's bill from the service supplier.

(f) The district may institute legal proceedings to collect fees not paid and may establish internal collection procedures and recover the cost of collection from the nonpaying service user. If the district prevails in legal proceedings instituted to collect a fee, the court may award the district court costs, attorney's fees, and interest in addition to other amounts recovered. A delinquent fee accrues interest at an annual rate of 12 percent beginning on the date the payment becomes due. (V.A.C.S. Art. 1432e, Secs. 12(a) (part); 14(a) (part), (b), (c) (part).)

**Sec. 772.316. DISTRICT DEPOSITORY.** (a) The board shall select a depository for the district in the manner provided by law for the selection of a county depository.

(b) A depository selected by the board is the district's depository for two years after the date of its selection and until a successor depository is selected and qualified. (V.A.C.S. Art. 1432e, Sec. 14(d).)

**Sec. 772.317. ALLOWABLE EXPENSES.** Allowable operating expenses of a district include all costs attributable to designing a 9-1-1 system and to all equipment and personnel necessary to establish and operate a public safety answering point and other

related answering points that the board considers necessary. (V.A.C.S. Art. 1432e, Sec. 13 (part).)

Sec. 772.318. NUMBER AND LOCATION IDENTIFICATION. (a) As part of computerized 9-1-1 service, a service supplier shall furnish current telephone numbers of subscribers and the addresses associated with the numbers on a call-by-call basis.

(b) Information furnished under this section is confidential and is not available for public inspection.

(c) A service provider is not liable to any person who uses a 9-1-1 system created under this subchapter for the release to the district of the information specified in Subsection (a). (V.A.C.S. Art. 1432e, Sec. 15.)

Sec. 772.319. PUBLIC REVIEW. (a) Periodically, the board shall solicit public comments and hold a public review hearing on the continuation of the district and the 9-1-1 emergency service fee. The first hearing shall be held three years after the date the order certifying the creation of the district is filed with the county clerks. Subsequent hearings shall be held three years after the date each order required by Subsection (d) is adopted.

(b) The board shall publish notice of the time and place of the hearing once a week for two consecutive weeks in a daily newspaper of general circulation published in the district. The first notice must be published not later than the 16th day before the date set for the hearing.

(c) At the hearing, the board shall also solicit comments on the participation of the district in the applicable regional plan for 9-1-1 service under Chapter 771. After the hearing, the board may choose to participate in the regional plan as provided by that chapter.

(d) After the hearing, the board shall adopt an order on the continuation or dissolution of the district and the 9-1-1 emergency service fee. (V.A.C.S. Art. 1432e, Secs. 16(a), (b), (c), (e).)

Sec. 772.320. DISSOLUTION PROCEDURES. (a) If a district is dissolved, 9-1-1 service must be discontinued on the date of the dissolution. The commissioners court of the county in which the district was located or, if the district contains more than one county, the commissioners courts of those counties acting jointly, shall assume the assets of the district and pay the district's debts. If the district's assets are insufficient to retire all existing debts of the district on the date of dissolution, the commissioners court or courts acting jointly shall continue to impose the 9-1-1 service fee, and each service supplier shall continue to collect the fee for the commissioners court or courts. Proceeds from the imposition of the fee after dissolution of the district may be used only to retire the outstanding debts of the district.

(b) The commissioners court or courts shall retire the district's debts to the extent practicable according to the terms of the instruments creating the debts and the terms of the orders and resolutions authorizing creation of the debts.

(c) The commissioners court or courts by order may adopt the rules necessary to administer this section. (V.A.C.S. Art. 1432e, Sec. 16(d).)

Sec. 772.321. ISSUANCE OF BONDS. The board may issue and sell bonds in the name of the district to finance:

(1) the acquisition by any method of facilities, equipment, or supplies necessary for the district to begin providing 9-1-1 service to all participating jurisdictions; and

(2) the installation of equipment necessary for the district to begin providing 9-1-1 service to all participating jurisdictions. (V.A.C.S. Art. 1432e, Sec. 17.)

Sec. 772.322. REPAYMENT OF BONDS. The board may provide for the payment of the principal of and interest on the bonds by pledging all or any part of the district's revenues from the 9-1-1 emergency service fee or from other sources. (V.A.C.S. Art. 1432e, Sec. 18.)

Sec. 772.323. ADDITIONAL SECURITY FOR BONDS. (a) The bonds may be additionally secured by a deed of trust or mortgage lien on part or all of the physical

properties of the district and the rights appurtenant to those properties, vesting in the trustee power to sell the properties for payment of the indebtedness, power to operate the properties, and all other powers necessary for the further security of the bonds.

(b) The trust indenture, regardless of the existence of the deed of trust or mortgage lien on the properties, may include provisions prescribed by the board for the security of the bonds and the preservation of the trust estate and may make provisions for investment of funds of the district.

(c) A purchaser under a sale under the deed of trust or mortgage lien is the absolute owner of the properties and rights purchased and may maintain and operate them. (V.A.C.S. Art. 1432e, Sec. 19.)

**Sec. 772.324. FORM OF BONDS.** (a) A district may issue its bonds in various series or issues.

(b) Bonds may mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate permitted by state law.

(c) A district's bonds and interest coupons, if any, are investment securities under the terms of Chapter 8, Business & Commerce Code, may be issued registrable as to principal or as to both principal and interest, and may be made redeemable before maturity, at the option of the district, or contain a mandatory redemption provision.

(d) A district may issue its bonds in the form, denominations, and manner and under the terms, and the bonds shall be signed and executed, as provided by the board in the resolution or order authorizing their issuance. (V.A.C.S. Art. 1432e, Sec. 20.)

**Sec. 772.325. PROVISIONS OF BONDS.** (a) In the orders or resolutions authorizing the issuance of bonds, including refunding bonds, the board may provide for the flow of funds and the establishment and maintenance of the interest and sinking fund, the reserve fund, and other funds and may make additional covenants with respect to the bonds, the pledge revenues, and the operation and maintenance of any facilities the revenue of which is pledged.

(b) The orders or resolutions of the board authorizing the issuance of bonds may also prohibit the further issuance of bonds or other obligations payable from the pledged revenue or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(c) The orders or resolutions of the board issuing bonds may contain other provisions and covenants as the board may determine.

(d) The board may adopt and have executed any other proceedings or instruments necessary and convenient in the issuance of bonds. (V.A.C.S. Art. 1432e, Sec. 21.)

**Sec. 772.326. APPROVAL AND REGISTRATION OF BONDS.** (a) Bonds issued by a district must be submitted to the attorney general for examination.

(b) If the attorney general finds that the bonds have been authorized in accordance with law, the attorney general shall approve them. On approval by the attorney general, the comptroller shall register the bonds.

(c) After the approval and registration of bonds, the bonds are incontestable in any court or other forum for any reason and are valid and binding obligations according to their terms for all purposes. (V.A.C.S. Art. 1432e, Sec. 22.)

**Sec. 772.327. REFUNDING BONDS.** (a) A district may issue bonds to refund all or any part of its outstanding bonds, including matured but unpaid interest coupons.

(b) Refunding bonds shall mature serially or otherwise not more than 25 years after their date of issue and shall bear interest at any rate or rates permitted by state law.

(c) Refunding bonds may be payable from the same source as the bonds being refunded or from other sources.

(d) The refunding bonds must be approved by the attorney general as provided by Section 772.326 and shall be registered by the comptroller on the surrender and cancellation of the bonds refunded.

(e) The orders or resolutions authorizing the issuance of the refunding bonds may provide that they be sold and the proceeds deposited in the place or places at which the bonds being refunded are payable, in which case the refunding bonds may be issued before the cancellation of the bonds being refunded. If refunding bonds are issued before cancellation of the other bonds, an amount sufficient to pay the principal of the bonds being refunded and interest on those bonds accruing to their maturity dates or to their option dates if the bonds have been duly called for payment before maturity according to their terms shall be deposited in the place or places at which the bonds being refunded are payable. The comptroller shall register the refunding bonds without the surrender and cancellation of bonds being refunded.

(f) A refunding may be accomplished in one or in several installment deliveries. Refunding bonds and their interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(g) In lieu of the method set forth in Subsections (a)–(f), a district may refund bonds, notes, or other obligations as provided by the general laws of this state. (V.A.C.S. Art. 1432e, Sec. 23.)

Sec. 772.328. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a) District bonds are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and

(9) a sinking fund of a municipality, county, school district, and other political subdivision of the state and other public funds of the state and its agencies, including the permanent school fund.

(b) District bonds are eligible to secure deposits of public funds of the state and municipalities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons. (V.A.C.S. Art. 1432e, Secs. 24, 25.)

Sec. 772.329. TAX STATUS OF BONDS. Because a district created under this subchapter is a public entity performing an essential public function, bonds issued by the district, any transaction relating to the bonds, and profits made in the sale of the bonds are exempt from taxation by the state or by any municipality, county, special district, or other political subdivision of the state. (V.A.C.S. Art. 1432e, Sec. 26.)

[Sections 772.330–772.400 reserved for expansion]

#### SUBCHAPTER E. EMERGENCY COMMUNICATION SERVICE: COUNTIES WITH POPULATION OVER 1.5 MILLION

Sec. 772.401. DEFINITION. In this subchapter, “9–1–1 service” means a telecommunications service that enables the user of a public telephone system, by dialing the digits 9–1–1, to reach a communications facility having the responsibility to receive emergency calls and, as appropriate, to dispatch public safety services or to extend, transfer, or relay 9–1–1 calls to appropriate public service agencies. (V.A.C.S. Art. 1432g, Sec. 1.)

Sec. 772.402. APPLICATION OF SUBCHAPTER. This subchapter applies only to a county having a population of more than 1.5 million in which a communication district has not been created under Subchapter B. (V.A.C.S. Art. 1432g, Sec. 2.)

Sec. 772.403. IMPLEMENTATION OF 9–1–1 SERVICE AND FEE. (a) A county to which this subchapter applies may implement a system for providing 9–1–1 service in the



unincorporated areas of the county and may impose a service fee on local exchange telephone service customers in the area served.

(b) The commissioners court shall set the fee in an amount reasonable to cover the costs of providing the 9-1-1 service.

(c) Revenue from the fee may be used only for the planning, development, and provision of 9-1-1 service. (V.A.C.S. Art. 1432g, Secs. 3(a), (c) (part).)

**Sec. 772.404. COLLECTION OF FEE.** (a) A telecommunications carrier providing local exchange service in a county that imposes a fee under this subchapter shall collect the fees and deliver them to the commissioners court not later than the 60th day after the last day of the month during which the fees were collected.

(b) A customer on whom a fee is imposed under this subchapter is liable for the fee in the same manner the customer is liable for charges for service provided by the local exchange service provider. The fee must be stated separately in the customer's bill.

(c) A local exchange service provider collecting fees under this subchapter may retain as an administrative fee an amount equal to two percent of the total amount of the fees it collects. (V.A.C.S. Art. 1432g, Secs. 3(b), (c) (part), (d).)

**Sec. 772.405. AUDIT OF SERVICE PROVIDER.** The commissioners court of a county may require at the county's expense an audit of a local exchange service provider collecting fees or surcharges under this subchapter. The audit must be limited to the collection and remittance of money collected under this subchapter. (V.A.C.S. Art. 1432g, Sec. 3(e).)

## **CHAPTER 773. EMERGENCY MEDICAL SERVICES**

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## CHAPTER 773. EMERGENCY MEDICAL SERVICES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 773.001. **SHORT TITLE.** This chapter may be cited as the Emergency Medical Services Act. (V.A.C.S. Art. 4447o, Sec. 1.01.)

Sec. 773.002. **PURPOSE.** The purpose of this chapter is to provide for the prompt and efficient transportation of sick and injured patients, after necessary stabilization, and to encourage public access to that transportation in each area of the state. (V.A.C.S. Art. 4447o, Sec. 1.02.)

Sec. 773.003. **DEFINITIONS.** In this chapter:

(1) "Advanced life support" means emergency prehospital care provided by a specially skilled emergency medical technician or paramedic emergency medical technician using invasive medical acts.

(2) "Basic life support" means emergency prehospital care provided by an emergency care attendant or a basic emergency medical technician using noninvasive medical acts.

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

(4) "Bureau" means the department's bureau of emergency management.

(5) "Bureau chief" means the chief of the bureau of emergency management.

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

(7) "Emergency medical services personnel" means:

(A) emergency care attendants;

(B) basic emergency medical technicians;

(C) specially skilled emergency medical technicians; or

(D) paramedic emergency medical technicians.

(8) "Emergency medical services provider" means an organization that uses or maintains emergency medical services vehicles or emergency medical services personnel to provide emergency medical care or nonemergency transportation of the sick or injured.

(9) "Emergency medical services vehicle" means:

- (A) a basic life-support emergency medical services vehicle;
- (B) an advanced life-support emergency medical services vehicle;
- (C) a mobile intensive-care unit; or
- (D) a specialized emergency medical services vehicle.

(10) "Emergency medical services volunteer provider" means an emergency medical services provider that provides emergency prehospital care without remuneration, except reimbursement for expenses.

(11) "Emergency prehospital care" means care provided to the sick or injured during emergency transportation to a medical facility, and includes any necessary stabilization of the sick or injured in connection with that transportation.

(12) "Governmental entity" means a county, municipality, school district, or special district or authority created in accordance with the Texas Constitution.

(13) "Medical supervision" means direction given to emergency medical services personnel by a licensed physician under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) and the rules adopted under that Act by the Texas State Board of Medical Examiners. (V.A.C.S. Art. 4447o, Sec. 1.03, Subdivs. (1) (part), (2) (part), (3)-(7), (12), (17)-(19), (21), (22).)

**Sec. 773.004. VEHICLES AND PERSONNEL EXCLUDED FROM CHAPTER.** (a) This chapter does not apply to:

- (1) a ground or air transfer vehicle and staff used to transport a patient who is under a physician's care between medical facilities or between a medical facility and a private residence;
- (2) an industrial ambulance; or
- (3) a physician, registered nurse, or other health care practitioner licensed by this state unless the health care practitioner staffs an emergency medical services vehicle regularly.

(b) In this section, "industrial ambulance" means a vehicle owned and operated by an industrial facility that is not available for hire or use by the public except to assist the local community in a disaster or when existing ambulance service is not available, and includes a ground vehicle at an industrial site used:

- (1) for the initial transportation or transfer of the unstable urgently sick or injured; or
- (2) to transport from the job site to an appropriate medical facility a person who becomes sick, injured, wounded, or otherwise incapacitated in the course of employment. (V.A.C.S. Art. 4447o, Secs. 1.03(23); 3.02(c), (d).)

**Sec. 773.005. BUREAU OF EMERGENCY MANAGEMENT.** (a) The bureau of emergency management is in the department under the direction of a bureau chief.

- (b) The bureau chief must have:
  - (1) proven ability as an administrator and organizer; and
  - (2) direct experience in emergency medical services.

(c) In filling the position of bureau chief, the department shall give preference to a physician who applies for the position. (V.A.C.S. Art. 4447o, Sec. 2.01.)

**Sec. 773.006. EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL.** (a) The Emergency Medical Services Advisory Council is an adjunct to the bureau.

(b) The council is composed of 18 members appointed by the board. The board shall appoint members from different geographic areas to ensure representation of urban and rural interests.

- (c) The members must include:

- (1) three licensed physicians, one of whom must be a board-certified emergency physician, appointed from nominations received from a statewide professional association of physicians;

- (2) two members of governing bodies of municipalities, appointed from nominations received from a statewide association of municipalities;
  - (3) two elected members of commissioners courts, appointed from nominations received from a statewide association of county judges or commissioners courts;
  - (4) a representative of hospitals, appointed from a statewide association of hospitals;
  - (5) a private provider of emergency medical services, appointed from nominations received from a statewide association of private providers of emergency medical services;
  - (6) an emergency medical services volunteer provider;
  - (7) a local governmental provider of emergency medical services;
  - (8) an emergency medical services educator;
  - (9) a paramedic emergency medical technician, appointed from nominations received from a statewide association of emergency medical technicians;
  - (10) an emergency medical technician, appointed from nominations received from a statewide association of emergency medical technicians;
  - (11) an emergency nurse, appointed from nominations received from a statewide association of licensed professional nurses;
  - (12) a representative of a fire department that provides emergency medical services, appointed from nominations received from a statewide association of fire fighters; and
  - (13) two consumer members.
- (d) A person is not eligible for appointment as a consumer member of the council if the person or the person's spouse:
- (1) is licensed by an occupational regulatory agency in the field of health care;
  - (2) is employed by or participates in the management of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or
  - (3) owns, controls, or has directly or indirectly more than a 10 percent interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment.
- (e) Members are appointed for staggered six-year terms, with the terms of six members expiring January 1 of each even-numbered year. If a vacancy occurs on the council, the board shall appoint a person to serve for the remainder of the unexpired term.
- (f) The council may adopt rules for the conduct of its activities and may elect a chairman from among its members. The council shall meet in the city of Austin at least quarterly.
- (g) A member serves without compensation, but is entitled to:
- (1) \$50 for each council meeting the member attends; and
  - (2) the per diem and travel allowance authorized for state employees by the General Appropriations Act.
- (h) The council shall consider the needs for emergency medical services in the state and shall recommend for the board's consideration rules to implement standards adopted under this chapter. (V.A.C.S. Art. 4447o, Sec. 3.01.)
- Sec. 773.007. SUPERVISION OF EMERGENCY PREHOSPITAL CARE. (a) The provision of advanced life support must be under medical supervision and a licensed physician's control.
- (b) The provision of basic life support may be under medical supervision and a licensed physician's control. (V.A.C.S. Art. 4447o, Sec. 1.03, Subdivs. (1) (part), (2) (part).)
- Sec. 773.008. CONSENT FOR EMERGENCY CARE. Consent for emergency care of an individual is not required if:
- (1) the individual is:

(A) unable to communicate because of an injury, accident, or illness or is unconscious; and

(B) suffering from what reasonably appears to be a life-threatening injury or illness;

(2) a court of record orders the treatment of an individual who is in an imminent emergency to prevent the individual's serious bodily injury or loss of life; or

(3) the individual is a minor who is suffering from what reasonably appears to be a life-threatening injury or illness and whose parents, managing or possessory conservator, or guardian is not present. (V.A.C.S. Art. 4447o, Sec. 3.17.)

**Sec. 773.009. LIMITATION ON CIVIL LIABILITY.** A person who authorizes, sponsors, supports, finances, or supervises the functions of emergency room personnel and emergency medical services personnel is not liable for civil damages for an act or omission connected with training emergency medical services personnel or with services or treatment given to a patient or potential patient by emergency medical services personnel if the training, services, or treatment is performed in accordance with the standard of ordinary care. (V.A.C.S. Art. 4447o, Sec. 3.18.)

**Sec. 773.010. TRANSPORTATION BY HOSPITAL.** A hospital that owns, operates, or is an emergency medical services provider and that is transporting a person who is unable to communicate because of an injury, accident, or illness or is unconscious and who is suffering from what reasonably appears to be a life-threatening injury or illness shall transport the person to the hospital that is nearest the location at which the person is picked up and that can provide appropriate emergency care. (V.A.C.S. Art. 4447o, Sec. 3.19.)

**Sec. 773.011. NONPROFIT SUBSCRIPTION PROGRAMS.** (a) To fund an emergency medical service to provide emergency medical services vehicle services in their jurisdictions, a municipality, county, hospital district, or any number and combination of those entities may create and operate a nonprofit subscription program by:

(1) contract;

(2) joint agreement; or

(3) any other method provided by:

(A) The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes); or

(B) any other state law authorizing local governmental entities to provide joint programs.

(b) A nonprofit subscription program under Subsection (a) is exempt from the Insurance Code for the sole purpose of providing emergency medical services vehicle services if:

(1) the entities that created or that operate the program directly control and supervise the program; and

(2) the program funds an emergency medical services vehicle service that meets the standards and requirements of this chapter. (V.A.C.S. Art. 4447o, Sec. 3.10A.)

[Sections 773.012–773.020 reserved for expansion]

## **SUBCHAPTER B. STATE PLAN FOR EMERGENCY SERVICES**

**Sec. 773.021. STATE PLAN.** (a) The bureau shall develop a state plan for the prompt and efficient delivery of adequate emergency medical services to acutely sick or injured persons.

(b) The advisory council shall consider the bureau's actions under Subsection (a), and the board shall review the council's recommendations. (V.A.C.S. Art. 4447o, Sec. 2.02.)

**Sec. 773.022. SERVICE DELIVERY AREAS.** The bureau shall divide the state into emergency medical services delivery areas that coincide, to the extent possible, with other regional planning areas. (V.A.C.S. Art. 4447o, Sec. 2.03.)

Sec. 773.023. AREA PLANS. (a) The bureau shall:

(1) identify all public or private agencies and institutions that are used or may be used for emergency medical services in each delivery area; and

(2) enlist the cooperation of all concerned agencies and institutions in developing a well-coordinated plan for delivering emergency medical services in each delivery area.

(b) A delivery area plan must include an interagency communications network that facilitates prompt and coordinated response to medical emergencies by the Department of Public Safety, local police departments, ambulance personnel, medical facilities, and other concerned agencies and institutions.

(c) A delivery area plan may include the use of helicopters that may be available from the Department of Public Safety, the National Guard, or the United States Armed Forces. (V.A.C.S. Art. 4447o, Secs. 2.04, 2.05, 2.06.)

Sec. 773.024. FEDERAL PROGRAMS. The bureau is the state agency designated to develop state plans required for participation in federal programs involving emergency medical services. The bureau may receive and disburse available federal funds to implement the service programs. (V.A.C.S. Art. 4447o, Sec. 2.07.)

Sec. 773.025. ACCESSIBILITY OF TRAINING. (a) The bureau shall identify all individuals and public or private agencies and institutions that are or may be engaged in emergency medical services training in each delivery area.

(b) A delivery area plan must include provisions for encouraging emergency medical services training so as to reduce the cost of training to emergency medical services providers and to make training more accessible to low population or remote areas.

(c) A governmental entity that sponsors or wishes to sponsor an emergency medical services provider may request the bureau to provide emergency medical services training for emergency care attendants at times and places that are convenient for the provider's personnel, if the training is not available locally. (V.A.C.S. Art. 4447o, Sec. 2.08.)

[Sections 773.026–773.040 reserved for expansion]

#### SUBCHAPTER C. PERMITS, CERTIFICATION, AND QUALIFICATIONS

Sec. 773.041. PERMIT OR CERTIFICATE REQUIRED. (a) A person may not operate an emergency medical services vehicle unless the vehicle has a permit issued under this chapter and the vehicle is staffed by emergency medical services personnel in accordance with this chapter.

(b) A person may not practice as any type of emergency medical services personnel unless the person is certified under this chapter and rules adopted under this chapter.

(c) A certificate or permit issued under this chapter is not transferable. (V.A.C.S. Art. 4447o, Secs. 3.02(a) (part), 3.12.)

Sec. 773.042. BASIC LIFE-SUPPORT EMERGENCY MEDICAL SERVICES VEHICLE QUALIFICATIONS. A vehicle qualifies as a basic life-support emergency medical services vehicle if it is designed for transporting the sick or injured and has sufficient equipment and supplies for providing basic life support. (V.A.C.S. Art. 4447o, Sec. 1.03(13).)

Sec. 773.043. ADVANCED LIFE-SUPPORT EMERGENCY MEDICAL SERVICES VEHICLE QUALIFICATIONS. A vehicle qualifies as an advanced life-support emergency medical services vehicle if it:

(1) meets the requirements of a basic life-support emergency medical services vehicle; and

(2) has sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation. (V.A.C.S. Art. 4447o, Sec. 1.03(14).)

Sec. 773.044. MOBILE INTENSIVE-CARE UNIT QUALIFICATIONS. A vehicle qualifies as a mobile intensive-care unit if it:

(1) meets the requirements of an advanced life-support emergency medical services vehicle; and

(2) has sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio communication. (V.A.C.S. Art. 4447o, Sec. 1.03(15).)

**Sec. 773.045. SPECIALIZED EMERGENCY MEDICAL SERVICES VEHICLE QUALIFICATIONS.** A vehicle, including a helicopter, boat, fixed-wing aircraft, or ground transfer vehicle, qualifies as a specialized emergency medical services vehicle if it:

(1) is designed for transporting the sick or injured by air, water, or ground transportation;

(2) is not a basic or advanced life-support emergency medical services vehicle or a mobile intensive-care unit; and

(3) has sufficient equipment and supplies to provide for the specialized needs of the patient transported. (V.A.C.S. Art. 4447o, Sec. 1.03(16).)

**Sec. 773.046. EMERGENCY CARE ATTENDANT QUALIFICATIONS.** An individual qualifies as an emergency care attendant if the individual:

(1) has at least 40 hours of training approved by the department; and

(2) is certified by the department to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness. (V.A.C.S. Art. 4447o, Sec. 1.03(8).)

**Sec. 773.047. BASIC EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS.** An individual qualifies as a basic emergency medical technician if the individual:

(1) has at least 120 hours of training approved by the department; and

(2) is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes cardiopulmonary resuscitation and the control of hemorrhaging. (V.A.C.S. Art. 4447o, Sec. 1.03(9).)

**Sec. 773.048. SPECIALLY SKILLED EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS.** An individual qualifies as a specially skilled emergency medical technician if the individual:

(1) has successfully completed the basic emergency medical technician requirements and at least 160 hours of additional training approved by the department; and

(2) is certified by the department as minimally proficient to provide emergency prehospital care by initiating under medical supervision intravenous therapy and endotracheal or esophageal intubation. (V.A.C.S. Art. 4447o, Sec. 1.03(10).)

**Sec. 773.049. PARAMEDIC EMERGENCY MEDICAL TECHNICIAN QUALIFICATIONS.** An individual qualifies as a paramedic emergency medical technician if the individual:

(1) has successfully completed the basic emergency medical technician requirements and at least 400 hours of additional training approved by the department; and

(2) is certified by the department as minimally proficient to provide advanced life support that includes initiation under medical supervision of intravenous therapy, endotracheal or esophageal intubation, electrical cardiac defibrillation or cardioversion, and drug therapy. (V.A.C.S. Art. 4447o, Sec. 1.03(11).)

**Sec. 773.050. MINIMUM STANDARDS.** (a) Each basic life-support emergency medical services vehicle when in service must be staffed by at least two individuals certified as emergency care attendants or certified at a higher level of training.

(b) The board by rule shall establish minimum standards for:

(1) staffing an advanced life-support emergency medical services vehicle, a mobile intensive-care unit, or a specialized emergency medical services vehicle;

(2) emergency medical services personnel certification and performance, including certification, decertification, recertification, suspension, emergency suspension, and probation;

(3) the approval of courses and training programs, the certification of program instructors, examiners, and course coordinators for emergency medical services personnel training, and the revocation and probation of an approval or certification;

(4) medical supervision of advanced life-support systems; and

(5) granting, suspending, and revoking a permit for an emergency medical services vehicle.

(c) The board shall consider the education, training, and experience of allied health professionals in adopting the minimum standards for emergency medical services personnel certification and may establish criteria for interstate reciprocity of emergency medical services personnel.

(d) The board may not adopt a rule that requires any system, service, or agency to provide advanced life-support or staffing beyond basic life-support levels except for the operation of:

(1) an advanced life-support emergency medical services vehicle;

(2) a mobile intensive-care unit; or

(3) a specialized emergency medical services vehicle that provides advanced life support. (V.A.C.S. Art. 4447o, Secs. 3.02(a) (part), (b); 3.03; 3.09.)

Sec. 773.051. MUNICIPAL REGULATION. A municipality may establish standards for staffing or equipping an emergency medical services vehicle that are stricter than the minimum standards of this chapter and department rules adopted under this chapter. (V.A.C.S. Art. 4447o, Sec. 3.10.)

Sec. 773.052. VARIANCES. (a) An emergency medical services provider with a specific hardship may apply to the bureau chief for a variance from a rule adopted under this chapter.

(b) On receipt of a request for a variance, the department shall consider any relevant factors, including:

(1) the nearest available service;

(2) geography; and

(3) demography.

(c) A sole provider for a service area is entitled to a variance from the minimum standards for staffing and equipping a basic life-support emergency medical services vehicle if the provider is:

(1) an emergency medical services volunteer provider; or

(2) a municipally operated emergency medical service that existed on January 1, 1988, and that provides emergency prehospital care with the same personnel who provide fire or police services.

(d) An applicant for a variance under Subsection (c) must submit a letter to the department from the commissioners court of the county or the governing body of the municipality in which the provider intends to operate an emergency medical services vehicle. The letter must state that there is no other emergency medical services provider in the service area.

(e) The department shall grant a variance under Subsection (c) if the department determines that the provider qualifies and may deny the variance if the department determines that the provider does not qualify. The department shall give a provider whose application is denied the opportunity for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(f) The department shall issue an emergency medical services vehicle permit to a provider granted a variance under this section. The permit is subject to annual review by the department. A provider is encouraged to upgrade staffing and equipment to meet the minimum standards set by the rules adopted under this chapter. (V.A.C.S. Art. 4447o, Sec. 3.13.)



**Sec. 773.053. NOTICE OF RULE CHANGES.** (a) The bureau shall publish a proposed rule or amendment of a rule in its official publications not later than the 90th day before the date of adoption. Before the adoption or amendment of a rule, the bureau shall make reasonable efforts to notify:

- (1) organizations owning or operating ambulances registered with the department;
  - (2) emergency medical services coordinators of health systems agencies;
  - (3) emergency medical services coordinators of councils of governments;
  - (4) the Texas State Board of Medical Examiners;
  - (5) course coordinators of established emergency medical services training programs;
- and
- (6) any other agency or organization designated by the bureau chief.

(b) The entities listed in Subsection (a) are emergency medical services agencies. (V.A.C.S. Art. 4447o, Sec. 3.11.)

**Sec. 773.054. APPLICATIONS FOR PERSONNEL CERTIFICATION AND TRAINING PROGRAM APPROVAL.** (a) This section applies to an application for:

- (1) examination for certification of emergency medical services personnel;
- (2) approval of a course or training program; or
- (3) certification of a program instructor, examiner, or course coordinator.

(b) Each application must be made to the department on a form prescribed by the board and under rules adopted by the board. (V.A.C.S. Art. 4447o, Secs. 3.04(a) (part), (g) (part), (h) (part).)

**Sec. 773.055. CERTIFICATION OF EMERGENCY MEDICAL SERVICES PERSONNEL.** (a) A nonrefundable fee determined by the board must accompany each application for examination for emergency medical services personnel certification. The fee may not exceed:

- (1) \$18.75 for examination for certification or recertification of a paramedic emergency medical technician or specially skilled emergency medical technician; or
- (2) \$12.50 for examination for certification or recertification of a basic emergency medical technician or emergency care attendant.

(b) Except as provided by Subsection (c), the department shall notify each examinee of the results of an examination for certification or recertification not later than the 30th day after the date on which the examination is administered.

(c) The department shall notify an examinee of the results of an examination not later than the 14th day after the date on which the department receives the results if the examination is graded or reviewed by a national testing service. If the notice of the examination results will be delayed longer than 90 days after the examination date, the department shall notify each examinee of the reason for the delay before the 90th day.

(d) The department shall furnish a person who fails an examination for certification or recertification with an analysis of the person's performance on the examination if requested in writing by that person.

(e) The department shall issue certificates to emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 773.050. A certificate is valid for four years from the date of issuance.

(f) The fee required by Subsection (a) is the obligation of the applicant but may be paid by the emergency medical services provider. (V.A.C.S. Art. 4447o, Secs. 3.04(a) (part), (b), (c), (d).)

**Sec. 773.056. APPROVAL OF TRAINING PROGRAMS; CERTIFICATION OF INSTRUCTORS, EXAMINERS, AND COORDINATORS.** (a) The department shall approve each course or training program that meets the minimum standards adopted under Section 773.050.

(b) The department shall issue a certificate to each program instructor, examiner, or course coordinator who meets the minimum standards adopted under Section 773.050. The certificate is valid for one year. (V.A.C.S. Art. 4447o, Secs. 3.04(g) (part), (h) (part).)

Sec. 773.057. **EMERGENCY MEDICAL SERVICES VEHICLE PERMITS.** (a) An emergency medical services provider must submit an application for an emergency medical services vehicle permit in accordance with procedures prescribed by the board. An emergency medical services volunteer provider must submit with the application a letter of sponsorship from a governmental entity.

(b) A nonrefundable fee determined by the board must accompany each application. The fee may not exceed:

- (1) \$100 for each emergency medical services vehicle; or
- (2) \$2,000 for a fleet of emergency medical services vehicles.

(c) The department on inspection shall issue a permit for an emergency medical services vehicle that meets the minimum standards adopted under Section 773.050. The permit is valid for two years.

(d) The department may delegate the duty to inspect vehicles under Subsection (c) to the commissioners court of a county or the governing body of a municipality. The delegation must be made:

- (1) at the request of the commissioners court or governing body; and
- (2) in accordance with criteria and procedures adopted by the board.

(e) The commissioners court of a county or governing body of a municipality that conducts inspections under Subsection (d) shall collect and retain the fee for vehicles it inspects. (V.A.C.S. Art. 4447o, Secs. 3.04(e), (f).)

Sec. 773.058. **VOLUNTEERS EXEMPT FROM FEES.** An emergency medical services volunteer provider and each individual who actively participates in the operations of an emergency medical services volunteer provider are exempt from the payment of fees under this subchapter. (V.A.C.S. Art. 4447o, Sec. 3.04(i).)

Sec. 773.059. **LATE RECERTIFICATION.** A person applying for recertification whose application is received later than the 90th day after the expiration date of the person's certificate must meet the requirements of the initial certification, including training and fees in effect on the date of the application. (V.A.C.S. Art. 4447o, Sec. 3.05.)

Sec. 773.060. **DISPOSITION OF FUNDS.** (a) The department shall account for all fees and other funds it receives under this chapter.

(b) The department shall deposit the fees and other funds in the state treasury to the credit of the bureau of emergency management fund. The fund may be used only to administer this chapter. (V.A.C.S. Art. 4447o, Sec. 3.06.)

Sec. 773.061. **DISCIPLINARY ACTIONS.** (a) For a violation of this chapter or a rule adopted under this chapter, the department may:

- (1) decertify, suspend, place on emergency suspension, or place on probation emergency medical services personnel;
- (2) revoke or place on probation course or training program approval;
- (3) revoke or place on probation the certificate of a program instructor, examiner, or course coordinator; and
- (4) revoke or suspend an emergency medical services vehicle permit.

(b) Except as provided by Section 773.062, the procedures by which the department takes action under this section and the procedures by which that action is appealed are governed by the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4447o, Sec. 3.07.)

Sec. 773.062. **EMERGENCY SUSPENSION.** (a) The bureau chief shall issue an emergency order to suspend a certificate or permit issued under this chapter if the bureau chief has reasonable cause to believe that the conduct of any certificate or permit holder creates an imminent danger to the public health or safety.

(b) An emergency suspension is effective immediately without a hearing on notice to the certificate or permit holder. Notice must also be given to the sponsoring governmental entity if the holder is a volunteer provider.

(c) The holder may request in writing a hearing on the emergency suspension. The department shall conduct the hearing not earlier than the 10th day or later than the 30th day after the date on which the request is received and may continue, modify, or rescind the suspension. The department hearing rules and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) govern the hearing and any appeal from a disciplinary action related to the hearing. (V.A.C.S. Art. 4447o, Sec. 3.08.)

Sec. 773.063. **CIVIL PENALTY.** (a) The attorney general, a district attorney, or a county attorney may bring a civil action to compel compliance with this chapter or to enforce a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty in addition to any injunctive relief or other remedy provided by law. The civil penalty may not exceed \$250 a day for each violation.

(c) Civil penalties recovered in a suit brought by the state at the department's request shall be deposited in the state treasury to the credit of the general revenue fund.

(d) Civil penalties recovered in a suit brought by a local government shall be paid to the local government that brought the suit. A municipality or county is encouraged to use the amount of recovered penalties that exceed the cost of bringing suit to improve the delivery of emergency medical services in the municipality or county. (V.A.C.S. Art. 4447o, Sec. 3.14.)

Sec. 773.064. **CRIMINAL PENALTIES.** (a) A person commits an offense if the person knowingly practices as, attempts to practice as, or represents himself to be a paramedic emergency medical technician, specially skilled emergency medical technician, basic emergency medical technician, or emergency care attendant and the person does not hold a certificate issued by the department under this chapter. An offense under this subsection is a Class A misdemeanor.

(b) An emergency medical services provider commits an offense if the provider knowingly advertises or causes the advertisement of a false, misleading, or deceptive statement or representation concerning emergency medical services staffing, equipment, and vehicles. An offense under this subsection is a Class A misdemeanor.

(c) A person commits an offense if the person knowingly uses or permits to be used a vehicle that the person owns, operates, or controls to transport a sick or injured person unless the vehicle has a permit issued by the department. An offense under this subsection is a Class C misdemeanor.

(d) It is an exception to the application of Subsection (c) that the person transports a sick or injured person:

- (1) to medical care as an individual citizen not ordinarily engaged in that activity;
- (2) in a casualty situation that exceeds the basic vehicular capacity or capability of an emergency medical services provider; or
- (3) as an emergency medical services provider in a vehicle for which a variance has been granted under Section 773.052.

(e) Venue for prosecution of an offense under this section is in the county in which the offense is alleged to have occurred. (V.A.C.S. Art. 4447o, Sec. 3.15.)

#### **CHAPTER 774. LOCAL PROVISION OF EMERGENCY MEDICAL SERVICES**

Sec. 774.001. **MUTUAL ASSISTANCE AMONG MUNICIPALITIES AND COUNTIES IN PROVIDING EMERGENCY MEDICAL SERVICES**

Sec. 774.002. **EDUCATIONAL INCENTIVE PAY FOR EMERGENCY MEDICAL TECHNICIANS**

Sec. 774.003. **EMERGENCY AMBULANCE SERVICE PROVIDED BY COUNTIES**

## CHAPTER 774. LOCAL PROVISION OF EMERGENCY MEDICAL SERVICES

Sec. 774.001. **MUTUAL ASSISTANCE AMONG MUNICIPALITIES AND COUNTIES IN PROVIDING EMERGENCY MEDICAL SERVICES.** (a) On request, a county shall provide emergency medical services for a municipality within that county or for a county bordering that county if:

- (1) an agreement has been executed between the county and the requesting municipality or county;
- (2) an emergency exists in the requesting municipality or county;
- (3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;
- (4) the request is for services that the county receiving the request provides or contracts to provide for persons within its jurisdiction; and
- (5) the county providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county.

(b) On request, a municipality shall provide emergency medical services for the county in which that municipality is located or for a municipality located within 30 miles of that municipality if:

- (1) an agreement has been executed between the municipality and the requesting municipality or county;
- (2) an emergency exists in the requesting municipality or county;
- (3) the requesting municipality or county is temporarily unable to provide its own emergency medical services;
- (4) the request is for services that the municipality receiving the request provides or contracts to provide for persons within its jurisdiction; and
- (5) the municipality providing the services will be able to provide reasonable protection to persons within its jurisdiction while providing services for the requesting municipality or county. (V.A.C.S. Art. 4447o-1.)

Sec. 774.002. **EDUCATIONAL INCENTIVE PAY FOR EMERGENCY MEDICAL TECHNICIANS.** (a) A municipality or other political subdivision that employs emergency medical technicians may pay educational incentive pay to employees holding certificates from the Texas Department of Health as emergency medical technicians.

(b) The educational incentive pay is in addition to any other form of compensation provided by law for emergency medical technicians. (V.A.C.S. Art. 1269j-10.)

Sec. 774.003. **EMERGENCY AMBULANCE SERVICE PROVIDED BY COUNTIES.** (a) The commissioners court of a county may provide for emergency ambulance service in the county, including the provision of necessary equipment, personnel, and maintenance for the service.

(b) In providing for the service authorized by Subsection (a), a commissioners court may enter into agreements with any municipality, hospital district, sheriff's office, fire department, private ambulance service, or other agency or entity that the commissioners court finds to be suitably organized to provide efficient emergency ambulance service in the county. The governing body of a municipality or hospital district in which emergency ambulance service is to be rendered must approve an agreement made with the commissioners court to provide that service in the municipality or hospital district.

(c) A commissioners court operating under this section may expend county funds to defray the expense of establishing, operating, and maintaining the emergency ambulance service in the county. The funds may be expended whether the service is provided directly by the county or by agreement with some other governmental agency or private entity.

(d) A commissioners court providing emergency ambulance service under this section shall establish reasonable fees for the service. The commissioners court or any other agency or entity performing the service may charge and collect the fees.

(e) A commissioners court may make special provisions for rendering emergency ambulance service to indigent persons. (V.A.C.S. Art. 2372t.)

**CHAPTER 775. EMERGENCY SERVICES DISTRICTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 775.001. DEFINITIONS**
- Sec. 775.002. LIBERAL CONSTRUCTION**
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[Sections 775.004–775.010 reserved for expansion]

**SUBCHAPTER B. CREATION OF DISTRICT**

- Sec. 775.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY**
- Sec. 775.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY**
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[Sections 775.021–775.030 reserved for expansion]

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- Sec. 775.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS

## CHAPTER 775. EMERGENCY SERVICES DISTRICTS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 775.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of emergency services commissioners.
- (2) "District" means an emergency services district created under this chapter. (New.)

Sec. 775.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter. (V.A.C.S. Art. 2351a-8, Sec. 34.)

Sec. 775.003. AUTHORIZATION. An emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and by this chapter to protect life and health. (V.A.C.S. Art. 2351a-8, Sec. 1.)

[Sections 775.004-775.010 reserved for expansion]

## SUBCHAPTER B. CREATION OF DISTRICT

Sec. 775.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 qualified voters who own taxable real property in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ County Emergency Services District No. \_\_\_\_\_," with the name of the county and the proper consecutive number inserted. (V.A.C.S. Art. 2351a-8, Secs. 2(a), (b)(2).)

Sec. 775.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ Emergency Services District." (V.A.C.S. Art. 2351a-8, Secs. 3(a), (b)(2).)

Sec. 775.013. CONTENTS OF PETITION. (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 II, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;
- (2) the name of the proposed district;
- (3) the district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) that none of the territory in the district is included in another emergency services district; and

(5) the mailing address of each petitioner.

(b) The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than \$150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses. (V.A.C.S. Art. 2351a-8, Secs. 2(b) (part), (c); 3(b) (part), (c).)

**Sec. 775.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY.** (a) Before a district may be created that contains territory in a municipality's limits or extraterritorial jurisdiction, a written request to be included in the district must be presented to the municipality's governing body. Except as provided by Subsection (c), that territory may not be included in the district unless the municipality's governing body gives its written consent on or before the 60th day after the date on which the municipality receives the request.

(b) If the municipality's governing body does not consent to inclusion within the 60-day period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire control and emergency medical and ambulance services available. The petition must be submitted to the governing body not later than the 90th day after the date on which the municipality receives the request under Subsection (a).

(c) If the municipality's governing body refuses or fails to act on the petition requesting fire protection and emergency medical and ambulance services within six months after the date on which the petition submitted under Subsection (b) is received, the governing body's refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, consent to include the industrial district must be obtained from the municipality's governing body in the same manner provided by this section for obtaining consent to include territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

(f) A governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given. (V.A.C.S. Art. 2351a-8, Sec. 10.)

**Sec. 775.015. FILING OF PETITION AND NOTICE OF HEARING.** (a) If the petition is in proper form, the county judge may receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall give notice of the hearing. The notice must state:

(1) that creation of a district is proposed;

(2) that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(3) the name of the proposed district;

(4) the district's boundaries as stated in the petition;

(5) the place, date, and time of the hearing; and

(6) that each person who has an interest in the creation of the district may attend the hearing and present grounds for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication as prescribed by Subsection (e).

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

- (1) be endorsed or attached to a copy of the notice;
- (2) show the execution of the notice;
- (3) specify each date on which the notice was posted or published; and
- (4) include a printed copy of the published notice. (V.A.C.S. Art. 2351a-8, Secs. 2(b) (part), 3(b) (part), 4, 5.)

Sec. 775.016. HEARING. (a) At the time and place set for the hearing or at a later date then set, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district and may issue incidental orders it considers proper in relation to the issues before the commissioners court. The commissioners court may adjourn the hearing as necessary. (V.A.C.S. Art. 2351a-8, Sec. 6.)

Sec. 775.017. PETITION APPROVAL. (a) If after the hearing the commissioners court finds that creation of the district is feasible and will promote the public safety, welfare, health, and convenience of persons residing in the proposed district, the commissioners court shall grant the petition and fix the district's boundaries.

(b) If the proposed district will include territory in the municipal limits or extraterritorial jurisdiction of one or more municipalities, the commissioners court of the county in which the municipality is located must determine if the district would still meet the requirements prescribed by Subsection (a) if the territory in the municipality's limits or extraterritorial jurisdiction is excluded from the district. The commissioners court must make this finding for each municipality the territory of which will be included in the district.

(c) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition. (V.A.C.S. Art. 2351a-8, Secs. 7, 9(a), (b).)

Sec. 775.018. ELECTION. (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the imposition of a tax not to exceed 10 cents on each \$100 of the taxable value of property taxable by the district or two cents on each \$100 of the taxable value of property taxable by the district if any area in the district is also included in a rural fire prevention district.

(b) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(c) Subject to Section 4.003, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 2351a-8, Sec. 8 (part).)

Sec. 775.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER. (a) A district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.



(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of creating the district and imposing a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 775.017 are favorable to the district's creation.

(c) If a nonconsenting municipality annexes territory in the proposed district, the board shall, after notice, immediately disannex the area from the district and shall cease to provide further services to the residents of that area.

(d) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election for at least one year after the date of the official canvass of the most recent election concerning creation of the district. A subsequent election must be held in the same manner provided by this chapter for the original creation election.

(e) When a district is created, the commissioners court of each county in which the district is located shall enter in its minutes an order that reads substantially as follows:

Whereas, at an election held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in that part of \_\_\_\_\_ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into an emergency services district under state law; and

Whereas, at the election \_\_\_\_\_ votes were cast in favor of formation of the district and \_\_\_\_\_ votes were cast against formation; and

Whereas, the formation of the emergency services district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of \_\_\_\_\_ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into an emergency services district (or a portion thereof) under the name of \_\_\_\_\_, under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and has the powers vested by law in the district. (V.A.C.S. Art. 2351a-8, Secs. 9(c), (d); 11; 12.)

Sec. 775.020. **OVERLAPPING DISTRICTS.** (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 775.016 was most recently held.

(c) The creation of a district with boundaries that overlap the boundaries of another district does not affect the validity of either district. (V.A.C.S. Art. 2351a-8, Secs. 13(a), (b), (c).)

[Sections 775.021-775.030 reserved for expansion]

#### **SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES**

Sec. 775.031. **DISTRICT POWERS.** (a) A district is a political subdivision of the state. To perform the functions of the district, a district may:

- (1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;
- (2) enter into and perform necessary contracts;
- (3) appoint and employ necessary officers, agents, and employees;
- (4) sue and be sued;
- (5) impose and collect taxes as prescribed by this chapter;

- (6) accept and receive donations;
  - (7) lease, own, maintain, operate, and provide emergency services vehicles and other necessary or proper apparatus, instrumentalities, equipment, and machinery to provide emergency services;
  - (8) lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain emergency services vehicles and equipment;
  - (9) contract with other entities, including other districts or municipalities, to make emergency services facilities and emergency services available to the district;
  - (10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district; and
  - (11) perform other acts necessary to carry out the intent of this chapter.
- (b) A district may contract with the state or a political subdivision for law enforcement services. A district may not commission a peace officer or employ a person as a peace officer.

(c) A district is not required to perform all the functions authorized by this chapter. A district may be created to provide limited services. (V.A.C.S. Art. 2351a-8, Sec. 14 (part).)

Sec. 775.032. CERTAIN BUSINESSES NOT SUBJECT TO TAX OR DISTRICT POWERS. A business entity located in a district is not subject to the tax authorized by this chapter or subject to the district's powers if the business entity:

- (1) is providing its own fire protection on the date the district is created;
- (2) receives the appropriate certification from the Commission on Fire Protection Personnel Standards and Education and the Texas State Board of Medical Examiners; and
- (3) owns or operates fire-fighting, medical, or ambulance equipment equivalent to or better than an emergency services district or metropolitan county fire protection system, as defined by the State Board of Insurance. (V.A.C.S. Art. 2351a-8, Sec. 13(d).)

Sec. 775.033. LIABILITY OF DISTRICT. (a) A district is not liable for a claim arising from the act or omission of an employee or volunteer under an oral or written contract with the district if the act or omission:

- (1) is in the course and scope of the employee's or volunteer's duties for the district;
  - (2) takes place during the provision of emergency services;
  - (3) is not in violation of a statute or ordinance applicable to emergency action; and
  - (4) is not wilful or wantonly negligent.
- (b) This section does not expand the liability of a district. (V.A.C.S. Art. 2351a-8, Sec. 15.)

Sec. 775.034. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of emergency services commissioners to serve as the district's governing body. Except as prescribed by Subsection (b), commissioners serve two-year terms.

(b) After the votes are canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial emergency services commissioners to serve until January 1 of the year following the district election. On January 1, the court shall designate three of those emergency services commissioners to serve a two-year term and two of those emergency services commissioners to serve a one-year term.

(c) On January 1 of each year, the commissioners court shall appoint a successor for each emergency services commissioner whose term has expired.

(d) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term. (V.A.C.S. Art. 2351a-8, Secs. 16(a), (b), (c).)

**Sec. 775.035. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY.** (a) The governing body of a district located in more than one county consists of a five-person board of emergency services commissioners elected as prescribed by this section. Except as provided by Subsection (g), emergency services commissioners serve two-year terms.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day in November, other than the date of the general election for state and county officers, to conduct an election to elect the initial emergency services commissioners.

(c) To be eligible to be a candidate for emergency services commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for emergency services commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for emergency services commissioner. On receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial emergency services commissioners' terms of office begin on January 1 of the year following the election. The two commissioners who received the fewest votes serve one-year terms. The other emergency services commissioners serve two-year terms.

(h) The general election for commissioner shall be held annually on an authorized uniform election date as provided by Chapter 41, Election Code. (V.A.C.S. Art. 2351a-8, Sec. 17(a), (b) (part), (c), (d), (e).)

**Sec. 775.036. POWERS AND DUTIES OF BOARD.** (a) The board shall:

- (1) hold regular monthly meetings and other meetings as necessary;
- (2) keep minutes and records of its acts and proceedings;
- (3) give reports required by the state fire marshal, commissioner of health, and other authorized persons;
- (4) give a written report not later than February 1 of each year to the commissioners court regarding the district's administration for the preceding calendar year and the district's financial condition; and
- (5) administer the district in accordance with this chapter.

(b) The board may require inspections in the district relating to the causes and prevention of fires and medical emergencies.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter. (V.A.C.S. Art. 2351a-8, Secs. 14(a) (part); 18(a) (part), (c).)

**Sec. 775.037. OFFICERS OF BOARD.** (a) The emergency services commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed must determine the amount and sufficiency of the bond before it is filed. (V.A.C.S. Art. 2351a-8, Secs. 16(d), (e); 17(f), (g).)

Sec. 775.038. COMPENSATION; CONFLICT OF INTEREST. (a) Emergency services commissioners serve without compensation but may be reimbursed for reasonable and necessary expenses incurred in performing official duties.

(b) Except as a resident or property owner in the district, an emergency services commissioner may not have an interest in a contract or transaction to which the district is a party and under which the commissioner may receive money or other things of value as consideration. (V.A.C.S. Art. 2351a-8, Secs. 18(b) (part), (d).)

[Sections 775.039-775.050 reserved for expansion]

#### SUBCHAPTER D. EXPANSION OR DISSOLUTION OF DISTRICT

Sec. 775.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The hearing may be held not earlier than the 31st day after the date on which the board issues the order.

(c) The secretary of the board shall give notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) The secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district for at least 15 days before the date of the hearing; and

(2) not later than the 16th day before the date on which the hearing will be held, publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the \_\_\_\_\_ Emergency Services District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the \_\_\_\_\_ Emergency Services District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the other provisions of this chapter relating to those matters to the extent that those provisions can be made applicable. (V.A.C.S. Art. 2351a-8, Sec. 27.)

Sec. 775.052. PETITION FOR DISSOLUTION; NOTICE OF HEARING. (a) Before a district may be dissolved, the district's board must receive a petition signed by at least 10 percent of the registered voters in the district.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall give notice of the hearing. The notice must include:

- (1) the name of the district;
- (2) a description of the district's boundaries;
- (3) the proposal that the district be dissolved; and
- (4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held. (V.A.C.S. Art. 2351a-8, Sec. 28.)

**Sec. 775.053. HEARING.** (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition. (V.A.C.S. Art. 2351a-8, Sec. 29.)

**Sec. 775.054. ELECTION TO CONFIRM DISSOLUTION.** (a) On the granting of a petition to dissolve the district, the board shall order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the board grants the petition.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the \_\_\_\_\_ Emergency Services District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district in the boundaries of the old district may not be held for at least one year after dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election. (V.A.C.S. Art. 2351a-8, Secs. 80(a), (b), (c) (part), (d), (e) (part), (f), (g), (h).)

**Sec. 775.055. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION.** (a) After a vote to dissolve a district, the board shall continue to control and administer the property, debts, and assets of the district until all funds are disposed of and all district debts are paid or settled.

(b) The board may not dispose of the district's assets except for due compensation unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's residents.

(c) After the board issues the dissolution order, the board shall:

- (1) determine the debt owed by the district; and
- (2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the taxpayer's share of surplus tax money be

credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

(g) After the district pays all its debts and disposes of all its assets and funds as prescribed by this section, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the board's actions in dissolving the district. Not later than the 10th day after the date it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each emergency services commissioner is discharged from liability under the emergency services commissioner's bond on entry of the order prescribed by Subsection (g). (V.A.C.S. Art. 2351a-8, Sec. 31.)

Sec. 775.056. **CONVERSION OF RURAL FIRE PREVENTION DISTRICT.** (a) Qualified voters who own taxable real property in a rural fire prevention district may present a petition in the manner provided by this chapter for creation of a district to convert the rural fire prevention district to an emergency services district.

(b) If a rural fire prevention district is converted to an emergency services district, the district assumes all obligations and outstanding indebtedness of the rural fire prevention district. (V.A.C.S. Art. 2351a-8, Sec. 33.)

[Sections 775.057-775.070 reserved for expansion]

#### SUBCHAPTER E. FINANCES AND BONDS

Sec. 775.071. **LIMITATION ON INDEBTEDNESS.** Except as provided by Section 775.051, Section 775.072, and Sections 775.077-775.081, a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand or that may be paid from current revenues for the year. (V.A.C.S. Art. 2351a-8, Sec. 19 (part).)

Sec. 775.072. **DEPOSITORY.** (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in a depository bank, except that the board:

(1) may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds.

(d) The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government. (V.A.C.S. Art. 2351a-8, Sec. 25.)

Sec. 775.073. **METHOD OF PAYMENT.** (a) District funds may be disbursed only by check signed by the treasurer and countersigned by the president.

(b) An expenditure may not be paid from tax money unless a sworn itemized account covering the expenditure is presented to the board and the board approves the expenditure. (V.A.C.S. Art. 2351a-8, Sec. 18(b) (part).)

Sec. 775.074. **TAXES.** (a) The board shall annually impose a tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as the interest and principal come due

and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(e) The board shall certify the tax rate to the county tax assessor-collector, who is the assessor-collector for the district. (V.A.C.S. Art. 2351a-8, Secs. 19 (part); 20(j), (k), (l).)

**Sec. 775.075. REDUCTION OF TAX RATE.** (a) The qualified voters of a district may petition in the manner provided by Sections 775.052 through 775.054 for dissolution of a district to reduce the tax rate of the district.

(b) The petition must state the new tax rate desired by the voters.

(c) The tax rate may not be reduced below the rate needed to pay any outstanding bonded indebtedness. (V.A.C.S. Art. 2351a-8, Sec. 32.)

**Sec. 775.076. BONDS AND NOTES AUTHORIZED.** (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers. Before the board may issue bonds or notes, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

- (1) ad valorem taxes;
- (2) all or part of the district's revenues, income, or receipts; or
- (3) a combination of those taxes, revenues, income, and receipts.

(c) The bonds and notes may be issued to mature serially or otherwise in not more than 40 years from the date of their issuance.

(d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.

(e) The bonds, notes, and any interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(f) The bonds and notes may be:

- (1) issued registrable as to principal alone or as to principal and interest;
- (2) made redeemable before maturity;
- (3) issued in the form, denominations, and manner and under the terms, conditions, and details provided by the resolution; and
- (4) sold in the manner, at the price, and under the terms, conditions, and details provided by the resolution.

(g) The bonds and notes bear interest at rates not to exceed the maximum rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(h) If provided by the resolution, the proceeds from the sale of the bonds or notes may be used for:

- (1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;
- (2) paying expenses of operation and maintenance of the facility;
- (3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and

(4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for:

(1) all payments of principal, interest, and any other amounts required in connection with the bonds or notes; and

(2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall impose a tax as prescribed by Section 775.074 if the bonds or notes are payable wholly or partly from ad valorem taxes. (V.A.C.S. Art. 2351a-8, Secs. 20(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) (part), (k) (part).)

Sec. 775.077. ELECTION TO APPROVE BONDS AND NOTES. (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election ordered for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

(1) the amount of bonds or notes to be authorized; and

(2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."

(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)." (V.A.C.S. Art. 2351a-8, Secs. 21(a), (b), (c), (d), (e) (part).)

Sec. 775.078. BOND ANTICIPATION NOTES. (a) A district may issue bond anticipation notes from time to time to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may from time to time authorize the issuance of bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to



payment of the notes will be sufficient to pay the principal of and interest on the notes. (V.A.C.S. Art. 2351a-8, Sec. 22.)

**Sec. 775.079. REFUNDING BONDS.** (a) A district may refund or refinance bonds or notes issued under this chapter by issuing refunding bonds for the purpose and under the terms, conditions, and details determined by the board.

(b) Each relevant and appropriate provision of this chapter is applicable to the refunding bonds, and the refunding bonds shall be issued in the manner provided by this chapter for issuing other bonds.

(c) Refunding bonds may be sold and delivered in amounts necessary to pay the principal of, interest on, and redemption premium, if any, on bonds to be refunded at maturity or on a redemption date.

(d) The refunding bonds may be issued in exchange for the bonds being refunded, and the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the resolution authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(e) The bonds and notes issued by the district may be refunded in the manner provided by other applicable state law. (V.A.C.S. Art. 2351a-8, Sec. 23.)

**Sec. 775.080. APPROVAL AND REGISTRATION OF BONDS.** (a) The district shall submit the bonds, notes, and bond anticipation notes issued under this chapter, and the appropriate proceedings authorizing their issuance, to the attorney general for examination.

(b) If the bonds, notes, or bond anticipation notes state that they are secured by a pledge of contract revenues, the district may submit a copy of the contract and the proceedings relating to the contract to the attorney general.

(c) The attorney general shall approve the bonds, notes, or bond anticipation notes and any submitted contract if the attorney general finds that the bonds, notes, or bond anticipation notes are authorized as provided by law, and that the contract, if submitted, is made as provided by law.

(d) On approval by the attorney general, the comptroller shall register the bonds, notes, or bond anticipation notes.

(e) After approval and registration, the bonds, notes, or bond anticipation notes and the contract are incontestable in a court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes. (V.A.C.S. Art. 2351a-8, Sec. 24.)

**Sec. 775.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.** (a) District bonds and notes are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) District bonds and notes are eligible to secure the deposit of public funds of the state and of a municipality, county, school district, or other political corporation or subdivision of the state. The bonds and notes are legal and sufficient security for deposits to the extent of their value, and if in coupon form, when accompanied by all unmatured coupons. (V.A.C.S. Art. 2351a-8, Sec. 26.)

**CHAPTER 776. EMERGENCY SERVICES DISTRICTS IN COUNTIES OF 125,000 OR LESS**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 776.001. DEFINITIONS
- Sec. 776.002. LIBERAL CONSTRUCTION
- Sec. 776.003. AUTHORIZATION

[Sections 776.004–776.010 reserved for expansion]

**SUBCHAPTER B. CREATION OF DISTRICT**

- Sec. 776.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY
- Sec. 776.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY
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- Sec. 776.015. FILING OF PETITION AND NOTICE OF HEARING
- Sec. 776.016. HEARING
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- Sec. 776.018. CONSIDERATION OF EFFECT OF MUNICIPAL PARTICIPATION
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- Sec. 776.020. ELECTION RESULT AND COMMISSIONERS COURT ORDER
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**SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES**

- Sec. 776.031. DISTRICT POWERS
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- Sec. 776.035. POWERS AND DUTIES OF BOARD
- Sec. 776.036. OFFICERS OF BOARD
- Sec. 776.037. COMPENSATION; CONFLICT OF INTEREST

[Sections 776.038–776.050 reserved for expansion]

**SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT**

- Sec. 776.051. EXPANSION OF DISTRICT TERRITORY
- Sec. 776.052. REMOVAL OF CERTAIN TERRITORY BY GOVERNING BODY OF MUNICIPALITY
- Sec. 776.053. PETITION FOR DISSOLUTION; NOTICE OF HEARING
- Sec. 776.054. HEARING
- Sec. 776.055. APPEAL
- Sec. 776.056. ELECTION TO CONFIRM DISSOLUTION
- Sec. 776.057. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION

[Sections 776.058–776.070 reserved for expansion]

**SUBCHAPTER E. FINANCES AND BONDS**

- Sec. 776.071. LIMITATION ON INDEBTEDNESS
- Sec. 776.072. DEPOSITORIES
- Sec. 776.073. METHOD OF PAYMENT
- Sec. 776.074. COMPETITIVE BIDS REQUIREMENT

- Sec. 776.075. TAXES
- Sec. 776.076. BONDS AND NOTES AUTHORIZED
- Sec. 776.077. ELECTION TO APPROVE BONDS AND NOTES
- Sec. 776.078. BOND ANTICIPATION NOTES
- Sec. 776.079. REFUNDING BONDS
- Sec. 776.080. APPROVAL AND REGISTRATION OF BONDS
- Sec. 776.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS

**CHAPTER 776. EMERGENCY SERVICES DISTRICTS IN  
COUNTIES OF 125,000 OR LESS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 776.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of emergency commissioners.
- (2) "District" means an emergency services district created under this chapter.  
(New.)

Sec. 776.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter. (V.A.C.S. Art. 2351a-9, Sec. 30 (part).)

Sec. 776.003. AUTHORIZATION. In a county with a population of 125,000 or less, an emergency services district may be organized as provided by Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and by this chapter to protect life and property and to conserve natural and human resources. (V.A.C.S. Art. 2351a-9, Secs. 1, 38.)

[Sections 776.004-776.010 reserved for expansion]

**SUBCHAPTER B. CREATION OF DISTRICT**

Sec. 776.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) To create a district located wholly in one county, a petition signed by at least 100 qualified voters who own taxable real property in the proposed district must be filed with the county judge of that county. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ County Emergency Services District No. \_\_\_\_\_," with the name of the county and the proper consecutive number inserted. (V.A.C.S. Art. 2351a-9, Secs. 2(a), (b)(2).)

Sec. 776.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) To create a district that contains territory located in more than one county, a petition must be filed with the county judge of each county in which the proposed district will be located. The petition must be signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters in a county, the petition must be signed by a majority of those voters in that county.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ Emergency Services District." (V.A.C.S. Art. 2351a-9, Secs. 3(a), (b)(2).)

Sec. 776.013. CONTENTS OF PETITION. The petition for the creation of a district must contain:

(1) a statement that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(2) the name of the proposed district;

(3) the district's boundaries as designated by metes and bounds or other sufficient legal description;

(4) a statement that none of the territory in the proposed district is included in another emergency services district;

(5) the mailing address of each petitioner; and

(6) an agreement signed by at least two petitioners that obligates them to pay not more than \$150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses. (V.A.C.S. Art. 2351a-9, Secs. 2(b) (part), (c); 3(b) (part), (c).)

**Sec. 776.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY.** (a) When creation of a district that contains territory within a municipality's limits or extraterritorial jurisdiction is proposed, a written request to exclude that territory from the district must be presented to the municipality's governing body. Except as provided by Subsection (c), that territory may be included in the district unless the municipality's governing body in writing approves the request for exclusion not later than the 60th day after the date on which the request is received.

(b) If the municipality's governing body does not approve the request for exclusion within the period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory that is in the municipality's limits or extraterritorial jurisdiction and that is to be included in the district may petition the governing body to make emergency services available to their territory. The petition must be submitted to the governing body not earlier than the 61st nor later than the 90th day after the date on which the municipality receives the request.

(c) The refusal or failure of the municipality's governing body to act on the petition requesting emergency services within six months after the date on which the petition is received constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, a request for exclusion of that territory must be presented to the municipality's governing body in the same manner provided by this section for territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body fails to exclude from the proposed district territory within the municipality's limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory under this chapter.

(f) A governing body's consent under this section expires six months after the date on which the consent is given. (V.A.C.S. Art. 2351a-9, Sec. 10.)

**Sec. 776.015. FILING OF PETITION AND NOTICE OF HEARING.** (a) The county judge may receive a petition for creation of a district if the petition is in proper form and shall file it with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall issue a notice of the hearing. The notice must state:

(1) that creation of a district is proposed;

(2) that the district is to be created and is to operate under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987;

(3) the name of the proposed district;

(4) the district's boundaries and functions as stated in the petition;

(5) the place, date, and time of the hearing; and

(6) that each person who has an interest in the creation of the district is invited to attend the hearing and to present the person's opinion for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication.

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

- (1) be endorsed or attached to a copy of the notice;
- (2) show the execution of the notice;
- (3) specify each date on which the notice was posted or published; and
- (4) include a printed copy of the published notice. (V.A.C.S. Art. 2351a-9, Secs. 2(b) (part); 3(b) (part); 4; 5.)

**Sec. 776.016. HEARING.** (a) At the time and place set for the hearing or at a later date set at that time, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district and may issue incidental orders it considers proper. The commissioners court may adjourn the hearing as necessary. (V.A.C.S. Art. 2351a-9, Sec. 6.)

**Sec. 776.017. PETITION APPROVAL; DENIAL.** (a) If after the hearing the commissioners court finds that the proposed district is feasible, will benefit the territory in the district, will secure the public safety, welfare, and convenience, and will aid in conserving the real property or natural resources in the proposed district, the commissioners court shall grant the petition and fix the district's boundaries.

(b) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition. (V.A.C.S. Art. 2351a-9, Sec. 7.)

**Sec. 776.018. CONSIDERATION OF EFFECT OF MUNICIPAL PARTICIPATION.** (a) If the area of the proposed district encompasses the territory of any municipality, including the area within the extraterritorial jurisdiction of the municipality, the commissioners court of the county in which the municipal territory or jurisdiction is located, in making a determination under Section 776.017, shall also determine whether those findings would be the same as to the remaining portion of the proposed district, including any or all of the territory of the municipalities in the event any one or more of the municipalities should fail to cast a majority vote against the district and the tax.

(b) This finding shall be made as to each municipality whose territory is proposed to be included within the area of the proposed district. (V.A.C.S. Art. 2351a-9, Secs. 9(a), (b).)

**Sec. 776.019. ELECTION.** (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the levy of a tax not to exceed 10 cents on each \$100 of the taxable value of property taxable by the district.

(b) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(c) Subject to Section 4.008, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 2351a-9, Secs. 8(a) (part), (c).)

Sec. 776.020. ELECTION RESULT AND COMMISSIONERS COURT ORDER. (a) If a majority of the votes cast in the election favor confirmation, the district is created.

(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of confirmation of the creation of the district and imposing a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 776.017 were favorable to the district's creation.

(c) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election.

(d) When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

Whereas, at an election held on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in that part of \_\_\_\_\_ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into an emergency services district under state law; and

Whereas, at the election \_\_\_\_\_ votes were cast in favor of formation of the district and \_\_\_\_\_ votes were cast against formation; and

Whereas, the formation of the emergency services district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of \_\_\_\_\_ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into an emergency services district (or a portion thereof) under the name of \_\_\_\_\_, under Article III, Section 48-e, of the Texas Constitution, as proposed by S.J.R. No. 27, Acts of the 70th Legislature, Regular Session, 1987, and adopted by the voters at an election held November 3, 1987, and has the powers vested by law in the district. (V.A.C.S. Art. 2351a-9, Secs. 9(c), (d) (part); 11.)

Sec. 776.021. OVERLAPPING DISTRICTS. (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date on which the election confirming its creation was held. If the elections confirming the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 776.016 was most recently held.

(c) The fact that a district is created with boundaries that overlap the boundaries of another district does not affect the validity of either district. (V.A.C.S. Art. 2351a-9, Secs. 12(a), (b), (c).)

[Sections 776.022-776.030 reserved for expansion]

#### SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES

Sec. 776.031. DISTRICT POWERS. (a) A district is a political subdivision of the state. To perform the functions of the district, a district may carry out this chapter and:

- (1) acquire, hold, lease, manage, occupy, and sell real and personal property or an interest in property including real property, improvements, and fixtures necessary to house, repair, and maintain fire protection equipment;
- (2) appoint and employ necessary officers, agents, and employees;
- (3) sue and be sued;
- (4) impose and collect taxes as prescribed by this chapter;
- (5) accept and receive donations;

(6) lease, own, maintain, and operate an emergency services system and other necessary or proper fire protection equipment and machinery to prevent and extinguish fires in the district and provide emergency services, including emergency ambulance service;

(7) enter into and perform necessary contracts, including a contract with another district, municipality, or another entity:

(A) to make fire-fighting facilities, fire extinguishment services, and emergency rescue and ambulance services available to the district; or

(B) for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district; and

(8) lease, own, maintain, operate, and provide emergency rescue equipment, emergency medical equipment, and other necessary and proper equipment to prevent loss of life or serious personal injury from fire or other hazards.

(b) A district may be created to provide limited services specified at the time of the district's creation. (V.A.C.S. Art. 2351a-9, Secs. 13, 14 (part), 39.)

**Sec. 776.032. CERTAIN BUSINESSES NOT SUBJECT TO TAX OR DISTRICT POWERS.** A business entity located in a district is not subject to the tax authorized by this chapter or subject to the district's powers if the business entity:

(1) provides its own emergency services;

(2) receives the appropriate certification from the Commission on Fire Protection Personnel Standards and Education and the Texas State Board of Medical Examiners; and

(3) owns or operates fire-fighting, medical, or ambulance equipment equivalent to or better than a Class I emergency services district or metropolitan fire protection system, as defined by the State Board of Insurance on December 1, 1987. (V.A.C.S. Art. 2351a-9, Sec. 12(d).)

**Sec. 776.033. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY.** (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of emergency commissioners to serve as the district's governing body. Except as prescribed by Subsection (b), a commissioner serves a two-year term.

(b) After the votes have been canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial emergency commissioners to serve until January 1 of the year following the year of the district election. On January 1, the court shall designate three of those commissioners to serve two-year terms and two commissioners to serve one-year terms.

(c) On January 1 of each year, the commissioners court shall appoint a successor for each emergency commissioner whose term has expired.

(d) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term. (V.A.C.S. Art. 2351a-9, Secs. 25(a), (b).)

**Sec. 776.034. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY.** (a) The governing body of a district located in more than one county consists of a five-person board of emergency commissioners elected as prescribed by this section. Except as provided by Subsection (g), an emergency commissioner serves a two-year term.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day in November, other than the date of the general election for state and county officers, to conduct an election to elect the initial emergency commissioners.

(c) To be eligible as a candidate for emergency commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for emergency commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person intends to run for emergency commissioner. On receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial emergency commissioners' terms of office begin on January 1 of the year following the year of the election. The two commissioners who received the fewest votes serve one-year terms. The other commissioners serve two-year terms.

(h) The general election for commissioner shall be held annually on an authorized election date as provided by Chapter 41, Election Code. (V.A.C.S. Art. 2351a-9, Secs. 26(a), (b) (part), (c), (d), (e).)

Sec. 776.035. POWERS AND DUTIES OF BOARD. (a) The board shall:

- (1) hold regular monthly meetings and other meetings as necessary;
- (2) keep minutes and records of its acts and proceedings;
- (3) file reports as required by the state fire marshal, the commissioner of health, and other authorized persons;
- (4) file a written report not later than February 1 of each year with the commissioners court regarding the district's administration for the preceding calendar year and the district's financial condition; and
- (5) administer the district in accordance with this chapter.

(b) The board may require inspections to be made in the district relating to the causes and prevention of fires or other disasters affecting human life or property.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter. (V.A.C.S. Art. 2351a-9, Secs. 14 (part); 27(a) (part), (c), (d).)

Sec. 776.036. OFFICERS OF BOARD. (a) The emergency commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed shall determine the amount and sufficiency of the bond before it is filed. (V.A.C.S. Art. 2351a-9, Secs. 25(c), (d), 26(f), (g).)

Sec. 776.037. COMPENSATION; CONFLICT OF INTEREST. (a) Emergency commissioners serve without compensation but may be reimbursed for reasonable and necessary expenses incurred in performing official duties.

(b) Except as a resident or property owner in the district, an emergency commissioner may not have an interest in a contract or transaction to which the district is a party and under which the commissioner may receive money or other things of value as consideration. (V.A.C.S. Art. 2351a-9, Secs. 27(b) (part), (e).)

[Sections 776.038-776.050 reserved for expansion]

#### SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 776.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a



petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place for a hearing on the petition. The hearing must be held not earlier than the 31st day after the date on which the board issues the order.

(c) The secretary of the board shall issue a notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) Not later than the 16th day before the date on which the hearing will be held, the secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district; and

(2) publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district is feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a modification or change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the \_\_\_\_\_ Emergency Services District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the \_\_\_\_\_ Emergency Services District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the applicable provisions of this chapter, except that the board president shall conduct the election and certify the results to the county judge of each county in the district. (V.A.C.S. Art. 2351a-9, Sec. 28.)

**Sec. 776.052. REMOVAL OF CERTAIN TERRITORY BY GOVERNING BODY OF MUNICIPALITY.** (a) If territory in a municipality's limits or extraterritorial jurisdiction is included in a district, the municipality's governing body may remove that territory from the district if:

(1) the municipality agrees to provide emergency protection to the territory as prescribed by Section 776.014; or

(2) the territory is designated an industrial district under Section 42.044, Local Government Code.

(b) To remove territory, the governing body of the municipality must notify the secretary of the board in writing that the territory is excluded from the district's territory.

(c) If a municipality that is not in the district annexes territory that is included in a district, the governing body of the municipality shall notify the secretary of the board in writing that the annexed territory is excluded from the district's territory. (V.A.C.S. Art. 2351a-9, Secs. 9(d) (part), 29.)

**Sec. 776.053. PETITION FOR DISSOLUTION; NOTICE OF HEARING.** (a) Before a district may be dissolved, the district's board must receive a petition signed by at least 100 qualified voters who own taxable real property in the district or a majority of those voters, whichever is less.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall issue a notice of the hearing that includes:

- (1) the name of the district;
- (2) a description of the district's boundaries;
- (3) the proposal that the district be dissolved; and
- (4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held. (V.A.C.S. Art. 2351a-9, Sec. 34.)

Sec. 776.054. HEARING. (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition. (V.A.C.S. Art. 2351a-9, Sec. 35(a).)

Sec. 776.055. APPEAL. A person in the district or an owner of real or personal property located in the district may appeal the board's decision on dissolution of the district. The person or owner must file the appeal in a district court in a county in which the district is located. (V.A.C.S. Art. 2351a-9, Sec. 35(b).)

Sec. 776.056. ELECTION TO CONFIRM DISSOLUTION. (a) On the granting of a petition to dissolve the district, the board shall order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the \_\_\_\_\_ Emergency Services District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district within the boundaries of the old district may not be held before the first anniversary of the date of dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election. (V.A.C.S. Art. 2351a-9, Secs. 36(a), (b), (c) (part), (d), (e) (part), (f), (g), (h).)

Sec. 776.057. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a district, the board shall continue to control and administer the debts, property, and other assets of the district until all assets have been disposed of and all district debts have been satisfied.

(b) The board may not dispose of the district's assets except for appropriate consideration unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's citizens.

(c) After the board issues the dissolution order, the board shall:

(1) determine the amount of debt owed by the district in excess of the district's assets; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the amount of the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to pay that amount to the county tax assessor-collector.

(g) After the district has paid all its debts and has disposed of all its assets as prescribed by this section, the board shall file with the commissioners court of each county in which the district is located a written report setting forth a summary of the board's actions in dissolving the district. Not later than the 10th day after it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each emergency commissioner is discharged from liability under the emergency commissioner's bond on entry of the dissolution order under Subsection (g). (V.A.C.S. Art. 2351a-9, Sec. 37.)

[Sections 776.058-776.070 reserved for expansion]

#### **SUBCHAPTER E. FINANCES AND BONDS**

**Sec. 776.071. LIMITATION ON INDEBTEDNESS.** Except as provided by Section 776.072 and Sections 776.076-776.081, a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand or that may be paid from current revenues for the year. (V.A.C.S. Art. 2351a-9, Sec. 17 (part).)

**Sec. 776.072. DEPOSITORIES.** (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in its depository, except that the board:

(1) may deposit funds pledged to pay bonds or notes with a bank named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds.

(d) The resolution or trust indenture securing the bonds or notes may require that some or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government. (V.A.C.S. Art. 2351a-9, Sec. 23.)

**Sec. 776.073. METHOD OF PAYMENT.** (a) District funds may be disbursed only by check signed by the treasurer and countersigned by the president. If the treasurer is unavailable, the assistant treasurer may sign for the treasurer. If the president is unavailable, the vice-president may sign for the president.

(b) An expenditure of more than \$2,000 may not be paid from tax money unless a sworn itemized account covering the expenditure is presented to the board and the board approves the expenditure. (V.A.C.S. Art. 2351a-9, Sec. 27(b) (part).)

**Sec. 776.074. COMPETITIVE BIDS REQUIREMENT.** (a) The board must submit to competitive bids an expenditure of more than \$10,000 for the purchase or lease of:

(1) one item or service; or

(2) more than one of the same or a similar type of items or services in a fiscal year.

(b) The board shall notify at least 10 suppliers, vendors, or providers of the item or service required and inform them of bidding procedure. If at least 10 suppliers, vendors, or providers are not available or known to the board, the board may give notice to fewer than 10 suppliers, vendors, or providers.

(c) The notice for competitive bidding must:

- (1) describe the service to be performed or the item to be purchased or leased;
- (2) state the location at which the bidding documents, plans, specifications, or other data may be examined; and
- (3) state the time and place for submitting bids and the time and place that bids will be opened.

(d) Bids may be opened only by the board at a public meeting or by a district officer or employee at a district office.

(e) The board may reject any and all bids. The board shall award a contract to the lowest responsible bidder. The board may not award a contract to a bidder who is not the lowest bidder unless, before the bid is awarded, the lowest bidder is given notice of the proposed award and an opportunity to appear before the board or its designated representative and present evidence concerning the bidder's responsibility.

(f) A contract awarded in violation of this section is void.

(g) This section applies to an expenditure of district tax revenues by any person or entity, including a volunteer fire department, for the purchase of services, vehicles, equipment, or goods.

(h) This section does not apply:

- (1) to the purchase or lease of real property;
- (2) to an item or service that the board determines can be obtained from only one source; or
- (3) to an emergency expenditure. (V.A.C.S. Art. 2351a-9, Secs. 15, 16.)

Sec. 776.075. TAXES. (a) The board shall annually impose a tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as they come due and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(e) The board shall certify the tax rate to the county tax assessor-collector, who is the assessor-collector for the district. (V.A.C.S. Art. 2351a-9, Secs. 17 (part); 18(j), (k), (l).)

Sec. 776.076. BONDS AND NOTES AUTHORIZED. (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers. Before the board may issue bonds or notes, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

- (1) ad valorem taxes;
- (2) all or part of the district's revenues, income, or receipts; or
- (3) a combination of those taxes, revenues, income, and receipts.

(c) The bonds and notes may be issued to mature serially or otherwise in not more than 40 years from the date of their issuance.

(d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.

(e) The bonds, notes, and any interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(f) The bonds and notes may be:

- (1) issued registrable as to principal alone or as to principal and interest;
- (2) made redeemable before maturity;
- (3) issued in the form, denominations, and manner and under the terms provided by the resolution; and
- (4) sold in the manner, at the price, and under the terms provided by the resolution.

(g) The bonds and notes bear interest at rates not to exceed the maximum rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(h) If provided by the resolution, the proceeds from the sale of the bonds or notes may be used for:

- (1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;
- (2) paying expenses of operation and maintenance of the facility;
- (3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and
- (4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal of, interest on, and other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that, together with any other pledged resources, will be at least sufficient to provide for:

- (1) all payments of principal of, interest on, and other amounts required in connection with the bonds or notes; and
- (2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall impose a tax as prescribed by Section 776.075 if the bonds or notes are payable wholly or partly from ad valorem taxes. (V.A.C.S. Art. 2351a-9, Secs. 18(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) (part), (k) (part).)

**Sec. 776.077. ELECTION TO APPROVE BONDS AND NOTES.** (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election called for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

- (1) the amount of bonds or notes to be authorized; and

(2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."

(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)." (V.A.C.S. Art. 2351a-9, Secs. 19(a), (b), (c), (d), (e) (part).)

Sec. 776.078. BOND ANTICIPATION NOTES. (a) A district at any time may issue bond anticipation notes to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may at any time authorize the issuance of bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to payment of the notes will be sufficient to pay the principal of and interest on the notes. (V.A.C.S. Art. 2351a-9, Sec. 20.)

Sec. 776.079. REFUNDING BONDS. (a) A district may refund or refinance bonds or notes issued under this chapter by issuing refunding bonds for the purpose and under the terms determined by the board.

(b) This chapter is applicable to the refunding bonds, and the refunding bonds shall be issued in the manner provided by this chapter for issuing other bonds.

(c) Refunding bonds may be sold and delivered in amounts necessary to pay the principal of, interest on, and redemption premium, if any, for bonds to be refunded at maturity or on a redemption date.

(d) The refunding bonds may be issued in exchange for the bonds being refunded, and the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the resolution authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(e) The bonds and notes issued by the district may be refunded in the manner provided by other applicable state law. (V.A.C.S. Art. 2351a-9, Sec. 21.)

Sec. 776.080. APPROVAL AND REGISTRATION OF BONDS. (a) The district shall submit the bonds, notes, and bond anticipation notes issued under this chapter, and the appropriate proceedings authorizing their issuance, to the attorney general for examination.

(b) If the bonds, notes, or bond anticipation notes state that they are secured by a pledge of contract revenues, the district may submit a copy of the contract and the proceedings relating to the contract to the attorney general.

(c) The attorney general shall approve the bonds, notes, or bond anticipation notes and any submitted contract if the attorney general finds that the bonds, notes, or bond anticipation notes are authorized as provided by law, and that the contract, if submitted, is made as provided by law.

(d) On approval by the attorney general, the comptroller shall register the bonds, notes, or bond anticipation notes.

(e) After approval and registration, the bonds, notes, or bond anticipation notes and the contract are incontestable in a court or other forum for any reason and are valid and

binding obligations in accordance with their terms for all purposes. (V.A.C.S. Art. 2351a-9, Sec. 22.)

**Sec. 776.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS. (a)**  
District bonds and notes are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and

(9) a sinking fund of a municipality, county, school district, or other political corporation or subdivision of the state.

(b) District bonds and notes are eligible to secure the deposit of public funds of the state and of municipalities, counties, school districts, or other political corporations or subdivisions of the state. The bonds and notes are legal and sufficient security for deposits to the extent of their value, and if in coupon form, when accompanied by all unmatured coupons. (V.A.C.S. Art. 2351a-9, Sec. 24.)

[Chapters 777-790 reserved for expansion]

**SUBTITLE C. FIRE**

**CHAPTER 791. FIRE ESCAPES**

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SUBTITLE C. FIRE

CHAPTER 791. FIRE ESCAPES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 791.001. DEFINITIONS. In this chapter:

- (1) "Owner" includes an individual, firm, association, or private corporation.
- (2) "Story" has its usual architectural meaning and includes:
  - (A) a basement that extends five feet or more above the grade line on one or more sides of a building;
  - (B) a balcony or mezzanine floor of a building;
  - (C) a roof garden; or
  - (D) an attic used for any purpose. (V.A.C.S. Arts. 3961, 3962.)

Sec. 791.002. FIRE ESCAPE REQUIRED. (a) The owner of a building shall equip the building with at least one fire escape and with additional fire escapes as required by Subchapters C and D if the building has at least:

- (1) three stories and is used as a facility subject to Subchapter C; or
- (2) two stories and is used as a school.

(b) A fire escape required by this chapter must meet the specifications provided by this chapter for an exterior stairway fire escape, an exterior chute fire escape, a combination of those exterior fire escapes, or an interior fire escape. (V.A.C.S. Arts. 3955, 3963 (part).)

Sec. 791.003. COMPLIANCE. A building constructed after September 1, 1925, and subject to this chapter shall be equipped with fire escapes and must meet all other requirements of this chapter before the building is wholly or partially occupied or used. (V.A.C.S. Art. 3970.)

Sec. 791.004. EXEMPTIONS. (a) This chapter does not apply to the construction of a structure in a municipality that has in effect a nationally recognized model building code governing the construction if the building code requires at least one one-hour fire-resistive means of escape with a total width equal to or greater than the total exit width required under this chapter for a structure of three or more stories.

(b) This chapter does not apply to a grain elevator constructed of:

- (1) steel;
- (2) steel and concrete; or



(3) wood if fewer than five persons are employed at the grain elevator. (V.A.C.S. Arts. 3958 (part), 3972b.)

Sec. 791.005. **LOCATION OF FIRE ESCAPES.** Consistent with accessibility, each fire escape subject to this chapter must be located as far as possible from stairways, elevator hatchways, and other openings in the floors of the building served by the fire escape. If possible, each fire escape must be located at the end of a hallway or unobstructed passageway and as far apart as is consistent with the construction and location of the building. (V.A.C.S. Art. 3964.)

Sec. 791.006. **INSPECTION; APPROVAL.** (a) A fire escape subject to this chapter and each extension or addition to that fire escape shall be inspected before being approved for use.

(b) The inspection may be conducted by:

- (1) the state fire marshal;
- (2) an inspector of the State Board of Insurance;
- (3) the chief of a municipal fire department; or
- (4) a municipal fire marshal.

(c) A fire escape or an addition or extension to a fire escape may not be approved unless it meets the requirements of this chapter. (V.A.C.S. Art. 3971.)

Sec. 791.007. **TESTS; AFFIDAVIT.** (a) The person who erects a fire escape shall test the fire escape, on its completion and before final approval of the fire escape, by the application of a live load of 160 pounds per square foot of area of balcony floor and stair treads, or a dead load of 240 pounds per square foot of area of balcony floor and stair treads. The weight must be simultaneously imposed on each balcony and the stairways connecting the balconies that lead both up and down.

(b) Sand, gravel, concrete blocks, or any other suitable commodity may be used in performing the tests. The load must be accurately weighed and applied as specified in this section.

(c) A dead load must be placed in position in whole or in part by mechanical means without a person present on the fire escape when the test is made. A live load must be placed in position by mechanical means or by persons, and persons must be present on the fire escape as part of the load when the test is made.

(d) The person who erects the fire escape shall conduct the tests in the presence of:

- (1) the state fire marshal;
- (2) an appointed representative of the state fire marshal;
- (3) the chief of a fire department; or
- (4) a municipal fire marshal.

(e) If an official listed in Subsection (d) cannot be present to witness the test, any of the officials instead may accept an affidavit from the person who erects the fire escape that states that the minimum required test has been made and that the fire escape has passed the test. (V.A.C.S. Arts. 3968, 3969.)

[Sections 791.008–791.010 reserved for expansion]

#### **SUBCHAPTER B. MINIMUM SPECIFICATIONS FOR FIRE ESCAPES**

Sec. 791.011. **GENERAL REQUIREMENTS.** (a) A fire escape shall be constructed and arranged in a manner that:

- (1) permits exit on the fire escape from each floor of the building above the first floor; and
- (2) provides an uninterrupted exit from the building to the grade.

(b) The materials, construction, erection, and test of a fire escape must comply with the minimum specifications established under this subchapter for that type of fire escape. (V.A.C.S. Arts. 3963 (part), 3966 (part).)

Sec. 791.012. MINIMUM SPECIFICATIONS FOR EXTERIOR STAIRWAY FIRE ESCAPES. (a) An exterior stairway fire escape is a structure that:

- (1) is located on the exterior of a building;
- (2) is constructed of iron, steel, or reinforced concrete; and
- (3) consists of balconies and stairways.

(b) An exterior stairway fire escape may be constructed in:

- (1) superimposed form;
- (2) straight run form;
- (3) superimposed form with intermediate balconies; or
- (4) a combination of those forms.

(c) The balconies for a superimposed form stairway fire escape attached to the building at two or more floors must equal in length the horizontal length of the stair runs plus an amount at each end equal to the width of the stairs. Each balcony must be as long as the width of the exit opening in the building wall and must be at least 50 inches wide inside the balcony railings.

(d) The balconies for a superimposed form stairway fire escape with intermediate balconies attached to the building at two or more floors must be at least equal in width to the combined width of the stairways connected by the balconies leading both up and down. The landings at the head and foot of the stairs must be as deep as the width of the stairs and as long as the width of the exit opening in the building wall.

(e) The balconies for a straight run form stairway fire escape must be at least equal in width to the width of the stairs and as long as the width of the exit opening in the building wall.

(f) The floor of an iron or steel balcony must be either solid or slatted. If solid, the floor must have a scored surface to prevent slipping and, to provide drainage, must be pitched at a slope of not less than one-half inch in 10 feet. If slatted, the slats may not be placed more than three-quarters inch apart and must be secured with rivets or bolts. Material used in the floor must be at least three-sixteenths inch thick.

(g) The railing enclosures of a balcony must be at least two feet nine inches high. If of vertical and horizontal slat or grill construction, a space between slats or within the grill may not have a horizontal width of more than eight inches. If of truss construction, the span of a panel may not exceed three feet. An opening in the railing enclosures on any type of construction may not exceed two square feet. A railing enclosure must be free throughout its length from obstructions that tend to break handholds, and the passage space must be smooth and free from obstructions or projections. A railing enclosure must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(h) A balcony must be anchored to the building with bolts at least one inch in diameter, extending through the wall of the building and provided with a wall bearing plate on the interior that is at least five inches square and three-eighths inch thick, or must be anchored by such bolts set in concrete or masonry or made integral in new buildings. A balcony may not be placed above or more than one foot below the top of the sill of the exit opening in the building wall and preferably should be level with the sill.

(i) A concrete balcony must meet the requirements of this section and must be made of reinforced concrete composed of one part cement, two parts sand, and four parts stone or gravel. The railing enclosure of a concrete balcony must meet the specifications of this section or be made of reinforced concrete, with balusters spaced not more than one foot apart.

(j) The pitch of a fire escape stairway may not exceed 45 degrees.

(k) The stairway treads must be at least eight inches wide, excluding nosings, and at least 24 inches long. Treads must be placed so that the rise, either open or closed, does not exceed eight inches. If solid, treads must have a scored surface. If slatted, the slats must be placed not more than three-quarters inch apart and be well secured by bolts or rivets. Material used in the treads must be at least three-sixteenths inch thick.

(l) Railings must be provided on both sides of stairs. The railings must be at least two feet nine inches high, measured vertically from the center of the stair treads, and must be supported by balusters spaced not more than one foot apart. If an intermediate rail is provided, it shall be provided halfway between the top rail and the stair stringers and the balusters must be placed not more than five feet apart. Stair railings must permit at least 24 inches of unobstructed passageway and must be designed to withstand a horizontal pressure of 200 pounds per running foot of railing without serious deflection.

(m) Concrete stairs must comply with the requirements of this section and must be made of reinforced concrete composed in the same mix as provided by Subsection (i). Railing enclosures for concrete stairs must be either as provided by Subsection (g) or of reinforced concrete balustrade with balusters spaced not more than one foot apart.

(n) Stairways must be built stationary to grade where possible and must be built stationary to grade for buildings such as schools or hospitals.

(o) If a fire escape terminates over a street, alley, private driveway, or other similar situation and terminates in a hinged and counterbalanced section of stairway, the construction of that section of stairs must conform to the stationary parts of the stairway and must be balanced so that the weight of one person on the third or fourth tread will lower the stairway to the landing. Bearings for counterbalanced stairs must be either bronze bushings or have sufficient clearance to prevent sticking caused by corrosion. A latch or lock may not be attached to the counterbalanced stairs in the up position, but a latch must be provided to hold the stairs in the down position when they have been swung to the ground. The connection between stair railings on the stationary part of the stairway and the counterbalanced part of the stairway must be designed to prevent the probability of injury to persons who use the fire escape. If necessary, a suitable opening must be provided in any awning, roof, or other intervening obstruction to admit the counterbalanced stairs and permit the passage of persons on the stairs.

(p) The fire escape must be connected to the roof of the building to which it is attached. If the roof of the building is designed in such a way that escape by way of the roof may be necessary, the fire escape must extend to the roof. If the connection is only for use by the fire department, it must be made with a gooseneck-type ladder with stringers made of material at least three-eighths inch thick, and rungs at least three-quarters inch in diameter, 16 inches long, and not more than 14 inches apart. The ladder must be anchored to the wall.

(q) The minimum unobstructed width of an exterior passageway in the fire escape, whether parallel to the building or at right angles to it, is 24 inches.

(r) The clearance at all points on balconies and stairs, as measured vertically, must be at least six feet six inches. (V.A.C.S. Art. 3966 (part).)

**Sec. 791.013. MINIMUM SPECIFICATIONS FOR EXTERIOR CHUTE FIRE ESCAPES.** (a) An exterior chute fire escape is a structure that is located on the exterior of a building and constructed of iron or steel and that consists of balconies and a straight or spiral gravity chute.

(b) An exterior straight chute fire escape may be in:

- (1) superimposed form parallel to or at right angles to the building;
- (2) straight run form parallel to or at right angles to the building; or
- (3) a combination of those two forms.

(c) An exterior spiral chute fire escape must be constructed in a spiral form around a central column and must rest on and be anchored to a concrete base at least 18 inches thick.

(d) The chute and any intervening balconies must be constructed in a manner that provides a continuous gravity slide from the top floor to the grade and must be accessible from all floors of the building. An exterior straight chute must be placed at an angle that does not exceed 45 degrees.

(e) The balconies must meet the specifications imposed under Section 791.012 for the balconies of exterior stairway fire escapes.

(f) A straight chute must be composed of material equal to at least 14-gauge iron or steel. A spiral chute must be composed of material equal to at least 16-gauge iron or steel. The material used must be blue annealed or of equal type and must be capable of taking a smooth or polished surface.

(g) The interior of a straight chute must be 20 inches wide and 18 inches deep, and in cross section must have a concave bottom and straight sides. The interior of a spiral chute must be at least 30 inches wide. The interior of either form of chute must be free from obstructions or sharp edges.

(h) The top edges of a straight chute must be stiffened and protected throughout the length of the chute with iron or steel angles free from sharp edges. The angles must be of the size necessary to carry the maximum possible load. The chute must be reinforced crosswise underneath with iron or steel angles.

(i) The slideway of a spiral chute must be banked at the outer edge to prevent a passenger from being thrown against a guardrail or enclosure and must be enclosed by either a continuous wall or guardrail at least 30 inches high constructed of at least 18-gauge iron or steel. A spiral chute may not terminate more than two feet above the grade and must be constructed and arranged so that a normal landing is in a standing position.

(j) A landing composed of the same material as the chute must be provided at the lower end of a straight chute and must be of sufficient length in proportion to the length of the chute and the concavity of its surface to check the momentum attained through gravity and to provide a safe stop. The landing must be six inches wider than the chute on each side if wall construction does not interfere and must be without sharp edges or ragged projections. The landing must rest on and be anchored to a concrete base at least six inches thick.

(k) All rivets exposed inside a chute and on the top side of a landing of a straight chute must be countersunk and ground smooth. (V.A.C.S. Art. 3966 (part).)

Sec. 791.014. MINIMUM SPECIFICATIONS FOR INTERIOR FIRE ESCAPES. (a) An interior fire escape may be:

(1) a stairway composed of iron, steel, or concrete; or

(2) a straight or spiral chute composed of iron or steel.

(b) The fire escape must be enclosed with a noncombustible material. All door and window openings in the enclosure must be protected with self-closing fireproof shutters.

(c) Balconies or landings used with an interior fire escape must meet the construction requirements imposed under Section 791.012, except that a balcony used with an interior fire escape must permit at least 40 inches of unobstructed passageway, and the balconies or landings must be located on a level with the floors of the building.

(d) The stairs of an interior stairway fire escape must meet the requirements imposed under Section 791.012, except that the stairs must permit at least 40 inches of unobstructed passageway in all parts. An interior stairway fire escape may not use stairs of the types known as "spirals" or "winders."

(e) An interior stairway fire escape must be continuous, starting at the ground floor, and may not descend to any basement. It must extend through the roof of the building and must terminate in a penthouse constructed of noncombustible material equipped with a self-closing fire door as specified in this section.

(f) An interior chute fire escape must meet the requirements of Section 791.013.

(g) An interior fire escape must be accessible from all parts of the building it is designed to serve. Each lobby, hall, or passageway that leads to a fire escape and is used in connection with it must be at least 36 inches wide and at least six feet six inches high and must be level with the floor on which the fire escape opens and which it serves. The fire escape must be constructed at the lower end in a manner that permits direct exit to the outside of the building at the grade.

(h) The enclosing walls of an interior fire escape may be constructed of:

(1) brick;

- (2) plain solid concrete;
- (3) reinforced stone or gravel concrete;
- (4) reinforced cinder concrete;
- (5) hollow terra-cotta blocks;
- (6) hollow concrete blocks composed of stone or cinder concrete mortar;
- (7) gypsum blocks; or
- (8) metal lath on steel studding.

(i) If the enclosing walls are of brick or plain solid concrete, they must be at least eight inches thick for the top 30 feet, increasing four inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least eight inches thick for the entire height if the walls are wholly supported at intervals not to exceed 30 feet. If the enclosing walls are of reinforced stone or gravel concrete, they must be at least five inches thick for the top 30 feet, increasing two inches in thickness for each lower section of 30 feet or fraction of 30 feet, or at least three inches thick for the entire height if supported at vertical intervals not to exceed 20 feet and if braced as necessary with lateral supports or suitable steel uprights. If the enclosing walls are of reinforced cinder concrete, the concrete must be at least five inches thick for the entire height of the enclosing walls, and the walls must be supported at vertical intervals not to exceed 15 feet and must be braced as necessary with lateral supports or suitable steel uprights.

(j) If the enclosing walls are composed of hollow terra-cotta blocks, the blocks must be laid in cement mortar, and the walls must be at least five inches thick overall. If the enclosing walls are composed of hollow concrete blocks of either stone or cinder concrete mortar, the enclosing walls must be at least five inches thick overall. If the walls are constructed of gypsum blocks, the blocks may be either solid or hollow but must contain not more than 25 percent by weight of cinders, asbestos fiber, wood chips, or vegetable fiber. The gypsum blocks must be laid in gypsum plaster or cement mortar tempered with lime, and the enclosing walls must be at least five inches thick overall. If the walls are constructed of metal lath on steel studding, they must be covered with portland cement mortar or gypsum plaster of a finished thickness of at least two inches in the case of solid partitions or of at least three inches in the case of hollow partitions. Each opening in a wall or partition must have substantial steel framing, the vertical members of which must be securely attached to the floor construction above and below.

(k) Each door opening in an interior fire escape must be protected by the use of an automatic or self-closing fire door of standard manufacture, bearing the Underwriters Laboratory label. If an automatic fire door is used, it must be enclosed in a recessed partition. All doors must be arranged and equipped to remain in closed positions at all times and under all conditions except during actual use.

(l) Each window opening must be equipped with a metal sash bearing the Underwriters Laboratory label and with wire glass.

(m) Each interior fire escape must be provided at each landing with at least one light equal in power to a 10-watt electric globe. The lighting must be on a separate circuit from that of the rest of the building and must be designed to operate if the regular lighting system of the building is disabled. (V.A.C.S. Art. 3966 (part).)

**Sec. 791.015. EXIT LIGHTS; GUIDE SIGNS.** (a) At least one red light must be installed and maintained in good condition at each exit to a fire escape in a building subject to Section 791.002. An exit light must be painted with the words "fire escape exit."

(b) One guide sign must be installed and maintained in good condition at each hallway intersection. An additional guide sign must be provided for every 25 lineal feet of hallway leading to a fire escape. A guide sign must be painted with the words "fire escape" and with an arrow or hand pointing to the nearest fire escape exit. (V.A.C.S. Art. 3965 (part).)

**Sec. 791.016. PAINTING AND MAINTENANCE REQUIREMENTS.** (a) A fire escape constructed of iron or steel must be painted with at least two coats of good metallic paint

when erected. The fire escape must be repainted at least every two years or more frequently if necessary to preserve the fire escape from rust or climatic influences.

(b) The slideway of a straight or spiral chute fire escape must be thoroughly cleaned and painted at least once each year. (V.A.C.S. Art. 3967.)

[Sections 791.017–791.020 reserved for expansion]

#### SUBCHAPTER C. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN FACILITIES

Sec. 791.021. ADDITIONAL FIRE ESCAPES FOR CERTAIN FACILITIES. (a) This section applies to:

- (1) a hospital;
- (2) a seminary;
- (3) a college;
- (4) an academy;
- (5) a school;
- (6) a dormitory;
- (7) a hotel or other facility for the accommodation of transient guests;
- (8) a lodging house, apartment house, rooming house, or boardinghouse;
- (9) a lodge hall;
- (10) a theater or other public place of amusement; or
- (11) any other facility used for public gatherings.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

- (1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and
- (2) the area in excess of the largest multiple of 5,000 square feet contained in the facility's lot area if that excess is more than 2,000 square feet. (V.A.C.S. Art. 3956.)

Sec. 791.022. ADDITIONAL FIRE ESCAPES FOR CERTAIN OFFICE BUILDINGS, STORES, OR INDUSTRIAL PLANTS. (a) This section applies to:

- (1) an office building;
- (2) a wholesale or retail mercantile establishment or store;
- (3) a workshop or manufacturing establishment; or
- (4) an industrial plant.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 6,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

- (1) each 6,000 square feet of area in excess of the initial 6,000 square feet; and
- (2) the area in excess of the largest multiple of 6,000 square feet contained in the facility's lot area if that excess is more than 2,500 square feet. (V.A.C.S. Art. 3957.)

Sec. 791.023. ADDITIONAL FIRE ESCAPES FOR CERTAIN WAREHOUSES AND MILLS. (a) This section applies to a warehouse, storehouse, or mill building.

(b) Each facility subject to this section and Section 791.002 that has a lot area greater than 8,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

- (1) each 8,000 square feet of area in excess of the initial 8,000 square feet; and
- (2) the area in excess of the largest multiple of 8,000 square feet contained in the facility's lot area if that excess is more than 3,500 square feet. (V.A.C.S. Art. 3958 (part).)

**Sec. 791.024. ADDITIONAL FIRE ESCAPES FOR NONSCHOOL PUBLIC BUILDINGS.** (a) This section applies to a building, other than a school building, that is owned by this state or by a municipality or county of this state and in which public assemblies or sleeping apartments are permitted on any floor above the first floor.

(b) Each building subject to this section and Section 791.002 that has a lot area greater than 5,000 square feet shall provide, in addition to the fire escape required by Section 791.002, one additional fire escape for:

(1) each 5,000 square feet of area in excess of the initial 5,000 square feet; and

(2) the area in excess of the largest multiple of 5,000 square feet contained in the building's lot area if that excess is more than 2,000 square feet.

(c) Each person who has charge or supervision of a facility subject to this section, or who has charge or supervision of the letting of contracts for the construction of the facility, shall comply with this chapter. (V.A.C.S. Arts. 3959, Sec. A; 3960.)

[Sections 791.025–791.030 reserved for expansion]

#### **SUBCHAPTER D. ADDITIONAL FIRE ESCAPE REQUIREMENTS FOR CERTAIN SCHOOL BUILDINGS**

**Sec. 791.031. DEFINITIONS.** (a) In this subchapter, “story” means the space between two successive floor levels of a building, and a basement is a story if the floor level immediately above the basement is at least 10 feet above the grade line on at least one side of the building.

(b) In this subchapter, types of construction are classified as “fireproof,” “semifireproof,” or “ordinary,” as those terms are defined in the most recent edition of the building code published by the successor organization to the National Board of Fire Underwriters. (V.A.C.S. Art. 3959, Sec. B (part).)

**Sec. 791.032. APPLICATION.** This subchapter applies to a building in which a school of any kind is conducted and that is:

(1) at least two stories high; and

(2) owned by a school district. (V.A.C.S. Art. 3959, Sec. B (part).)

**Sec. 791.033. COMPLIANCE REQUIREMENTS.** Each person who has charge or supervision of a school building subject to this subchapter, or who has charge or supervision of the letting of contracts for the construction of the building, shall comply with this chapter. (V.A.C.S. Art. 3960.)

**Sec. 791.034. ADMINISTRATION; ENFORCEMENT.** (a) The state fire marshal shall administer and supervise the enforcement of this subchapter and Section 791.024.

(b) The state fire marshal, an inspector of the State Board of Insurance, the chief of any fire department, and any municipal fire marshal shall enforce this subchapter and Section 791.024 by all lawful means. (V.A.C.S. Art. 3959a.)

**Sec. 791.035. FIRE ESCAPE REQUIREMENT.** (a) A school building of at least three stories and of fireproof construction, semifireproof construction, or ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(b) A school building of two stories and of ordinary construction shall have one fire escape for each group of 250 pupils, or each major fraction of that number, who are housed in the building at a level above the first floor.

(c) A school building of two stories that is of fireproof or semifireproof construction or that has stairways and hallways of that type of construction is not required to have a fire escape. (V.A.C.S. Art. 3959, Sec. B (part).)

**Sec. 791.036. REQUIRED TYPES OF FIRE ESCAPES; SPECIFICATIONS.** (a) A fire escape for a school building constructed before March 17, 1950, may be either an interior fire escape or an exterior fire escape.

(b) A school building constructed on or after March 17, 1950, that consists of at least three stories of fireproof construction or at least two stories of ordinary construction shall have interior fire escapes.

(c) An exterior fire escape for a school building constructed before March 17, 1950, may be:

- (1) an iron, steel, or concrete stairway;
- (2) an iron or steel straight chute;
- (3) an iron or steel spiral chute; or
- (4) a fire escape that is a combination of those types.

(d) Exterior fire escapes used in school buildings must meet the construction requirements of this section or similar construction requirements approved by the successor organization to the National Board of Fire Underwriters. Except as otherwise provided by this section, exterior fire escapes must be:

- (1) constructed throughout of noncombustible materials;
- (2) designed for a live load of 100 pounds per square foot; and
- (3) supported by vertical steel columns.

(e) If it is impossible to use vertical steel columns in the construction of an exterior fire escape, the use of steel brackets with bolts extending through the entire thickness of the wall may be approved.

(f) The landings and treads of exterior fire escapes must be of solid hatched steel plate or of steel gratings with interstices that do not exceed three-fourths inch and must be designed so that any accumulation of ice and snow is reduced to a minimum.

(g) The guardrails of exterior fire escapes must be at least three feet six inches high and must be substantially constructed. The guardrails must be faced either with heavy wire mesh or by steel balusters or rails not more than 9½ inches o.c.

(h) The fire escape must have handrails on each side of the stairs that must be securely attached to the guardrails or to the building walls. Handrails must be two feet four inches to two feet six inches above the nosings.

(i) The calculated live load of an exterior fire escape must be clearly stated on the plans submitted for approval.

(j) Exterior fire escapes must be:

- (1) free from obstruction;
- (2) constructed in a manner that provides a safe exit for children;
- (3) conveniently accessible from each floor above the first floor; and
- (4) of sufficient width and strength so that each step and landing may accommodate two adults at the same time.

(k) If the Central Education Agency approves that construction as providing a convenient and safe passage, doorways may be used as exits from each floor. The base of a doorway must be at the same level as the corresponding floor of the building and the landing of the fire escape to which the doorway leads. A doorway must be at least three feet wide and six feet six inches high and must be fitted with panic hardware approved by the successor organization to the National Board of Fire Underwriters. If there are two or more rooms or hallways adjacent and convenient to the landing of a fire escape, each room or hallway must have a doorway leading to that landing.

(l) The design of an interior fire escape used in a school building must meet the specifications required under Section 791.014, and must have:

- (1) stairs and landings at least three feet six inches long and at least three feet wide;
- (2) treads at least nine inches wide with a one inch nosing; and
- (3) risers of not more than 7¼ inches.

(m) A rise in a single run may not exceed nine feet six inches. A longer run must be interrupted by landings at least as deep as the width of the stairs.



(n) Stairs must extend continuously to the ground. Counterbalanced or swinging sections may not be approved. (V.A.C.S. Art. 3959, Sec. B (part).)

Sec. 791.037. **EXTERIOR FIRE ESCAPE EXITS.** (a) An exit door leading to an exterior fire escape must open on a landing that is at least the width of the doors. The door must swing outward and be:

(1) at least three feet by six feet six inches;

(2) glazed with wire glass; and

(3) level at the bottom with the floors of the rooms or hallways and landings that it serves.

(b) An exit door may be secured only by panic hardware approved by the successor organization to the National Board of Fire Underwriters. Hooks, latches, bolts, locks, and similar devices are prohibited.

(c) A window may not be used as a means of access to an exterior fire escape. (V.A.C.S. Art. 3959, Sec. B (part).)

Sec. 791.038. **WINDOWS.** A window located beneath or within 10 feet of a fire escape must be glazed with wire glass. (V.A.C.S. Art. 3959, Sec. B (part).)

[Sections 791.039–791.050 reserved for expansion]

#### **SUBCHAPTER E. ENFORCEMENT AND PENALTY PROVISIONS**

Sec. 791.051. **ENFORCEMENT.** (a) The attorney general, the county attorney of a county in which a building is maintained in violation of this chapter, or the district attorney of a district in which such a building is located may bring an action in the name of the state for an injunction or other process to enforce this chapter against the owner or person in charge of the building.

(b) The action shall be brought in the district court of the county in which the building is located.

(c) The action may be prosecuted by the attorney general, the county attorney, or the district attorney on that person's own motion, or on the relation of any individual, including the state fire marshal, an inspector of the State Board of Insurance, the chief of a municipal fire department, or a municipal fire marshal.

(d) A district judge may issue a mandatory injunction or other writ against a person to enforce this chapter. Disobedience of the injunction constitutes contempt of court and is punishable in the manner provided for contempt.

(e) The court may hear the case and may grant an injunction after the defendant has received 10 days' notice of the time and place set for the hearing on the injunction. (V.A.C.S. Art. 3972.)

Sec. 791.052. **CRIMINAL PENALTY.** (a) A person commits an offense if the person obstructs a fire escape or a hallway or entrance leading to a fire escape in a manner that prevents free access to or use of the fire escape. A door equipped with a lock requiring a key to operate is an obstruction.

(b) A person commits an offense if the person is the owner of a building required to be equipped with fire escapes and the person fails or refuses to comply with this chapter.

(c) A person commits an offense if the person serves as an agent in the care, management, supervision, control, or renting of a building for an owner who is not a resident of this state and the owner fails or refuses to comply with this chapter as it applies to that building.

(d) An offense under this section is punishable by a fine of not less than \$20 or more than \$50. If the defendant is a corporation, each officer or member of the board of directors of the corporation is subject to the fine.

(e) Each day's failure or refusal to comply constitutes a separate offense. Each day that an agent represents a nonresident owner who is not in compliance constitutes a separate offense. (V.A.C.S. Arts. 3965 (part), 3972.1, 3972.2.)

## CHAPTER 792. SMOKE DETECTORS IN HOTELS

## Sec. 792.001. DEFINITIONS

## Sec. 792.002. SMOKE DETECTORS IN HOTELS; CRIMINAL PENALTY

## Sec. 792.003. SMOKE DETECTOR LIST

## CHAPTER 792. SMOKE DETECTORS IN HOTELS

## Sec. 792.001. DEFINITIONS. In this chapter:

(1) "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration, including a hotel, motel, tourist home, tourist house, tourist court, hostel, lodging house, rooming house, or inn. The term does not include:

(A) a hospital, sanitarium, or nursing home; or

(B) a building in which all or substantially all of the occupants have the right to use or possess their sleeping accommodations for at least 28 consecutive days.

(2) "Person" has the meaning assigned by Section 1.07, Penal Code.

(3) "Smoke detector" means a device that is:

(A) designed to detect the presence of visible or invisible products of combustion in the air; and

(B) designed with an alarm audible throughout the room in which it is installed to alert the occupants of the room of the presence of visible or invisible products of combustion in the air of the room.

(4) "Smoke detector for hearing-impaired persons" means a smoke detector that, in addition to the sound alarm, uses a xenon design strobe light with a visible effective intensity of not less than 100 candela, as tested and labeled in accordance with ANSI/UL Standard 1638, and with a flash rate of not less than 60 nor more than 120 flashes per minute. (V.A.C.S. Art. 4596d, Sec. 1 (part).)

Sec. 792.002. SMOKE DETECTORS IN HOTELS; CRIMINAL PENALTY. (a) A person who operates a hotel commits an offense if the person:

(1) does not maintain a smoke detector in good working order in every room of the hotel that is regularly used for sleeping;

(2) does not maintain smoke detectors for hearing-impaired persons as prescribed by Subsection (b); or

(3) does not comply with the requirements of Subsection (c) if a hotel patron requests a room with a smoke detector for hearing-impaired persons.

(b) A person who operates a hotel shall maintain one smoke detector for hearing-impaired persons for each 60, or fraction of 60, rooms of the hotel that are regularly used for sleeping, except that the operator is not required to maintain more than five smoke detectors for hearing-impaired persons.

(c) If a hotel patron requests a room with a smoke detector for hearing-impaired persons, the operator of the hotel shall:

(1) assign the patron to a room in which a hard-wired smoke detector for hearing-impaired persons has been properly installed; or

(2) install in the patron's room a portable smoke detector for hearing-impaired persons using a receptacle that cannot be controlled by a wall switch.

(d) An offense under this section is a Class B misdemeanor.

(e) A person commits a separate offense under this section on each calendar day the person commits the offense. (V.A.C.S. Art. 4596d, Sec. 2.)

Sec. 792.003. SMOKE DETECTOR LIST. (a) To qualify for use under this chapter, a smoke detector must be listed by the state fire marshal after the device has been tested and shown to be effective by the state fire marshal or by a testing laboratory under conditions and procedures approved by the state fire marshal.

(b) In lieu of or in addition to the list made under Subsection (a), the state fire marshal may substitute or use a list of devices that comply with standards of manufacture and installation adopted by the State Board of Insurance under Article 5.43-2, Insurance Code. (V.A.C.S. Art. 4596d, Sec. 1 (part).)

**CHAPTER 793. DISABLING FIRE EXIT ALARMS**

**Sec. 793.001. DEFINITIONS**

**Sec. 793.002. CRIMINAL PENALTY**

**CHAPTER 793. DISABLING FIRE EXIT ALARMS**

**Sec. 793.001. DEFINITIONS.** In this chapter:

(1) "Fire exit" means a door, window, or other means of egress from a building that has been expressly designated as a fire escape or emergency exit by a sign, light, or other device located on or in the immediate vicinity of the fire escape or exit.

(2) "Fire exit alarm" means a device designed to sound an alarm when a fire exit is opened or an attempt to open a fire exit is made. (V.A.C.S. Art. 3972.3, Sec. 1.)

**Sec. 793.002. CRIMINAL PENALTY.** (a) A person commits an offense if:

(1) the person intentionally or knowingly causes a fire exit alarm to fail to sound an alarm; and

(2) the person is not authorized to do so by a person having lawful custody or control of the building or the part of the building in which the fire exit is located.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 3972.3, Sec. 2.)

**CHAPTER 794. RURAL FIRE PREVENTION DISTRICTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 794.001. DEFINITIONS**

**Sec. 794.002. LIBERAL CONSTRUCTION**

**Sec. 794.003. AUTHORIZATION**

[Sections 794.004–794.010 reserved for expansion]

**SUBCHAPTER B. CREATION OF DISTRICT**

**Sec. 794.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY**

**Sec. 794.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY**

**Sec. 794.013. CONTENTS OF PETITION**

**Sec. 794.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY**

**Sec. 794.015. FILING OF PETITION AND NOTICE OF HEARING**

**Sec. 794.016. HEARING**

**Sec. 794.017. PETITION APPROVAL**

**Sec. 794.018. ELECTION**

**Sec. 794.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER**

**Sec. 794.020. OVERLAPPING DISTRICTS**

[Sections 794.021–794.030 reserved for expansion]

**SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES**

**Sec. 794.031. DISTRICT POWERS**

**Sec. 794.032. CERTAIN BUSINESSES NOT SUBJECT TO TAX OR DISTRICT POWERS**

**Sec. 794.033. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY**

- Sec. 794.034. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY
- Sec. 794.035. POWERS AND DUTIES OF BOARD
- Sec. 794.036. OFFICERS OF BOARD
- Sec. 794.037. COMPENSATION; CONFLICT OF INTEREST

[Sections 794.038–794.050 reserved for expansion]

**SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT**

- Sec. 794.051. EXPANSION OF DISTRICT TERRITORY
- Sec. 794.052. EXCLUSION OF TERRITORY LOCATED IN OTHER TAXING AUTHORITY
- Sec. 794.053. REMOVAL OF CERTAIN TERRITORY BY GOVERNING BODY OF MUNICIPALITY
- Sec. 794.054. PAYMENT OF DEBT BY EXCLUDED TERRITORY
- Sec. 794.055. ANNEXATION BY ADJACENT DISTRICT
- Sec. 794.056. PETITION FOR DISSOLUTION; NOTICE OF HEARING
- Sec. 794.057. HEARING
- Sec. 794.058. APPEAL
- Sec. 794.059. ELECTION TO CONFIRM DISSOLUTION
- Sec. 794.060. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION

[Sections 794.061–794.070 reserved for expansion]

**SUBCHAPTER E. FINANCES AND BONDS**

- Sec. 794.071. LIMITATION ON INDEBTEDNESS
- Sec. 794.072. DEPOSITORIES
- Sec. 794.073. METHOD OF PAYMENT
- Sec. 794.074. COMPETITIVE BIDS REQUIREMENT
- Sec. 794.075. TAXES
- Sec. 794.076. BONDS AND NOTES AUTHORIZED
- Sec. 794.077. ELECTION TO APPROVE BONDS AND NOTES
- Sec. 794.078. BOND ANTICIPATION NOTES
- Sec. 794.079. REFUNDING BONDS
- Sec. 794.080. APPROVAL AND REGISTRATION OF BONDS
- Sec. 794.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS

**CHAPTER 794. RURAL FIRE PREVENTION DISTRICTS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 794.001. DEFINITIONS. In this chapter:

- (1) "Board" means the board of fire commissioners.
- (2) "District" means a rural fire prevention district created under this chapter. (New.)

Sec. 794.002. LIBERAL CONSTRUCTION. This chapter and a proceeding under this chapter shall be liberally construed to achieve the purposes of this chapter. (V.A.C.S. Art. 2351a–6, Sec. 15 (part).)

Sec. 794.003. AUTHORIZATION. A rural fire prevention district may be organized as provided by Article III, Section 48–d, of the Texas Constitution and by this chapter to protect life and property from fire and to conserve natural and human resources. (V.A.C.S. Art. 2351a–6, Sec. 1.)

[Sections 794.004–794.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT

Sec. 794.011. PETITION FOR CREATION OF DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) Before a district located wholly in one county may be created, the county judge of that county must receive a petition signed by at least 100 qualified voters who own taxable real property in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ County Rural Fire Prevention District No. \_\_\_\_\_," with the name of the county and the proper consecutive number inserted. (V.A.C.S. Art. 2351a-6, Secs. 2(1), (2)(b).)

Sec. 794.012. PETITION FOR CREATION OF DISTRICT LOCATED IN MORE THAN ONE COUNTY. (a) Before a district that contains territory located in more than one county may be created, the county judge of each county in which the proposed district will be located must receive a petition signed by at least 100 qualified voters who own taxable real property that is located in the county in which that judge presides and in the proposed district. If there are fewer than 100 of those voters, the petition must be signed by a majority of those voters.

(b) The name of the district proposed by the petition must be "\_\_\_\_\_ Rural Fire Prevention District." (V.A.C.S. Art. 2351a-6, Secs. 2(a)(1), (2)(b).)

Sec. 794.013. CONTENTS OF PETITION. (a) The petition prescribed by Section 794.011 or 794.012 must show:

- (1) that the district is to be created and is to operate under Article III, Section 48-d, of the Texas Constitution;
- (2) the name of the proposed district;
- (3) the district's boundaries as designated by metes and bounds or other sufficient legal description;
- (4) that none of the territory in the district is included in another rural fire prevention district; and
- (5) the mailing address of each petitioner.

(b) The petition must contain an agreement signed by at least two petitioners that obligates them to pay not more than \$150 of the costs incident to the formation of the district, including the costs of publishing notices, election costs, and other necessary and incidental expenses. (V.A.C.S. Art. 2351a-6, Secs. 2(2) (part), (3); 2(a)(2) (part), (3).)

Sec. 794.014. CREATION OF DISTRICT THAT INCLUDES MUNICIPAL TERRITORY. (a) Before a district may be created that contains territory in a municipality's limits or extraterritorial jurisdiction, a written request to be included in the district must be presented to the municipality's governing body. Except as provided by Subsection (c), that territory may not be included in the district unless the municipality's governing body gives its written consent on or before the 60th day after the date on which the municipality receives the request.

(b) If the municipality's governing body does not consent to inclusion within the 60-day period prescribed by Subsection (a), a majority of the qualified voters and the owners of at least 50 percent of the territory in the municipality's limits or extraterritorial jurisdiction that would have been included in the district may petition the governing body to make fire protection available. The petition must be submitted to the governing body not later than the 90th day after the date on which the municipality receives the request.

(c) If the municipality's governing body refuses or fails to act on the petition requesting fire protection within six months after the date on which the petition submitted under Subsection (b) is received, the governing body's refusal or failure to act constitutes consent for the territory that is the subject of the petition to be included in the proposed district.

(d) If the proposed district will include territory designated by a municipality as an industrial district under Section 42.044, Local Government Code, consent to include the industrial district must be obtained from the municipality's governing body in the same

manner provided by this section for obtaining consent to include territory within the limits or extraterritorial jurisdiction of a municipality.

(e) If the municipality's governing body consents to inclusion of territory within its limits or extraterritorial jurisdiction, or in an industrial district, the territory may be included in the district in the same manner as other territory is included under this chapter.

(f) A governing body's consent to include territory in the district and to initiate proceedings to create a district as prescribed by this chapter expires six months after the date on which the consent is given. (V.A.C.S. Art. 2351a-6, Sec. 8B.)

Sec. 794.015. FILING OF PETITION AND NOTICE OF HEARING. (a) If the petition is in proper form, the county judge may receive the petition and shall file the petition with the county clerk.

(b) At the next regular or special session of the commissioners court held after the petition is filed with the county clerk, the commissioners court shall set a place, date, and time for the hearing to consider the petition.

(c) The county clerk shall issue a notice of the hearing. The notice must state:

- (1) that creation of a district is proposed;
- (2) that the district is to be created and is to operate under Article III, Section 48-d, of the Texas Constitution;
- (3) the name of the proposed district;
- (4) the district's boundaries as stated in the petition;
- (5) the place, date, and time of the hearing; and
- (6) that each person who has an interest in the creation of the district is invited to attend the hearing and to present the person's opinion for or against creation of the district.

(d) The county clerk shall retain a copy of the notice and shall deliver sufficient copies of the notice to the sheriff for posting and publication as prescribed by Subsection (e).

(e) Not later than the 21st day before the date on which the hearing will be held, the sheriff shall post one copy of the notice at the courthouse door. The sheriff shall also have the notice published in a newspaper of general circulation in the proposed district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held.

(f) The return of each officer executing notice must:

- (1) be endorsed or attached to a copy of the notice;
- (2) show the execution of the notice;
- (3) specify each date on which the notice was posted or published; and
- (4) include a printed copy of the published notice. (V.A.C.S. Art. 2351a-6, Secs. 2(2) (part); 2(a)(2) (part); 3; 4.)

Sec. 794.016. HEARING. (a) At the time and place set for the hearing or at a later date then set, the commissioners court shall consider the petition and each issue relating to creation of the district.

(b) Any interested person may appear before the commissioners court in person or by attorney to support or oppose the creation of the district and may offer pertinent testimony.

(c) The commissioners court has exclusive jurisdiction to determine each issue relating to the creation of the district and may issue incidental orders it considers proper in relation to the issues before the commissioners court. The commissioners court may adjourn the hearing as necessary. (V.A.C.S. Art. 2351a-6, Sec. 5.)

Sec. 794.017. PETITION APPROVAL. (a) If after the hearing the commissioners court finds that creation of the district is feasible, will benefit the territory in the district, will secure the public safety, welfare, and convenience, and will aid in conserving the real

property or natural resources in the proposed district, the commissioners court shall grant the petition and fix the district's boundaries.

(b) If the proposed district will include territory in the municipal limits or extraterritorial jurisdiction of one or more municipalities in the district, the commissioners court of the county in which the municipality is located must determine if the district would still meet the qualifications prescribed by Subsection (a) if the territory in the municipality's limits or extraterritorial jurisdiction is excluded from the district. The commissioners court must make this finding for each municipality the territory of which will be included in the district.

(c) If the commissioners court finds that the proposed district does not meet the requirements prescribed by Subsection (a), the commissioners court shall deny the petition. (V.A.C.S. Art. 2351a-6, Secs. 6, 8A (part).)

Sec. 794.018. ELECTION. (a) On the granting of a petition, the commissioners court shall order an election to confirm the district's creation and authorize the levy of a tax not to exceed three cents on each \$100 of the taxable value of property taxable by the district.

(b) If the petition indicates that the proposed district will contain territory in more than one county, the commissioners court may not order an election until the commissioners court of each county in which the district will be located has granted the petition.

(c) Subject to Section 4.003, Election Code, the notice of the election shall be given in the same manner as the notice of the petition hearing.

(d) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 2351a-6, Sec. 8 (part).)

Sec. 794.019. ELECTION RESULT AND COMMISSIONERS COURT ORDER. (a) A district is created and organized under this chapter if a majority of the votes cast in the election favor creation of the district.

(b) A district may not include territory in a municipality's limits or extraterritorial jurisdiction unless a majority of the voters residing in that territory who vote at the election vote in favor of creating the district and levying a tax. The exclusion of that territory does not affect the creation of a district that includes the remainder of the proposed territory if the commissioners court's findings under Section 794.017 were favorable to the district's creation.

(c) If a majority of those voting at the election vote against creation of the district, the commissioners court may not order another election for at least one year after the date of the most recent election concerning creation of the district.

(d) When a district is created, the commissioners court of each county in which the district is located shall enter an order in its minutes that reads substantially as follows:

Whereas, at an election held on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in that part of \_\_\_\_\_ County, State of Texas, described as (insert description unless the district is countywide), there was submitted to the qualified voters the question of whether that territory should be formed into a rural fire prevention district under state law; and

Whereas, at the election \_\_\_\_\_ votes were cast in favor of formation of the district and \_\_\_\_\_ votes were cast against formation; and

Whereas, the formation of the rural fire prevention district received the affirmative vote of the majority of the votes cast at the election as provided by law;

Now, therefore, the Commissioners Court of \_\_\_\_\_ County, State of Texas, finds and orders that the tract described in this order has been duly and legally formed into a rural fire prevention district (or a portion thereof) under the name of \_\_\_\_\_, under Article III, Section 48-d, of the Texas Constitution, and has the powers vested by law in the district. (V.A.C.S. Art. 2351a-6, Secs. 8A (part), 9.)

Sec. 794.020. OVERLAPPING DISTRICTS. (a) If the territory in one or more districts overlaps, the commissioners court of the county in which the most recently created district is located by order shall exclude the overlapping territory from that district.

(b) For purposes of this section, a district is created on the date on which the election approving its creation was held. If the elections approving the creation of two or more districts are held on the same date, the most recently created district is the district for which the hearing required by Section 794.016 was most recently held.

(c) The fact that a district is created with boundaries that overlap the boundaries of another district does not affect the validity of either district. (V.A.C.S. Art. 2351a-6, Secs. 9A(a), (b), (c).)

[Sections 794.021-794.030 reserved for expansion]

#### SUBCHAPTER C. ORGANIZATION, POWERS, AND DUTIES

Sec. 794.031. DISTRICT POWERS. A district is a political subdivision of the state. To perform the functions of the district, a district may:

- (1) acquire, purchase, hold, lease, manage, occupy, and sell real and personal property or an interest in property;
- (2) enter into and perform necessary contracts;
- (3) appoint and employ necessary officers, agents, and employees;
- (4) sue and be sued;
- (5) levy and enforce the collection of taxes as prescribed by this chapter;
- (6) accept and receive donations;
- (7) lease, own, maintain, operate, and provide fire engines and other necessary or proper fire protection equipment and machinery to prevent and extinguish fires in the district;
- (8) lease, own, and maintain real property, improvements, and fixtures necessary to house, repair, and maintain fire protection equipment;
- (9) contract with other entities, including other districts or municipalities, to make fire-fighting facilities, fire extinguishment services, and emergency rescue and ambulance services available to the district;
- (10) contract with other entities, including other districts or municipalities, for reciprocal operation of services and facilities if the contracting parties find that reciprocal operation would be mutually beneficial and not detrimental to the district;
- (11) lease, own, maintain, operate, and provide emergency rescue equipment, and emergency ambulance service, and other necessary and proper equipment to prevent loss of life or serious personal injury from fire or other hazards; and
- (12) perform other acts necessary to carry out the intent of this chapter. (V.A.C.S. Art. 2351a-6, Secs. 10, 11 (part).)

Sec. 794.032. CERTAIN BUSINESSES NOT SUBJECT TO TAX OR DISTRICT POWERS. A business entity located in a district is not subject to the tax authorized by this chapter or subject to the district's powers if the business entity:

- (1) provides its own fire protection;
- (2) receives the appropriate certification from the Texas Industrial Fire Training Board; and
- (3) owns or operates fire-fighting equipment equivalent to or better than a Class I Rural Fire Prevention District or Metropolitan County Fire Protection System, as defined by the State Board of Insurance on September 1, 1985. (V.A.C.S. Art. 2351a-6, Sec. 9A(d).)

Sec. 794.033. APPOINTMENT OF BOARD IN DISTRICT LOCATED WHOLLY IN ONE COUNTY. (a) The commissioners court of a county in which a single-county district is located shall appoint a five-member board of fire commissioners to serve as the district's governing body. Except as prescribed by Subsection (b), commissioners serve two-year terms.



(b) After the votes have been canvassed and the commissioners court enters the order creating the district, the commissioners court shall appoint the initial fire commissioners to serve until January 1 of the year following the district election. On January 1, the court shall designate three of those fire commissioners to serve a two-year term and two of those fire commissioners to serve a one-year term.

(c) On January 1 of each year, the commissioners court shall appoint a successor for each fire commissioner whose term has expired.

(d) The commissioners court shall fill a vacancy on the board for the remainder of the unexpired term. (V.A.C.S. Art. 2351a-6, Secs. 13(1), (2).)

**Sec. 794.034. ELECTION OF BOARD IN DISTRICT LOCATED IN MORE THAN ONE COUNTY.** (a) The governing body of a district located in more than one county consists of a five-person board of fire commissioners elected as prescribed by this section. Except as provided by Subsection (g), fire commissioners serve two-year terms.

(b) After a district located in more than one county is created, the county judges of each county in the district shall mutually establish a convenient day in November, other than the date of the general election for state and county officers, to conduct an election to elect the initial fire commissioners.

(c) To be eligible to be a candidate for fire commissioner of a district located in more than one county, a person must be at least 18 years of age and a resident of the district.

(d) A candidate for fire commissioner must give the county clerk of each county in the district a sworn notice of the candidate's intention to run for office. The notice must state the person's name, age, and address and state that the person is serving notice of intent to run for fire commissioner. On receipt of the notice, the county clerk shall have the candidate's name placed on the ballot.

(e) The county clerks of each county in the district shall jointly appoint an election judge to certify the results of the election.

(f) After the election is held, the county clerk of each county or the clerk's deputy shall prepare a sworn statement of the election costs incurred by the county. The statement shall be given to the newly elected board, which shall order the appropriate official to reimburse each county for the county's election costs.

(g) The initial fire commissioners' terms of office begin on January 1 of the year following the election. The two commissioners who received the fewest votes serve one-year terms. The other fire commissioners serve two-year terms.

(h) The general election for commissioner shall be held annually on an authorized election date as provided by Chapter 41, Election Code. (V.A.C.S. Art. 2351a-6, Sec. 13(a), Subsecs. (1), (2) (part).)

**Sec. 794.035. POWERS AND DUTIES OF BOARD.** (a) The board shall:

- (1) hold regular monthly meetings and other meetings as necessary;
- (2) keep minutes and records of its acts and proceedings;
- (3) give reports required by the state fire marshal and other authorized persons;
- (4) give a written report not later than February 1 of each year to the commissioners court regarding the district's administration for the preceding calendar year and the district's financial condition; and
- (5) administer the district in accordance with this chapter.

(b) The board may cause inspections to be made in the district relating to the causes and prevention of fires.

(c) The board may promote educational programs it considers proper to help carry out the purposes of this chapter. (V.A.C.S. Art. 2351a-6, Secs. 11 (part), 14 (part).)

**Sec. 794.036. OFFICERS OF BOARD.** (a) The fire commissioners shall elect from among their members a president, vice-president, secretary, treasurer, and assistant treasurer to perform the duties usually required of the respective offices. The office of secretary and treasurer may be combined.

(b) The treasurer must execute and file with the county clerk a bond conditioned on the faithful execution of the treasurer's duties. The treasurer of a district located in more than one county shall file the bond with the county clerk of the county with the largest population in the district. The county judge of the county in which the bond is to be filed must determine the amount and sufficiency of the bond before it is filed. (V.A.C.S. Art. 2351a-6, Secs. 13(3); 13(a)(3).)

Sec. 794.037. COMPENSATION; CONFLICT OF INTEREST. (a) Fire commissioners serve without compensation but may be reimbursed for reasonable and necessary expenses incurred in performing official duties.

(b) Except as a resident or property owner in the district, a fire commissioner may not have an interest in a contract or transaction to which the district is a party and under which the fire commissioner may receive money or other things of value as consideration. (V.A.C.S. Art. 2351a-6, Sec. 14 (part).)

[Sections 794.038-794.050 reserved for expansion]

#### SUBCHAPTER D. CHANGE IN BOUNDARIES OR DISSOLUTION OF DISTRICT

Sec. 794.051. EXPANSION OF DISTRICT TERRITORY. (a) Qualified voters who own taxable real property in a defined territory that is not included in a district may file a petition with the secretary of the board requesting the inclusion of the territory in the district. The petition must be signed by at least 50 qualified voters who own taxable real property in the territory or a majority of those voters, whichever is less.

(b) The board by order shall set a time and place to hold a hearing on the petition to include the territory in the district. The board shall set a date for the hearing that is not less than 30 days after the date on which the board issues the order.

(c) The secretary of the board shall issue a notice of the hearing. The notice must contain the time and place for the hearing and a description of the territory proposed to be annexed into the district.

(d) Not later than the 16th day before the date on which the hearing will be held, the secretary shall:

(1) post copies of the notice in three public places in the district and one public place in the territory proposed to be annexed into the district; and

(2) publish the notice once in a newspaper of general circulation in the county.

(e) If after the hearing the board finds that annexation of the territory into the district would be feasible and would benefit the district, the board may approve the annexation by a resolution entered in its minutes. The board is not required to include all of the territory described in the petition if the board finds that a modification or change is necessary or desirable.

(f) Annexation of territory is final when approved by a majority of the voters at an election held in the district and by a majority of the voters at a separate election held in the territory to be annexed. If the district has outstanding debts or taxes, the voters in the election to approve the annexation must also determine if the annexed territory will assume its proportion of the debts or taxes if added to the district.

(g) The election ballots shall be printed to provide for voting for or against the following, as applicable:

(1) "Adding (description of territory to be added) to the \_\_\_\_\_ Rural Fire Prevention District."

(2) "(Description of territory to be added) assuming its proportionate share of the outstanding debts and taxes of the \_\_\_\_\_ Rural Fire Prevention District, if it is added to the district."

(h) The election notice, the manner and time of giving the notice, and the manner of holding the election are governed by the applicable provisions of this chapter, except that the board president shall conduct the election and certify the results to the county judge of each county in the district. (V.A.C.S. Art. 2351a-6, Sec. 14a.)

**Sec. 794.052. EXCLUSION OF TERRITORY LOCATED IN OTHER TAXING AUTHORITY.** (a) The board may exclude from the district territory that is in another taxing authority if the other taxing authority provides the same services to the territory as the district provides.

(b) The board may hold a hearing to consider the exclusion of territory.

(c) The board shall hold a hearing to consider the exclusion of territory if the board receives a petition requesting a hearing on the issue that is signed by at least five percent of the qualified voters who own taxable real property in the district. A petition submitted under this subsection must describe the proposed new boundaries of the district or describe the boundaries of the territory to be excluded from the district.

(d) The board shall give notice of a hearing under this section. The procedure under Section 794.015 for issuing notice of a hearing to create the district applies to the notice under this section. The notice must state:

(1) the proposed new boundaries of the district or the territory to be excluded;

(2) the time and place of the hearing; and

(3) that each person who has an interest in the exclusion or nonexclusion of the territory is invited to attend the hearing and to present the person's opinion for or against the exclusion of the territory.

(e) After the hearing, the board may order an election on the question of exclusion or declare by resolution the territory excluded from the district, except that the board may not exclude territory by resolution if the owners of at least three percent of the property located in the district protest the exclusion.

(f) In a resolution excluding territory, the board shall describe the new boundaries of the district.

(g) The board shall order an election on the question of exclusion if:

(1) the owners of at least three percent of the property located in the district protest the exclusion; or

(2) the board:

(A) despite the lack of protest, refuses to exclude the territory; and

(B) after refusing to exclude the territory, receives a petition requesting an election that is signed by a majority of the qualified voters who own taxable real property in the territory proposed to be excluded.

(h) The provisions of this chapter relating to the election creating the district apply to the election notice, the manner and time of giving the notice, and the manner of holding the election under this section.

(i) If a majority of the votes in an election favor excluding the territory from the district, the board shall enter an order declaring the territory excluded from the district and describing the new boundaries of the district.

(j) The board shall file a copy of a resolution or order with the county clerk of each county in which the district is located. Each county clerk shall record the resolution or order. After the resolution or order is recorded, the excluded territory is no longer part of the district.

(k) If a majority of the votes in the election are against excluding the territory, the board may not act on a petition to exclude all or any part of the territory before the first anniversary of the date of the most recent election to exclude the territory. (V.A.C.S. Art. 2351a-6, Secs. 9B(a), (b), (c), (d), (e), (f), (g), (h), (i), (j).)

**Sec. 794.053. REMOVAL OF CERTAIN TERRITORY BY GOVERNING BODY OF MUNICIPALITY.** (a) This section applies only to a district that does not have bonded indebtedness.

(b) If territory in a municipality's limits or extraterritorial jurisdiction is included in a district, the municipality's governing body may remove that territory from the district as prescribed by this section if:

(1) the municipality agrees to provide fire protection to the territory as prescribed by Section 794.014; or

(2) the territory is designated an industrial district under Section 42.044, Local Government Code.

(c) To remove territory under Subsection (b), the governing body of the municipality must notify the secretary of the board in writing that the territory is excluded from the district's territory.

(d) If a municipality annexes territory that is included in a district, the governing body of the municipality shall notify the secretary of the board in writing that the annexed territory is excluded from the district's territory.

(e) A district may collect taxes on property in territory excluded under this section for the calendar year in which the municipality excludes the territory. However, if the district collects the taxes, the district must provide services to the territory for the entire calendar year. Not later than the last day of the calendar year in which the board receives the notice under Subsection (c) or (d) or is otherwise informed of the municipality's actions, the board shall stop providing service to the territory, exclude the territory from the district by order, and redefine the district's boundaries. (V.A.C.S. Art. 2351a-6, Sec. 14b.)

Sec. 794.054. PAYMENT OF DEBT BY EXCLUDED TERRITORY. (a) The exclusion of territory under Section 794.052 or 794.053 does not diminish or impair the rights of the holders of any outstanding and unpaid bonds, warrants, or other obligations of the district.

(b) Except as provided by Section 794.055, territory excluded under Section 794.052 or 794.053 is not released from the payment of its share of the district's indebtedness. The district shall continue to levy taxes each year on the excluded territory at the same rate levied on territory in the district until the taxes collected from the excluded territory equals its pro rata share of the indebtedness of the district at the time the territory was excluded. The taxes collected under this subsection shall be applied exclusively to the payment of the excluded territory's share of the indebtedness. The owner of all or part of the excluded territory may pay in full, at any time, the owner's share of the pro rata share of the district's indebtedness. (V.A.C.S. Art. 2351a-6, Secs. 9B(k), (l); 14c (as added Acts 70th Leg., R.S., Ch. 1072, 1987).)

Sec. 794.055. ANNEXATION BY ADJACENT DISTRICT. (a) If under Section 794.053 a municipality annexes or agrees to provide services to the majority of the territory previously included in a district, an adjacent district may annex the remaining district territory if:

(1) the tax rate in each district is identical;

(2) neither district has any bonded indebtedness; and

(3) the board in each district agrees to the annexation by a majority vote.

(b) A district annexed by another district under this section is dissolved on the date on which the annexation takes effect. The annexing district assumes all rights and responsibilities of the annexed district. (V.A.C.S. Art. 2351a-6, Sec. 14c (as added, Acts 70th Leg., R.S., Ch. 730, 1987).)

Sec. 794.056. PETITION FOR DISSOLUTION; NOTICE OF HEARING. (a) Before a district may be dissolved, the district's board must receive a petition signed by at least 100 qualified voters who own taxable real property in the district or a majority of those voters, whichever is less.

(b) If the petition is in proper form, the board shall set a place, date, and time for a hearing to consider the petition.

(c) The board shall issue a notice of the hearing that includes:

(1) the name of the district;

(2) a description of the district's boundaries;

(3) the proposal that the district be dissolved; and

(4) the place, date, and time of the hearing on the petition.

(d) The notice shall be published in a newspaper of general circulation in the district once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the hearing will be held. (V.A.C.S. Art. 2351a-6, Sec. 19.)

Sec. 794.057. HEARING. (a) At the hearing on the petition to dissolve the district, the board shall consider the petition and each issue relating to the dissolution of the district.

(b) Any interested person may appear before the board to support or oppose the dissolution.

(c) The board shall grant or deny the petition. (V.A.C.S. Art. 2351a-6, Sec. 20(a).)

Sec. 794.058. APPEAL. A person or an owner of real or personal property located in the district may appeal the board's decision relating to dissolution of the district. The person or owner must file the appeal in a district court in a county in which the district is located. (V.A.C.S. Art. 2351a-6, Sec. 20(b).)

Sec. 794.059. ELECTION TO CONFIRM DISSOLUTION. (a) On the granting of a petition to dissolve the district, the board shall order an election to confirm the district's dissolution.

(b) Notice of the election shall be given in the same manner as the notice of the petition hearing.

(c) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law.

(d) The ballot shall be printed to provide for voting for or against the following: "Dissolving the \_\_\_\_\_ Rural Fire Prevention District."

(e) A copy of the tabulation of results shall be filed with the county clerk of each county in which the district is located.

(f) If a majority of those voting at the election vote to dissolve the district, the board shall proceed with dissolution. An election to create a new district in the boundaries of the old district may not be held for at least one year after dissolution.

(g) If a majority of those voting at the election vote against dissolving the district, the board may not order another election on the issue before the first anniversary of the date of the canvass of the election. (V.A.C.S. Art. 2351a-6, Secs. 21(a), (b), (c) (part), (d), (e) (part), (f), (g), (h).)

Sec. 794.060. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a district, the board shall continue to control and administer the property, debts, and assets of the district until all funds have been disposed of and all district debts have been paid or settled.

(b) The board may not dispose of the district's assets except for due compensation unless the debts are transferred to another governmental entity or agency within or embracing the district and the transfer will benefit the district's citizens.

(c) After the board issues the dissolution order, the board shall:

(1) determine the debt owed by the district; and

(2) impose on the property included in the district's tax rolls a tax that is in proportion of the debt to the property value.

(d) Each taxpayer may pay the tax imposed by the district under this section at once.

(e) The board may institute a suit to enforce payment of taxes and to foreclose liens to secure the payment of taxes due the district.

(f) When all outstanding debts and obligations of the district are paid, the board shall order the secretary to return the pro rata share of all unused tax money to each district taxpayer. A taxpayer may request that the taxpayer's share of surplus tax money be credited to the taxpayer's county taxes. If a taxpayer requests the credit, the board shall direct the secretary to transmit the funds to the county tax assessor-collector.

(g) After the district has paid all its debts and has disposed of all its assets and funds as prescribed by this section, the board shall file a written report with the commissioners court of each county in which the district is located setting forth a summary of the

board's actions in dissolving the district. Not later than the 10th day after it receives the report and determines that the requirements of this section have been fulfilled, the commissioners court of each county shall enter an order dissolving the district.

(h) Each fire commissioner is discharged from liability under the fire commissioner's bond on entry of the order prescribed by Subsection (g). (V.A.C.S. Art. 2351a-6, Sec. 22.)

[Sections 794.061-794.070 reserved for expansion]

#### SUBCHAPTER E. FINANCES AND BONDS

Sec. 794.071. **LIMITATION ON INDEBTEDNESS.** Except as provided by Section 794.072 and Sections 794.076-794.081, a district may not contract for an amount of indebtedness in any one year that is in excess of the funds then on hand or that may be paid from current revenues for the year. (V.A.C.S. Art. 2351a-6, Sec. 12 (part).)

Sec. 794.072. **DEPOSITORIES.** (a) The board shall designate one or more banks to serve as depositories for district funds.

(b) The board shall deposit all district funds in a depository bank, except that the board:

(1) may deposit funds pledged to pay bonds or notes with banks named in the trust indenture or in the bond or note resolution; and

(2) shall remit funds for the payment of the principal of and interest on bonds and notes to the bank of payment.

(c) The district may not deposit funds in a depository or trustee bank in an amount that exceeds the maximum amount secured by the Federal Deposit Insurance Corporation unless the excess funds are secured in the manner provided by law for the security of county funds.

(d) The resolution or trust indenture securing the bonds or notes may require that any or all of the funds must be secured by obligations of or unconditionally guaranteed by the federal government. (V.A.C.S. Art. 2351a-6, Sec. 12F.)

Sec. 794.073. **METHOD OF PAYMENT.** (a) District funds may be disbursed only by check signed by the treasurer and countersigned by the president. If the treasurer is absent or unavailable, the assistant treasurer may sign for the treasurer. If the president is absent or unavailable, the vice-president may sign for the president.

(b) An expenditure of more than \$2,000 may not be paid from tax money unless a sworn itemized account covering the expenditure is presented to the board and the board approves the expenditure. (V.A.C.S. Art. 2351a-6, Sec. 14 (part).)

Sec. 794.074. **COMPETITIVE BIDS REQUIREMENT.** (a) Except as provided by Subsection (i), the board must submit to competitive bids an expenditure of more than \$10,000 for:

(1) one item or service; or

(2) more than one of the same or a similar type of items or services in a fiscal year.

(b) The board shall request bids on items to be purchased or leased or services to be performed as provided by this subsection. The board shall notify suppliers, vendors, or providers by advertising for bids or by providing at least five suppliers, vendors, or purchasers with written notice by mail of the intended purchase. If the board decides to advertise for bids, the advertisement must be published in accordance with Section 262.025(a), Local Government Code. If the board receives fewer than five bids in response to the advertisement, the board shall give written notice directly to at least five suppliers, vendors, or providers of the intended purchase. If five suppliers, vendors, or providers are not available or known to the board, the board shall give written notice by mail directly to each supplier, vendor, or provider known to the board.

(c) The advertisement or notice for competitive bidding must:

(1) describe the work to be performed or the item to be purchased or leased;

(2) state the location at which the bidding documents, plans, specifications, or other data may be examined; and

- (3) state the time and place for submitting bids and the time and place that bids will be opened.
- (d) The board may not prepare restrictive bid specifications.
- (e) Bids may be opened only by the board at a public meeting or by a district officer or employee at or in a district office.
- (f) The board may reject any bid. The board may not award a contract to a bidder who is not the lowest bidder unless, before the bid is awarded, the lowest bidder is given notice of the proposed award and an opportunity to appear before the board or its designated representative and present evidence concerning the bidder's responsibility.
- (g) A contract awarded in violation of this section is void.
- (h) This section applies to an expenditure of district tax revenues by any party or entity, including a volunteer fire department, for the purchase of services, vehicles, equipment, or goods.
- (i) This section does not apply:
  - (1) to the purchase or lease of real property;
  - (2) to an item or service that the board determines can be obtained from only one source; or
  - (3) an emergency expenditure. (V.A.C.S. Art. 2351a-6, Secs. 11A, 11B.)

**Sec. 794.075. TAXES.** (a) The board shall annually impose a tax on all real and personal property located in the district and subject to district taxation for the district's support and the purposes authorized by this chapter.

(b) If a district issues bonds or notes that are payable wholly from ad valorem taxes, the board shall, when bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds or notes as the interest and principal come due and to provide reserve funds if prescribed in the resolution authorizing, or the trust indenture securing, the bonds or notes.

(c) If a district issues bonds or notes that are payable from ad valorem taxes and from revenues, income, or receipts of the district, the board shall, when the bonds or notes are authorized, set a tax rate that is sufficient to pay the principal of and interest on the bonds and notes and to create and maintain any reserve funds.

(d) In establishing the rate of tax to be collected for a year, the board shall consider the money that will be available to pay the principal of and interest on any bonds or notes issued and to create any reserve funds to the extent and in the manner permitted by the resolution authorizing, or the trust indenture securing, the bonds or notes.

(e) The board shall certify the tax rate to the county tax assessor-collector, who is the assessor-collector for the district. (V.A.C.S. Art. 2351a-6, Secs. 12 (part); 12A(j), (k), (l).)

**Sec. 794.076. BONDS AND NOTES AUTHORIZED.** (a) The board may issue bonds and notes as prescribed by this chapter to perform any of its powers. Before the board may issue bonds or notes, the commissioners court of each county in which the district is located must approve the issuance of the bonds or notes by a majority vote.

(b) The board may issue bonds and notes in one or more issues or series that are payable from and secured by liens on and pledges of:

- (1) ad valorem taxes;
  - (2) all or part of the district's revenues, income, or receipts; or
  - (3) a combination of those taxes, revenues, income, and receipts.
- (c) The bonds and notes may be issued to mature serially or otherwise in not more than 40 years from the date of their issuance.
- (d) Provision may be made for the subsequent issuance of additional parity bonds or notes or subordinate lien bonds or notes under terms and conditions stated in the resolution authorizing the issuance of the bonds or notes.
- (e) The bonds, notes, and any interest coupons are investment securities under Chapter 8, Business & Commerce Code.

(f) The bonds and notes may be:

- (1) issued registrable as to principal alone or as to principal and interest;
- (2) made redeemable before maturity;
- (3) issued in the form, denominations, and manner and under the terms, conditions, and details provided by the resolution; and
- (4) sold in the manner, at the price, and under the terms, conditions, and details provided by the resolution.

(g) The bonds and notes bear interest at rates not to exceed the maximum rate allowed by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes).

(h) If provided by the resolution, the proceeds from the sale of the bonds or notes may be used for:

- (1) paying interest on the bonds or notes during the period of the acquisition or construction of a facility to be provided through the issuance of the bonds or notes;
- (2) paying expenses of operation and maintenance of the facility;
- (3) creating a reserve fund to pay the principal of and interest on the bonds or notes; and
- (4) creating other funds.

(i) As provided in the resolution, proceeds from the sale of the bonds and notes may be placed on time deposit or invested until needed.

(j) If the bonds or notes are issued payable by a pledge of revenues, income, or receipts, the district may pledge all or any part of its revenues, income, or receipts from fees, rentals, rates, charges, and proceeds and payments from contracts to the payment of the bonds or notes, including the payment of principal, interest, and any other amounts required or permitted in connection with the bonds or notes. The pledged fees, rentals, rates, charges, proceeds, and payments must be established and collected in amounts that will be at least sufficient, together with any other pledged resources, to provide for:

- (1) all payments of principal, interest, and any other amounts required in connection with the bonds or notes; and
- (2) the payment of expenses in connection with the bonds or notes and the operation, maintenance, and other expenses in connection with the facilities to the extent required by the resolution authorizing, or the trust indenture securing, the issuance of the bonds or notes.

(k) The district shall levy a tax as prescribed by Section 794.075 if the bonds or notes are payable wholly or partly from ad valorem taxes. (V.A.C.S. Art. 2351a-6, Secs. 12A(a), (b), (c), (d), (e), (f), (g), (h), (i), (j) (part), (k) (part).)

Sec. 794.077. ELECTION TO APPROVE BONDS AND NOTES. (a) A district may not authorize bonds and notes secured in whole or in part by taxes unless a majority of the district's qualified voters who vote at an election called for that purpose approve the issuance of the bonds and notes.

(b) The board may order an election on the bonds and notes. The order must contain the same information contained in the notice of the election.

(c) The board shall publish notice of the election at least once in a newspaper of general circulation in the district. The notice must be published not later than the 31st day before election day.

(d) In addition to the contents of the notice required by the Election Code, the notice must state:

- (1) the amount of bonds or notes to be authorized; and
- (2) the maximum maturity of the bonds or notes.

(e) At an election to approve bonds or notes payable wholly from ad valorem taxes, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the levy of taxes for payment of the (bonds or notes)."



(f) At an election to approve bonds or notes payable from both ad valorem taxes and revenues, the ballots must be printed to provide for voting for or against the following: "The issuance of (bonds or notes) and the pledge of net revenues and the levy of ad valorem taxes adequate to provide for the payment of the (bonds or notes)." (V.A.C.S. Art. 2351a-6, Secs. 12B(a), (b), (c), (d), (e) (part).)

**Sec. 794.078. BOND ANTICIPATION NOTES.** (a) A district may issue bond anticipation notes from time to time to carry out one or more of its powers.

(b) The bond anticipation notes may be secured by a pledge of all or part of the district's ad valorem taxes and revenues, income, or receipts.

(c) A district may from time to time authorize the issuance of bonds to provide proceeds to pay the principal of and interest on bond anticipation notes. The bonds must be secured by a pledge of all or part of the district's ad valorem taxes or revenues, income, or receipts and may be issued on a parity with or subordinate to outstanding district bonds.

(d) If the resolution authorizing the issuance of, or the trust indenture securing, the bond anticipation notes includes a covenant that the notes are payable from the proceeds of the subsequently issued bonds, it is not necessary for the district to demonstrate, in order to receive the approval of the attorney general or registration by the comptroller, that the ad valorem taxes or revenues, income, or receipts that may be pledged to payment of the notes will be sufficient to pay the principal of and interest on the notes. (V.A.C.S. Art. 2351a-6, Sec. 12C.)

**Sec. 794.079. REFUNDING BONDS.** (a) A district may refund or refinance bonds or notes issued under this chapter by issuing refunding bonds for the purpose and under the terms, conditions, and details determined by the board.

(b) Each relevant and appropriate provision of this chapter is applicable to the refunding bonds, and the refunding bonds shall be issued in the manner provided by this chapter for issuing other bonds.

(c) Refunding bonds may be sold and delivered in amounts necessary to pay the principal of, interest on, and redemption premium, if any, on bonds to be refunded at maturity or on a redemption date.

(d) The refunding bonds may be issued in exchange for the bonds being refunded, and the comptroller shall register the refunding bonds and deliver them to each holder of the bonds being refunded as provided by the resolution authorizing the refunding bonds. The exchange may be made in one delivery or in several installment deliveries.

(e) The bonds and notes issued by the district may be refunded in the manner provided by other applicable state law. (V.A.C.S. Art. 2351a-6, Sec. 12D.)

**Sec. 794.080. APPROVAL AND REGISTRATION OF BONDS.** (a) The district shall submit the bonds, notes, and bond anticipation notes issued under this chapter, and the appropriate proceedings authorizing their issuance, to the attorney general for examination.

(b) If the bonds, notes, or bond anticipation notes state that they are secured by a pledge of contract revenues, the district may submit a copy of the contract and the proceedings relating to the contract to the attorney general.

(c) The attorney general shall approve the bonds, notes, or bond anticipation notes and any submitted contract if the attorney general finds that the bonds, notes, or bond anticipation notes are authorized as provided by law, and that the contract, if submitted, is made as provided by law.

(d) On approval by the attorney general, the comptroller shall register the bonds, notes, or bond anticipation notes.

(e) After approval and registration, the bonds, notes, or bond anticipation notes and the contract are incontestable in a court or other forum for any reason and are valid and binding obligations in accordance with their terms for all purposes. (V.A.C.S. Art. 2351a-6, Sec. 12E.)

**Sec. 794.081. BONDS AS INVESTMENTS AND SECURITY FOR DEPOSITS.** (a) District bonds and notes are legal and authorized investments for:

- (1) a bank;
- (2) a savings bank;
- (3) a trust company;
- (4) a savings and loan association;
- (5) an insurance company;
- (6) a fiduciary;
- (7) a trustee;
- (8) a guardian; and
- (9) a sinking fund of a municipality, a county, a school district, or other political corporation or subdivision of the state.

(b) District bonds and notes are eligible to secure the deposit of public funds of the state and of municipalities, counties, school districts, or other political corporations or subdivisions of the state. The bonds and notes are legal and sufficient security for deposits to the extent of their value, and if in coupon form, when accompanied by all unmatured coupons. (V.A.C.S. Art. 2351a-6, Sec. 12G.)

[Chapters 795-820 reserved for expansion]

**TITLE 10. HEALTH AND SAFETY OF ANIMALS**

**CHAPTER 821. TREATMENT AND DISPOSITION OF ANIMALS**

**SUBCHAPTER A. TREATMENT OF ANIMALS**

- Sec. 821.001. DEFINITION**  
**Sec. 821.002. TREATMENT OF IMPOUNDED ANIMALS**  
**Sec. 821.003. TREATMENT OF LIVE BIRDS**  
**Sec. 821.004. KNOWLEDGE OR ACTS OF CORPORATE AGENT OR EMPLOYEE**

[Sections 821.005-821.020 reserved for expansion]

**SUBCHAPTER B. DISPOSITION OF CRUELLY TREATED ANIMALS**

- Sec. 821.021. DEFINITION**  
**Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL**  
**Sec. 821.023. HEARING; ORDER OF SALE OR RETURN OF ANIMAL**  
**Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL**  
**Sec. 821.025. APPEAL**

**TITLE 10. HEALTH AND SAFETY OF ANIMALS**

**CHAPTER 821. TREATMENT AND DISPOSITION OF ANIMALS**

**SUBCHAPTER A. TREATMENT OF ANIMALS**

**Sec. 821.001. DEFINITION.** In this subchapter, "animal" includes every living dumb creature. (V.A.C.S. Art. 180 (part).)

**Sec. 821.002. TREATMENT OF IMPOUNDED ANIMALS.** (a) A person who impounds or causes the impoundment of an animal under state law or municipal ordinance shall supply the animal with sufficient wholesome food and water during its confinement.

(b) If an animal impounded under Subsection (a) continues to be without necessary food and water for more than 12 successive hours, any person may enter the pound or corral as often as necessary to supply the animal with necessary food and water. That person may recover the reasonable cost of the food and water from the owner of the animal. The animal is not exempt from levy and sale on execution of a judgment issued to recover those costs. (V.A.C.S. Art. 186.)

**Sec. 821.003. TREATMENT OF LIVE BIRDS.** (a) This section applies to a person who receives live birds for transportation or for confinement:

- (1) on wagons or stands;
- (2) by a person who owns a grocery store, commission house, or other market house; or
- (3) by any other person if the birds are to be closely confined.

(b) The person shall immediately place the birds in coops, crates, or cages that are made of open slats or wire on at least three sides and that are of a height so that the birds can stand upright without touching the top.

(c) The person shall keep clean water and suitable food in troughs or other receptacles in the coops, crates, or cages. The troughs or other receptacles must be easily accessible to the confined birds and must be placed so that the birds cannot defile their contents.

(d) The person shall keep the coops, crates, or cages in a clean and wholesome condition and may place in each coop, crate, or cage only the number of birds that have room to move around and to stand without crowding each other.

(e) The person may not expose the birds to undue heat or cold and shall immediately remove all injured, diseased, or dead birds from the coops, crates, or cages. (V.A.C.S. Art. 181.)

**Sec. 821.004. KNOWLEDGE OR ACTS OF CORPORATE AGENT OR EMPLOYEE.** The knowledge and acts of an agent or employee of a corporation in regard to an animal transported, owned, or used by or in the custody of the corporation are the knowledge and acts of the corporation. (V.A.C.S. Art. 180 (part).)

[Sections 821.005–821.020 reserved for expansion]

#### **SUBCHAPTER B. DISPOSITION OF CRUELLY TREATED ANIMALS**

**Sec. 821.021. DEFINITION.** In this subchapter, “cruelly treated” includes tortured, seriously overworked, unreasonably abandoned, unreasonably deprived of necessary food, care, or shelter, cruelly confined, or caused to fight with another animal. (V.A.C.S. Art. 182a, Sec. 1.)

**Sec. 821.022. SEIZURE OF CRUELLY TREATED ANIMAL.** (a) If a county sheriff, constable, or deputy constable or an officer who has responsibility for animal control in a municipality has reason to believe that an animal has been or is being cruelly treated, he may apply to a justice court in the county in which the animal is located for a warrant to seize the animal.

(b) On a showing of probable cause to believe that the animal has been or is being cruelly treated, the court shall issue the warrant and set a time within 10 days of the date of issuance for a hearing in the court to determine whether the animal has been cruelly treated.

(c) The officer executing the warrant shall cause the animal to be impounded and shall give written notice to the owner of the animal of the time and place of the justice court hearing. (V.A.C.S. Art. 182a, Sec. 2(a).)

**Sec. 821.023. HEARING; ORDER OF SALE OR RETURN OF ANIMAL.** (a) A finding in county court that the owner of an animal is guilty of an offense under Section 42.11, Penal Code, involving the animal is prima facie evidence at a hearing authorized by Section 821.022 that the animal has been cruelly treated.

(b) A statement of an owner made at a hearing provided for under this subchapter is not admissible in a trial of the owner for an offense under Section 42.11, Penal Code.

(c) Each interested party is entitled to an opportunity to present evidence at the hearing.

(d) The court shall order a public sale of the animal by auction if the court finds that the animal's owner has cruelly treated the animal. The court shall order the animal

returned to the owner if the court does not find that the animal's owner has cruelly treated the animal. (V.A.C.S. Art. 182a, Sec. 2(b).)

Sec. 821.024. SALE OR DISPOSITION OF CRUELLY TREATED ANIMAL. (a) Notice of an auction ordered under this subchapter must be posted on a public bulletin board where other public notices are posted for the county or municipality. At the auction, a bid by the former owner of a cruelly treated animal or the owner's representative may not be accepted.

(b) Proceeds from the sale of the animal shall be applied first to the expenses incurred in caring for the animal during impoundment and in conducting the auction. The officer conducting the auction shall pay any excess proceeds to the justice court ordering the auction. The court shall return the excess proceeds to the former owner of the animal.

(c) If the officer is unable to sell the animal at auction, he may cause the animal to be destroyed or may give the animal to a nonprofit animal shelter, pound, or society for the protection of animals. (V.A.C.S. Art. 182a, Sec. 3.)

Sec. 821.025. APPEAL. (a) An owner of an animal ordered sold at public auction as provided in this subchapter may appeal the order.

(b) While an appeal under this section is pending, the animal may not be sold, destroyed, or given away as provided by Sections 821.022–821.024. (V.A.C.S. Art. 182a, Sec. 4 (part).)

## CHAPTER 822. REGULATION OF ANIMALS

### SUBCHAPTER A. DOGS THAT ARE A DANGER TO PERSONS

- Sec. 822.001. SEIZURE OF A DOG CAUSING DEATH OF PERSON
- Sec. 822.002. HEARING
- Sec. 822.003. DESTRUCTION OF DOG
- Sec. 822.004. PROVOCATION OR LOCATION OF ATTACK IRRELEVANT

[Sections 822.005–822.010 reserved for expansion]

### SUBCHAPTER B. DOGS THAT ARE A DANGER TO ANIMALS

- Sec. 822.011. CERTAIN DOGS PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY

[Sections 822.012–822.020 reserved for expansion]

### SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS

- Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER
- Sec. 822.022. PETITION FOR ELECTION
- Sec. 822.023. NOTICE
- Sec. 822.024. BALLOT PROPOSITION
- Sec. 822.025. ELECTION RESULT
- Sec. 822.026. INTERVAL BETWEEN ELECTIONS
- Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE
- Sec. 822.028. REGISTRATION FEE
- Sec. 822.029. DISPOSITION OF FEE
- Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS
- Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE
- Sec. 822.032. UNMUZZLED DOGS PROHIBITED FROM RUNNING AT LARGE
- Sec. 822.033. DOGS THAT ATTACK DOMESTIC ANIMALS
- Sec. 822.034. PROTECTION OF DOMESTIC ANIMALS
- Sec. 822.035. CRIMINAL PENALTY

**CHAPTER 822. REGULATION OF ANIMALS**

**SUBCHAPTER A. DOGS THAT ARE A DANGER TO PERSONS**

**Sec. 822.001. SEIZURE OF A DOG CAUSING DEATH OF PERSON.** (a) A justice court or county court shall order the sheriff of the county to seize a dog and shall issue a warrant authorizing the seizure:

(1) on the sworn complaint of any person, including the county attorney or a peace officer, that the dog has caused the death of a person by attacking, biting, or mauling the person; and

(2) on a showing of probable cause to believe that the dog caused the death of the person as stated in the complaint.

(b) The sheriff shall seize the dog or order its seizure and shall provide for the impoundment of the dog in secure and humane conditions until the court orders the disposition of the dog. (V.A.C.S. Art. 192-4, Sec. (a).)

**Sec. 822.002. HEARING.** (a) The court shall set a time for a hearing to determine whether the dog caused the death of a person by attacking, biting, or mauling the person. The hearing must be held not later than the 10th day after the date on which the warrant is issued.

(b) The court shall give written notice of the time and place of the hearing to:

(1) the owner of the dog or the person from whom the dog was seized; and

(2) the person who made the complaint.

(c) Any interested party, including the county attorney, is entitled to present evidence at the hearing.

(d) The court shall order the dog destroyed if the court finds that the dog caused the death of a person by attacking, biting, or mauling the person. If that finding is not made, the court shall order the dog released to:

(1) its owner;

(2) the person from whom the dog was seized; or

(3) any other person authorized to take possession of the dog. (V.A.C.S. Art. 192-4, Secs. (b), (c).)

**Sec. 822.003. DESTRUCTION OF DOG.** The destruction of a dog under this subchapter must be performed by:

(1) a licensed veterinarian;

(2) personnel of a recognized animal shelter or humane society who are trained in the humane destruction of animals; or

(3) personnel of a governmental agency responsible for animal control who are trained in the humane destruction of animals. (V.A.C.S. Art. 192-4, Sec. (d).)

**Sec. 822.004. PROVOCATION OR LOCATION OF ATTACK IRRELEVANT.** This subchapter applies to any dog that causes a person's death by attacking, biting, or mauling the person, regardless of whether the dog was provoked and regardless of where the incident resulting in the person's death occurred. (V.A.C.S. Art. 192-4, Sec. (e).)

[Sections 822.005-822.010 reserved for expansion]

**SUBCHAPTER B. DOGS THAT ARE A DANGER TO ANIMALS**

**Sec. 822.011. CERTAIN DOGS PROHIBITED FROM RUNNING AT LARGE; CRIMINAL PENALTY.** (a) The owner, keeper, or person in control of a dog that the owner, keeper, or person knows is accustomed to run, worry, or kill goats, sheep, or poultry may not permit the dog to run at large.

(b) A person who violates this section commits an offense. An offense under this subsection is punishable by a fine of not more than \$100.

(c) Each time a dog runs at large in violation of this section constitutes a separate offense. (V.A.C.S. Art. 192-2.)

[Sections 822.012-822.020 reserved for expansion]

#### SUBCHAPTER C. COUNTY REGISTRATION AND REGULATION OF DOGS

Sec. 822.021. APPLICATION TO COUNTIES THAT ADOPT SUBCHAPTER. This subchapter applies only to a county that adopts this subchapter by a majority vote of the qualified voters of the county voting at an election held under this subchapter. (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.022. PETITION FOR ELECTION. (a) On receiving a petition signed by at least 100 qualified property taxpaying voters of the county or a majority of the qualified property taxpaying voters of the county, whichever is less, the commissioners court of a county shall order an election to determine whether the registration of and registration fee for dogs will be required in the county.

(b) The election shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with other requirements of law. (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.023. NOTICE. In addition to the notice required by Section 4.003, Election Code, notice of an election under this subchapter shall be published at least once in an English language newspaper of general circulation in the county. If there is no English language newspaper of general circulation in the county, the notice shall be posted at the courthouse door for at least one week before the election. (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.024. BALLOT PROPOSITION. The ballot for an election under this subchapter shall be printed to provide for voting for or against the proposition: "Registration of and registration fee for dogs." (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.025. ELECTION RESULT. (a) If a majority of those voting at the election vote in favor of the measure, the requirement that dogs be registered takes effect in the county on the 10th day after the date on which the result of the election is declared.

(b) The county judge shall issue a proclamation declaring the result of the election if the vote is in favor of the measure. The proclamation shall be published at least once in an English language newspaper of general circulation in the county or, if there is no English language newspaper of general circulation in the county, the proclamation shall be posted at the courthouse door. (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.026. INTERVAL BETWEEN ELECTIONS. (a) If the result of an election is against the registration of and registration fee for dogs, another election on that subject may not be held for six months after the date of the election.

(b) If the result of an election is for the registration of and registration fee for dogs, an election to repeal the registration and fee may not be held for two years from the date of the election. (V.A.C.S. Art. 192-3, Sec. 6 (part).)

Sec. 822.027. REGISTRATION TAGS AND CERTIFICATE. (a) The commissioners court of a county shall furnish the county treasurer the necessary dog identification tags.

(b) The tags must be numbered consecutively and must be printed or impressed with the name of the county issuing the tags.

(c) The county treasurer shall assign a registration number to each dog registered with the county and shall give the owner or person having control of the dog the identification tag and a registration certificate.

(d) The county treasurer shall record the registration of a dog, including the age, breed, color, sex, and registration date of the dog. If the registration information is not recorded on microfilm, as may be permitted under other law, it shall be recorded in a book kept for that purpose.

(e) If the ownership of a dog is transferred, the dog's registration certificate shall be transferred to the new owner. (V.A.C.S. Art. 192-3, Secs. 1 (part), 4 (part).)

**Sec. 822.028. REGISTRATION FEE.** (a) An owner of a dog registered under this subchapter must pay a registration fee of \$1. Registration is valid for one year from the date of registration.

(b) If a dog is moved to another county, the owner may present the registration certificate to the county treasurer of the county to which the dog is moved and receive without additional cost a registration certificate. The new registration certificate is valid for one year from the date of registration in the county from which the dog was moved. (V.A.C.S. Art. 192-3, Sec. 4 (part).)

**Sec. 822.029. DISPOSITION OF FEE.** (a) The fee collected for the registration of a dog shall be deposited to the credit of a special fund of the county and used only to:

(1) defray the cost of administering this subchapter in the county, including the costs of registration and the identification tags; and

(2) reimburse the owner of any sheep, goats, calves, or other domestic animals or fowls killed in the county by a dog not owned by the person seeking reimbursement.

(b) Reimbursement under Subsection (a)(2) shall be made on the order of the commissioners court only on satisfactory proof of the killing.

(c) The commissioners court shall determine the amount and time of reimbursement. If there is insufficient money in the fund to reimburse all injured persons in full, reimbursement shall be made on a pro rata basis.

(d) The county treasurer shall keep an accurate record showing all amounts received into and paid from the fund. (V.A.C.S. Art. 192-3, Sec. 4 (part).)

**Sec. 822.030. REGISTRATION REQUIRED; EXCEPTION FOR TEMPORARY VISITS.** (a) The owner or person having control of a dog six months of age or older in a county that has adopted this subchapter must register the dog not later than the 30th day after the date on which the proclamation is published or adopted.

(b) A dog brought into a county for not more than 10 days for breeding purposes, trial, or show is not required to be registered. (V.A.C.S. Art. 192-3, Secs. 4 (part), 6 (part).)

**Sec. 822.031. UNREGISTERED DOGS PROHIBITED FROM RUNNING AT LARGE.** The owner or person having control of a dog at least six months of age in a county adopting this subchapter may not allow the dog to run at large unless the dog:

(1) is registered under this subchapter with the county in which the dog runs at large; and

(2) has fastened about its neck a dog identification tag issued by the county. (V.A.C.S. Art. 192-3, Sec. 1 (part).)

**Sec. 822.032. UNMUZZLED DOGS PROHIBITED FROM RUNNING AT LARGE.** The owner of a dog in a county adopting this subchapter may not allow the dog to run at large between sunset of one day and sunrise of the following day unless the dog has a leather or metallic muzzle securely fastened about its mouth that will effectively prevent the dog from killing or injuring sheep, goats, calves, or other domestic animals or fowls. (V.A.C.S. Art. 192-3, Sec. 2.)

**Sec. 822.033. DOGS THAT ATTACK DOMESTIC ANIMALS.** (a) A dog that is attacking, is about to attack, or has recently attacked sheep, goats, calves, or other domestic animals or fowls may be killed by any person witnessing or having knowledge of the attack.

(b) A person who kills a dog as provided by this section is not liable for damages to the owner of the dog.

(c) A dog known or suspected of having killed sheep, goats, calves, or other domestic animals or fowls is a public nuisance. Any person may detain or impound the dog until the dog's owner is notified and all damage done by the dog has been determined and paid to the proper persons.

(d) The owner of a dog that is known to have attacked sheep, goats, calves, or other domestic animals or fowls shall kill the dog. A sheriff, deputy sheriff, constable, police officer, magistrate, or county commissioner may enter the premises of the owner of the dog and kill the dog if the owner fails to do so. (V.A.C.S. Art. 192-3, Sec. 3 (part).)

Sec. 822.034. PROTECTION OF DOMESTIC ANIMALS. The owner of any sheep, goats, calves, or other domestic animals that are subject to the ravages of sheep-killing dogs may place poison on the premises where the animals are kept. The owner must post notice of the poison at each entrance to the premises before placing the poison. (V.A.C.S. Art. 192-3, Sec. 3 (part).)

Sec. 822.035. CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally:

- (1) fails or refuses to register a dog required to be registered under this subchapter;
- (2) fails or refuses to allow a dog to be killed when ordered by the proper authorities to do so; or
- (3) violates this subchapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$100, confinement in the county jail for not more than 30 days, or both. (V.A.C.S. Art. 192-3, Sec. 5.)

#### CHAPTER 823. ANIMAL SHELTERS

Sec. 823.001. DEFINITIONS

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, MUNICIPALITIES, CLINICS, AND FACILITIES

Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY

Sec. 823.004. PERSONNEL TRAINING

Sec. 823.005. ADVISORY COMMITTEE

Sec. 823.006. PROHIBITED METHODS OF DEATH

Sec. 823.007. INJUNCTION

#### CHAPTER 823. ANIMAL SHELTERS

Sec. 823.001. DEFINITIONS. In this chapter:

- (1) "Animal shelter" means a facility that keeps or legally impounds stray, homeless, abandoned, or unwanted animals.
- (2) "Board" means the Texas Board of Health.
- (3) "Commissioner" means the commissioner of health.
- (4) "Department" means the Texas Department of Health. (V.A.C.S. Art. 4477-6b, Sec. 1 (part).)

Sec. 823.002. EXEMPTION FOR CERTAIN COUNTIES, MUNICIPALITIES, CLINICS, AND FACILITIES. This chapter does not apply to:

- (1) a county having a population of less than 75,000;
- (2) an animal shelter within the limits of a municipality having a population of less than 75,000;
- (3) a veterinary medicine clinic; or
- (4) a livestock commission facility. (V.A.C.S. Art. 4477-6b, Secs. 1 (part), 8.)

Sec. 823.003. STANDARDS FOR ANIMAL SHELTERS; CRIMINAL PENALTY. (a) Each animal shelter operated in this state shall comply with the standards for housing and sanitation existing on September 1, 1982, and adopted under Chapter 826 (Rabies Control Act of 1981).

(b) An animal shelter shall separate animals in its custody at all times by species, by sex (if known), and if the animals are not related to one another, by size.

(c) An animal shelter may not confine healthy animals with sick, injured, or diseased animals.

(d) Each person who operates an animal shelter shall employ a veterinarian at least once a year to inspect the shelter to determine whether it complies with the requirements of this chapter. The veterinarian shall file copies of his report with the person operating the shelter and with the department on forms prescribed by the department.



(e) The board may require each person operating an animal shelter to keep records of the date and disposition of animals in its custody, to maintain the records on the business premises of the animal shelter, and to make the records available for inspection at reasonable times.

(f) A person commits an offense if the person substantially violates this section. An offense under this subsection is a Class C misdemeanor. (V.A.C.S. Art. 4477-6b, Sec. 2.)

**Sec. 823.004. PERSONNEL TRAINING.** The board shall prescribe standards and charge reasonable fees for training animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and the transportation of animals. (V.A.C.S. Art. 4477-6b, Sec. 3.)

**Sec. 823.005. ADVISORY COMMITTEE.** (a) The governing body of a county or municipality in which an animal shelter is located shall appoint an advisory committee to assist in complying with the requirements of this chapter.

(b) The advisory committee must be composed of at least one licensed veterinarian, one county or municipal official, one person whose duties include the daily operation of an animal shelter, and one representative from an animal welfare organization.

(c) The advisory committee shall meet at least three times a year. (V.A.C.S. Art. 4477-6b, Sec. 4.)

**Sec. 823.006. PROHIBITED METHODS OF DEATH.** (a) A person commits an offense if the person kills a dog, cat, or other small animal in the custody of an animal shelter by shooting, except in emergency field conditions, by clubbing, by using a decompression chamber, or by administering any of the following:

(1) unfiltered or uncooled carbon monoxide;

(2) curariform drugs, used alone, including curare, succinylcholine, pancuronium, and glyceryl fenesin;

(3) magnesium salts, used alone;

(4) chloral hydrate;

(5) nicotine; or

(6) strychnine.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6b, Sec. 5.)

**Sec. 823.007. INJUNCTION.** A court of competent jurisdiction may, on the petition of any person, prohibit by injunction the substantial violation of this chapter. (V.A.C.S. Art. 4477-6b, Sec. 6.)

#### **CHAPTER 824. CIRCUSES, CARNIVALS, AND ZOOS**

**Sec. 824.001. DEFINITIONS**

**Sec. 824.002. EXEMPTIONS**

**Sec. 824.003. LICENSE REQUIRED**

**Sec. 824.004. LICENSE APPLICATION**

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**Sec. 824.015. FEES; ANNUAL FINANCIAL REPORT**

**Sec. 824.016. CRIMINAL PENALTY**

## CHAPTER 824. CIRCUSES, CARNIVALS, AND ZOOS

Sec. 824.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health.
- (4) "Circus" or "carnival" means a commercial variety show featuring animal acts for public entertainment.
- (5) "Person" means an individual, association, partnership, corporation, trust, estate, joint-stock company, foundation, or political subdivision.
- (6) "Zoo" means any premises, whether mobile or stationary, where living animals that normally live in a wild state are kept primarily for display to the general public. (V.A.C.S. Art. 4447v, Sec. 1.)

Sec. 824.002. EXEMPTIONS. This chapter does not apply to:

- (1) a circus, carnival, or zoo that is licensed under the federal Animal Welfare Act (7 U.S.C. Section 2131 et seq.) and that furnishes proof to the commissioner that it is inspected by the federal agency administering that Act at least once each calendar year;
- (2) a zoo that is operated by a political subdivision of the state or a child-care institution or that is accredited by the American Association of Zoological Parks and Aquariums;
- (3) premises where nonindigenous ruminants are bred and raised; or
- (4) an organization sponsoring, and all persons participating in, exhibitions of domestic livestock shows and rodeos. (V.A.C.S. Art. 4447v, Sec. 3.)

Sec. 824.003. LICENSE REQUIRED. A person may not operate a circus, carnival, or zoo without a license issued under this chapter for the particular circus, carnival, or zoo. (V.A.C.S. Art. 4447v, Sec. 2.)

Sec. 824.004. LICENSE APPLICATION. To be licensed under this chapter, a person must:

- (1) submit to the board a written application on a form prescribed by the board;
- (2) furnish information requested by the board; and
- (3) pay an application fee. (V.A.C.S. Art. 4447v, Sec. 4.)

Sec. 824.005. LICENSING STANDARDS. (a) The board shall adopt standards for the operation of circuses, carnivals, and zoos that promote humane conditions for animals and protect the public health and safety.

(b) The standards must include provisions relating to housing and sanitation, animal health and disease control, and control, care, and transportation of animals.

(c) In adopting and enforcing standards established under this section, the board may consult experts and persons concerned with the welfare of animals in circuses, carnivals, and zoos. (V.A.C.S. Art. 4447v, Sec. 5.)

Sec. 824.006. ISSUANCE OF LICENSE. (a) The board shall issue a license to operate a particular circus, carnival, or zoo to an applicant who complies with Section 824.004, meets the board's standards adopted under Section 824.005, and pays a license fee.

(b) A license issued under this chapter is valid for two years from the date of issuance or a lesser period determined appropriate by the board for circuses that are not resident in this state and that are not exempt under Section 824.002(1). (V.A.C.S. Art. 4447v, Sec. 6.)

Sec. 824.007. LICENSE RENEWAL. (a) A license holder may renew the license by submitting to the board before the expiration date of the license a renewal fee and a renewal application on a form prescribed by the board.

(b) The board shall issue a renewal license to a license holder who complies with Subsection (a) and who meets the standards adopted under Section 824.005. (V.A.C.S. Art. 4447v, Sec. 7.)

**Sec. 824.008. INSPECTION BY BOARD.** (a) The board shall inspect circuses, carnivals, and zoos to determine if they comply with the standards adopted under Section 824.005.

(b) The board or its agents may enter the circuses, carnivals, or zoos inspected under this section at reasonable times.

(c) The board shall prescribe the qualifications for its agents employed to inspect circuses, carnivals, or zoos under this section. (V.A.C.S. Art. 4447v, Sec. 8.)

**Sec. 824.009. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.** (a) If the commissioner determines after the inspection required under Section 824.008 that an applicant for a license has failed to comply with the standards adopted under Section 824.005, the commissioner shall refuse to issue the license and shall give written notice of the decision and the reasons for it to the applicant. Not later than the 31st day after the date the notice is received, the applicant may submit to the commissioner a written request for a hearing on the license denial. The commissioner shall conduct the hearing not later than the 31st day after the date the request is received. If after the hearing the commissioner determines that the applicant has failed to comply with the standards, the commissioner shall refuse to issue the license.

(b) If the commissioner determines after inspection that a license holder has failed to comply with the standards, the commissioner shall give written notice to the license holder of a revocation hearing to be held not later than the 31st day after the date the notice is given. If after the hearing the commissioner determines that the license holder has failed to comply with the standards, the commissioner shall revoke the license.

(c) If the commissioner determines after inspection that a license holder has committed gross violations of the standards, the commissioner may, after giving written notice to the license holder, suspend the license for not more than 31 days pending a hearing. The commissioner shall give written notice to the license holder of a revocation hearing to be held not later than the 31st day after the date the notice is given. If after the hearing the commissioner determines that the license holder has failed to comply with the standards, the commissioner shall revoke the license. (V.A.C.S. Art. 4447v, Secs. 9(a), (b), (c).)

**Sec. 824.010. SEIZURE AND SALE OF ANIMALS.** (a) If a license is suspended or revoked, the commissioner may seek a writ from a justice of the peace serving the justice precinct in which the circus, carnival, or zoo is located ordering the sheriff or other peace officer to seize any of the animals being kept on the premises of the circus, carnival, or zoo operated by the person whose license was suspended or revoked.

(b) The justice of the peace shall issue the writ if the justice finds probable cause to believe that any of the animals are in danger of being harmed by a gross violation of the licensing standards.

(c) The board's employees may accompany the peace officer executing the writ. The department may rent, lease, or acquire facilities for keeping impounded animals.

(d) If the license is revoked and the commissioner's decision becomes final, the commissioner shall order a public sale by auction of the seized animals. Proceeds from the sale shall be applied first to the expenses incurred in conducting the sale. The commissioner shall return any excess proceeds to the person whose license is revoked. That person or the person's agent may not participate in the auction. (V.A.C.S. Art. 4447v, Sec. 9(d).)

**Sec. 824.011. INFORMAL DISPOSITION.** Sections 824.009 and 824.010 do not preclude an informal disposition of the matter by an agreement between a license holder and the board. (V.A.C.S. Art. 4447v, Sec. 9(e).)

**Sec. 824.012. JUDICIAL REVIEW.** A person whose application for a license is denied or whose license is revoked is entitled to judicial review in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 4447v, Sec. 10.)

**Sec. 824.013. RULES.** The board shall adopt rules necessary to administer this chapter. (V.A.C.S. Art. 4447v, Sec. 11.)

Sec. 824.014. **CONTRACTS.** The board may enter into contracts or agreements necessary to administer this chapter. Under a contract or agreement, the board may pay for materials, equipment, or services from any available funds. (V.A.C.S. Art. 4447v, Sec. 12.)

Sec. 824.015. **FEES; ANNUAL FINANCIAL REPORT.** (a) The board shall prescribe the amount of each type of fee required by this chapter.

(b) Fees received by the board under this chapter shall be deposited in the state treasury to the credit of a fund to be known as the circus, carnival, and zoo licensing fund and may be used only for administering the board's or commissioner's functions under this chapter.

(c) A fee received by the board under this chapter is not refundable.

(d) During the period beginning on August 31 and ending on September 10 of each year, the board shall file with the governor an annual financial report relating to the administration of this chapter.

(e) If the funds in the circus, carnival, and zoo licensing fund at the beginning of the state fiscal year plus the fees anticipated for that year exceed the probable costs of administering this chapter during that year, the board shall reduce the fees required by this chapter by the amount necessary to eliminate the projected surplus.

(f) The legislature may not appropriate funds from the general revenue fund to implement this chapter. (V.A.C.S. Art. 4447v, Sec. 13.)

Sec. 824.016. **CRIMINAL PENALTY.** (a) A person commits an offense if the person knowingly or intentionally violates Section 824.003.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4447v, Sec. 14.)

#### CHAPTER 825. PREDATORY ANIMALS AND ANIMAL PESTS

##### SUBCHAPTER A. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS

Sec. 825.001. **COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN  
CONTROLLING PREDATORY ANIMALS AND RODENTS**

Sec. 825.002. **COOPERATIVE AGREEMENT**

Sec. 825.003. **EXPENDITURE OF APPROPRIATIONS**

Sec. 825.004. **APPROPRIATIONS BY LOCAL GOVERNMENTS**

Sec. 825.005. **SALE OF FURS, SKINS, AND SPECIMENS**

Sec. 825.006. **BOUNTIES PROHIBITED**

Sec. 825.007. **CONSTRUCTION WITH PARKS AND WILDLIFE CODE**

Sec. 825.008. **TAMPERING WITH TRAPS; CRIMINAL PENALTY**

Sec. 825.009. **STEALING TRAPS; CRIMINAL PENALTY**

Sec. 825.010. **STEALING ANIMALS FROM TRAPS; CRIMINAL PENALTY**

[Sections 825.011–825.020 reserved for expansion]

##### SUBCHAPTER B. PURCHASE OF POISON TO DESTROY CERTAIN ANIMAL PESTS

Sec. 825.021. **COMMISSIONERS COURT MAY PURCHASE POISON**

Sec. 825.022. **NOTICE CONCERNING POISON**

Sec. 825.023. **DUTIES OF COMMISSIONER OF AGRICULTURE**

Sec. 825.024. **DUTIES OF LAND HOLDERS, LESSEES, AND TENANTS**

[Sections 825.025–825.030 reserved for expansion]

##### SUBCHAPTER C. BOUNTIES FOR PREDATORY ANIMALS

Sec. 825.031. **BOUNTIES FOR PREDATORY ANIMALS**

Sec. 825.032. **ANGELINA, HENDERSON, OR TRINITY COUNTY: WOLVES AND  
OTHER PREDATORY ANIMALS**

- Sec. 825.033. ARANSAS, BEE, REFUGIO, OR SAN PATRICIO COUNTY: RATTLE-SNAKES, WOLVES, COYOTES, PANTHERS, BOBCATS, AND OTHER PREDATORY ANIMALS
- Sec. 825.034. PANOLA COUNTY: WOLVES
- Sec. 825.035. BORDEN COUNTY: RABBITS
- Sec. 825.036. PRAIRIE DOGS
- Sec. 825.037. EFFECT OF OTHER LAWS

**CHAPTER 825. PREDATORY ANIMALS AND ANIMAL PESTS**

**SUBCHAPTER A. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES  
IN CONTROLLING PREDATORY ANIMALS AND RODENTS**

Sec. 825.001. COOPERATION BETWEEN STATE AND FEDERAL AGENCIES IN CONTROLLING PREDATORY ANIMALS AND RODENTS. The state shall cooperate through The Texas A&M University System with the appropriate federal officers and agencies in controlling coyotes, mountain lions, bobcats, Russian boars, and other predatory animals and in controlling prairie dogs, pocket gophers, jackrabbits, ground squirrels, rats, and other rodent pests to protect livestock, food and feed supplies, crops, and ranges. (V.A.C.S. Art. 192b, Sec. 1.)

Sec. 825.002. COOPERATIVE AGREEMENT. The director of the Texas Agricultural Extension Service shall execute a cooperative agreement with the appropriate federal officers or agencies to perform the cooperative work in predatory animal and rodent control in the manner and under the regulations stated in the agreement. (V.A.C.S. Art. 192b, Sec. 5.)

Sec. 825.003. EXPENDITURE OF APPROPRIATIONS. The state funds appropriated to administer this subchapter shall be spent in amounts as authorized by the Board of Regents of The Texas A&M University System and disbursed on vouchers or payrolls certified by the director of the extension service. (V.A.C.S. Art. 192b, Sec. 3.)

Sec. 825.004. APPROPRIATIONS BY LOCAL GOVERNMENTS. The commissioners court of a county or the governing body of a municipality may appropriate funds to perform predatory animal and rodent control work described by this subchapter and, in cooperation with federal and state authorities, may employ labor and purchase and provide supplies required to effectively perform that work. (V.A.C.S. Art. 192b, Sec. 6.)

Sec. 825.005. SALE OF FURS, SKINS, AND SPECIMENS. (a) Except as provided by Subsection (b), all furs, skins, and specimens of value taken by hunters or trappers paid from state funds under this subchapter shall be sold under rules adopted by The Texas A&M University System. The proceeds of the sales shall be deposited to the credit of the fund established for predatory animal and rodent control.

(b) Any specimen taken under this subchapter may be presented free of charge to any state, county, or federal institution for scientific purposes. (V.A.C.S. Art. 192b, Sec. 7.)

Sec. 825.006. BOUNTIES PROHIBITED. (a) A hunter or trapper acting under this subchapter may not collect a bounty from a county or any other source for an animal taken under this subchapter.

(b) The scalp of each animal taken under this subchapter shall be destroyed and each skin that has commercial value shall be sold. (V.A.C.S. Art. 192b, Sec. 8.)

Sec. 825.007. CONSTRUCTION WITH PARKS AND WILDLIFE CODE. Section 71.004(b), Parks and Wildlife Code, does not apply to a hunter or trapper while performing duties under this subchapter. (V.A.C.S. Art. 192b, Sec. 10.)

Sec. 825.008. TAMPERING WITH TRAPS; CRIMINAL PENALTY. (a) A person commits an offense if the person maliciously or wilfully tampers with all or any part of a trap set under this subchapter or removes a trap from the position in which it is placed by a hunter or trapper acting under this subchapter.

(b) An offense under this section is punishable by a fine of not less than \$50 or more than \$200. (V.A.C.S. Art. 192b, Sec. 11.)

Sec. 825.009. **STEALING TRAPS; CRIMINAL PENALTY.** (a) A person commits an offense if the person steals or fraudulently takes a trap belonging to the state or the United States Department of the Interior.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200. (V.A.C.S. Art. 192b, Sec. 12.)

Sec. 825.010. **STEALING ANIMALS FROM TRAPS; CRIMINAL PENALTY.** (a) A person commits an offense if the person steals an animal listed in Section 825.001 from a trap set under this subchapter or takes the animal from the trap without authority.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

(c) An animal stolen or taken in violation of this section is the property of the state. A complaint alleging a violation of this section must allege that the animal is owned by the state, and the only proof necessary to establish ownership shall consist of proving that the animal was taken from a trap that had been set by a hunter or trapper acting under this subchapter. (V.A.C.S. Art. 192b, Sec. 13.)

[Sections 825.011–825.020 reserved for expansion]

#### SUBCHAPTER B. PURCHASE OF POISON TO DESTROY CERTAIN ANIMAL PESTS

Sec. 825.021. **COMMISSIONERS COURT MAY PURCHASE POISON.** (a) The commissioners court of a county may purchase poisons and related accessories required by citizens of the county to destroy prairie dogs, wildcats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows, and ravens.

(b) The commissioners court may furnish the poison to citizens of the county free or at cost.

(c) The commissioners court shall pay for the poison from the general fund of the county and shall deposit the proceeds of any sale to the credit of that fund. (V.A.C.S. Art. 190, Sec. 1.)

Sec. 825.022. **NOTICE CONCERNING POISON.** (a) The commissioners court of a county acting under this subchapter shall determine the days on which the poison will be put out and shall give notice at least 20 days before the first day it is put out.

(b) The notice required by this section must be:

(1) published in at least one county newspaper, if one is available, for three successive issues; and

(2) posted in public places.

(c) The notice must state when the poison will be put out, the fact that it may be obtained from the commissioners court, and the terms on which it may be obtained. (V.A.C.S. Art. 190, Sec. 2.)

Sec. 825.023. **DUTIES OF COMMISSIONER OF AGRICULTURE.** (a) The commissioner of agriculture shall furnish a commissioners court acting under this subchapter with formulas and instructions for preparing the poison and with plans for using the poison.

(b) On request of a commissioners court, the commissioner of agriculture as soon as practicable shall demonstrate and give instructions on preparing the poison and the time and method for applying the poison. (V.A.C.S. Art. 190, Sec. 3.)

Sec. 825.024. **DUTIES OF LAND HOLDERS, LESSEES, AND TENANTS.** (a) Each land holder whose premises are infested with any pests listed in Section 825.021 shall obtain and apply the poison as provided in the plans furnished by the commissioner of agriculture.

(b) Each lessee or tenant occupying any premises under contract shall obtain the poison and destroy any pests listed in Section 825.021 that infest the premises. Any expenses

incurred under this subsection by a lessee or tenant shall be charged against the landowner and are collectible as any other valid debt. (V.A.C.S. Art. 190, Secs. 4, 5.)

[Sections 825.025–825.030 reserved for expansion]

**SUBCHAPTER C. BOUNTIES FOR PREDATORY ANIMALS**

**Sec. 825.031. BOUNTIES FOR PREDATORY ANIMALS.** (a) The commissioners court of a county may pay bounties for killing cougars, bobcats, jaguars, ocelots, jaguarondis, gray wolves, red wolves, Florida wolves, coyotes, javelinas, or rattlesnakes.

(b) The commissioners court may determine which animals are predatory animals in that county.

(c) A bounty paid under this section may not exceed \$5 for each animal and shall be paid from the general fund of the county. The bounty shall be paid by a warrant drawn on that fund by the county judge on presentation of proof of destruction required by the commissioners court.

(d) The commissioners court may determine eligibility criteria for receiving a bounty under this section. (V.A.C.S. Art. 190h.)

**Sec. 825.032. ANGELINA, HENDERSON, OR TRINITY COUNTY: WOLVES AND OTHER PREDATORY ANIMALS.** (a) The Commissioners Court of Angelina, Henderson, or Trinity County may pay bounties for the destruction of wolves and other predatory animals in the county.

(b) The commissioners court may, by resolution entered on its minutes, provide for the destruction of wolves and other predatory animals, the method of destruction and proof necessary to entitle the person destroying the animal to receive the bounty, and the amount of the bounty to be paid for each animal.

(c) A bounty paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge on presentation of proof of destruction required by the commissioners court. (V.A.C.S. Art. 190a–2.)

**Sec. 825.033. ARANSAS, BEE, REFUGIO, OR SAN PATRICIO COUNTY: RATTLESNAKES, WOLVES, COYOTES, PANTHERS, BOBCATS, AND OTHER PREDATORY ANIMALS.** (a) The Commissioners Court of Aransas, Bee, Refugio, or San Patricio County may pay bounties for the destruction of rattlesnakes, wolves, coyotes, panthers, bobcats, and other predatory animals in the county to preserve game and to protect the interests of livestock and poultry raisers.

(b) The commissioners court may set the bounty in an amount not to exceed:

- (1) \$5 for each wolf, coyote, panther, or bobcat;
- (2) 50 cents for each raccoon, skunk, opossum, or other similar animal; and
- (3) 10 cents for each rattlesnake.

(c) The commissioners court shall, by resolution entered on its minutes, specify the amount of the bounty to be paid for each animal and prescribe regulations and require proof necessary to protect the county's interest.

(d) The bounties paid under this section shall be paid by warrant drawn on the general fund of the county by the county judge. (V.A.C.S. Art. 190g–4.)

**Sec. 825.034. PANOLA COUNTY: WOLVES.** (a) The Commissioners Court of Panola County may pay bounties on wolves in order to preserve game.

(b) The commissioners court may set the bounty in an amount not to exceed \$25 for each wolf killed. The bounty shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one wolf has been killed for each wolf paid for. (V.A.C.S. Art. 190d–1.)

**Sec. 825.035. BORDEN COUNTY: RABBITS.** (a) The Commissioners Court of Borden County may pay bounties for lawfully killing wild rabbits in the county to prevent property damage.

(b) The bounty may not exceed 10 cents for each rabbit and shall be paid from the general fund of the county.

(c) The commissioners court may adopt rules necessary to protect the interest of the county and may require proof necessary to assure that one rabbit has been killed for each rabbit paid for. (V.A.C.S. Art. 190j.)

Sec. 825.036. PRAIRIE DOGS. Prairie dogs are a public nuisance. (V.A.C.S. Art. 191.)

Sec. 825.037. EFFECT OF OTHER LAWS. This subchapter does not authorize:

(1) the killing of an animal if the killing is prohibited by federal or state law or rule; or

(2) the payment of a bounty for killing an animal if the killing is prohibited by federal or state law or rule. (New.)

## **CHAPTER 826. RABIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 826.001. SHORT TITLE

Sec. 826.002. DEFINITIONS

[Sections 826.003–826.010 reserved for expansion]

### **SUBCHAPTER B. GENERAL POWERS AND DUTIES OF BOARD AND LOCAL GOVERNMENTS**

Sec. 826.011. GENERAL POWERS AND DUTIES OF BOARD

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES

Sec. 826.016. CONTRACTS

Sec. 826.017. DESIGNATION OF LOCAL HEALTH AUTHORITY

[Sections 826.018–826.020 reserved for expansion]

### **SUBCHAPTER C. RABIES VACCINATIONS**

Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED

Sec. 826.022. VACCINATION; CRIMINAL PENALTY

Sec. 826.023. USE AND SALE OF RABIES VACCINE

Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY

Sec. 826.025. PROVISION OF VACCINE AND SERUM

[Sections 826.026–826.030 reserved for expansion]

### **SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS**

Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY

Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY

[Sections 826.035–826.040 reserved for expansion]

### **SUBCHAPTER E. REPORTS AND QUARANTINE**

Sec. 826.041. REPORTS OF RABIES

Sec. 826.042. QUARANTINE OF ANIMALS

Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL

Sec. 826.044. QUARANTINE; CRIMINAL PENALTY



**Sec. 826.045. AREA RABIES QUARANTINE**

**Sec. 826.046. VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY**

[Sections 826.047–826.050 reserved for expansion]

**SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES**

**Sec. 826.051. MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES**

**Sec. 826.052. INSPECTIONS**

**Sec. 826.053. HEARING**

**Sec. 826.054. SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY**

**Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY**

**CHAPTER 826. RABIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 826.001. SHORT TITLE.** This chapter may be cited as the Rabies Control Act of 1981. (V.A.C.S. Art. 4477–6a, Sec. 1.01.)

**Sec. 826.002. DEFINITIONS.** In this chapter:

- (1) “Animal” means a warm-blooded animal.
- (2) “Board” means the Texas Board of Health.
- (3) “Cat” means *Felis catus*.
- (4) “Commissioner” means the commissioner of health.
- (5) “Department” means the Texas Department of Health.
- (6) “Dog” means *Canis familiaris*.
- (7) “Epizootic” means the occurrence in a given geographic area or population of cases of a disease clearly in excess of the expected frequency.
- (8) “Licensed veterinarian” means a veterinarian licensed to practice veterinary medicine in one or more of the 50 states.
- (9) “Quarantine” means strict confinement of an animal specified in an order of the board or its designee:
  - (A) on the private premises of the animal’s owner or at a facility approved by the board or its designee; and
  - (B) under restraint by closed cage or paddock or in any other manner approved by board rule.
- (10) “Rabies” means an acute viral disease of man and animal affecting the central nervous system and usually transmitted by an animal bite.
- (11) “Stray” means roaming with no physical restraint beyond the premises of an animal’s owner or keeper. (V.A.C.S. Art. 4477–6a, Sec. 1.03 (part).)

[Sections 826.003–826.010 reserved for expansion]

**SUBCHAPTER B. GENERAL POWERS AND DUTIES OF BOARD AND LOCAL GOVERNMENTS**

**Sec. 826.011. GENERAL POWERS AND DUTIES OF BOARD.** (a) The board or its designee, with the cooperation of the governing bodies of counties and municipalities, shall administer the rabies control program established by this chapter.

(b) The board shall adopt rules necessary to effectively administer this chapter.

(c) The board or its designee may enter into contracts or agreements with public or private entities to carry out this chapter. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(d) Subject to any limitations or conditions prescribed by the legislature, the board or its designee may seek, receive, and spend funds received through appropriations, grants, or donations from public or private sources for the rabies control program established by this chapter.

(e) The board or its designee may compile, analyze, publish, and distribute information relating to the control of rabies for the education of physicians, veterinarians, public health personnel, and the public. (V.A.C.S. Art. 4477-6a, Secs. 1.02 (part); 2.01(a), (b), (c), (e), (f).)

Sec. 826.012. MINIMUM STANDARDS FOR RABIES CONTROL. This chapter and the rules adopted by the board under this chapter are the minimum standards for rabies control. (V.A.C.S. Art. 4477-6a, Secs. 1.02 (part), 3.01(a).)

Sec. 826.013. COUNTIES AND MUNICIPALITIES MAY ADOPT CHAPTER. The governing body of a municipality or the commissioners court of a county may adopt this chapter and the standards adopted by the board. (V.A.C.S. Art. 4477-6a, Sec. 2.02(a).)

Sec. 826.014. COUNTIES MAY ADOPT ORDINANCES AND RULES. (a) The commissioners court of a county may adopt ordinances or rules that establish a local rabies control program in the county and set local standards that are compatible with and equal to or more stringent than the program established by this chapter and the rules adopted by the board.

(b) County ordinances or rules adopted under this section supersede this chapter and the rules of the board within that county so that dual enforcement will not occur. (V.A.C.S. Art. 4477-6a, Secs. 2.02(b) (part), 3.01(b).)

Sec. 826.015. MUNICIPALITIES MAY ADOPT ORDINANCES OR RULES. (a) The governing body of a municipality may adopt ordinances or rules that establish a local rabies control program in the municipality and set local standards that are compatible with and equal to or more stringent than:

(1) the ordinances or rules adopted by the county in which the municipality is located; and

(2) the program established by this chapter and the rules adopted by the board.

(b) Municipal ordinances or rules adopted under this section supersede ordinances or rules adopted by the county in which the municipality is located, this chapter, and the rules of the board within that municipality so that multiple enforcement will not occur. (V.A.C.S. Art. 4477-6a, Secs. 2.02(b) (part), 3.01(c).)

Sec. 826.016. CONTRACTS. The governing body of a municipality and the commissioners court of a county may enter into contracts or agreements with public or private entities to carry out the activities required or authorized under this chapter. (V.A.C.S. Art. 4477-6a, Sec. 2.02(d).)

Sec. 826.017. DESIGNATION OF LOCAL HEALTH AUTHORITY. (a) The commissioners court of each county and the governing body of each municipality shall designate an officer to act as the local health authority for the purposes of this chapter.

(b) Except as restricted by board rule, the officer designated as local health authority may be the county health officer, municipal health officer, animal control officer, peace officer, or any entity that the commissioners court or governing body considers appropriate.

(c) Among other duties, the local health authority shall enforce:

(1) this chapter and the board rules that comprise the minimum standards for rabies control;

(2) the ordinances or rules of the municipality or county that the local health authority serves; and

(3) the rules adopted by the board under the area rabies quarantine provisions of Section 826.045. (V.A.C.S. Art. 4477-6a, Secs. 2.02(c), 3.02.)

[Sections 826.018-826.020 reserved for expansion]

**SUBCHAPTER C. RABIES VACCINATIONS**

**Sec. 826.021. VACCINATION OF DOGS AND CATS REQUIRED.** (a) Except as otherwise provided by board rule, the owner of a dog or cat shall have the animal vaccinated against rabies by the time the animal is four months of age and at regular intervals thereafter as prescribed by board rule.

(b) A veterinarian who vaccinates a dog or cat against rabies shall issue to the animal's owner a vaccination certificate in a form that meets the minimum standards approved by the board.

(c) A county or municipality may not register or license an animal that has not been vaccinated in accordance with this section. (V.A.C.S. Art. 4477-6a, Sec. 3.05.)

**Sec. 826.022. VACCINATION; CRIMINAL PENALTY.** (a) A person commits an offense if the person fails or refuses to have each dog or cat owned by the person vaccinated against rabies and the animal is required to be vaccinated under:

(1) Section 826.021 and board rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.05.)

**Sec. 826.023. USE AND SALE OF RABIES VACCINE.** (a) Rabies vaccine for animals may be administered only by or under the direct supervision of a veterinarian.

(b) A veterinarian may not administer or directly supervise the administration of rabies vaccine in this state unless the person is:

(1) licensed by the State Board of Veterinary Medical Examiners to practice veterinary medicine; or

(2) practicing veterinary medicine on an installation of the armed forces or National Guard.

(c) A person may not sell or distribute rabies vaccine for animals to any person except a licensed veterinarian or to a person working in a veterinary clinic who accepts the vaccine on behalf of the veterinarian.

(d) This section does not prohibit a pharmacy licensed by the Texas State Board of Pharmacy from supplying rabies vaccine for animals to a licensed veterinarian. (V.A.C.S. Art. 4477-6a, Sec. 3.06.)

**Sec. 826.024. USE AND SALE OF RABIES VACCINE; CRIMINAL PENALTY.** (a) A person commits an offense if the person:

(1) administers or attempts to administer rabies vaccine in a manner not authorized by Section 826.023;

(2) dispenses or attempts to dispense rabies vaccine in a manner not authorized by Section 826.023; or

(3) sells or distributes rabies vaccine for animals in violation of Section 826.023(c).

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.07.)

**Sec. 826.025. PROVISION OF VACCINE AND SERUM.** (a) The department may provide vaccine and hyperimmune serum in accordance with board policies or procedures for the use and benefit of a person exposed, or suspected of having been exposed, to rabies.

(b) In accordance with board rules and eligibility standards, the department is entitled to be reimbursed by or on behalf of the person receiving the vaccine or serum for actual costs incurred in providing the vaccine or serum.

(c) At the written request of the department, the attorney general or the county or district attorney for the county in which the recipient of the vaccine or serum resides may bring suit or start other proceedings in the name of the state to collect the reimbursement owed the department for the vaccine or serum.

(d) A suit or other proceeding may be brought against:

- (1) the recipient;
- (2) the parent, guardian, or other person legally responsible for the support of the recipient; or
- (3) a responsible third party. (V.A.C.S. Art. 4477-6a, Sec. 3.10.)

[Sections 826.026-826.030 reserved for expansion]

#### SUBCHAPTER D. REGISTRATION AND RESTRAINT OF DOGS AND CATS

##### Sec. 826.031. REGISTRATION OF DOGS AND CATS BY LOCAL GOVERNMENTS.

(a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 requiring the registration of each dog and cat within the jurisdiction of the municipality or county.

(b) A dog or cat may not be subject to dual registration.

(c) The enforcing agency may collect a fee set by ordinance for the registration of each dog or cat and may retain the fees collected. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction. (V.A.C.S. Art. 4477-6a, Secs. 2.02(b) (part), 3.07.)

Sec. 826.032. REGISTRATION; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to register or present for registration a dog or cat owned by the person; and

(2) the animal is required to be registered under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.03.)

##### Sec. 826.033. RESTRAINT, IMPOUNDMENT, AND DISPOSITION OF DOGS AND CATS.

(a) The governing body of a municipality and the commissioners court of a county may adopt ordinances or rules under Section 826.014 or 826.015 to require that:

(1) each dog or cat be restrained by its owner;

(2) each stray dog or cat be declared a public nuisance;

(3) each unrestrained dog or cat be detained or impounded by the local health authority or that officer's designee;

(4) each stray dog or cat be impounded for a period set by ordinance or rule; and

(5) a humane disposition be made of each unclaimed stray dog or cat on the expiration of the required impoundment period.

(b) A jurisdiction may not be subject to dual restraint ordinances or rules.

(c) The enforcing agency may adopt an ordinance setting a fee for the impoundment and board of a dog or cat during the impoundment period. The animal's owner must pay the fee before the animal may be released.

(d) The enforcing agency shall deposit the fees collected in the treasury of the enforcing agency. The fees may be used only to help defray the cost of administering this chapter or the ordinances or rules of the enforcing agency within its jurisdiction. (V.A.C.S. Art. 4477-6a, Secs. 2.02(b) (part); 3.08(a), (b), (c).)

Sec. 826.034. RESTRAINT; CRIMINAL PENALTY. (a) A person commits an offense if:

(1) the person fails or refuses to restrain a dog or cat owned by the person; and

(2) the animal is required to be restrained under the ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.04.)

[Sections 826.035–826.040 reserved for expansion]

**SUBCHAPTER E. REPORTS AND QUARANTINE**

**Sec. 826.041. REPORTS OF RABIES.** (a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local health authority of the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

- (1) the name and address of the victim and of the animal's owner, if known; and
- (2) any other information that may help in locating the victim or animal.

(c) The local health authority shall investigate a report filed under this section. (V.A.C.S. Art. 4477–6a, Secs. 3.03(a), (c).)

**Sec. 826.042. QUARANTINE OF ANIMALS.** (a) The board shall adopt rules governing the testing of quarantined animals and the procedure for and method of quarantine.

(b) The local health authority shall quarantine or test in accordance with board rules any animal that the local health authority has probable cause to believe may have exposed a person to rabies.

(c) An owner shall submit for quarantine an animal that:

- (1) is reported to be rabid or to have exposed an individual to rabies; or
- (2) the owner knows or suspects is rabid or to have exposed an individual to rabies.

(d) The owner shall submit the animal to the local health authority of the county or municipality in which the exposure occurs. (V.A.C.S. Art. 4477–6a, Secs. 3.03(b), 3.04(a), (b) (part).)

**Sec. 826.043. RELEASE OR DISPOSITION OF QUARANTINED ANIMAL.** (a) If a veterinarian determines that a quarantined animal does not show the clinical signs of rabies, the local health authority shall release the animal to its owner when the quarantine period ends if:

- (1) the owner has an unexpired rabies vaccination certificate for the animal; or
- (2) the animal is vaccinated against rabies by a licensed veterinarian at the owner's expense.

(b) If a veterinarian determines that a quarantined animal shows the clinical signs of rabies, the local health authority shall humanely destroy the animal. If an animal dies or is destroyed while in quarantine, the local health authority shall remove the head or brain of the animal and submit it to the nearest department laboratory for testing.

(c) The owner of an animal that is quarantined under this chapter shall pay to the local health authority the reasonable costs of the quarantine and disposition of the animal. The local health authority may bring suit to collect those costs.

(d) The local health authority may sell the animal and retain the proceeds or keep, grant, or destroy an animal if the owner or custodian does not take possession of the animal before the fourth day following the final day of the quarantine period. (V.A.C.S. Art. 4477–6a, Secs. 3.04(d), (e), (f).)

**Sec. 826.044. QUARANTINE; CRIMINAL PENALTY.** (a) A person commits an offense if the person fails or refuses to quarantine or present for quarantine or testing an animal that:

(1) is required to be placed in quarantine or presented for testing under Section 826.042 and board rules; or

(2) is required to be placed in quarantine under ordinances or rules adopted under this chapter by a county or municipality within whose jurisdiction the act occurs.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477–6a, Sec. 5.01.)

Sec. 826.045. **AREA RABIES QUARANTINE.** (a) If rabies is known to exist in an area, the board or its designee may declare an area rabies quarantine to prevent or contain a rabies epizootic.

(b) On the declaration that a quarantine exists, the board shall:

- (1) define the borders of the quarantine area; and
- (2) adopt permanent or emergency rules.

(c) The rules adopted under Subsection (b)(2) may include conditions for the restraint of carnivorous animals and the transportation of carnivorous animals into and out of the quarantine area.

(d) The quarantine remains in effect until the 181st day after the date on which the last case of rabies is diagnosed in a dog, cat, or other animal species that caused the board or its designee to declare a quarantine, unless the board or its designee, by declaration, removes the quarantine before that date.

(e) While the quarantine is in effect, the rules adopted by the board supersede all other applicable ordinances or rules applying to the quarantine area and apply until the board or its designee removes the quarantine by declaration or until the rules expire or are revoked by the board. (V.A.C.S. Art. 4477-6a, Secs. 2.01(d), 3.09.)

Sec. 826.046. **VIOLATION OF AREA RABIES QUARANTINE; CRIMINAL PENALTY.** (a) A person commits an offense if the person violates or attempts to violate a rule of the board adopted under Section 826.045 governing an area rabies quarantine.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.02.)

[Sections 826.047-826.050 reserved for expansion]

#### SUBCHAPTER F. QUARANTINE AND IMPOUNDMENT FACILITIES

Sec. 826.051. **MINIMUM STANDARDS FOR QUARANTINE AND IMPOUNDMENT FACILITIES.** (a) The board shall adopt rules governing the types of facilities that may be used to quarantine animals.

(b) The board by rule shall establish minimum standards for impoundment facilities and for the care of impounded animals.

(c) In accordance with board rules, a local health authority may contract with one or more public or private entities to provide and operate a quarantine facility. (V.A.C.S. Art. 4477-6a, Secs. 3.04(b) (part), (c); 3.08(d).)

Sec. 826.052. **INSPECTIONS.** An employee of the department, on the presentation of appropriate credentials to the local health authority or the authority's designee, may conduct a reasonable inspection of a quarantine or impoundment facility at a reasonable hour to determine if the facility complies with the minimum standards adopted by the board for those facilities. (V.A.C.S. Art. 4477-6a, Sec. 4.01.)

Sec. 826.053. **HEARING.** (a) A person aggrieved by an action of the department in amending, limiting, suspending, or revoking any approval required of the department by this chapter may request a hearing before the department.

(b) The department shall conduct the hearing held under this section in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and the department's formal hearing rules. (V.A.C.S. Art. 4477-6a, Sec. 4.02.)

Sec. 826.054. **SUITS TO ENJOIN OPERATION OF QUARANTINE OR IMPOUNDMENT FACILITY.** (a) At the request of the commissioner, the attorney general may bring suit in the name of the state to enjoin the operation of a quarantine or impoundment facility that fails to meet the minimum standards established by this chapter and board rules.

(b) The suit shall be brought in a district court in the county in which the facility is located.

(c) When a court issues an order to a facility to cease operation, the local health authority shall remove all animals housed in the facility to a shelter approved by the department. The county or municipality within whose jurisdiction the facility is located shall pay the cost of relocating the animals to an approved shelter. (V.A.C.S. Art. 4477-6a, Sec. 4.03.)

Sec. 826.055. QUARANTINE OR IMPOUNDMENT FACILITY; CRIMINAL PENALTY. (a) A person commits an offense if the person operates a facility for quarantined or impounded animals that fails to meet standards for approval established by:

(1) board rules; or

(2) ordinances or rules adopted under this chapter by a county or municipality.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 4477-6a, Sec. 5.06.)

SECTION 2. CONFORMING AMENDMENT. Chapter 74, Education Code, is amended by adding Subchapter K to read as follows:

**SUBCHAPTER K. THE UNIVERSITY OF TEXAS HEALTH  
SCIENCE CENTER AT TYLER**

*Sec. 74.601. USE AND CONTROL. (a) The Board of Regents of The University of Texas System shall govern, operate, manage, and control The University of Texas Health Science Center at Tyler and the land, buildings, facilities, equipment, supplies, improvements, and other property comprising the center in the manner authorized by law for the governance, management, and control of other component institutions of The University of Texas System.*

*(b) The board of regents may use the center as a teaching hospital. (V.A.C.S. Art. 3201a-4, Secs. 2 (part), 5 (part).)*

*Sec. 74.602. PURPOSE OF HEALTH SCIENCE CENTER. It is the policy of this state to provide a program of treatment of the citizens of this state who are affected with respiratory diseases. In pursuance of that policy, The University of Texas Health Science Center at Tyler, among other functions, shall serve as the primary facility in this state to:*

*(1) conduct research relating to respiratory diseases;*

*(2) develop diagnostic and treatment techniques and procedures for respiratory diseases;*

*(3) provide training and teaching programs; and*

*(4) provide diagnosis and treatment of inpatients and outpatients with respiratory diseases. (V.A.C.S. Art. 3201a-4, Sec. 6.)*

*Sec. 74.603. SERVICE AS STATE CHEST HOSPITAL. (a) The University of Texas Health Science Center at Tyler serves as a state chest hospital under Subchapter B, Chapter 13, Health and Safety Code, among other functions, for tuberculosis patients sent by the Texas Department of Health.*

*(b) Sections 13.034 and 13.044, Health and Safety Code, do not apply to the center.*

*(c) It is the intent of the legislature that:*

*(1) The University of Texas System shall provide and pay for the care and treatment of tuberculosis patients in The University of Texas Health Science Center at Tyler from funds appropriated to the center for that purpose;*

*(2) The University of Texas System shall honor and perform all contracts in existence on September 1, 1977, entered into by, for, or on behalf of the center, including contracts related to the training and education of osteopathic resident physicians at the center; and*

*(3) if additional contracts are required to provide for the care and treatment of outpatients, The University of Texas System shall, as appropriate:*

(A) pay for the care and treatment from funds appropriated for that purpose; or

(B) transfer to the Texas Department of Health, out of funds appropriated to the center for that purpose, money to pay for the care and treatment. (V.A.C.S. Art. 3201a-4, Secs. 1 (part), 7.)

SECTION 3. CONFORMING AMENDMENT. Article 1015, Revised Statutes, is amended to read as follows:

Art. 1015. OTHER POWERS. The governing body shall also have power:

1. ~~[Promotion of health.—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.~~

~~[2.—Quarantine regulations.—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof.~~

~~[3.—Joint sanitary regulations.—To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements.~~

~~[4.—Hospitals.—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals.~~

~~[5.—Food inspection, etc.—To regulate the inspection of beef, pork, flour, meal, salt and other provisions; to appoint weighers, gaugers and inspectors, and to prescribe their duties and regulate their fees.~~

~~[6.—Dead animals, etc.—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and to require the owner of any dead animal to remove the same to such place as may be designated.~~

~~[7.—Burial of dead, etc.—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of marriages; and to direct the returning and keeping of bills of mortality.~~

~~[8.] Obstructions on public ways, etc.—To prevent the incumbering of the streets, alleys, sidewalks, and public grounds, with any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever, to compel persons to keep all weeds, filth or any kind of rubbish from the sidewalks and streets and gutters in front of their premises, and to compel the owners of property to fill up, grade, gravel and otherwise improve the sidewalks in front of same.~~

2. [9.] Bridges, sewers, etc.—To establish, erect, construct, regulate and keep in repair, bridges, culverts, and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk. The cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such manner as the city council may by ordinance provide. A sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser. The balance of proceeds of such sale, after paying the amount due the city and costs of sale, shall be paid to the owner.

3. [10.] Street railways.—To compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain



the rate of speed and to compel such railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties.

4. ~~[11.]~~ Railway companies.—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city.

5. ~~[12.]~~ Unsafe driving.—To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets.

6. ~~[13.]~~ Light and gas.—To provide for lighting the streets and erecting lamp posts therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts, to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere.

~~[14. Cemeteries.—To provide for inclosing, regulating and improving cemeteries belonging to the city.]~~

SECTION 4. CONFORMING AMENDMENT. Article 1175, Revised Statutes, is amended to read as follows:

Art. 1175. ENUMERATED POWERS. A home-rule municipality has the following powers:

1. The power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the Constitution of this State; provided, that said bonds shall have first been authorized by a majority vote by the duly qualified property tax-paying voters voting at an election held for that purpose. Thereafter all such bonds shall be submitted to the Attorney General for his approval, and the Comptroller for registration, as provided by law, provided that any such bonds after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. Whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this chapter shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

2. To prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided by any such ordinance. To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the

corporate property, labor done or property actually received in accordance with the laws and Constitution of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose.

3. To have exclusive dominion, control, and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising, grading, filling or otherwise improving the same and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making such improvement, and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of constructing of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance. The power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs, or boulevards, as it may deem advisable by its charter.

4. To open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by said special commissioners. The city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one third the cost, and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. The city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payment of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed eight per cent. The city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable, and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement, that its charter may provide. The authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment of any such improvement.

5. To control, regulate and remove all obstructions or other encroachments or encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon

and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

6. To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving bond or other security for the operation of the same.

7. ~~[To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and post-houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.~~

[8.] Provided that in all cities of over twenty-five thousand inhabitants, the governing body of such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines of service into any section of said city not to exceed two miles, all told, in any one year.

8. [9.] Whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; said security shall apply alone to said properties so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.

9. [37.] A home-rule city may provide publicly owned facilities for use by organizations that provide human services to the indigent. In this subdivision, "human services" includes the provision of housing, food, clothing, and day care services.

10. [37.] (a) This subdivision applies only to a home-rule city that has a population of 700,000 or more, according to the most recent federal census, and has adopted an ordinance under Subdivision 36 of this article.

(b) In addition to the authority granted under Subdivision 36 of this article, after the expiration of the time allotted under Subdivision 36 of this article for the repair or removal of a building the city may:

(i) repair the building at the expense of the city and assess the expenses on the land on which the building stands or to which it is attached and may provide for that assessment, the mode and manner of giving notice, and the means of recovering the repair expenses; or

(ii) assess a civil penalty against the property owner for failure to repair or remove the building and provide for that assessment, the mode and manner of giving notice, and the means of recovering the assessment.

(c) The city may repair a building under Paragraph (b) of this subdivision only to the extent necessary to bring the building into compliance with the minimum standards and only if the building is a residential building with 10 or less dwelling units. The repairs may not improve the building to the extent that the building exceeds minimum housing standards.

(d) The city may impose a lien against the land on which the building stands or stood to secure the payment of the repair or removal expenses or the civil penalty.

(e) The city's lien to secure the payment of a civil penalty or the costs of repairs or removal is inferior to any previously recorded bona fide mortgage lien attached to the real property to which the city's lien attaches if the mortgage lien was filed for record in the office of the county clerk of the county in which the real property is

located before the date the civil penalty is assessed or the repair or removal is begun by the city. The city's lien is superior to all other previously recorded judgment liens.

(f) Any civil penalty or other assessment imposed under this subdivision accrues interest at the rate of 10 percent a year from the date of the assessment until paid in full.

(g) The city's right to the assessment lien may not be transferred to third parties.

(h) In any judicial proceeding regarding enforcement of city rights under this subdivision, the prevailing party is entitled to recover reasonable attorney's fees from the nonprevailing party.

11. [37.] A home-rule city may provide human services to the indigent. If the services are provided by contract, the amount of the contract may not exceed 50 percent of the annual budget of the organization that provides the services under the contract.

SECTION 5. CONFORMING AMENDMENT. Article 2351, Revised Statutes, is amended to read as follows:

Art. 2351. CERTAIN POWERS SPECIFIED. Each commissioners court shall:

1. Establish public ferries whenever the public interest may require.
2. Lay out and establish, change and discontinue public roads and highways.
3. Build bridges and keep them in repair.
4. Appoint road overseers and apportion hands.
5. Exercise general control over all roads, highways, ferries and bridges in their counties.
6. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. A county is obligated to provide health care assistance to eligible residents only to the extent prescribed by the Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes), but that Act does not affect the authority of a commissioners court to provide eligibility standards or other requirements relating to other assistance programs or services that are not covered by the Indigent Health Care and Treatment Act.

7. ~~[Provide for the burial of paupers.]~~

[8.] Said Court shall have the authority to use county road machinery and funds from the General Fund or Road and Bridge Funds in cleaning streams and in aiding flood control when such improvements are deemed to be of aid to the county in the maintenance and the building of county roads, in counties having a population of from nineteen thousand, eight hundred and fifty (19,850) to nineteen thousand, eight hundred and ninety-five (19,895) according to the last Federal Census.

8. [21.] In addition to its other powers, a Commissioners Court may acquire by purchase, gift, lease, or other method of acquisition, except by condemnation, any property or an interest in property inside or outside the county that the Commissioners Court finds necessary to obtain a surface water supply or to transport and deliver surface water. If the property that is being acquired is located outside the county, the Commissioners Court of the county or counties where the property is located shall hold a public hearing and acquisition must be approved by the Commissioners Court at a regular meeting of the court. The Commissioners Court may contract with any political subdivision of the State for the management and operation of part or all of the property or interests in property and for the beneficial use of the surface water. A contract may be entered into on terms the Commissioners Court considers to be appropriate, but a contract may not be for a term of more than forty (40) years.

SECTION 6. CONFORMING AMENDMENT. Chapter 195, Acts of the 60th Legislature, Regular Session, 1967 (Article 3183g, Vernon's Texas Civil Statutes), is amended to read as follows:

Art. 3183g

Sec. 1. On and after the effective date of this Act, the Texas State Department of Health shall by rule and regulation set standards as to the physical safety of buildings

and adequacy of staff, in number and quality, necessary to assure a continuous plan of adequate medical, psychiatric, nursing and social work services to patients cared for in [~~State tuberculosis hospitals,~~] State mental hospitals and State schools for the retarded.

Sec. 2. The Texas State Department of Health shall approve those [~~State tuberculosis hospitals,~~] State mental hospitals and State schools for the retarded which meet the standards promulgated by it and shall certify its approval to the Texas Department of Public Welfare or the United States Department of Health, Education and Welfare when requested to do so.

SECTION 7. EFFECT ON PER DIEM DETERMINATION. The determination of the amount of per diem to which a state board or commission member covered by this Act is entitled shall be determined as if this Act did not reenact laws relating to the board or commission member's per diem.

SECTION 8. TRANSFER OF RESPONSIBILITY UNDER INDIGENT HEALTH CARE AND TREATMENT ACT. (a) Not later than the 30th day after a county and municipality agree to a transfer of responsibility under Section 2.011, Indigent Health Care and Treatment Act (Article 4438f, Vernon's Texas Civil Statutes), revised in this Act as Section 61.025, the county and municipality shall notify the Texas Department of Human Services of the agreement and the date on which the agreement takes effect. The county and municipality shall also send the department a copy of any ordinance, resolution, or order relating to the agreement.

(b) This section expires October 1, 1989.

SECTION 9. TERMS: HOSPITAL EQUIPMENT FINANCING COUNCIL. A trustee or member of the Texas Hospital Equipment Financing Council who held office on May 27, 1985, and whose term has not expired before September 1, 1989, continues in office for the term for which the trustee was appointed. This section expires September 1, 1992.

SECTION 10. COMPLIANCE WITH COMPREHENSIVE MUNICIPAL SOLID WASTE MANAGEMENT, RESOURCE RECOVERY, AND CONSERVATION ACT. Each county with a population of more than 30,000, according to the most recent federal census, and each municipality shall comply with Section 363.113, Health and Safety Code, as adopted by this Act, before January 1, 1990. This section expires January 2, 1990.

SECTION 11. VALIDITY OF BONDS. (a) Bonds issued or voted to be issued by a municipality under Chapter 106, Acts of the 64th Legislature, Regular Session, 1975 (Article 4477-10, Vernon's Texas Civil Statutes), on or before September 1, 1989, are valid and binding obligations of that municipality. Actions and proceedings in connection with those bonds and assessments, fees, and other revenue sources collected or authorized to be collected to pay the principal of and interest on those bonds are valid, and the repeal of Chapter 106, Acts of the 64th Legislature, Regular Session, 1975 (Article 4477-10, Vernon's Texas Civil Statutes), which authorized those actions and proceedings and those assessments, fees, and other revenue sources, does not affect the implementation of those actions and proceedings or the imposition and collection of necessary assessments, fees, and other revenue sources to pay the principal of and interest on those bonds.

(b) The rights of the holders of any bonds issued under Chapter 106, Acts of the 64th Legislature, Regular Session, 1975 (Article 4477-10, Vernon's Texas Civil Statutes), are not impaired by the repeal of that Act, and the holders of those bonds are entitled to exercise any rights or authority created for those holders by those bonds and any contracts, agreements, and instruments that are supplemental to those bonds.

(c) Bonds issued by or authorized to be issued by a municipality under Chapter 106, Acts of the 64th Legislature, Regular Session, 1975 (Article 4477-10, Vernon's Texas Civil Statutes), before September 1, 1989, are governed by Chapter 106, Acts of the 64th Legislature, Regular Session, 1975 (Article 4477-10, Vernon's Texas Civil Statutes), and that law is continued in effect for that purpose.

SECTION 12. DIRECTIVE UNDER NATURAL DEATH ACT. The changes made by this Act to the suggested wording of a directive provided by Section 3(d), Natural Death Act (Article 4590h, Vernon's Texas Civil Statutes), revised in this Act as Section 672.004, do not affect the validity of a directive that uses the form provided by Section 3(d) before the effective date of this Act, regardless of the date on which the directive is executed.

The changes made by this Act to Section 3(d) are intended to be nonsubstantive and do not affect the requirements for executing a written directive or the information that should be included in a written directive.

**SECTION 13. REPEALER.** The following laws are repealed:

(1) the following articles and Acts, as compiled in Vernon's Texas Civil Statutes: 165-2; 165-3; 180; 181; 182; 182a; 186; 190; 190a; 190a-1; 190a-2; 190b; 190c; 190d; 190d-1; 190e; 190f; 190g; 190g-1; 190g-2; 190g-3; 190g-4; 190h; 190i; 190j; 191; 192b; 192-2; 192-3; 192-4; 912a-1; 912a-2; 912a-3; 912a-4; 912a-5; 912a-6; 912a-7; 912a-8; 912a-9; 912a-10; 912a-11; 912a-12; 912a-13; 912a-14; 912a-15; 912a-16; 912a-17; 912a-18; 912a-19; 912a-20; 912a-21; 912a-22; 912a-23; 912a-24; 912a-25; 912a-26; 912a-26a; 912a-27; 912a-28; 912a-29; 912a-30; 912a-31; 912a-32; 912a-33; 912a-34; 930a-1; 931b-1; 931c; 969c; 969c-1; 969c-2; 1015q; 1070a; 1071; 1072; 1073; 1074; 1075; 1146A; 1269j-10; 1432c; 1432d; 1432e; 1432f; 1432g; 1436c; 1528j; 2338-1a; 2351a-6; 2351a-8; 2351a-9; 2351f-1; 2351f-2; 2351f-3; 2351g-1; 2368a.6; 2372i; 2372t; 2372ee; 3196a-1; 3196c; 3196c-1; 3201a; 3201a-1; 3201a-2; 3201a-2.1; 3201a-3; 3201a-4; 3955; 3956; 3957; 3958; 3959; 3959a; 3960; 3961; 3962; 3963; 3964; 3965; 3966; 3967; 3968; 3969; 3970; 3971; 3972; 3972.1; 3972.2; 3972.3; 3972b; 3972c; 4414b; 4414c; 4418f-1; 4418g-2; 4418h; 4419b-1; 4419b-1.5; 4419b-2; 4419c; 4419g; 4419h; 4420a; 4420b; 4421; 4436; 4436a-2; 4436a-3; 4436a-4; 4436b; 4437; 4437a; 4437b; 4437c; 4437c-1; 4437c-2; 4437d; 4437e; 4437e-1; 4437e-2; 4437e-3; 4437f; 4437f-1; 4437f-2; 4437f-3; 4437g; 4437h; 4438a; 4438b; 4438c; 4438d; 4438e; 4438f; 4442a; 4442c; 4443a; 4446; 4447d; 4447d-1; 4447d-2; 4447e; 4447e-1; 4447e-2; 4447f; 4447i; 4447j; 4447k; 4447l; 4447n; 4447o; 4447o-1; 4447p; 4447q; 4447r; 4447s; 4447t; 4447u; 4447v; 4447w; 4447x; 4447y; 4474; 4475; 4476; 4476-1a; 4476-5; 4476-5a; 4476-5b; 4476-5d; 4476-5e; 4476-5f; 4476-5g; 4476-6b; 4476-7; 4476-8; 4476-9; 4476-10; 4476-10b; 4476-10c; 4476-11; 4476-13; 4476-13a; 4476-14; 4476-15; 4476-15a; 4476-15b; 4476-15d; 4476-16; 4476a; 4477; 4477c; 4477e; 4477f; 4477-1; 4477-1c; 4477-2; 4477-5; 4477-5a; 4477-5b; 4477-6; 4477-6a; 4477-6b; 4477-7; 4477-7a; 4477-7c; 4477-7d; 4477-7e, as added by Chapters 162, 406, and 810, Acts of the 70th Leg., R.S., 1987; 4477-7f; 4477-8; 4477-8a; 4477-9a, Articles II and III and Section 1.01; 4477-9b; 4477-10; 4477-11; 4477-12; 4477-20; 4477-30; 4477-40; 4477-41; 4477-50; 4477-60; 4477-70; 4477-80; 4478; 4478a; 4479; 4480; 4481; 4482; 4483; 4484; 4485; 4486; 4487; 4488; 4489; 4490; 4491; 4492; 4493; 4493a; 4494; 4494a; 4494b; 4494c; 4494c-1; 4494d; 4494e; 4494f; 4494g; 4494h; 4494i; 4494i-1; 4494j; 4494k; 4494l; 4494m; 4494m-1; 4494n; 4494n-1; 4494n-2; 4494n-3; 4494o; 4494p; 4494r; 4494r-1; 4494r-2; 4494r-2.1; 4494r-3; 4494r-4; 4494r-5; 4494s; 4494t; 4512.8; 4583; 4583a; 4584; 4585; 4585A; 4586; 4587; 4589; 4590; 4590.1; 4590-2; 4590-4; 4590-5; 4590-6; 4590f; 4590f-1; 4590h; 4596d; 5182b; 5182c; 5221c; 5561cc; 5561c-1; 5561c-2; 5561c-2a; 5561c-3; 6145a; 6145b; 6145c; 8876; 9002; 9013; 9201; 9202; and 9203.

(2) Subchapter D, Chapter 76, Parks and Wildlife Code.

(3) Chapter 301, Acts of the 70th Legislature, Regular Session, 1987 (designated by Vernon's Texas Session Law Service as Article 1528j-1, but printed in Vernon's Texas Civil Statutes as Article 1527j-1); and Section 9, Chapter 236, Acts of the 70th Legislature, Regular Session, 1987.

**SECTION 14. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE.** This Act is enacted under Article III, Section 43, of the Texas Constitution. This is intended as a recodification only, and no substantive change in the law is intended by this Act.

**SECTION 15. EFFECTIVE DATE.** This Act takes effect September 1, 1989.

**SECTION 16. EMERGENCY.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 27, 1989, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2136 on May 18, 1989, by a non-record vote; passed by the Senate, with amendments, on May 16, 1989, by a viva-voce vote.

Approved June 14, 1989.

Effective Sept. 1, 1989.