

CHAPTER 1038

H.B. No. 803

AN ACT

relating to restitution for bad checks.

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

SECTION 1. Section 32.41(e), Penal Code, is amended to read as follows:

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court ~~by certified checks, cashiers checks, or money order only, payable to the person that received the bad checks~~.

SECTION 2. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 27, 1989, by the following vote: Yeas 129, Nays 0; passed by the Senate on May 20, 1989, by the following vote: Yeas 31, Nays 0.

Approved June 16, 1989.

Effective June 16, 1989.

CHAPTER 1039

H.B. No. 863

AN ACT

relating to the continuation of the Texas Department of Labor and Standards under the new name, the Texas Department of Licensing and Regulation, and to the administration and functions of that department; making appropriations; providing penalties.

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

ARTICLE 1. DEPARTMENT OF LICENSING AND REGULATION

SECTION 1.01. The Revised Statutes are amended by adding Title 132A to read as follows:

TITLE 132A. TEXAS DEPARTMENT OF LICENSING AND REGULATION

Art. 9100. DEPARTMENT OF LICENSING AND REGULATION

Sec. 1. DEFINITIONS. In this article:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.*
- (2) "Commissioner" means the commissioner of licensing and regulation.*
- (3) "Department" means the Texas Department of Licensing and Regulation.*

Sec. 2. DEPARTMENT; STRUCTURE. (a) The Texas Department of Licensing and Regulation is the primary state agency responsible for oversight of businesses, industries, general trades, and occupations regulated by this state as assigned to the department by the legislature.

(b) The department is governed by the Texas Commission of Licensing and Regulation and the commissioner of licensing and regulation.

Sec. 3. COMMISSION. (a) The commission is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the commission shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

(c) A member of the commission is not liable in a civil action for any act performed in good faith in the execution of duties as a commission member.

(d) The commission 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).

Sec. 4. APPLICATION OF SUNSET ACT. The commission and the department are subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the commission and the department are abolished September 1, 2001.

Sec. 5. PUBLIC MEMBERSHIP. All members of the commission must be representatives of the general public. A person is not eligible for appointment as a member of the commission if the person or the person's spouse:

(1) is registered, certified, or licensed by the department;

(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 or controls, 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, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Sec. 6. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) An officer, employee, or paid consultant of a Texas trade association in a field regulated by the department may not be a member of the commission or an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(b) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in a field regulated by the department may not be a commission member and may not be an employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) 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 profession related to the operation of the commission.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 7. TERMS; VACANCY. (a) Members of the commission hold office for staggered terms of six years. Two members' terms expire February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall appoint a replacement to fill the unexpired part of the term.

Sec. 8. OFFICERS. *The commission shall elect one of its members as chairman. The chairman serves in that capacity for two years. The chairman has a vote on all matters before the commission.*

Sec. 9. REMOVAL OF COMMISSION MEMBERS. (a) *It is a ground for removal from the commission if a member:*

(1) *does not have at the time of appointment the qualifications required for appointment to the commission;*

(2) *does not maintain during service on the commission the qualifications required for appointment to the commission;*

(3) *violates a prohibition established by Section 6 of this article;*

(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 commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists.*

Sec. 10. COMPENSATION. *A member of the commission may not receive compensation for serving on the commission. A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.*

Sec. 11. MEETINGS. (a) *The commission shall meet at least once in each quarter of the calendar year.*

(b) *The commission may meet at other times at the call of the chairman or as provided by the rules of the commission.*

Sec. 12. GENERAL POWERS AND DUTIES OF COMMISSION. (a) *The commission shall supervise the commissioner's administration of the department and shall formulate policy objectives for the department.*

(b) *The commission shall approve the operating budget of the department and the department's requests for legislative appropriations.*

(c) *The commission may adopt rules as necessary for its own procedures.*

(d) *The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.*

(e) *The commission shall develop and implement policies that clearly define the respective responsibilities of the commission, the commissioner, and the staff of the department.*

(f) *The commission shall set, in amounts that are reasonable and necessary to cover the costs of administering the programs or activities, the fees for:*

(1) *licenses, registrations, certificates, titles, and permits issued by the commissioner;*

(2) *license, registration, certificate, title, and permit renewals and late renewals;*

(3) *examinations; and*

(4) *all other authorized fees for programs or activities administered by the department.*

(g) *The commission may adopt a system under which licenses, registrations, certificates, or permits expire on various dates during the year and may provide for a*

renewal period that exceeds 12 months. The commission shall notify a person regulated by the department of the impending expiration of the person's license, registration, certificate, or permit.

(h) The commissioner shall develop cost management procedures that enable the commission to determine with reasonable accuracy the cost to the department of each program and activity for which a fee is charged.

(i) The commission may assess administrative penalties and issue orders relating to the imposition of those penalties as provided by Section 17 of this article.

Sec. 13. COMMISSIONER. (a) The commission shall appoint an executive director for the department, whose title is commissioner of licensing and regulation. The commissioner shall perform duties as assigned by the commission or specified by law.

(b) The commissioner serves for a term of one year expiring on March 1. A commissioner is eligible for reappointment by the commission. If a vacancy occurs during a term, the commission shall appoint a replacement to fill the unexpired part of the term.

(c) The commissioner is responsible for the administration and enforcement of all programs of the department. The commissioner shall issue the licenses, registrations, certificates, and permits authorized by those programs and shall prescribe any necessary forms.

(d) The commissioner by rule may provide for prorating the fees set by the commission for the initial issuance of a license, registration, certificate, or permit, so that a person regulated by the department pays only that portion of the applicable fee that is allocable to the number of months during which the license, registration, certificate, or permit is valid.

(e) The commissioner 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 fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 14. RULES. (a) The commissioner shall adopt rules as necessary to implement this article and other laws establishing programs regulated by the department. Rules adopted by the commissioner are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The commissioner may not adopt rules restricting competitive bidding or advertising by a person regulated by the department except to prohibit false, misleading, or deceptive practices by that person.

(c) The commissioner may not include in the rules to prohibit false, misleading, or deceptive practices by a person regulated by the department a rule that:

(1) restricts the use of any advertising medium;

(2) restricts the person's personal appearance or the use of the person's voice in an advertisement;

(3) relates to the size or duration of an advertisement used by the person; or

(4) restricts the use of a trade name in advertising by the person.

Sec. 15. PERSONNEL. (a) The commissioner may employ persons to perform the work of the department and may prescribe their duties and compensation, subject to commission approval of the budget and in accordance with personnel policies adopted by the commission. Subject to those policies, the commissioner may remove any employee.

(b) 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 program may not in any manner penalize, or otherwise adversely affect, an employee who chooses not to move from one office location to another.

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

(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 related 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;

(3) procedures by which a determination can be made of significant underuse in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(e) *A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated at least annually, and be filed with the governor's office.*

(f) *The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (e) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.*

Sec. 16. PUBLIC INTEREST INFORMATION AND COMPLAINTS. (a) *The department shall prepare information of public interest describing the functions of the commission and department and the procedures by which complaints are filed with and resolved by the commission or department. The department shall make the information available to the public and appropriate state agencies.*

(b) *The commissioner by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department. The department may provide for that notification:*

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

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

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

(c) *The department shall keep an information file about each complaint filed with the commission or department that the commission or department has authority to resolve. If a written complaint is filed with the commission or department that the commission or department has authority to resolve, 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 the notice would jeopardize an undercover investigation.*

(d) *The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.*

(e) *The commission shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the commission's programs.*

Sec. 17. SANCTIONS; ADMINISTRATIVE PENALTY. (a) *The commissioner shall adopt rules relating to the administrative sanctions that may be enforced against a person regulated by the department. If the person violates a law establishing a*

regulatory program administered by the department or a rule or order adopted or issued by the commissioner relating to the program, the commissioner may:

- (1) issue a written reprimand to the person that specifies the violation;*
- (2) revoke or suspend the person's license, registration, certificate, or permit; or*
- (3) place on probation a person whose license, registration, certificate, or permit has been suspended.*

(b) In addition to or in lieu of a sanction imposed under Subsection (a) of this section, the commission may assess an administrative penalty in an amount not to exceed \$1,000 for each violation.

(c) If a suspension is probated, the commissioner may require the person to:

- (1) report regularly to the commissioner on matters that are the basis of the probation;*

(2) limit practice to the areas prescribed by the commissioner; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commissioner in those areas that are the basis for the probation.

(d) If the commissioner proposes to suspend or revoke a license, registration, certificate, or permit, or the commission proposes to assess an administrative penalty against a person regulated by the department, the person is entitled to a hearing before the commissioner or a hearings officer appointed by the commissioner. The commissioner by rule shall prescribe the procedures by which a decision to suspend or revoke a license, registration, certificate, or permit, or to assess an administrative penalty, are made and are appealable. Proceedings conducted under this section are subject to the hearings requirements and contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(e) In determining the amount of an administrative penalty assessed under this section, the commission shall consider:

- (1) the seriousness of the violation;*
- (2) the history of previous violations;*
- (3) the amount necessary to deter future violations;*
- (4) efforts made to correct the violation; and*
- (5) any other matters that justice may require.*

(f) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the seriousness of the violation determined by consideration of the factors set forth in Subsection (e) of this section.

(g) Not later than the 14th day after the date on which the preliminary report is issued, the commissioner shall give written notice of the violation to the person charged. The notice shall 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 the occurrence of the violation and the amount of the penalty.*

(h) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under Subsection (f) of this section, including the recommended penalty, or make a written request for a hearing on that determination.

(i) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(j) If the person charged fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing. The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commission a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted. Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commission by order may find that a violation has occurred and may assess a 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).

(k) The commissioner shall give notice of the commission's order to the person charged. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed;
- (3) a statement of the right of the person charged to judicial review of the commission's order; and
- (4) any other information required by law.

(l) Not later than the 30th day after the date on which the decision is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged shall:

- (1) pay the penalty in full; or
- (2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty:
 - (A) forward the amount assessed to the department for deposit in an escrow account; or
 - (B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the commissioner and effective until judicial review of the decision is final.

(m) A person charged with a penalty who is financially unable to comply with Subsection (l)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(n) Except as provided by Subsection (m) of this section, failure to forward the amount assessed or post the bond with the department in the manner and within the period prescribed by Subsection (l) of this section results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond as required by Subsection (l) of this section, the department or the attorney general may bring an action for the collection of the penalty.

(o) Judicial review of the order of the commission assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(p) If, after judicial review, the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period

beginning on the date that the assessed penalty is paid to the commissioner and ending on the date the penalty is remitted.

(g) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 18. INJUNCTIVE RELIEF AND CIVIL PENALTIES. (a) If it appears that a person is in violation of, or is threatening to violate, a law establishing a regulatory program administered by the department or a rule or order of the commissioner related to such a program, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding \$1,000 for each violation and not exceeding \$250,000 in the aggregate.

(b) A civil action filed under this section shall be filed in a district court in Travis County.

(c) The attorney general and the department may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Sec. 19. INSPECTIONS; INVESTIGATIONS. The department may conduct inspections or investigations as necessary to enforce the laws administered by the department. In conducting an inspection or investigation of a person regulated by the department, or of a person suspected of being in violation of, or threatening to violate, a law establishing a regulatory program administered by the department or a rule or order of the commissioner related to such a program, the department may enter the business premises of the person during reasonable business hours and may examine and copy records pertinent to the inspection or investigation.

ARTICLE 2. DEPARTMENT REGULATORY PROGRAMS

SECTION 2.01. Section 1(12), Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(12) "Commissioner" means the commissioner of *licensing and regulation* [~~labor and standards~~].

SECTION 2.02. Section 2(a), Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This Act does not apply to:

(1) [~~a person regulated by Chapter 234, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-5, Vernon's Texas Civil Statutes);~~

[(2)] a personnel service operated by this state, the United States government, or any municipal government of this state;

(2) [(3)] a personnel service operated without assessment of a fee by a person in conjunction with the person's own business for the exclusive purpose of employing help for use in that business;

(3) [(4)] a labor union; or

(4) [(5)] a professional counselor licensed under the Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes).

SECTION 2.03. Sections 7(b), (d), and (e), Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The notice shall be accepted by the commissioner, and on payment of a filing fee, the commissioner shall issue to the owner a certificate of authority to do business as a personnel service in this state not later than the 15th day after the day of the filing. [~~The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative and enforcement costs, not to exceed \$100.~~]

(d) The certificate of authority shall be valid for *the* [a] period *set by the commission* [~~of one year from the date of its issuance~~]. It shall be displayed in a prominent place in the principal location of the personnel service.

(e) Renewals of the certificate of authority shall be issued by the commissioner on the filing by an owner of a notice containing the same information specified in Subsection (a) of this section and on the receipt by the commissioner of *the renewal* [a filing] fee. [~~The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative and enforcement costs, not to exceed \$100.~~]

SECTION 2.04. Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended by adding Section 7A to read as follows:

Sec. 7A. CONTINUING EDUCATION. The commissioner may recognize, prepare, or administer continuing education programs for persons regulated under this Act. Participation in the programs is voluntary.

SECTION 2.05. Sections 1(3) and (4), Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes), are amended to read as follows:

(3) "Commissioner" means the commissioner of *licensing and regulation* [~~the Texas Department of Labor and Standards~~].

(4) "Department" means the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~].

SECTION 2.06. Section 3(e), Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) A certificate of authority is valid for *the period set by the commission* [~~one year from the date of issuance and may be renewed by filing a notice containing the information required under Subsection (a) of this section, accompanied by the renewal fee set by the commissioner~~]. The owner shall display the certificate in a prominent place in the principal location of the career counseling service.

SECTION 2.07. Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. CONTINUING EDUCATION. The commissioner may recognize, prepare, or administer continuing education programs for persons regulated under this Act. Participation in the programs is voluntary.

SECTION 2.08. Section 1, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (10), (40), and (43), and by adding Subdivision (46) to read as follows:

(10) "Commissioner"—The Commissioner of *licensing and regulation* [~~the Department of Labor and Standards of the State of Texas~~].

(40) "Safety Appliance"—Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the *Commissioner* [ASME Code and the Rules and Regulations]) provided for the purpose of diminishing the danger of accidents.

(43) "Standard Boiler"—A boiler which bears a Texas stamp, the [ASME] stamp of a *nationally recognized engineering professional society, such as the American Society of Mechanical Engineers*, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Commissioner.

(46) "Department"—*The Texas Department of Licensing and Regulation.*

SECTION 2.09. Section 2, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) Unless otherwise specifically exempted in this Act, all boilers operated within the State shall be registered with the *department* [~~Department of Labor and Standards~~]. In addition, such boilers shall not be operated unless they have satisfactorily

passed a Certificate Inspection and have qualified for a Certificate of Operation. The Certificate of Operation shall remain in full force and effect until expiration unless cancelled for cause by the Commissioner and shall be placed under glass in a conspicuous place on or near the boiler for which it is issued. No prosecution shall be maintained where the issuance of or the renewal of such Certificate of Operation shall have been requested and shall remain unacted upon. However, if the operation of such boiler without a Certificate of Operation shall constitute a serious menace to the life and safety of any person or persons in or about the premises, the Commissioner, as hereinafter provided for, shall apply to the District Court in a suit brought by either the Attorney General of the State, or any District or County Attorney, in the county in which such boiler is located or in Travis County, for an injunction restraining the operation of said boiler until the unsafe condition restraining its use shall be corrected and a Certificate of Operation issued. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute a bond as a condition precedent to the issuing of any injunction or restraining order hereunder. The affidavit of the Commissioner that no application for or no Certificate of Operation exists for such boiler, and the affidavit of the Chief Inspector or any Deputy Inspector that its operation constitutes a menace to the life and safety of any person or persons in or about the premises, shall be sufficient proof to warrant the immediate granting of a temporary restraining order. The Commissioner may revoke any Certificate of Operation issued for a boiler within this State after good cause is shown and after notice and opportunity for a hearing on the revocation.

(b) The Commissioner shall enter interagency agreements with the Texas Department of Health and the State Board of Insurance under which inspectors from those agencies who discover unsafe or unregistered boilers in the course and scope of inspections conducted as part of regulatory or safety programs administered by those agencies are required to report the unsafe or unregistered boilers to the Commissioner. The Commissioner may enter analogous agreements with local fire marshals. The Commissioner shall adopt rules relating to the terms and conditions of an interagency agreement entered under this subsection.

SECTION 2.10. Section 2a, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2a. (a) There is established within the *department* [~~Department of Labor and Standards~~] a Board of Boiler Rules, consisting of nine members appointed by the Commissioner. Except for the initial appointees, members hold office for terms of six years expiring on January 31 of odd-numbered years. [~~In making the initial appointments, the Commissioner shall designate three for terms expiring in 1979, three for terms expiring in 1981, and three for terms expiring in 1983.~~]

(b) The Commissioner may remove any member of the Board for inefficiency or neglect of duty in office. Upon the resignation, death, suspension, or incapacity of any member, the Commissioner shall fill the vacancy for the remainder of the vacated term with an individual representative of the same interests with which the predecessor was identified.

(c) The nine members shall have experience with boilers, and at least four, when available, shall be registered professional engineers licensed in the State of Texas. Three members shall be representatives of owners or users of boilers, one shall be representative of boiler manufacturers or installers, three shall be representatives of companies insuring boilers in this State, one shall be a mechanical engineer on the faculty of a recognized engineering college within the State, and one shall be a representative of a labor union.

(d) The Chief Inspector shall serve as chairman, and the Commissioner shall be an ex officio member. At the call of the chairman, the Board shall meet at least twice each year at a place designated by the Board. No decision of the Board shall be effective unless supported by the vote of at least five members.

(e) The Board shall act in an advisory capacity to [of] the Commissioner in formulating definitions, rules and regulations for the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances.

(f) The Board members shall serve without salary, but are entitled to reimbursement for actual expenses incurred in the performance of their duties as board members.

SECTION 2.11. Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), is amended by adding Sections 10a and 10b to read as follows:

Sec. 10a. (a) Not later than the 30th day after the date on which an examination is administered to an applicant for a commission as an inspector of boilers, the Commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the Commissioner receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the Commissioner shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the examination, the Commissioner shall furnish the person with an analysis of the person's performance on the examination.

Sec. 10b. The Commissioner may recognize, prepare, or administer continuing education programs for authorized inspectors. Participation in the programs is voluntary.

SECTION 2.12. Section 12, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. (a) Any person, firm, corporation, or agent thereof, owning or having the custody, management, use or operation of any boiler in this State, who shall violate any provision of this Act, or who violates any rule, regulation or order promulgated by authority hereof by the Commissioner or any regularly employed inspector authorized to enforce any provision or any rule, regulation or order authorized herein, or any person, firm, corporation, or agent thereof coming within any provision of this Act, or any rule, regulation or order authorized herein, who shall fail or refuse to comply therewith commits an offense.

~~(b) An offense under this section is a Class B misdemeanor. [shall be deemed guilty of a misdemeanor and upon conviction therefor shall be subject to a fine of not less than Fifty Dollars (\$50) nor more than Two Hundred Dollars (\$200), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.]~~

SECTION 2.13. Section 3, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(1) [(a)] "Mobile home" means a structure that was constructed before June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems.

(2) [(b)] "Retailer" means any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease-purchase to consumers. No person shall be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(3) [(e)] "Manufacturer" means any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within the state.

(4) [(d)] "Department" means the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~].

(5) [(e)] "Person" means an individual, partnership, company, corporation, association, or other group, however organized.

(6) [(f)] "Broker" means a person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease-purchase of a manufactured home to which a certificate or document of title has been issued and is outstanding. A broker may or may not be an agent of any party involved in the transaction. A person who maintains a location for the display of manufactured homes is not a broker but is a retailer. The term shall not apply if the manufactured home is affixed to a permanent foundation, the manufacturer's certificate or the document of title is canceled, and the home is offered as real estate; however, the provisions of The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes) shall apply.

(7) [(g)] "Consumer" means any person other than one registered under this article who seeks or acquires by purchase, exchange, or lease-purchase a manufactured home.

(8) [(i)] "Seal" means a device or insignia issued by the *commissioner* [~~department~~] to be affixed to used *manufactured* [~~mobile~~] homes *for titling purposes, as required by the commissioner* [~~to indicate compliance with the standards, rules, and regulations established by the department~~]. The seal shall remain the property of the department.

(9) [(j)] "Label" means a device or insignia issued by the *commissioner* [~~department~~] to indicate compliance with the standards, rules, and regulations established by the Department of Housing and Urban Development, and is permanently affixed to each transportable section of each HUD-code manufactured home constructed after June 15, 1976, for sale to a consumer.

(10) [(k)] "Installation," when used in reference to manufactured housing, means the transporting of manufactured homes or manufactured home components to the place where they will be used by the consumer, the construction of the foundation system, whether temporary or permanent, and the placement and erection of a manufactured home or manufactured home components on the foundation system, and includes supporting, blocking, leveling, securing, anchoring, and proper connection of multiple or expandable sections or components, the installation of air conditioning, and minor adjustments.

(11) [(l)] "Installer" means any person, including a retailer or manufacturer, who performs installation functions on manufactured housing.

(12) [(m)] "Alteration" means the replacement, addition, and modification, or removal of any equipment or its installation *in a new manufactured home after sale by a manufacturer to a retailer but prior to sale and installation by a retailer to a purchaser* which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in the manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance requiring plug-in to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring "plug-in" to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected.

(13) [(n)] "Lease-purchase" means to enter into a lease contract with a provision conferring on the lessee an option to purchase the manufactured home.

(14) [(o)] "Commissioner" means the *commissioner of licensing and regulation* [~~Commissioner of the Texas Department of Labor and Standards~~].

(15) [(p)] "Code" means the Texas Manufactured Housing Standards Code.

(16) [(*)] "Salesperson" means any person who for any form of compensation sells or lease-purchases or offers to sell or lease-purchase manufactured housing to consumers as an employee or agent of a retailer or broker.

(17) [(*)] "Manufactured housing" or "manufactured home" means a HUD-code manufactured home or a mobile home and collectively means and refers to both.

(18) [(*)] "Registrant" means any person who has registered with the department and has been issued a certificate of registration as a manufactured housing manufacturer, retailer, broker, salesperson, [~~recycler,~~] or installer.

(19) [(*)] "HUD-code manufactured home" means a structure, constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems. *The term does not include a recreational vehicle as that term is defined by 24 C.F.R. Section 3282.8(g).*

(20) [(*)] "Advertising" or "advertisement" means any commercial message which promotes the sale, exchange, or lease-purchase of manufactured homes and which appears in, or is presented on, radio, television, a public-address system, newspapers, magazines, leaflets, flyers, catalogs, direct mail literature, other printed material, an inside or outside sign or window display, or in point-of-sale literature or price tags. Materials which are educational or that may be required by law do not constitute advertising. Any advertisement relating to manufactured housing shall be considered as an offer to sell, exchange, or lease-purchase to consumers.

(21) "*Commission*" means the *Texas Commission of Licensing and Regulation*.

SECTION 2.14. Section 4, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. MANUFACTURED HOUSING STANDARDS. (a) The *commissioner* [~~department~~] shall adopt standards and requirements for the installation and for the construction of manufactured housing, that are reasonably necessary in order to protect the health, safety, and welfare of the occupants and the public. The collection of these standards and requirements is the Texas Manufactured Housing Code.

[(1)] The requirements and standards for the plumbing, heating, air-conditioning and electrical systems and construction of mobile homes in effect on September 1, 1989 [1979], remain in full force and effect until amended in accordance with the procedure set forth in this section.

[(2)] The *commissioner* [~~department~~] shall adopt standards and requirements for the construction of HUD-code manufactured homes in compliance with the federal standards and requirements established under Title VI of the Housing and Community Development Act of 1974, entitled the National Manufactured Home Construction and Safety Standards Act of 1974.

(b) The *commissioner* [~~department~~] shall adopt standards and requirements for the installation of all manufactured housing in the state that are necessary for the protection of the health, safety, and welfare of all the citizens. The standards must assure that manufactured housing in the first two tiers of coastal counties in the state is capable of withstanding winds of hurricane-force velocity of not less than 105 miles per hour and that manufactured housing in all other counties of the state is capable of withstanding winds of a minimum gale-force velocity.

[(1)] The requirements and standards for the installation of mobile homes as adopted by the department in existence on September 1, 1989 [August 31, 1979], remain in force until amended in accordance with the procedure set forth in this section.

[(2)] All manufactured housing must be installed in compliance with the standards, rules, regulations, or administrative orders of the *commissioner* [~~department~~].

(c) A political subdivision of this state, without the express approval of the *commissioner* [department] following a hearing on the matter, may not adopt different standards from those promulgated by the *commissioner* [department] for the construction or installation of manufactured housing within the political subdivision.

(d) Before the adoption or promulgation of any standards or requirements authorized by this section, any change in or addition to the standards authorized in this section, or the approval of different standards by any political subdivision, the *commissioner* [department] shall publish a notice and conduct a public hearing in accordance with the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), not sooner than the 30th day following the publication of notice.

(e) Every requirement or standard or modification, amendment, or repeal of a requirement or standard adopted by the *commissioner* [department] shall state the date it shall take effect.

(f) The department shall cooperate with all units of local government in this state and shall authorize local units of government, on request, to make and perform inspection and enforcement activities related to the construction of foundation systems and the erection and installation of manufactured housing at the homesite pursuant to contracts or other official designations and the rules and regulations of the *commissioner* [department]. *The department shall notify each local governmental unit biennially in writing to advise the local governmental unit of the program for contracting installation inspections.* The department shall encourage local building inspection officials to perform enforcement and inspection activities for manufactured housing installed within the local governmental unit and may establish cooperative inspection training programs. The department may withdraw the authorization if the local governmental unit fails to follow the rules, regulations, interpretations, and written instructions of the department.

SECTION 2.15. Section 6(g), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) It is unlawful for a retailer to purchase for resale to a consumer, or to sell, exchange, or lease-purchase or offer to sell, exchange, or lease-purchase, any new HUD-code manufactured home which was constructed by a manufacturer which was not registered with the *commissioner* [department] at the time of construction.

SECTION 2.16. Sections 7(a), (d), (e), (g), (i), (k), (m), (n), (o), (p), and (q), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A person may not construct or assemble a new HUD-code manufactured home in the state or ship a new HUD-code manufactured home into the state, unless the person is registered as a manufactured housing manufacturer by the *commissioner* [department] and possesses a valid manufacturer's certificate of registration at the time the home is constructed or assembled.

(d) A person may not perform any installation functions on manufactured housing in the state, unless the person possesses a valid installer's certificate of registration and files proof of insurance as required by the *commissioner* [department]. The *commissioner* [department] may issue a temporary installer's certificate of registration to a homeowner for the installation of the owner's home in accordance with applicable requirements, standards, and regulations of the *commissioner* [department], on application and payment of the required fee and on submission of proof of insurance by the owner as required by the department.

(e) Each applicant for a certificate of registration as a manufacturer, retailer, broker, or installer must file with the *commissioner* [department] an application for registration containing the following information:

- (1) the legal name, address, and telephone number of the applicant;
- (2) the trade name by which the applicant does business and, if incorporated, the name registered with the secretary of state and the address of the business; and
- (3) the dates on which the applicant became the owner and operator of the business.

(g) All certificates of registration are valid for *the period set by the commission* [~~one year from the date of issue~~] and are renewable *as provided by the commission* [~~annually on payment of the annual fee~~].

(i) If a change occurs in the information filed with the *commissioner* [~~department~~] under Subsection (e) of this section, the applicant shall file an amendment to his or her application that states the correct information.

(k) The commissioner, after notice and hearing, may refuse to issue or may permanently revoke, or suspend for a definite period of time and for a specified geographic area or sales location, any certificate of registration if the commissioner finds that the applicant or registrant:

(1) knowingly and wilfully violated any provision of this article or any rule, *administrative order*, or regulation made pursuant to this article;

(2) without lawful authorization retained or converted any money, property, or any other thing of value from consumers in the form of down payments, sales and use taxes, deposits, or insurance premiums;

(3) failed to deliver proper title documents or certificates of title to consumers;

(4) failed to give or breached any manufactured home warranty required by this article or by the Federal Trade Commission;

(5) engaged in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code;

(6) failed to furnish or file any reports required by the department for the administration and enforcement of this article;

(7) furnished false information on any application, report, or other document filed with the department;

(8) has a record of criminal convictions which, in the opinion of the *commissioner* [~~department~~], renders the applicant unfit for registration; or

(9) failed to file the bond or post other security for each location as required by Section 13 of this article.

(m) A retailer or an installer may not contract with any person for the installation of any air-conditioning equipment, devices, or components in connection with the installation of a manufactured home unless the person is registered as an installer with the *commissioner* [~~department~~] or is otherwise licensed by the state as an air-conditioning contractor. This subsection shall not apply to a new manufactured home being installed on a permanent foundation within a municipality which regulates air-conditioning contractors unless some other state statute provides otherwise.

(n) A person may not act as a salesperson of manufactured housing unless the person is registered with the *commissioner* [~~department~~]. Each applicant for a certificate of registration shall file with the *commissioner* [~~department~~] an application giving such information as the *commissioner* [~~department~~] deems necessary and pay the required fee. The owner of a sole proprietorship, a partner in a partnership, or an officer of a corporation which is duly registered as a retailer or broker does not have to register as a salesperson so long as such individual is properly listed in the retailer's or broker's application for registration. The salesperson is the agent of the retailer or broker. The registration shall be an annual registration. A retailer or broker shall not employ, retain, or otherwise use the services of a salesperson who is not registered. A registered salesperson may work or sell for one or more retailers, brokers, or sales locations.

(o) A person may not alter, repair, or otherwise rebuild a salvaged manufactured home, as such term is defined in Section 8 of this article, unless the person is duly registered with the *commissioner* [~~department~~] as a manufactured home rebuilder and unless the person complies with the rules and regulations of the *commissioner* [~~department~~] relating to the rebuilding of salvaged manufactured homes.

(p) Any person not registered with the *commissioner* [~~department~~] as of September 1, 1987, must attend and complete twenty (20) hours of instruction in the law and consumer

protection regulations prior to any registration. The instruction shall be given not less than one time each quarter. No test shall be made a prerequisite of registration, but actual attendance at the instruction sessions is required. The *commissioner* [department] shall not issue a registration until the instruction is completed. This subsection does not apply to a registrant making application to register additional business locations or to register as a salesperson.

(q) Notwithstanding any provision of this *article* [section] to the contrary, any [a] state or national bank, state or federal savings and loan association or federal savings bank, or state or federal credit union engaged in the business of selling or offering for sale, exchange, or lease-purchase manufactured homes that the institution has acquired as a result of repossession of its collateral [domiciled in this state] is not required to attend any school or file any bond or post other security in order to be registered as a retailer [to sell, exchange, or lease-purchase up to three repossessed manufactured homes to consumers in any consecutive 12-month period; provided, that such bank, savings and loan association, or credit union is the lienholder of record on a document of title issued by the department at the time of repossession].

SECTION 2.17. The Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) is amended by adding Section 7A to read as follows:

Sec. 7A. CONTINUING EDUCATION PROGRAMS. The commissioner may recognize, prepare, or administer continuing education programs for persons regulated under this Act. Participation in the programs is voluntary.

SECTION 2.18. Sections 8(b), (d), (e), and (g), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) It is unlawful for a person to sell, exchange, or lease-purchase any used manufactured home to a consumer for use as a dwelling or residence *without giving a written warranty that [unless] the manufactured home is habitable. The consumer has 60 days after the date of the sale, exchange, or lease-purchase agreement to notify the seller in writing of any defects that make the home uninhabitable. Failure to give this required notice terminates any obligations and liabilities of the seller under this section. The warranty must conspicuously disclose this requirement to the consumer.* If the sale, exchange, or lease-purchase is to a purchaser for the purchaser's business use, the manufactured home need not be habitable; however, the title to the home shall be surrendered to the department for cancellation by the seller. "Business use" means any use other than for a dwelling or residence.

(d) It is unlawful for a person to sell, exchange, or lease-purchase a used manufactured home to any person without the appropriate transfer of good and marketable title to the home except when the sale, exchange, or lease-purchase is (1) to a purchaser for the purchaser's business use, or (2) to a rebuilder for the purpose of rebuilding a salvaged manufactured home. *The seller or transferor shall forward to the department properly completed documents for the transfer of title within 30 days after the date the transfer of ownership is effective.*

(e) The purchaser of a used manufactured home for business use shall not sell, exchange, or lease-purchase the home for use as a dwelling or residence unless a new title to the used manufactured home is issued by the *commissioner* [department]. The purchaser may apply to the department for the issuance of a new title. The department shall then inspect the home, and if it is determined that the home is habitable, issue a new title.

(g)(1) A "salvaged" manufactured home, for purposes of all provisions of this article, is defined as and means a manufactured home obtained by a property and casualty insurer from the insured by reason of the insurer's payment of the policy value written on the home to the insured; the reasonableness of the insurer's judgment that the costs of repair to the home would exceed the insured value of the home does not affect the status of the home as salvage.

(2) The person possessing the original document of title to a salvaged manufactured home must surrender such document of title to the *commissioner* [department] for cancellation of the title and issuance of a salvage title. If the manufactured home is

rebuilt in accordance with the provisions of this article and the rules and regulations of the *commissioner* [department], the *commissioner* [department] shall issue, upon proper application, a new original document of title in lieu of the salvage title.

SECTION 2.19. Sections 9(a), (b), (c), (d), (e), (f), (g), (j), (k), (l), (m), (n), and (o), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The *commission* [department] is hereby charged with the administration and enforcement of this *article* [Act].

(b) The *commissioner* [department] shall adopt rules and regulations, promulgate administrative orders, and take all action necessary to assure compliance with the intent and purpose of this Act to effectuate and to provide for uniform enforcement of all provisions of this Act and of the Texas Manufactured Housing Standards Code. The *commissioner* [department] shall make and enforce rules and regulations reasonably required to effectuate the notification and correction procedures provided in Section 615 of the National Manufactured Home Construction and Safety Standards Act of 1974.

(c) The *commissioner* [department] shall adopt rules and regulations, promulgate administrative orders, and take all actions necessary to comply with the provisions of the National Manufactured Home Construction and Safety Standards Act of 1974 and to provide for the effective enforcement of all HUD-code manufactured home construction and safety standards in order to have its state plan approved by the secretary of the United States Department of Housing and Urban Development. *The state plan must provide that a manufacturer may, at its option, choose a third-party inspection agency that is approved by the commission and authorized by the Department of Housing and Urban Development to act as the In Plant Inspection Agency. However, the manufacturer may not change from one third-party In Plant Inspection Agency to another without the approval of the commission.*

(d) At least 30 days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in Subsections (b) and (c) of this section, the *commissioner* [department] shall publish in the Texas Register a notice including:

- (1) a copy of the proposed changes and additions; and
- (2) the time and place that the *commissioner* [department] will consider any objections to the proposed changes and additions.

(e) After giving the notice required by Subsection (d) of this section, the *commissioner* [department] shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments with or without opportunity to present the same orally on any matter.

(f) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the *commissioner* [department] shall state the date it shall take effect.

(g) Immediately after their promulgation, the *commissioner* [department] shall publish in the Texas Register all rules and regulations or amendments thereto.

(j) The *commissioner* [department] may employ state inspectors to carry out the functions required of the department pursuant to this *article* [Act], to effectuate the provisions of this *article* [Act], and to enforce the rules, regulations, and administrative orders promulgated pursuant to this *article* [Act]. The *commissioner* [department] may authorize state inspectors to travel inside or outside of the state to inspect manufacturing facilities in connection with the enforcement of this *article* [Act].

(k) The *commissioner* [department] may contract with any federal agency or any agency or political subdivision of any state for the performance of any inspections or inspection programs pursuant to this *article* [Act] or the rules and regulations of the *commissioner* [department] to assure that manufactured homes sold or installed in the state comply with the Texas Manufactured Housing Standards Code.

(l) The *commissioner* [department] may enter into contracts with the Department of Housing and Urban Development or its designees to monitor the Department of Housing and Urban Development programs.

(m) When necessary or required by law, the *commissioner* [~~department~~] may obtain inspection search warrants.

(n) The *commissioner* [~~department~~] may inspect manufactured homes at the borders of this state and adopt rules and regulations necessary for the inspection of all manufactured homes entering this state to assure compliance with the National Manufactured Home Construction and Safety Standards Act of 1974, the Texas Manufactured Housing Standards Code, and the rules and regulations of the *commissioner* [~~department~~], and to assure payment of any use tax which may be due the State of Texas.

(o) In order to protect the public health, safety, and welfare, and to assure the availability of low cost manufactured housing for all consumers, the *commissioner* [~~department~~] shall establish rules and regulations for the protection of the interests of consumers who occupy or desire to purchase or *install* manufactured housing and for the business conduct of those persons required to be registered under this *article* [~~Act~~].

SECTION 2.20. Sections 11(a), (b), (c), and (g), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) There shall be a fee in an amount set by the *commission* [~~commissioner~~] for the inspection of the installation of mobile and HUD-code manufactured homes which shall be paid by the installer of the home. Said fee shall be paid to the state and shall accompany notification to the department of the exact location of the home. The department shall make appropriate fee distributions to local governmental units performing inspections pursuant to contracts or other official designations provided that the local governmental units are not collecting a local inspection fee.

(b) Looking for guidance to the rules and regulations promulgated under Title VI of the Housing and Community Development Act of 1974 and to that Act itself, the *commission* [~~commissioner~~] shall set fees for the following functions:

(1) There shall be a schedule of fees for the review of HUD-code manufactured home blueprints and supporting data when the department acts as a Design Approval Primary Inspection Agency. This fee shall be paid by the manufacturer seeking approval.

(2) There shall be an inspection fee on all HUD-code manufactured homes manufactured or assembled within the State of Texas. This fee shall be paid by the manufacturer of the home. The manufacturer shall also be charged for the actual cost of travel for representatives of the department to and from the manufacturing facility.

(3) The fees in Subsections (1) and (2) shall not be applicable when an accepted inspection agency authorized by the Department of Housing and Urban Development, other than the department, acts as the Design Approval Primary Inspection Agency or the In-Plant Inspection Agency.

(4) There shall be a fee charged on an hourly basis for inspection of alterations made upon the structure, plumbing, heating, or electrical systems of HUD-code manufactured homes. This fee shall be paid by the person making the alteration. There shall be a fee for the inspection of the rebuilding of salvaged manufactured homes which shall be paid by the rebuilder. The person making the alteration or the rebuilder shall also be charged for the actual cost of travel for representatives of the department to and from the place of inspection. There shall be a fee for the inspection of used manufactured homes for which the title has been cancelled to determine if the home is habitable for the issuance of a new title.

(5) There shall be a fee for the issuance of seals for used mobile or HUD-code manufactured homes.

(c) The *commission* [~~commissioner~~] shall set [~~annual~~] fees for the issuance and renewal of manufacturers', retailers', brokers', salespersons', and installers' certificates of registration; and fees for the issuance of rebuilder registrations.

(g) The *commission* [~~commissioner~~] shall set the fees imposed under this section in amounts that are reasonable and necessary to defray the costs of administering this article.

SECTION 2.21. Sections 13(a), (e), (e-1), (f), (g), (h), and (i), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The *commissioner* [department] may not issue a certificate of registration, unless the applicant first files a surety bond or posts other security in such form as the commissioner may prescribe and a written irrevocable designation of the commissioner as agent for service of legal process.

(e) The bond or other security shall be to the state for the use by a consumer, the state, or any political subdivision thereof who secures any judgment against a manufacturer, retailer, broker, or installer, or a *registrant's surety*, for damages, restitution, or expenses including reasonable attorney's fees resulting from a cause of action directly related to the sale, lease-purchase, exchange, brokerage, or installation of a manufactured home, including:

(1) retention or conversion of money, property, or any other thing of value from consumers in the form of down payments, any sales and use taxes, deposits, or insurance premiums;

(2) failure to give proper title documents or certificates of title to consumers;

(3) failure to give or the breach of any warranty required by this article or by the Federal Trade Commission or the violation of any requirements of the Texas Credit Code or of the federal Truth-in-Lending Act; or

(4) engaging in any false, misleading, or deceptive acts or practices as the term is set forth in and as those acts or practices are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code.

(f) [~~(e-1)~~] The bond or other security shall not be liable for any judgment, or part thereof, resulting from any tort claims, except as *are recoverable in a deceptive trade practice action pursuant to Chapter 17, Subchapter E, Business & Commerce Code* [~~expressly set forth in Subsections (e)(1), (e)(2), (e)(3), and (e)(4) of this section~~], nor for any punitive, exemplary, or treble damages. A consumer, the state, or any political subdivision thereof may recover against the principal, *the surety*, or *the principal and surety jointly and severally* for such damages, restitution, or expenses; provided, however, that in no event shall a surety or the other security posted under this section be liable for an amount in excess of actual damages, restitution, or expenses, including reasonable attorney's fees. Any judgment obtained against a principal is conclusive against the surety or other security if notice of the filing of suit is given as required by this section. The bond or other security shall be open to successive claims up to the amount of face value of the bond or other required security. The surety shall not be liable for successive claims in excess of the bond amount, regardless of the number of years the bond remains in force.

(g) [~~(f)~~] A consumer shall inform the manufacturer, retailer, or installer, and the department in writing of any claim against the bond or security no later than two years after the purchase of the manufactured home. Whenever the department receives notice of a claim against a bond, the *commissioner* [department] shall promptly notify the bonding company involved. If the consumer claim results in a private lawsuit being filed by the consumer, the consumer shall notify the attorney general's office and the surety company by certified mail of the filing of the lawsuit. At the time of sale or delivery of a new manufactured home to a consumer, the consumer must be given conspicuous written notification of this two-year limit and the notice requirements.

(h) [~~(g)~~] Any manufacturer, retailer, broker, or installer who maintains a place of business at one or more locations shall file with the *commissioner* [department] a separate bond or other security for each location. Property used for the business that is not contiguous to, or *located within 300 feet of*, a bonded location requires a separate bond. Any location at which a manufactured home is shown to the public or at which it is offered for sale, exchange, or lease-purchase by a retailer to consumers is a location which is required to be bonded. A manufactured home installed on a permanent foundation system and offered for sale as real estate is not a business location that requires a bond. A temporary location for a bona fide trade show sponsored by a

nonprofit corporation which qualifies for tax exemption pursuant to Section 501(c) of the U.S. Internal Revenue Code is not a location which requires a bond.

(i) [(h)] A manufacturer shall be bonded or post other security in the amount of \$100,000. A retailer shall be bonded or post other security in the amount of \$30,000. A broker shall be bonded or post other security in the amount of \$20,000. An installer shall be bonded or post other security in the amount of \$10,000. In order to assure the availability of prompt and satisfactory warranty service, a manufacturer, which does not have a registered manufacturing plant or other facility in this state from which warranty service and repairs can be provided and made, shall be bonded or post other security in an additional amount of \$100,000. A retailer holding a valid certificate of registration shall not be required to be bonded or file any security to secure a certificate of registration as a broker or an installer. A new bond shall not be required for any change of ownership of a person registered with the *commissioner* [department] nor for any change of a location; however, a proper endorsement of the original bond may be required by the *commissioner* [department].

(j) [(i)] The bonding company must provide written notification to the *commissioner* [department] at least 60 days prior to the cancellation of any bond required by this section. Any other security on file with the *commissioner* [department] shall remain on file with the *commissioner* [department] for two years after the person ceases business as a manufacturer, retailer, broker, or installer or at such later time as the *commissioner* [department] may determine that no claims exist against the security.

SECTION 2.22. Sections 13A(a), (b), (e), (f), (g), (h), (i), (j), (k), (m), and (n), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) There is hereby established the manufactured homeowners' recovery fund ("fund"). The fund shall be administered and managed by the *commission* [board of trustees composed of three members appointed by the governor as follows:

~~[(1) the commissioner of the Texas Department of Labor and Standards or other representative of the department;~~

~~[(2) the chief of the consumer protection division of the attorney general's office or other representative of the attorney general; and~~

~~[(3) a representative of the manufactured housing industry in this state].~~

(b) ~~[The members of the board of trustees shall be appointed for terms which shall expire on February 1 of each odd-numbered calendar year.] No bond or other security shall be required of the members of the board of trustees.~~

(e) Subject to the limitations and requirements of Section 13 of this article and of this section, the fund shall be used to compensate consumers who have unsatisfied judgments, or in certain limited circumstances unsatisfied claims, against a manufacturer, retailer, broker, or installer registered with the department ("registrant") or against the registrant's surety, in one of the following situations:

(1) The consumer has obtained a final judgment which is unsatisfied against the registrant, its surety, or the registrant and its surety jointly and severally, or against the registrant only, if the court found that the surety was not liable due to prior payments of valid claims against the bond in an amount equal to, or greater than, the face amount of the applicable bond.

(2) The consumer has obtained a judgment against the surety of the registrant which is unsatisfied.

(3) The consumer has obtained a judgment against a registrant which has posted other security in lieu of the bond in accordance with Section 13 of this article, and such security is insufficient to satisfy the judgment.

(4) The consumer has alleged a claim against the registrant in a lawsuit which has been stayed or discharged as a result of the filing for reorganization or discharge in bankruptcy by the registrant and (1) judgment against the surety is not possible because of the bankruptcy or liquidation of the surety or because the surety has been found by a court of competent jurisdiction not to be liable due to prior payment of valid

claims against the bond in an amount equal to, or greater than, the face amount of the applicable bond; or (2) the registrant has posted other security in lieu of the bond.

(f)(1) In order to recover from the fund, the consumer must file, in the ~~[court in which the unsatisfied final judgment was entered or the]~~ district courts of Travis County, Texas, an application for an order directing payment out of the fund to which is attached a verified claim. A copy of the application and verified claim must be served on the ~~commission [board of trustees]~~ by serving the commissioner. ~~[The consumer must mail copies of the application and verified claim to the registrant and its surety by certified mail, return receipt requested, on the date the application is filed with the court.]~~

(2) If the consumer has obtained a judgment which is unsatisfied against the registrant and/or its surety as set forth in Subsection (e)(1), (e)(2), or (e)(3) of this section, the verified claim shall contain the following:

(A) evidence satisfactory to the court: (1) that the judgment against *the registrant, its surety, or* the registrant and its surety has been entered, or (2) that the judgment against the registrant only contains a specific finding that the surety has no liability, and that execution has been returned nulla bona, and that a judgment lien has been perfected;

(B) the amount of actual damages broken down by category as awarded by the court or jury in the cause which resulted in the unsatisfied judgment, and the amount of attorney's fees, *costs, and expenses* set forth in the unsatisfied judgment;

(C) the amount of payment or other consideration received, if any, from the registrant, the surety, or other security posted with the department; and

(D) the amount that may be realized, if any, from the sale of real or personal property or other assets of the judgment debtors liable to be sold or applied in satisfaction of the judgment and the balance remaining due on the judgment after application of the amount which may be realized.

(3) If the consumer has alleged a claim as set forth in Subsection (e)(4) of this section and for the reasons set forth therein has not been able to secure a judgment, the verified claim must contain the following:

(A) a true copy of all the pleadings in the lawsuit which was stayed or discharged by the bankruptcy court;

(B) a complete list of all complaints against the registrant, setting forth the specific acts or omissions complained of which resulted in actual damage to the consumer along with the actual dollar amount necessary to reimburse or compensate the consumer for costs or expenses resulting from the acts or omissions of which the consumer complains;

(C) a true copy of any written agreement which the consumer has entered into with his or her attorney; or a statement as to the oral agreement with the attorney with reference to the payment of legal fees and costs; and

(D) true copies of all purchase agreements, warranties, notices, requests for warranty service, service or repair orders, or papers or documents of any kind whatsoever which the consumer received in connection with the purchase, exchange, or lease-purchase of the manufactured home and its warranties from which the consumer's cause of action arises.

(g) Within 20 days following receipt of service of the application and verified claim, the ~~commission [board of trustees]~~ may enter an appearance on its behalf, file a response, appear at the hearing, cross-examine witnesses, or take whatever other action it deems appropriate *that could have been taken in the original action* on behalf of, and in the name of, the registrant or surety; in taking such action the ~~commission [board of trustees]~~ shall act only to protect the fund from spurious or unjust claims and ~~[or]~~ to assure compliance with the requirements for recovery under this section.

(h) The court shall set a hearing on the application at the earliest possible time following 30 days from the date on which the ~~commission [board of trustees]~~ was served. Not less than 10 days' notice shall be given the applicant and the ~~commission [board of trustees]~~. The court shall determine from the verified complaint or oral testimony at the

hearing the amount of actual damage which is recoverable by the consumer pursuant to the provisions and limitations of Section 13 of this article, and the amount of reasonable attorney's fees, costs, and expenses which the consumer incurred in the litigation which resulted in the judgment or incurred in preparing and prosecuting the litigation which was stayed or discharged by the bankruptcy court and for legal services, costs, and expenses in recovering from the fund. The court shall enter its order specifically setting forth the actual damages and attorney's fees, costs, and expenses which the commission ~~[board of trustees]~~ shall pay to the consumer. Under no circumstances shall the order include any punitive, exemplary, or double or treble damages nor damages for pain and suffering or any other tort claims which are not recoverable against a surety as set forth in Section 13 of this article.

(i) Within ~~30~~ [60] days following receipt of the order of the court, the commission ~~[board of trustees]~~ shall pay to the consumer a sum equal to the amount of actual damages and attorney's fees, costs, and expenses awarded by the court in its order; however, under no circumstances shall any consumer be paid *actual damages* in an amount in excess of \$25,000 [~~\$50,000~~] per home. Prior to payment, the consumer shall execute an assignment to the commission ~~[board of trustees]~~ of all of the consumer's right, title, and interest in and to the unsatisfied judgment and the judgment lien or the claim against the registrant and surety.

(j) The commission ~~[board of trustees]~~ shall notify the commissioner ~~[department]~~ of the name of any manufacturer, retailer, broker, or installer named in a judgment which is the basis for a claim against the fund. If the person named is still registered with the department, the commissioner ~~[department]~~ shall immediately suspend the registration, without hearing, by notifying the registrant by certified mail, return receipt requested.

(k) The commission ~~[board of trustees]~~, in its discretion, may try to recover from the registrant, the judgment debtor, or its surety any sums paid to consumers from the fund. Any sums recovered shall be deposited to the credit of the fund.

(m) The ~~[board of trustees shall contract with the]~~ Texas Department of *Licensing and Regulation* shall ~~[Labor and Standards to]~~ serve and act as manager of the fund. The manager shall handle the administrative duties of the fund, keep such books and records as may be required by the commission ~~[board of trustees]~~, cause appearances to be entered in hearings or judicial proceedings as may be necessary to protect the fund from spurious or unjust claims and to assure compliance with the requirements for recovery under this section, pay claims, and invest and reinvest the fund's assets in accordance with instructions from the commission ~~[board of trustees]~~. The manager of the fund shall be paid its reasonable and necessary costs and expenses for the management of the fund; however, such costs and expenses shall only be paid out of the interest earnings of the fund and not from the proceeds of the additional title fee charge or other assets which the fund may recover. *The interest earnings from the fund are hereby appropriated and reappropriated to the department.*

(n) Neither the fund, nor the commission ~~[board of trustees]~~, shall be liable to any consumer for recovery if the fund does not have the funds necessary to pay the amounts awarded by an order of the court. If the fund does not have sufficient assets to pay the consumer, it shall log the time and date of receipt of any order by a court for payment to a consumer. As funds become available, the commission ~~[board]~~ shall pay the consumer whose unpaid order is the earliest by time and date.

SECTION 2.23. Sections 14(d), (g), and (h), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) The retailer shall give the consumer a written warranty that the installation of the new HUD-code manufactured home at the initial homesite will be completed in accordance with all standards, rules, regulations, administrative orders, and requirements of the commissioner ~~[department]~~ and that any appliances or equipment included with the sale of the home to be installed by the retailer have been, or will be, installed in accordance with the instructions or specifications of the manufacturer of the appliance or equipment and are free from defects in materials or workmanship. The retailer's warranty is for a period of one year from the date of initial installation of the home at the consumer's

homesite. The retailer shall deliver to the consumer at the time the contract of sale is signed the following:

- (1) the manufacturer's warranty;
- (2) the retailer's warranty;
- (3) the warranties for all appliances and equipment given by the manufacturers of the appliances and equipment included with, or installed in, the home; and
- (4) the name and address of the manufacturer and retailer to which the consumer is to give notice of warranty service requests.

(g) For all secondary installations not covered by the retailer's warranty as set forth in Subsection (d) of this section and for the installation of all used manufactured homes, the installer shall give the manufactured home owner a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of the *commissioner* [department].

(h) If a manufacturer is no longer registered with the *commissioner* [department] or has filed for reorganization or discharge in bankruptcy, the commissioner shall give written notice of this fact to all registered retailers. The retailer must assume liability, and is fully responsible, for the manufacturer's warranty and all warranty service as to any new HUD-code manufactured home constructed by such manufacturer and sold to a consumer by the retailer following receipt of the commissioner's notice. A written notice, as required by the *commissioner* [department], must be given to the consumer by the retailer prior to the execution of a binding deposit agreement or retail installment sales contract. The retailer is entitled to indemnity from the manufacturer's surety or other security, and from the manufactured homeowners' recovery fund, for all warranty service performed pursuant to the manufacturer's warranty; in this situation the retailer is a "consumer" for purposes of recovery against the surety and the fund pursuant to the provisions of Sections 13 and 13A of this article. Nothing contained in this subsection authorizes a retailer to purchase new HUD-code manufactured homes from an unregistered manufacturer in violation of Section 6(h) of this article.

SECTION 2.24. Sections 14(e)(2), (5), and (6), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(2) If the manufacturer or retailer fails to provide warranty service within the reasonable time allowed by the rules of the *commissioner* [department], the manufacturer or retailer must show good cause in writing why such service was not provided. Failure to show good cause constitutes sufficient basis for suspension or revocation of the registration.

(5) After receipt of a request for a home inspection, the department will perform such inspection within 15 days. Within five days following the inspection, the *commissioner* [department] shall mail a [its] written report and orders, if any, to the consumer, manufacturer, and retailer by certified mail, return receipt requested. The report shall detail each of the consumer's complaints, whether or not each complaint is covered by either of the warranties and which warranty. The *commissioner* [department] shall issue appropriate orders to the manufacturer or retailer for correction or repair of the defects and the time allowed, which must be reasonable, for the correction.

(6) The manufacturer and retailer shall comply with the initial report and warranty service orders of the *commissioner* [department]. Such orders are not contested cases within the meaning of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) so as to provide an opportunity for an adjudicative hearing prior to compliance. If the manufacturer or retailer, or both, fails or refuses to provide the warranty service in accordance with the orders of the department following a home inspection, the commissioner shall set a hearing at which the manufacturer or retailer, or both, shall show cause why the registration should not be suspended or revoked. If, following the hearing, the commissioner finds that the prior warranty service orders were correct, the failure or refusal of the manufacturer or retailer to comply with the orders is sufficient cause for the suspension or revocation of the registration. If the commissioner finds that the prior warranty service orders were incorrect in the determination of the respective responsibilities of the manufactur-

er, retailer, or both, the commissioner shall enter a final order setting forth (1) the correct responsibilities, and (2) the right of either the manufacturer or retailer to indemnification from the other. The commissioner may also enter an order directing the manufacturer or retailer whose registration is not revoked, *or who is not out of business*, to perform the warranty service responsibilities of the retailer or manufacturer whose registration is revoked, *or who is out of business*, by giving the manufacturer or retailer performing such warranty service the right of indemnity against the other. The manufacturer or retailer entitled to indemnification by virtue of an order of the commissioner pursuant to this subsection is a "consumer" for purposes of Sections 13 and 13A of this article and may recover its costs, expenses, and attorney's fees from the other party's surety, other security, or the manufactured homeowners' recovery fund.

SECTION 2.25. Sections 17(a), (b), (c), and (d), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A person, individual, or director, officer, or agent of a corporation who knowingly and wilfully violates a provision of this Act or any rule, regulation, or administrative order of the *commissioner* [~~department~~] in a manner that threatens the health or safety of any purchaser or consumer commits a Class A misdemeanor and on conviction shall be fined not more than \$2,000 or shall be confined in the county jail not longer than one year or both.

(b) *In addition to the injunctive relief set forth in Section 18, Article 8900, Revised Statutes, a person who fails to obtain or maintain a registration as required by this article may be assessed a civil penalty by the court payable to the state in an amount not to exceed \$10,000 for each violation of this article in addition to the reasonable attorney's fees, court costs, witness fees, investigative costs, and deposition expenses* [~~Any person who violates any provision of this Act or the rules, regulations, or administrative orders of the department may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper, except that the maximum civil penalty may not exceed \$1,000,000 for any related series of violations occurring within one year from the date of the first violation. In lieu of revoking or suspending the registration pursuant to Subsection (k) of Section 7 of this Act, and with the agreement of the registrant, the department may assess a civil penalty in an amount not to exceed \$1,000 for each and every violation of this Act or the rules, regulations, or administrative orders of the department, provided that the aggregate civil penalties as to any one registrant shall not exceed \$50,000 for any related series of violations occurring within one year from the date of the first violation.~~]

(c) [~~Whenever it appears that any person has violated or is threatening to violate any of the provisions of this Act or of the rules, regulations, or administrative orders of the department, the attorney general, the department, or any person holding a valid registration pursuant to this Act may cause a civil suit to be instituted either for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of the civil penalty or for both. If the injunctive relief is granted or a civil penalty assessed, the plaintiff or petitioner shall be awarded reasonable attorney fees and costs of suit.~~]

[(d)] Failure by a manufacturer, *installer*, or retailer to comply with the warranty provisions of this article or any implied warranties or the violation of any provision of this article by any person is a deceptive trade practice in addition to those practices delineated in Chapter 17, Subchapter E, Business & Commerce Code and is actionable pursuant to said subchapter. As such, the venue provisions and all remedies available in said subchapter apply to and are cumulative of the remedies in this article. However, notwithstanding any provisions of law to the contrary, a lawsuit containing allegations that the manufacturer, *installer*, or retailer failed to perform warranty obligations or failed to comply with any written or implied warranties shall be abated, provided that a plea in abatement is filed with the court not more than 45 days following the answer date of the movant, if the manufacturer, *installer*, or retailer requests a consumer complaint inspection pursuant to the provisions of Section 14 of this article. The abatement shall continue until the department has performed a consumer complaint inspection and the

retailer, manufacturer, or both, *or the installer, has [have]* been given an opportunity to comply with the inspection report, determinations, and orders of the *commissioner [department]*; however, the abatement shall not be granted for a period in excess of 150 days. A consumer's refusal to allow the manufacturer, *installer*, or retailer to perform warranty service pursuant to the inspection report, determinations, or orders of the *commissioner [department]* is a bar to any cause of action relating to alleged failure to comply with any written or implied warranties or perform warranty service.

SECTION 2.26. Sections 19(a)(2), (3), (4), and (7), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(2) "Document of title" means a written instrument issued solely by and under the authority of the *commissioner [department]* that sets forth:

(A) the name and address of the purchaser and seller at the first retail sale, or the transferee and transferor at any subsequent sale or transfer;

(B) the manufacturer's name and address and, if any, the model designation;

(C) in accordance with applicable rules of the *commissioner [department]*, the outside dimensions of the manufactured home when installed for occupancy exclusive of the tongue or other towing device as measured to the nearest one-half of one foot at the base of the home, and the approximate square footage of the home when installed for occupancy;

(D) the identification number or numbers for each section or module of the manufactured home;

(E) the county of this state in which the manufactured home is installed for occupancy;

(F) the dates of any liens, and the names and addresses of the lienholders, in chronological order of recordation, and if no liens are registered or recorded on the manufactured home, a statement of that fact;

(G) the signature of the owner signed with pen and ink on receipt of the certificate;

(H) that if a husband and wife file, with the application for document of title, an agreement signed by both providing that the manufactured home is to be held jointly with rights of survivorship, the *commissioner [department]* will issue the document of title in both names; and

(I) any other data the *commissioner [department]* requires.

(3) "First retail sale" means the initial acquisition by a consumer of a *new* manufactured home by purchase, exchange, or lease-purchase from a retailer and includes a bargain, sale, transfer, or delivery with intent to pass an interest other than a lien, to a manufactured home for which a document of title has not been previously issued by the *commissioner [department]*.

(4) "Identification number" means the permanent number affixed to, or imprinted on, a manufactured home or section of the home as prescribed by the rules of the *commissioner [department]*.

(7) "Manufacturer's certificate" means a document, or a form prescribed by the *commissioner [department]*, that shows the original transfer of a manufactured home from the manufacturer to the retailer, and if presented with an application for a document of title, the certificate must show, on a form prescribed by the *commissioner [department]*, each subsequent transfer between retailers and retailer to owner.

SECTION 2.27. Sections 19(b), (c), (d), (e), (f), (g), (h), (i), (j), (l), (m), (q), (r), (s), (t), and (u), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The *commissioner [department]* shall prescribe forms and adopt rules relating to manufacturer's certificates, to applications for documents of title, and to the issue of documents of title at the first retail sale and for each subsequent sale or transfer of a manufactured home.

(c)(1) At the first retail sale, the retailer and purchaser shall apply for the issuance of a document of title. As a part of the application, the retailer shall surrender the original

manufacturer's certificate. At a subsequent sale or transfer the seller and purchaser, or the transferor and transferee, shall apply for the issuance of a new document of title. As a part of the application, the seller or transferor shall surrender the original document of title.

(2) The *commissioner* [department] may not refuse to issue a document of title, and ~~or~~ may not suspend or revoke a document of title, unless [if]:

(A) the application contains any false or fraudulent statement, or the applicant has failed to furnish information required by the *commissioner* [department], or the applicant is not lawfully entitled to the issuance of a document of title;

(B) the *commissioner* [department] has reasonable basis to believe that the manufactured home has been stolen or unlawfully converted, or the issuance of a document of title would constitute a fraud against the rightful owner or a lienholder;

(C) the *commissioner* [department] has reasonable basis to believe that the manufactured home is "salvaged" as defined in Section 8 of this article and a salvage title has not been applied for; ~~or~~

(D) the required fee has not been paid; or

(E) a state tax lien has been recorded as filed by the comptroller pursuant to Subsection (h) of this section.

(3) If the *commissioner* [department] refuses to issue, or suspends or revokes, a document of title, written notice of such action must be given by certified mail to the seller and purchaser, or transferor and transferee, and to the holder of a lien or security interest of record. Such action by the *commissioner* [department] is a contested case within the meaning of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), ~~and the person having an interest in the manufactured home may appeal such action to the commissioner.~~ Notice of the appeal and request for hearing must be filed with the commissioner within 30 days following notice of the *commissioner's* [department's] action.

(d) If there are no liens registered or recorded, the *commissioner* [department] shall issue a document of title marked "ORIGINAL" on its face and shall send the original by first class mail to the purchaser or transferee at the address on the application. If a lien is shown in the application or recorded with the department, the *commissioner* [department] shall issue a document of title marked "ORIGINAL" on its face and send the original by first class mail to the first lienholder. The *commissioner* [department] shall mail, first class, a copy of the document of title conspicuously marked "NONTRANSFERABLE COPY" on its face to the purchaser or transferee and any other lienholder at the address shown on the application.

(e) The owner designated in the original document of title must transfer the title on a form prescribed by the *commissioner* [department] executed before a notary public and must file the form with the department before a manufactured home may be conveyed, transferred, or otherwise disposed of at a subsequent sale. The form must include any information the *commissioner* [department] requires and must include an affidavit that the person signing is the owner of the manufactured home and that there are no liens on the home except a lien shown on the document of title or described in the affidavit. A title to a manufactured home may not pass or vest at a subsequent sale until the transfer is executed as provided by this section and an application for the issuance of a new document of title is sent to the department.

(f) When the ownership of a manufactured home in this state is transferred by operation of law, as in an inheritance, a devise, or a bequest, bankruptcy, receivership, judicial sale, or any involuntary divestiture of ownership, the *commissioner* [department] shall issue a new document of title when the department is provided with a certified copy of the order or bill of sale from an officer making a judicial sale, or the order appointing a temporary administrator, the probate proceedings, the letters testamentary, the letters of administration, or an affidavit by all of the heirs at law showing that no administration is necessary and showing in whose name the certificate should be issued. If a security interest or other lien is foreclosed in accordance with law by nonjudicial means and the secured party or other mortgagee files an affidavit with the department showing the

nonjudicial foreclosure in accordance with law, the *commissioner* [department] may issue a new document of title in the name of the purchaser at the foreclosure sale. If the foreclosure is of a constitutional or statutory lien and the mortgagee files an affidavit showing the creation of the lien and of the divestiture of title because of the lien in accordance with law, the *commissioner* [department] may issue a new document of title in the name of the purchaser. If an agreement providing for right of survivorship is signed by the husband and wife and if on the death of either spouse the department is provided with a copy of the death certificate of the deceased spouse, the *commissioner* [department] shall issue a new document of title to the surviving spouse.

(g) If an original document of title is lost or destroyed, the owner or lienholder may obtain a certified copy of the original from the department by making an affidavit on a form prescribed by the *commissioner* [department]; but the *commissioner* [department] shall issue the certified copy only to the first lienholder if a lien is disclosed on the original. The certified copy shall be conspicuously marked "CERTIFIED COPY OF ORIGINAL" on its face. If the original is recovered, the owner or lienholder shall immediately surrender the original to the department with the certified copy of the original document of title, and the *commissioner* [department] shall issue a new original document of title.

(h) The *commissioner* [department] shall record all state tax liens as filed by the comptroller on manufactured homes installed for use and occupancy in this state. The *commissioner* [department] may not issue or transfer the title to a manufactured home on which a state tax lien has been filed until the tax, penalties, and interest are paid. On receipt of a notice that the comptroller has filed a lien, the *commissioner* [department] shall notify the owner and all lienholders.

(i) A lien on the manufactured homes in the inventory is perfected by filing a security agreement with the department in a form that contains the information the *commissioner* [department] requires. Failure to pay or satisfy any inventory lien filed and recorded against a manufactured home pursuant to the terms of the security agreement by the retailer is sufficient cause to revoke or suspend the retailer's registration with the *commissioner* [department].

(j) If a manufactured home is affixed to real estate by installation on a permanent foundation, as defined by the department, the manufacturer's certificate or the original document of title may be surrendered to the department for cancellation. The address and location of the real estate must be given to the department when the certificate or document of title is surrendered. The *commissioner* [department] may require the filing of other information. The *commissioner* [department] may not cancel a manufacturer's certificate or a document of title if a lien has been registered or recorded on the manufactured home. If a lien has been registered or recorded, the *commissioner* [department] shall notify the owner and each lienholder that the title and a description of the lien have been surrendered to the department and that the *commissioner* [department] will not cancel the title until the lien is released. Permanent attachment to real estate does not affect the validity of a lien recorded or registered with the department before the manufactured home is permanently attached. The rights of a prior lienholder pursuant to a security agreement or the provisions of a credit transaction and the rights of the state pursuant to a tax lien are preserved.

(l) Notwithstanding any other provisions of this section, the filing of a security agreement by a secured party perfecting a lien in the inventory of a retailer shall not prevent a buyer in the ordinary course of business as defined by Sections 1.201(9) and 9.307(a) of the Business & Commerce Code from acquiring good title free and clear of such interest, and the *commissioner* [department] shall not consider such security interest as a lien for the purpose of title issuance.

(m) The *commissioner* [department] shall furnish each county tax assessor-collector in this state a quarterly report that lists the name of the owner of each manufactured home installed in the county during the preceding calendar quarter, the name of the manufacturer, the model designation, the identification number of each section or module, and the address or location where the manufactured home is installed. The *commissioner*

[department] shall furnish a copy of the report to the chief appraiser of the appraisal district established for the county in which the manufactured home is installed.

(g) The *commissioner* [department] shall adopt rules consistent with this article for the titling of a manufactured home that has been previously registered or titled in this state or any other state. The rules must protect a lienholder recorded on a certificate or document of title.

(r) The *commission* [department] shall set fees for issuing and cancelling titles to manufactured housing which shall include \$10 for each title transaction which shall be paid to the State Treasury and deposited in a fund to be known as the manufactured homeowners' recovery fund. *The unexpended balance in the manufactured homeowners' recovery fund on September 1, 1989, and \$10 of each title transaction fee collected after that date are hereby appropriated and reappropriated to the commission for payment of claims pursuant to Section 13A of this article. The balance of the fee for each title transaction is [These fees are] hereby appropriated, and reappropriated, [respectively,] to the department [and the manufactured homeowners' recovery fund] in addition to its general appropriation to be used exclusively for enforcement of this article.*

(s) The department shall print on every document of title issued by the *commissioner* [department] under this section a notice that the document of title may not reflect the existence of a tax lien notice filed for the manufactured home since the document of title was issued and that information about tax liens for which notice has been filed may be obtained from the department on written request.

(t) On the written request of a person containing the name of the owner of a manufactured home having a document of title or the identification number of a manufactured home, the *commissioner* [department] shall furnish information held by the department on the current ownership of the manufactured home and the existence of any tax liens on the manufactured home for which notice has been filed with the department.

(u) The *commissioner* [department] shall cancel titles to manufactured homes which have been sold, exchanged, or lease-purchased to purchasers for the purchasers' business use. New titles may be issued on proper application following an inspection and determination that the home is habitable. The *commissioner* [department] shall issue salvage titles for salvaged manufactured homes, as defined in Section 8 of this article, and may issue new titles if the new home is rebuilt pursuant to the rules and regulations of the *commissioner* [department].

SECTION 2.28. Sections 20(a), (b), and (c), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A retailer or manufacturer shall not transfer title to a HUD-Code manufactured home nor otherwise sell, assign or convey a HUD-Code manufactured home to a consumer without delivering the formaldehyde health notice required by this section subject to applicable rules of the *commissioner* [department]. The notice shall be delivered to the consumer prior to the execution of any mutually binding sales agreement or retail installment sales contract.

(b) The content of the notice shall be the same as required by the U.S. Department of Housing and Urban Development and of such type, size, and format as prescribed by the *commissioner* [department]. A retailer or manufacturer shall not vary the provisions or form of the notice; it is sufficient and adequate, as a matter of law, to advise consumers of the risks of occupying the home.

(c) The knowing and willful failure of a retailer or a manufacturer to comply with the applicable regulations of the U.S. Department of Housing and Urban Development and of the *commissioner* [department] is conclusive that such person breached the duty to notify the consumer about formaldehyde and that the home is not habitable; compliance with such applicable regulations by a retailer or a manufacturer is conclusive that the consumer received sufficient and adequate notice of the risks of occupying the home and that the home is habitable as regards formaldehyde emissions.

SECTION 2.29. Section 1, Article 5221f-1, Revised Statutes, is amended by amending Subdivisions (4) and (5) and by adding Subdivision (7) to read as follows:

(4) "Department" means the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~].

(5) "Commissioner" means the commissioner of *licensing and regulation* [~~the Texas Department of Labor and Standards~~].

(7) "*Commission*" means the *Texas Commission of Licensing and Regulation*.

SECTION 2.30. Section 2(d), Article 5221f-1, Revised Statutes, is amended to read as follows:

(d) All areas of authority belonging to municipalities are specifically and entirely reserved to them. That authority may include local land use and zoning requirements, building setback requirements, side and rear yard requirements, site planning and development and property line requirements, subdivision control, and landscape architectural requirements. Those local requirements and regulations and others not in conflict with this article or other state law relating to transportation, erection, or installation, or use, shall be reasonably and uniformly applied and enforced without distinctions as to whether the housing or buildings are manufactured or are constructed on-site. A municipality that regulates on-site construction or installation specifically has authority to:

(1) require and review, for compliance with the mandatory state codes, a complete set of design plans and specifications bearing the stamp of the council for each installation within its corporate limits;

(2) require that all applicable local permits and licenses be obtained before any construction begins on a building site;

(3) require that all modules or modular components bear an approved decal or insignia under rules of the department reflecting that they have been inspected at the manufacturing plant or facility; and

(4) establish procedures for the inspection of the erection and installation of any industrialized housing or buildings to be located within its corporate limits to assure compliance with the mandatory codes and the rules of the *commissioner* [~~department~~] and for the inspection of all foundation and other on-site construction to assure compliance with approved designs, plans, and specifications; these procedures may require final inspections and tests before occupancy in accordance with the mandatory codes and may require correction of deficiencies identified by the tests or discovered in final inspections.

SECTION 2.31. Section 4, Article 5221f-1, Revised Statutes, is amended by amending Subsections (a) and (b) and by adding Subsection (c) to read as follows:

(a) The department shall inspect the construction of industrialized housing or buildings at the manufacturing plant or facility to assure compliance with the approved designs, plans, and specifications. Instead of using *department* [~~its own~~] personnel for in-plant inspections, the *commissioner* [~~department~~] may designate third-party inspectors approved by the council to perform these inspections subject to rules of the *commissioner* [~~department~~]. Local building officials shall be permitted to witness in-plant inspections in order to make recommendations for inspection procedures to the council.

(b) The construction of the foundation system and the erection and installation of the modules or modular components on the permanent foundation to assure compliance with the designs, plans, and specifications for industrialized housing or buildings to be sited within the corporate limits of a city shall be inspected by the city building official along with all construction done at the permanent site location. If the industrialized housing or building is to be located outside the corporate limits of any city, the on-site inspections shall be performed by third-party inspectors approved by the council or by the *commissioner* [~~department~~].

(c) *The commissioner, by rule, may authorize a building inspection of industrialized housing or buildings constructed in another state to be performed by an inspector of the equivalent regulatory agency of the other state and also may*

authorize the performance of inspections of industrialized housing or buildings that are constructed in this state for use in another state. The commissioner must enter a reciprocity agreement with the agency of the other state as necessary to implement this section.

SECTION 2.32. Sections 5(f) and (m), Article 5221f-1, Revised Statutes, are amended to read as follows:

(f) The *commissioner* [department] shall recommend qualified third-party inspectors and design review agencies to the council. The council shall establish criteria for the approval of, and it must approve, all third-party inspectors and design review agencies. The *commissioner* [department] shall publish a listing of all approved inspectors and design review agencies.

(m) The *commissioner* [department] shall adopt rules as may be necessary to implement the actions and decisions of the council. The decisions, actions, and interpretations of the council are binding on the department, third-party inspectors, design review agencies, and municipalities and other local political subdivisions.

SECTION 2.33. Section 6, Article 5221f-1, Revised Statutes, is amended to read as follows:

Sec. 6. *REGISTRATION; [DEPARTMENT] RULES.* The *commissioner* [department] shall adopt rules and regulations and promulgate administrative orders as necessary to assure compliance with the intent and purpose of this Act and to provide for uniform enforcement. The rules and regulations shall [may] provide for registration and regulation of manufacturers or builders of industrialized housing or buildings and for the placement of decals or insignia on each transportable modular section or modular component to indicate compliance with the mandatory codes. The *commissioner* [department] must adopt rules as appropriate to implement actions, decisions, interpretations, and instructions of the council.

SECTION 2.34. Article 5221f-1, Revised Statutes, is amended by adding Section 6A to read as follows:

Sec. 6A. *CONTINUING EDUCATION.* The *commissioner* may recognize, prepare, or administer continuing education programs for persons regulated under this article. Participation in the programs is voluntary.

SECTION 2.35. Sections 7(a) and (b), Article 5221f-1, Revised Statutes, are amended to read as follows:

(a) The *commission* [department] shall set fees for registration of manufacturers or builders constructing industrialized housing or buildings, for the inspection of industrialized housing or buildings at the manufacturing plant or facility, and for the issuance of decals or insignia in amounts that pay for all costs of the inspections and administration of this article. These fees shall be paid to the state treasurer and placed in the general revenue fund.

(b) If an approved third-party inspector does inspections, fees may be paid directly to the third-party inspector [~~but must be forwarded through the department for approval~~].

SECTION 2.36. Sections 8(a), (b), and (d), Article 5221f-1, Revised Statutes, are amended to read as follows:

(a) No person shall construct, sell or offer to sell, lease or offer to lease, or transport over the roads, streets, or highways of this state any industrialized housing or buildings, or modular sections or components thereof, in violation of this article or the rules, regulations, or administrative orders of the *commissioner* [department].

(b) Any person who violates any provision of this article or of the rules, regulations, or administrative orders of the *commissioner* [department] may be assessed a civil penalty to be paid to the State of Texas in an amount not to exceed \$1,000 for each such violation as the court may deem proper.

(d) A person who knowingly and wilfully violates any provision of this article or of any published rule, regulation, or administrative order of the *commissioner* [department] commits a Class A misdemeanor.

SECTION 2.37. Section 9, Article 5221f-1, Revised Statutes, is amended to read as follows:

Sec. 9. ADMINISTRATIVE SANCTIONS. (a) The commissioner~~[—after notice and hearing,]~~ may refuse to issue or may permanently revoke, or suspend for a definite period of time and for a specified geographic area or location, any certificate of registration if the commissioner finds that the applicant or registrant:

(1) furnished false information on any application, report, or other document filed with the department;

(2) failed to pay any fee or to furnish or file any reports required by the department for the administration and enforcement of this article;

(3) engaged in any false, misleading, or deceptive acts or practices as those terms are set forth in and as those acts are declared unlawful by the provisions of Chapter 17, Subchapter E, Business & Commerce Code; or

(4) violated any provision of this article or any rule, regulation, or administrative order made or issued by the commissioner ~~[department]~~ pursuant to this article or any decisions, actions, or interpretations of the council.

(b) *If the commissioner proposes to suspend or revoke a person's certificate of registration, the person is entitled to a hearing before the commissioner or a hearings officer appointed by the commissioner. The commissioner shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commissioner.*

SECTION 2.38. Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. In this article:

(1) "Commissioner" means the commissioner of licensing and regulation.

(2) "Department" means the Texas Department of *Licensing and Regulation* ~~[Labor and Standards]~~.

(3) ~~(2)~~ "Vehicle storage facility" means a garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing or parking 10 or more vehicles.

(4) ~~(3)~~ "Vehicle" means a motor vehicle subject to registration under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes) or any other device designed to be self-propelled or transported on a public highway.

(5) ~~(4)~~ "Owner of a vehicle" means:

(A) a person in whose name the vehicle is registered under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes);

(B) a person in whose name the vehicle is registered under Section 2, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-2, Vernon's Texas Civil Statutes), or a member of the person's immediate family;

(C) a person who holds the vehicle through a valid lease agreement; or

(D) an unrecorded lienholder whose right to possess the vehicle exists through a chattel mortgage.

(6) "Principal" means an individual who:

(A) holds personally or as a beneficiary of a trust or by other constructive method:

(i) 10 percent of a corporation's outstanding stock; or

(ii) more than \$25,000 of the fair market value of a business;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10 percent in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, is through shares, stock, or any other manner, or includes voting rights;

(D) is a member of the board of directors or other governing body of a business;
or

(E) serves as an elected officer of a business.

SECTION 2.39. Section 4, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 4. AUTHORITY. (a) The *commissioner* may ~~[department is authorized to]~~ issue licenses to operate vehicle storage facilities.

(b) The *commissioner* ~~[department]~~ shall adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

SECTION 2.40. Section 5, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 5. PROHIBITION. A person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued to the person by the *commissioner* ~~[department]~~.

SECTION 2.41. Section 6(a), Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(a) The *commissioner* ~~[department]~~ by rule shall determine the types of information to be supplied on an application for a license under this article, but the rules must require that an application be made under oath and list:

(1) each conviction of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$200, that was obtained against the applicant or a partner or officer of the applicant in the three years immediately preceding the date of the application;

(2) the name and address of each partner, if the applicant is a partnership; and

(3) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

SECTION 2.42. Section 7, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 7. APPROVAL. The *commissioner* ~~[department]~~ shall approve an application that is submitted as provided by Section 6 of this article for a license to operate a vehicle storage facility unless the *commissioner* ~~[department]~~ determines that:

(1) the applicant knowingly supplied false or incomplete information on the application;

(2) the applicant, one of the applicant's partners, a *principal or the general manager of the applicant*, or one of the applicant's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, in the three years preceding the date of the application; or

(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by the rules of the *commissioner* ~~[department]~~.

SECTION 2.43. Section 8, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 8. NOTICE OF DENIAL. If the *commissioner* ~~[department]~~ denies an application for a license under this article, the department shall send written notice of *the [its]* decision to the applicant, at the address shown on the application, by certified mail, return receipt requested. The notice shall state the reason for the *commissioner's* ~~[department's]~~ decision and that the applicant is entitled to a hearing before the *commissioner* ~~[department]~~ under Section 11 of this article. The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with the requirements of this article and rules of the *commissioner* ~~[department]~~ before the 15th day after the date the applicant receives the notice, the *commissioner* ~~[department]~~ shall then approve the application.

SECTION 2.44. Section 9, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 9. TERM OF LICENSE. (a) A license issued under this article *is valid for the period set by the commission* ~~[expires on December 31 of the year in which it is issued]~~.

(b) A person may apply to the *commission* ~~[department]~~ to renew the license on an application form approved by the *commission* ~~[department]~~. An application for renewal of a license must be accompanied by a *nonrefundable fee* ~~[of \$100]~~.

(c) If an application for renewal of a license is not submitted before the *date of* ~~[31st day after the]~~ expiration ~~[date]~~ of the license, the license may not be renewed.

(d) A person whose license expires and is not renewed under this section may apply for a new license under Section 6 of this article.

SECTION 2.45. Section 10, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 10. SANCTIONS ~~[REVOCATION]~~. (a) *The commissioner shall adopt rules relating to the administrative sanctions that may be enforced against a licensee. If a licensee, a partner of a licensee, a principal in the licensee's business, or an employee of the licensee violates, with the knowledge of the licensee, this article or a rule or order adopted under this article, the commissioner may:*

(1) *issue a written warning to the licensee specifying the violations;*

(2) *deny, revoke, or suspend an application under this article;*

(3) *place on probation a person whose license has been suspended; or*

(4) *assess an administrative penalty in an amount not to exceed \$1,000 for each violation, with each violation considered a separate offense* ~~[department may revoke a license or deny an application to renew a license issued under this article if the department determines that:~~

~~[(1) the licensee, one of the licensee's partners, or one of the licensee's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding \$500, which directly relates to a duty or responsibility of an operator of a vehicle storage facility;~~

~~[(2) the vehicle storage facility for which the license was issued does not meet a standard for a vehicle storage facility set by rule of the department; or~~

~~[(3) the licensee knowingly violated a rule of the department, or an employee of the licensee, with the licensee's knowledge, violated a rule of the department].~~

(b) *The commissioner may revoke or suspend a license issued under this article or place on probation a person whose license has been suspended if the commissioner determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of:*

(1) *a felony; or*

(2) *a misdemeanor that:*

(A) *is punishable by confinement or by a fine that exceeds \$500; and*

(B) *directly relates to a duty or responsibility of an operator of a vehicle storage facility* ~~[The department shall send notice of the revocation or denial to the licensee by certified mail, return receipt requested, before the eighth day after the date of the decision].~~

(c) *If it appears that a person is in violation of or is threatening to violate this article or a rule or order adopted under this article, the commissioner or the attorney general at the commissioner's request may institute an action for injunctive relief, to recover a civil penalty not to exceed \$1,000 for each violation, or for both injunctive relief and the civil penalty. If the commissioner or the attorney general prevails in an action under this subsection, the commissioner or the attorney general is entitled to recover reasonable attorney's fees and court costs.*

(d) *A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.*

SECTION 2.46. Section 11(a), Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(a) A person whose application for a license to operate a storage facility has been denied, whose license has been revoked, or whose application to renew a license has been denied may, before the 15th day after the date the person receives notice of the revocation or denial, request in writing a hearing before the *commissioner* [department] on the revocation or denial.

SECTION 2.47. Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 13. *NOTIFICATION OF OWNER* [~~LOCAL OPTION~~]. (a) *The operator of a vehicle storage facility who receives a vehicle that has been towed to the facility for storage shall, not later than the seventh day after the date the operator receives the vehicle, send a written notice to the registered owner and the primary lienholder of the vehicle. This subsection does not apply to notice for a vehicle that is removed by the owner before the seventh day after the date the operator receives the vehicle.*

(b) *The notice must be sent by certified mail, return receipt requested, and must contain:*

- (1) *the date the vehicle was accepted for storage;*
- (2) *the first day for which a storage fee is assessed;*
- (3) *the daily storage rate;*
- (4) *the type and amount of all other charges to be paid when the vehicle is claimed;*
- (5) *the full name, street address, and telephone number of the facility;*
- (6) *the hours during which the owner may claim the vehicle; and*
- (7) *the facility license number preceded by "Texas Department of Licensing and Regulation Vehicle Storage Facility License Number."*

(c) *A notice is considered to be timely filed if the postmark shows that it was mailed within the seven-day period provided by Subsection (a) of this section. [~~The governing body of a city by ordinance may provide that this article and rules adopted under this article do not apply inside the limits of the city.~~*

~~(b) On adopting an ordinance under this section, the governing body shall deliver a copy of the ordinance to the department.~~

~~(c) An ordinance adopted under this section takes effect on the first day of the month following the month in which the ordinance is adopted.~~

~~(d) If the governing body of a city repeals an ordinance adopted under this section, the governing body shall notify the department of its act as soon as practicable after the repeal.~~

SECTION 2.48. Section 14, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 14. *FEES; CHARGES* [~~ENFORCEMENT~~]. (a) *The operator of a vehicle storage facility may not charge an owner more than \$25 for notification under Section 13 of this article.*

(b) *The operator of a vehicle storage facility may not charge an owner more than \$10 for preservation of a stored motor vehicle.*

(c) *The operator of a vehicle storage facility may not charge less than \$5 or more than \$15 for each day or part of a day for storage of a vehicle.*

(d) *The operator of a vehicle storage facility may not charge any additional fees that are similar to notification, preservation, or administrative fees.*

(e) *This section controls over any conflicting municipal ordinance or charter provision [~~A peace officer or license and weight inspector of the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.~~*

SECTION 2.49. Section 15, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 15. USE OF FEES. The *commissioner* [department] shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of a fund to be used, subject to legislative appropriation, for administering this article.

SECTION 2.50. Section 5.05(b), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of 7 [10] days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within 7 [10] days after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

SECTION 2.51. Section 1, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (2) "Commissioner" means the commissioner of licensing and regulation.
- (3) "Department" means the Texas Department of Licensing and Regulation [Labor and Standards].
- (4) [(2)] "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move disabled motor vehicles.
- (5) [(3)] "Tow truck owner" means a person engaged in the business of using a tow truck to tow, winch, or otherwise move a motor vehicle.

SECTION 2.52. Sections 2(a) and (b), Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Section 5 of this Act, a person may not operate a tow truck [for compensation] in this state unless the tow truck is registered with the department as provided by this Act.

(b) The *commissioner* [department] shall issue a certificate of registration to a tow truck owner whose vehicle meets the registration requirements prescribed by [department] rule of the *commissioner* and who pays the registration fee.

SECTION 2.53. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by amending Section 3 to read as follows:

Sec. 3. POWERS AND DUTIES OF COMMISSIONER [DEPARTMENT]. [(a)] The *commissioner* [department] shall adopt rules regarding only the minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.

~~[(b)] The department shall impose fees for the original registration and renewal registration of all tow trucks operated for compensation. The department shall set the fees in amounts that are reasonable and necessary to cover the costs of the administration of this Act.~~

~~[(c)] The department shall prescribe application forms for original and renewal certificates of registration.~~

SECTION 2.54. Section 4(b), Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The *commissioner* [department] shall adopt rules relating to the identification requirement imposed under this section.

SECTION 2.55. Section 6, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. RENEWAL. [(a)] A certificate of registration is valid for *the period set by the commission* [one-year] and may be renewed *by paying to the commissioner* [annually on or before February 1 on payment of] the required renewal fee.

~~[(b) If a tow truck owner fails to renew the registration by the required date, the owner may renew the registration on payment of the renewal fee and a late fee set by the department. If an application for renewal of the registration is not submitted to the department before the 31st day after the expiration date of the registration, the registration may not be renewed. To reinstate the certificate of registration, the owner must comply with the requirements for an original certificate.]~~

SECTION 2.56. Sections 7(a) and (b), Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The *commissioner* [department] may deny, suspend, revoke, or reinstate a certificate of registration.

(b) The *commissioner* [department] shall adopt rules establishing the procedures for denial, suspension, revocation, or reinstatement of a certificate of registration for failure to follow the insurance and minimum safety requirements established by the *commissioner* [department].

SECTION 2.57. Section 2, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE. It is the legislature's intent to improve the general welfare and safety of the citizens of this state. The legislature finds that the boxing [and wrestling] industry in this state should be regulated in order to protect the best interest of both contestants and the public, and it is the responsibility of the state to provide for the protection of the contestants and the public through the imposition of certain regulations on the boxing [and wrestling] industry and to impose a gross receipts tax upon the proceeds obtained from boxing [and wrestling] performances to finance said regulation. The legislature finds this to be the most economical and efficient means of dealing with this problem and serving the public interest. Accordingly, this Act shall be liberally construed and applied to promote its underlying policies and purposes.

SECTION 2.58. Section 3, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. DEFINITIONS. Whenever used in this Act, unless the context otherwise requires, the following words and terms have the following meanings:

(1) [(a)] "Commissioner" means the commissioner of *licensing and regulation* [the Texas Department of Labor and Standards] or his designated representative.

(2) [(b)] "Department" means the Texas Department of *Licensing and Regulation* [Labor and Standards].

(3) [(c)] "Person" includes an individual, association, partnership, or corporation.

(4) [(d)] "Professional boxer [or wrestler]" means a person to be licensed by the *commissioner* [department] who competes for a money prize, purse, or compensation in a boxing [or wrestling] contest, exhibition, or match held within the State of Texas.

(5) [(e)] "Exhibition" means a demonstration of boxing or wrestling skills.

(6) [(f)] "Boxing" [as used in the Texas Boxing and Wrestling Act] includes kickboxing, a form of boxing in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.

(7) [(g)] "Judge" means a person to be licensed by the *commissioner* [department] who is at ringside during a boxing [or wrestling] match and who has the responsibility of scoring the performance of the participants in the match.

(8) [(h)] "Referee" means a person to be licensed by the *commissioner* [department] who has the general supervision of a boxing [and wrestling] match or exhibition and is present inside of the ring during the match or exhibition.

(9) "Boxing promoter" [(i) "Promoter"] means a person to be licensed by the department who arranges, advertises, or conducts a boxing [or wrestling] contest, match, or exhibition.

(10) "Wrestling promoter" means a person to be registered with the secretary of state who arranges, advertises, or conducts a wrestling contest, match, or exhibition.

SECTION 2.59. Section 4, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. ENFORCEMENT RESPONSIBILITY. (a) The department shall have the sole jurisdiction and authority to enforce the provisions of this Act, and the commissioner shall investigate any allegations of activity which may violate the provisions of this Act.

(b) [(a)] The commissioner is authorized to enter at reasonable times and without advance notice any place of business or establishment where said alleged illegal activity may occur.

(c) [(b)] The commissioner is authorized to promulgate rules and regulations and hold administrative hearings in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commissioner shall promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act. The commissioner is authorized to promulgate rules and regulations governing professional kickboxing contests or exhibitions, which shall be fought on the basis of the best efforts of the contestants. The commissioner shall have the power and authority to revoke or suspend the license or permit of any judge, boxer, [wrestler,] manager, referee, timekeeper, second, or *boxing promoter* for violations of any rule or regulation promulgated pursuant to this Act or for the violation of any provision of this Act, and [he] may deny an application for a license when the applicant does not possess the requisite qualifications.

(d) [(c)] The commissioner shall have the power and authority to hold a hearing regarding allegations that any person has violated or failed to comply with the provisions of this Act. In addition to the denial, revocation, or suspension of a license, the commissioner may order the forfeiture of the purse of any boxer[, wrestler,] or manager in an amount not to exceed \$1,000 for the violation of any rule or regulation promulgated pursuant to the Act or for the violation of any provision of this Act, and said money shall be deposited to the credit of the General Revenue Fund of the State of Texas.

(e) [(d)] In the conduct of any administrative hearing held pursuant to this Act, the commissioner may administer oaths to witnesses, receive evidence, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of papers and documents related to matters under investigation. Administrative hearings shall be held in conformity with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 2.60. Sections 7(a) and (c), Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The promoting, conducting, or maintaining of boxing [and wrestling] matches, contests, or exhibitions when conducted by educational institutions, Texas National Guard Units, or amateur athletic organizations duly recognized by the commissioner shall be exempt from the licensing and bonding provisions of this Act provided that none of the participants in such contests or exhibitions receive a money remuneration, purse, or prize for their performance or services therein.

(c) When an admission fee is charged by any person conducting or sponsoring an amateur boxing [and wrestling] contest, match, or exhibition, except those amateur events exempted in Section 7(b) herein, the gross receipts tax hereinafter provided in Section 11 of this Act shall apply and must be paid by the sponsoring person. In addition, amateur boxing [or wrestling] contests wherein an admission fee is charged shall be conducted under the following conditions:

(1) The commissioner must approve the contest, match, or exhibition at least seven days in advance of the event.

(2) All entries shall be filed with the amateur organization at least three days in advance of the event.

(3) The amateur organization shall determine the amateur standing of all contestants.

(4) The amateur contest, match, or exhibition shall be subject to the supervision of the commissioner, and all profits derived from such contests shall be used in the development of amateur athletics.

(5) Only referees and judges licensed by the commissioner may participate in amateur contests, matches, or exhibitions.

(6) All contestants shall be examined by a licensed physician within a reasonable time prior to the event, and a licensed physician shall be in attendance at the ringside during the entire event.

(7) All professional boxers [~~and wrestlers~~] licensed under this Act are prohibited from participating in any capacity during an amateur contest, match, or exhibition.

SECTION 2.61. Section 8, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. PROMOTERS. (a) A [~~No~~] person may not [~~shall~~] act as a *boxing promoter* [~~of either boxing or wrestling~~] until *the person* [~~he~~] has been licensed by the department under [~~pursuant to~~] this Act. *A person may not act as a wrestling promoter until the person has registered with the secretary of state.*

(b) The application for a *boxing promoter's* license shall be made upon a form furnished by the commissioner and shall be accompanied by *the* [~~an annual~~] license fee *set by the commission* [~~and the license or registration fee shall be \$20 for a Boxing Promoter's License and \$20 for a Wrestling Promoter's License in a city with a population not exceeding 10,000; \$50 in cities with a population of 10,001 to 25,000, inclusive; \$100 in cities with a population of 25,001 to 100,000, inclusive; \$200 in cities with a population of 100,001 to 250,000, inclusive; and \$300 in a city above 250,001 inhabitants~~]. The application for a *boxing promoter's* license shall be accompanied by a surety bond subject to the approval of the commissioner and conditioned on [~~for~~] the payment of the tax [~~hereby~~] imposed under Section 11 of this Act. The commissioner shall fix the sum of the surety bond, but the sum may not be less than \$300.

(c) *The registration of a wrestling promoter shall be made on a form furnished by the secretary of state and shall be accompanied by the registration fee set by the secretary of state in an amount reasonably necessary to cover the administrative costs of registration. The registration application shall be accompanied by a \$5,000 surety bond to be filed with the secretary of state.*

(d) A [~~The~~] surety bond shall be issued by a company authorized to do business in Texas and shall be in conformity with the Insurance Code.

(e) A [~~(d) The~~] surety bond shall be to the state for the use by the state or any political subdivision thereof who establishes liability against a *boxing or wrestling promoter* for damages, penalties, taxes, or expenses resulting from promotional activities conducted within the State of Texas.

(f) A [~~(e) The~~] bond shall be open to successive claims up to the amount of face value, and a new bond must be filed each year. The bonding company is required to provide written notification to the department at least 30 days prior to the cancellation of the bond.

SECTION 2.62. Sections 9(a) and (b), Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) No person shall act as a professional boxer [~~or wrestler~~], manager of a professional boxer [~~or wrestler~~], referee, judge, second, timekeeper, or matchmaker until he has been licensed pursuant to this Act.

(b) The application for a license shall be made upon a form furnished by the commissioner and shall be accompanied by *the* [~~an annual~~] license fee. [~~as follows~~;

(2) boxer	—	\$15
(2) wrestler	—	\$15
(3) manager	—	\$75
(4) matchmaker	—	\$75
(5) judge	—	\$15
(6) referee	—	\$25
(7) second	—	\$10
(8) timekeeper	—	\$10

SECTION 2.63. Section 10, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and by adding Subsection (c) to read as follows:

(a) The commissioner is authorized to promulgate rules and regulations setting forth reasonable qualifications for *an applicant* [applicants] seeking a *license* [licenses] as a *boxing promoter, manager, matchmaker, professional boxer* [~~or wrestler~~], judge, referee, second, or timekeeper.

(c) *The commissioner may waive any license requirement for an applicant with a valid license from another state with which this state has a reciprocity agreement.*

SECTION 2.64. The Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes) is amended by adding Section 10A to read as follows:

Sec. 10A. CONTINUING EDUCATION PROGRAMS. The commissioner may recognize, prepare, or administer continuing education programs for licensees. Participation in the programs is voluntary.

SECTION 2.65. Section 11, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. GROSS RECEIPTS TAX. (a) Any person who conducts a boxing [~~or wrestling~~] match, contest, or exhibition wherein an admission fee is charged shall furnish to the department within 72 hours after the termination of the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of three percent of the total gross receipts of the event shall be attached to the verified report.

(b) Any person who charges an admission fee for exhibiting a simultaneous telecast of any live, spontaneous, or current boxing [~~or wrestling~~] match, contest, or exhibition on a closed circuit telecast must possess a *boxing promoter's license* issued pursuant to this Act and must obtain a permit for each closed circuit telecast shown in Texas. The [~~three percent~~] gross receipts tax described in Section 11(a) herein is applicable to said telecast, and the *boxing promoter* shall furnish to the department within 72 hours after the event a duly verified report on a form furnished by the department showing the number of tickets sold, prices charged, and amount of gross receipts obtained from the event. A cashier's check or money order made payable to the State of Texas in the amount of [~~three percent of~~] the *tax due* [~~total gross receipts of the event~~] shall be attached to the verified report.

(c) Revenue obtained [~~by the department~~] from the [~~three percent~~] gross receipts *taxes imposed under this section* [~~tax~~] shall be deposited to the credit of the General Revenue Fund.

~~[(d) The admissions tax provided in Chapter 21, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended, shall not be applicable to said telecast.]~~

SECTION 2.66. Section 12, Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. ARREST AND CONVICTION RECORDS. The Department of Public Safety shall upon request supply to the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] any available arrest and conviction records of individuals applying for or holding any license under this Act.

SECTION 2.67. Section 1(6), Chapter 320, Acts of the 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's Texas Civil Statutes), is amended to read as follows:

(6) "Commissioner" means the *commissioner of licensing and regulation* [~~Commissioner of the Texas Department of Labor and Standards~~].

SECTION 2.68. Sections 3(f) and (h), Chapter 320, Acts of the 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's Texas Civil Statutes), are amended to read as follows:

(f) A person who establishes his eligibility for an auctioneer's license may apply to the commissioner for a license examination. The application must be accompanied by *the* [~~an~~] examination fee [~~of \$25~~]. On receipt of an examination application with the required fee, the commissioner shall furnish the applicant with study materials and references on which the examination will be based and a schedule specifying the dates and places the examination will be offered. The applicant may take the examination at any scheduled offering within 90 days after receipt of the study materials. If an applicant fails the qualifying examination, he may reapply to take the license examination again. However, if the applicant fails the examination twice within a one-year period, he must wait one year to reapply.

(h) A license issued under this Act *shall* [~~must~~] be issued for *the period set by the commission* [~~one year, and it expires on the anniversary of issuance unless it is affected by actions resulting from a hearing conducted according to this Act or unless enjoined by actions of a court of competent jurisdiction. Any license issued under this Act may be renewed within 30 days after the expiration date on written request by the licensee and payment of the required license fee~~].

SECTION 2.69. Chapter 320, Acts of the 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's Texas Civil Statutes), is amended by adding Sections 3A and 3B to read as follows:

Sec. 3A. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commissioner shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with an analysis of the person's performance on the examination.

Sec. 3B. CONTINUING EDUCATION PROGRAMS. The commissioner may recognize, prepare, or administer continuing education programs for licensees. Participation in the programs is voluntary.

SECTION 2.70. Section 2, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (5) and (7) and by adding Subdivisions (12) and (13) to read as follows:

(5) "Commissioner" means the commissioner of *licensing and regulation* [~~the Texas Department of Labor and Standards~~].

(7) "Environmental air conditioning maintenance work" means repair work and all other work required for the continued normal performance of an environmental air conditioning system. The term does not include the installation of a total replacement of the system or the installation of boilers or pressure vessels that must be installed by licensed persons pursuant to rules and regulations *adopted by the commissioner* [~~promulgated by the Texas Department of Labor and Standards~~] under the Texas boiler inspection law, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes).

(12) "Department" means the *Texas Department of Licensing and Regulation*.

(13) "Commission" means the *Texas Commission of Licensing and Regulation*.

SECTION 2.71. Sections 3(g) and (k), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(g) The *department* [~~commissioner~~] may employ the personnel necessary to implement this Act. The *department* [~~commissioner~~] shall employ at least two full-time air conditioning and refrigeration contractors to serve as examiners.

(k) The *department* [~~commissioner~~] shall publish annually a directory of the persons licensed under this Act. The *department* [~~commissioner~~] may sell the directory on payment of a reasonable fee set by the *commission* [~~commissioner~~]. The fees collected under this subsection shall be appropriated to the department for use in the administration of this Act.

SECTION 2.72. Sections 3A(a) and (h), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Air Conditioning and Refrigeration Contractors Advisory Board is created to advise the commissioner in adopting rules[, setting fees,] and enforcing and administering this Act *and to advise the commission in setting fees.*

(h) The advisory board members serve without compensation. *A member is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the advisory board, subject to any applicable limitation on reimbursement provided by the General Appropriations Act, and members are not entitled to reimbursement for any expenses incurred in performing duties under this Act.*

SECTION 2.73. Section 4(h), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) A license issued under this Act expires *at the end of the license period set by the commission* [~~three years after the date it was issued. To renew a license, the licensee must submit to the commissioner before the expiration date a renewal application, on a form prescribed by the commissioner, accompanied by the renewal fee. The commissioner shall notify the licensee of the expiration date of the license and the amount of the renewal fee. The notice shall be mailed not later than the 30th day before the expiration date.~~].

SECTION 2.74. The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Sections 4A, 4B, 4C, and 4D to read as follows:

Sec. 4A. NOTICE OF EXAMINATION RESULTS. (a) Not later than the 30th day after the date on which an examination is administered under this Act, the commissioner shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commissioner shall notify examinees of the results of the examination not later than the 14th day after the date on which the commissioner receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commissioner shall notify the examinee of the reason for the delay before the 90th day.

(b) If requested in writing by a person who fails the examination, the commissioner shall furnish the person with an analysis of the person's performance on the examination.

Sec. 4B. CONTINUING EDUCATION PROGRAMS. The commissioner may recognize, prepare, or administer continuing education programs for licensees. Participation in the programs is voluntary.

Sec. 4C. LICENSE BY RECIPROCITY. The commissioner may waive any license requirement for an applicant with a valid license from another state with which this state has a reciprocity agreement.

Sec. 4D. TEMPORARY LICENSE. (a) The commissioner, by rule, may provide for the issuance of a temporary license to perform air conditioning and refrigeration contracting.

(b) *The commissioner may issue a temporary license to an applicant who applies to the commissioner on a form prescribed by the commissioner and pays the required fees.*

ARTICLE 3. PROGRAMS TRANSFERRED TO OTHER STATE AGENCIES

SECTION 3.01. Article 5155, Revised Statutes, is amended to read as follows:

Art. 5155. PAY DAYS

Sec. 1. DEFINITIONS. *In this article:*

- (1) *"Person" means an individual, association, corporation, or other legal entity.*
- (2) *"Employer" means a person that employs one or more employees. The term does not include the state or a political subdivision of the state.*
- (3) *"Employee" means an individual who is employed by an employer for compensation. The term does not include:*
 - (A) *the spouse of the employer;*
 - (B) *a person related within the first or second degree by consanguinity or affinity to either the employer or the employer's spouse; or*
 - (C) *an independent contractor.*
- (4) *"Commission" means the Texas Employment Commission or its designee.*
- (5) *"Wages" means compensation owed by an employer for:*
 - (A) *labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation; and*
 - (B) *vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay, if owed to an employee under a written agreement with the employer or under a written policy of the employer.*
- (6) *"Day" means the calendar day.*
- (7) *"Employment" means any service, including service in interstate commerce, that is performed for wages or under any contract of hire, whether written or oral or express or implied. The term includes any service performed by an individual for wages unless it is shown that the individual is free from control or direction in the performance of the service, both under any contract of service and in fact.*
- (8) *"Mail" means deposit for mailing with the United States Postal Service.*
- (9) *"Payday" means the date or dates of each month designated for the payment of wages.*

Sec. 2. PAYMENT OF WAGES. (a) *An employer shall pay wages to each employee who is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) at least once a month and all other employees at least as often as semimonthly. Each of the two pay periods for wages paid semimonthly must consist as nearly as possible of an equal number of days.*

(b) *An employee who is absent on a payday, or who for any other reason is not paid on that day, must be paid on a regular business day at the employee's request.*

(c) *An employee who is discharged from employment must be paid in full not later than the sixth day after the date the employee is discharged.*

(d) *An employee who leaves employment other than by discharge must be paid in full not later than the next regularly scheduled payday.*

(e) *Each employer shall pay wages to an employee in United States currency or by a written instrument issued by the employer that is negotiable on demand at full face value for United States currency unless the employee has agreed in writing to receive part or all of the wages in kind or in another form. Payment by a written instrument that is not negotiable or for which payment is refused for any reason attributable to the employer does not constitute payment of wages for purposes of this article.*

(f) Except as provided by Subsection (g) of this section, an employer shall pay the wages by sending them to the employee by registered mail or by delivering them to the employee either at the employee's regular place of employment during regular employment hours or at a place and hour mutually agreed on by the employer and employee.

(g) An employer may deliver wages paid under this article to a person that is designated by the employee in writing or may deliver the wages to the employee by any reasonable means requested by the employee in writing.

Sec. 3. DEDUCTIONS FROM WAGES. *An employer may not withhold or divert any part of an employee's wages unless the employer:*

(1) is ordered to do so by a court of competent jurisdiction;

(2) is authorized to do so by state or federal law; or

(3) has written authorization from the employee to deduct a part of the wages for a lawful purpose.

Sec. 4. PAYDAY REQUIREMENTS; NOTICE. *(a) An employer shall designate paydays in accordance with Section 2(a) of this article. If an employer fails to designate paydays, the paydays are the first and fifteenth day of each month.*

(b) The employer shall post, in conspicuous places in the workplace, notices indicating the paydays.

Sec. 5. WAGE CLAIM; DETERMINATION; HEARING; ADMINISTRATIVE PENALTY. *(a) An employee who is not paid as prescribed by this article may file a sworn written wage claim with the commission on a form prescribed by the commission. The employee must file the wage claim with the commission not later than the 180th day after the date the wages in question were due for payment. The employee must file the wage claim in person at an office of the commission.*

(b) The commission shall analyze each wage claim filed under Subsection (a) of this section and shall make a preliminary determination of the validity of the claim based on the information provided by the claimant. The analysis and determination shall be made not later than the 30th day after the date the wage claim is filed with the commission.

(c) If the commission determines that the wage claim is not valid, or that it is brought in bad faith and a penalty may be assessed, it shall notify the claimant in writing of the preliminary determination by mail not later than the 14th day after the date on which the preliminary determination is made. A claimant may dispute the preliminary determination or the proposed penalty by filing, not later than the 30th day after the date the notice of the preliminary determination was mailed by the commission, a written request with the commission for a full investigation of the claim. If the claimant fails to respond in a timely manner, the preliminary determination, including any proposed penalty, becomes the final order of the commission.

(d) If the commission determines that the wage claim is valid, it shall notify the employer in writing by mail of the claim, the amount of wages due, and the amount of any proposed penalty not later than the 14th day after the date of the preliminary determination. The employer may respond by filing a written response with the commission not later than the 30th day after the date the notice was mailed by the commission. If the employer fails to respond in a timely manner, the preliminary determination including any proposed penalty becomes the final order of the commission.

(e) If the commission determines that the employer acted in bad faith in not paying wages as required by this article, the commission, in addition to ordering the payment of the wages, may assess the employer an administrative penalty in an amount not to exceed the amount of the wages in question and not to exceed \$1,000. If the commission determines that the wage claim was brought in bad faith, the commission may assess the claimant an administrative penalty in an amount not to exceed the

amount of the wages claimed and not to exceed \$1,000. In determining the amount of an administrative penalty assessed under this section, the commission shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations; and
- (4) any other appropriate matters, including mitigating circumstances.

(f) If either the employer or the claimant disputes the preliminary determination, the commission shall investigate the claim. After investigation, the commission shall issue a determination order either dismissing the complaint or requiring the payment of the wages and assessing any applicable administrative penalties. The commission shall notify each of the parties of its determination order in writing by mail not later than the 14th day after the date the determination order is issued. Either party may request a hearing to contest the determination order. A party must make the request for a hearing in writing not later than the 21st day after the date the commission mails the notice of the determination order. If neither party requests a hearing in a timely manner, the commission determination order becomes the final order of the commission for all purposes.

(g) An employer who does not request a hearing in a timely manner to contest a determination order shall pay the amounts ordered to the commission not later than the 21st day after the date of mailing of the commission notice. Payment to the commission constitutes payment to the employee for all purposes.

(h) A notice regarding an administrative hearing conducted under this section must be mailed by the commission not later than the 21st day after the date the request for the hearing is received by the commission. The hearing shall be conducted by the commission as soon as practicable, but not later than the 45th day after the date the commission hearing notice is mailed. The hearing is subject to the hearings procedures used by the commission in the determination of a claim for unemployment compensation benefits and is not subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The commission may modify, affirm, or rescind a determination order.

(i) If it is determined by the commission that wages are due or a penalty may be assessed, the commission shall enter a written order to that effect. The commission shall notify the parties in writing of the decision, the amount of wages subject to the order, the amount of any penalty assessed, and the parties' right to judicial review of the commission's order. Either party may bring an action in district court to appeal the final order. The action must be filed not later than the 60th day after the date the final order is entered. An appeal under this section is governed by the substantial evidence rule as applied to an appeal from a final decision under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes).

(j) Not later than the 60th day after the date the commission's order is final, the party required to pay wages or assessed a penalty shall either remit the amount in question to the commission or, if the party files a petition for judicial review in a court of competent jurisdiction contesting the final order, forward all amounts assessed to the commission for deposit in escrow in an interest-bearing account. Unless the person files an affidavit of inability to pay with the clerk of the court within the specified period, failure to forward the amounts within the specified period constitutes a waiver of the right to judicial review.

(k) If, after judicial review, it is determined that some or all of the wages are not owed, or the penalty is reduced or is not assessed, the commission shall remit the appropriate amount to the party assessed the wage payment or the penalty, plus the interest accrued on the escrowed amount. Interest under this section shall be paid for the period beginning on the date the assessed amount is paid to the commission and ending on the date the amount is remitted.

(l) The attorney general may bring an action in a Travis County district court to enforce a final order from which an appeal has not been taken as provided by this

article. In the action the attorney general also may seek, and the court may order, recovery of attorney's fees, including investigation costs and other costs of court.

(m) The attorney general may seek injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this article.

(n) Wages collected under this section and any interest earned on those wages shall be remitted by the commission to the claimant employee not later than the 30th day after the date on which the claim is finally adjudicated or otherwise resolved. A penalty collected under this section shall be deposited in the unemployment compensation special administration fund.

Sec. 6. **ADMINISTRATIVE LIEN.** (a) The entry of a final administrative order against an employer, unless timely appealed to a court, becomes a lien on all the property, both real and personal, belonging to the employer so indebted to the state for penalties or wages. The lien attaches immediately on the determination becoming final and remaining unpaid. Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of this lien. The commission has all the duties imposed, and the power and authority in administering and enforcing the lien created, by this section that is conferred on the comptroller for the enforcement of other liens under Subchapters A and B, Chapter 113, Tax Code. The lien may be released in the manner provided by those subchapters for state tax liens. The lien may be recorded in the "State Tax Liens" book kept by the county clerk as provided by Section 113.004, Tax Code.

(b) The agency shall pay by warrant drawn by the comptroller to the county clerk of the county in which a notice of the lien provided by this subsection has been filed the usual fee for filing and recording other similar instruments. The fee becomes an amount due to the agency from the employer. When the liability secured by the lien is fully paid, the agency shall mail to the employer a release of lien, and it shall be the employer's responsibility to file the release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

Sec. 7. **RULES; ADMINISTRATION OF OATHS.** (a) The commission may adopt rules as necessary to implement this article.

(b) The commission may administer oaths as necessary to implement this article.

~~(a) A person who employs one or more employees in this state shall pay the employees who are exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 at least once per month and shall pay all other employees at least semimonthly.~~

~~(b) In this article, "person" means an individual, corporation, organization, partnership, association, or any other private legal entity. The term does not include the state or a political subdivision of the state.]~~

SECTION 3.02. Section 4(c), Texas Minimum Wage Act (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Except with respect to employment of persons in agriculture, employers who are not subject to liability for payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act, as amended, are exempt from the provisions of this Act.

Upon written request, the *Texas Employment Commission* [~~Commissioner of Labor and Standards~~] shall furnish to any person applying therefor, a certificate stating whether or not a specified employer is an employer in this state who is liable for the payment of contributions to the Unemployment Compensation Fund under the provisions of the Texas Unemployment Compensation Act. [~~The Texas Employment Commission shall provide the Department of Labor and Standards with such certificate upon request by the Department of Labor and Standards.~~] The certificates shall be admissible in evidence in any cause of action brought by an employee or employees under the provisions of Section 13 of this Act, and, in the absence of evidence to the contrary, it shall be presumed that the facts stated in such certificates are true and the certificate shall be conclusive as to the issue of whether or not the named employer is exempt from the provisions of this Act under Section 4(c). The *Texas Employment Commission* [~~Commissioner of Labor and Standards~~] may require payment of a fee not to exceed \$5

for the issuance of a certificate as provided in this section and all fees collected for issuing certificates shall be deposited in the State Treasury to the credit of the General Revenue Fund. ~~[The issuance of a certificate by the Texas Employment Commission under this subsection and reimbursement for the administrative expenses incurred by that commission in providing the certificate are subject to the terms of an interagency agreement entered into between the Texas Department of Labor and Standards and the Texas Employment Commission.]~~

SECTION 3.03. Section 7(h), Texas Minimum Wage Act (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) After the establishment of any piece rate or rates the order establishing same shall be kept on file in the office of the commissioner in Austin, Texas, and shall be available for public inspection. The commissioner shall make copies available to anyone on request and may charge a reasonable amount to cover the cost of making and distributing the copies. A copy of each order establishing a piece rate or rates shall be furnished by the commissioner to the Texas *Employment Commission* ~~[Department of Labor and Standards]~~.

SECTION 3.04. Section 15, Texas Minimum Wage Act (Article 5159d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 15. DISSEMINATION OF INFORMATION. The Texas *Employment Commission* ~~[Department of Labor and Standards]~~ shall disseminate information to the public regarding the provisions of this Act to the end that both employers and employees in this state will be fully aware of their respective rights and responsibilities, the exemptions specified, and the penalties and liabilities which may be incurred for violations of the provisions of this Act.

SECTION 3.05. Section 2, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. DEFINITIONS. In this Act:

(1) "Child" means an individual under 18 years of age.

(2) "*Commission*" ~~["Commissioner" means the commissioner of labor and standards,~~

~~(3) "Department" means the Texas *Employment Commission* [Department of Labor and Standards].~~

(3) [(4)] "Person" means an individual, corporation, partnership, unincorporated association, or other legal entity.

SECTION 3.06. Section 3, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. MINIMUM AGE. Except as provided by this Act or by a rule of the *commission* ~~[commissioner of labor and standards]~~, a person commits an offense if that person employs a child under 14 years of age.

SECTION 3.07. Section 4, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. RULEMAKING. The *commission* ~~[commissioner of labor and standards]~~ may adopt rules necessary to promote the purpose of this Act. Except as expressly authorized by this Act, a rule may not permit the employment of a child under 14 years of age.

SECTION 3.08. Section 6, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. HARDSHIP. [(a)] The *commission* ~~[commissioner]~~ may adopt rules to determine whether a hardship exists in the case of an individual child.

~~[(b) The department may determine whether a hardship exists in the case of an individual child under the rules adopted by the commissioner.~~

[(c)] If the *commission* ~~[department]~~ determines that a hardship exists in the case of an individual child, Sections 5(a), (b), and (c) of this Act do not apply in that case.

SECTION 3.09. Section 7(a), Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The *commission or its designee* [~~commissioner or any deputy or inspector of the commissioner~~] may, during working hours, inspect a place where there is good reason to believe a child is employed and collect information concerning the employment of a child who works at that place.

SECTION 3.10. Sections 8(a) and (b), Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) If the *commission determines* [~~commissioner finds~~] that any occupation is particularly hazardous for the employment of a child and that occupation has been declared to be hazardous by an agency of the federal government, the *commission* [~~commissioner~~] by rule shall declare that occupation to be hazardous.

(b) The *commission* [~~commissioner~~] by rule may restrict the employment of children 14 years of age or older in hazardous occupations.

SECTION 3.11. Sections 9(a), (b), and (c), Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A child who is at least 14 years of age may apply to the *commission* [~~department~~] for a certificate of age.

(b) When applying for a certificate of age, a child must present documentary proof of age that the *commission* [~~department~~] finds necessary.

(c) After the *commission* [~~department~~] has approved a child's documentary proof of age, the *commission* [~~department~~] shall issue to the child a certificate stating the date of birth of the child.

SECTION 3.12. Section 10, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. ACTORS. The *commission* [~~commissioner~~] by rule may authorize the employment of a child under 14 years of age as an actor or performer in a motion picture or in a theatrical, radio, or television production.

SECTION 3.13. Sections 11(a) and (c), Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) This Act does not apply to employment of a child who is:

(1) employed in a nonhazardous occupation under the direct supervision of the child's parent or an adult having custody of the child in a business or enterprise owned or operated by the parent or custodian;

(2) engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the *commission* [~~department~~];

(4) employed in agriculture during a period of time when the child is not legally required to be attending school;

(5) employed through a rehabilitation program supervised by a county judge; or

(6) engaged in casual nonhazardous employment with parental consent or the consent of an adult having custody of such child which will not endanger the safety, health, or well-being of such child.

(c) The *commission* [~~commissioner~~] by rule may define nonhazardous casual employment which the *commission* [~~commissioner~~] determines is dangerous to the safety, health, or well-being of a child.

SECTION 3.14. Section 6, Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DEFINITIONS. In this Act:

(1) "Contract" means an agreement by which one becomes a member of a health spa.

(2) [~~"Department" means the Texas Department of Labor and Standards.~~

[(3)] "Facilities" means equipment, physical structures, improvements, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business, including but not limited to saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

(3) [(4)] "Health spa" means a business primarily involved in the sale of memberships that provides the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise. The term does not include an organization that is tax exempt under 26 U.S.C. 501 et seq., a private club owned and operated by its members, an entity primarily operated for the purpose of teaching dance or aerobic exercise, an entity primarily engaged in physical rehabilitation activity related to an individual's injury or disease, an individual or entity engaged in an activity authorized under a valid license issued by this state, or an activity conducted or sanctioned by a school operating under the Education Code.

(4) [(5)] "Member" means a person entitled to the benefits of membership in a health spa.

(5) [(6)] "Membership" means the status under a contract between an individual and a health spa that entitles the individual to the use of services or facilities of the health spa.

(6) [(7)] "Person" means an individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

(7) [(8)] "Prepayment" means a payment for all services or for the use of facilities made by members of a health spa before the first day the services or facilities are made available to the members.

(8) [(9)] "Purchaser" means a person who purchases a health spa membership.

(9) [(10)] "Seller" means a person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

(10) [(11)] "Services" means programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

SECTION 3.15. Sections 8(a), (d), and (e), Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) A health spa shall file a registration statement with the *secretary of state* [~~department~~] before offering for sale or selling memberships in this state. *The health spa shall file a separate registration statement for each location at which the health spa operates.* The registration statement must contain:

(1) the name and address of the health spa;

(2) the name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the health spa;

(3) the type of available or proposed facilities and services *offered at that location;* and

(4) the approximate size of the health spa *location* measured in square feet.

(d) Each health spa registering under this section shall maintain a copy of the registration statement *filed for each location* in the *records* [~~files~~] of the health spa. The health spa shall allow a current member or a prospective purchaser of a membership to inspect a [~~the~~] registration statement on request.

(e) The *secretary of state* [~~department~~] may charge each health spa that files a registration statement [~~with the department~~] a reasonable fee not to exceed \$100 to cover the cost of filing. The *secretary of state* [~~department~~] may not require a health spa to provide information other than that provided in the registration statement.

SECTION 3.16. Sections 9(a) and (d), Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (e) of this section, a health spa or its assignee or agent that accepts prepayments for its memberships shall deposit all of the funds received as prepayments in an escrow account established with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, which shall hold the funds as escrow agent for the benefit of the members that prepay. The health spa shall deposit prepayments received at least as often as biweekly and shall make the first deposit not later than the 14th day after the day on which the spa accepts the first prepayment. Not later than the 14th day after the day on which the first prepayment is received, the spa shall give the *secretary of state* [~~department~~] a notarized statement that identifies the financial institution in which the prepayments are held in escrow and the name in which the account is held. The prepayments shall be held in escrow until the 30th day after the date that the health spa fully opens for business.

(d) If the health spa remains open for 30 days after the date the health spa initially fully opens for business, the health spa may withdraw the escrowed funds at its discretion if the health spa files an affidavit with the *secretary of state* [~~department~~] certifying that all obligations of the health spa for which a lien could be claimed under Chapter 53, Property Code, have been paid and if no person is eligible to claim a lien under that chapter during the period the health spa accepts prepayments.

SECTION 3.17. Section 10, Health Spa Act (Article 52211, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. SECURITY. (a) ~~Not later than~~ [~~Except as provided by Subsection (d) of this section, on or before~~] the 30th day ~~before~~ [~~after~~] the date a health spa opens a location [~~its facilities~~] for the use of its members, the health spa shall file with the *secretary of state* [~~department~~] a surety bond issued by a surety company licensed to do business in this state, or, in lieu of and in equal amount to the bond, a security deposit in the form of a certificate of deposit, letter of credit, or other negotiable instrument issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The bond [~~certificate of deposit, letter of credit,~~] or other security deposit [~~instrument~~] shall be payable in favor of the state and shall be held for the benefit of any members of the health spa who suffer financial losses due to the insolvency or cessation of operation of the health spa. "Financial losses" shall mean and be limited to any unused or unearned portion of such member's dues or fees. Such a member may bring an action based on the bond and recover against the surety regardless of the number of claimants or claims filed against the bond, but the liability of the surety may not exceed the aggregate amount of the bond. If the claims filed against the bond exceed the amount of the bond, the surety shall pay the amount of the bond to the *secretary of state* [~~department~~] for distribution to the claimants on a pro rata basis. The surety is relieved of liability under the bond on payment of the amount to the *secretary of state* [~~department~~].

(b) The amount of the security required under Subsection (a) of this section is [~~20 percent of the total value of the prepayments received by the health spa. However, the amount of the security may not be less than~~] \$20,000 [~~or more than \$50,000~~]. ~~If a claim is paid from the bond or other security deposit, the health spa must post additional security, not later than the 20th day after the date on which the claim is paid, to restore the amount of the security to \$20,000.~~

(c) The health spa shall maintain the bond or other security deposit in the amount provided in Subsection (b) of this section in effect for two years after the date on which the health spa ceases business or until the *secretary of state* determines that each claim to which the bond or other security deposit is subject has been satisfied or foreclosed by law [~~security is filed with the department. Thereafter, the health spa shall continuously maintain security in the amount of \$5,000~~].

(d) [~~A health spa is exempt from the security requirements of this section if the owner of the health spa owns at least one other spa in this state which has operated at one location for at least the two years preceding the effective date of this Act and against~~

~~which none of its members have initiated litigation or filed a complaint with any governmental authority in this state relating to the failure to open or the closing of the health spa. An owner of a health spa is not subject to the security requirements of this section because of litigation or a complaint based on the closing of a health spa if that closing was caused by a fire, flood, or other natural disaster and if the closing is temporary and does not exceed one month. An owner is not subject to the security requirements of this section because of litigation or a complaint based on the closing of a health spa if that closing is due to the relocation of the spa to a site not more than 10 miles from the original location and if the time elapsed between closing the spa at the old location and reopening at the new location does not exceed one month.~~

~~(e)~~ The following provisions shall be applicable to all bonds issued hereunder:

(1) Regardless of the number of years the bond shall continue in force or the number of premiums payable or paid, the limit of the surety's liability stated in the bond shall not be cumulative from year to year or period to period.

(2) The surety shall not be liable through a bond for punitive damages or for civil or criminal penalties assessed against a health spa, its individual owners, or its employees.

(3) The bond written by a surety hereunder shall be continuous until cancelled by the surety or terminated by the health spa only upon giving 90 days prior notice to the *secretary of state* ~~[department]~~ of such cancellation.

(4) A surety hereunder shall not be liable for any claim brought or suit filed against a bond if the claim or filing of a suit occurs more than two years from the last effective date of the bond.

SECTION 3.18. Section 17(c), Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) A health spa may not fail or refuse to:

(1) file or update the registration *statements* ~~[statement]~~ required by Section 8 of this Act;

(2) establish the escrow account required by Section 9 of this Act; or

(3) maintain the security required by Section 10 of this Act in full force and effect.

SECTION 3.19. Section 19(a), Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If a member is injured as a result of an unlawful act or practice by the seller, the member may bring an action against the seller in a court of competent jurisdiction in *Travis County*, the county in which the seller resides, the county in which the seller has his principal place of business, a county in which the seller is doing business, the county in which the member resides, or the county in which the transaction occurred. The court may award actual damages and equitable relief as it considers necessary or proper. A member may obtain punitive damages in an appropriate case.

SECTION 3.20. Section 222.003, Property Code, as added by S.B. 221, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 222.003. DEFINITIONS. In this chapter:

(1) "Advertising" means a direct or indirect solicitation or inducement to purchase and includes but is not necessarily limited to a solicitation or inducement made by print or electronic media, through the mail, or by personal contact.

(2) "Amenities" means all common areas of real property occupied by a membership camping resort and includes but is not necessarily limited to camping sites, swimming pools, stables, tennis courts, recreation buildings, restrooms and showers, laundry rooms, trading posts, grocery stores, and maintenance facilities.

(3) "Blanket encumbrance" means a mortgage, deed of trust, option to purchase, or vendor's lien, an interest obtained under a contract or agreement of sale, or other financing lien or encumbrance granted by an operator that secures or evidences the obligation to pay money or to sell or convey any campgrounds located in this state that are made available to purchasers by the operator, and that authorizes, permits, or requires the foreclosure or other disposition of the affected campground.

- (4) "Business day" means any day other than a Saturday, Sunday, or federal holiday.
- (5) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, recreational vehicle, or similar device designed for camping.
- (6) ~~"Commissioner" means the commissioner of the Texas Department of Labor and Standards or that official's designee.~~
- ~~(7)~~ "Dispose" or "disposition" means a voluntary transfer of any membership interest or membership right but does not include the transfer or release of a real estate lien or of a security interest.
- (7) ~~(8)~~ "Home resort" means the camping resort to which the purchaser has purchased a right of membership. The term does not include a resort that a purchaser may use as a result of a reciprocal program among operators.
- (8) ~~(9)~~ "Membership camping contract" means an agreement under which a purchaser pays for or becomes obligated to pay for a membership interest or membership right in a membership camping resort.
- (9) ~~(10)~~ "Membership camping contract broker" means a person who resells a membership camping contract to a new purchaser on behalf of the former purchaser. The term does not include a membership camping operator or that person's agent.
- (10) ~~(11)~~ "Membership camping resort disclosure statement" means a written statement that includes the information that is required by Section 222.006(b).
- (11) ~~(12)~~ "Membership camping resort" means real property owned or operated by a membership camping operator that is available for camping by purchasers of a membership right.
- (12) ~~(13)~~ "Membership interest" means a membership camping resort estate.
- (13) ~~(14)~~ "Membership right" means a license, contract right, or other right entitling a purchaser to use camping sites or amenities at a membership camping resort.
- (14) ~~(15)~~ "Offering" or "offer" means any advertisement, inducement, or solicitation and includes but is not necessarily limited to any attempt to encourage a person to purchase a membership interest or membership right.
- (15) ~~(16)~~ "Operator" means a person who owns or provides a camping site or an amenity to a purchaser. The term does not include:
- (A) a person who owns or otherwise provides a mobile home park or a camping or recreational trailer park open to the general public with camping sites that are rented on a fee for use basis and who does not solicit purchases of membership camping contracts; or
- (B) an outdoor service, facility, enterprise, or park that is owned or operated by or under the control of the United States, this state, or a political subdivision of this state.
- (16) ~~(17)~~ "Promotion" means any program or activity that is used to induce any person to attend a membership camping resort sales presentation.
- (17) ~~(18)~~ "Promotional disclosure statement" means a written statement that includes the information required by Section 222.006(a).
- (18) ~~(19)~~ "Purchaser" means a person, other than an operator, seller, or broker, who by means of voluntary transfer acquires a membership interest or membership right in a membership camping resort other than as security for an obligation.
- (19) ~~(20)~~ "Reciprocal company" means any person, including an operator, who operates a reciprocal program.
- (20) ~~(21)~~ "Reciprocal program disclosure statement" means a written statement that includes the information required by Section 222.006(c).
- (21) ~~(22)~~ "Reciprocal program" means any program under which the purchaser of a membership interest or membership right in a membership camping resort may use

the facilities of a membership camping resort other than those of the purchaser's home resort.

(22) [(29)] "Seller" means a person, including an operator, who in the ordinary course of business offers a membership interest or membership right for sale to the public but does not include a person who acquires a membership interest or membership right for his use and subsequently offers it for resale.

SECTION 3.21. Section 222.004, Property Code, as added by S.B. 221, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 222.004. REGISTRATION; ADMINISTRATION. (a) A person may not offer or dispose of a membership interest or membership right under a membership camping contract in this state unless the operator is registered with the *secretary of state* [commissioner]. If an operator also sells membership camping contracts, that operator must also comply with the registration requirements for membership camping contract brokers imposed by Section 222.005.

(b) A registration filed under this section must be on a form prescribed by the *secretary of state* [commissioner] and must include, to the extent applicable, the following information:

(1) the operator's name, address, and the organizational form of the operator's business, including the date and jurisdiction under which the business was organized, the name and address of each of its officers in this state, and the name and address of each membership camping resort located in this state that is owned or operated in whole or in part by the operator;

(2) a list of all owners of 10 percent or more of the capital stock of the operator's business if the operator is not required to report under the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78a et seq.);

(3) a brief description and certified copy of the instrument creating the operator's ownership of or other right to use the membership camping resort and the amenities that are to be available for use by purchasers, together with a copy of any lease, license, franchise, reciprocal agreement, or other agreement entitling the operator to use the membership camping resort and the amenities, and any material provision of the agreement that restricts a purchaser's use of the membership camping resort or the amenities;

(4) a sample copy of each instrument to be delivered to a purchaser to evidence the purchaser's membership in the membership camping resort and a sample copy of each agreement that a purchaser is required to execute;

(5) financial statements of the operator for the most recent fiscal quarter;

(6) a narrative description of the promotional plan for the offering of membership interests or membership rights;

(7) a copy of any agreement between the operator and any person owning, controlling, or managing the membership camping resort;

(8) a complete list of the locations and addresses of any sales offices located in this state;

(9) the names of any other states or foreign countries in which a registration of the operator or the membership camping contract has been filed;

(10) complete information concerning any adverse order, judgment, or decree entered by any court or administrative agency in connection with a membership camping resort operated by the operator or in which the operator had an interest at the time of the order, judgment, or decree;

(11) a description of any blanket encumbrance on the membership camping resort; and

(12) a membership camping resort disclosure statement and any required reciprocal program disclosure statement required by Section 222.006.

(c) The registration must be signed by the operator, by an officer or general partner of the operator, or by another person who holds a power of attorney for this purpose from

the operator. If the registration is signed under a power of attorney, a copy of the power of attorney must be included with the registration. The registration must be submitted with the registration fee set by the *secretary of state* [~~commissioner~~] pursuant to Section 222.010.

(d) The operator shall promptly file amendments to the registration reporting to the *secretary of state* [~~commissioners~~] any material and adverse change in any document contained in such registration. For the purposes of this subsection, a material and adverse change includes any change that significantly reduces or terminates either the applicant's or a purchaser's right to use the membership camping resort or any of the amenities described by the membership camping contract but does not include minor changes covering the use of the membership camping resort, its amenities, or any reciprocal program.

(e) The *secretary of state* [~~commissioner~~] shall investigate all matters relating to the registration and may in his discretion require a personal inspection of the proposed membership camping resort by any persons designated by him.

(f) The *secretary of state* [~~commissioner~~] may prescribe and publish forms necessary to carry out the provisions of this chapter. The *secretary of state* [~~commissioner~~] may not approve or disapprove any registration, and an operator may not represent to any person that the *secretary of state* [~~commissioner~~] endorses or approves the membership camping resort or membership camping contract.

SECTION 3.22. Sections 222.005(a), (c), (d), and (e), Property Code, as added by S.B. 221, Acts of the 71st Legislature, Regular Session, 1989, are amended to read as follows:

(a) A person may not offer a membership interest or membership right in a membership camping resort or resell membership camping contracts in this state unless the person is registered with the *secretary of state* [~~commissioner~~]. Each application for registration as a seller or membership camping contract broker must be in writing and must be signed by the applicant.

(c) The *secretary of state* [~~commissioner~~] may require any additional information that is reasonably necessary to determine the good moral character of an applicant for registration.

(d) Each application for registration as a seller or membership camping contract broker must be accompanied by the required registration fee set by the *secretary of state* [~~commissioner~~] pursuant to Section 222.010.

(e) The *secretary of state* [~~commissioner~~] may prescribe and publish forms to carry out the provisions of this section.

SECTION 3.23. Section 222.010, Property Code, as added by S.B. 221, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

Sec. 222.010. FEES. (a) The *secretary of state* [~~commissioner~~] shall set all fees imposed by this chapter in amounts reasonable and necessary to cover the costs of administering this chapter.

(b) The *secretary of state* [~~commissioner~~] shall deposit all fees received under this chapter in the state treasury to the credit of a special fund to be used in the administration of this chapter.

SECTION 3.24. Section 222.011(a), Property Code, as added by S.B. 221, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows: (a) A person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b), Section 17.46, Deceptive Trade Practices-Consumer Protection Act (Section 17.46, Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a membership interest or membership right required by Section 222.006;

(2) failing to provide a purchaser with a copy of the membership camping contract and any other document signed by the purchaser or the operator in connection with the purchase of a membership interest or membership right;

- (3) making false or misleading statements of a material nature concerning camping sites or amenities available to the purchaser;
- (4) predicting specific or immediate increases in the value of a membership interest or membership right without a reasonable basis for such predictions;
- (5) making false or misleading statements of a material nature concerning the conditions under which a purchaser of a membership interest or membership right may use or occupy other membership camping resort camping sites or amenities;
- (6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with intent not to award that prize, gift, or other benefit;
- (7) representing that registration with the *secretary of state* [~~commissioner~~] under Section 222.004 constitutes approval or endorsement by the *secretary of state* [~~commissioner~~] of the operator, the membership camping contract, or the membership camping resort;
- (8) offering or disposing of a membership interest or membership right under a membership camping contract without having complied with the registration requirements under Section 222.004; and
- (9) offering for sale a membership interest or membership right in a membership camping resort without having complied with the registration requirements under Section 222.005.

ARTICLE 4. CONFORMING AMENDMENTS

SECTION 4.01. Section 441.036(b), Government Code, is amended to read as follows:

(b) This section applies to the state auditor, State Board of Barber Examiners, State Purchasing and General Services Commission, Texas Cosmetology Commission, Texas State Board of Medical Examiners, Board of Pardons and Paroles, Board of Regents, Texas State University System, Texas Department of *Licensing and Regulation* [~~Labor and Standards~~], comptroller of public accounts, Court of Appeals for the Third Court of Appeals District, governor, Texas Department of Health, State Board of Insurance, Legislative Budget Board, Parks and Wildlife Commission, Railroad Commission of Texas, Texas Real Estate Commission, secretary of state, State Securities Board, Teacher Retirement System of Texas, Central Education Agency, Texas State Library, Texas Water Commission, and the state treasury department.

SECTION 4.02. Section 11.432(a), Tax Code, is amended to read as follows:

(a) For a manufactured home to qualify for an exemption under Section 11.13 of this code, the application for the exemption must be accompanied by a copy of a document of title to the manufactured home issued by the *commissioner of licensing and regulation* [~~Texas Department of Labor and Standards~~] under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), showing that the individual applying for the exemption is the owner of the manufactured home.

SECTION 4.03. Section 21.25, Tax Code, is amended to read as follows:

Sec. 21.25. EXEMPTION. The requirement by this subchapter of a record and report of movement of a mobile home in this state does not apply to a move that begins outside this state and ends outside this state nor to any move which is reported to the *Texas Department of Licensing and Regulation* [~~Labor and Standards~~] by a registrant pursuant to the provisions of the Texas Manufactured Housing Standards Act and rules and regulations issued pursuant thereto.

SECTION 4.04. Section 32.014(a), Tax Code, as added by Section 2, Chapter 633, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(a) A tax lien to secure the payment of a tax and any penalties and interest imposed on a manufactured home does not attach to the real property on which the manufactured home is located, even if the manufactured home is affixed to the real property by installation on a permanent foundation, if on the January 1 on which the tax is imposed, the manufactured home is subject to a lien of record on a document of title issued on the

manufactured home by the *commissioner of licensing and regulation* [~~Texas Department of Labor and Standards~~].

SECTION 4.05. Sections 32.015(a), (b), (c), and (e), Tax Code, are amended to read as follows:

(a) The collector for a taxing unit may file notice of the unit's tax lien on a manufactured home with the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] if the tax has not been paid by January 31 of the year following the year for which the tax is assessed. The notice must include:

- (1) the name and address of the owner of the manufactured home; and
- (2) the amount of tax owed, the tax year for which the tax was imposed, and the name of the taxing unit that imposed the tax; and
- (3) the correct identification number of the manufactured home.

(b) The collector may simultaneously file notice of tax liens of all the taxing units served by the collector. However, notice of any lien for taxes for the prior calendar year must be filed with the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] prior to May 1 of the following year. Any lien for which the notice is not filed by such date is extinguished and is not enforceable.

(c) If the information on the tax lien notice matches that of the title of record, the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] shall record a tax lien notice filed under this section and shall thereafter indicate the existence of the lien on any document of title for the manufactured home issued by the *commissioner of licensing and regulation* [~~department~~] under Section 19, Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes), until the collector for the taxing unit files a notice under Subsection (e) of this section canceling the notice. Simultaneously with the recording of a tax lien, the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] must mail a notice of the tax lien to any other lienholders of record.

(e) If a tax lien for which notice has been filed under this section ceases to exist, the collector for the taxing unit shall file a notice with the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~] stating that the lien no longer exists. The collector shall file the notice not later than the 10th day after the date of payment of the taxes subject to the lien.

SECTION 4.06. Section 158.152, Tax Code, is amended to read as follows:

Sec. 158.152. LIEN. The state has a lien on each new manufactured home installed for use and occupancy in this state for the collection and payment of the tax imposed by this chapter if the tax has not been set forth on the invoice or bill of sale on the initial sale and paid to the manufacturer by the retailer or other person to whom or for whom the manufactured home is sold, shipped, or consigned. The lien shall be filed with the county clerk of the county of this state in which such new manufactured home is installed for use and occupancy. In addition, the lien shall be filed and recorded with the Texas Department of *Licensing and Regulation* [~~Labor and Standards~~].

SECTION 4.07. Subsection A, Section 2.01, Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), is amended to read as follows:

A. Except as hereinafter in this Article expressly excluded herefrom, non-profit corporations may be organized under this Act for any lawful purpose or purposes, which purposes shall be fully stated in the articles of incorporation. Such purpose or purposes may include, without being limited to, any one or more of the following: charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural and horticultural; and the conduct of professional, commercial, industrial, or trade associations; and animal husbandry. Subject to the provisions of Chapter 2, Title 83, of the Revised Civil Statutes of Texas, 1925, and of such Chapter or any part thereof as it may hereafter be amended, a corporation may be organized under this Act if any one or more of its purposes for the conduct of its affairs in this State is to organize laborers, working men, or wage earners to protect themselves in their various pursuits. [~~Provided, however, that no articles of incorporation~~

~~shall be issued hereafter to laborers, working men or wage earners, or amendment granted to a charter or articles of incorporation of a corporation previously created to organize laborers, working men or wage earners, or that may be created hereafter under this Act to organize laborers, working men or wage earners, by the Secretary of State to any person, association or corporation for such purposes without an investigation first having been made by the Labor Commissioner concerning such application and a favorable recommendation made thereon by said Labor Commissioner to the Secretary of State. No investigation or recommendation by the Labor Commissioner shall be required or made of applications from farmers for articles of incorporation.]~~

(1) Charitable corporations may be formed for the purpose of operating a Dental Health Service Corporation which service corporation will manage and coordinate the relationship between the contracting dentist, who will perform the dental services, and the patient who will receive such services where such patient is a member of a group which has contracted with the Dental Health Service Corporation to provide dental care to members of that group. An application for a charter under this Section shall have attached as exhibits (1) an affidavit by the applicants that not less than thirty percent (30%) of the dentists legally engaged in the practice of dentistry in this state together with their names and addresses have signed contracts to perform the required dental services for a period of not less than one (1) year, after incorporation, and (?) a certification by the Texas State Board of Dental Examiners that the applicant incorporators are reputable citizens of the State of Texas and are of good moral character and that the corporation sought to be formed will be in the best interest of the public health. A corporation formed hereunder shall have not less than twelve (12) directors, nine (9) of whom shall be dentists licensed by the Texas State Board of Dental Examiners to practice dentistry in this state and be actively engaged in the practice of dentistry in this state. A corporation formed hereunder shall maintain not less than thirty percent (30%) of the number of dentists actually engaged in the practice of dentistry in this state as participating or contracting dentists, and shall file with the Texas State Board of Dental Examiners each September the names and addresses of all contracting or participating dentists. A corporation formed hereunder shall not (1) prevent any patient from selecting the licensed dentist of his choice to render dental services to him, (2) deny any licensed dentist the right to participate as a contracting dentist to perform the dental services contracted for by the patient, (3) discriminate among patients or licensed dentists regarding payment or reimbursement for the cost of performing dental services provided the dentist is licensed to perform the dental service, or (4) authorize any person to regulate, interfere, or intervene in any manner in the diagnosis or treatment rendered by a licensed dentist to his patient. A corporation formed hereunder may require the attending dentist to provide a narrative oral or written description of the dental services rendered for the purpose of determining benefits or providing proof of treatment. Diagnostic aids used in the course of treatment may be requested by the corporation, but may not be required for any purpose.

SECTION 4.08. Section 10, Chapter 42, Acts of the 42nd Legislature, 3rd Called Session, 1932 (Article 1524k, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. If any agent, servant, officer or employee of any corporation created under the provisions of this Act shall wilfully violate any order, rule, regulation or ordinance fixing rents, charges, rate of return, areas and method of operation, the District Court of the County in which the property of such corporation is situated, upon application of the governing body of the municipality or county, where the properties to be owned or operated are situated outside the corporate limits of any organized town, city or village wherein the corporation owns property [or upon application of any Labor Inspector employed by the State of Texas when authorized to so act by the Commissioner of Labor Statistics of the State of Texas], may issue during its term or in vacation a temporary writ of injunction restraining such agents, servants, officers or employees from any violation of such order, rule, regulation or ordinance and which temporary writ of injunction may be made permanent upon notice and hearing in the manner now provided by law. No bond shall be required before issuing any such temporary or permanent injunction and if any such injunction is violated by the agents, servants, officers or

employees of said corporation, the Court, in addition to its power to punish for contempt, may order that the building of such corporation shall not be used or occupied for any period not to exceed one year but the Court shall permit said building to be occupied or used if the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety to be provided by the Court in the sum of not less than Five Hundred (\$500.00) Dollars nor more than One Thousand (\$1,000.00) Dollars, payable to the Judge of said Court, conditioned that said corporation, its agents, servants, officers or employees will thereafter comply with the orders, rules, regulations or ordinances which have been or may be promulgated, fixing the rents, charges, or rate of return, areas and methods of operation of said corporation and that it will pay all fines and costs that may be assessed in contempt proceedings against its agents, servants, officers and employees for the violation of any writ of injunction existing, or which may thereafter be issued.

SECTION 4.09. Section 3(8), Chapter 6A, Title 79, Revised Statutes (Article 5069-6A.03, Vernon's Texas Civil Statutes), is amended to read as follows:

(8) In a transaction not involving real estate, no documentary fee for the preparation of credit documents shall be charged to the consumer and the only official fees which can be charged to the consumer are (i) the title fee and (ii) the installation fee, both as set by the *Texas Commission of Licensing and Regulation* [~~Commissioner of the Department of Labor and Standards~~], and (iii) the permit fee for highway movement to the installation site as paid to the State Department of Highways and Public Transportation.

SECTION 4.10. Article 16.06(1), Business Opportunity Act (Article 5069-16.01 et seq., Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Business opportunity" does not include:

(A) the sale or lease of an established and ongoing business or enterprise, whether comprised of one or more than one component businesses or enterprises, where the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of such business or enterprise or liquidation thereof; [or]

(B) any contract or agreement by which a retailer of goods or services sells the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining the retail business establishment as a department or division thereof; [or]

(C) transactions regulated by the Texas Motor Vehicle Commission, Texas Department of *Licensing and Regulation* [~~Labor and Standards~~], State Board of Insurance, or the Texas Real Estate Commission when engaged in by persons licensed by such agencies; [or]

(D) real estate syndications; [or]

(E) a sale or lease to an existing or beginning business enterprise which also sells or leases equipment, products, and supplies or performs services (1) which are not supplied by the seller and (2) which the purchaser does not utilize with the equipment, products, supplies, or services of the seller; or

(F) any contract or agreement defined as a "product or package franchise" under the then current Federal Trade Commission regulations entitled Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (16 Code of Federal Regulations Section 436) if the franchisor complies in all material respects in the State of Texas with the disclosure requirements and prohibitions concerning franchising in such Federal Trade Commission regulations. Any alternative franchise disclosure statements permitted by the Federal Trade Commission may be used in lieu of its franchise disclosure requirements. This subsection applies provided that prior to offering for sale or selling a franchise in this state, a person files a notice with the secretary of state, along with any reasonable fee that may be charged by the secretary of state to cover the costs incurred as a result of this filing. The form of the notice shall be prescribed by the secretary of state and shall require only the name of the franchisor, the name under which the franchisor intends to do business, and the franchisor's principal business address.

SECTION 4.11. Section 7(a), Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) For purposes of establishing a safety classification for employers, the board is authorized, empowered, and directed to secure medical and compensation costs data regularly compiled by the State Board of Insurance in carrying out its rate-making duties and functions with respect to the employers' liability and workers' compensation insurance law ~~to obtain from the commissioner of the Texas Department of Labor and Standards such statistical details as are collected by that department]~~ and to collect and compile information relating to employers' accident frequency rate, existence and implementation of private safety programs, man-hour losses due to injuries, and other facts reflecting accident experience and, based upon all such factors to separate employers into such classifications as the board deems appropriate in order to carry out the purposes of this Act.

SECTION 4.12. Section 12, Texas Unemployment Compensation Act (Article 5221b-10, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. (a) ~~The Texas State Employment Service is, as provided for under Act of the Forty-fourth Legislature, Regular Session, Chapter 236, page 552, is hereby transferred to the Commission as]~~ a division of the *Texas Employment Commission* [thereof]. The Commission, through such division, shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this Act, and for purposes of performing such duties, as are within the purview of the Act of Congress entitled "An Act to provide for the establishment of a national employment system and for cooperation with the States in the promotion of such system and for other purposes," approved June 6, 1933, (48 Stat. 113; U.S.C., Title 29, Section 49(c)) as amended. It shall be the duty of the Commission to cooperate with any official or agency of the United States having powers or duties under the provisions of the said Act of Congress, as amended, and to do and perform all things necessary to secure to this State the benefits of the said Act of Congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said Act of Congress, as amended, are hereby accepted by this State in conformity with Section 4 of said Act, and this State will observe and comply with the requirements thereof. The Texas Employment Commission is hereby designated and constituted the agency of this State for the purposes of said Act.

(b) Financing: All monies received by this State under the said Act of Congress, as amended, shall be paid into the special "Employment Service Account" in the Unemployment Compensation Administration Fund, and said monies are hereby made available to the Texas *Employment* [Unemployment Compensation] Commission to be expended as provided by this Section and by said Act of Congress ~~and any unexpended balance of funds appropriated or allocated either by the State of Texas or the Federal Government to the Texas State Employment Service as a division of the Bureau of Labor Statistics, is hereby, upon the passage of this Act, transferred to the special "Employment Service Account" in the Unemployment Compensation Administration Fund]. For the purpose of establishing and maintaining free public employment offices, the Commission is authorized to enter into agreements with any political subdivision of this State or with any private, and/or non-profit organization, and as a part of any such agreement the Commission may accept monies, services, or quarters as a contribution to the special "Employment Service Account."~~

~~[(c) Invalidity of Transfer: In the event that this Act, or any section thereof, in so far as the same shall affect the Texas State Employment Service, shall be held or declared unconstitutional or invalid, then in that event Chapter 236, page 552, Acts of the Regular Session of the Forty-fourth Legislature establishing the Texas State Employment Service shall be and remain in full force and effect as it was prior to the passage of this Act.]~~

SECTION 4.13. Section 3(a), Chapter 873, Acts of the 69th Legislature, Regular Session, 1985 (Article 6252-28, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The State Employee Incentive Commission is created. The commission is composed of the state auditor, the comptroller of public accounts, the state treasurer, the agency administrator of the Texas Employment Commission, the *commissioner* [~~executive director~~] of *licensing and regulation* [~~the Texas Department of Labor and Standards~~], the executive director of the Legislative Budget Board, and three public members who must have experience in the administration of incentive programs and other related programs used in private industry. The governor, lieutenant governor, and speaker of the house of representatives shall each appoint one public member for a two-year term. A vacancy in the term of a public member shall be filled by the official who made the original appointment.

SECTION 4.14. Section 5i(c), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The department shall issue license plates under this section to a tow truck owner who:

- (1) applies to the county tax collector in the county of the owner's residence on a form approved by the department;
- (2) submits with the application a certified copy of the certificate of registration issued by the *commissioner of licensing and regulation* [~~Texas Department of Labor and Standards~~] for that tow truck; and
- (3) pays the fee prescribed by Subsection (e) of this section.

SECTION 4.15. Section C(1), Article 6701-¹/₂, Revised Statutes, is amended to read as follows:

- (1) The State Department of Highways and Public Transportation shall only issue permits to persons registered as manufacturers or retailers with the *commissioner of licensing and regulation* [~~Texas Department of Labor and Standards~~] or certificated for the transportation of manufactured housing by the Railroad Commission of Texas or the Interstate Commerce Commission except as otherwise expressly authorized by this section. The registration number or the certificate number of the person to whom the permit is issued shall be affixed to the rear of the manufactured home during transportation with letters and numbers which are at least eight (8) inches in height.

ARTICLE 5. REPEALER

SECTION 5.01. The following laws are repealed:

(1) Articles 5144, 5144a, 5145, 5145a, 5146, 5147, 5147a, 5148, 5148a, 5149, 5150, 5150a, 5151, 5151b, 5151c, 5156, 5157, 5158, 5159, 5173, 5174, 5175, 5179, 5179a, 5180, 5892, 5901, 5901a, 5901b, 5902, 5903, 5904, 5904a, 5905, 5905a, 5906, 5906a, 5907, 5907a, 5908, 5908a, 5909, 5909a, 5910, 5910a, 5911, 5911a, 5912, 5912a, 5913, 5913a, 5914, 5914a, 5914b, 5915, 5915a, 5917, 5917a, 5918, 5918a, 5919, 5919a, 5920, 5920a, and 6814, Revised Statutes;

(2) Sections 5(d), 8(c), and 10, Article 5221f-1, Revised Statutes;

(3) Section 6(c), Vehicle Storage Facility Act (Article 6687-9a, Vernon's Texas Civil Statutes);

(4) Chapter 434, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5151a, Vernon's Texas Civil Statutes);

(5) Section 6, Chapter 104, Acts of the 48th Legislature, Regular Session, 1943 (Article 5154a, Vernon's Texas Civil Statutes);

(6) Section 7A(e), Chapter 234, Acts of the 51st Legislature, Regular Session, 1949 (Article 5221a-5, Vernon's Texas Civil Statutes);

(7) Sections 6A(e) and 7(e), Chapter 263, Acts of the 66th Legislature, Regular Session, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes);

(8) Section 11(e), Chapter 222, Acts of the 70th Legislature, Regular Session, 1987 (Article 5221a-8, Vernon's Texas Civil Statutes);

- (9) Sections 1(4) and (9), Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes);
- (10) Sections 11 and 13, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes);
- (11) Sections 6(i), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);
- (12) Section 7(h), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);
- (13) Sections 9(h) and (i), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);
- (14) Sections 17(e) and (f), Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes);
- (15) Sections 3(i) and 4, Chapter 320, Acts of the 64th Legislature, Regular Session, 1975 (Article 8700, Vernon's Texas Civil Statutes);
- (16) Sections 3(c) and (i), Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes);
- (17) Section 10, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes); and
- (18) Section 111.006, Agriculture Code.

ARTICLE 6. TRANSITION AND MISCELLANEOUS PROVISIONS

SECTION 6.01. CREATION OF COMMISSION; INITIAL APPOINTMENTS. (a) The Texas Commission of Licensing and Regulation is created on the effective date of this Act.

(b) In making the initial appointments to the Texas Commission of Licensing and Regulation, the governor shall designate two members for terms expiring February 1, 1991, two members for terms expiring February 1, 1993, and two members for terms expiring February 1, 1995.

SECTION 6.02. TRANSITION OF COMMISSIONER. The commissioner of the Texas Department of Labor and Standards shall act as the commissioner of the Texas Department of Licensing and Regulation from the effective date of this Act until such time as the commission appoints a commissioner.

SECTION 6.03. DEPARTMENT NAME CHANGE. The name of the Texas Department of Labor and Standards is changed to the Texas Department of Licensing and Regulation. Any reference in the law to the Texas Department of Labor and Standards or the commissioner of labor and standards means, respectively, the Texas Department of Licensing and Regulation or the commissioner of licensing and regulation.

SECTION 6.04. TRANSFER OF RECORDS. (a) All records in the custody of the Texas Department of Labor and Standards relating to the enforcement of the state laws regarding child labor are transferred to the Texas Employment Commission on the effective date of this Act.

(b) All records in the custody of the Texas Department of Labor and Standards relating to matters pending on the effective date of this Act regarding payment of wages shall be transferred to the Texas Employment Commission not later than January 1, 1990.

(c) All records in the custody of the Texas Department of Labor and Standards relating to the enforcement of the state laws regarding the operation of health spas and membership camping resorts are transferred to the office of the secretary of state on the effective date of this Act.

SECTION 6.05. INITIAL POLICY STATEMENT. The policy statement required under Section 15, Article 9100, Revised Statutes, as added by this Act, must be filed not later than October 30, 1989.

SECTION 6.06. ADMINISTRATIVE PENALTIES. Section 17, Article 9100, Revised Statutes, as added by this Act, providing for the assessment of administrative penalties

by the commissioner of licensing and regulation, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 6.07. BOILER OFFENSE. (a) The change in law made by Section 12, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon's Texas Civil Statutes), as amended by this Act, applies only to an offense committed on or after the effective date of this Act.

(b) For the purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 6.08. WAGE CLAIMS. (a) The change in law made by Section 5, Article 5155, Revised Statutes, as amended by this Act, relating to the enforcement of wage payments by the Texas Employment Commission, applies only to a violation of Article 5155, Revised Statutes, that arises on or after January 1, 1990.

(b) Not later than January 1, 1990, the Texas Department of Licensing and Regulation shall transfer any outstanding wage claims it received for processing before that date to the Texas Employment Commission. The Texas Employment Commission shall process the claims in accordance with the law in effect on the date that the claim was filed with the Texas Department of Labor and Standards or its successor, and the former law is continued in effect for this purpose.

(c) The Texas Employment Commission may receive and spend appropriations made to that agency for implementation of the functions transferred to that agency under this Act beginning September 1, 1989. The Texas Department of Licensing and Regulation may receive and spend appropriations made to that agency for the processing of wage claims from September 1, 1989, through December 31, 1989.

SECTION 6.09. HEALTH SPAS. (a) The security requirements imposed under Section 10, Health Spa Act (Article 5221, Vernon's Texas Civil Statutes), as amended by this Act, apply to a health spa that opens an initial facility on or after September 1, 1989, and to each additional location opened on or after September 1, 1989, by a health spa that opens an initial facility on or after September 1, 1989.

(b) A health spa in operation before September 1, 1989, and any additional location opened by that health spa on or after September 1, 1989, is subject to the security requirements in effect on August 31, 1989, and the former law is continued in effect for that purpose.

SECTION 6.10. VEHICLE STORAGE. (a) The provisions of this Act relating to penalties under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), apply only to an act or an offense under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), committed on or after the effective date of this Act. An offense under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), committed before the effective date of this Act is covered by the law in effect on the date that the offense was committed, and that law is continued in effect for that purpose. For purposes of this subsection, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) The provisions of this Act relating to notice given under Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), apply to notice for vehicles initially parked or stored at a vehicle storage facility on or after the effective date of this Act.

(c) The provisions of this Act relating to notification, preservation, and storage fees under Section 5.05(b), Texas Litter Abatement Act (Article 4477-9a, Vernon's Texas Civil Statutes), or Section 14, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), apply to fees charged for notification or storage on or after the effective date of this Act.

SECTION 6.11. EFFECTIVE DATE. This Act takes effect September 1, 1989.

SECTION 6.12. 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 May 18, 1989, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 863 on May 28, 1989, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 863 on May 29, 1989, by a non-record vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas; passed by the Senate, with amendments, on May 27, 1989, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 863 on May 29, 1989, by a viva-voce vote; passed subject to the provisions of Article III, Section 49a, of the Constitution of the State of Texas.

Approved June 16, 1989.

Effective Sept. 1, 1989.

CHAPTER 1040

H.B. No. 1779

AN ACT

relating to electronic monitoring and community service as a sentencing alternative for certain defendants convicted of misdemeanors; providing a criminal penalty.

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

SECTION 1. Article 42.03, Code of Criminal Procedure, is amended by adding Section 7 to read as follows:

Sec. 7. A court in a county served by a district probation office that has an electronic monitoring program approved by the Texas Adult Probation Commission may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring rather than being confined in the county jail.

SECTION 2. Article 42.03, Code of Criminal Procedure, is amended by adding Section 8 to read as follows:

Sec. 8. (a) A court may require a defendant to serve all or part of a sentence of confinement in county jail by performing community service rather than by being confined in county jail.

(b) In its order requiring a defendant to participate in community service work, the court must specify:

- (1) the number of hours the defendant is required to work;*
- (2) the entity or organization for which the defendant is required to work;*
- (3) the project on which the defendant is required to work; and*
- (4) whether the district probation department or a court related services office will perform the administrative duties required by the placement of the defendant in the community service program.*

(c) The court may order the defendant to perform community service work under this section only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court related services office.

(d) A court may not order a defendant to perform more than 16 hours per week of community service under this section unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.