LABOR CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

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

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 1.004. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

TITLE 2. PROTECTION OF LABORERS
SUBTITLE A. EMPLOYMENT DISCRIMINATION
CHAPTER 21. EMPLOYMENT DISCRIMINATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. PURPOSES. The general purposes of this chapter are to:

(1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000e et seq.);

(2) identify and create an authority that meets the criteria under 42 U.S.C. Section 2000e-5(c) and 29 U.S.C. Section 633;

(3) provide for the execution of the policies embodied in Title I of the Americans with Disabilities Act of 1990 and its subsequent amendments (42 U.S.C. Section 12101 et seq.);

(4) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;

(5) make available to the state the full productive capacities of persons in this state;

(6) avoid domestic strife and unrest in this state;

(7) preserve the public safety, health, and general welfare; and

(8) promote the interests, rights, and privileges of persons in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.01(a), eff. Sept. 1, 1995.

Sec. 21.0015. TEXAS WORKFORCE COMMISSION. The powers and duties exercised by the Commission on Human Rights under this chapter are transferred to the Texas Workforce Commission. A reference in this chapter to the "commission" means the Texas Workforce Commission.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 1.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 9, eff. September 1, 2015.

Sec. 21.002. DEFINITIONS. In this chapter:

(1) "Auxiliary aids and services" includes:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) services and actions similar to those described by Paragraphs (A)-(C).

(2) "Bona fide occupational qualification" means a qualification:

(A) reasonably related to the satisfactory performance of the duties of a job; and

(B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

(3) Repealed by Acts 2003, 78th Leg., ch. 302, Sec. 4(2).

(4) "Complainant" means an individual who brings an action or proceeding under this chapter.

(5) "Demonstrates" means meets the burdens of production and persuasion.

(6) "Disability" means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment. The term

does not include:

(A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or

(B) a currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.

(8) "Employer" means:

(A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year;

(B) an agent of a person described by Paragraph (A);

(C) an individual elected to public office in this state or a political subdivision of this state; or

(D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

(9) "Employment agency" means a person or an agent of the person who regularly undertakes, with or without compensation, to procure:

(A) employees for an employer; or

(B) the opportunity for employees to work for an employer.

(10) "Labor organization" means a labor organization engaged in an industry affecting commerce. The term includes:

(A) an organization, an agency, or an employee representation committee, group, association, or plan engaged in an industry affecting commerce in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) a conference, general committee, joint or system

board, or joint council that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(11) "Local commission" means a commission on human relations created by one or more political subdivisions.

(11-a) "Major life activity" includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The term also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(12) "Political subdivision" means a county or municipality.

(12-a) "Regarded as having such an impairment" means subjected to an action prohibited under Subchapter B or C because of an actual or perceived physical or mental impairment, other than an impairment that is minor and is expected to last or actually lasts less than six months, regardless of whether the impairment limits or is perceived to limit a major life activity.

(13) "Respondent" means the person charged in a complaint filed under this chapter and may include an employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including an on-the-job training program.

(14) "State agency" means:

(A) a board, commission, committee, council, department, institution, office, or agency in the executive branch of state government having statewide jurisdiction;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction; or

(C) an institution of higher education as defined by Section 61.003, Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 834, Sec. 1, eff. Sept. 1, 1997; Acts

1999, 76th Leg., ch. 872, Sec. 10, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 302, Sec. 4(a).
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 1, eff. September 1, 2009.

Sec. 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS. (a) The term "disability":

(1) shall be construed in favor of broad coverage of individuals under Subchapters B and C, to the maximum extent allowed under those subchapters; and

(2) includes an impairment that is episodic or in remission that substantially limits a major life activity when active.

(b) The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, including:

(1) medication, medical supplies, medical equipment, medical appliances, prosthetic limbs and devices, hearing aids, cochlear implants and other implantable hearing devices, mobility devices, and oxygen therapy equipment;

(2) devices that magnify, enhance, or otherwise augment a visual image, other than eyeglasses and contact lenses that are intended to fully correct visual acuity or eliminate refractive error;

(3) the use of assistive technology;

(4) reasonable accommodations and auxiliary aids or services; and

(5) learned behavioral or adaptive neurological modifications.

Added by Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 2, eff. September 1, 2009.

Sec. 21.0022. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 1, eff. September 1, 2015.

Sec. 21.003. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission may:

(1) promote the creation of local commissions on human rights by cooperating or contracting with individuals or state, local, or other agencies, public or private, including agencies of the federal government and of other states;

(2) receive, investigate, seek to conciliate, and pass on complaints alleging violations of this chapter;

(3) file civil actions to effectuate the purposes of this chapter;

(4) request and, if necessary, compel by subpoena:

(A) the attendance of necessary witnesses for examination under oath; and

(B) the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this chapter;

(5) furnish technical assistance requested by a person subject to this chapter to further compliance with this chapter or with a rule or order issued under this chapter;

(6) recommend in its annual report legislation or other action to carry out the purposes and policies of this chapter;

(7) adopt procedural rules to carry out the purposes and policies of this chapter; and

(8) provide educational and outreach activities to individuals who have historically been victims of employment discrimination.

(b) The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in Subsection (a)(4) on behalf of the commission.

(c) The commission biennially shall develop an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies.

(d) The commission at least annually shall make a comprehensive written report on the commission's activities to the governor and to the legislature.

(e) The commission shall conduct a study of the policies and programs of a selected state agency if the commission is directed to conduct the study by legislative resolution or by executive order of the governor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.03(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 872, Sec. 11, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 77, eff. September 1, 2013.

Sec. 21.0035. CIVILIAN WORKFORCE COMPOSITION. (a) The commission by rule shall biennially determine:

(1) the percentage of the statewide civilian workforce composed of:

(A) Caucasian Americans;

(B) African Americans;

(C) Hispanic Americans;

(D) females; and

(E) males; and

(2) the percentage of the statewide civilian workforce of the groups listed in Subdivision (1) according to the following job categories:

(A) state agency administration;

(B) professional;

(C) technical;

(D) protective services;

(E) paraprofessional;

(F) administrative support;

(G) skilled craft; and
(H) service and maintenance.

(b) The commission shall report the percentages of the statewide civilian workforce as determined under this section to the governor and the legislature not later than the fifth day of each regular session of the legislature.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 12, eff. Sept. 1, 1999.

Sec. 21.004. CRIMINAL OFFENSE OF INTERFERENCE; PENALTY. (a) A person commits an offense if the person wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this chapter.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.005. CONSTRUCTION WITH OTHER LAWS. (a) This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws.

(b) This chapter does not affect the standards for determining eligibility for benefits under Title 5 or under a state or federal disability benefit program.

(c) Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 3, eff. September 1, 2009.

Sec. 21.006. CONFORMITY WITH FEDERAL STATUTES. If a provision of this chapter is held by the Equal Employment Opportunity Commission to disqualify the commission as a deferral agency or for

the receipt of federal funds, the commission shall administer this chapter to qualify for deferral status or the receipt of those funds until the legislature meets in its next session and has an opportunity to amend this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.007. PRIVILEGED COMMUNICATION; IMMUNITY. An oral or written statement made to a commissioner or an employee of the commission in connection with the discharge of the commissioner's or employee's duties under this chapter may not be the basis for an action for defamation of character.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.008. LIMITED SEVERABILITY. (a) If any clause, sentence, subsection, section, or other provision of this chapter or the application of such a provision to any person or circumstances is held invalid or unconstitutional, that invalidity shall not affect the other clauses, sentences, subsections, sections, or provisions or applications of this chapter that may be given effect without the invalid clause, sentence, subsection, section, or provision or application and shall not affect, invalidate, impair, or nullify the remainder of this chapter. The effect of the determination of invalidity shall be confined to the clause, sentence, subsection, section, or provision or application so adjudicated to be invalid or unconstitutional, and to that end the provisions of this chapter are declared to be severable.

(b) If any limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means, the amount of civil liability for all past and future noneconomic losses, including past and future pain and suffering, mental anguish and suffering, and any other nonpecuniary damage, is limited to an amount not to exceed $150,000.

(c) If a limit on damages prescribed by Section 21.2585 is invalidated by a method other than by legislative means and if the alternative civil liability limits contained in Subsection (b) are also invalidated by a method other than by legislative means, Section

21.2585 is void.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.009. JOINDER OF COMMISSION. (a) In any civil action in which the validity of a provision of this chapter or Chapter 461, Government Code, a rule adopted under this chapter or Chapter 461, Government Code, or the application of the provision or rule is challenged as void, unconstitutional, or unenforceable, the commission shall be made a party to the proceedings, and, on the motion of the commission, venue of the cause may be transferred to the district courts of Travis County.

(b) An order restraining the commission or invalidating a provision of this chapter or Chapter 461, Government Code, or a commission rule adopted under this chapter or Chapter 461, Government Code, may not be enforced and may not take effect until the commission has answered and appeared in the action and has exhausted all avenues of appeal and any judgment is final and enforceable.

(c) Notwithstanding any other provision of state law, including this chapter, only the commission, if a prevailing party, may recover costs and attorney's fees in such a declaratory proceeding under this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.08(a), eff. Sept. 1, 1995.

Sec. 21.010. EMPLOYMENT DISCRIMINATION TRAINING FOR STATE EMPLOYEES. (a) Each state agency shall provide to employees of the agency an employment discrimination training program that complies with this section.

(b) The training program must provide the employee with information regarding the agency's policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment.

(c) Each employee of a state agency shall attend the training program required by this section not later than the 30th day after the date the employee is hired by the agency and shall attend supplemental training every two years.

(d) The commission shall develop materials for use by state agencies in providing employment discrimination training as required by this section.

(e) Each state agency shall require an employee of the agency who attends a training program required by this section to sign a statement verifying the employee's attendance at the training program. The agency shall file the statement in the employee's personnel file.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 14, eff. Sept. 1, 1999.

SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An employment agency commits an unlawful employment practice if the employment agency:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, or age; or

(2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the labor organization:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would:

(A) deprive or tend to deprive an individual of any employment opportunity;

(B) limit an employment opportunity or adversely affect in any other manner the status of an employee or of an applicant for employment; or

(C) cause or attempt to cause an employer to violate this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING PROGRAM. (a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, or age in admission to or participation in the program.

(b) The prohibition against discrimination because of age in this section applies only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.055. RETALIATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or

discriminates against a person who, under this chapter:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.056. AIDING OR ABETTING DISCRIMINATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.057. INTERFERENCE WITH COMMISSION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully interferes with the performance of a duty or the exercise of a power under this chapter or Chapter 461, Government Code, by the commission, the commission's staff, or the commission's representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.058. PREVENTION OF COMPLIANCE. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully obstructs or prevents a person from complying with this chapter or a rule adopted or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.059. DISCRIMINATORY NOTICE OR ADVERTISEMENT. (a) An employer, labor organization, employment agency, or joint labor-

management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

(b) This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.060. VIOLATION OF CONCILIATION AGREEMENT. A party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of the conciliation agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.061. INSUFFICIENT EVIDENCE OF UNLAWFUL PRACTICE. In the absence of other evidence of an unlawful employment practice, evidence of the employment of one person in place of another is not sufficient to establish an unlawful employment practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. APPLICATION; EXCEPTIONS

Sec. 21.101. AGE DISCRIMINATION LIMITED TO INDIVIDUALS OF CERTAIN AGE. Except as provided by Section 21.054, the provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.102. BONA FIDE EMPLOYEE BENEFIT PLAN; PRODUCTION MEASUREMENT SYSTEM. (a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

(1) a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or

(2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.103. COMPULSORY RETIREMENT PERMITTED FOR CERTAIN EMPLOYEES. This chapter does not prohibit the compulsory retirement of an employee who is:

(1) at least 65 years of age;

(2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and

(3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least $27,000.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.104. AGE REQUIREMENT FOR PEACE OFFICERS OR FIRE FIGHTERS. An employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace

officers or fire fighters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.105. DISCRIMINATION BASED ON DISABILITY. A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.106. SEX DISCRIMINATION. (a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.

(b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.1065. SEXUAL HARASSMENT PROTECTIONS FOR UNPAID INTERNS. (a) In this section, "sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(1) submission to the advance, request, or conduct is made a term or condition of an individual's internship, either explicitly or implicitly;

(2) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's internship;

(3) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance at the individual's internship; or

(4) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

(b) An employer commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the employer or the employer's agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

(c) In this section, an individual is considered to be an unpaid intern of an employer if:

(1) the individual's internship, even though it includes engagement in the employer's operations or the performance of productive work for the employer, is similar to training that would be given in an educational environment;

(2) the individual's internship experience is for the individual's benefit;

(3) the individual does not displace the employer's regular employees but works under close supervision of the employer's existing staff;

(4) the employer does not derive any immediate advantage from the individual's internship activities and on occasion the employer's operations may be impeded by those activities;

(5) the individual is not entitled to a job at the conclusion of the internship; and

(6) the individual is not entitled to wages for the time spent in the internship.

Added by Acts 2015, 84th Leg., R.S., Ch. 1019 (H.B. 1151), Sec. 1, eff. September 1, 2015.

Sec. 21.107. EFFECT ON ABORTION BENEFITS. This chapter does not:

(1) require an employer to pay for health insurance benefits for abortion unless the life of the mother would be endangered if the fetus were carried to term;

(2) preclude an employer from providing abortion benefits; or

(3) affect a bargaining agreement relating to abortion.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.108. DISCRIMINATION BASED ON RELIGION. A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.109. EMPLOYMENT BY RELIGIOUS ORGANIZATION. (a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting employment or giving a preference to members of the same religion.

(b) Subchapter B does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the performance of religious activities by the corporation, association, or society.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.110. DISCRIMINATION BASED ON NATIONAL ORIGIN. A provision in this chapter referring to discrimination because of national origin or on the basis of national origin includes discrimination because of or on the basis of the national origin of an ancestor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.111. PERSON EMPLOYED OUT OF STATE. This chapter does not apply to an employer with respect to the employment of a person outside this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.113. IMBALANCE PLAN NOT REQUIRED. This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, or age because of an imbalance between:

(1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, or age:

(A) employed by an employer;

(B) referred or classified for employment by an employment agency or labor organization;

(C) admitted to membership or classified by a labor organization; or

(D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and

(2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, or age in:

(A) a community, this state, a region, or other area; or

(B) the available work force in a community, this state, a region, or other area.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.114. PLAN TO END DISCRIMINATORY SCHOOL PRACTICES. A public school official does not commit an unlawful employment practice by adopting or implementing a plan reasonably designed to end discriminatory school practices.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.115. BUSINESS NECESSITY. (a) Subject to Subsection (b), an employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

(1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and

(2) is justified by business necessity.

(b) An employer may not use a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 4, eff. September 1, 2009.

Sec. 21.116. RELIANCE ON COMMISSION INTERPRETATION OR OPINION. (a) A person is not liable for an unlawful employment practice performed in good faith and in conformity with and in reliance on a written interpretation or opinion of the commission.

(b) In a proceeding alleging an unlawful employment practice, the respondent has the burden of pleading and proving the defense provided by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.117. EMPLOYMENT OF FAMILY MEMBER. Subchapter B does not apply to the employment of an individual by the individual's

parent, spouse, or child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.118. STATEWIDE HOMETOWN PLAN. Subchapter B does not apply to a labor union, firm, association, or individual participating on September 23, 1983, in a statewide hometown plan approved by the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.119. BONA FIDE OCCUPATIONAL QUALIFICATION. If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

(1) an employer hiring and employing an employee;

(2) an employment agency classifying or referring an individual for employment;

(3) a labor organization classifying its members or classifying or referring an individual for employment; or

(4) an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.120. USE OR POSSESSION OF CONTROLLED SUBSTANCE. (a) An employer does not commit an unlawful employment practice by adopting a policy prohibiting the employment of an individual who currently uses or possesses a controlled substance as defined in Schedules I and II of Section 202, Controlled Substances Act, and their subsequent amendments (21 U.S.C. Section 801 et seq.), other than the use or possession of a drug taken under the supervision of a licensed health care professional or any other use or possession

authorized by the Controlled Substances Act or any other federal or state law.

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.04(a), eff. Sept. 1, 1995.

Sec. 21.121. WORK FORCE DIVERSITY PROGRAMS. An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.04(a), eff. Sept. 1, 1995.

Sec. 21.122. BURDEN OF PROOF IN DISPARATE IMPACT CASES. (a) An unlawful employment practice based on disparate impact is established under this chapter only if:

(1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, or disability and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or

(2) the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice.

(b) To determine the availability of and burden of proof applicable to a disparate impact case involving age discrimination, the court shall apply the judicial interpretation of the Age Discrimination in Employment Act of 1967 and its subsequent amendments (29 U.S.C. Section 621 et seq.).

(c) To demonstrate that a particular employment practice causes a disparate impact, the complainant must demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complainant demonstrates to the satisfaction of

the court that the elements of a respondent's decision-making process are not capable of separation for analysis, that decision-making process may be analyzed as one employment practice.

(d) If the respondent demonstrates that a specific practice does not cause a disparate impact, the respondent may not be required to demonstrate that the practice is consistent with business necessity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.123. SCOPE OF DEFENSE. A demonstration that an employment practice is consistent with business necessity may not be used as a defense under this chapter against a complaint of intentional discrimination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES. It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, or disability.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, OR DISABILITY IN EMPLOYMENT PRACTICES. (a) Except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, or disability was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, sex, national origin, religion, age, or

disability is combined with objective job-related factors to attain diversity in the employer's work force.

(b) In a complaint in which a complainant proves a violation under Subsection (a) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court may grant declaratory relief, injunctive relief except as otherwise provided by this subsection, and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a complaint under Subsection (a), but may not award damages or issue an order requiring an admission, reinstatement, hiring, promotion, or back pay.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1126, Sec. 1, eff. Sept. 1, 1997.

Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, sex, national origin, religion, age, or disability against an individual who is an employee or applicant for employment to:

(1) serve on the elected official's personal staff;

(2) serve the elected official on a policy-making level; or

(3) serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.127. EXPANSION OF RIGHTS TO CHALLENGE DISCRIMINATORY SENIORITY SYSTEMS. With respect to a seniority system adopted for an intentionally discriminatory purpose in violation of this chapter, whether that discriminatory purpose is apparent on the face of the seniority provision, an unlawful employment practice occurs when:

(1) the seniority system is adopted;

(2) an individual becomes subject to the system; or

(3) an individual is injured by the application of the system or a provision of the system.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Sec. 21.128. REASONABLE ACCOMMODATION; GOOD FAITH EFFORT. (a) It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent.

(b) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. In considering a complaint based on a disability, the commission shall consider the reasonableness of the cost of any necessary workplace accommodation and the availability of alternatives or other appropriate relief.

(c) In a complaint in which a discriminatory employment practice involves the provision of a reasonable workplace accommodation under this chapter, damages may not be awarded under Subchapter F if the respondent demonstrates good faith efforts, in consultation with the otherwise qualified individual with a disability who has informed the respondent that accommodation is needed, to identify and make a reasonable workplace accommodation that would provide the individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(d) A respondent is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual under Subsection (a) if the individual's disability is based solely on being regarded as having an impairment that substantially limits at least one major life activity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Amended by:
Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 5, eff. September 1, 2009.

Sec. 21.129. COURT-ORDERED REMEDIES, AFFIRMATIVE ACTION AGREEMENTS, AND CONCILIATION AGREEMENTS NOT AFFECTED. This chapter does not affect a court-ordered remedy, affirmative action agreement, or conciliation agreement made in accordance with law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

SUBCHAPTER D. LOCAL ENFORCEMENT

Sec. 21.151. ENFORCEMENT BY ORDINANCE. A political subdivision may adopt and enforce an order or ordinance that prohibits a practice that is unlawful under this chapter, another state law, or federal law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.152. CREATION OF LOCAL COMMISSION. (a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:

(1) promote the purposes of this chapter; and

(2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, or age.

(b) The political subdivision creating a local commission may appropriate funds for the expenses of the local commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.153. GENERAL POWERS AND DUTIES OF LOCAL COMMISSION. (a) A local commission may:

(1) employ an executive director and other employees and agents and set their compensation;

(2) cooperate or contract with a person, including an

agency of the federal government or of another state or municipality; and

(3) accept a public grant or private gift, bequest, or other payment.

(b) A local commission shall prepare at least annually a report and furnish a copy of the report to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.154. INVESTIGATORY AND CONCILIATORY POWERS OF LOCAL COMMISSION. (a) If the federal government or the Commission on Human Rights refers a complaint alleging a violation of this chapter to a local commission or defers jurisdiction over the subject matter of the complaint to a local commission, the local commission may receive, investigate, conciliate, or rule on the complaint and may file a civil action to carry out the purposes of this chapter.

(b) The local commission may request, and as necessary, compel by subpoena:

(1) the attendance of a witness for examination under oath; or

(2) the production for inspection or copying of a record, document, or other evidence relevant to the investigation of an alleged violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.155. REFERRAL TO LOCAL COMMISSION AND ACTION ON COMPLAINTS. (a) The Commission on Human Rights shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, or age that is filed with that commission to a local commission with the necessary investigatory and conciliatory powers if:

(1) the complaint has been referred to the Commission on Human Rights by the federal government; or

(2) jurisdiction over the subject matter of the complaint has been deferred to the Commission on Human Rights by the federal government.

(b) The local commission shall take appropriate action to remedy the practice alleged as discriminatory in the referred

complaint.

(c) If the local commission does not act on the complaint within 60 days or a longer time that is reasonable, the Commission on Human Rights shall reassume responsibility for the complaint and take appropriate action on the complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.156. REFERRAL BY LOCAL COMMISSION TO STATE COMMISSION. A local commission may refer a matter under its jurisdiction to the Commission on Human Rights.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. ADMINISTRATIVE REVIEW

Sec. 21.201. FILING OF COMPLAINT; FORM AND CONTENT; SERVICE. (a) A person claiming to be aggrieved by an unlawful employment practice or the person's agent may file a complaint with the commission.

(b) The complaint must be in writing and made under oath.

(c) The complaint must state:

(1) that an unlawful employment practice has been committed;

(2) the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(3) facts sufficient to enable the commission to identify the respondent.

(d) The executive director or the executive director's designee shall serve the respondent with a copy of the perfected complaint not later than the 10th day after the date the complaint is filed.

(e) A complaint may be amended to cure technical defects or omissions, including a failure to verify the complaint or to clarify and amplify an allegation made in the complaint.

(f) An amendment to a complaint alleging additional facts that constitute unlawful employment practices relating to or arising from the subject matter of the original complaint relates back to the date the complaint was first received by the commission.

(g) If a perfected complaint is not received by the commission

within 180 days of the alleged unlawful employment practice, the commission shall notify the respondent that a complaint has been filed and that the process of perfecting the complaint is in progress.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.06(a), eff. Sept. 1, 1995.

Sec. 21.202. STATUTE OF LIMITATIONS. (a) A complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.

(b) The commission shall dismiss an untimely complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1993.

Sec. 21.203. ALTERNATIVE DISPUTE RESOLUTION; OFFICE. (a) The use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, is encouraged to resolve disputes arising under this chapter. The settlement of a disputed claim under this chapter that results from the use of traditional or alternative means of dispute resolution is binding on the parties to the claim.

(b) The commission shall establish an office of alternative dispute resolution. At any time after a complaint is received under Section 21.201, at the request of a party or at the direction of the commission the matter may be referred to the office of alternative dispute resolution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.06(b), eff. Sept. 1, 1995.

Sec. 21.204. INVESTIGATION BY COMMISSION. (a) The executive director or a staff member of the commission designated by the executive director shall investigate a complaint and determine if there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in the complaint.

(b) If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of

the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.205. LACK OF REASONABLE CAUSE; DISMISSAL OF COMPLAINT. (a) If after investigation the executive director or the executive director's designee determines that reasonable cause does not exist to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall issue a written determination, incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

(b) The executive director or the executive director's designee shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.206. DETERMINATION OF REASONABLE CAUSE; REVIEW BY COMMISSION. (a) If after investigation the executive director or the executive director's designee determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall review with the commission members the evidence in the record.

(b) If after the review at least two of the three commission members determine that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice, the executive director shall:

(1) issue a written determination incorporating the executive director's finding that the evidence supports the complaint; and

(2) serve a copy of the determination on the complainant, the respondent, and other agencies as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 10, eff. September 1, 2015.

Sec. 21.207. RESOLUTION BY INFORMAL METHODS. (a) If a determination of reasonable cause is made under Section 21.206, the commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.208. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT. If the commission dismisses a complaint filed under Section 21.201 or does not resolve the complaint before the 181st day after the date the complaint was filed, the commission shall inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.210. TEMPORARY INJUNCTIVE RELIEF. (a) If the commission concludes from a preliminary investigation of an unlawful employment practice alleged in a complaint that prompt judicial action is necessary to carry out the purpose of this chapter, the commission shall file a petition seeking appropriate temporary relief against the respondent pending final determination of a proceeding under this chapter.

(b) The petition shall be filed in a district court in a county in which:

(1) the alleged unlawful employment practice that is the subject of the complaint occurred; or

(2) the respondent resides.

(c) A court may not issue temporary injunctive relief unless the commission shows:

(1) a substantial likelihood of success on the merits; and

(2) irreparable harm to the complainant in the absence of the preliminary relief pending final determination on the merits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.211. ELECTION OF REMEDIES. A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. JUDICIAL ENFORCEMENT

Sec. 21.251. CIVIL ACTION BY COMMISSION. (a) The commission may bring a civil action against a respondent if:

(1) the commission determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice;

(2) the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful; and

(3) a majority of the commissioners determines that the civil action may achieve the purposes of this chapter.

(b) The complainant may intervene in a civil action brought by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.252. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) A complainant who receives notice under Section 21.208 that the complaint is not dismissed or resolved is entitled to request from the commission a written notice of the complainant's right to file a civil action.

(b) The complainant must request the notice in writing.

(c) The executive director may issue the notice.

(d) Failure to issue the notice of a complainant's right to file a civil action does not affect the complainant's right under this subchapter to bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.253. EXPEDITED NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) On receipt of a written request by a complainant, the commission shall issue before the 181st day after the date the complaint was filed a notice of the right to file a civil action if:

(1) the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or

(2) the executive director certifies that administrative processing of the complaint cannot be completed before the 181st day after the date the complaint was filed.

(b) The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date the commission receives the written request.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.254. CIVIL ACTION BY COMPLAINANT. Within 60 days after the date a notice of the right to file a civil action is received, the complainant may bring a civil action against the respondent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.255. COMMISSION'S INTERVENTION IN CIVIL ACTION BY COMPLAINANT. After receipt of a timely application, a court may permit the commission to intervene in a civil action filed under Section 21.254 if:

(1) the commission certifies that the case is of general public importance; and

(2) before commencement of the action the commission issued

a determination of reasonable cause to believe that this chapter was violated.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.256. STATUTE OF LIMITATIONS. A civil action may not be brought under this subchapter later than the second anniversary of the date the complaint relating to the action is filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(a), eff. Sept. 1, 1995.

Sec. 21.257. ASSIGNMENT TO EARLY HEARING. The court shall set an action brought under this subchapter for hearing at the earliest practicable date to expedite the action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.258. INJUNCTION; EQUITABLE RELIEF. (a) On finding that a respondent engaged in an unlawful employment practice as alleged in a complaint, a court may:

(1) prohibit by injunction the respondent from engaging in an unlawful employment practice; and

(2) order additional equitable relief as may be appropriate.

(b) Additional equitable relief may include:

(1) hiring or reinstating with or without back pay;

(2) upgrading an employee with or without pay;

(3) admitting to or restoring union membership;

(4) admitting to or participating in a guidance program, apprenticeship, or on-the-job training or other training or retraining program, using objective job-related criteria in admitting an individual to a program;

(5) reporting on the manner of compliance with the terms of a final order issued under this chapter; and

(6) paying court costs.

(c) Liability under a back pay award may not accrue for a date more than two years before the date a complaint is filed with the

commission. Interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.2585. COMPENSATORY AND PUNITIVE DAMAGES. (a) On finding that a respondent engaged in an unlawful intentional employment practice as alleged in a complaint, a court may, as provided by this section, award:

(1) compensatory damages; and

(2) punitive damages.

(b) A complainant may recover punitive damages against a respondent, other than a respondent that is a governmental entity, if the complainant demonstrates that the respondent engaged in a discriminatory practice with malice or with reckless indifference to the state-protected rights of an aggrieved individual.

(c) Compensatory damages awarded under this section may not include:

(1) back pay;

(2) interest on back pay; or

(3) other relief authorized under Section 21.258(b).

(d) The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed, for each complainant:

(1) $50,000 in the case of a respondent that has fewer than 101 employees;

(2) $100,000 in the case of a respondent that has more than 100 and fewer than 201 employees;

(3) $200,000 in the case of a respondent that has more than 200 and fewer than 501 employees; and

(4) $300,000 in the case of a respondent that has more than 500 employees.

(e) For the purposes of Subsection (d), in determining the number of employees of a respondent, the requisite number of employees must be employed by the respondent for each of 20 or more calendar weeks in the current or preceding calendar year.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(b), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 872, Sec. 13, eff. Sept. 1, 1999.

Sec. 21.259. ATTORNEY'S FEES; COSTS. (a) In a proceeding under this chapter, a court may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs.

(b) The state, a state agency, or a political subdivision is liable for costs, including attorney's fees, to the same extent as a private person.

(c) In awarding costs and attorney's fees in an action or a proceeding under this chapter, the court, in its discretion, may include reasonable expert fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.07(c), eff. Sept. 1, 1995.

Sec. 21.260. RELIEF FOR DISABLED EMPLOYEE OR APPLICANT. If the affected employee or applicant for employment has a disability, a court shall consider the undue hardship defense, including the reasonableness of the cost of necessary workplace accommodation and the availability of alternatives or other appropriate relief.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.261. COMPELLED COMPLIANCE. If an employer, employment agency, or labor organization fails to comply with a court order issued under this subchapter, a party to the action or the commission, on the written request of a person aggrieved by the failure, may commence proceedings to compel compliance with the order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.262. TRIAL DE NOVO. (a) A judicial proceeding under this chapter is by trial de novo.

(b) A commission finding, recommendation, determination, or other action is not binding on a court.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. RECORDS

Sec. 21.301. RECORDKEEPING; REPORTS. A person under investigation in connection with a charge filed under this chapter and who is subject to this chapter shall:

(1) make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed;

(2) preserve the records for the period required by commission rule or court order; and

(3) make reports from the records as prescribed by commission rule or court order as reasonable, necessary, or appropriate for the enforcement of this chapter or a rule or order issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.302. RECORDS; TRAINING PROGRAM. The commission by rule shall require that a person subject to this chapter who controls an apprenticeship, on-the-job training, or other training or retraining program:

(1) keep all records reasonably necessary to carry out the purposes of this chapter, including a list of applicants for participation in the program and a record of the chronological order in which applications for the program were received; and

(2) furnish to the commission on request a detailed description of the manner in which individuals are selected to participate in the program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.303. CONFORMITY TO FEDERAL LAW. A report or record required by the commission under this subchapter must conform to a similar record or report required under 42 U.S.C. Section 2000e-8(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 21.304. CONFIDENTIALITY OF RECORDS. An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except in compliance with Section 21.305 and as necessary to the conduct of a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1012 (H.B. 2463), Sec. 1, eff. September 1, 2011.

Sec. 21.305. ACCESS TO COMMISSION RECORDS. (a) Except as provided by Subsection (c), the commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Except as provided by Subsection (c), unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law.

(c) Notwithstanding Section 552.023, Government Code, the following information is not considered public information for the purposes of Chapter 552, Government Code, and may not be disclosed to a party to a complaint filed under Section 21.201:

(1) identifying information of persons other than the parties and witnesses to the complaint;

(2) identifying information about confidential witnesses, including any confidential statement given by the witness;

(3) sensitive medical information about the charging party or a witness to the complaint that is:

(A) provided by a person other than the person requesting the information; and

(B) not relevant to issues raised in the complaint, including information that identifies injuries, impairments,

pregnancies, disabilities, or other medical conditions that are not obviously apparent or visible;

(4) identifying information about a person other than the charging party that is found in sensitive medical information regardless of whether the information is relevant to the complaint;

(5) nonsensitive medical information that is relevant to the complaint if the disclosure would result in an invasion of personal privacy, unless the information is generally known or has been previously reported to the public;

(6) identifying information about other respondents or employers not a party to the complaint;

(7) information relating to settlement offers or conciliation agreements received from one party that was not conveyed to the other and information contained in a separate alternative dispute resolution file prepared for mediation purposes; and

(8) identifying information about a person on whose behalf a complaint was filed if the person has requested that the person's identity as a complaining party remain confidential.

(d) In this section, "identifying information" has the meaning assigned by Section 32.51, Penal Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1012 (H.B. 2463), Sec. 2, eff. September 1, 2011.

Sec. 21.306. SUBPOENA OF RECORD OR REPORT. (a) If a person fails to permit access, examination, photographing, or copying or fails to make, keep, or preserve a record or make a report in accordance with this subchapter, the commission may issue a subpoena requiring compliance.

(b) On a failure to comply with a subpoena of the commission, the commission shall apply for an order directing compliance to the district court of the county in which the person is found, resides, or transacts business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. DISCRIMINATORY USE OF GENETIC INFORMATION

Sec. 21.401. DEFINITIONS. In this subchapter:

(1) "DNA" means deoxyribonucleic acid.

(2) "Family health history" means a history taken by a physician or genetic professional to ascertain genetic or medical information about an individual's family.

(3) "Genetic characteristic" means a scientifically or medically identifiable genetic or chromosomal variation, composition, or alteration that:

(A) is scientifically or medically believed to:

(i) predispose an individual to a disease, disorder, or syndrome; or

(ii) be associated with a statistically significant increased risk of developing a disease, disorder, or syndrome; and

(B) may or may not be associated with any symptom of an ongoing disease, disorder, or syndrome affecting an individual on the date the genetic information is obtained regarding the individual.

(4) "Genetic information" means information that is:

(A) obtained from or based on a scientific or medical determination of the presence or absence in an individual of a genetic characteristic; or

(B) derived from the results of a genetic test performed on, or a family health history obtained from, an individual.

(5) "Genetic test" means a presymptomatic laboratory test of an individual's genes, gene products, or chromosomes that:

(A) analyzes the individual's DNA, RNA, proteins, or chromosomes; and

(B) is performed to identify any genetic variation, composition, or alteration that is associated with the individual's having a statistically increased risk of:

(i) developing a clinically recognized disease, disorder, or syndrome; or

(ii) being a carrier of a clinically recognized disease, disorder, or syndrome.

The term does not include a blood test, cholesterol test, urine test, or other physical test used for a purpose other than determining a genetic or chromosomal variation, composition, or alteration in a specific individual.

(6) "RNA" means ribonucleic acid.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(a), eff. Sept. 1, 2003.

Sec. 21.402. DISCRIMINATORY USE OF GENETIC INFORMATION PROHIBITED. (a) An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(b) A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(c) An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(d) An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant:

(1) on the basis of genetic information concerning the employee, member, or applicant; or

(2) because of the refusal of the employee, member, or

applicant to submit to a genetic test.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997.

Sec. 21.403. CONFIDENTIALITY OF GENETIC INFORMATION. (a) Except as provided by Section 21.4031, genetic information is confidential and privileged regardless of the source of the information.

(b) A person who holds genetic information about an individual may not disclose or be compelled to disclose, by subpoena or otherwise, that information unless the disclosure is specifically authorized as provided by Section 21.4032.

(c) This section applies to a redisclosure of genetic information by a secondary recipient of the information after disclosure of the information by an initial recipient.

(d) Redesignated as V.T.C.A., Labor Code Sec. 21.4031 by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(d).

(e) A person who discloses genetic information in violation of this section is liable for a civil penalty of not more than $10,000. The attorney general may bring an action in the name of the state to recover the penalty, plus reasonable attorney's fees and court costs.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 965, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(b) to (e), eff. Sept. 1, 2003.

Sec. 21.4031. EXCEPTIONS TO CONFIDENTIALITY. (a) Subject to Subchapter G, Chapter 411, Government Code, genetic information may be disclosed without an authorization required under Section 21.4032 if the disclosure is:

(1) authorized under a state or federal criminal law relating to:

(A) the identification of individuals; or

(B) a criminal or juvenile proceeding, an inquest, or a child fatality review by a multidisciplinary child-abuse team;

(2) required under a specific order of a state or federal court;

(3) for the purpose of establishing paternity as authorized

under a state or federal law;

(4) made to provide genetic information relating to a decedent and the disclosure is made to the blood relatives of the decedent for medical diagnosis; or

(5) made to identify a decedent.

(b) Genetic information may be disclosed without an authorization under Section 21.4032 if:

(1) the disclosure is for information from a research study in which the procedure for obtaining informed written consent and the use of the information is governed by national standards for protecting participants involved in research projects, including guidelines issued under 21 C.F.R. Part 50 and 45 C.F.R. Part 46;

(2) the information does not identify a specific individual; and

(3) the information is provided to the Texas Department of Health to comply with Chapter 87, Health and Safety Code.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Redesignated from Labor Code Sec. 21.403(c), (d) and amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(d), eff. Sept. 1, 2003.

Sec. 21.4032. AUTHORIZED DISCLOSURE. An individual or the legal representative of an individual may authorize disclosure of genetic information relating to the individual by a written authorization that includes:

(1) a description of the information to be disclosed;

(2) the name of the person to whom the disclosure is made; and

(3) the purpose for the disclosure.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Redesignated from Labor Code Sec. 21.403(b) and amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(e), eff. Sept. 1, 2003.

Sec. 21.404. DISCLOSURE OF TEST RESULTS TO INDIVIDUAL TESTED. An individual who submits to a genetic test has the right to know the results of the test. On the written request by the individual, the entity that performed the test shall disclose the test results to:

(1) the individual; or

(2) a physician designated by the individual.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(f), eff. Sept. 1, 2003.

Sec. 21.405. DESTRUCTION OF SAMPLE MATERIAL; EXCEPTIONS. A sample of genetic material obtained from an individual for a genetic test shall be destroyed promptly after the purpose for which the sample was obtained is accomplished unless:

(1) the sample is retained under a court order;

(2) the individual authorizes retention of the sample for medical treatment or scientific research;

(3) the sample was obtained for research that is cleared by an institutional review board and retention of the sample is:

(A) under a requirement the institutional review board imposes on a specific research project; or

(B) authorized by the research participant with institutional review board approval under federal law; or

(4) the sample was obtained for a screening test established by the Texas Department of Health under Section 33.011, Health and Safety Code, and performed by that department or a laboratory approved by that department.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 11.001(g), eff. Sept. 1, 2003.

SUBCHAPTER I. PERSONNEL POLICIES AND PROCEDURES

Sec. 21.451. DEFINITION. In this subchapter, "state agency" does not include a public junior college as defined by Section 61.003, Education Code.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.452. DEVELOPMENT AND IMPLEMENTATION OF PERSONNEL POLICIES AND PROCEDURES. Each state agency shall develop and implement personnel policies and procedures that comply with this

chapter, including personnel selection procedures that incorporate a workforce diversity program.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.453. REVIEW. (a) Except as provided by Subsection (a-1), the commission shall review the personnel policies and procedures of each state agency on a six-year cycle to determine whether the policies and procedures comply with this chapter.

(a-1) The commission by rule shall develop risk-assessment criteria for determining the circumstances under which the commission may conduct a review of the personnel policies and procedures of a state agency more frequently than required by Subsection (a). The risk-assessment criteria must include:

(1) data on complaints against a state agency;

(2) previous review findings; and

(3) any other related information collected and maintained by the commission.

(b) The commission by rule shall establish a system to stagger the reviews of state agency personnel policies and procedures required under this section.

(c) If the commission determines that the personnel policies and procedures of a state agency do not comply with this chapter, the commission shall recommend appropriate revisions to the personnel policies and procedures.

(d) The state agency shall take these recommendations into consideration and determine whether to revise the personnel policies and procedures.

(e) The review of a state agency's personnel policies and procedures shall be completed within one year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 11, eff. September 1, 2015.

Sec. 21.454. COMPLIANCE REPORT. Not later than 60 days after the commission completes the review of a state agency's personnel policies and procedures as required by Section 21.453 and provides

its review and any recommendations to the agency, the agency shall submit to the commission, the governor, the legislature, and the Legislative Budget Board a report detailing:

(1) whether the agency implemented the recommendations of the commission; and

(2) if the agency did not implement all of the commission's recommendations, the reasons for rejecting those recommendations.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.455. REIMBURSEMENT; AUDIT. (a) A state agency shall reimburse the commission through interagency contract for the reasonable and necessary expenses incurred by the commission in conducting a review under Section 21.453.

(b) The commission shall maintain a record of the time expended and the actual costs and travel expenses incurred by the commission in conducting a review under Section 21.453.

(c) The amount of reimbursement paid by a state agency under Subsection (a) and the record maintained by the commission under Subsection (b) is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(d) Annually, the commission shall:

(1) review the reimbursements received by the commission under this section to ensure that the commission recovers the expenses described by Subsection (a); and

(2) adjust the reimbursement rate if, as a result of the most recent annual review, the commission determines that the reimbursement rate is higher or lower than the rate required to recover those expenses.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 785, Sec. 61, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 12, eff. September 1, 2015.

Sec. 21.456. FAILURE TO COMPLY WITH SUBCHAPTER; ADMINISTRATIVE PENALTY. (a) If the commission determines that a state agency has

failed to comply with this subchapter, the commission shall certify that determination to the comptroller.

(b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of $5,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency has complied with this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:

(1) if the state agency failed to develop or implement personnel policies and procedures as required by Section 21.452:

(A) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by the amount of $5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of $5,000; or

(2) if the state agency failed to reimburse the commission as required by Section 21.455:

(A) transfer the amount of the reimbursement from the agency to the commission's appropriations and reduce the funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter by an amount that equals the difference between the amount of the reimbursement and $5,000; or

(B) if all funds appropriated to the agency for the fiscal year in which the agency fails to comply with this subchapter have been distributed to the agency:

(i) during the next fiscal year, transfer the amount of the reimbursement from the funds appropriated to the agency for that fiscal year to the commission's appropriations; and

(ii) reduce the funds appropriated to the agency during the next fiscal year by an amount that equals the difference between the amount of the reimbursement and $5,000.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER J. HIRING PRACTICES

Sec. 21.501. WORKFORCE ANALYSIS. Each state fiscal biennium, each state agency shall analyze its current workforce and compare the number of African Americans, Hispanic Americans, and females employed by the agency in each job category to the available African Americans, Hispanic Americans, and females in the statewide civilian workforce to determine the percentage of exclusion or underutilization by each job category.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.502. RECRUITMENT PLAN. Based upon a workforce availability analysis under Section 21.501 that demonstrates the exclusion or underutilization of African Americans, Hispanic Americans, and females, or court-ordered remedies, or supervised conciliations or settlement agreements, each state agency, other than a public junior college as defined by Section 61.003, Education Code, shall develop and implement a plan to recruit qualified African Americans, Hispanic Americans, and females. The plan must comply with this chapter. The commission shall monitor state agencies to determine compliance with this section.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.503. EFFECT ON REMEDIES UNDER OTHER LAWS. This subchapter does not affect a remedy, agreement, settlement, or affirmative action plan that has been ordered or approved by a court or that has been adopted in accordance with other law.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.504. ANNUAL REPORT. Not later than November 1 of each calendar year, each state agency shall report to the commission the total number of African Americans, Hispanic Americans, females, and other persons hired for each job category by the agency during the preceding state fiscal year. The commission shall compile this information and submit a report based on the information to the governor and the Legislative Budget Board not later than January 1 of

the subsequent calendar year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

SUBCHAPTER K. EQUAL EMPLOYMENT OPPORTUNITY REPORTS

Sec. 21.551. DEFINITION. In this subchapter, "racial and ethnic group" means Caucasian American, African American, or Hispanic American.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.552. EQUAL EMPLOYMENT OPPORTUNITY REPORT REQUIRED. (a) Not later than November 1 of each year, each state agency shall report equal employment opportunity information for the preceding fiscal year to the commission as required by this subchapter. The report must be made in the form prescribed by the commission and include information compiled on a monthly basis.

(b) Each year the commission shall compile equal employment opportunity information reported to the commission by a state agency. The information must include:

(1) the total number of employees of the agency and the total number of new employees hired since the date of the last report made by the agency;

(2) the total number of employees of the agency listed by racial and ethnic group and the percentage of the total number of agency employees for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;

(3) the total number of male employees and the total number of female employees of the agency, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency;

(4) the total number of male employees and the total number of female employees of the agency for each racial and ethnic group, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency; and

(5) the total number of employees of the agency listed by job classification and the total number of employees for each sex and racial and ethnic group listed by job classification, including a distinction for those categories between the total number of employees and the total number of employees hired since the date of the last report made by the agency.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 1301 (H.B. 2716), Sec. 2, eff. June 18, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 78, eff. September 1, 2013.

Sec. 21.553. COOPERATION WITH COMPTROLLER AND UNIFORM STATEWIDE ACCOUNTING SYSTEM; REPORT. (a) The commission shall compile the information reported to the commission under this subchapter with the assistance of the comptroller and the uniform statewide accounting system.

(b) The commission shall conduct an analysis of the information reported to the commission under this subchapter and report the results of that analysis to the legislature, the Legislative Budget Board, and the governor not later than January 1 of each odd-numbered year. The report required under this subsection must be written in plain language.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 79, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 80, eff. September 1, 2013.

Sec. 21.554. FORM. Not later than December 15 of each year, the commission shall notify each state agency of the form to be used to make a report under this subchapter for the following year.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.555. FAILURE TO FILE REQUIRED REPORT; ADMINISTRATIVE PENALTY. (a) If the commission determines that a state agency has failed to file a report required under this subchapter, the commission shall certify that determination to the comptroller.

(b) On receipt of a certification by the commission under Subsection (a), the comptroller shall notify the state agency that is the subject of the certification that funds appropriated to the agency are subject to a reduction in the amount of $2,000 as provided by this section unless, not later than the 30th day after the date the agency receives notice from the comptroller under this subsection, the agency submits to the comptroller proof that the agency filed the report required under this subchapter. If the agency fails to submit to the comptroller the proof required by this subsection, the comptroller shall:

(1) reduce the funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter by the amount of $2,000; or

(2) if all funds appropriated to the agency for the fiscal year in which the agency fails to file the report required under this subchapter have been distributed to the agency, reduce the funds appropriated to the agency during the next fiscal year by the amount of $2,000.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999.

Sec. 21.556. REQUIRED COMPLIANCE TRAINING FOR STATE AGENCIES. (a) A state agency that receives three or more complaints of employment discrimination in a fiscal year, other than complaints determined to be without merit, shall provide a comprehensive equal employment opportunity training program to appropriate supervisory and managerial employees.

(b) The training may be provided by the commission or by another entity or person approved by the commission, including a state agency.

(c) The state agency shall provide documentation of the training to the commission if the training is not conducted by the commission. The documentation shall include the dates the training was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person

providing the training.

(d) The commission by rule shall adopt minimum standards for a training program described by Subsection (a) and shall approve an entity or person to provide a training program if the program complies with the minimum standards adopted by the commission under this subsection.

(e) An agency required to participate in a program under this section shall pay the cost of attending the program or shall reimburse the commission or state agency providing the program through interagency contract. The cost of providing the program shall be determined and approved by the commission or state agency. The state auditor may audit the commission's expenditure of fees collected under this section based on a risk assessment performed by the state auditor and subject to the approval by the legislative audit committee of including the audit in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 872, Sec. 15, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 62, eff. Sept. 1, 2003.

CHAPTER 22. EMPLOYMENT DISCRIMINATION FOR PARTICIPATING IN EMERGENCY EVACUATION

Sec. 22.001. DEFINITIONS. In this chapter:

(1) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property that results from a natural or man-made cause, including fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, or other public calamity requiring emergency action, or an energy emergency.

(2) "Emergency evacuation order" means an official statement issued by the governing body of this state or a political subdivision of this state to recommend the evacuation of all or part of the population of an area stricken or threatened with a disaster. The term includes a declaration of local disaster under Section 418.108, Government Code.

(3) "Emergency services personnel" includes fire fighters,

police officers and other peace officers, emergency medical technicians, and other individuals who are required, in the course and scope of their employment, to provide services for the benefit of the general public during emergency situations.

(4) "Employee" means an individual who is employed by an employer for compensation.

(5) "Employer" means a person who employs one or more employees.

(6) "Political subdivision" means a county, municipality, special district, or authority of this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.002. DISCRIMINATION PROHIBITED. An employer may not discharge or in any other manner discriminate against an employee who leaves the employee's place of employment to participate in a general public evacuation ordered under an emergency evacuation order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.003. LIABILITY; REINSTATEMENT. (a) An employer who violates Section 22.002 is liable for any loss of wages and employer-provided benefits incurred by the employee as a result of the violation.

(b) A person discharged in violation of Section 22.002 is entitled to reinstatement in the same or an equivalent position of employment with commensurate pay.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

Sec. 22.004. EXEMPTION; EMERGENCY SERVICES PERSONNEL. (a) Section 22.002 does not apply to individuals employed as emergency services personnel if the employer provides adequate emergency shelter for those individuals.

(b) This chapter does not apply to a person who is necessary to

provide for the safety and well-being of the general public, including a person necessary for the restoration of vital services.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.09(a), eff. Sept. 1, 1995.

CHAPTER 23. VOLUNTARY VETERAN'S EMPLOYMENT PREFERENCE FOR PRIVATE EMPLOYERS

Sec. 23.001. DEFINITION. In this chapter, "veteran" means an individual who:

(1) has served on active duty in the armed forces of the United States; and

(2) was honorably discharged from military service.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff. September 1, 2015.

Sec. 23.002. VOLUNTARY PREFERENCE POLICY. (a) A private employer may adopt a policy under which the employer may give a preference in employment decisions regarding hiring, promotion, or retention to a veteran over another qualified applicant or employee.

(b) A policy adopted under this section must be in writing.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff. September 1, 2015.

Sec. 23.003. APPLICATION OF POLICY.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3

(a) An employer shall apply any policy adopted under this chapter reasonably and in good faith in employment decisions regarding hiring, promotion, or retention during a reduction in the employer's workforce.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1

(a) A private employer shall apply any policy adopted under this chapter reasonably and in good faith in employment decisions regarding hiring, promotion, or retention during a reduction in the employer's workforce.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3

(b) An employer may require appropriate documentation from a veteran for the veteran to be eligible for the preference under a policy adopted under this chapter.

Text of subsection as added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1

(b) A private employer may require appropriate documentation from a veteran for the veteran to be eligible for the preference under a policy adopted under this chapter.

(c) Granting a preference in accordance with a policy adopted under this chapter does not violate Chapter 21.

Added by Acts 2015, 84th Leg., R.S., Ch. 195 (S.B. 805), Sec. 3, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 816 (H.B. 3547), Sec. 1, eff. September 1, 2015.

SUBTITLE B. RESTRICTIONS ON LABOR
CHAPTER 51. EMPLOYMENT OF CHILDREN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. PURPOSE. The purpose of this chapter is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, or well-being.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.002. DEFINITIONS. In this chapter:

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

(2) "Commission" means the Texas Workforce Commission.

(3) "Delivery of newspapers" means the distribution of newspapers on or the maintenance of a newspaper route. The term does

not include direct sales of newspapers to the general public.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 648 (H.B. 2930), Sec. 1, eff. September 1, 2005.

Sec. 51.003. GENERAL EXEMPTIONS. (a) This chapter does not apply to employment of a child:

(1) employed:

(A) in a nonhazardous occupation;

(B) under the direct supervision of the child's parent or an adult having custody of the child; and

(C) in a business or enterprise owned or operated by the parent or custodian;

(2) 11 years or older engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the commission;

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

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

(6) engaged in nonhazardous casual employment that will not endanger the safety, health, or well-being of the child and to which the parent or adult having custody of the child has consented; or

(7) 16 years or older engaged in the direct sale of newspapers to the general public.

(b) In this section, "employment in agriculture" means engaged in producing crops or livestock and includes:

(1) cultivating and tilling the soil;

(2) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity;

(3) dairying; and

(4) raising livestock, bees, fur-bearing animals, or poultry.

(c) For the purposes of Subsection (a)(6), the commission by rule may define nonhazardous casual employment that the commission determines is dangerous to the safety, health, or well-being of a

child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 648 (H.B. 2930), Sec. 2, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1184 (H.B. 581), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. RESTRICTIONS ON EMPLOYMENT

Sec. 51.011. MINIMUM AGE. Except as provided by this chapter, a person commits an offense if the person employs a child under 14 years of age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.012. PERFORMER EXEMPTION. The commission by rule may authorize the employment of children under 14 years of age as performers in a motion picture or a theatrical, radio, or television production.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.013. HOURS OF EMPLOYMENT; HARDSHIP EXEMPTION. (a) A person commits an offense if the person permits a child who is 14 or 15 years of age and who is employed by the person to work more than:

(1) eight hours in one day; or

(2) 48 hours in one week.

(b) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is enrolled in a term of a public or private school to work:

(1) between the hours of 10 p.m. and 5 a.m. on a day that is followed by a school day; or

(2) between the hours of midnight and 5 a.m. on a day that is not followed by a school day.

(c) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is not enrolled in summer school to work between the hours of midnight and 5

a.m. on any day during the time that school is recessed for the summer.

(d) The commission may adopt rules for determining whether hardships exist. If, on the application of a child, the commission determines that a hardship exists for that child, this section does not apply to that child.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.014. HAZARDOUS OCCUPATIONS. (a) The commission by rule shall declare an occupation to be hazardous if:

(1) the occupation has been declared to be hazardous by an agency of the federal government; and

(2) the commission determines that the occupation is particularly hazardous for the employment of children.

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

(c) A person commits an offense if the person employs a child in violation of a rule adopted under this section.

(d) In addition to any occupation determined to be hazardous under Subsection (a), the employment of a child to sell items or services for or solicit donations for any person other than an exempt organization or a business owned or operated by a parent, conservator, guardian, or other person who has possession of the child under a court order is a hazardous occupation for purposes of this chapter if the child is:

(1) younger than 14 years of age; and

(2) unaccompanied by a parent, conservator, guardian, or other person who has possession of the child under a court order.

(e) For purposes of this section, "exempt organization" means:

(1) a charitable organization, as that term is defined under Section 84.003, Civil Practice and Remedies Code;

(2) an organization regulated under Title 15, Election Code; or

(3) a club, organization, or other group engaged in a fund-raising activity for the club, organization, or group if the activity is sponsored by a public or private primary or secondary school.

(f) Subsection (d) does not apply to a child younger than 14 years of age selling items or services as a self-employed person with

the consent of a parent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 501, Sec. 1, eff. Sept. 1, 1995.

Sec. 51.0145. USE OF CHILD FOR SALES AND SOLICITATION. (a) For purposes of this section:

(1) "Exempt organization" means:

(A) a charitable organization, as defined by Section 84.003, Civil Practice and Remedies Code;

(B) an organization regulated under Title 15, Election Code; or

(C) a club, organization, or other group engaged in a fund-raising activity for the club, organization, or group if the activity is sponsored by a public or private primary or secondary school.

(2) "Solicit" means an action of a person to:

(A) sell goods or services in a setting other than a retail establishment;

(B) request donations; or

(C) distribute items, information, or advertising.

(b) The employment of a child to solicit is a hazardous occupation for purposes of this chapter.

(c) A person may not employ a child to solicit unless the person:

(1) at least seven days before the date the child begins employment, obtains on a form approved by the commission the signed consent of a parent of the child or of a conservator, guardian, or other person who has possession of the child under a court order;

(2) provides to the individual who gives consent:

(A) a map of the route the child will follow during each solicitation trip; and

(B) the name of each individual who will be supervising each solicitation trip;

(3) provides at each location where children will be engaged to solicit at least one adult supervisor for every three children engaged in that solicitation trip; and

(4) limits each solicitation trip to:

(A) no later than 7 p.m. on a day when the child is

legally required to attend school; and

(B) the hours between 10 a.m. and 7 p.m. on all other days.

(d) The commission may make additional requirements by rule for a person employing a child under this section to protect the safety, health, or well-being of the child.

(e) This section does not apply to an exempt organization or a business owned or operated by a parent, conservator, guardian, or other person who has possession of the child under a court order.

(f) A person commits an offense if the person employs a child in violation of this section or a rule adopted under this section.

Added by Acts 1999, 76th Leg., ch. 648, Sec. 1, eff. Sept. 1, 1999.

Sec. 51.015. OPERATION OF MOTOR VEHICLE FOR CERTAIN COMMERCIAL PURPOSES. (a) An occupation that involves the operation of a motor vehicle by a child for a commercial purpose is not a hazardous occupation under this chapter if the child:

(1) has a driver's license under Chapter 521, Transportation Code;

(2) is not required to obtain a commercial driver's license under Chapter 522, Transportation Code, to perform the duties of the occupation;

(3) performs the duties of the occupation:

(A) under the direct supervision of the child's parent or an adult having custody of the child; and

(B) for a business owned or operated by the child's parent or guardian; and

(4) operates a vehicle that has no more than two axles and does not exceed a gross vehicle weight rating of 15,000 pounds.

(b) The commission shall adopt rules consistent with this section.

Added by Acts 1995, 74th Leg., ch. 903, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.213, eff. Sept. 1, 1997.

Sec. 51.016. SEXUALLY ORIENTED BUSINESSES. (a) In this section, "sexually oriented business" has the meaning assigned by

Section 243.002, Local Government Code.

(b) A sexually oriented business may not employ an individual younger than 18 years of age.

(c) A sexually oriented business shall maintain at the business a record that contains a copy of a valid proof of identification of each employee or independent contractor working at the premises of the business.

(d) A proof of identification satisfies the requirements of Subsection (c) if the identification:

(1) contains a physical description and photograph consistent with the person's appearance;

(2) contains the date of birth of the person; and

(3) was issued by a government agency.

(e) The form of identification under Subsection (c) may include:

(1) a driver's license issued by this state or another state;

(2) a passport; or

(3) an identification card issued by this or another state or the federal government.

(f) A sexually oriented business shall maintain a record under this section for at least two years after the date the employee or independent contractor ends employment with or a contractual obligation to the business.

(g) The requirements of Subsections (c) and (f) do not apply with regard to an independent contractor who contracts with a sexually oriented business solely to perform repair, maintenance, or construction services at the business.

(h) The commission, the attorney general, or a local law enforcement agency may inspect a record maintained under this section if there is good reason to believe that an individual younger than 18 years of age is employed or has been employed by the sexually oriented business within the two years preceding the date of the inspection.

(i) A person commits an offense if the person:

(1) fails to maintain a record as required by this section; or

(2) knowingly or intentionally hinders an inspection authorized under Subsection (h).

Added by Acts 2009, 81st Leg., R.S., Ch. 489 (S.B. 707), Sec. 1, eff. September 1, 2009.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 51.021. INSPECTION; COLLECTION OF INFORMATION. (a) The commission, or a person designated by the commission, may, during working hours:

(1) inspect a place where there is good reason to believe that a child is employed or has been employed within the last two years; and

(2) collect information concerning the employment of a child who works or within the last two years has worked at that place.

(b) A person commits an offense if the person knowingly or intentionally hinders an inspection or the collection of information authorized by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 905, Sec. 1, eff. Sept. 1, 1995.

Sec. 51.022. CERTIFICATE OF AGE. (a) A child who is at least 14 years of age may apply to the commission for a certificate of age that states the date of birth of the child.

(b) The application must include documentary proof of age as required by the commission.

(c) After approval by the commission of the proof of age, the commission shall issue to the child a certificate of age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.023. RULEMAKING. The commission may adopt rules necessary to promote the purpose of this chapter but may not adopt a rule permitting the employment of a child under 14 years of age unless expressly authorized by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.024. POWERS OF COMMISSION; PENALTY. (a) The commission may require reports, conduct investigations, and take other action it considers necessary to implement this chapter.

(b) In the discharge of the duties imposed by this chapter, a member of the commission or an authorized representative of the commission may administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses who may be found within 100 miles of the relevant event and the production of books, papers, correspondence, memoranda, or other records considered necessary as evidence in the administration of this chapter. Notwithstanding Chapter 152 or 154, Local Government Code, or any other law of this state, the commission shall pay the fee of a sheriff or constable for serving a subpoena under this subsection from the administrative funds of the commission, and the comptroller shall issue a warrant for that fee as directed by the commission.

(c) In the case of contumacy or other refusal to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county court or district court within the jurisdiction of which the inquiry is conducted or the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction on application by the commission or its representative to issue to the person an order requiring the person to appear before a commissioner, the commission, or an authorized representative of the commission to produce evidence or give testimony regarding the matter under investigation. Failure to obey the court order may be punished by the court as contempt.

(d) A person commits an offense if the person, without just cause, fails or refuses to obey a commission subpoena to:

(1) attend and testify;

(2) answer any lawful inquiry; or

(3) produce books, papers, correspondence, memoranda, or other records.

(e) An offense under Subsection (d) is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER D. PENALTY AND DEFENSE

Sec. 51.031. OFFENSE; PENALTY. (a) Except as provided by Subsection (b), an offense under this chapter is a Class B misdemeanor.

(b) An offense under Section 51.014(d) or Section 51.0145 is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.10(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 501, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 648, Sec. 2, eff. Sept. 1, 1999.

Sec. 51.032. DEFENSE TO PROSECUTION. It is a defense to prosecution of a person employing a child who does not meet the minimum age requirement for a type of employment that the person relied in good faith on an apparently valid certificate of age presented by the child that showed the child to meet the age requirement for that type of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 51.033. ADMINISTRATIVE PENALTY. (a) If the commission determines that a person who employs a child has violated this chapter or a rule adopted under this chapter, the commission may assess an administrative penalty against that person as provided by this section.

(b) The penalty for a violation may be in an amount not to exceed $10,000.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) If, after examination of a possible violation and the facts relating to that possible violation, the commission determines that a violation has occurred, the commission shall issue a preliminary determination that states the facts on which the determination is

based, the fact that an administrative penalty is to be imposed, and the amount of the penalty.

(e) Not later than the 14th day after the date the report is issued, the commission shall give written notice of the preliminary determination to the person charged with the violation. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right 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.

(f) Not later than the 21st day after the date on which the notice is mailed, the person may make a written request for 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.

(g) If the person requests a hearing, the commission shall set a hearing and give notice of the hearing to the person not later than the 21st day after the date a request for the hearing is received by the commission. As soon as practicable, but not later than the 45th day after the date the hearing notice is mailed, the commission shall conduct the hearing. The hearing is subject to the commission rules and hearings procedures used by the commission to determine a claim under Subtitle A, Title 4, but is not subject to Chapter 2001, Government Code. The hearings examiner shall issue a decision.

(h) If it is determined after the hearing that a penalty may be imposed, the commission shall enter a written order to that effect. The commission shall notify the person in writing of the decision and the amount of the penalty imposed by mailing the notice to the person at the person's last known address as reflected by commission records. The order of the commission becomes final 14 days after the date of mailing, unless, within 14 days after the date of the mailing, the hearing is reopened by commission order or the person files a written motion for rehearing.

(i) The notice of the commission's order must include a statement of the right of the person to judicial review of the order.

(j) Not later than the 30th day after the date the commission's final order is mailed, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and

the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court that is for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commission by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2), the commission may file with the court not later than the fifth day after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by bringing an action as provided by Subchapter E, Chapter 212; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the

person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that a penalty is not owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) The attorney general may bring a suit in a district court in Travis County to enforce a final order from which an appeal under this chapter has not been taken. In the suit and on the request of the attorney general, the court may order payment of attorney's fees and other costs of court.

(r) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.11(a), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 905, Sec. 3, eff. Sept. 1, 1995.

Sec. 51.034. INJUNCTION: ATTORNEY GENERAL'S ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly violates the requirements established by this chapter relating to the employment of children.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.11(a), eff. Sept. 1, 1995.

SUBCHAPTER E. COLLECTION OF PENALTY

Sec. 51.041. DEFINITION. In this subchapter, "asset" means:

(1) a credit, bank, or savings account or deposit; or

(2) any other intangible or personal property.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.042. NOTICE OF DELINQUENCY. (a) If, under a final order, a person is determined to be delinquent in the payment of any amount, including penalties, interest, or other amounts due under this chapter, the commission may notify personally or by mail any other person who:

(1) possesses or controls an asset belonging to the delinquent person; or

(2) owes a debt to the delinquent person.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this section may be given at any time after the amount due under this chapter becomes delinquent. The notice must state the amount of wages, penalties, interest, or other amounts due, and any additional amount that will accrue by operation of law in a period not to exceed 30 days after the date on which the notice is given and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.043. DUTIES OF NOTICE RECIPIENT. (a) On receipt of a notice under Section 51.042, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date on which the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person receiving the notice on the date the person received the notice during the 60-day period after the date of receipt of the notice.

(b) A notice under Section 51.042 that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal or any

branch office of the bank, including the office of the bank at which the deposit is carried or the credit or property is held.

(c) A person who receives a notice under this subchapter and who transfers or disposes of an asset or debt in a manner that violates Subsection (a)(2) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given, to the extent of the value of the affected asset or debt.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.044. LEVY. (a) At any time during the 60-day period provided by Section 51.043(a)(2), the commission may levy on the asset or debt by delivery of a notice of levy.

(b) On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.045. NOTICE EFFECT. A notice delivered under this subchapter is effective:

(1) at the time of delivery against all property, rights to property, credits, and debts involving the delinquent person that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, or debts involving the delinquent person that come into the possession or control of the person served with the notice during the 60-day period provided by Section 51.043(a)(2).

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

Sec. 51.046. DISCHARGE OF LIABILITY. A person acting in accordance with the terms of a notice issued by the commission under this subchapter is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to

property, credits, and debts of the person affected by compliance with the notice of freeze or levy.

Added by Acts 1995, 74th Leg., ch. 905, Sec. 4, eff. Sept. 1, 1995.

CHAPTER 52. MISCELLANEOUS RESTRICTIONS

SUBCHAPTER A. RESTRICTIONS ON CERTAIN CONSECUTIVE PERIODS OF EMPLOYMENT

Sec. 52.001. RETAIL EMPLOYER. (a) A person who is an employer may not require an employee to work seven consecutive days in an establishment, the business of which is selling merchandise at retail.

(b) The person may not deny an employee at least one period of 24 consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked.

(c) The person shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the employer's business. In addition, the person may not require an employee to work during a period that the employee requests to be off to attend one regular worship service a week of the employee's religion.

(d) This section does not apply to employment of a part-time employee whose total work hours for one employer during a calendar week do not exceed 30 hours.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.002. EMPLOYER FORMERLY SUBJECT TO SATURDAY/SUNDAY CLOSING LAW. An employer whose establishment was closed on Saturday or Sunday to comply with Chapter 15, Acts of the 57th Legislature, 1st Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), before that Act was repealed effective September 1, 1985, may not require an employee who has been continuously employed by that employer since August 31, 1985, to work on whichever of those days the establishment was closed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.003. OFFENSE; PENALTY; DEFENSE. (a) A person commits an offense if the person violates this subchapter.

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

(c) It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and that the employee signed a written statement stating that the employee volunteered. The statement must also contain a provision, signed by the employer or the employer's agent, that the employer did not require the work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. RESTRICTION ON WORK BY FOREIGN CREW

Sec. 52.011. PROHIBITION OF CERTAIN WORK BY FOREIGN CREW; PENALTY. (a) A person commits an offense if the person:

(1) is an officer or member of a crew of a foreign seagoing vessel; and

(2) works on a wharf or levee of a port beyond the end of the vessel's tackle.

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

(1) a fine of not less than $10 and not more than $100;

(2) confinement in jail for a term of not less than 10 days and not more than 30 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. RESTRICTIONS ON LENGTH OF HOES

Sec. 52.021. MINIMUM LENGTH OF HOE HANDLES. (a) An employer of agricultural laborers may not require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor in a commercial farming operation.

(b) This section does not apply to an employer engaged in the operation of a greenhouse or nursery.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 52.022. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 52.021.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. RESTRICTIONS ON BLACKLISTING

Sec. 52.031. BLACKLISTING OFFENSE; PENALTY. (a) In this section, "blacklist" means to place on a book or list or publish the name of an employee of an individual, firm, company, or corporation who was discharged or who voluntarily left that employment, intending to prevent the employee from engaging in or securing employment of any kind with any other person, in either a public or a private capacity.

(b) A person commits an offense if the person:

(1) blacklists or causes to be blacklisted an employee; or

(2) conspires or contrives by correspondence or any other manner to prevent an employee discharged by a corporation, company, or individual from procuring employment.

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

(1) a fine of not less than $50 or more than $250;

(2) imprisonment in jail for not less than 30 days or more than 90 days; or

(3) both the fine and imprisonment.

(d) This section may not be held to prohibit a corporation, company, or individual from giving, on application from a discharged employee or a person desiring to employ the employee, a written truthful statement of the reason for the discharge. The written statement may not be used as the cause for a civil or criminal action for libel against the person who furnishes the statement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. RESTRICTIONS ON COERCION OF EMPLOYEE TRADE

Sec. 52.041. COERCION OF EMPLOYEE TRADE; PENALTY. (a) A person, firm, or corporation commits an offense if the person, firm, or corporation requires or attempts to require by coercion an employee to:

(1) deal with a person, association, corporation, or

company; or

(2) purchase an article of food, clothing, or other merchandise at a place or store.

(b) A person, firm, or corporation commits an offense if the person, firm, or corporation excludes from work, punishes, or blacklists an employee for failure to:

(1) deal with the person, firm, or corporation; or

(2) purchase an article of food, clothing, or other merchandise at a place or store.

(c) An offense under this section is punishable by a fine of not less than $50 or more than $200.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. RESTRICTIONS ON PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA

Sec. 52.051. PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA. (a) An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding.

(b) If the subpoena to which a violation of Subsection (a) applies is issued by a court, the employer violating Subsection (a) may be found in contempt by the court issuing the subpoena.

(c) If the subpoena to which a violation of Subsection (a) applies is issued by a legislative committee or a state agency, the employer violating Subsection (a) is subject to the authority of the committee or agency to impose a monetary penalty, not to exceed $500, on a person who violates an order of the committee or agency.

(d) An employee discharged in violation of this section is entitled to return to the same employment that the employee had at the time the employee was subpoenaed if the employee, as soon as practical after release from compliance with the subpoena, gives the employer actual notice that the employee intends to return.

(e) An employee injured because of the violation of this section by an employer may recover:

(1) damages in an amount that does not exceed six months' compensation at the rate at which the employee was compensated when the subpoena was issued; and

(2) reasonable attorney's fees.

(f) It is a defense to an action by an employee under this section for reemployment that reemployment is impossible or unreasonable because of a change in the employer's circumstances while the employee complied with the subpoena.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. RESTRICTIONS ON PROHIBITING EMPLOYEE TRANSPORTATION OR STORAGE OF CERTAIN FIREARMS OR AMMUNITION

Sec. 52.061. RESTRICTION ON PROHIBITING EMPLOYEE ACCESS TO OR STORAGE OF FIREARM OR AMMUNITION. A public or private employer may not prohibit an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition from transporting or storing a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 30, eff. January 1, 2016.

Sec. 52.062. EXCEPTIONS. (a) Section 52.061 does not:

(1) authorize a person who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, who otherwise lawfully possesses a firearm, or who lawfully possesses ammunition to possess a firearm or ammunition on any property where the possession of a firearm or ammunition is prohibited by state or federal law; or

(2) apply to:

(A) a vehicle owned or leased by a public or private employer and used by an employee in the course and scope of the employee's employment, unless the employee is required to transport or store a firearm in the official discharge of the employee's duties;

(B) a school district;

(C) an open-enrollment charter school, as defined by Section 5.001, Education Code;

(D) a private school, as defined by Section 22.081, Education Code;

(E) property owned or controlled by a person, other than the employer, that is subject to a valid, unexpired oil, gas, or other mineral lease that contains a provision prohibiting the possession of firearms on the property; or

(F) property owned or leased by a chemical manufacturer or oil and gas refiner with an air authorization under Chapter 382, Health and Safety Code, and on which the primary business conducted is the manufacture, use, storage, or transportation of hazardous, combustible, or explosive materials, except in regard to an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, and who stores a firearm or ammunition the employee is authorized by law to possess in a locked, privately owned motor vehicle in a parking lot, parking garage, or other parking area the employer provides for employees that is outside of a secured and restricted area:

(i) that contains the physical plant;

(ii) that is not open to the public; and

(iii) the ingress into which is constantly monitored by security personnel.

(b) Section 52.061 does not prohibit an employer from prohibiting an employee who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, or who otherwise lawfully possesses a firearm, from possessing a firearm the employee is otherwise authorized by law to possess on the premises of the employer's business. In this subsection, "premises" has the meaning assigned by Section 46.035(f)(3), Penal Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 437 (H.B. 910), Sec. 30, eff. January 1, 2016.

Sec. 52.063. IMMUNITY FROM CIVIL LIABILITY. (a) Except in

cases of gross negligence, a public or private employer, or the employer's principal, officer, director, employee, or agent, is not liable in a civil action for personal injury, death, property damage, or any other damages resulting from or arising out of an occurrence involving a firearm or ammunition that the employer is required to allow on the employer's property under this subchapter.

(b) The presence of a firearm or ammunition on an employer's property under the authority of this subchapter does not by itself constitute a failure by the employer to provide a safe workplace.

(c) For purposes of this section, a public or private employer, or the employer's principal, officer, director, employee, or agent, does not have a duty:

(1) to patrol, inspect, or secure:

(A) any parking lot, parking garage, or other parking area the employer provides for employees; or

(B) any privately owned motor vehicle located in a parking lot, parking garage, or other parking area described by Paragraph (A); or

(2) to investigate, confirm, or determine an employee's compliance with laws related to the ownership or possession of a firearm or ammunition or the transportation and storage of a firearm or ammunition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.

Sec. 52.064. CONSTRUCTION OF PROVISION RELATING TO IMMUNITY FROM CIVIL LIABILITY. Section 52.063 does not limit or alter the personal liability of:

(1) an individual who causes harm or injury by using a firearm or ammunition;

(2) an individual who aids, assists, or encourages another individual to cause harm or injury by using a firearm or ammunition; or

(3) an employee who transports or stores a firearm or ammunition on the property of the employee's employer but who fails to comply with the requirements of Section 52.061.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1058 (S.B. 321), Sec. 1, eff. September 1, 2011.

SUBTITLE C. WAGES
CHAPTER 61. PAYMENT OF WAGES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Day" means a calendar day.

(3) "Employee" means an individual who is employed by an employer for compensation. The term does not include:

(A) a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Chapter 573, Government Code; or

(B) an independent contractor.

(4) "Employer" means a person who:

(A) employs one or more employees; or

(B) acts directly or indirectly in the interests of an employer in relation to an employee.

(5) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a contract of hire, whether written or oral or express or implied. The term does not include any service performed by an individual for wages if 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.

(6) "Mail" means to deposit for mailing with the United States Postal Service.

(7) "Wages" means compensation owed by an employer for:

(A) labor or services rendered by an employee, whether computed on a time, task, piece, commission, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), 9.12(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 1, eff. September

1, 2005.

Sec. 61.002. COMMISSION DUTIES. (a) The commission shall:

(1) administer this chapter; and

(2) adopt rules as necessary to implement this chapter.

(b) The commission may require reports, conduct investigations, and take other action as it considers necessary to implement this chapter.

(c) In the discharge of the duties imposed by this chapter, any authorized representative or member of the commission may:

(1) administer an oath or affirmation;

(2) take a deposition;

(3) certify to an official act; and

(4) issue a subpoena to compel the attendance of a witness and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in the administration of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(a), eff. Sept. 1, 1995.

Sec. 61.003. GOVERNMENTAL ENTITIES EXCLUDED. This chapter does not apply to the United States, this state, or a political subdivision of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.0031. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or

degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 2, eff. September 1, 2015.

Sec. 61.004. PAYMENT OF CERTAIN FEES FOR SERVICE OF PROCESS. Notwithstanding Chapter 152 or 154, Local Government Code, or any other law of this state, the fees assessed by a sheriff or constable for service of a subpoena under Section 61.002 shall be paid by the commission out of the administrative funds of the commission, and the comptroller shall issue warrants for those fees as directed by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(b), eff. Sept. 1, 1995.

Sec. 61.005. EFFECT OF REFUSAL TO OBEY COMMISSION SUBPOENA; CRIMINAL PENALTY. (a) In the case of contumacy or other refusal by a person to obey a subpoena issued by the commission or an authorized representative of the commission to that person, any county or district court of this state in the jurisdiction of which the inquiry is carried on or in the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business has jurisdiction, on application by the commission or its representative, to issue to the person an order requiring the person to appear before the commission or its authorized representative to:

(1) produce evidence if so ordered; or

(2) testify regarding the matter under investigation or in question.

(b) The court may punish as contempt a failure to obey a court order issued under Subsection (a).

(c) A person commits an offense if the person, without just cause, fails or refuses to obey a commission subpoena to:

(1) attend and testify;

(2) answer any lawful inquiry; or

(3) produce books, papers, correspondence, memoranda, or other records.

(d) An offense under Subsection (c) is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.13(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 10.11, eff. Sept. 1, 2003.

Sec. 61.006. NOTICE LANGUAGES. The commission shall:

(1) make available any notice the commission is required to provide to an employee under this chapter in the two languages that are most commonly spoken in this state; and

(2) ensure that employees are notified of an employee's ability to request from the commission notice in either language described by Subdivision (1).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 13, eff. September 1, 2015.

SUBCHAPTER B. PAYMENT OF WAGES

Sec. 61.011. PAYDAYS. (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.

(b) An employer shall pay wages to an employee other than an employee covered by Subsection (a) at least twice a month.

(c) If wages are paid twice a month, each pay period must consist as nearly as possible of an equal number of days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.012. DESIGNATION OF PAYDAYS; NOTICE. (a) An employer shall designate paydays in accordance with Section 61.011.

(b) If an employer fails to designate paydays, the employer's paydays are the first and 15th day of each month.

(c) An employer shall post, in conspicuous places in the workplace, notices indicating the paydays.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.013. PAYMENT OTHER THAN ON PAYDAY. An employer shall pay an employee who is not paid on a payday for any reason, including the employee's absence on a payday, on another regular business day on the employee's request.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.014. PAYMENT AFTER TERMINATION OF EMPLOYMENT. (a) An employer shall pay in full an employee who is discharged from employment not later than the sixth day after the date the employee is discharged.

(b) An employer shall pay in full an employee who leaves employment other than by discharge not later than the next regularly scheduled payday.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.015. PAYMENT OF COMMISSIONS AND BONUSES. (a) Wages paid on commission and bonuses are due according to the terms of:

(1) an agreement between the employee and employer; or

(2) an applicable collective bargaining agreement.

(b) An employer shall pay wages paid on commission and bonuses to an employee in a timely manner as required for the payment of other wages under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.016. FORM OF PAYMENT. (a) An employer shall pay wages to an employee:

(1) in United States currency;

(2) by a written instrument issued by the employer that is negotiable on demand at full face value for United States currency; or

(3) by the electronic transfer of funds.

(b) An employee may agree in writing to receive part or all of

the wages in kind or in another form.

(c) 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 the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.017. DELIVERY OF PAYMENT. (a) An employer shall pay wages through a means authorized by this section.

(b) An employer may pay wages by:

(1) delivering them to the employee at the employee's regular place of employment during regular employment hours;

(2) delivering them to the employee at a time and place agreed on by the employer and employee;

(3) sending them to the employee by registered mail, to be received by the employee not later than payday;

(4) delivering them in a manner similar to a manner specified by Subdivision (1), (2), or (3) to a person designated by the employee in writing; or

(5) delivering them to the employee by any reasonable means authorized by the employee in writing.

(c) An employer may elect to pay wages to an employee who maintains at a financial institution an account that qualifies for electronic funds transfer through a direct deposit plan that uses electronic funds transfer to deposit the wages in the employee's account. An employer who desires to pay wages through a direct deposit plan shall:

(1) notify each affected employee in writing, at least 60 days before the date on which the direct deposit payroll system is scheduled to begin, that the employer is adopting a direct deposit payroll system; and

(2) obtain from the employee any information required by the financial institution in which the employee maintains the account that is necessary to implement the electronic funds transfer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 316, Sec. 1, eff. June 18, 2003.

Sec. 61.018. DEDUCTION 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 part of the wages for a lawful purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.019. FAILURE TO PAY WAGES; CRIMINAL PENALTY. (a) An employer commits an offense if:

(1) at the time of hiring an employee, the employer intends to avoid payment of wages owed to the employee; and

(2) the employer fails after demand to pay those wages.

(b) An employer commits an offense if the employer:

(1) intends to avoid payment of wages owed to an employee;

(2) intends to continue to employ the employee; and

(3) fails after demand to pay those wages.

(c) An employer commits a separate offense under Subsection (b) for each pay period during which the employee earns wages that the employer fails to pay.

(d) An offense under this section is a felony of the third degree.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1158, Sec. 1, eff. Sept. 1, 1997.

Sec. 61.020. FAILURE TO PAY WAGES; ATTORNEY GENERAL ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. SECURITY FOR WAGE PAYMENTS

Sec. 61.031. BOND. (a) The commission may require an employer

to deposit a bond if:

(1) the employer is convicted of two violations of this chapter; or

(2) a final order of the commission against an employer for nonpayment of wages remains unsatisfied after the 10th day after the date on which the time to appeal from that final order has expired and an appeal is not pending.

(b) The bond must be:

(1) in an amount approved and considered by the commission as adequate under the circumstances;

(2) payable to the state;

(3) conditioned that the employer, for a period not to exceed 36 months, pay the employees in accordance with this chapter; and

(4) conditioned that the employer pay any sum recovered against the employer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.032. SUIT TO ENFORCE BOND REQUIREMENT. (a) If an employer fails to deposit a bond required under Section 61.031 before the 11th day after the date on which demand is made for the bond, the attorney general may bring a suit in the name of the state against the employer to furnish the bond or to cease doing business until the employer furnishes the bond.

(b) If the court finds just cause for requiring the bond and that the bond is reasonably necessary and proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with this chapter, the court may enjoin the employer from doing business until the requirement is met. The injunction may also apply to any other person concerned with or in any way participating in the failure to pay wages resulting in the conviction or in a final order of the commission. The court may make any other order appropriate and necessary to compel compliance with the requirement.

(c) In an action under this section, the employer has the burden of proving that the bond is unnecessary or that the amount demanded by the commission is excessive.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.033. FAILURE OF SURETY COMPANY TO PAY VERIFIED CLAIM FOR WAGES; CIVIL PENALTY. (a) A surety company that issues a bond to secure the payment of wages under this chapter and that wilfully fails to pay a verified claim for wages found to be due and payable is subject to a civil penalty in the amount of $1,000 for each failure to pay each employee.

(b) A subsequent violation is subject to a civil penalty in the amount of $1,000 for each failure to pay each employee plus 25 percent of the amount unlawfully withheld.

(c) The attorney general shall recover a penalty imposed by this section in an action brought in the name of the state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. WAGE CLAIMS

Sec. 61.051. FILING WAGE CLAIM. (a) An employee who is not paid wages as prescribed by this chapter may file a wage claim with the commission in accordance with this subchapter.

(b) A wage claim must be filed in a manner and on a form prescribed by the commission and must be verified by the employee.

(c) A wage claim must be filed not later than the 180th day after the date the wages claimed became due for payment. The 180-day deadline is a matter of jurisdiction.

(d) The employee may file the wage claim:

(1) in person at an office of the commission;

(2) by mailing the claim to an address designated by the commission;

(3) by faxing the claim to a fax number designated by the commission; or

(4) by any other means adopted by the commission by rule.

(e) The commission shall ensure that employees are notified of an employee's ability to request from the commission a wage claim form in either language described by Section 61.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 21 (S.B. 741), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 97 (H.B. 762), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 14, eff. September 1, 2015.

Sec. 61.052. PRELIMINARY WAGE DETERMINATION ORDER. (a) An examiner employed by the commission shall analyze each wage claim filed under Section 61.051 and, if the claim alleges facts actionable under this chapter, shall investigate the claim and issue a preliminary wage determination order:

(1) dismissing the wage claim; or

(2) ordering payment of wages determined to be due and unpaid.

(b) If a commission examiner imposes an administrative penalty under Section 61.053, the preliminary wage determination order must include an order for payment of the penalty.

(b-1) If a wage claim is filed later than the date described by Section 61.051(c), the examiner shall dismiss the wage claim for lack of jurisdiction.

(c) The commission examiner shall mail notice of the preliminary wage determination order to each party at that party's last known address, as reflected by commission records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 2, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 21 (S.B. 741), Sec. 2, eff. September 1, 2009.

Sec. 61.0525. ESTABLISHMENT OF WAGE CLAIM APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial wage claim appeal tribunals to hear and decide disputed wage claims if the commission determines that establishment of those tribunals is necessary to ensure prompt disposal of wage claims cases on appeal.

(b) Each wage claim appeal tribunal shall be composed of a salaried examiner appointed by the commission.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 3, eff.

September 1, 2005.

Sec. 61.053. BAD FAITH; ADMINISTRATIVE PENALTY. (a) If the commission examiner, a wage claim appeal tribunal, or the commission determines that an employer acted in bad faith in not paying wages as required by this chapter, the examiner, tribunal, or commission, in addition to ordering the payment of the wages, may assess an administrative penalty against the employer.

(b) If the commission examiner, a wage claim appeal tribunal, or the commission determines an employee acted in bad faith in bringing a wage claim, the examiner, tribunal, or commission may assess an administrative penalty against the employee.

(c) An administrative penalty assessed under this section may not exceed the lesser of:

(1) the amount of the wages in question or claimed; or

(2) $1,000.

(d) In determining the amount of an administrative penalty assessed under this section, the commission examiner, a wage claim appeal tribunal, or the commission shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter a future violation; and

(4) any other appropriate matter, including mitigating circumstances.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 4, eff. September 1, 2005.

Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a) Either party may request a hearing before a wage claim appeal tribunal to appeal a preliminary wage determination order made under Section 61.052.

(b) The request for hearing must be made in writing not later than the 21st day after the date the commission examiner mails the notice of the preliminary wage determination order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 5, eff. September 1, 2005.

Sec. 61.055. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. If neither party requests a hearing to appeal a preliminary wage determination order within the period prescribed by Section 61.054, the order becomes the final order of the commission for all purposes, and neither party is entitled to judicial review of the order under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 6, eff. September 1, 2005.

Sec. 61.056. PAYMENT REQUIRED IF HEARING NOT REQUESTED. (a) An employer that does not request a hearing within the period prescribed by Section 61.054 to appeal a preliminary wage determination order shall pay the amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order. The payment must equal the net amount of outstanding wages after any valid deductions and must include an itemized list of those deductions.
(b) Payment to the commission constitutes payment to the employee for all purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 7, eff. September 1, 2005.

Sec. 61.057. NOTICE; TIME FOR HEARING. (a) A notice regarding an administrative hearing conducted under this subchapter must be mailed by the wage claim appeal tribunal not later than the 21st day after the date a request for the hearing is received by the commission.

(b) As soon as practicable, but not later than the 45th day after the date a notice is mailed under Subsection (a), the tribunal shall conduct the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 8, eff. September 1, 2005.

Sec. 61.058. HEARING PROCEDURES. (a) A hearing conducted under this subchapter is subject to the rules and hearings procedures used by the commission in the determination of a claim for unemployment compensation benefits.
(b) The hearing is not subject to Chapter 2001, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 61.059. CONSIDERATION OF PRELIMINARY WAGE DETERMINATION ORDER. The wage claim appeal tribunal may modify, affirm, or rescind a preliminary wage determination order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 9, eff. September 1, 2005.

Sec. 61.060. ORDER AFTER HEARING. After a hearing, the wage claim appeal tribunal shall enter a written order for the payment of wages that the tribunal determines to be due or for the payment of any penalty the tribunal assesses.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 10, eff. September 1, 2005.

Sec. 61.061. NOTICE AND FINALITY OF ORDER. (a) The wage claim appeal tribunal shall mail to each party to the appeal notice of:

(1) the decision;

(2) the amount of wages subject to the order; and

(3) the amount of any penalty assessed.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

(c) The order of the wage claim appeal tribunal becomes final 14 days after the date on which it is mailed unless a further appeal to the commission is initiated as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 11, eff. September 1, 2005.

Sec. 61.0611. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE WAGE CLAIM APPEAL TRIBUNAL. (a) The commission by order may remove to itself or transfer to another wage claim appeal tribunal the proceedings on a wage claim pending before a wage claim appeal tribunal.

(b) The commission promptly shall mail to the parties to the affected wage claim a notice of the order under Subsection (a).

(c) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0612. COMMISSION REVIEW OF WAGE CLAIM APPEAL TRIBUNAL ORDER. The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside an order issued under Section 61.061 on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties affected by the order to initiate a further appeal before the commission.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0613. NOTICE OF COMMISSION ACTION. (a) The commission shall mail to each party to the appeal under Section 61.0612 notice of:

(1) the commission's decision;

(2) the amount of wages subject to the order;

(3) the amount of any penalty assessed; and

(4) the parties' right to judicial review of the order.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.0614. FINALITY OF COMMISSION ORDER. An order of the commission becomes final 14 days after the date the order is mailed unless before that date:

(1) the commission by order reopens the appeal; or

(2) a party to the appeal files a written motion for rehearing.

Added by Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 12, eff. September 1, 2005.

Sec. 61.062. JUDICIAL REVIEW. (a) A party who has exhausted the party's administrative remedies under this chapter, other than a motion for rehearing, may bring a suit to appeal the order.

(b) The suit must be filed not later than the 30th day after the date the final order is mailed.

(c) The commission and any other party to the proceeding before the commission must be made defendants in the suit.

(d) The suit must be brought in the county of the claimant's residence. If the claimant is not a resident of this state, the suit must be brought in the county in this state in which the employer has its principal place of business.

(e) An appeal under this subchapter is by trial de novo with

the substantial evidence rule being the standard of review in the manner as applied to an appeal from a final decision under Subtitle A, Title 4.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(b), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 13, eff. September 1, 2005.

Sec. 61.063. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW; WAIVER. (a) Not later than the 30th day after the date a commission order becomes final, the party required to pay wages or a penalty shall:

(1) pay the amount to the commission; or

(2) if the party files a petition for judicial review in a court of competent jurisdiction contesting the final order, send the amount to the commission for deposit in an interest-bearing escrow account.

(b) Unless the party files an affidavit of inability to pay with the clerk of the court within the period specified in Subsection (a), failure to send the amount within that period constitutes a waiver of the right to judicial review.

(c) 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 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 to the party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(c), eff. Sept. 1, 1995.

Sec. 61.064. PAYMENT TO EMPLOYEE. Not later than the 30th day after the date on which a claim is finally adjudicated or otherwise resolved, the commission shall pay to the claimant wages collected under this subchapter and any interest earned on those wages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.065. DEPOSIT OF PENALTY. The commission shall deposit a penalty collected under this subchapter in the unemployment compensation special administration fund established under Subchapter E, Chapter 203.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.066. COMMISSION ACTION; ENFORCEMENT OF ORDER. (a) The commission, in the name of the state and the attorney general, may:

(1) bring a suit in a district court in Travis County to enforce a final order from which an appeal under this chapter has not been taken; or

(2) serve on the defaulting party a notice of assessment stating the amount due.

(b) A notice of assessment served under this section is prima facie evidence of the contents of the notice. However, the defaulting party may show the incorrectness of the notice of assessment.

(c) The notice shall be served in the manner provided by law for service of process on a defendant in a civil action in district court.

(d) A person aggrieved by the determination of the commission as stated in the notice of assessment may seek judicial review of the assessment by filing a petition for judicial review in a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition shall be served in the manner prescribed by law for service of process on a defendant in a civil action in district court on:

(1) a member of the commission; or

(2) a person designated by the commission for service of process.

(e) If the party on whom a notice of assessment is served does not seek judicial review as provided by this section, the assessment is final for all purposes. An assessment that is not contested or that is upheld after judicial review shall be recorded, enforced,

renewed, and otherwise treated as the final judgment of a district court.

(f) Unless the adverse party prevails in the civil action or the notice of assessment is reversed by a reviewing court, the adverse party shall pay all costs of either action, including attorney's fees, investigation costs, service costs, court costs, and other applicable costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.14(d), eff. Sept. 1, 1995.

Sec. 61.067. RECIPROCAL COLLECTION ARRANGEMENTS. The commission may enter into reciprocal arrangements with appropriate authorized agencies of the United States or other states for the collection of wage claims that are final under the laws of the jurisdictions in which they were filed.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.15(a), eff. Sept. 1, 1995.

SUBCHAPTER E. ADMINISTRATIVE LIEN

Sec. 61.081. CREATION AND ATTACHMENT OF LIEN. (a) A final order of the commission against an employer indebted to the state for penalties or wages, unless timely appealed to a court, is a lien on all the property belonging to the employer.

(b) The lien for an unpaid debt attaches at the time the order of the commission becomes final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.082. ENFORCEMENT OF LIEN. (a) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien established under this subchapter.

(b) In administering and enforcing the lien, the commission has the duties imposed and the powers conferred on the comptroller for the enforcement of other liens under Subchapters A and B, Chapter 113, Tax Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.0825. PRIORITY OF LIEN. A lien established under this subchapter is superior to any other lien on the same property, with the exception of a lien for ad valorem taxes.

Added by Acts 2001, 77th Leg., ch. 641, Sec. 1, eff. Sept. 1, 2001.

Sec. 61.083. FILING; FEE. (a) A lien under this subchapter may be recorded in the book entitled "State Tax Liens" kept by the county clerk as provided by Section 113.004, Tax Code.

(b) The commission shall pay the county clerk of the county in which a notice of the lien has been filed the usual fee for filing and recording similar instruments. The fee shall be paid by warrant drawn by the comptroller. The fee is an amount due to the commission from the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.084. RELEASE OF LIEN. (a) A lien under this subchapter may be released in the manner provided by Subchapter A, Chapter 113, Tax Code, for a state tax lien.

(b) If the liability secured by the lien is fully paid, the commission shall mail a release of lien to the employer.

(c) The employer is responsible for filing a release of lien with the appropriate county clerk and paying the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 61.085. ASSIGNMENT OF LIEN. A lien securing wages due under this chapter may be assigned to the claimant, at the claimant's request.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. DELINQUENCY; LEVY

Sec. 61.091. NOTICE OF DELINQUENCY. (a) If, under a final order, a person is determined to be delinquent in the payment of wages, penalties, interest, or other amounts due under this chapter, the commission may notify personally or by mail any person who:

(1) possesses or controls any of the delinquent person's assets, including a credit, bank, or savings account or deposit, or other intangible or personal property; or

(2) owes a debt to the delinquent person.

(b) A notice under this subchapter to a state officer, department, or agency must be provided before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this subchapter may be given at any time after the wages, penalties, interest, or other amounts due under this chapter become delinquent. The notice must state the amount of wages, penalties, interest, or other amounts due and owing and any additional amount that will accrue by operation of law in a period not to exceed 30 days and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.092. DUTIES OF NOTICE RECIPIENT. (a) On receipt of a notice under this subchapter, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date on which the notice is received of each asset belonging to the delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person on the date the person received the notice within the 60-day period after the date of receipt of the notice.

(b) A notice under this subchapter that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal office or any branch office of the bank, including any office of the

bank at which the deposit is carried or the credit or property is held.

(c) A person who receives a notice under this subchapter and who violates Subsection (a)(2) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given, to the extent of the value of the affected asset or debt.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.093. LEVY. (a) At any time during the 60-day period provided by Section 61.092(a)(2), the commission may levy on the asset or debt by delivery of a notice of levy.

(b) On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.094. NOTICE EFFECT. A notice delivered under this subchapter is effective:

(1) at the time of delivery against all property, rights to property, credits, or debts involving the delinquent person that are not on the date of the notice subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, or debts involving the delinquent person that come into the possession or control of the person served with a notice of levy during the 60-day period provided by Section 61.092(a)(2).

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

Sec. 61.095. DISCHARGE OF LIABILITY. A person acting in accordance with the terms of the notice issued by the commission under this subchapter is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by

compliance with the notice of freeze or levy.

Added by Acts 1995, 74th Leg., ch. 761, Sec. 2, eff. Sept. 1, 1995.

CHAPTER 62. MINIMUM WAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Texas Minimum Wage Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.002. DEFINITIONS. In this chapter, unless the context requires a different definition:

(1) Repealed by Acts 2009, 81st Leg., R.S., Ch. 506, Sec. 5.35(10), eff. September 1, 2009.

(2) "Agriculture" includes:

(A) farming in all its branches;

(B) cultivating and tilling the soil;

(C) dairying;

(D) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity, including a commodity defined as an agricultural commodity by Section 15(g), Agricultural Marketing Act (12 U.S.C. Section 1141j(g));

(E) raising livestock, bees, fur-bearing animals, or poultry; and

(F) any practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including:

(i) forestry or lumber operations;

(ii) preparation for market; and

(iii) delivery to storage, market, or a carrier for transportation to market.

(3) "Commission" means the Texas Employment Commission.

(4) "Employ" includes to permit to work.

(5) "Employee" includes any individual employed by an employer.

(6) "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee.

(7) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized

group of persons.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.35(10), eff. September 1, 2009.

Sec. 62.003. EARNINGS STATEMENT. (a) At the end of each pay period, an employer shall give each employee a written earnings statement covering the pay period.

(b) An earnings statement must be signed by the employer or the employer's agent and must show:

(1) the name of the employee;

(2) the rate of pay;

(3) the total amount of pay earned by the employee during the pay period;

(4) any deduction made from the employee's pay and the purpose of the deduction;

(5) the amount of pay after all deductions are made; and

(6) the total number of:

(A) hours worked by the employee if the employee's pay is computed by the hour; or

(B) units produced by the employee during the pay period if the employee's pay is computed on a piece rate.

(c) An earnings statement may be in any form determined by the employer. The information required by Subsection (b) may be stated on a check voucher or bank draft given to an employee for the employee's wages.

(d) In this section, "pay period" means the period that an employee works for which salary or wages are regularly paid under the employee's employment agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 1, eff. Sept. 1, 2003.

Sec. 62.004. PROVISION OF INFORMATION. The commission shall provide information to the public about this chapter to ensure that both employers and employees in this state are fully aware of:

(1) their respective rights and responsibilities;

(2) the specified exemptions; and

(3) the penalties and liabilities that may be incurred for a violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.005. COLLECTIVE BARGAINING NOT IMPAIRED. This chapter does not interfere with or in any way diminish the right of employees to bargain collectively with their employer through representatives chosen by the employees to establish wages that exceed the applicable minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.006. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 3, eff. September 1, 2015.

SUBCHAPTER B. MINIMUM WAGE

Sec. 62.051. MINIMUM WAGE. Except as provided by Section 62.057, an employer shall pay to each employee the federal minimum wage under Section 6, Fair Labor Standards Act of 1938 (29 U.S.C. Section 206).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 461, Sec. 2, eff. Sept. 1, 2003.

Sec. 62.0515. APPLICATION OF MINIMUM WAGE TO CERTAIN GOVERNMENTAL ENTITIES; CERTAIN AGREEMENTS WITH GOVERNMENTAL ENTITIES. (a) Except as otherwise provided by this section, the minimum wage provided by this chapter supersedes a wage established in an ordinance, order, or charter provision governing wages in private employment, other than wages under a public contract.

(b) This section does not apply to any state or federal job training or workforce development program.

(c) This section does not apply to a minimum wage established by a governmental entity that applies to a contract or agreement, including a non-annexation agreement, entered into by a governmental entity and a private entity. A private entity that enters into a contract or agreement, including a non-annexation agreement, with a governmental entity, under the terms of which the private entity agrees to comply with a minimum wage established by the governmental entity, is subject to the terms of that contract or agreement, and those terms apply to and may be enforced against a general contractor, subcontractor, developer, and other person with which the private entity contracts in order to comply with the provisions of the original contract or agreement.

(d) For purposes of this section, "governmental entity" includes a municipality, a county, a special district or authority, a junior college district, or another political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 461, Sec. 3, eff. Sept. 1, 2003.

Sec. 62.052. TIPPED EMPLOYEES. (a) In determining the wage of a tipped employee, the amount paid the employee by the employer is the amount described as paid to a tipped employee under Section 3(m), Fair Labor Standards Act of 1938 (29 U.S.C. Section 203(m)).

(b) In this section, "tipped employee" means an employee engaged in an occupation in which the employee customarily and regularly receives more than $20 a month in tips.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 386, Sec. 2, eff. Sept. 1, 2001.

Sec. 62.053. COST OF MEALS OR LODGING. In computing the wage paid to an employee, an employer may include the reasonable cost to the employer of furnishing meals, lodging, or both to the employee if:

(1) meals or lodging customarily are furnished by the employer to employees; and

(2) the cost of the meals and lodging are separately stated and identified in the earnings statement furnished to the employee under Section 62.003.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.054. CERTAIN EMPLOYEES SUBJECT TO CALL. An employer may not be required to pay an employee who lives on the premises of a business and who is assigned certain working hours plus additional hours when the employee is subject to call for more than the number of hours the employee actually works or is on duty because of assigned working hours.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.057. PATIENTS AND CLIENTS OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. (a) A person may be compensated for services rendered to the Texas Department of Mental Health and Mental Retardation or a department facility at a percentage of the base wage adopted under this section if:

(1) the person is a patient or client of a department facility;

(2) the person's productive capacity is impaired;

(3) the person:

(A) assists in the operation of the facility as part of the person's therapy; or

(B) receives occupational training in a sheltered workshop or other program operated by the department; and

(4) the facility or department derives an economic benefit

from the person's services.

(b) The percentage of the base wage paid to a person under Subsection (a) must correspond to the percentage of the person's productive capacity compared with the capacity of an employee who performs the same or similar tasks and who is not similarly impaired.

(c) The department shall adopt rules to determine the base wage and the percentage of productive capacity of the patients and clients and other rules necessary to implement this section.

(d) Services rendered and payment provided under this section may not be construed as creating an employer-employee relationship between the department and the patient or client engaged in occupational training or therapeutic or rehabilitative services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. EXEMPTIONS

Sec. 62.151. PERSON COVERED BY FEDERAL ACT. This chapter and a municipal ordinance or charter provision governing wages in private employment, other than wages under a public contract, do not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 4, eff. Sept. 1, 2003.

Sec. 62.152. EMPLOYMENT BY RELIGIOUS, EDUCATIONAL, CHARITABLE, OR NONPROFIT ORGANIZATION. An employer is exempt from this chapter with respect to the employment of a person who is:

(1) a member of a religious order while the person is performing a service for or at the direction of the order;

(2) a duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while the person is performing services in that capacity for a church, synagogue, or religious organization;

(3) engaged in the activities of a religious, educational, charitable, or nonprofit organization in which:

(A) the employer-employee relationship does not in fact exist; or

(B) the services are rendered to the organization

gratuitously;

(4) employed by the Boy Scouts of America, the Girl Scouts of America, or a local organization affiliated with those organizations;

(5) employed by a camp of a religious, educational, charitable, or nonprofit organization; or

(6) employed with the person's spouse by a nonprofit educational institution to serve as the parents of a child:

(A) who is an orphan;

(B) one of whose natural parents is deceased; or

(C) who is enrolled in and resides in residential facilities of the institution, if the employee and the employee's spouse:

(i) reside in residential facilities of the institution; and

(ii) receive, without cost, board and lodging from the institution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.153. EMPLOYMENT OF CERTAIN PROFESSIONALS, SALESPERSONS, AND PUBLIC OFFICIALS. An employer is exempt from this chapter with respect to the employment of a person:

(1) employed in a bona fide executive, administrative, or professional capacity;

(2) employed as an outside salesperson or collector and paid a commission; or

(3) who performs services for a political subdivision as an elected official or as a member of a legislative body.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.154. DOMESTIC EMPLOYMENT. An employer is exempt from this chapter with respect to the employment of a person who:

(1) performs domestic services in or about a private home, including a person who performs the duties of baby-sitting in or out of the employer's home; or

(2) lives in or about a private home and furnishes personal care for a resident of the home.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.155. EMPLOYMENT OF CERTAIN YOUTHS AND STUDENTS. An employer is exempt from this chapter with respect to the employment of a person who:

(1) is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate;

(2) is less than 20 years of age and is a student regularly enrolled in a high school, college, university, or vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate; or

(3) has a disability and who is:

(A) not more than 21 years of age;

(B) a client of vocational rehabilitation; and

(C) participating in a cooperative school-work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.156. EMPLOYMENT OF INMATES. An employer is exempt from this chapter with respect to the employment of a person who performs services while imprisoned in the institutional division of the Texas Department of Criminal Justice or while confined in a local jail.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.157. EMPLOYMENT OF CERTAIN FAMILY MEMBERS. An employer is exempt from this chapter with respect to employment of the employer's brother, sister, brother-in-law, sister-in-law, child, spouse, parent, son-in-law, daughter-in-law, ward, or person in loco parentis to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.158. CERTAIN AMUSEMENT AND RECREATIONAL ESTABLISHMENTS. An employer is exempt from this chapter with respect to employment in

an amusement or recreational establishment that:

(1) does not operate for more than seven months in a calendar year; or

(2) had average receipts for any six months of the preceding calendar year of not more than 33-1/3 percent of its average receipts for the other six months of the year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.159. CERTAIN EMPLOYERS NOT CONTRIBUTING TO UNEMPLOYMENT COMPENSATION FUND; CERTIFICATE. (a) An employer that is not liable for payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, is exempt from this chapter, except with respect to employment of a person in agriculture.

(b) The commission shall furnish a certificate stating whether a specified employer is liable for the payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, to a person making a written request for a certificate. The commission may require payment of a fee not to exceed $5 for the issuance of the certificate.

(c) A certificate issued under this section is admissible in evidence in an action brought by an employee under Subchapter E. In the absence of evidence to the contrary:

(1) it is presumed that the facts stated in the certificate are true; and

(2) the certificate is conclusive as to whether the named employer is exempt from this chapter under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.16, eff. Sept. 1, 1995.

Sec. 62.160. AGRICULTURAL EXEMPTIONS. (a) An employer is exempt from this chapter with respect to employment of a person in dairy farming.

(b) Sections 62.051-62.054 do not apply to an agricultural employer with respect to an employee engaged in the production of livestock.

(c) In this section, "production of livestock" includes:

(1) any livestock operation, without regard to size or type

of location, in which the land produces forage or feedstuffs, including naturally or artificially revegetated forage or feedstuffs;

(2) breeding, feeding, watering, containing, maintaining, and caring for livestock;

(3) production of livestock in feedlots; and

(4) all other activities necessary or useful to the raising of livestock.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 5.34, eff. September 1, 2009.

Sec. 62.161. SHELTERED WORKSHOPS. A nonprofit charitable organization that is engaged in evaluating, training, and employment services for clients with disabilities and that complies with federal regulations covering those activities is considered to have complied with this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. CIVIL PENALTY

Sec. 62.201. CIVIL PENALTY. An employer who violates Section 62.051, 62.052, 62.053, or 62.054 or Subchapter C is liable to an affected employee in the amount of the unpaid wages plus an additional equal amount as liquidated damages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 461, Sec. 5, eff. Sept. 1, 2003.

Sec. 62.202. LIMITATIONS. An action to recover a liability imposed by this subchapter must be brought not later than the second anniversary of the date on which the unpaid wages are due and payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.203. PLAINTIFFS. (a) An action to recover a liability under this subchapter may be brought by an employee for that employee and other similarly affected employees.

(b) An employee may not be a plaintiff to an action brought under this subchapter unless:

(1) the employee consents in writing; and

(2) the consent is filed in the court in which the action is brought.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.204. REQUIRED FINDINGS. At the trial of an action brought under this subchapter, the plaintiff recovers if the jury or the court finds from a preponderance of the evidence that:

(1) the plaintiff is or has been employed by the defendant at any time during the two years preceding the institution of the action;

(2) the original petition filed by or on behalf of the plaintiff is verified; and

(3) the defendant failed to pay the plaintiff the minimum wage under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 62.205. ATTORNEY'S FEES; COSTS. In addition to a judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees and costs of the action to be paid by the defendant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 63. ACTION ON ASSIGNMENT OF WAGES

Sec. 63.001. ASSIGNMENT OF UNEARNED WAGES; NOTICE REQUIRED. An employee's assignment of the employee's wages or a salary is not effective against the employee's employer in any suit for wages or salaries that are unearned at the time the assignment is executed unless the employer is given written notice of the assignment immediately after the execution of the assignment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.17(a), eff. Sept. 1, 1995.

Sec. 63.002. EXEMPTION. This chapter does not affect Section 22.002, Education Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.17(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 12.01, eff. Sept. 1, 1999.

CHAPTER 64. REDEMPTION OF EMPLOYER'S EVIDENCES OF INDEBTEDNESS FOR WAGES

Sec. 64.001. DEFINITIONS. In this chapter:

(1) "Employer's evidence of indebtedness" means an instrument, other than money, used by a person to pay an employee or laborer of the person for labor or otherwise. The term includes:

(A) a coupon;

(B) a chip;

(C) scrip;

(D) a punchout; and

(E) a store order.

(2) "Holder" means an employee, laborer, or other bona fide holder who holds an employer's evidence of indebtedness.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

Sec. 64.002. REDEMPTION OF EVIDENCE OF INDEBTEDNESS. (a) A person who uses an employer's evidence of indebtedness shall, on the demand for redemption and presentation of the employer's evidence of indebtedness by the holder on a regular payday, redeem the employer's evidence of indebtedness:

(1) for United States currency; and

(2) at the face value of the employer's evidence of indebtedness.

(b) The face value of an employer's evidence of indebtedness is currency equal to the cash value of the purchasing power in merchandise at the commissary or other repository of the person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

Sec. 64.003. ACTION TO ENFORCE REDEMPTION; PENALTY. (a) A holder who under Section 64.002 presents an employer's evidence of indebtedness and demands redemption is entitled, if the person using the employer's evidence of indebtedness refuses redemption, to recover from that person:

(1) the value of the employer's evidence of indebtedness;

(2) a penalty in an amount equal to 25 percent of the amount due; and

(3) costs of court and reasonable attorney's fees.

(b) The holder may bring an action under Subsection (a) in the holder's own name.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.18(a), eff. Sept. 1, 1995.

SUBTITLE D. EMPLOYEE BENEFITS

CHAPTER 81. WORK AND FAMILY POLICIES

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Clearinghouse" means the Work and Family Policies Clearinghouse.

(2) "Commission" means the Texas Workforce Commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 2, eff. May 30, 2005.

Sec. 81.003. WORK AND FAMILY POLICIES CLEARINGHOUSE. The Work and Family Policies Clearinghouse is within the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 81.004. CLEARINGHOUSE POWERS AND DUTIES. (a) The clearinghouse shall provide technical assistance and information on

dependent care and other employment-related family issues to public and private employers, state agencies, policymakers, and individuals.

(b) Repealed by Acts 2005, 79th Leg., Ch. 263, Sec. 5(2), eff. May 30, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 5(2), eff. May 30, 2005.

Sec. 81.0045. DEPENDENT CARE GRANT PROGRAM. (a) The clearinghouse may establish a grant program to provide funds to public or private persons to conduct demonstration dependent care projects.

(b) The clearinghouse shall adopt rules governing the submission and approval of grant requests and the cancellation of grants.

(c) To receive a grant, a person whose grant is approved must execute an interagency agreement or a contract with the clearinghouse. The contract must require the person receiving the grant to perform the services as stated in the approved grant request. The contract must contain appropriate provisions for program and fiscal monitoring.

Added by Acts 1995, 74th Leg., ch. 305, Sec. 4, eff. Sept. 1, 1995.

Sec. 81.0046. PROMOTION OF EMPLOYEE DEPENDENT CARE BENEFITS. In providing technical assistance and information under this chapter, the clearinghouse shall encourage employers to provide employee dependent care benefits by:

(1) promoting the economic benefits realized by employers who provide dependent care benefits, including decreased absenteeism and turnover rates, greater productivity, and federal and state tax incentives;

(2) advertising the availability of federal and state tax incentives for employee dependent care benefits; and

(3) providing technical assistance to employers who establish employee dependent care benefit programs, including assistance in obtaining federal and state tax incentives.

Added by Acts 2003, 78th Leg., ch. 1038, Sec. 1, eff. Sept. 1, 2003.

Sec. 81.005. DEPOSIT OF MATERIALS. Materials on employment-related family issues that are published by state agencies may be deposited with the clearinghouse for distribution to employers, job applicants, and other interested persons.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 81.007. RULES. The commission by rule may adopt procedures to implement functions under Sections 81.004 and 81.005. In adopting rules under this section, the commission shall consider the recommendations of the clearinghouse staff.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 263 (H.B. 2962), Sec. 3, eff. May 30, 2005.

Sec. 81.008. GIFTS, GRANTS, AND DONATIONS. (a) The clearinghouse may accept a gift or grant from a public or private entity to fund any activity under this chapter.

(b) The commission may accept a donation of money, services, or property only if the commission determines that the donation furthers the lawful purposes and objectives of the commission under this chapter and the donation is accepted in an open meeting by a majority of the voting members of the commission. The donation must be reported in the public records of the commission with the name of the donor and the purpose of the donation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 82. DISCHARGE OF LIABILITY UNDER CERTAIN EMPLOYEE BENEFIT PLANS

Sec. 82.001. DEFINITIONS. In this chapter:

(1) "Employee benefit plan" includes:

(A) a retirement benefits plan;

(B) a death benefits plan; and
(C) a savings plan.
(2) "Employer" includes a former employer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.002. DISCHARGE OF LIABILITY. (a) A payment or refund made by an employer or trustee under a written employee benefit plan to a person described by Subsection (b) fully discharges the employer or trustee from all adverse claims against the payment or refund unless, before making the payment, the employer or trustee receives a notice that some other person claims to be entitled to all or part of the payment or refund.

(b) Subsection (a) applies to a payment to:
(1) an employee;
(2) a former employee;
(3) an employee's or former employee's beneficiary, heir, or legatee; or
(4) a representative of an employee's or former employee's estate.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.003. NOTICE. (a) The notice described by Section 82.002 must be received at:
(1) the employer's principal place of business in this state, if given to an employer; or
(2) the trustee's home office, if given to the trustee.

(b) The notice may be given by or on behalf of the other person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.004. CORPORATION MAY TRANSFER STOCK OWNERSHIP. A corporation, the stock of which is a part of a payment or refund that

is made as provided by Section 82.002, may accept the stock for transfer as directed by the employer or trustee and treat the person to whom the stock is transferred as the owner of the stock for all purposes unless or until the corporation receives at its home office written notice by or on behalf of a person other than the person to whom the transfer is directed that the other person claims ownership of the stock or another interest in the stock.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

Sec. 82.005. LIMITED EFFECT. This chapter does not affect a claim or right to a payment or refund between persons other than:

(1) an employer or trustee that makes the payment or refund; or

(2) a corporation that accepts for transfer corporate stock that is a part of the payment or refund.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.19(a), eff. Sept. 1, 1995.

SUBTITLE E. REGULATION OF CERTAIN OCCUPATIONS

CHAPTER 91. PROFESSIONAL EMPLOYER ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for a license or the renewal of a license under this chapter.

(2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 117, Sec. 28(1), eff. September 1, 2013.

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for professional employer organizations;

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

(3) "Client" means any person who enters into a

professional employer services agreement with a license holder.

(3-a) "Coemployer" means a professional employer organization or a client that is a party to a coemployment relationship.

(3-b) "Coemployment relationship" means a contractual relationship between a client and a professional employer organization that involves the sharing of employment responsibilities with or allocation of employment responsibilities to covered employees in accordance with the professional employer services agreement and this chapter.

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

(5) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 14.010(1).

(6) "Common ownership" means a direct or indirect ownership interest in excess of 33-1/3 percent. The term includes ownership through subsidiaries or affiliates.

(7) "Controlling person" means an individual who:

(A) possesses direct or indirect control of 25 percent or more of the voting securities of a business entity that offers or proposes to offer professional employer services;

(B) possesses the authority to set policy and direct management of a business entity that offers or proposes to offer professional employer services;

(C) is employed, appointed, or authorized by a business entity that offers or proposes to offer professional employer services to enter into a professional employer services agreement with a client on behalf of the business entity; or

(D) a person who is an officer or director of a corporation or a general partner of a partnership that offers or proposes to offer professional employer services.

(7-a) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client.

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

(8-a) "Executive director" means the executive director of the department.

(9) "Governmental entity" means this state, or an agency, county, or municipality of this state.

(10) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(11) "License holder" means a person licensed under this chapter to provide professional employer services.

(12) Repealed by Acts 2009, 81st Leg., R.S., Ch. 188, Sec. 6, eff. September 1, 2009.

(13) "Offer" means a proposal for acceptance or rejection that is made in such a form that the promises or performance to be rendered by each party are reasonably certain.

(14) "Professional employer services" means the services provided through coemployment relationships in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees. The term does not include:

(A) temporary help;

(B) an independent contractor;

(C) the provision of services that otherwise meet the definition of "professional employer services" by one person solely to other persons who are related to the service provider by common ownership; or

(D) a temporary common worker employer as defined by Chapter 92.

(15) "Professional employer organization" means a business entity that offers professional employer services.

(16) "Temporary help" means an arrangement by which an organization hires its own employees and assigns them to a company to support or supplement the company's work force in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

(17) "Wages" means:

(A) compensation for labor or services rendered by a covered employee, whether computed on a time, task, piece, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, severance pay, bonuses, commissions, stock option grants, or deferred compensation owed to a covered employee under a written agreement.

(18) "Working capital" of an applicant means the applicant's current assets minus the applicant's current liabilities as determined by generally accepted accounting principles.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.001, 14.010(1), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 833, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 6, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 28(1), eff. September 1, 2013.

Sec. 91.002. RULES. (a) The commission shall adopt rules as necessary to administer this chapter.

(b) Each person who offers professional employer services is subject to this chapter and the rules adopted by the commission.

(c) Notwithstanding any other provision of this chapter, nothing in this chapter preempts the existing statutory or rulemaking authority of any other state agency or entity to regulate professional employer services in a manner consistent with the statutory authority of that state agency or entity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 2, eff. Sept. 1, 1999;

Acts 2003, 78th Leg., ch. 816, Sec. 14.002, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 4, eff. September 1, 2013.

Sec. 91.003. INTERAGENCY COOPERATION. (a) Each state agency that in performing duties under other law affects the regulation of professional employer services shall cooperate with the department and other state agencies as necessary to implement and enforce this chapter.

(b) In particular, the Texas Workforce Commission, the division of workers' compensation of the Texas Department of Insurance, the Department of Assistive and Rehabilitative Services, and the attorney general's office shall assist in the implementation of this chapter and shall provide information to the department on request.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.016, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.001, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 5, eff. September 1, 2013.

Sec. 91.004. EFFECT OF OTHER LAW ON CLIENTS AND EMPLOYEES. (a) This chapter does not exempt a client of a license holder, or any covered employee, from any other license requirements imposed under local, state, or federal law.

(b) A covered employee who is licensed, registered, or certified under law is considered to be an employee of the client for the purpose of that license, registration, or certification.

(c) A license holder is not engaged in the unauthorized practice of an occupation, trade, or profession that is licensed, certified, or otherwise regulated by a governmental entity solely by entering into a professional employer services agreement with a client and covered employees.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.005. APPLICATION OF CERTAIN PROCUREMENT LAWS. With respect to a bid, contract, purchase order, or agreement entered into with the state or a political subdivision of the state, a client's status or certification as a small, minority-owned, disadvantaged, or woman-owned business enterprise or as a historically underutilized business is not affected because the client has entered into a professional employer services agreement with a license holder or uses the services of a license holder.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.006. WORKERS' COMPENSATION COVERAGE. (a) A certificate of insurance coverage or other evidence of coverage showing that either a license holder or a client maintains workers' compensation insurance coverage constitutes proof of workers' compensation insurance coverage for the license holder and the client with respect to all covered employees of the license holder and the client. The state and a political subdivision of the state shall accept a certificate of insurance coverage or other evidence of coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For a client that has employees who are not covered employees under a professional employer services agreement, the state or a political subdivision of the state may require the client to furnish separate proof of workers' compensation insurance coverage for those employees.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.007. APPLICATION OF LABOR RELATIONS LAWS. This chapter does not relieve a client of a right, obligation, or duty under:

(1) Chapter 101;

(2) the federal National Labor Relations Act (29 U.S.C. Section 151 et seq.);

(3) the federal Railway Labor Act (45 U.S.C. Section 151 et seq.); or

(4) any other law governing labor relations.

Added by Acts 1999, 76th Leg., ch. 771, Sec. 3, eff. Sept. 1, 1999.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.008. APPLICABILITY OF CONTINUING EDUCATION LAW. Section 51.405, Occupations Code, does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 14.003, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 91.011. LICENSE REQUIRED. A person may not engage in or offer professional employer services in this state unless the person holds a license issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.012. GENERAL LICENSE REQUIREMENTS. To be qualified to serve as a controlling person of a license holder under this chapter, that person must be at least 18 years of age and have educational,

managerial, or business experience relevant to:

(1) operation of a business entity offering professional employer services; or

(2) service as a controlling person of a professional employer organization.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 6, eff. September 1, 2013.

Sec. 91.013. BACKGROUND INVESTIGATIONS. (a) On receipt of an original application for a license, the department shall conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance of a license if the department finds that an applicant or a controlling person is not qualified under this chapter. The investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(b) Department background investigations are governed by this chapter, Section 411.122, Government Code, and Chapter 53, Occupations Code. Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license. The department shall consider criminal convictions as provided by Section 411.122, Government Code, and Chapter 53, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 6, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.815, eff. Sept. 1, 2001.

Sec. 91.014. WORKING CAPITAL REQUIREMENTS. (a) An applicant for an original or renewal license must demonstrate positive working capital in the following amounts:

(1) $50,000 if the applicant employs fewer than 250 covered employees;

(2) $75,000 if the applicant employs at least 250 but not more than 750 covered employees; and

(3) $100,000 if the applicant employs more than 750 covered employees.

(b) The applicant shall demonstrate the applicant's working capital to the department by providing the department with the applicant's financial statement. The financial statement must be prepared in accordance with generally accepted accounting principles, be audited by an independent certified public accountant, and be without qualification as to the going concern status of the applicant. An applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations must meet the financial capacity requirements required by Subsection (a) and provide the department with financial statements that have been reviewed by a certified public accountant.The applicant may satisfy any deficiencies in the working capital requirement through guarantees, letters of credit, a bond in an amount that demonstrates compliance with the amounts required under Subsection (a), or other security acceptable to the department. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty.

(c) Information submitted to or maintained by the department is subject to Chapter 552, Government Code, other than information related to:

(1) identification of clients;

(2) working capital;

(3) financial statements; or

(4) federal tax returns.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 7, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 2, eff. December 31, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 7, eff. September 1, 2013.

Sec. 91.015. LICENSE APPLICATION. (a) To receive a professional employer organization original license, a person shall file with the department a written application accompanied by the application fee.

(b) The department shall require an applicant for a license to provide information necessary to determine that the applicant meets the licensing requirements of this chapter. The department shall also require the applicant to provide information necessary to determine whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(c) Before denying a license application, the department shall provide written notice to an applicant specifying the reasons for the denial. The department shall provide the applicant at least 30 days after the date of the notice to address the reasons for the denial. For good cause and on a showing of a good faith effort to remedy the reasons for the denial, the executive director may grant an additional 30 days to remedy the reasons for denial.

(d) Removal, demotion, or discharge of a controlling person in response to notice from the department of the alleged unsuitability of that controlling person is an affirmative defense to any claim by that individual based on the removal, demotion, or discharge.

(e) A controlling person who has been evaluated by the department under this chapter is not required to be reevaluated if that person changes the person's affiliation or employment from one applicant or license holder to another applicant or license holder.

(f) Following denial or revocation of a license, and prior to issuing a new license or reinstating a license, the department shall consider:

(1) the extent to which the applicant or license holder has adequately corrected any problems; and

(2) whether the applicant or license holder has demonstrated that the applicant or license holder had exercised due diligence to avoid the reason or reasons for the denial or revocation.

The applicant or license holder shall bear the burden of proof with respect to Subdivisions (1) and (2).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 8, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 26.017, eff. Sept. 1, 2003.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 8, eff. September 1, 2013.

Sec. 91.016. LICENSE ISSUANCE; TERM. (a) The department shall issue a license to an applicant who the department determines has met the requirements of this chapter. The department shall notify an applicant of any deficiency in the application not later than the 30th day after the date on which the department receives the application forms. The department shall issue the license not later than the 90th day after the date on which the completed application is filed with the department.

(b) A license issued or renewed by the department under this chapter is valid for one year from the date of the issuance or renewal. The department shall renew a license on receipt of a complete renewal application form and payment of the license renewal fee.

(c) Each applicant or license holder shall disclose to the department the addition of a new controlling person not later than the 45th day after the date on which the person assumes the duties of a controlling person. That person may serve as a controlling person while the department is conducting any necessary investigation. If the department determines not to approve the new controlling person, the department shall notify the applicant or license holder and that controlling person at least 20 days before taking action against the applicant or license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.004, eff. Sept. 1, 2003.

Sec. 91.017. FEES. (a) Each applicant for an original or renewal professional employer organization license shall pay to the department before the issuance of the license or license renewal a fee set by the commission by rule.

(b) The commission is authorized to charge reasonable fees for license applications and renewals, investigations, inspections, and any other administrative or enforcement responsibilities created under this chapter.

(c) Fees collected by the department under this chapter may be used only to implement this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 10, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.005, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 9, eff. September 1, 2013.

Sec. 91.018. LICENSE NOT ASSIGNABLE; CHANGE OF NAME OR LOCATION. (a) A license holder may not conduct business under any name other than that specified in the license. A license issued under this chapter is not assignable. A license holder may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another license holder that the public may be confused or misled by the name's use. A license holder may not conduct business under more than one name unless the license holder has obtained a separate license for each name.

(b) A license holder may change the license holder's licensed name at any time by notifying the department and paying a fee for each change of name. The commission by rule shall set the fee for a name change. A license holder may change the license holder's name on renewal of the license without the payment of the name change fee.

(c) A license holder must notify the department in writing of:

(1) any change in the location of the license holder's primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records maintained by the license holder.

(d) A license holder may amend the name specified in its license to add a trade name, trademark, service mark, or parent company name. An amendment made under this subsection must comply with the requirements imposed under Subsection (a). The department may charge a fee for processing of such an amendment.

(e) A license holder offering professional employer services in more than one state may advertise in this state using the name of its parent company or under a trade name, trademark, or service mark. The trade name, trademark, service mark, or parent company name must be listed on the license in addition to the licensed name used by the license holder in this state.

(f) Each written proposal provided to a prospective client and each contract between a license holder and a client or covered employee shall clearly identify the name of the license holder. A proposal or contract may also identify the trade name, trademark, service mark, or parent company name of the license holder. A license holder may use written materials including forms, benefit information, letterhead, and business cards that bear only the trade name, trademark, service mark, or parent company name of the license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 11, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.006, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 10, eff. September 1, 2013.

Sec. 91.019. LIMITED LICENSE. (a) The commission by rule shall provide for the issuance of a limited license to a person who seeks to offer limited professional employer services in this state.

(b) For purposes of this section, a professional employer organization is considered to be offering limited professional employer services if the professional employer organization:

(1) employs fewer than 50 covered employees in this state at any one time;

(2) does not provide covered employees to a client based or domiciled in this state; and

(3) does not maintain an office in this state or solicit clients located or domiciled in this state.

(c) A professional employer organization that offers limited professional employer services shall complete the application forms and pay the fees for a limited license as prescribed by the department. A limited license is valid for one year from the date of issuance and may be renewed annually on submission of a renewal application and payment of the required fees.

(d) The department may use information obtained from regulatory agencies in other states in evaluating an applicant for a limited license.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 771, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 816, Sec. 14.007, eff. Sept. 1, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 11, eff. September 1, 2013.

Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The department may take disciplinary action against a license holder on any of the following grounds:

(1) engaging in professional employer services or offering to engage in the provision of professional employer services without a license;

(2) transferring or attempting to transfer a license issued under this chapter;

(3) violating this chapter or any order or rule issued by the executive director or commission under this chapter;

(4) failing after the 31st day after the date on which a felony conviction of a controlling person is final to notify the department in writing of the conviction;

(5) failing to cooperate with an investigation, examination, or audit of the license holder's records conducted by the license holder's insurance company or the insurance company's designee, as allowed by the insurance contract or as authorized by

law by the Texas Department of Insurance;

(6) failing after the 31st day after the effective date of a change in ownership, principal business address, or the address of accounts and records to notify the department and the Texas Department of Insurance of the change;

(7) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the executive director;

(8) refusing, after reasonable notice, to meet reasonable health and safety requirements within the license holder's control and made known to the license holder by a federal or state agency;

(9) being delinquent in the payment of the license holder's insurance premiums other than those subject to a legitimate dispute;

(10) being delinquent in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(11) knowingly making a material misrepresentation to an insurance company or to the department or other governmental agency;

(12) failing to maintain the working capital required under Section 91.014; or

(13) using professional employer services to avert or avoid an existing collective bargaining agreement.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.008, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 3, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 12, eff. September 1, 2013.

Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) The commission may adopt rules to permit the acceptance of electronic filings under this chapter, including the filing of applications, documents, reports, and other documents required by this chapter. The rules may provide for the acceptance of electronic filing and other assurance by an assurance organization, qualified and approved

by the commission, that provides satisfactory assurance and documentation of compliance acceptable to the department that meets or exceeds the requirements of this chapter.

(b) A professional employer organization may authorize an assurance organization that is qualified and approved by the commission to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Use of an assurance organization is optional and is not mandatory for a professional employer organization.

(c) Nothing in this section may be construed to change or affect the department's authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 4, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 13, eff. September 1, 2013.

SUBCHAPTER C. PROFESSIONAL EMPLOYER SERVICES AGREEMENT

Sec. 91.031. AGREEMENT; NOTICE. (a) A license holder shall establish the terms of a professional employer services agreement by a written contract between the license holder and the client.

(b) The license holder shall give written notice of the agreement as it affects covered employees to each covered employee.

(c) The written notice required by Subsection (b) must be given to each covered employee not later than the first payday after the date on which that individual becomes a covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 15, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 14, eff. September 1, 2013.

Sec. 91.032. CONTRACT REQUIREMENTS. (a) A professional employer services agreement between a license holder and a client

must provide that the license holder:

(1) shares, as provided by Subsection (b), with the client the right of direction and control over covered employees;

(2) assumes responsibility for the payment of wages to the covered employees without regard to payments by the client to the license holder;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on covered employees;

(4) shares, as provided by Subsection (b), with the client the right to hire, fire, discipline, and reassign the covered employees; and

(5) shares, as provided by Subsection (b), with the client the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures.

(b) Notwithstanding any other provision of this chapter, a client retains sole responsibility for:

(1) the direction and control of covered employees as necessary to conduct the client's business, discharge any applicable fiduciary duty, or comply with any licensure, regulatory, or statutory requirement;

(2) goods and services produced by the client; and

(3) the acts, errors, and omissions of covered employees committed within the scope of the client's business.

(c) Notwithstanding Subsection (a)(2), a client is solely obligated to pay any wages for which:

(1) obligation to pay is created by an agreement, contract, plan, or policy between the client and the covered employee; and

(2) the professional employer organization has not contracted to pay.

(d) Each professional employer organization shall disclose the requirements of Subsection (c) in writing to each covered employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 771, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 833, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 14, eff. September 1, 2013.

SUBCHAPTER D. POWERS AND DUTIES OF LICENSE HOLDER

Sec. 91.041. EMPLOYEE BENEFIT PLANS; REQUIRED DISCLOSURE; OTHER REPORTS. (a) A client and license holder are each considered an employer under the laws of this state for purposes of sponsoring retirement and welfare benefit plans for covered employees.

(a-1) A license holder may sponsor a single welfare benefit plan under which eligible covered employees of one or more clients may elect to participate.

(a-2) A fully insured welfare benefit plan offered to the covered employees of a license holder and provided by an insurance company authorized to provide that insurance in this state or a self-funded health benefit plan sponsored by a license holder as provided by Section 91.0411 shall be treated for purposes of state law as a single employer welfare benefit plan.

(b) With respect to any insurance or benefit plan provided by a license holder for the benefit of its assigned employees, a license holder shall disclose the following information to the department, each client, and its covered employees:

(1) the type of coverage;

(2) the identity of each insurer for each type of coverage;

(3) the amount of benefits provided for each type of coverage and to whom or in whose behalf benefits are to be paid;

(4) the policy limits on each insurance policy; and

(5) whether the coverage is fully insured, partially insured, or fully self-funded.

(c) The commission by rule may require a license holder to file other reports that are reasonably necessary for the implementation of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 16, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 14.009, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 15, eff. September 1, 2013.

Sec. 91.0411. SELF-FUNDED HEALTH BENEFIT PLAN. (a) In this section, "commissioner" means the commissioner of insurance.

(b) A license holder may sponsor a benefit plan that is not fully insured if the license holder meets the requirements of this section and is approved to sponsor the plan by the commissioner.

(c) The commissioner may, on notice and opportunity for all interested persons to be heard, adopt rules and issue orders reasonably necessary to augment and implement the regulation of benefit plans sponsored by a license holder that are not fully insured. The commissioner may not adopt a rule that requires clients or covered employees to be members of an association or group in the same trade or industry in order to be covered by a license holder-sponsored benefit plan that is not fully insured. The rules must include all requirements that must be met by the license holder and the plan, including:

(1) initial and final approval requirements;

(2) authority to prescribe forms and items to be submitted to the commissioner by the license holder;

(3) a fidelity bond;

(4) use of an independent actuary;

(5) use of a third-party administrator;

(6) authority for the commissioner to examine an application or a plan;

(7) the minimum number of clients and covered employees covered by the plan;

(8) standards for those natural persons managing the plan;

(9) the minimum amount of gross contributions;

(10) the minimum amount of written commitment, binder, or policy for stop-loss insurance;

(11) the minimum amount of reserves; and

(12) a fee in an amount reasonable and necessary to defray the costs of administering this section to be deposited to the credit of the operating fund of the Texas Department of Insurance.

(d) Information submitted under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) Each license holder under this section shall appoint the commissioner as its resident agent for purposes of service of process. The fee for that service is $50, payable at the time of appointment.

(f) The commissioner may examine the affairs of any plan and shall have access to the records of the plan. The commissioner may examine under oath a manager or employee of the license holder in

connection with the plan.

(g) In addition to any requirement or remedy under a law, the commissioner may suspend, revoke, or limit the authorization of a plan if the commissioner determines, after notice and hearing, that the plan does not comply with this section. The commissioner may notify the attorney general of a violation of this section, and the attorney general may apply to a district court in Travis County for leave to file suit in the nature of quo warranto or for injunctive relief or both.

(h) A plan under this section is subject to Chapters 401, 404, 441, and 443, Insurance Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 16, eff. September 1, 2013.

Sec. 91.042. WORKERS' COMPENSATION INSURANCE; ADMINISTRATIVE VIOLATION. (a) A license holder or client may elect to obtain workers' compensation insurance coverage for covered employees through an insurance company as defined under Section 401.011(28) or through self-insurance as provided under Chapter 407.

(a-1) The client and the professional employer organization shall specify in the professional employer services agreement whether the parties have elected to obtain workers' compensation insurance coverage for the covered employees and shall specify which party must maintain coverage. If the license holder maintains workers' compensation insurance coverage for the client, an individual who is an executive employee, as described by Section 406.097, of the client is eligible to be treated as an executive employee for premium calculation and classification purposes. A copy of the professional employer services agreement must be provided to the Texas Department of Insurance on request. Information obtained by the Texas Department of Insurance under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

(a-2) If the client elects to maintain workers' compensation insurance coverage for the covered employees under the client's policy or other coverage, the client shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client.

(b) If a license holder maintains workers' compensation

insurance coverage for covered employees, the license holder shall pay workers' compensation insurance premiums for the covered employees based on the experience rating of the client for the first two years the covered employees are covered under the professional employer organization's policy and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a license holder and the license holder's client shall be coemployers. If either a license holder or a client elects to obtain workers' compensation insurance coverage for covered employees, the client and the license holder are subject to Sections 406.005, 406.034, 408.001, and 411.032.

(c-1) Notwithstanding Subsection (c), for purposes of Section 462.308(a)(2), Insurance Code, the client is considered to be the insured employer.

(d) If a license holder or a client does not elect to obtain workers' compensation insurance coverage for covered employees, both the license holder and the client are subject to Sections 406.004, 406.005, 406.033, and 411.032.

(e) After the expiration of the two-year period under Subsection (b), if the client elects to obtain workers' compensation insurance coverage for covered employees through coverage maintained by the client, or if the professional employer services agreement is terminated and the client elects to maintain, through coverage maintained by the client or through coverage maintained by a successor professional employer organization, workers' compensation insurance coverage for employees previously covered by the former professional employer organization's policy, the premium for the workers' compensation insurance coverage for the client shall be based on the lower of:

(1) the experience modifier of the client before being covered under the professional employer organization's coverage; or

(2) the experience modifier of the license holder at the time the client's coverage under the professional employer organization's coverage is terminated.

(f) On request, an insurer shall provide the necessary computations to the prospective workers' compensation insurer of the client to comply with Subsection (e).

(g) On the written request of a client, a license holder that elects to provide workers' compensation insurance for covered

employees shall provide to the client a list of:

(1) claims associated with that client made against the license holder's workers' compensation policy; and

(2) payments made and reserves established on each claim.

(h) The license holder shall provide the information described by Subsection (g) in writing from the license holder's own records, if the license holder is a qualified self-insurer, or from information the license holder received from the license holder's workers' compensation insurance provider following the license holder's request under Section 2051.151, Insurance Code, not later than the 60th day after the date the license holder receives the client's written request. For purposes of this subsection, information is considered to be provided to the client on the date the information is:

(1) received by the United States Postal Service; or

(2) personally delivered to the client.

(i) A license holder that fails to comply with Subsection (g) or (h) commits a Class D administrative violation as provided by Section 415.011.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 17, eff. September 1, 2013.

Sec. 91.044. UNEMPLOYMENT TAXES; PAYROLL. (a) A license holder is the employer of a covered employee for purposes of Subtitle A, Title 4, and, except for wages subject to Section 91.032(c), for purposes of Chapter 61.

(a-1) A license holder may, in a calendar year during which an employee becomes a covered employee of the license holder, apply toward the maximum amount of taxable wages established in Section 201.082(1) any wages paid to the employee in that calendar year by:

(1) the client; or

(2) another license holder under a prior professional employer services agreement with that client.

(a-2) In addition to any other reports required to be filed by law, a license holder shall report quarterly to the Texas Workforce Commission on a form prescribed by the Texas Workforce Commission the name, address, telephone number, federal income tax identification number, and classification code according to the North American Industry Classification System of each client.

(b) For purposes of Subtitle A, Title 4, in the event of the termination of a contract between a license holder and a client or the failure by a professional employer organization to submit reports or make tax payments as required by that subtitle, the contracting client shall be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 17, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 833, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1260 (H.B. 3150), Sec. 1, eff. September 1, 2015.

Sec. 91.045. POSTING REQUIREMENTS. (a) Each license holder shall post in a conspicuous place in the license holder's principal place of business in this state the license issued under this chapter.

(b) Each license holder shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and regulated by the department and that any questions or complaints should be directed to the department.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.046. CONTRACTUAL DUTIES. Each license holder is

responsible for the license holder's contractual duties and responsibilities to manage, maintain, collect, and make timely payments for:

(1) insurance premiums;

(2) benefit and welfare plans;

(3) other employee withholding; and

(4) any other expressed responsibility within the scope of the professional employer services agreement for fulfilling the duties imposed under this section and Sections 91.032, 91.047, and 91.048.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 91.047. COMPLIANCE WITH OTHER LAWS. Each license holder shall comply with all appropriate state and federal laws relating to reporting, sponsoring, filing, and maintaining benefit and welfare plans.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.048. REQUIRED INFORMATION. Each license holder shall:

(1) maintain adequate books and records regarding the license holder's duties and responsibilities;

(2) maintain and make available at all times to the executive director the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to persons other than other governmental agencies having a reasonable, legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client;

(B) each professional employer services agreement with a client; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual" published by the

United States Office of Management and Budget, of each client;

(3) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 45th day after the date on which the person is added or deleted as a controlling person; and

(4) provide a biographical history to the department in connection with the addition of a new controlling person.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 18, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 816, Sec. 26.018, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 91.049. AGENT FOR SERVICE OF PROCESS. Each license holder shall maintain a registered agent for the service of process in this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) For the purpose of determining tax credits, grants, and other economic incentives provided by this state or other governmental entities that are based on employment, covered employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of covered employees of the client. This subsection applies even if the professional employer organization is the reporting employer for federal income tax purposes.

(b) If a grant or the amount of any incentive described by Subsection (a) is based on the number of employees, each client shall be treated as employing only those employees coemployed by the client. Covered employees working for other clients of the professional employer organization may not be included in the computation.

(c) Each professional employer organization shall provide, on the request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

Added by Acts 2009, 81st Leg., R.S., Ch. 188 (H.B. 2249), Sec. 5, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

SUBCHAPTER E. PROHIBITED ACTS; ENFORCEMENT

Sec. 91.061. PROHIBITED ACTS. A person may not:

(1) engage in or offer professional employer services without holding a license under this chapter as a professional employer organization;

(2) use the name, title, or designation "professional employer organization," "PEO," "staff leasing company," "employee leasing company," "licensed professional employer organization," "professional employer organization services company," "professional employer organization company," or "administrative employer" or otherwise represent that the entity is licensed under this chapter unless the entity holds a license issued under this chapter;

(3) represent as the person's own the license of another person or represent that a person is licensed if the person does not hold a license;

(4) give materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this chapter; or

(5) use or attempt to use a license that has expired or been revoked.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1379, Sec. 19, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff.

September 1, 2013.

Sec. 91.062. ACTION BY ATTORNEY GENERAL. (a) The executive director may notify the attorney general of a violation of this chapter. The attorney general may apply to a district court in Travis County for permission to file for quo warranto relief, injunctive relief, or both.

(b) The attorney general may not be required to post a bond for injunctive relief under this section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.019, eff. Sept. 1, 2003.

CHAPTER 92. TEMPORARY COMMON WORKER EMPLOYERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. PURPOSE. (a) The legislature finds that this chapter is necessary to:

(1) provide for the health, safety, and welfare of workers throughout this state; and

(2) establish uniform standards of conduct and practice for certain employers in this state.

(b) This chapter shall be implemented in accordance with these purposes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 92.002. DEFINITIONS. In this chapter:

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

(2) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 16.004(1).

(3) "Common worker" means an individual who performs labor involving physical tasks that do not require:

(A) a particular skill;

(B) training in a particular occupation, craft, or trade; or

(C) practical knowledge of the principles or processes of an art, science, craft, or trade.

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

(4-a) "Executive director" means the executive director of the department.

(5) "Governmental subdivision" means a municipality, county, special district, zone, authority, or other entity that is chartered, created, or authorized by this state.

(6) "Labor hall" means a central location maintained by a license holder where common workers assemble and are dispatched to work for a user of common workers.

(7) "Temporary common worker employer" means a person who provides common workers to a user of common workers. The term includes a temporary common worker agent or temporary common worker agency.

(8) "User of common workers" means a person who uses the services of a common worker provided by a temporary common worker employer.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 16.001, 16.004(1), eff. Sept. 1, 2003.

Sec. 92.003. AGENCY POWERS AND DUTIES. The department and commission shall exercise the regulatory, administrative, and licensing authority granted under this chapter as provided by Chapter 51, Occupations Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 836, Sec. 5, eff. June 14, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.817, eff. Sept. 1, 2001.

Sec. 92.004. APPLICABILITY OF OTHER LAW. Section 51.405, Occupations Code, does not apply to this chapter.

Added by Acts 2003, 78th Leg., ch. 816, Sec. 16.002, eff. Sept. 1, 2003.

SUBCHAPTER B. LICENSE REQUIREMENTS

Sec. 92.011. LICENSE REQUIRED. A person may not operate as a temporary common worker employer in this state unless the person holds a license issued under this chapter for each location at which the person operates.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 92.012. EXEMPTIONS FROM LICENSING REQUIREMENT. This chapter does not apply to:

(1) a temporary skilled labor agency;

(2) a professional employer organization;

(3) an employment counselor;

(4) a talent agency;

(5) a labor union hiring hall;

(6) a temporary common worker employer that does not operate a labor hall;

(7) a labor bureau or employment office operated by a person for the sole purpose of employing an individual for the person's own use; or

(8) an employment service or labor training program provided by a governmental entity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

Sec. 92.013. EFFECT OF OTHER REGULATION. (a) Except as provided by Subsection (b), a license issued under this chapter supersedes a license required or issued by a municipality or other governmental subdivision of this state, and a license holder may not be required to hold a license issued by a municipality or other governmental subdivision of this state to operate as a temporary common worker employer in the municipality or governmental

subdivision.

(b) A municipality with a population greater than one million may establish municipal licensing requirements that impose stricter standards than those imposed under Subchapter C.

(c) This chapter does not restrict the zoning authority of a municipality.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 59, eff. September 1, 2011.

Sec. 92.014. LICENSE APPLICATION AND ISSUANCE. (a) The department shall issue a temporary common worker employer license to a person who meets the application requirements established by the executive director and pays the application and registration fees set by the commission.

(b) A license issued under this chapter is valid throughout this state and is not assignable or transferable.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 26.020, eff. Sept. 1, 2003.

Sec. 92.015. LICENSE RENEWAL. (a) A license issued under this chapter is valid for one year from the date of issuance and may be renewed on payment of the required renewal fee.

(b) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 16.004(2).

(c) Repealed by Acts 2003, 78th Leg., ch. 816, Sec. 16.004(2).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 16.004(2), eff. Sept. 1, 2003.

SUBCHAPTER C. POWERS AND DUTIES OF LICENSE HOLDER

Sec. 92.021. LICENSE HOLDER AS EMPLOYER. (a) Each license holder is the employer of the common workers provided by that license

holder.

(b) A license holder may hire, reassign, control, direct, and discharge the employees of the license holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 92.022. REQUIRED RECORDS; CONFIDENTIALITY. (a) Each license holder shall maintain and make available to a representative of the department records that show for each common worker provided by the license holder to a user of common workers:

(1) the name and address of the worker;

(2) the hours worked;

(3) the places at which the work was performed;

(4) the wages paid to the worker; and

(5) any deductions made from those wages.

(b) The license holder shall maintain the records at least until the second anniversary of the date on which the worker was last employed by the license holder.

(c) Information received by the commission or department under this section is privileged and confidential and is for the exclusive use of the commission or department. The information may not be disclosed to any other person except on the entry of a court order requiring disclosure or on the written consent of a person under investigation who is the subject of the records.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 816, Sec. 16.003, eff. Sept. 1, 2003.

Sec. 92.023. POSTING OF CERTAIN INFORMATION. (a) Each license holder shall post the license for a place of business at which the license holder operates as a temporary common worker employer in a conspicuous place on the licensed premises for inspection.

(b) Each license holder shall also post in a conspicuous place in the licensed premises a notice of any charge permitted under this chapter that the license holder may assess against a common worker for equipment, tools, transportation, or other work-related services.

(c) For purposes of this section, "conspicuous place" means a

location that is in open view to the general public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 92.024. LABOR HALL REQUIREMENTS. A license holder that operates a labor hall as part of a licensed premises shall provide adequate facilities for a worker waiting for a job assignment. The facilities must include:

(1) restroom facilities for both men and women;

(2) drinking water;

(3) sufficient seating; and

(4) access to vending refreshments and food.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

Sec. 92.025. CERTAIN CHARGES AND DEDUCTIONS PROHIBITED. (a) A license holder may not charge a common worker for:

(1) safety equipment, clothing, or accessories required by the nature of the work, either by law, custom, or the requirements of the user of common workers;

(2) uniforms, special clothing, or other items required as a condition of employment by the user of common workers;

(3) the cashing of a check or voucher; or

(4) the receipt by the worker of earned wages.

(b) A license holder may not deduct or withhold any amount from the earned wages of a common worker except:

(1) a deduction required by federal or state law; or

(2) a reimbursement for a cash advance made to the worker during the same pay period.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.20(a), eff. Sept. 1, 1995.

CHAPTER 93. TEMPORARY EMPLOYMENT SERVICES

Sec. 93.001. DEFINITIONS. In this chapter:

(1) "Temporary employee" means an individual hired for a

temporary employment service.

(2) "Temporary employment service" means a person who employs individuals for the purpose of assigning those individuals to the clients of the service to support or supplement the client's workforce in a special work situation, including:

(A) an employee absence;

(B) a temporary skill shortage;

(C) a seasonal workload; or

(D) a special assignment or project.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.002. PROHIBITION. A temporary employment service may not deny an application for, or placement in, a position of employment to an individual for the sole reason that the individual has not earned a high school diploma or graduate equivalency diploma unless the position of employment or the client requires that credential to perform the duties of the position.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.003. NO CAUSE OF ACTION. This chapter does not create a private cause of action for any person or class of persons.

Added by Acts 1997, 75th Leg., ch. 574, Sec. 1, eff. Sept. 1, 1997.

Sec. 93.004. WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A certificate of insurance coverage showing that a temporary employment service maintains a policy of workers' compensation insurance constitutes proof of workers' compensation insurance coverage for the temporary employment service and the client of the temporary employment service with respect to all employees of the temporary employment service assigned to the client. The state or a political subdivision of the state shall accept a certificate of insurance coverage described by this section as proof of workers' compensation coverage under Chapter 406.

(b) For workers' compensation insurance purposes, if a temporary employment service elects to obtain workers' compensation

insurance, the client of the temporary employment service and the temporary employment service are subject to Sections 406.034 and 408.001.

(c) Except as provided by Subsection (d), an employee's election under Section 406.034(b) made with respect to the temporary employment service applies to any client of the temporary employment service, and the employee may not make a separate election under that section with respect to the client.

(d) If an employee elects to retain a common-law right of action under Section 406.034(b) with respect to the temporary employment service, that election does not apply to a client of that temporary employment service if the client is not subject to Section 406.034.

Added by Acts 2013, 83rd Leg., R.S., Ch. 321 (H.B. 1762), Sec. 1, eff. September 1, 2013.

TITLE 3. EMPLOYER-EMPLOYEE RELATIONS
CHAPTER 101. LABOR ORGANIZATIONS
SUBCHAPTER A. RIGHTS OF WORKING PERSONS

Sec. 101.001. RIGHT TO ORGANIZE. All persons engaged in any kind of labor may associate and form trade unions and other organizations to protect themselves in their personal labor in their respective employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.002. RIGHT TO INFLUENCE ANOTHER REGARDING EMPLOYMENT. (a) A person by peaceful and lawful means may induce or attempt to induce another to:

(1) enter or refuse to enter a particular employment; or

(2) quit a particular employment in which the other person is then engaged.

(b) A member of a trade union or other organization may not enter the premises of another without the consent of the owner of the premises.

(c) This section does not apply to an association formed, an act taken, or an agreement made:

(1) to limit the production, transportation, use, or

consumption of labor's products; or

(2) that creates a trust or conspiracy in restraint of trade under the laws of this state.

(d) Subsection (c) does not interfere with the terms of a private contract between an employer and an employee with regard to the time of service or other stipulations.

(e) Subsection (c) may not be construed as repealing or affecting a statute on trusts, conspiracies against trade, pools, or monopolies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.003. RIGHT TO BARGAIN. A person's inherent right to work and to bargain freely with the person's employer, individually or collectively, for terms of the person's employment may not be denied or infringed by law or by any organization.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.004. CONTRACT FOR WITHHOLDING UNION DUES FROM EMPLOYEE'S COMPENSATION VOID WITHOUT EMPLOYEE'S CONSENT. A contract that permits or requires the retention of part of an employee's compensation to pay dues or assessments on the employee's part to a labor union is void unless the employee delivers to the employer the employee's written consent to the retention of those sums.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. RIGHT TO WORK

Sec. 101.051. DEFINITION. In this subchapter, "labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.052. DENIAL OF EMPLOYMENT BASED ON LABOR UNION MEMBERSHIP PROHIBITED. A person may not be denied employment based on membership or nonmembership in a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.053. CONTRACT REQUIRING OR PROHIBITING LABOR UNION MEMBERSHIP VOID. A contract is void if it requires that, to work for an employer, employees or applicants for employment:

(1) must be or may not be members of a labor union; or

(2) must remain or may not remain members of a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. REGULATION OF LABOR UNIONS

Sec. 101.101. DEFINITIONS. In this subchapter:

(1) "Enforcement officer" means the attorney general, district attorney, or county attorney.

(2) "Labor organizer" means a person who for a financial consideration solicits membership in a labor union or members for a labor union.

(3) "Labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.102. LEGISLATIVE FINDINGS; POLICY. (a) The legislature finds that because the activities of labor unions affect the economic conditions of the country and the state by entering into almost all business and industrial enterprises, labor unions affect the public interest and are charged with a public use.

(b) Workers must be protected without regard to whether they

are unionized. The right to work is the right to live.

(c) The policy of this state, in the exercise of its sovereign constitutional police power, is to regulate the activities and affairs of labor unions and officers, agents, organizers, and representatives of labor unions, as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.103. LIBERAL CONSTRUCTION. (a) This subchapter shall be liberally construed to:

(1) achieve the purposes provided by Section 101.102; and

(2) protect the rights of working persons to work and to organize for their mutual benefit in connection with their work.

(b) This subchapter may not be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing, regarding a matter affecting labor or employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.104. METHOD OF ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. (a) An officer, agent, organizer, or representative of a labor union must be elected by secret ballot and by majority vote of the members present and participating, except as provided by Subsections (b) and (c) and Section 101.108.

(b) A labor union may require more than a majority vote for the election of an officer, agent, organizer, or representative.

(c) A labor union may take a vote of the entire membership for an officer, agent, organizer, or representative by mailed ballots.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.105. ANNUAL ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. An election for labor union officers, agents, organizers, and representatives must be held at least once each year, except as provided by Section 101.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.106. NOTICE OF ELECTION. Except as provided by Section 101.108, a labor union shall give members at least seven days' notice of an election under Section 101.105. The notice must be given in the manner most convenient to the union by:

(1) written or printed notice mailed to the member's last known address;

(2) posting notice in a place public to the membership; or

(3) announcement at a regular stated meeting of the union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.107. RESULTS OF ELECTION. The results of an election held under Section 101.105 shall be determined and declared by the president and the secretary at the time in the presence of the members or delegates participating, except as provided by Section 101.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.108. CERTAIN UNIONS EXCEPTED. Sections 101.104-101.107 do not apply to a union that:

(1) under its constitution, bylaws, or other organization rules, held its elections for officers and representatives every three years or every four years, for the four years ending August 10, 1943; and

(2) charged members an initiation fee of $10 or less, for the 10 years ending August 10, 1943.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.109. CERTAIN PERSONS PROHIBITED FROM HOLDING OFFICE. (a) A person may not serve as a labor union officer or as a labor organizer if the person:

(1) is an alien; or

(2) has been convicted of a felony.

(b) Subsection (a) does not apply to a person who has been convicted of a felony and whose rights of citizenship have been fully restored.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.110. LABOR ORGANIZERS; ORGANIZER'S CARD. (a) A labor organizer operating in this state must apply in writing for an organizer's card before soliciting members for the organizer's organization.

(b) An application for an organizer's card must:

(1) be filed with the secretary of state by mail or in person;

(2) state the applicant's full name and labor union affiliations, if any;

(3) describe the applicant's credentials;

(4) be accompanied by a copy of the applicant's credentials; and

(5) be signed by the applicant.

(c) On the filing of an application for an organizer's card, the secretary of state shall issue the applicant a card containing:

(1) the applicant's name;

(2) the applicant's union affiliation;

(3) a space for the applicant's signature;

(4) the designation "labor organizer"; and

(5) the secretary of state's signature, dated and attested by the state seal.

(d) A labor organizer shall:

(1) carry the card issued under Subsection (c) whenever the organizer is soliciting members; and

(2) exhibit the card on request of a person being solicited for membership.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.21(a), eff. Sept. 1, 1995.

Sec. 101.111. FEE FOR PRIVILEGE TO WORK PROHIBITED. (a) A labor union, a labor organizer, or an officer, member, agent, or representative of a labor union may not collect, receive, or demand, directly or indirectly, a fee as a work permit or as a condition for the privilege to work from a person who is not a member of the union.

(b) Subsection (a) does not prevent the collection of an

initiation fee as provided by Section 101.113.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.112. EXCESSIVE FEES PROHIBITED. (a) A labor union or an officer, agent, or member of a labor union may not charge or receive initiation fees, dues, fines, or other assessments to create a fund that exceeds the reasonable requirements of the union in carrying out its lawful purposes or activities, if the fees, dues, fines, or other assessments create an undue hardship on an applicant for initiation to the union or on union members.

(b) Subsection (a) may not be construed to prevent dues or other assessments:

(1) for a purpose that is beneficial to union members according to established practice, including the maintenance or investment of funds for those beneficial purposes;

(2) if the members who contribute share in or may reasonably expect to share in the benefits, for:

(A) old age benefits;

(B) death and burial benefits;

(C) hospitalization, unemployment, health and accident, retirement, or other forms of mutual insurance;

(D) legislative representation;

(E) a grievance committee;

(F) gifts, floral offerings, or other charitable purposes; or

(G) any other legitimate purpose; or

(3) for placement in a fund to be used by the union in paying its members while they are on strike, if:

(A) initiation fees are not placed in the fund; and

(B) the fund remains under the members' control.

(c) This section shall be liberally construed to prevent excessive initiation fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.113. ADVANCE FEES. (a) On payment in full by an applicant for labor union membership of all initiation fees or dues regularly assessed by the union, the union shall:

(1) elect the applicant to membership; or

(2) immediately return in full the money paid by the applicant.

(b) On election of an applicant to labor union membership, advance fees paid by the applicant may be used by the union for the purposes for which the fees were advanced.

(c) A labor union or an officer, agent, or member of a labor union shall collect all fees in good faith. A labor union may not elect a person to membership merely to obtain the person's initiation fee.

(d) A labor union may not collect an initiation fee from a member and then discharge or suspend the member, or cause the member's employer to discharge the member, without reasonable and just cause.

(e) A labor union that violates Subsection (d) is subject to the civil penalty provided by Section 101.121.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.114. FEE RECEIPT REQUIRED. A labor organizer or an officer, agent, or member of a labor union may not collect a fee, dues, or other sum in connection with membership in a labor union from a person without giving the person at that time a receipt that:

(1) is signed by the labor organizer, officer, agent, or member; and

(2) states that the sum of money received is to be:

(A) delivered to the labor union; and

(B) held intact until the person has been elected and has become a bona fide voting member of the union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.115. CONSTRUCTION OF FEE RESTRICTIONS. Sections 101.111, 101.113, and 101.114 may not be construed as preventing any type of bargaining agreement or limiting the bargaining power of a labor union.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.116. MEMBER IN ARMED FORCES. A union member who, because of service with the United States armed forces, has been unable to pay any dues or assessment levied by a union to which the member belonged may not be required to make the back payments as a condition to reinstatement in good standing as a member.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.117. REASONABLE TIME FOR DECISION ON MEMBERSHIP REQUIRED. A labor union may not refuse to give a person desiring membership in the union a reasonable time after obtaining the promise of employment in which to decide whether to join the union as a condition of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.118. EXPULSION OF MEMBER. (a) A labor union may not expel a union member without:

(1) good cause; and

(2) a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on the specific charges alleged.

(b) On the petition of a member expelled from a labor organization, a court of competent jurisdiction shall order the reinstatement of the member if the member was expelled without good cause.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.119. RECORDS. (a) Each labor union in this state shall keep accurate books of accounts that:

(1) itemize each receipt from any source;

(2) itemize each expenditure for any purpose; and

(3) state the source of each receipt and the purpose of each expenditure.

(b) A member of a labor union is entitled to inspect the books, records, and accounts of the union at any reasonable time.

(c) The attorney general, or, subject to the attorney general's

approval, a district attorney or county attorney, is entitled to inspect on demand the books, records, and accounts of a labor union at any reasonable time.

(d) The books, records, and accounts of a labor union are open to grand juries and judicial and quasi-judicial inquiries in legal proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.120. REPORTS. A labor union required to file reports with the United States Secretary of Labor under Section 201, Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Section 431) or a successor statute shall file a copy of each report with the secretary of state not later than the 30th day after the date the report was filed with the secretary of labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.121. CIVIL PENALTY. A labor union that violates a provision of this subchapter is liable for a civil penalty not to exceed $1,000 for each violation. The civil penalty may be recovered in the name of the state, acting through an enforcement officer, in a court of competent jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.122. ENFORCEMENT BY CIVIL PROCESS. (a) A district court has jurisdiction, on the application of the state acting through an enforcement officer, to issue a restraining order, a temporary or permanent injunction, or any other writ or process appropriate to enforce this subchapter.

(b) A proceeding under Subsection (a) shall be instituted, prosecuted, and tried in the same manner as another civil case of a similar nature in the district court.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.123. OFFENSE; PENALTY. (a) A labor union officer or a labor organizer commits an offense if the person violates a provision of this subchapter.

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

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than 60 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.124. ENFORCEMENT OFFICERS. The attorney general, and each district attorney and county attorney, within the attorney's respective jurisdiction, shall:

(1) prosecute all criminal proceedings under this subchapter; and

(2) institute and maintain all civil proceedings under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PICKETING

Sec. 101.151. DEFINITION. In this subchapter, "picketing" includes the stationing of a person for an organization to:

(1) induce anyone not to enter the premises being picketed;

(2) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(3) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.152. MASS PICKETING PROHIBITED. (a) A person may not engage in any form of picketing activity in which a picket constitutes any character of obstacle to the free ingress to and egress from an entrance to any premises, either by obstructing the

free ingress and egress with the person's body or by placing a vehicle or other physical obstruction.

(b) In this section, "picket" includes a person:

(1) stationed by or acting for an organization to:

(A) induce anyone not to enter the premises being picketed; or

(B) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(2) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.153. USE OF INSULTING, THREATENING, OR OBSCENE LANGUAGE PROHIBITED. A person may not, by use of insulting, threatening, or obscene language, interfere with or intimidate or seek to interfere with or intimidate another:

(1) in the exercise of the other person's lawful right to work or to enter on the performance of a lawful vocation; or

(2) from freely entering or leaving any premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.154. PICKETING INTENDED TO SECURE BREACH OF LABOR AGREEMENT PROHIBITED. A person may not engage in picketing the purpose of which, directly or indirectly, is to secure the disregard or breach of a valid existing labor agreement arrived at between an employer and the representatives:

(1) designated by the employees for the purpose of collective bargaining; or

(2) certified as the bargaining unit under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.155. DECLARATION OR PUBLICATION OF CONTINUATION OF ENJOINED PICKETING PROHIBITED. A person may not declare or publicize

the continued existence of actual or constructive picketing at a point or directed against a premises after a court of competent jurisdiction has enjoined the continuation of that picketing at that point or premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.156. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 101.152, 101.153, 101.154, or 101.155. Each separate act of violation constitutes a separate offense.

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

(1) a fine of not less than $25 nor more than $500;

(2) confinement in jail for not more than 90 days; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. SECONDARY PICKETING

Sec. 101.201. SECONDARY PICKETING PROHIBITED. (a) A person may not establish, call, participate in, or aid picketing at or near the premises of an employer with whom a labor dispute does not exist.

(b) In this section:

(1) "Employee" includes any person working for another for hire in this state, but does not include an independent contractor.

(2) "Employer" means any person who engages the services of an employee.

(3) "Labor dispute" means a controversy concerning wages, hours, or conditions of employment between an employer and employees. A controversy is not a labor dispute if the employees do not have a real and substantial economic interest in the work performed for the employer.

(4) "Picket" includes a person:

(A) stationed by or acting in behalf of an organization to:

(i) induce anyone not to enter the premises being picketed;

(ii) apprise the public by signs or other means of

the existence of a labor dispute at or near the premises being picketed; or

(iii) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(B) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.202. OFFENSE; PENALTY. (a) A person commits an offense if the person violates any provision of this subchapter.

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

(1) a fine of not more than $500;

(2) confinement in the county jail for not more than six months; or

(3) both the fine and confinement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.203. CIVIL LIABILITY. (a) A person who violates any provision of this subchapter is liable to a person damaged by the violation for the damages resulting from the violation.

(b) A person damaged by a violation of this subchapter may maintain an action to redress the damage and may obtain injunctive relief.

(c) An association or labor union that represents or purports to represent a person who violates any provision of this subchapter is jointly and severally liable with the person for the damages resulting from the violation.

(d) In this section, "labor union" means any incorporated or unincorporated association, group, union, national or local, branch, or subordinate organization of a union of working persons organized and existing in part to protect those persons and to improve their working conditions, wages, or employment relationships and includes the local, state, national, and international affiliates of those organizations.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.204. ENFORCEMENT. The state, acting through the attorney general or a district attorney or county attorney, may institute a suit in district court to enjoin a person from violating this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.205. VENUE. Venue for a suit or cause of action arising under this subchapter is in:

(1) the county in which the violation is alleged to have occurred;

(2) the county in which the defendant resides; or

(3) if there are two or more defendants, a county in which any defendant resides.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. LIABILITY OF LABOR ORGANIZATION FOR DAMAGES

Sec. 101.251. DEFINITIONS. In this subchapter:

(1) "Labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions.

(2) "Picketing" includes the stationing of a person for an organization to:

(A) induce anyone not to enter the premises being picketed;

(B) apprise the public by signs or other means of the existence of a dispute;

(C) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(D) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 101.252. LIABILITY OF LABOR ORGANIZATION. A labor organization whose members picket or strike against a person is liable for damages for a loss resulting to the person because of the picketing or strike if a court of competent jurisdiction holds that the picketing or strike is a breach of contract.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. INTERFERENCE WITH RIGHT TO WORK

Sec. 101.301. INTERFERENCE WITH RIGHT TO WORK; LIABILITY. (a) The right of a person to work may not be denied or abridged because of membership or nonmembership in a labor union or other labor organization.

(b) In the exercise of the right to work, each person shall be free from threats, force, intimidation, or coercion.

(c) A person who violates this subchapter is liable to a person who suffers from that violation for all resulting damages.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

Sec. 101.302. INJUNCTIVE RELIEF. (a) The attorney general or a district or county attorney may bring an action in district court to enjoin a violation of this subchapter.

(b) The district courts shall grant injunctive relief when a violation of this subchapter is made apparent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

Sec. 101.303. ASSIGNMENT OF DISTRICT JUDGE. Not later than the second day after the receipt of notice of institution of a cause of action under this subchapter, a party to the cause of action may apply to the presiding judge of the administrative judicial region within which the action is brought. The presiding judge shall immediately assign a district judge from within the administrative judicial region who shall hear all proceedings in the cause of action.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.22, eff. Sept. 1, 1995.

CHAPTER 102. LABOR ARBITRATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. DEFINITION. In this chapter, "board" means an arbitration board appointed under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.002. DISPUTE RESOLUTION THROUGH ARBITRATION. (a) An employer and employees may submit a dispute or grievance resulting from the employer's and employees' work relationship to a board for a hearing and determination.

(b) An arbitration may not be conducted under this chapter without the consent of all parties involved in the dispute or grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. SELECTION OF BOARD AND OFFICERS

Sec. 102.011. NUMBER OF BOARD MEMBERS. A board established under this chapter must be composed of five members.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1. 1993.

Sec. 102.012. EMPLOYER REPRESENTATION ON BOARD. The employer may designate two arbitrators to serve on the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.013. EMPLOYEE REPRESENTATION ON BOARD. (a) In a dispute or grievance in which the affected employees are members in good standing of a labor organization:

(1) if the organization is represented by a delegate in a central body, the central body may designate two arbitrators to serve on the board; and

(2) if the organization is not represented by a delegate in a central body, the organization may designate two arbitrators to serve on the board.

(b) In a dispute or grievance in which all of the affected employees are not represented by a labor organization, the labor organization in concurrent action with a majority of those employees not represented by a labor organization may designate two arbitrators to serve on the board.

(c) In a dispute or grievance that concerns two or more classes or grades of employees who belong to different labor organizations, the labor organizations in concurrent action may designate two arbitrators to serve on the board.

(d) If the employees concerned in the dispute or grievance are not members of a labor organization, those employees shall call a meeting to elect by majority vote two arbitrators to serve on the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.014. CHAIRMAN. (a) The four arbitrators selected under Sections 102.012 and 102.013 shall designate a fifth arbitrator who serves as the chairman of the board.

(b) If an agreement as to a fifth arbitrator cannot be reached under Subsection (a), on notice of any arbitrator a district judge of the district that has jurisdiction over the dispute or grievance shall appoint the fifth arbitrator, who serves as the chairman of the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.015. BOARD SECRETARY. The board shall select one member to act as secretary for the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.016. ARBITRATOR'S CONSENT TO ACT. (a) An arbitrator selected under this chapter must:

(1) sign a form consenting to serve as an arbitrator; and

(2) take and sign an oath administered by an officer authorized to administer oaths to faithfully and impartially discharge the duties of an arbitrator.

(b) A written copy of the consent form and oath shall be filed with the district clerk for the county in which the arbitration is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD AND OFFICERS

Sec. 102.021. POWERS AND DUTIES OF BOARD. (a) A board may adopt and enforce rules to be followed at board hearings.

(b) The board may set a schedule of sessions and adjournments.

(c) The board shall hear and examine witnesses who are brought before the board and consider other proof given that is relevant to the matter in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.022. CHAIRMAN'S DUTIES. (a) The chairman of the board may:

(1) administer oaths; and

(2) issue subpoenas for the production of books and papers and the attendance of witnesses.

(b) The chairman of the board may exercise the powers granted under this section to the same extent as a judge of a court of record in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.023. ISSUANCE OF SUBPOENAS. (a) The board's secretary shall sign each subpoena issued under this chapter.

(b) The board may authorize a person of full age to serve a subpoena issued under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PARTY CONDUCT

Sec. 102.031. EMPLOYEE TERMINATION RESTRICTED. During the period that the arbitration is pending, an employer or receiver or an agent of the employer may not discharge an employee who is a party to the arbitration except for:

(1) the employee's inefficiency, violation of law, or neglect of duty; or

(2) the employer's need for a work force reduction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.032. PROHIBITIONS AGAINST STRIKES OR BOYCOTTS. (a) During the period that arbitration is pending, a labor organization that represents employees who are parties to the arbitration may not order or aid employees in a strike or boycott against the employer or receiver.

(b) Employees who are parties to the arbitration may not engage in or aid a strike or boycott of the employer or receiver.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. FILINGS WITH BOARD; HEARINGS

Sec. 102.041. WRITTEN SUBMISSION OF DISPUTE OR GRIEVANCE. (a) The question to be decided by the board must be submitted to the board in writing, signed by:

(1) the employer or receiver; and

(2) the labor organization representing the employees or the employee or any employee or employees to be affected by the arbitration who do not belong to a labor organization.

(b) The submission must stipulate that:

(1) pending the arbitration, the status existing before the dispute, grievance, or strike may not be changed;

(2) the arbitration award shall be filed with the district clerk for the county in which the arbitration is conducted;

(3) the arbitration award is final and may not be set aside except for an error in law that is apparent on the record;

(4) the parties will faithfully execute the arbitration award;

(5) the arbitration award may be enforced in a court of

equity;

(6) an employee dissatisfied with the arbitration award may not end employment because of that dissatisfaction without giving the employer 30 days' written notice of the intention to end employment;

(7) the award continues in effect until the first anniversary of the initial date of its implementation; and

(8) a new arbitration of the same subject matter between the same parties may not be entered into during the one year period provided for in Subdivision (7).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.042. HEARING; NOTICE. (a) The board shall conduct a hearing not later than the 10th day after the agreement to arbitrate is filed.

(b) Each party to the dispute is entitled to receive notice of the time and place of the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. COURT FILINGS AND ORDERS

Sec. 102.051. ARBITRATION PETITION. A board may submit a written petition signed by a majority of the board to a district judge in the county in which the dispute or grievance arose. The petition must:

(1) show that the board was selected according to the procedures set forth in this chapter;

(2) state the nature of the dispute or grievance that is the subject matter of the arbitration; and

(3) request the judge to issue an order establishing and approving the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.052. COURT ORDER REQUIRED. On receipt of a petition filed under Section 102.051, the judge shall issue an order establishing an arbitration board. The order shall refer the matter in dispute to the board for a hearing and determination of the matter

in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.053. FILING OF PETITION AND ORDER. The petition and the subsequent order or a copy of the petition and order shall be filed with the district clerk in the county in which the arbitration is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. EXPENSES AND FEES

Sec. 102.061. SURETY BOND. Before a board considers a dispute or grievance, each party shall file a bond in an amount set by the board and conditioned on the payment of all expenses connected with the arbitration procedure. The bond must have two or more good and sufficient sureties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.062. BOARD MEMBER EXPENSES. A member of the board is entitled to receive:

(1) three dollars a day for each day of actual service on the board not to exceed $30; and

(2) five cents a mile for each mile traveled to and from the place where the board is in session.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.063. REIMBURSEMENT OF WITNESS. A witness called by the board is entitled to receive:

(1) 50 cents a day for each day's attendance; and

(2) five cents a mile for each mile traveled by the shortest route to and from a board hearing where the witness' attendance is required.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.064. FEES. (a) The board may charge fees and mileage paid under Sections 102.062 and 102.063 against either or both parties.

(b) Fees and mileage charged against a party under this section shall be included in the award.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. AWARD AND APPEALS

Sec. 102.071. TERMINATION OF BOARD'S POWER. Except as provided by Section 102.072, a board's power ends on the determination of the grievance or dispute by the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.072. ADDITIONAL DISPUTE OR GRIEVANCE. (a) If, at the time a board renders its determination, a similar grievance or dispute exists between the same class of persons for which a board may be created, those persons may submit the dispute or grievance to the board.

(b) The board has the same power to act and determine a dispute or grievance submitted under this section as the board would have if it had been created to determine that dispute or grievance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.073. COPIES OF AWARD; ISSUANCE. (a) The board shall issue three copies of the arbitration award.

(b) The board shall:

(1) file one copy of the award with the district clerk;

(2) issue one copy of the award to the employer or receiver; and

(3) issue one copy of the award to the employees or the employees' representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.074. JUDGMENT ON AWARD; EFFECTIVE DATE; EXCEPTION. (a) Judgment shall be entered on an award made under this chapter and the award takes effect, unless a timely exception is filed, on the 11th day after the date it is filed with the district clerk under Section 102.073.

(b) A party may file an exception to an award for a matter of law apparent on the record. The exception must be filed with the court not later than the 10th day after the date on which the award is filed with the district clerk under Section 102.073.

(c) If an exception is filed, judgment shall be entered on the award and the award takes effect on the 11th day after the date of the decision of the district court on the exception or on appeal from the district court's decision under Section 102.075.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 102.075. APPEALS. (a) Either party to an arbitration case decided by a district court may file an appeal of the district court's decision not later than the 10th day after the date on which the judgment is entered.

(b) The decision of the court of appeals under this section is final. The clerk of the court of appeals shall certify the decision and the district court shall enter the judgment.

(c) If the court of appeals sustains the exception, it shall set aside the award, but the parties may agree on a judgment to be entered disposing of the dispute. A judgment on an agreement entered into under this subsection has the same force and effect of law as a judgment entered on an award by a board of arbitration.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 103. DISCLOSURE BY EMPLOYER OF INFORMATION REGARDING CERTAIN EMPLOYEES OR FORMER EMPLOYEES

Sec. 103.001. PURPOSE; LEGISLATIVE FINDING. The legislature finds that the disclosure by an employer of truthful information regarding a current or former employee protects employment relationships and benefits the public welfare. It is the intent of

the legislature that an employer who makes a disclosure based on information obtained by the employer that any employer would reasonably believe to be true should be immune from civil liability for that disclosure.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.002. DEFINITIONS. In this chapter:

(1) "Employee" means a person who performs services for an employer, whether or not for compensation.

(2) "Employer" means a person who has one or more employees or other individuals who perform services under a contract of hire or service, whether expressed or implied, or oral or written.

(3) "Job performance" means the manner in which an employee performs a position of employment and includes an analysis of the employee's attendance at work, attitudes, effort, knowledge, behaviors, and skills.

(4) "Prospective employee" means any person who has made an application, either oral or written, or has sent a resume or other correspondence indicating an interest in employment.

(5) "Prospective employer" means an employer to whom a prospective employee has made an application, either oral or written, or sent a resume or other correspondence expressing an interest in employment.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.003. AUTHORIZED DISCLOSURE; APPLICATION TO CERTAIN EMPLOYEES. (a) An employer may disclose information about a current or former employee's job performance to a prospective employer of the current or former employee on the request of the prospective employer or the employee.

(b) An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under Section 301.352 or 303.005, Occupations Code. The employer must provide an affected nurse an opportunity to submit a statement of reasonable length to the employer to establish the application of Section 301.352 or 303.005, Occupations Code.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.818, eff. Sept. 1, 2001.

Sec. 103.004. IMMUNITY FROM CIVIL LIABILITY; EMPLOYER REPRESENTATIVES. (a) An employer who discloses information about a current or former employee under Section 103.003 is immune from civil liability for that disclosure or any damages proximately caused by that disclosure unless it is proven by clear and convincing evidence that the information disclosed was known by that employer to be false at the time the disclosure was made or that the disclosure was made with malice or in reckless disregard for the truth or falsity of the information disclosed. For purposes of this subsection, "known" means actual knowledge based on information relating to the employee, including any information maintained in a file by the employer on that employee.

(b) This chapter applies to a managerial employee or other representative of the employer who is authorized to provide and who provides information in accordance with this chapter in the same manner that it applies to an employer.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

Sec. 103.005. EMPLOYMENT REFERENCE. This chapter does not require an employer to provide an employment reference to or about a current or former employee.

Added by Acts 1999, 76th Leg., ch. 240, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 104. INFORMATION REGARDING EARNED INCOME TAX CREDIT

Sec. 104.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual who is employed by an employer for compensation.

(2) "Employer" means a person who employs one or more employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.002. REQUIRED INFORMATION. (a) Not later than March 1 of each year, each employer shall provide to the employer's employees information regarding general eligibility requirements for the federal earned income tax credit.

(b) An employer may not satisfy the requirements of Subsection (a) solely by posting information in the place of employment. The employer shall provide the required information to the employee:

(1) in person;

(2) electronically at the employee's last known e-mail address;

(3) through a flyer included, in writing or electronically, as a payroll stuffer; or

(4) by mailing the information to the employee at the employee's last known address by United States first class mail.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.003. PROVISION OF ADDITIONAL INFORMATION TO EMPLOYEES.In addition to the information required by Section 104.002, an employer may provide to the employer's employees:

(1) Internal Revenue Service publications relating to the federal earned income tax credit or information prepared by the comptroller under Section 403.025, Government Code, relating to that credit; or

(2) federal income tax forms necessary to claim the federal earned income tax credit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

Sec. 104.004. COMMISSION DUTIES; RULES. (a) The commission periodically shall notify employers regarding the requirement adopted under Section 104.002. The commission shall provide the notice as part of any other periodic notice sent to employers and shall also post the notice on the commission's Internet website.

(b) If the commission adopts rules under Section 301.067

regarding employer requirements under this chapter, each employer shall provide the information required by Section 104.002 in the manner prescribed by those rules.

Added by Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 1, eff. September 1, 2009.

CHAPTER 105. EMPLOYMENT TERMINATION FOR FALSIFICATION OF MILITARY RECORD IN OBTAINING EMPLOYMENT OR EMPLOYMENT BENEFITS

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Employee" means an individual who is employed by an employer for compensation.

(2) "Employer" means a person who employs one or more employees.

(3) "Military record" has the meaning assigned by Section 32.54, Penal Code.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

Sec. 105.002. EMPLOYMENT TERMINATION; EMPLOYMENT CONTRACT VOID AND UNENFORCEABLE. (a) An employer may discharge an employee, regardless of whether the employee is employed under an employment contract with the employer, if the employer determines, based on a reasonable factual basis, that the employee, in obtaining the employee's employment or any benefit relating to the employee's employment, falsified or otherwise misrepresented any information regarding the employee's military record in a manner that would constitute an offense under Section 32.54, Penal Code.

(b) An employment contract entered into by an employer with an employee discharged by the employer under this section is void and unenforceable as against public policy.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

Sec. 105.003. SUIT TO APPEAL TERMINATION. An employee who was employed by an employer under an employment contract on the date of

the employee's termination and who believes the employee was wrongfully terminated under Section 105.002 may bring suit against the employer in a district court in the county in which the termination occurred for appropriate relief, including rehiring or reinstatement to the employee's previous job, payment of back wages, and reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been terminated.

Added by Acts 2015, 84th Leg., R.S., Ch. 468 (S.B. 664), Sec. 2, eff. September 1, 2015.

TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT
SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT
CHAPTER 201. UNEMPLOYMENT COMPENSATION ACT--GENERAL PROVISIONS
SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 201.001. SHORT TITLE. This subtitle may be cited as the Texas Unemployment Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. GENERAL DEFINITIONS

Sec. 201.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Base period" means:

(A) the four consecutive completed calendar quarters, prescribed by the commission, in the five consecutive completed calendar quarters preceding the first day of an individual's benefit year; or

(B) for an individual precluded because of a medically verifiable injury or illness from working during a major part of a calendar quarter of the period that would otherwise be the individual's base period under Paragraph (A), the first four calendar quarters of the five consecutive calendar quarters preceding the calendar quarter in which the illness began or the injury occurred if the individual files an initial claim for benefits not later than 24 months after the date on which the individual's injury or illness began or occurred.

(2) "Benefit" means the money payable under this subtitle to an individual because of the individual's unemployment.

(3) "Benefit amount" means benefits an individual is entitled to receive for one benefit period of total unemployment.

(4) "Benefit period" means the seven consecutive calendar days ending at midnight on Saturday and is the period for which entitlement to benefits is determined.

(5) "Benefit year" means the 52 consecutive calendar weeks beginning with the week for which an individual files a valid initial claim for benefits.

(6) "Calendar quarter" means a period of three consecutive calendar months ending on:

(A) March 31, June 30, September 30, or December 31; or

(B) the dates prescribed by rule of the commission.

(7) "Chargeback" means the benefits charged to an employer's account under Section 204.021.

(8) "Commission" means the Texas Workforce Commission.

(9) "Compensation fund" means the unemployment compensation fund.

(10) "Contribution" means a tax payment under this subtitle to the compensation fund.

(11) "Employing unit" means a person who, after January 1, 1936, has employed an individual to perform services for the person in this state.

(12) "Employment office" means a free public employment office operated by this state or maintained as a part of a state-controlled system of public employment offices. The term includes a branch office.

(13) "Initial claim" means a notice filed under Section 208.001(a) to establish a benefit year by an individual who does not have a benefit year in effect at the time the notice was filed.

(14) "Institution of higher education" means:

(A) a college or university in this state; or

(B) a public or other nonprofit educational institution that:

(i) admits as regular students only individuals with a certificate of graduation or equivalent credentials;

(ii) is legally authorized to provide an educational program beyond high school; and

(iii) provides an educational program:

(a) for which the institution awards a

bachelor's or higher degree;

(b) that is acceptable for full credit toward a bachelor's or higher degree; or

(c) that trains a student for the gainful practice of a recognized occupation.

(15) "Mail" means the United States Postal Service or any other method approved by the commission to provide actual notice, including an electronic transfer system.

(16) "Reimbursement" means a payment made in accordance with Chapter 205.

(17) "Reimbursing employer" means an employer making payments in accordance with Chapter 205.

(18) "State" means a state of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands.

(19) "Taxed employer" means an employer who pays a contribution under this subtitle.

(20) "Temporary employee" means an individual employed by a temporary help firm for the purpose of being assigned to work for the clients of a temporary help firm.

(21) "Temporary help firm" means a person who employs individuals for the purpose of assigning those individuals to work for the clients of the temporary help firm to support or supplement a client's work force during employee absences, temporary skill shortages, seasonal work loads, special assignments and projects, and other similar work situations.

(22) "United States" includes, in a geographic context, each state.

(23) "Valid claim" means a claim filed by an unemployed individual who has received the wages necessary to qualify for benefits.

(24) "Warrant" means a written payment order or an electronic payment order that is a part of an electronic fund transfer system approved by the commission.

(25) "Week" means seven consecutive calendar days as prescribed by the commission.

(26) "Indian tribe" has the meaning assigned by Section 3306(u), Federal Unemployment Tax Act (26 U.S.C. Section 3306), as amended. A reference in this subtitle to an Indian tribe includes a tribal unit, a subdivision or subsidiary of an Indian tribe, and a business wholly owned by an Indian tribe.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.23(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 518, Sec. 1, eff. June 11, 2001; Acts 2003, 78th Leg., ch. 817, Sec. 10.13, eff. Sept. 1, 2003.

Sec. 201.012. DEFINITION OF MISCONDUCT. (a) "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees.

(b) The term "misconduct" does not include an act in response to an unconscionable act of an employer or superior.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. DEFINITION OF EMPLOYER

Sec. 201.021. GENERAL DEFINITION OF EMPLOYER. (a) In this subtitle, "employer" means an employing unit that:

(1) paid wages of $1,500 or more during a calendar quarter in the current or preceding calendar year; or

(2) employed at least one individual in employment for a portion of at least one day during 20 or more different calendar weeks of the current or preceding calendar year.

(b) The definition provided by this section does not apply to an employing unit covered by Section 201.023 or to farm and ranch labor covered by Section 201.028.

(c) An individual who performs a service in this state for an employing unit that maintains two or more separate establishments in this state is employed by a single employing unit for purposes of this subtitle.

(d) In this subsection, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1. The definition of employer provided by this section does not apply to a franchisor with respect to:

(1) a franchisee; or

(2) a franchisee's employees.

(e) With respect to a specific claim for relief under this

subtitle made by a franchisee or a franchisee's employee, Subsection (d) does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 5, eff. September 1, 2015.

Sec. 201.022. EFFECT OF BUSINESS ACQUISITION. In this subtitle, "employer" also means an individual or employing unit that acquires or otherwise receives, through any means, all or part of the organization, trade, business, or workforce of another that was an employer subject to this subtitle at the time of the acquisition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 1, eff. September 1, 2005.

Sec. 201.023. TAX-EXEMPT NONPROFIT ORGANIZATION. In this subtitle, "employer" also means an employing unit that:

(1) is a nonprofit organization under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(2) is exempt from income tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)); and

(3) employed at least four individuals in employment for a portion of at least one day during 20 or more different calendar weeks during the current year or during the preceding calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.024. ELECTION TO BE EMPLOYER. In this subtitle, "employer" also means an employing unit that has elected to become an employer under Section 205.001, 205.002, 206.002, or 206.003.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.025. EMPLOYER UNDER FEDERAL LAW. In this subtitle, "employer" also means:

(1) an employing unit that is liable for the payment of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) for the current calendar year; or

(2) an employing unit that the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) requires to be an employer under this subtitle as a condition for approval of this subtitle for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.026. STATE; POLITICAL SUBDIVISION. In this subtitle, "employer" also means a state, a political subdivision of a state, or an instrumentality of a state or political subdivision of a state that is wholly owned by one or more states or political subdivisions of one or more states.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.027. EMPLOYER OF DOMESTIC SERVICE WORKER. (a) In this subtitle, "employer" also means an employing unit that paid cash wages of $1,000 or more during a calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(b) An employer subject to this section who is not otherwise considered an employer under this subtitle, annually, may report quarterly wages and pay contributions. An employer who elects to report wages and pay contributions under this section must make the election not later than December 31 of the year before the first calendar year reported.

(c) Contributions paid as provided by Subsection (b) become due and are required to be reported and paid by each employer not later than January 31 with respect to wages for employment paid in the preceding calendar year. For a rate taking effect under Section

204.041(c) during the preceding calendar year, the commission shall estimate the rate, subject to a correction when a final computation is made as provided by Section 204.047(c).

(d) An employer who elects to report wages and pay contributions annually shall file, on the request of the commission, reports at other times as necessary to adjudicate a claim or to establish wage credits.

(e) With respect to an employer who reports wages and pays contributions annually under this section, any penalty or interest imposed on the employer shall be computed in the same manner as for other types of employment.

(f) An election by an employer under this section is not revocable by the employer before the second anniversary of the date of the election.

(g) An employer under this section is not an employer for wages paid for a service other than domestic service unless the employer is treated as an employer for that service under another provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 1, eff. Sept. 1, 2001.

Sec. 201.028. EMPLOYER OF FARM AND RANCH LABORER. (a) In this subtitle, "employer" also means an employing unit that paid wages for, or employed individuals in, farm and ranch labor in accordance with this section, Section 201.047, or Section 204.009.

(b) In this section, an employer shall not be treated as an employer for wages paid for a service other than service performed by:

(1) a seasonal worker employed on a truck farm, orchard, or vineyard;

(2) a farm and ranch laborer who is a migrant worker; or

(3) a seasonal worker who:

(A) works for a farmer, ranch operator, or labor agent who employs migrant workers; and

(B) does the same work at the same time and location as the migrant workers.

(c) Subsection (b) does not apply if the employer is an employer with respect to farm and ranch labor performed under Section

201.047(a)(4).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.029. TEMPORARY HELP FIRM. For purposes of this subtitle, a temporary help firm is the employer of an individual employed by the firm as a temporary employee.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.23(b), eff. Sept. 1, 1995.

Sec. 201.030. PROFESSIONAL EMPLOYER ORGANIZATION. For the purposes of this subtitle, "professional employer organization" has the meaning assigned by Section 91.001.

Added by Acts 1997, 75th Leg., ch. 1379, Sec. 20, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 18, eff. September 1, 2013.

SUBCHAPTER D. DEFINITION OF EMPLOYMENT

Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT. In this subtitle, "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.042. SERVICE OF DRIVER OR SALESMAN. In this subtitle, "employment" includes service:

(1) as an agent-driver or commission-driver who delivers a meat product, vegetable product, fruit product, bakery product, laundry, dry cleaning, or beverage except milk, if:

(A) the service is performed for remuneration;

(B) the employment contract provides that the individual personally performs substantially all of the service;

(C) the individual performing the service does not have a substantial investment in a facility used in the performance of the service, other than in a facility for transportation; and

(D) the service is part of a continuing relationship with the principal and is not a single transaction; or

(2) of a traveling or city salesman, except as provided in Section 201.070, an agent-driver, or a commission-driver, who, on a full-time basis, obtains for the individual's principal, except for sideline sales activities for another person, orders from a wholesaler, retailer, contractor, or operator of a hotel, restaurant, or similar establishment for merchandise for resale or supplies for use in the business's operation if:

(A) the employment contract provides that the individual personally performs substantially all of the service;

(B) the individual does not have a substantial investment in a facility used in the performance of the service, except a facility for transportation; and

(C) the service is part of a continuing relationship with the principal and is not a single transaction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.043. LOCATION OF SERVICE. (a) In this subtitle, "employment" includes service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations, but the service is directed or controlled from this state; or

(B) the base of operations or place from which service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) In this subtitle, "employment" includes service performed anywhere in the United States, including service performed entirely

outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) In this subtitle, "employment" includes service performed entirely outside this state that is not included as employment under Subsection (b) or Section 201.045 and for which contributions are not required and paid under an unemployment compensation law of another state if:

(1) the individual performing the service is a resident of this state; and

(2) the commission approves the election of the employing unit for which the individual performs the service that the entire service of the individual is employment under this subtitle.

(d) In this subtitle, "employment" includes service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer, if:

(1) the service was not performed in a contiguous country with which the United States has an agreement relating to unemployment compensation;

(2) the service is not considered employment under Subsection (b) or (c) or Section 201.044 or 201.045 or the parallel provisions of another state's law; and

(3) the employer:

(A) has its principal place of business in the United States in this state;

(B) does not have a place of business in the United States and is:

(i) an individual who is a resident of this state;

(ii) a corporation that is organized under the laws of this state; or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(C) has elected coverage in this state; or

(D) has failed to elect coverage in any state and the

individual has filed a claim for benefits based on the service under the laws of this state.

(e) In this section, "American employer" means:

(1) an individual who is a resident of the United States;

(2) a partnership, if two-thirds or more of the partners are residents of the United States;

(3) a trust, if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or of a state.

(f) For the purposes of Subsection (b), service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

(g) If this state is the state of jurisdiction for services covered as employment under Subsection (d), the employer shall so notify its employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.044. SERVICE UNDER RECIPROCAL AGREEMENT. In this subtitle, "employment" includes service that is performed by an individual and that is covered by a reciprocal agreement under this subtitle between the commission and the agency that administers another state's or a federal unemployment compensation law if:

(1) under the agreement all service performed by the individual for an employing unit is considered to be performed entirely in this state; and

(2) the commission approves an election of the employing unit for whom the service is performed under which the entire service of the individual is considered employment subject to this subtitle during the period covered by the election.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.045. SERVICE ON VESSEL OR AIRCRAFT. In this subtitle, "employment" includes service performed on or in connection with an

American vessel or aircraft if:

(1) the service is employment under Section 3306(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3306(c)); and

(2) the operating office from which the vessel or aircraft is ordinarily and regularly directed and controlled is in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.046. EMPLOYMENT TO ASSIST EMPLOYEE OR AGENT. (a) An individual employed to perform or to assist in performing the work of an employee or agent of an employing unit is employed by that employing unit for purposes of this subtitle if the employing unit has actual or constructive knowledge of the work.

(b) Subsection (a) applies without regard to whether the individual is hired or paid directly by the employing unit or by the employee or agent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.047. FARM AND RANCH LABOR AS EMPLOYMENT. (a) Farm and ranch labor is employment for the purposes of this subtitle if the labor:

(1) is performed by a seasonal worker employed on a truck farm, orchard, or vineyard;

(2) is performed by a migrant worker;

(3) is performed by a seasonal worker who:

(A) is working for a farmer, ranch operator, or labor agent who employs a migrant worker; and

(B) is doing the same work at the same time and location as the migrant worker;

(4) performed after 1986 and the laborer is employed by an employing unit that:

(A) pays wages in cash of $6,250 or more for the labor during a calendar quarter in the calendar year in which the labor is performed or the calendar year preceding that year; or

(B) employs three or more individuals in farm and ranch labor for a portion of at least one day during at least 20 different calendar weeks of the calendar year in which the labor is performed or the calendar year preceding that year.

(b) Wages paid for services described in Subdivision (a)(1), (2), or (3) are included in determining the wages paid for the purpose of Subdivision (a)(4).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.24, eff. Sept. 1, 1995.

Sec. 201.048. SERVICE FOR INDIAN TRIBE. Except as provided by Sections 201.063 and 201.067, in this subtitle, "employment" includes service performed in the employ of an Indian tribe if the services are excluded from the definition of employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended, solely because of Section 3306(c)(7) of that Act.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 2, eff. June 11, 2001.

SUBCHAPTER E. EXCEPTIONS TO EMPLOYMENT

Sec. 201.061. SERVICE ELIGIBLE UNDER ACT OF CONGRESS. In this subtitle, "employment" does not include service for which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.062. SERVICE UNDER ARRANGEMENT WITH AGENCY. In this subtitle, "employment" does not include service under an arrangement that is between the commission and the agency that administers another state's or a federal unemployment compensation law and that considers the service for an employing unit during the period covered by the employing unit's approved election to be performed entirely within the agency's state or under the federal law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.063. CERTAIN GOVERNMENT SERVICE. (a) In this subtitle, "employment" does not include:

(1) service in the employ of a political subdivision or of

an instrumentality of a political subdivision that is wholly owned by one or more political subdivisions:

(A) as an elected official;

(B) as a member of a legislative body;

(C) as a member of the judiciary;

(D) as a temporary employee in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position that is designated under law as a major nontenured policy-making or advisory position or a policy-making or advisory position that ordinarily does not require more than eight hours of service each week; or

(F) as an election official or worker if the remuneration received by the individual during the calendar year is less than $1,000;

(2) service in the employ of a foreign government, including service as a consular or other officer or employee or as a nondiplomatic representative;

(3) service in the employ of an instrumentality wholly owned by a foreign government if:

(A) the service is similar to service performed in a foreign country by an employee of the United States government or an instrumentality of that government; and

(B) the United States secretary of state has certified to the United States secretary of the treasury that the foreign government grants an equivalent exemption for similar services performed in the foreign country by an employee of the United States government or an instrumentality of the United States government;

(4) service in the employ of the United States government or an instrumentality of the United States exempt under the United States Constitution from the contributions imposed by this subtitle; or

(5) service described by Subdivisions (1)-(3) performed in the employ of an Indian tribe.

(b) To the extent the United States Congress permits a state to require an instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, this subtitle applies to the instrumentality and to the service performed for the instrumentality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 2001, 77th Leg., ch. 518, Sec. 3, eff. June 11, 2001.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 654 (H.B. 983), Sec. 1, eff. September 1, 2013.

Sec. 201.064. DOMESTIC SERVICE. In this subtitle, "employment" does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as performed for an employer under Section 201.027.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.065. SERVICE BY RELATIVE. In this subtitle, "employment" does not include:

(1) service of an individual in the employ of the individual's son, daughter, or spouse; or

(2) service of an individual younger than 21 years of age in the employ of the individual's father or mother.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.066. RELIGIOUS SERVICE. In this subtitle, "employment" does not include:

(1) service in the employ of:

(A) a church;

(B) a convention or association of churches; or

(C) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches;

(2) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry; or

(3) service performed by a member of a religious order as required by the order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.067. REHABILITATIVE SERVICE; WORK RELIEF; EXCEPTION FOR SERVICES PERFORMED BY CERTAIN TRAINED INDIVIDUALS. (a) In this subtitle, "employment" does not include service performed:

(1) by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury while the individual is in training at a sheltered workshop or other facility operated by a charitable organization under a rehabilitation program that includes:

(A) an individual plan for employment as required by 29 U.S.C. Section 722, as amended by the Workforce Innovation and Opportunity Act (Pub. L. No. 113-128);

(B) a timeline for completion of the training; and

(C) a planned employment outcome; or

(2) by an individual who receives work relief or work training as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, a political subdivision of a state, or an Indian tribe.

(b) Notwithstanding Subsection (a)(1), in this subtitle "employment" includes service performed by an individual whose earning capacity is impaired by age, physical impairment, developmental disability, mental illness, or intellectual disability or injury, other than an individual compensated as provided by Section 62.057, and who, after training, is working for a sheltered workshop or other facility operated by a charitable organization:

(1) temporarily while awaiting placement in a position of employment in the competitive labor market; or

(2) permanently because the individual is unable to compete in the competitive labor market.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 518, Sec. 4, eff. June 11, 2001; Acts 2001, 77th Leg., ch. 996, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 11.002, eff. Sept. 1, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 819 (H.B. 3685), Sec. 1, eff. January 1, 2016.

Sec. 201.068. SERVICE IN HOSPITAL. In this subtitle,

"employment" does not include:

(1) service as a student nurse who is:

(A) employed by a hospital or a nurses' training school; and

(B) enrolled and regularly attending classes in a nurses' training school chartered or approved under state law;

(2) service as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved under state law; or

(3) service in the employ of a hospital by a patient of the hospital.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.069. SERVICE OF STUDENT. In this subtitle, "employment" does not include:

(1) service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university;

(2) service performed by an individual who is enrolled as a student in a full-time program that combines academic instruction with work experience and that is taken for credit at a nonprofit or public educational institution normally maintaining a regular faculty and curriculum and having a regularly organized body of students in attendance at the place where its educational activities are conducted, if the service is an integral part of the program, and the institution has so certified to the employing unit, except:

(A) service performed in a program established for an employer or a group of employers;

(B) service in an apprenticeship training program; or

(C) service performed by a teaching assistant; or

(3) service by a student in the employ of an organized camp if:

(A) the camp:

(i) did not operate for more than seven months in the current calendar year and did not operate for more than seven months in the preceding calendar year; or

(ii) had average gross receipts for any six months in the preceding calendar year that were not more than 33-1/3 percent

of its average gross receipts for the other six months in the preceding calendar year; and

(B) the student performed services for the camp for fewer than 13 calendar weeks in the calendar year and the student:

(i) is enrolled as a full-time student at an educational institution; or

(ii) is between academic terms or years and:

(a) the student was enrolled as a full-time student at an educational institution for the preceding academic term or year; and

(b) there is reasonable assurance that the student will be so enrolled for the next academic term or year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.070. SERVICE AS PRODUCT DEMONSTRATOR; SALESMAN. In this subtitle, "employment" does not include:

(1) service by an individual as a product demonstrator if:

(A) the service is performed under a written contract between the individual performing the service and a person whose principal business is obtaining the service of a demonstrator for a third person for product demonstration purposes; and

(B) in contract and in fact the individual:

(i) is not treated as an employee with respect to that service for federal unemployment tax purposes;

(ii) is compensated for each demonstration or is compensated based on factors that relate to the work performed;

(iii) determines the method of performing the service;

(iv) provides each vehicle used to perform the service;

(v) is responsible for the completion of a specific job and is liable for failure to complete the job;

(vi) may accept or reject a job from a product demonstrator business;

(vii) is free from control by the principal business as to where the individual works;

(viii) controls solely opportunity for profit or loss; and

(ix) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(2) service by an individual as a direct seller if:

(A) the individual is engaged in the business of:

(i) in-person sales of consumer products to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home or in a place other than, and not affiliated with, a permanent retail establishment; or

(ii) sales of consumer products in a home or in a place other than, and not affiliated with, a permanent retail establishment;

(B) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(3) service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler of consumer goods, if the wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a municipality with a population of more than one million.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 60, eff. September 1, 2011.

Sec. 201.071. SERVICE AS INSURANCE AGENT. In this subtitle, "employment" does not include service as an insurance agent for which the only remuneration for the service is a commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.072. SERVICE AS REAL ESTATE BROKER. In this subtitle, "employment" does not include:

(1) service performed by an individual as a real estate broker or salesperson if:

(A) the individual engages in activity described by the definition of " broker" in Section 1101.002, Occupations Code;

(B) the individual is licensed as a broker or salesperson by the Texas Real Estate Commission;

(C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesperson if:

(A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and

(B) the service is performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

Sec. 201.073. DELIVERY SERVICE; NEWSPAPER DELIVERY SERVICE. In this subtitle, "employment" does not include:

(1) service performed for compensation by an individual for a private for-profit delivery service if the individual:

(A) may accept or reject a job from the delivery service;

(B) is free from control by the delivery service as to when the individual works;

(C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;

(D) controls solely the opportunity for profit or loss;

(E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(F) determines the method of performing the service, including selection of routes and order of deliveries;

(G) is responsible for completion of a specific job and is liable for failure to complete the job;

(H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and

(I) provides the vehicle used to perform the service; or

(2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 705, Sec. 8, eff. Sept. 1, 1995.

Sec. 201.074. SERVICE BY INMATE. In this subtitle, "employment" does not include service performed by an inmate of a custodial or penal institution.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 125, Sec. 1, eff. Sept. 1, 1999.

Sec. 201.075. SERVICE ON FISHING VESSEL. In this subtitle, "employment" does not include service performed on a fishing vessel normally having a crew of fewer than 10 members if:

(1) the crew member's payment is a share of the catch; and

(2) the service is not employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.)

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.076. INCLUDED AND EXCLUDED SERVICE IN PAY PERIOD. (a) All of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during one-half or more of the period is employment.

(b) None of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during more than one-half of the pay period is not employment.

(c) This section does not apply to service performed in a pay period by an individual for a person employing the individual that is service that does not constitute employment under Section 201.061.

(d) In this section, "pay period" means the period, not to exceed 31 consecutive days, for which a person employing an individual ordinarily pays wages to the individual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.077. SERVICE BY LANDMAN. In this subtitle, "employment" does not include service performed for a private for-profit person by a landman, as defined by Section 1702.324, Occupations Code, if:

(1) the compensation paid to the landman directly relates only to the performance of the service; and

(2) the service performed by the landman is performed under a written contract between the landman and the person for whom the service is performed that provides that the landman is to be treated as an independent contractor and not as an employee with respect to the service provided under the contract.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.25(a), eff. Sept. 1, 1995.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 37 (S.B. 529), Sec. 1, eff. May 19, 2015.

Sec. 201.078. SERVICE BY NONRESIDENT ALIEN AGRICULTURAL WORKER. In this subtitle, "employment" does not include service performed by a nonresident alien during the period that the alien is temporarily in the United States under an H2-A visa if the service is not defined

as employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3306(c)(19)).

Added by Acts 2003, 78th Leg., ch. 52, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. DEFINITION OF WAGES

Sec. 201.081. GENERAL DEFINITION OF WAGES. In this subtitle, "wages" means all remuneration for personal services, including:

(1) the cash value of remuneration paid in a medium other than cash; and

(2) a gratuity received by an employee in the course of employment to the extent that the gratuity is considered wages in the computation of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 201.082. EXCEPTIONS TO WAGES. In this subtitle, "wages" does not include:

(1) that part of the remuneration paid by an employer to an individual for employment during a calendar year that exceeds remuneration to the individual, excluding remuneration under another subdivision of this section, by the employer, of $9,000;

(2) a payment, including an amount the employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity, that is made to or for an employee or the employee's dependent under a plan the employer established for employees generally, or a class of employees, including or excluding the employee's dependents, for:

(A) retirement;

(B) sickness or accident disability;

(C) medical or hospitalization expenses in connection with sickness or accident disability; or

(D) expenses related to death;

(3) a payment made to an individual employee for retirement, including an amount an employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity;

(4) a payment for sickness or accident disability, or

medical or hospitalization expenses for sickness or accident disability, an employer makes to or for an individual employee after the expiration of six calendar months after the last calendar month the employee worked for the employer;

(5) a payment made to or for an employee or the employee's beneficiary:

(A) from or to a trust defined by Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), that is exempt from tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)), at the time of payment, unless the payment is made to an employee of the trust as remuneration for service as an employee and not as a beneficiary of the trust; or

(B) under or to an annuity plan that, at the time of the payment, is a plan described by Section 403(a), Internal Revenue Code of 1986 (26 U.S.C. Section 403(a));

(6) a tax an employer pays, without deduction from the remuneration of the employee, that is imposed on the employee under Section 3101, Internal Revenue Code of 1986 (26 U.S.C. Section 3101);

(7) noncash remuneration paid to an employee for service not in the course of the employer's business;

(8) a payment, except vacation or sick pay, made to an employee after the month the employee is 65 years of age, if the employee did not work for the employer in the period for which the payment is made; or

(9) the part of remuneration from a single employer for services in a calendar year that exceeds the amount applicable to the year under Subdivision (1) for which contributions have been paid under a state unemployment law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. TOTAL AND PARTIAL UNEMPLOYMENT

Sec. 201.091. TOTAL AND PARTIAL UNEMPLOYMENT. (a) An individual is totally unemployed in a benefit period during which the individual does not perform services for wages in excess of the greater of:

(1) $5; or

(2) 25 percent of the benefit amount.

(b) An individual is partially unemployed in a benefit period of less than full-time work if the individual's wages payable for that benefit period are less than the sum of:

(1) the benefit amount the individual would be entitled to receive if the individual was totally unemployed; and

(2) the greater of:

(A) $5; or

(B) 25 percent of the benefit amount.

(c) For purposes of this subtitle, an individual is considered unemployed if the individual is:

(1) totally unemployed as defined by Subsection (a); or

(2) partially unemployed as defined by Subsection (b).

(d) Notwithstanding Subsection (b), an individual is not partially unemployed for purposes of this subtitle for a benefit period in which the individual's working hours are reduced by the individual's employer as a result of misconduct connected with the work on the part of the individual. Such limitation will be effective for a maximum of four weeks from the effective date of such a reduction in hours.

(e) For purposes of this subtitle, an individual is not considered unemployed and is not eligible to receive benefits for any benefit period during which the individual works the individual's customary full-time hours, regardless of the amount of wages the individual earns during the benefit period.

(f) For purposes of this subtitle, an individual who last worked for a temporary help firm is not considered to be unemployed until three business days have passed since the date the individual's last assignment ended.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.26(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 83, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1184, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 592 (H.B. 1745), Sec. 1, eff. September 1, 2005.

SUBCHAPTER H. CONFORMITY WITH FEDERAL STATUTES

Sec. 201.101. CONFORMITY WITH FEDERAL STATUTES. If the United

States secretary of labor holds that Section 91.044(a-1) or a provision of this subtitle does not conform with a federal statute, the commission may administer Section 91.044(a-1) or this subtitle, as applicable, to conform with the federal statute until the legislature meets in its next session and has an opportunity to amend the applicable law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1260 (H.B. 3150), Sec. 2, eff. September 1, 2015.

CHAPTER 202. TEXAS EMPLOYMENT COMMISSION
SUBCHAPTER C. AGENCY ADMINISTRATOR AND PERSONNEL

Sec. 202.044. DIVISION OF EDUCATION. (a) The division of education is a division in the commission. The division shall assist the agency administrator and commission in administering their functions under Chapter 132, Education Code.

(b) The agency administrator shall assign sufficient staff to the division to enable it to perform its functions.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 40, eff. May 30, 1995.

CHAPTER 203. FINANCING AND FUNDS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. DEFINITIONS. In this chapter:

(1) "Administration fund" means the unemployment compensation administration fund created under Section 203.151.

(2) "Federal trust fund" means the unemployment trust fund created under Section 904, Social Security Act (42 U.S.C. Section 1104).

(3) "Special administration fund" means the unemployment compensation special administration fund created under Section 203.201.

(4) Repealed by Acts 1997, 75th Leg., ch. 1423, Sec. 12.14, eff. Sept. 1, 1997.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.14, eff. Sept. 1, 1997.

Sec. 203.002. DUTIES OF COMPTROLLER. (a) The comptroller is treasurer and custodian of the compensation fund and the special administration fund and shall administer the funds in accordance with the directions of the commission.

(b) The comptroller shall issue warrants on the compensation fund in accordance with rules adopted by the commission.

(c) The comptroller shall issue warrants on the special administration fund in accordance with the directions of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.01, eff. Sept. 1, 1997.

Sec. 203.003. COMPTROLLER'S BOND LIABILITY. The comptroller is liable on the comptroller's official bond for the faithful performance of the comptroller's duties under this subtitle in connection with the compensation fund, the administration fund, and the special administration fund. This liability is in addition to liability on any separate bond that the comptroller may give.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.02, eff. Sept. 1, 1997.

Sec. 203.004. DEPOSIT OF FUNDS; EXCEPTION. All money paid to the commission under this subtitle:

(1) shall be deposited in the treasury unless:

(A) a state or federal law prohibits deposit in the treasury; or

(B) the deposit would result in the loss of any federal funds; and

(2) may be used only for the administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.005. APPLICATION OF OTHER LAW. Money in the

compensation fund, the administration fund, and the special administration fund shall be deposited, administered, and disbursed in the same manner and under the same requirements as provided by law for other special funds in the state treasury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. UNEMPLOYMENT COMPENSATION FUND

Sec. 203.021. UNEMPLOYMENT COMPENSATION FUND; SEPARATE ACCOUNTS. (a) The unemployment compensation fund is a special fund.

(b) The compensation fund consists of:

(1) contributions collected under this subtitle;

(2) interest earned on money in the compensation fund;

(3) property or securities acquired through the use of money in the compensation fund;

(4) earnings of property or securities described by Subdivision (3);

(5) amounts recovered for losses sustained by the compensation fund; and

(6) other money received for the compensation fund from any other source.

(c) Money in the compensation fund shall be mingled and undivided.

(d) The comptroller shall maintain in the compensation fund:

(1) a clearing account;

(2) a federal trust fund account; and

(3) a benefit account.

(e) Money in the compensation fund may not be transferred to the:

(1) Texas Enterprise Fund created under Section 481.078, Government Code; or

(2) Texas emerging technology fund established under Section 490.101, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.03, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 12, eff. September 1, 2011.

Sec. 203.022. COMPOSITION AND USE OF CLEARING ACCOUNT. (a) On receipt of any money payable to the compensation fund, the commission shall forward the money to the comptroller, who shall immediately deposit it in the clearing account.

(b) Except as provided by Section 203.026, money in the clearing account, after it has cleared, shall be immediately deposited with the United States secretary of the treasury to the credit of this state's account in the federal trust fund. This section prevails over any conflicting state statute relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.04, eff. Sept. 1, 1997.

Sec. 203.023. REQUISITIONS FROM FEDERAL TRUST FUND; BENEFIT ACCOUNT. (a) The commission periodically shall requisition from the federal trust fund amounts the commission considers necessary for the payment of benefits and refunds for a reasonable period. The commission may not requisition an amount exceeding the balance of this state's account in the federal trust fund.

(b) The benefit account is composed of money requisitioned from this state's account in the federal trust fund.

(c) On receipt of money requisitioned from the federal trust fund, the comptroller shall deposit it in the benefit account.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.05, eff. Sept. 1, 1997.

Sec. 203.024. DEPOSITS. (a) Except as otherwise provided by this subchapter, the comptroller, under the direction of the commission, may deposit money credited to the clearing and benefit accounts in a bank or public depository in which general funds of this state may be deposited.

(b) A public deposit insurance charge or premium may not be paid out of the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.06, eff. Sept. 1, 1997.

Sec. 203.025. USE OF REQUISITIONED MONEY. (a) The commission shall direct the administration of the compensation fund exclusively for the purposes of this subtitle.

(b) Money requisitioned from this state's account in the federal trust fund may be used only for the payment of benefits or for refunds as provided by Sections 203.023, 203.026, 203.027, and 203.203 and by Subchapter B, Chapter 210, and Subchapter E, Chapter 213 except that money credited to this state's account as provided by Section 903, Social Security Act (42 U.S.C. Section 1103), may be requisitioned and used by the commission only to the extent and under the conditions prescribed by that section.

(c) Notwithstanding Subsections (a) and (b) or any other provision of this subtitle or other law, the commission, under an agreement with or waiver by the United States secretary of labor, may use money requisitioned from this state's account in the federal trust fund to conduct demonstration projects for the reemployment of unemployed individuals in the manner prescribed by that agreement or waiver and consistent with any applicable requirements under federal law. The commission shall provide to the legislative standing committees with primary jurisdiction over the commission any evaluation reports required by the United States Department of Labor for a reemployment demonstration project.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1300 (H.B. 3005), Sec. 1, eff. June 14, 2013.

Sec. 203.026. ACCOUNTS FROM WHICH BENEFITS AND REFUNDS ARE PAID. (a) The comptroller may issue a warrant for a benefit only from the benefit account.

(b) As directed by the commission, the comptroller may issue a warrant for a refund as provided by Subchapter E, Chapter 213, from the benefit account or the clearing account.

(c) An expenditure from the benefit account or a refund from the clearing account is not subject to a law that requires itemization or other formal release by a state officer of money in

the officer's custody.

(d) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.28(a), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.28(a), eff. Sept. 1, 1995.

Sec. 203.027. UNEXPENDED BALANCE OF BENEFIT ACCOUNT. Money requisitioned from the federal trust fund that remains unclaimed or unpaid in the benefit account after the end of the period for which the money was requisitioned shall be, in the commission's discretion:

(1) deducted from an estimate for the succeeding periods and used to pay benefits and refunds in those periods; or

(2) redeposited in the federal trust fund as provided by Section 203.022.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.028. SOLVENCY OF COMPENSATION FUND; RESERVE. (a) If the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the compensation fund, it shall inform the governor and legislature of its belief and when the change will become necessary and shall make recommendations for the necessary change.

(b) The commission, if possible, shall maintain in the compensation fund a reserve against the liability to pay benefits in future years in excess of current contributions. The commission shall create the reserve according to accepted actuarial principles using statistics of employment, business activity, and other relevant factors for the longest possible period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.029. REFUND OF CONTRIBUTIONS TO FEDERAL INSTRUMENTALITY. If this state is not certified for any year by the United States secretary of labor as required under Section 3304(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3304(c)), the commission shall refund from the compensation fund a payment required

of an instrumentality of the federal government for that year in the same manner and within the same period as provided by Subchapter E, Chapter 213, for contributions erroneously collected.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.030. REIMBURSEMENT FROM OR TO COMPENSATION FUND UNDER RECIPROCAL ARRANGEMENT. (a) The commission may reimburse a state or federal agency from the compensation fund or receive a reimbursement from a state or federal agency for the compensation fund under an arrangement under Section 211.003.

(b) A reimbursement paid from the compensation fund under this section is a benefit for the purposes of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.031. NONLIABILITY OF STATE. Benefits are due and payable only to the extent money is available for that purpose in the compensation fund. Neither this state nor the commission is liable for any amount in excess of the amount in that fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.032. MANAGEMENT OF COMPENSATION FUND ON DISCONTINUANCE OF FEDERAL TRUST FUND. (a) To the extent that a provision of this subchapter relates to the federal trust fund, the provision is operative only as long as:

(1) the federal trust fund exists; and

(2) the United States secretary of the treasury maintains for this state a separate book account of all funds deposited in the federal trust fund by this state for benefit purposes, with this state's proportionate share of the earnings of the federal trust fund, from which no other state is permitted to make withdrawals.

(b) If the federal trust fund ceases to exist or the secretary of the treasury ceases to maintain a separate book account for this state in the federal trust fund, all money, property, or securities in the federal trust fund that belong to the compensation fund shall be transferred to the comptroller. The comptroller shall hold,

invest, transfer, deposit, and release the money, property, or securities in a manner approved by the commission in accordance with this subtitle.

(c) Money held by the comptroller under Subsection (b) shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America. The money shall be invested in such a manner that the assets of the compensation fund are readily convertible at all times into cash as needed for the payment of benefits.

(d) The comptroller may dispose of securities or other property belonging to the compensation fund only under the direction of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.07, eff. Sept. 1, 1997.

SUBCHAPTER C. ADVANCES FROM FEDERAL TRUST FUND AND OBLIGATION ASSESSMENT

Sec. 203.101. LIMIT ON APPLICATION FOR ADVANCE. In any application for an advance from the federal trust fund (Section 1201, Social Security Act (42 U.S.C. Section 1321)), the governor shall limit the amount of the application to an amount that, when added to previous advances, does not exceed the amount for which principal and interest may be paid from taxes on employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.102. OBLIGATION TRUST FUND. (a) The obligation trust fund is a dedicated trust fund outside of the state treasury in the custody of the comptroller. The obligation trust fund is composed of:

(1) revenue received under Section 203.105; and

(2) any surplus revenue transferred from the compensation fund under Section 204.065.

(b) The commission and governor may use money in the obligation trust fund without legislative appropriation to pay:

(1) bond obligations and bond administrative expenses; and

(2) principal and interest incurred on advances from the federal trust fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 12.08, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 317, Sec. 2, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.02, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 1, eff. May 4, 2007.

Sec. 203.104. LIMITATION ON TRANSFER FROM OBLIGATION TRUST FUND TO COMPENSATION FUND. An amount that is attributable to the portion of the unemployment obligation assessment authorized by Section 203.105(a)(2) may not be transferred to the compensation fund unless all bond obligations, including bond administrative expenses, have been fully paid and satisfied. After the obligations have been fully satisfied, the commission shall transfer the balance of the obligation trust fund to the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 3, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.03, eff. June 20, 2003.

Sec. 203.105. UNEMPLOYMENT OBLIGATION ASSESSMENT. (a) An unemployment obligation assessment shall be imposed as provided by this section if after January 1 of a year:

(1) an interest payment on an advance from the federal trust fund will be due and the estimated amount necessary to make the interest payment is not available in the obligation trust fund or available otherwise; or

(2) bond obligations are due and the amount necessary to pay in full those obligations, including bond administrative expenses, is not available in the obligation trust fund or available otherwise.

(b) The unemployment obligation assessment rate is the total of the amounts required to make the payments necessary under Subsections (a)(1) and (2). The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of interest under Subsection (a)(1), but not exceeding two-tenths of one

percent. The commission shall set the unemployment obligation assessment rate in an amount sufficient to ensure timely payment of the bond obligations, including administrative expenses, and to provide an amount necessary in the commission's judgment to enhance investor acceptance of the bonds. The rate shall be based on a formula prescribed by commission rule, using the employer's experience rating from the previous year. The unemployment obligation assessment rate applies to the same wage base to which the employer's unemployment tax applies for the year.

(c) The unemployment obligation assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

(d) Revenue from the unemployment obligation assessment under this section shall be deposited to the credit of the obligation trust fund under Section 203.102.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 4, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.04, eff. June 20, 2003.

SUBCHAPTER D. ADMINISTRATION FUND

Sec. 203.151. ADMINISTRATION FUND. (a) The unemployment compensation administration fund is a special fund in the state treasury.

(b) The administration fund consists of money:

(1) appropriated to the administration fund by this state;

(2) received from the United States or any federal agency for the administration of this subtitle;

(3) collected by the commission as fees for furnishing photostatic or certified copies of commission records;

(4) collected by the commission as fees for conducting audits under the authority granted by this subtitle;

(5) received from any federal agency or any agency of another state as compensation for services or facilities supplied to the agency;

(6) received under any surety bond or insurance policy or from other sources:

(A) for losses sustained by the administration fund; or

(B) by reason of damage to equipment or supplies purchased with money in the administration fund;

(7) received as proceeds from the sale or disposition of equipment or supplies that are no longer necessary for the proper administration of this subtitle, if the equipment or supplies were purchased with money in the administration fund; and

(8) received from any other source for the administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.152. USE OF ADMINISTRATION FUND. (a) Money credited to the administration fund may be used by the commission as provided by this subtitle and may not be transferred to any other fund.

(b) Money in the administration fund received from the federal government or a federal agency may be spent only for the purposes and in the amounts found necessary by the United States secretary of labor or that secretary's successor for the proper and efficient administration of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 203.154. REIMBURSEMENT OF ADMINISTRATION FUND. (a) If the United States secretary of labor or that secretary's successor finds that money received from the secretary or the secretary's successor under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) or any other federal money granted to the commission for the administration of this subtitle has been lost or spent for a purpose other than, or in an amount in excess of, that found necessary for the proper administration of this subtitle by the secretary or the secretary's successor, the money shall be replaced by money appropriated for that purpose from the general funds of this state to the administration fund for expenditure as provided by Section 203.152.

(b) On receipt of notice that the secretary or the secretary's successor has made a determination described in Subsection (a), the commission shall promptly report the amount needed for reimbursement to the governor. The governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of that

amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. SPECIAL ADMINISTRATION FUND

Sec. 203.201. SPECIAL ADMINISTRATION FUND. (a) The unemployment compensation special administration fund is a special fund.

(b) The special administration fund consists of:

(1) all interest and penalties collected under this subtitle, other than a penalty assessed under Section 214.003(a)(2); and

(2) any amounts received under any surety bond for losses sustained by the special administration fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 1, eff. October 1, 2013.

Sec. 203.202. USE OF SPECIAL ADMINISTRATION FUND. (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:

(1) to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;

(2) in the administration of Chapters 51, 61, and 62;

(3) for payment of interest on advances from the federal trust fund;

(4) as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received;

(5) to refund a penalty as provided by Section 203.203; and

(6) subject to the provisions of Chapter 2107, Government Code, to pay persons who contract with the commission to collect

delinquent unemployment taxes, penalties, and interest owed under this subtitle.

(b) Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the absence of that money, be available to finance expenditures for the administration of this subtitle.

(c) The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 2, eff. Sept. 1, 1997.

Sec. 203.203. REFUND OF PENALTIES. A refund under Subchapter E, Chapter 213 of a penalty that has been erroneously collected and deposited to the credit of the special administration fund shall be made, without interest, from the special administration fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. ISSUANCE OF FINANCIAL OBLIGATIONS FOR UNEMPLOYMENT COMPENSATION FUND

Sec. 203.251. FINDINGS AND PURPOSE. (a) The legislature finds that:

(1) it is an essential governmental function to maintain funds in an amount sufficient to pay unemployment benefits when due;

(2) at the time of the enactment of this subchapter, borrowing from the federal government was the only option available to obtain sufficient funds to pay benefits when the balance in the compensation fund is depleted;

(3) alternative methods of replenishing the unemployment compensation fund may reduce the costs of providing unemployment benefits and employers' cost of doing business in the state; and

(4) funds representing revenues received from the unemployment obligation assessment authorized under this subchapter and any income from the investment of those funds are not state

property.

(b) The purpose of this subchapter is to provide appropriate methods through which the state may continue the unemployment compensation program at the lowest possible cost to the state and employers in the state.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.252. DEFINITIONS; GENERAL PROVISION. (a) In this subchapter:

(1) "Authority" means the Texas Public Finance Authority.

(2) "Bond" means any type of revenue obligation, including a bond, note, certificate, or other instrument, payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund to the extent provided in the proceedings authorizing the obligation.

(3) "Bond administrative expenses" means expenses incurred to administer bonds issued under this subchapter, including fees for paying agents, trustees, and attorneys, and for other professional services necessary to ensure compliance with applicable state or federal law.

(4) "Bond obligations" means the principal of a bond and any premium and interest on a bond issued under this subchapter, together with any amount owed under a related credit agreement.

(5) "Credit agreement" means a loan agreement, a revolving credit agreement, an agreement establishing a line of credit, a letter of credit, an interest rate swap agreement, an interest rate lock agreement, a currency swap agreement, a forward payment conversion agreement, an agreement to provide payments based on levels of or changes in interest rates or currency exchange rates, an agreement to exchange cash flows or a series of payments, an option, put, or call to hedge payment, currency, interest rate, or other exposure, or another agreement that enhances the marketability, security, or creditworthiness of a bond issued under this subchapter.

(b) An amount owed by the authority under a credit agreement shall be payable from and secured by a pledge of revenues received from the unemployment obligation assessment and amounts on deposit in

the obligation trust fund to the extent provided in the proceedings authorizing the credit agreement.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.253. REQUEST FOR BOND ISSUANCE. (a) If the commission determines that the issuance of bonds is necessary to reduce or avoid the need to borrow or obtain a federal advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law, or to refinance a previous loan or advance received by the commission and that bond financing is the most cost-effective method of funding the payment of benefits, the commission may request the authority to issue bonds on its behalf. Before making a request of the authority under this subsection, the commission must by resolution determine that the issuance of bonds for the purposes established by this section will result in a savings to the state and to employers in this state as compared to the cost of borrowing or obtaining an advance under Section 1201, Social Security Act (42 U.S.C. Section 1321), as amended, or any similar federal law.

(b) The commission shall specify in the commission's request to the authority the maximum principal amount of the bonds, not to exceed $2 billion for any separate bond issue, and the maximum term of the bonds, not to exceed 10 years.

(c) The principal amount determined by the commission under Subsection (b) may be increased to include an amount sufficient to:

(1) pay the costs of issuance of the authority;

(2) provide a bond reserve fund; and

(3) capitalize interest for the period determined necessary by the commission, not to exceed two years.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.254. ISSUANCE OF BONDS BY AUTHORITY. (a) The authority shall issue bonds on request by the commission, in accordance with the requirements of Chapter 1232, Government Code, and other provisions of Title 9, Government Code, that apply to bond

issuance by a state agency.

(b) The authority shall determine the method of sale, type of bond, bond form, maximum interest rates, and other terms of the bonds that, in the authority's judgment, best achieve the economic goals of the commission and effect the borrowing at the lowest practicable cost.

(c) The authority may enter into a credit agreement in connection with the bonds.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.255. BOND PROCEEDS. (a) The proceeds of bonds issued by the authority under this subchapter may be deposited with a trustee selected by the authority and the commission or held by the comptroller in a dedicated trust fund outside the state treasury in the custody of the comptroller.

(b) Bond proceeds, including investment income, shall be held in trust for the exclusive use and benefit of the commission. The commission may use the proceeds to:

(1) repay the principal and interest of previous advances from the federal trust fund;

(2) pay unemployment benefits by depositing the proceeds in the unemployment compensation fund, as defined in Subchapter B;

(3) pay the costs of issuing the bonds;

(4) provide a bond reserve; and

(5) pay capitalized interest on the bonds for the period determined necessary by the commission, not to exceed two years.

(c) Any excess money remaining after the purposes for which the bonds were issued is satisfied may be used to purchase or redeem outstanding bonds.

(d) If there are no outstanding bonds or bond interest to be paid, the remaining proceeds shall be transferred to the unemployment compensation fund.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.256. REPAYMENT OF COMMISSION'S FINANCIAL OBLIGATIONS.

(a) The commission shall assess an unemployment obligation assessment annually on each employer entitled to an experience rating under Chapter 204 if any bonds issued under this subchapter are outstanding.

(b) With regard to outstanding bonds issued by the authority under this subchapter, the authority shall notify the commission of the amount of the bond obligations and the estimated amount of bond administrative expenses each year in sufficient time, as determined by the commission, to permit the commission to assess the annual rate of the unemployment obligation assessment, subject to verification by a financial advisor of the commission or as otherwise specified in the proceedings authorizing the bonds.

(c) The commission shall deposit all revenue collected from the unemployment obligation assessment into the obligation trust fund. Money deposited in the fund may be invested as permitted by general law. Money in the obligation trust fund required to be used to pay bond obligations and bond administrative expenses shall be transferred to the authority or used by the commission in the manner and at the time specified in the resolution adopted in connection with the bond issue to ensure timely payment of obligations and expenses, or as otherwise provided by the bond documents.

(d) For bonds issued by the authority for the commission, the commission shall provide for the payment of the bond obligations and the bond administrative expenses by irrevocably pledging revenues received from the unemployment obligation assessment and amounts on deposit in the obligation trust fund, together with any bond reserve fund, as provided in the proceedings authorizing the bonds and related credit agreements.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.257. BOND PAYMENTS. (a) Revenues received from the unemployment obligation assessment may be applied only as provided by this subchapter.

(b) The commission may pay bond obligations with other legally available funds.

(c) Bond obligations are payable only from sources provided for payment in this subchapter.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.258. EXCESS REVENUE COLLECTIONS AND INVESTMENT EARNINGS. Revenue collected from the unemployment obligation assessment in any year that exceeds the amount of the bond obligations and bond administrative expenses payable in that year and interest earned on the obligation trust fund may, in the discretion of the commission, be:

(1) used to pay bond obligations payable in the subsequent year, offsetting the amount of the assessment that would otherwise have to be levied for the year under this subchapter;

(2) used to redeem or purchase outstanding bonds;

(3) deposited in the unemployment compensation fund; or

(4) used to pay principal and interest on advances from the federal trust fund.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.259. STATE DEBT NOT CREATED. (a) A bond issued under this subchapter, and any related credit agreement, is not a debt of the state or any state agency or political subdivision of the state and is not a pledge of the faith and credit of any of them. A bond or credit agreement is payable solely from revenue as provided by this subchapter.

(b) A bond, and any related credit agreement, issued under this chapter must contain on its face a statement to the effect that:

(1) neither the state nor a state agency, political corporation, or political subdivision of the state is obligated to pay the principal of or interest on the bond except as provided by this subchapter; and

(2) neither the faith and credit nor the taxing power of the state or any state agency, political corporation, or political subdivision of the state is pledged to the payment of the principal of or interest on the bond.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.260. STATE NOT TO IMPAIR BOND OBLIGATIONS. If bonds under this subchapter are outstanding, the state may not:

(1) take action to limit or restrict the rights of the commission to fulfill its responsibility to pay bond obligations; or

(2) in any way impair the rights and remedies of the bond owners until the bonds are fully discharged.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.261. EXEMPTION FROM TAXATION. A bond issued under this subchapter, any transaction relating to the bond, and profits made from the sale of the bond are exempt from taxation by this state or by a municipality or other political subdivision of this state.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

Sec. 203.262. NO PERSONAL LIABILITY. The members of the commission, commission employees, the board of directors of the authority, and the employees of the authority are not personally liable as a result of exercising the rights and responsibilities granted under this subchapter.

Added by Acts 2003, 78th Leg., ch. 317, Sec. 5, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.05, eff. June 20, 2003.

CHAPTER 204. CONTRIBUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 204.001. DEFINITION. In this chapter, "manual" means the North American Industrial Classification System Manual published by the United States Office of Management and Budget.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.002. CONTRIBUTION REQUIRED. (a) An employer shall pay a contribution on wages for employment paid during a calendar year or the portion of the calendar year in which the employer is subject to this subtitle.

(b) The contribution shall be paid to the commission in accordance with rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.003. CONTRIBUTION NOT DEDUCTED FROM WAGES. An employer may not deduct any part of a contribution from the wages of an individual in the employer's employ.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.004. ASSIGNMENT TO MAJOR GROUP. The commission shall assign each employer to a major group in accordance with the definitions contained in the manual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.005. ESTABLISHMENT OF MAJOR GROUP CONTRIBUTION RATE. (a) For each calendar year, the commission shall establish by industry an average contribution rate for each major group.

(b) The commission shall determine the year's contribution rate for an industry by averaging the contribution rates paid by employers in that industry during the preceding year ending on September 30, as shown by the employment records maintained by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.006. INITIAL CONTRIBUTION RATE. (a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:

(1) the rate established for that year for the major group to which the employer is assigned under Section 204.004, less one-tenth of one percent; or

(2) two and six-tenths percent.

(b) A rate established under Subsection (a) applies to the employer until the date the experience rate computed under Section 204.041 takes effect for the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 1, eff. January 1, 2006.

Sec. 204.007. SPECIAL RATE; CERTAIN EMPLOYERS ENGAGED IN AGRICULTURE. (a) This section applies to an employer identified by the commission as classified in the manual as:

(1) Number 115114, crop preparation services for market; or

(2) Number 115111, cotton ginning.

(b) An employer subject to this section shall pay a contribution at the lowest of the following rates:

(1) five and four-tenths percent;

(2) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or

(3) any other tax rate applicable to that employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 864, Sec. 1, eff. Sept. 1, 2001.

Sec. 204.008. TIME BENEFITS ARE PAID. For the purpose of this chapter, benefits are paid at the time the claim for the benefits is certified by the commission to the comptroller for payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.009. APPLICATION TO LABOR AGENT. (a) A labor agent who furnishes a farm and ranch laborer is liable for the payment of a tax under this subtitle as if the labor agent were the employer of the laborer, without regard to any factor used to determine an employer-employee relationship, including the right of control.

(b) If a labor agent does not pay the tax in accordance with this subtitle, a person who contracts with the labor agent for the services of a farm and ranch laborer is jointly and severally liable with the labor agent for payment of the tax under this subtitle as an employer.

(c) A labor agent shall notify each person with whom the labor agent contracts whether the labor agent pays the tax under this subtitle.

(d) A labor agent who pays the tax shall present evidence of payment to each person with whom the labor agent contracts.

(e) In this section, "labor agent" means a person who is a farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.010. PAYMENT OF CONTRIBUTIONS BY INDIAN TRIBES. An Indian tribe that is subject to this subtitle shall pay contributions under the same terms and conditions as any other subject employer unless the Indian tribe elects under Chapter 205 to make reimbursements for benefits instead of contributions.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 5, eff. June 11, 2001.

SUBCHAPTER B. CHARGEBACKS

Sec. 204.021. CHARGEBACKS. (a) The amount of benefits paid to a claimant for a benefit year shall be charged to the accounts of each of the claimant's employers during the claimant's base period. The chargebacks of an employer for a calendar quarter are the benefits paid to all of the employer's employees or former employees during that quarter.

(b) The chargeback of benefits of a claimant who has two or more employers during the claimant's base period is allocated among those employers according to the proportion of the total of the claimant's benefit wage credits paid during the base period by each employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.022. EXCLUSIONS FROM CHARGEBACKS. (a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer's employment before the employee's benefit year:

(1) was required by a federal statute;

(2) was required by a statute of this state or an ordinance of a municipality of this state;

(3) would have disqualified the employee under Section 207.044, 207.045, 207.051, or 207.053 if the employment had been the employee's last work;

(4) imposes a disqualification under Section 207.044, 207.045, 207.051, or 207.053;

(5) was caused by a medically verifiable illness of the employee or the employee's minor child;

(6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;

(7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment;

(8) was based on a disaster that results in a disaster declaration by the governor under Section 418.014, Government Code;

(9) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage;

(10) was caused by the employer being called to active military service in any branch of the United States armed forces on or after January 1, 2003;

(11) resulted from the employee leaving the employee's workplace to protect the employee from family violence or stalking or the employee or a member of the employee's immediate family from violence related to a sexual assault as evidenced by:

(A) an active or recently issued protective order documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the

stalking of, the employee or the potential for family violence against, or the stalking of, the employee;

(B) a police record documenting sexual assault of the employee or a member of the employee's immediate family or family violence against, or the stalking of, the employee;

(C) a physician's statement or other medical documentation that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee that:

(i) is recorded in any form or medium that identifies the employee or member of the employee's immediate family, as applicable, as the patient; and

(ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or

(D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the employee or a member of the employee's immediate family or family violence against the employee;

(12) resulted from a move from the area of the employee's employment that:

(A) was made with the employee's spouse who is a member of the armed forces of the United States; and

(B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year;

(13) was caused by the employee being unable to perform the work as a result of a disability for which the employee is receiving disability insurance benefits under 42 U.S.C. Section 423;

(14) resulted from the employee leaving the employee's workplace to care for the employee's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available;

(15) was caused by the employer's reinstatement of a qualified uniformed service member with reemployment rights and benefits and other employment benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.); or

(16) was due to a reason that:

(A) constitutes an involuntary separation under Section 207.046(a)(1); and

(B) does not constitute good cause connected with the employee's work under Section 207.045 for the employee to voluntarily leave the employment.

(a-1) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if:

(1) the employment did not constitute suitable work for the employee, as determined under Section 207.008; and

(2) the employee worked for the employer for less than four weeks.

(a-2) Benefits computed on benefit wage credits of an employee may not be charged to the account of an employer if the employee continued to work the employee's customary hours for the employer when the employee's benefit year began. This subsection does not apply to a claim for unemployment benefits made under Chapter 215.

(b) For the purpose of this section, if an employee's last separation from the employment of an employer is a separation for which the employee was determined to have been disqualified under Section 207.048, the employee's last separation from the employment of that employer is considered to be the next later separation from the employment of that employer.

(c) Except as provided by law, evidence regarding an employee described by Subsection (a)(11) may not be disclosed to any person without the consent of the employee.

(d) For purposes of Subsection (a)(11):

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Stalking" means conduct described by Section 42.072, Penal Code.

(3) "Immediate family" means an individual's parent, spouse, or child under the age of 18.

(4) "Sexual assault" means conduct described by Section 22.011 or 22.021, Penal Code.

(5) "Family violence center" has the meaning assigned by Section 51.002, Human Resources Code.

(e) Benefits may not be charged to the account of an employer, regardless of whether the liability for the chargeback arises in the employee's current benefit year or in a subsequent benefit year, if the employee's last separation from the employer's employment before the employee's benefit year was or would have been excepted from

disqualification under Section 207.023(b)(2) or 207.045(j).

(f) Shared work benefits paid under Chapter 215 may not be charged to the account of an employer if the benefits are reimbursed by the federal government under the federal Layoff Prevention Act of 2012 (Pub. L. No. 112-96, Subtitle D, Title II).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 93, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 77, Sec. 1, eff. May 15, 2003; Acts 2003, 78th Leg., ch. 526, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 7A.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 39 (S.B. 1342), Sec. 1, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 493 (H.B. 481), Sec. 2, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 12.0015, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.001, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.002, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 1, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 2, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 26 (S.B. 439), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 59 (H.B. 1550), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 310 (H.B. 1580), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 1, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 2, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 888 (H.B. 916), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1398 (H.B. 2034), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.001(39), eff. September 1, 2015.

Sec. 204.023. NOTICE SENT AT TIME BENEFITS PAID. The commission shall mail to an employer a notice of the employer's maximum potential chargebacks when benefits are first paid if:

(1) notice of an initial claim has not already been mailed to the employer under Section 208.002; and

(2) the employer's account is potentially chargeable with benefits as a result of the initial claim and payment of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.024. PROTEST OF POTENTIAL CHARGEBACKS. To protest a potential chargeback, an employer to whom notice is mailed under Section 204.023 must mail to the commission at Austin a protest not later than the 30th day after the date the notice was mailed or the right to protest the chargeback is waived. The protest must include a statement of the facts supporting the grounds of the protest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 773, Sec. 1, eff. Sept. 1, 1999.

Sec. 204.025. DECISION AND ADMINISTRATIVE REVIEW OF PROTEST. (a) An examiner promptly shall decide the issues involved in a timely protest filed under Section 204.024 and shall mail a notice of the decision to the protesting employer.

(b) The examiner's decision becomes final 14 days from the date the examiner mails the notice unless before that date the employer mails to the commission at Austin a written appeal from the examiner's decision.

(c) Administrative review under this section must be in accordance with the rules of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.026. JUDICIAL REVIEW OF PROTEST. (a) An employer may appeal an administrative determination made under Section 204.025 after the employer has exhausted the employer's administrative remedies, not including a motion for rehearing, before the commission. An appeal must be filed within the time prescribed by Sections 212.153 and 212.201 for commission decisions on benefits.

(b) An appeal to a court relating to a chargeback has the same venue and jurisdiction as a suit to collect contributions and penalties under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.027. NOTICE, PROTEST, AND APPEAL--NOTICE SENT AT TIME OF CLAIM. (a) If notice of the claim was sent to an employer under Section 208.002, the commission shall mail the employer a notice of the amount of the employer's potential chargeback resulting from the claim.

(b) The employer may protest a clerical or machine error relating to the amount of the chargeback not later than the 14th day after the date the notice was mailed.

(c) The commission shall mail a decision on the protest to the employer.

(d) An employer may appeal the decision on the protest not later than the 14th day after the date notice of the decision is mailed to the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. GENERAL TAX RATE FOR EXPERIENCE-RATED EMPLOYERS

Sec. 204.041. TAX ON EXPERIENCE-RATED EMPLOYERS. (a) Each employer whose account has been chargeable with benefits throughout four or more consecutive calendar quarters shall pay contributions at the rate prescribed by the table in Section 204.042 or a table extended under Section 204.043.

(b) Except as provided by Subsection (c), a change in the rate applicable to an employer takes effect on January 1.

(c) The rate for an employer who becomes subject to contributions under Subsection (a) for the first time at the close of a calendar quarter takes effect on the first day of the next calendar

quarter and continues in effect until the January 1 of the next calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.042. TAX RATE TABLE.

If the replenishment ratio is	and the employer's benefit ratio does not exceed:									
1.00	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90
. . .										
1.20	0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75
1.21	0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74
1.22	0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73
1.23	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73
1.24	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.25	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.26	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71
1.27	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70
1.28	0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70
1.29	0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69
1.30	0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69
1.31	0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68
1.32	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68
1.33	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67
1.34	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67
1.35	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66
1.36	0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66
1.37	0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65
1.38	0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65
1.39	0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64
1.40	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64
1.41	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.42	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.43	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.44	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.45	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62

1.46	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62
1.47	0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61
1.48	0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60
1.49	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51	0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59
1.52	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57	0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

the employer's tax rate is:

0.00	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%
%									

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.043. EXTENSION OF TAX RATE TABLE UP TO SIX PERCENT. (a) The commission shall extend the table in Section 204.042 by providing additional replenishment ratios, benefit ratios, and tax rates up to six percent.

(b) In extending the table in Section 204.042, the commission shall use the same mathematical principles used in constructing the table.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.044. BENEFIT RATIO. (a) The benefit ratio for an employer is equal to the total amounts of the employer's chargebacks for the 36 consecutive months preceding the tax rate computation date divided by the total of the employer's taxable wages for the same months.

(b) The benefit ratio of an employer whose account has been

chargeable with benefits for less than 36 consecutive months but throughout each month of at least four calendar quarters is equal to the total amount of the employer's chargebacks for those months preceding the tax rate computation date divided by the total of the employer's taxable wages for those months.

(c) In computing the benefit ratio, only taxable wages on which contributions have been paid to the commission not later than the last day of the month in which the computation date occurs may be used.

(d) In computing the benefit ratio for employers who are subject only to Section 201.027 and who have elected under that section to file reports annually, only taxable wages for which contributions have been paid to the commission on or before January 31 may be used.

(e) The benefit ratio is expressed as a percentage.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.045. REPLENISHMENT RATIO. (a) The replenishment ratio for a calendar year is computed by:

(1) dividing the numerator described in Subsection (b) by the denominator described in Subsection (c); and

(2) rounding the result to the nearest hundredth.

(b) The numerator is equal to the amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts, plus one-half of the amount of benefits paid during that period that are not effectively charged to employers' accounts. In computing the amount of the benefits charged or paid, the commission shall not include the amount of:

(1) a canceled benefit warrant;

(2) that part of a benefit that has been overpaid and been repaid; or

(3) benefits paid that are repayable from a reimbursing employer, the federal government, or another governmental entity.

(c) The denominator is the total amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts.

(d) The commission shall compute the replenishment ratio for each calendar year before the date the first contribution payment with respect to wages for employment paid in that year is due. Once computed for the year, the replenishment ratio may not be adjusted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.046. EFFECTIVELY CHARGED BENEFITS. (a) A benefit is not effectively charged if it is:

(1) not charged to an employer's account;

(2) charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate; or

(3) charged to an employer's account but considered not collectible.

(b) A benefit not described in Subsection (a) is effectively charged.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.047. TAX RATE COMPUTATION DATE FOR EXPERIENCE TAX RATE. (a) The computation date for the tax rate for the contribution under Section 204.041 is October 1 of the year preceding the calendar year in which the rate takes effect, except as provided by Subsections (b) and (c).

(b) The computation date for the tax rate for the contribution under Section 204.041(a) for an employer who becomes subject to that tax rate for the first time is the date on which the rate takes effect under Section 204.041(c).

(c) An employer who reports annually under Section 201.027 has the same computation date as other employers, but the final computation of a rate for the employer may not occur before February 1 of the year following the computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 487, Sec. 3, eff. Sept. 1, 2001.

Sec. 204.048. VOLUNTARY CONTRIBUTIONS. (a) Notwithstanding any other provision of this subtitle, an employer for whom the

commission has computed an experience rate as of October 1 of a calendar year that is effective for the succeeding calendar year, as provided by Section 204.047(a), may elect to make a voluntary payment of contributions to the commission.

(b) The amount of a voluntary contribution may be equal to all or part of the employer's chargebacks during the period ending September 30 that are used in computing the employer's experience rate for the succeeding calendar year. The commission shall allocate a voluntary contribution of less than the full amount of the employer's chargebacks first to the employer's most recent chargebacks.

(c) On receipt of a voluntary contribution during the period prescribed by Subsection (d), the commission shall reduce the employer's chargebacks by an amount equal to the contribution and shall recompute the experience rate applicable to that employer for the succeeding calendar year.

(d) An employer who elects to make a voluntary contribution for the recomputation of the employer's experience rate must make the contribution as prescribed by rules adopted by the commission. The employer may not revoke the contribution after the date on which the commission uses the contribution to recompute the employer's experience rate.

(e) Notwithstanding Subsection (a), the commission may not compute a new experience rate for an employer or reduce an employer's experience rate based on a voluntary contribution made by the employer after the expiration of the 120th day of the calendar year for which the rate is effective.

(f) The commission shall deposit a voluntary contribution made under this section to the credit of the compensation fund.

Added by Acts 1997, 75th Leg., ch. 383, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 934, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. ADJUSTMENTS TO TAX RATE FOR EXPERIENCE-RATED EMPLOYERS

Sec. 204.061. CEILING AND FLOOR OF COMPENSATION FUND. In computing the tax rates under this subchapter:

(1) the ceiling of the compensation fund is two percent of the total taxable wages for the four calendar quarters ending the preceding June 30; and

(2) the floor of the compensation fund is equal to the greater of:

(A) $400 million; or

(B) one percent of the total taxable wages for the four calendar quarters ending the preceding June 30.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.062. REPLENISHMENT TAX. (a) In addition to the general tax computed under Subchapter C, an employer entitled to an experience rate shall pay a replenishment tax at the rate computed by:

(1) dividing the numerator described by Subsection (b) by the denominator described by Subsection (c);

(2) multiplying that result by 100 to obtain a percentage; and

(3) rounding that result to the nearest hundredth.

(b) The numerator is an amount equal to one-half of the amount of benefits paid by all employers during the 12 months ending the preceding September 30 that are not effectively charged.

(c) The denominator is an amount equal to the taxable wages paid by all employers during the four quarters ending the preceding June 30.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.31, eff. Sept. 1, 1995.

Sec. 204.0625. ADJUSTMENT TO REPLENISHMENT TAX RATE. On and after January 1, 2006, the replenishment tax rate computed under Section 204.062 shall be adjusted to a rate computed by subtracting one-tenth of one percent from the percentage computed under Section 204.062(a).

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 2, eff. June 18, 2005.

Sec. 204.063. DEFICIT ASSESSMENT. (a) If the amount of money in the compensation fund on a tax rate computation date is less than

the floor of the compensation fund, a deficit tax rate is added for the next calendar year to the general tax rate for each employer entitled to an experience rate for that year.

(b) The deficit tax rate for a calendar year is the lesser of:

(1) the rate computed by multiplying the deficit ratio, as computed under Section 204.064, by the sum of the employer's general tax rate, the replenishment tax rate, and the deficit tax rate for the previous calendar year; or

(2) two percent.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 6, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.06, eff. June 20, 2003.

Sec. 204.064. DEFICIT RATIO. (a) The deficit ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance, from the floor of the compensation fund.

(c) The denominator is the amount of contributions due under the general tax rate and the replenishment rate for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 317, Sec. 7, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 6.07, eff. June 20, 2003.

Sec. 204.065. USE OF SURPLUS. (a) If the amount in the compensation fund on a tax rate computation date is more than the ceiling of the compensation fund, the commission may use all or part of that surplus to pay outstanding bond obligations as provided by this section or to provide a surplus credit or a surplus credit rate as provided by Sections 204.0651 and 204.0652 to an employer entitled to an experience rate on the computation date.

(b) If, on the tax rate computation date, there are outstanding

bond obligations as described by Subchapter C, Chapter 203, including bond administrative expenses, the commission may transfer all or part of the surplus described by Subsection (a) to the obligation trust fund under Section 203.102 for payment of those obligations. The amount transferred under this subsection may not exceed any amount transferred to the unemployment compensation fund under Section 203.255(b)(2).

(c) To the extent that any portion of the surplus is not used to pay bond obligations, the commission shall use that amount to compute:

(1) a surplus credit under Section 204.0651; or

(2) an annual surplus credit rate under Section 204.0652.

(d) In determining the use of any surplus, the commission shall exercise the options that the commission determines to be in the best interests of the state's employers and workers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.

Sec. 204.0651. SURPLUS CREDIT. (a) The commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute a surplus credit for an employer entitled to an experience rate on the computation date, to be applied beginning with contributions for the first quarter of the following year.

(b) The amount of the surplus credit is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's contributions due for the four calendar quarters ending the preceding September 30.

(c) An employer may not apply a surplus credit against delinquent contributions. A surplus credit may not be applied until the employer has paid any delinquent contributions.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.

Sec. 204.0652. SURPLUS CREDIT RATE. (a) If the commission

does not compute a surplus credit under Section 204.0651, the commission may use any portion of the surplus under Section 204.065 that is not used to pay bond obligations to compute an annual surplus credit rate for an employer entitled to an experience rate on the computation date.

(b) The surplus credit rate is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's general and replenishment tax rates for the preceding year.

(c) The surplus credit rate shall be subtracted from the sum of the general and replenishment tax rates. The remainder may not be less than zero. The results shall be rounded to the nearest hundredth.

(d) An employer may not receive a surplus credit rate if any delinquent contributions are due on the computation date, but is eligible for a surplus credit rate beginning on the calendar quarter following the quarter in which the delinquent contributions are paid.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 2, eff. May 4, 2007.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 536 (H.B. 1657), Sec. 1, eff. June 16, 2015.

Sec. 204.066. SURPLUS RATIO. (a) The surplus ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the ceiling of the compensation fund from the balance of the compensation fund and subtracting from that amount any amount used to pay bond obligations under Section 204.065(b).

(c) The denominator is the amount of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 3, eff. May

4, 2007.

Sec. 204.067. ADJUSTMENTS TO RATE. The commission, at its own discretion, may adjust a rate under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 34 (S.B. 679), Sec. 4, eff. May 4, 2007.

SUBCHAPTER E. ACQUISITION OF EXPERIENCE-RATED EMPLOYER

Sec. 204.081. DEFINITIONS. (a) In this subchapter:

(1) "Compensation experience" includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters.

(2) "Person" means an individual, trust, estate, partnership, association, company, or corporation.

(3) "Substantially common management or control" exists if, after the acquisition of the organization, trade, or business of an employing unit, the predecessor employing unit continues to:

(A) own or manage the organization that conducts the organization, trade, or business;

(B) own or manage the assets necessary to conduct the organization, trade, or business;

(C) control through security or lease arrangements the assets necessary to conduct the organization, trade, or business; or

(D) direct the internal affairs or conduct of the organization, trade, or business.

(4) "Substantially common ownership" exists if, on the date of an acquisition of the organization, trade, or business of an employing unit, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employing unit, or the spouse or a person within the first degree of consanguinity or affinity, as determined under Chapter 573, Government Code, of the shareholder, officer, or other owner:

(A) is a shareholder, officer, or other owner of a legal or equitable interest in the successor employing unit; or

(B) holds an option to purchase a legal or equitable interest in the successor employing unit.

(5) "Transfer of trade or business" includes the transfer of part or all of an employer's workforce to another employer if, as the result of the transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce and the employer to whom the workforce is transferred performs trade or business with respect to the workforce.

(6) "Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved.

(b) For purposes of Subsection (a)(4), following a partial acquisition of an organization, trade, or business of an employing unit, substantially common ownership does not exist solely because the predecessor employing unit has the right to repossess the part acquired by the successor employing unit in the event of the successor's failure to complete a condition of the acquisition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 2, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 525 (H.B. 1251), Sec. 1, eff. September 1, 2015.

Sec. 204.082. EFFECTIVE DATE OF ACQUISITION. For purposes of this subchapter, an acquisition is effective on the first day of the calendar quarter in which the acquisition occurs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.083. ACQUISITION OF ALL OR PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS; TRANSFER OF COMPENSATION EXPERIENCE. The transfer of the predecessor employer's compensation experience to the successor employer is required if the predecessor employing unit transfers, through any means, all or part of the organization, trade, or business, to the successor employer and there is substantially common management or control or substantially common ownership of the entities.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 3, eff. September 1, 2005.

Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF COMPENSATION EXPERIENCE WITHOUT SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP; CONTRIBUTION RATE. (a) If an employing unit acquires or otherwise receives, through any means, part of the organization, trade, or business of an employer, and transfer of compensation experience is not required by Section 204.083, the successor employing unit and the predecessor employer may jointly make a written application to the commission to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit.

(b) If the acquisition results from the death of the predecessor employer, the requirement that the predecessor employer join in the application for transfer of the compensation experience does not apply.

(c) Except as provided by Subsection (d), the commission shall approve an application if:

(1) immediately after the acquisition the successor employing unit continues operation of substantially the same part of the organization, trade, or business acquired;

(2) the predecessor employer waives in writing all rights to an experience rating computed on the compensation experience attributable to the part of the organization, trade, or business acquired by the successor employing unit, unless the acquisition results from the death of the predecessor employer;

(3) a definitely identifiable and segregable part of the predecessor employer's compensation experience is attributable to the part of the organization, trade, or business acquired;

(4) for a successor employing unit that is not an employer at the time of the acquisition, the successor employing unit elects to become an employer on the date of the acquisition or otherwise becomes an employer during the year in which the acquisition occurs;

(5) the application was filed with the commission not later

than the first anniversary of the effective date of the acquisition; and

(6) the applicants have shown that:

(A) the acquired part of the organization, trade, or business is capable of operating independently and separately from the predecessor employer; and

(B) the wages attributable to the acquired part of the organization, trade, or business are solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.

(d) The commission shall deny a transfer of compensation experience under this section if the commission determines that the transfer was done primarily to qualify for a reduced compensation experience rating by either:

(1) circumventing the experience rating system; or

(2) manipulating the experience rating system by minimizing the impact of chargebacks to the predecessor's or successor's tax account.

(e) A successor employing unit that acquires compensation experience under this section and that is an experience-rated employer on the date of and during the period preceding the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of acquisition.

(f) A successor employing unit that acquires compensation experience under this section and that is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the next contribution rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition. If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor employing unit's contribution rate must be determined under Section 204.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 7.01, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 4, eff.

September 1, 2005.

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 5, eff. September 1, 2005.

Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; CERTAIN PARTIAL ACQUISITIONS. (a) Except as provided by Subsection (d), in the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, if the commission determines that the part of the organization, trade, or business transferred is definitely identifiable and segregable and that compensation experience can be specifically attributed to that part of the organization, trade, or business, the contribution rate of the successor must be computed:

(1) based on the successor employing unit's experience for the part of the organization, trade, or business that was not acquired by the transfer; and

(2) as provided by this section for the part of the organization, trade, or business acquired through the transfer.

(a-1) In the case of a partial acquisition for which the transfer of compensation experience is required under Section 204.083, the predecessor employer and successor employer may jointly submit, not later than the second anniversary of the date the partial acquisition was completed, information necessary for making the determination described by Subsection (a). The period for which the information is submitted must be the lesser of:

(1) four years; or

(2) the length of time the predecessor employer was liable for the payment of a tax under this subtitle.

(b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at a rate computed by using the compensation experience transferred from the predecessor employer and that of the successor employing unit.

(c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from

the date of the acquisition until the end of the calendar year at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition.

(d) If the commission determines that the transfer was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, the successor's contribution rate must be determined under Section 204.006.

(e) The commission shall include information about the availability of a partial transfer of compensation experience under this subchapter:

(1) with the information provided by the commission to each new employer; and

(2) on any form, including in electronic format, required to be submitted by an employer to report a change of status.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 525 (H.B. 1251), Sec. 2, eff. September 1, 2015.

Sec. 204.0851. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYERS WHEN SUBSTANTIALLY COMMON MANAGEMENT OR CONTROL OR SUBSTANTIALLY COMMON OWNERSHIP EXISTS; OTHER ACQUISITIONS. (a) For a transfer of compensation experience required by Section 204.083 other than a transfer described by Section 204.085(a), the contribution rate shall be computed as provided by this section.

(b) A successor employing unit that acquires compensation experience under Section 204.083 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate computed by using the prior 36-month combined compensation experience of the predecessor employing unit and the successor employing unit on the date of the acquisition.

(c) A successor employing unit that acquires compensation experience under Section 204.083 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year at the

highest rate applicable at the time of the acquisition to any predecessor employing unit that is a party to the acquisition.

(d) The contribution rate for experience-rated and nonexperience-rated successor employing units shall, for the years following the year of acquisition, be computed as follows:

(1) for the first year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 24-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;

(2) for the second year following acquisition, the successor employing unit's compensation experience plus the predecessor employing unit's 12-month compensation experience ending on September 30 preceding the year of acquisition, combined with the predecessor employing unit's compensation experience from that date to the date of the acquisition;

(3) for the third year following acquisition, compensation experience available to the successor employing unit plus the predecessor employing unit's compensation experience from September 30 preceding the year of acquisition to the date of the acquisition; and

(4) for years subsequent to the acquisition and to the transfer of compensation experience required under Section 204.083, the predecessor employing unit's contribution rate is computed without regard to any transfer of compensation experience required by that section.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.086. COLLECTION OF CONTRIBUTION, PENALTY, OR INTEREST FROM SUCCESSOR EMPLOYER. (a) An individual or employing unit that acquires the organization, trade, or business or substantially all of the assets of an organization, trade, or business of an employer who, at the time of the acquisition, is indebted to the commission for a contribution, a penalty, or interest, is liable to the commission for prompt payment of the contribution, penalty, or interest.

(b) If not paid, the commission may bring an action under

Chapter 213 for the collection of a contribution, a penalty, or interest as though the contribution, penalty, or interest had been incurred by the successor employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 2, eff. Sept. 1, 2001.

Sec. 204.0861. SURPLUS CREDIT FOR SUCCESSOR EMPLOYING UNITS. (a) In this section, "surplus credit" means a credit described by Section 204.0651.

(b) A successor employing unit to which compensation experience is transferred under Section 204.083 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit.

(c) A successor employing unit to which compensation experience is transferred under Section 204.084 is entitled to a surplus credit attributable to, but not applied or received by, the predecessor employing unit if the commission determines that the requirement described by Section 204.084(c)(3) is satisfied.

(d) If the commission determines that a transfer of compensation experience was accomplished solely or primarily for the purpose of obtaining a lower contribution rate, a successor employing unit is not entitled to, and may not apply or receive, a surplus credit under Subsection (b) or (c).

(e) A predecessor employing unit is not entitled to, and may not apply or receive, all or any portion of a surplus credit that is based on compensation experience that is transferred to a successor employing unit under this subchapter.

(f) The commission shall adopt rules necessary to implement and enforce this section, including rules that ensure that only a successor employing unit applies or receives all or part of a surplus credit previously attributable to a predecessor employing unit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 31 (S.B. 638), Sec. 1, eff. September 1, 2011.

Sec. 204.087. OFFENSE; CRIMINAL AND CIVIL PENALTIES. (a) A person commits an offense if the person recklessly, knowingly, or intentionally defeats, evades, or circumvents a provision of this

subchapter or if the person recklessly, knowingly, or intentionally attempts, aids and abets an attempt, or advises another to defeat, evade, or circumvent a provision of this subchapter.

(b) An employer who commits an offense under this section may be assessed a civil penalty in an amount equal to two percent of wages as defined in Subchapter F, Chapter 201, for the year during which the violation occurred and for the three years following that year.

(c) A person, other than the employer, who commits an offense under this section may be assessed a civil penalty of not more than $5,000 for a first offense and not more than $5,000 for each subsequent offense.

(d) A civil penalty assessed under Subsection (b) or (c) shall be deposited in the special administration fund established under Section 203.201.

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

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.088. PROCEDURES TO IDENTIFY EXPERIENCE-RATING TRANSFERS. The commission by rule shall establish procedures to identify the transfer or acquisition of a business for the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

Sec. 204.089. CONFORMITY WITH FEDERAL REGULATIONS. The commission shall administer this subchapter in conformity with any regulations prescribed by the United States Secretary of Labor relating to experience-rating transfers.

Added by Acts 2005, 79th Leg., Ch. 1315 (H.B. 3250), Sec. 7, eff. September 1, 2005.

SUBCHAPTER F. SPECIAL CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS

Sec. 204.101. CONTRIBUTION FROM GOVERNMENTAL EMPLOYER. A

governmental employer shall pay a contribution in accordance with this subchapter and rules adopted by the commission on wages paid for employment during each year or portion of the year in which the governmental employer is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.102. CONTRIBUTION NOT DEDUCTION FROM WAGES. A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer's employ.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.103. RATE OF CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS. (a) The rate of the contribution required under Section 204.101 for each calendar year is equal to the greater of:

(1) one-tenth of one percent; or

(2) the percentage, adjusted to the next higher one-tenth of one percent, computed by dividing the numerator described by Subsection (b) by the denominator described by Subsection (c).

(b) The numerator is the amount of all benefits paid during the preceding calendar year based on wage credits earned from employers that pay contributions under this subchapter, not including benefit payments that are reimbursable from any other source. If the amount of benefits paid during the period used for determining the rate is greater than the contributions paid by the same employers for the same period, the amount of the benefits paid in excess of the amount of contributions collected shall be added to the numerator in determining the contribution rate. If the amount of benefits paid for the period used for determining the rate is less than the contributions paid by the same employers for the same period, that amount shall be deducted from the numerator in computing the rate.

(c) The denominator is the amount of the total wages paid during the preceding calendar year by all employers that pay contributions under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.104. ACCOUNTING FOR GOVERNMENTAL EMPLOYERS. The commission shall account separately for benefits paid and contributions collected under this subchapter, and these benefits and contributions may not be used in determining contribution rates under Subchapters A, B, C, and D.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.105. PAST DUE CONTRIBUTIONS. (a) A governmental employer that fails to pay a contribution due under this subchapter on the date it is due as prescribed by the commission is subject to the same penalties as provided for other employers under Section 213.021.

(b) The provisions for collecting delinquent contributions under Chapter 213 apply to a governmental employer.

(c) The commission shall notify the comptroller in writing of the name of each governmental employer that is delinquent in payment of contributions under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 204.106. REPORTS AND RECORDS. (a) A governmental employer shall keep records and file reports with the commission relating to individuals in its employ as required by rules adopted by the commission.

(b) A governmental employer that does not keep the records or file the reports when due is subject to the same penalties provided for other employers under Sections 213.022, 213.023, 213.024, and 213.056.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT; FUNDS

Sec. 204.121. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT.

(a) In addition to any other taxes imposed under this subtitle, an employment and training investment assessment is imposed on or after January 1, 2006, on each employer paying contributions under this subtitle as a separate assessment of one-tenth of one percent of wages paid by the employer.

(b) The commission shall deposit the revenue from the employment and training investment assessment to the credit of the holding fund created under Section 204.122.

(c) The employment and training investment assessment is due at the same time, collected in the same manner, and subject to the same penalties and interest as other contributions assessed under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.

Sec. 204.122. HOLDING FUND. (a) The employment and training investment holding fund is a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state.

(b) The comptroller shall administer the holding fund in accordance with the directions of the commission. Interest accruing on amounts in the holding fund shall be deposited quarterly to the credit of the compensation fund.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.

Sec. 204.123. TRANSFER TO SKILLS DEVELOPMENT FUND, TRAINING STABILIZATION FUND, AND COMPENSATION FUND. (a) If, on September 1 of a year, the commission determines that the amount in the compensation fund will exceed 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer from the holding fund created under Section 204.122:

(1) during any state fiscal biennium beginning on or after September 1, 2007, 100 percent to the skills development fund created under Section 303.003, except that the amount transferred under this subdivision may not exceed the amount appropriated by the legislature

to the skills development program strategies and activities in that biennium; and

(2) any remaining amount in the holding fund after the distribution under Subdivision (1) to the training stabilization fund created under Section 302.101.

(b) If, on September 1 of a year, the commission determines that the amount in the compensation fund will be at or below 100 percent of its floor as computed under Section 204.061 on the next October 1 computation date, the commission shall transfer to the compensation fund as much of the amount in the holding fund as is necessary to raise the amount in the compensation fund to 100 percent of its floor, up to and including the entire amount in the holding fund. The commission shall transfer any remaining balance in the holding fund to the skills development fund and the training stabilization fund in the manner prescribed by Subsection (a).

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 3, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 13, eff. September 1, 2011.

CHAPTER 205. REIMBURSEMENTS

SUBCHAPTER A. ELECTION TO BECOME REIMBURSING EMPLOYER

Sec. 205.001. REIMBURSEMENTS OR CONTRIBUTIONS BY GOVERNMENTAL ENTITY. (a) A state, a political subdivision of a state, an Indian tribe, or an instrumentality of a state, political subdivision of a state, or Indian tribe may elect to pay reimbursements for benefits instead of contributions.

(b) The election must be made not later than the 45th day after the date on which notice that an employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) An election is effective for at least two calendar years and may be terminated after the minimum period by filing with the commission not later than December 1 a written request for termination. The termination is effective January 1 of the following year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 518, Sec. 6, eff. June 11, 2001.

Sec. 205.002. ELECTION BY NONPROFIT ORGANIZATION. (a) A nonprofit organization that is described by Section 201.023 or a group of those organizations subject to this subtitle may elect to pay reimbursements for benefits instead of contributions.

(b) An election under this section must be made not later than the 45th day after the date on which notice that the employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) The election is effective for at least two calendar years and may not be terminated before the expiration of that period, except as provided in Sections 205.003 and 205.031.

(e) An election may be withdrawn by written application by the employer filed with the commission not later than December 1 before the year for which the employer wishes to change the employer's method of payment. The method of payment may be changed again if a timely application is filed after a minimum of two calendar years.

(f) An election to pay reimbursements terminates at any time coverage terminates under this subtitle. An employer whose election terminates because of termination of coverage, on again becoming an employer subject to this subtitle, may reelect to pay reimbursements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.003. COMMISSION TERMINATION OF ELECTION. (a) The commission may terminate an employer's election to make reimbursements if the employer is delinquent in making reimbursements under this chapter.

(b) A termination under this section takes effect at the beginning of the next tax year and remains in effect for that tax year and the following tax year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.004. ELECTION BY INDIAN TRIBE. (a) An Indian tribe

that elects to make reimbursements for benefits instead of contributions shall make the election under this chapter in the same manner and subject to the same conditions as the state or a political subdivision of the state.

(b) An Indian tribe that makes an election under this chapter shall determine whether the election is for the tribe as a whole, individual tribal units, or a combination of individual tribal units.

(c) An Indian tribe that makes an election under this chapter shall pay the full amount of benefits attributable to service performed in the employ of the Indian tribe on the same schedule as other employing units that have elected to make reimbursements for benefits instead of contributions.

(d) An Indian tribe that fails to make a required payment, including payment of a penalty and interest, before the 91st day after receiving notice of the payment loses the option to pay reimbursements instead of contributions for the following tax year unless the commission receives payment in full before the date contribution rates for that tax year are computed.

(e) An Indian tribe that loses the option to pay reimbursements instead of contributions due to late payments under Subsection (d) may resume that option if, after the expiration of one year following the date of losing the option, the Indian tribe has timely paid all contributions and no contributions, payments instead of contributions for benefits paid, penalties, or interest remain outstanding.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 7, eff. June 11, 2001.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 205.011. APPLICABILITY OF SUBTITLE; WAIVER BY REIMBURSING EMPLOYER. (a) A reimbursing employer is entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this subtitle other than the following provisions of Chapter 204, which do not apply to a reimbursing employer:

(1) Sections 204.001-204.008;

(2) Subchapters B, C, and D of Chapter 204; and

(3) Sections 204.081-204.085.

(b) An election to become a reimbursing employer is a waiver of the rights afforded under Chapter 204 that do not apply to a reimbursing employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.012. PAYMENT OF REIMBURSEMENT. A reimbursing employer shall pay a reimbursement to the commission in accordance with this chapter and rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.0125. EXCEPTION FROM DUTY TO PAY REIMBURSEMENT. (a) Notwithstanding any other provision of this chapter, a reimbursing employer is not liable for paying a reimbursement for benefits paid to an individual, regardless of whether the employer was named as the individual's last work, if the individual's separation from work with the employer resulted from the individual:

(1) being discharged for misconduct; or

(2) voluntarily leaving work without good cause connected with the individual's work.

(b) A reimbursing employer may contest reimbursements billed to the employer by the commission in violation of this section using the dispute resolution procedures prescribed by Chapter 212 and rules adopted under that chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 810 (H.B. 3373), Sec. 1, eff. September 1, 2015.

Sec. 205.013. BILLING; AMOUNT OF REIMBURSEMENTS. (a) A reimbursing employer shall pay to the commission an amount equal to the regular benefits plus, except as provided by Subsection (c), one-half of the extended benefits paid during that quarter that are attributable to service in the employ of the employer.

(b) At the end of each calendar quarter the commission shall bill each reimbursing employer for the amount described under Subsection (a).

(c) A state, a political subdivision of a state, or any instrumentality of any one or more states or political subdivisions of a state that is wholly owned by one or more states or political subdivisions of a state that is a reimbursing employer shall pay 100 percent of the extended benefits paid on benefit wage credits earned

from that employer.

(d) If a reimbursing employer pays a reimbursement to the commission for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle, the employer is not entitled to a refund of, or credit for, the amount paid by the employer to the commission unless the employer has complied with the requirements of Section 208.004 with respect to the claimant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 1, eff. October 1, 2013.

Sec. 205.014. PROPORTIONATE ALLOCATION OF BENEFIT COSTS--MORE THAN ONE EMPLOYER AND AT LEAST ONE REIMBURSING EMPLOYER. If benefits to an individual are computed on benefit wage credits earned from more than one employer, at least one of whom is a reimbursing employer, the amount payable to the compensation fund by each reimbursing employer is the amount that bears the same ratio to the total benefits paid to the individual as the total base period benefit wage credits for the individual from that employer bears to the total base period benefit wage credits for the individual from all employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.015. CONTINUED LIABILITY FOR REIMBURSEMENT. An employer who has elected reimbursement under Section 205.001 or 205.002 shall pay reimbursements for benefits that are attributable to service in the employ of the employer during the period of the election, even if the employer is no longer a reimbursing employer when the benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.016. COLLECTION OF DELINQUENT REIMBURSEMENT; EFFECT OF FAILURE TO SUBMIT CERTAIN REPORTS. A reimbursing employer who

fails to pay a reimbursement on the date on which the reimbursement is due, or who fails to submit records and reports, as prescribed by the commission, is subject to the following in the same manner as an employer who does not pay a contribution when due:

(1) Sections 213.004, 213.005, 213.006, 213.008, and 213.009;

(2) Subchapters B, C, D, and E of Chapter 213, other than Section 213.058; and

(3) Section 204.086.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.017. DELINQUENT GOVERNMENTAL EMPLOYERS. The commission shall notify the comptroller in writing of the name of a governmental employer that is delinquent in payment of reimbursements under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.018. PAYMENT OF BENEFITS FROM COMPENSATION FUND; NO EFFECT ON REPLENISHMENT RATIO. Benefits computed on wages earned from a reimbursing employer and reimbursements for the benefits may not be used in computing the replenishment ratio under Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.019. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) A branch, department, or other instrumentality of this state that reimburses the commission with funds that are held outside the state treasury shall reimburse the commission by writing a check to the commission for deposit into the appropriate unemployment compensation account. A deposit under this section shall be made not later than the 30th day after the date the instrumentality receives the commission's statement of amounts due.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1312, Sec. 99(28), eff. September 1, 2013.

(c) A branch, department, or other instrumentality affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the appropriate unemployment compensation account for benefits paid.

(d) The state auditor may review the reimbursement of funds for compliance by the affected entities with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.38, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 63, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 99(28), eff. September 1, 2013.

SUBCHAPTER C. GROUP ACCOUNT

Sec. 205.021. APPROVAL OF GROUP ACCOUNT; EFFECTIVE DATE. (a) On approval of an application submitted by two or more reimbursing employers, the commission shall establish a group account for the employers to share the cost of benefits that are attributable to service in the employ of the employers.

(b) The application must identify and authorize a group representative to act as the group's agent for the purpose of this subchapter.

(c) The group account takes effect at the beginning of the calendar quarter in which the commission received the application. The commission shall notify the group's representative of the effective date of the account.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.022. DURATION AND TERMINATION OF GROUP ACCOUNT. (a) A group account must remain in effect for not less than two years.

(b) After two years, the account may be terminated at the discretion of the commission or on application by the group. The termination is effective January 1 of the next year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.023. GROUP MEMBER'S REIMBURSEMENT AMOUNT. On establishment of a group account, each member of the group is liable for reimbursements for each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service in the employ of all members of the group as the total wages paid for service in employment in the quarter by the member bears to the total wages paid in the quarter by all members of the group.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.024. REPORTS AND RECORDS. Each member of a group shall keep accurate employment records and submit reports as required by the commission relating to persons employed by the member.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.025. COMMISSION RULES. The commission shall as necessary adopt rules on:

(1) an application for the establishment, maintenance, and termination of a group account authorized by this subchapter;

(2) the type of records to be kept and reports to be submitted by a group of employers;

(3) the addition of a new member to a group;

(4) the withdrawal of an active member from a group; and

(5) the determination of the amount of reimbursements payable under this subchapter by members of a group and the time and manner of those payments.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. BONDS AND OTHER SAFEGUARDS

Sec. 205.031. BOND. (a) The commission may require a reimbursing employer or group of reimbursing employers to execute and file with the commission a surety bond approved by the commission.

(b) The amount of the bond shall be determined in accordance with rules adopted by the commission.

(c) The commission may require adjustments to a filed bond as it considers appropriate.

(d) If a reimbursing employer covered by a bond fails to pay the full amount of reimbursements when due, together with any applicable interest and penalties required under this subtitle, the surety is liable on the bond, to the extent of the bond, as though the surety were the employer.

(e) If a reimbursing employer fails to execute and file bond when directed to do so by the commission, the commission may terminate the employer's election to make reimbursements effective at the beginning of the next tax year. The termination remains effective for that tax year and the following tax year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.032. ADDITIONAL SAFEGUARDS. The commission may provide additional safeguards as necessary to ensure that a reimbursing employer pays the reimbursements required under Subchapters B and C.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. STATE ELECTIONS

Sec. 205.041. STATE ELECTION TO BE REIMBURSING EMPLOYER. (a) This state is a reimbursing employer subject to this subtitle for all services performed in the employ of:

(1) this state;

(2) a branch or department of this state; or

(3) an instrumentality of this state that is not otherwise an employer.

(b) All services performed in the employ of this state, a branch or department of this state, or an instrumentality of this state are employment.

(c) Subsection (a) does not apply to a political subdivision of this state.

(d) The commission shall provide to each state agency an annual statement showing the benefits paid by the commission during the year that are attributable to that agency.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 205.042. COVERAGE OF STATE EMPLOYEES WORKING OUTSIDE STATE. If the commission is unable to execute a reciprocal agreement under Chapter 211 to cover an employee of this state who works outside this state, the employing agency shall become a reimbursing employer if permitted by the law of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contribution for that employee from funds available for that purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 206. UNEMPLOYMENT INSURANCE COVERAGE

Sec. 206.001. YEARLY COVERAGE. An employing unit that is or becomes an employer in a calendar year is subject to this subtitle during that entire calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.002. ELECTION OF COVERAGE AS EMPLOYER. (a) An employing unit that is not otherwise subject to this subtitle may elect coverage as an employer for not less than two calendar years.

(b) Subsection (a) does not apply to an employing unit to which Section 205.001 or 205.002 applies.

(c) On written approval by the commission of an election under Subsection (a), the employing unit making the election becomes an employer to the same extent as all other employers beginning on the date stated in the approval.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.003. ELECTION OF COVERAGE REGARDING SERVICES NOT CONSTITUTING EMPLOYMENT. (a) An employing unit may elect for not less than two calendar years that all services that do not constitute employment and that are performed by individuals in its employ in one or more distinct establishments or places of business are to be considered employment for all purposes of this subtitle.

(b) An election under Subsection (a) must be in writing and be filed with the commission.

(c) On written approval by the commission of an election under Subsection (a), the services constitute employment during the period elected, beginning on the date stated in the approval.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.004. TERMINATION OF COVERAGE. (a) An employing unit may cease to be an employer only on January 1 of a year and only if the commission finds that:

(1) the employing unit was not an employer during the preceding year; or

(2) the employing unit has not had any individuals in employment during the preceding three calendar years.

(b) The commission may not make a finding under Subsection (a)(1) unless the employing unit files an application for termination of coverage with the commission on or after January 1 but before April 1 of the year for which termination is requested. The commission may make a finding under Subsection (a)(2) without an application having been filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 206.005. PREVIOUS RIGHTS LOST BY CESSATION OF COVERAGE. When an employing unit that ceased to be an employer subsequently becomes an employer, the employing unit is considered to be a new employer without regard to the rights that employing unit acquired when previously an employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 207. BENEFITS
SUBCHAPTER A. PAYMENT OF BENEFITS

Sec. 207.001. PAYMENT OF BENEFITS. Benefits are paid through the commission in accordance with rules adopted by the commission and are due and payable under this subtitle only to the extent provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.002. BENEFITS FOR TOTAL UNEMPLOYMENT. (a) An eligible individual who is totally unemployed in a benefit period is entitled to benefits for the benefit period at the rate of 1/25 of the wages received by the individual from employment by employers during that quarter in the individual's base period in which wages were highest. For purposes of this subsection, the wages received by the individual from employment by employers during the individual's base period include wages ordered to be paid to the individual by a final order of the commission under Chapter 61 that:

(1) were due to be paid to the individual by an employer during the individual's base period; and

(2) will be credited to the date or dates on which the payment of those wages was due.

(a-1) The commission by rule shall determine the method of crediting wages to a particular quarter for purposes of Subsection (a).

(a-2) The rate of benefits paid under this section may not be more than the maximum weekly benefit amount computed under Subsection (b) or less than the minimum weekly benefit amount computed under Subsection (b) for each benefit period.

(b) The maximum weekly benefit amount is 47.6 percent of the average weekly wage in covered employment in this state. The minimum weekly benefit amount is 7.6 percent of the average weekly wage in covered employment in this state.

(c) The commission shall determine the average weekly wage in covered employment and compute the maximum and minimum weekly benefit amount not later than October 1 of each year based on the annual average weekly wage for the preceding year. If a benefit amount computed under this subsection includes cents, the commission shall adjust the benefit amount as follows:

(1) if the computed benefit amount includes at least one cent but not more than 49 cents, the commission shall round the benefit down to the nearest multiple of $1; and

(2) if the computed benefit amount includes at least 50 cents but not more than 99 cents, the commission shall round the benefit amount up to the nearest multiple of $1.

(c-1) An increase in the maximum weekly benefit amount may not exceed $14 in any year. An increase in the minimum weekly benefit amount may not exceed $1 in any year.

(d) An increase in maximum and minimum benefit amounts under this section takes effect on October 1.

(e) The maximum benefit amount payable to an individual for a benefit period under this section on the effective date of a valid claim is the maximum benefit amount payable to that individual until the individual establishes a new benefit year.

(f) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 1, eff. June 15, 2007.

Sec. 207.003. BENEFITS FOR PARTIAL UNEMPLOYMENT. (a) An eligible individual who is partially unemployed in a benefit period is entitled to partial benefits for that benefit period.

(b) The amount of a partial benefit is computed by:

(1) adding the individual's benefit amount and the greater of $5 or 25 percent of the benefit amount; and

(2) subtracting the amount of the wages earned by the individual during the benefit period from the amount computed under Subdivision (1).

(c) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.004. BENEFIT WAGE CREDITS. (a) The commission shall credit as benefit wage credits during an individual's base period:

(1) wages the individual received for employment from an employer during the individual's base period; and

(2) wages ordered to be paid by a final order issued by the commission under Chapter 61 that:

(A) were due to be paid by an employer during the individual's base period; and

(B) will be credited to the date or dates on which the payment of those wages was due.

(a-1) The commission by rule shall determine the method of crediting wages to an individual's base period for purposes of Subsection (a).

(b) Wages used to qualify an individual for regular benefits under this subtitle or under any other unemployment compensation law may not be used again to qualify the individual for regular benefits.

(c) If an employer fails to report, when requested by the commission, wages that were paid to an individual during a base period, the commission may determine the amount of benefit wage credits for the individual for the base period from the best information obtained by the commission.

(d) In this section:

(1) "Benefit wage credits" means those wages used to determine an individual's right to benefits.

(2) "Wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 2, eff. June 15, 2007.

Sec. 207.005. MAXIMUM AMOUNT OF BENEFITS. The maximum amount of benefits payable to an eligible individual during a benefit year may not exceed the lesser of:

(1) 26 times the individual's benefit amount; or
(2) 27 percent of the individual's benefit wage credits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.006. ADJUSTMENT OF BENEFITS. If a benefit rate or benefit payable computed under this chapter is not a multiple of $1, the benefit rate or benefit payable is increased to the next multiple of $1.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.007. FEES LIMITATION; LEGAL REPRESENTATION; CRIMINAL OFFENSE; PENALTY. (a) An individual claiming benefits under this subtitle may not be charged a fee in a proceeding under this subtitle by:
(1) the commission or a representative of the commission; or
(2) a court or an officer of a court.
(b) An individual claiming benefits in a proceeding before the commission or a court may be represented by counsel or another authorized agent. Counsel or an agent representing an individual under this subtitle may charge and collect a fee for the counsel's or agent's services.
(c) A person who violates this section commits an offense. An offense under this section is punishable by:
(1) a fine of not less than $50 and not more than $500;
(2) imprisonment for not more than six months; or
(3) both a fine and imprisonment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 2, eff. September 1, 2005.

Sec. 207.008. SUITABLE WORK. (a) In determining whether work is suitable for an individual, the commission shall consider:
(1) the degree of risk involved to the individual's health,

safety, and morals at the place of performance of the work;

(2) the individual's physical fitness and previous training;

(3) the individual's experience and previous earnings;

(4) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and

(5) the distance of the work from the individual's residence.

(b) Notwithstanding any other provision of this subtitle, work is not suitable and benefits may not be denied under this subtitle to an otherwise eligible individual for refusal to accept new work if:

(1) the position offered is vacant directly because of a strike, lockout, or other labor dispute;

(2) the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) as a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining a bona fide labor organization.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.009. PAYMENT OF BENEFITS BY INDIAN TRIBE. Benefits based on service in the employ of an Indian tribe, as described by Section 201.048, are payable in the same amount, on the same terms, and subject to the same conditions as benefits paid on the basis of other service under this subtitle.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 8, eff. June 11, 2001.

SUBCHAPTER B. BENEFIT ELIGIBILITY

Sec. 207.021. BENEFIT ELIGIBILITY CONDITIONS. (a) Except as provided by Chapter 215, an unemployed individual is eligible to receive benefits for a benefit period if the individual:

(1) has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the commission;

(2) has made a claim for benefits under Section 208.001;

(3) is able to work;

(4) is available for work;

(5) is actively seeking work in accordance with rules adopted by the commission;

(6) for the individual's base period, has benefit wage credits:

(A) in at least two calendar quarters; and

(B) in an amount not less than 37 times the individual's benefit amount;

(7) after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount;

(8) has been totally or partially unemployed for a waiting period of at least seven consecutive days; and

(9) participates in reemployment services, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and to need those services to obtain new employment, unless:

(A) the individual has completed participation in such a service; or

(B) there is reasonable cause, as determined by the commission, for the individual's failure to participate in those services.

(b) A week may not be counted as a waiting period week for the purposes of this section:

(1) unless the individual has registered for work at an employment office in accordance with Subsection (a)(1);

(2) unless it is after the filing of an initial claim;

(3) unless the individual reports at an office of the commission and certifies that the individual has met the waiting period requirements;

(4) if benefits have been paid or are payable with respect to the week;

(5) if the individual does not meet the eligibility requirements of Subsections (a)(3) and (a)(4); and

(6) if the individual has been disqualified for benefits for the seven-day period under Section 207.044, 207.045, 207.047, or 207.048.

(b-1) An individual for whom suitable work is available only in

an occupation designated by United States Department of Labor regulation as an occupation that regularly conducts preemployment drug testing is available for work for purposes of Subsection (a)(4) only if the individual complies with the applicable requirements of the drug screening and testing program administered by the commission under Section 207.026. The commission shall adopt rules for determining the type of work that is suitable for an individual for purposes of this subsection.

(c) Notwithstanding any other provision of this section, an individual is eligible to receive benefits on the individual's waiting period claim in accordance with this subtitle if the individual has been paid benefits in the individual's current benefit year equal to or exceeding two times the individual's benefit amount and:

(1) has returned to full-time employment after being totally or partially unemployed for at least seven consecutive days; or

(2) has exhausted the individual's regular benefits for the current benefit year, other than benefits applicable to the waiting period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 759, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 107 (S.B. 920), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1141 (S.B. 21), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 220 (H.B. 931), Sec. 1, eff. September 1, 2015.

Sec. 207.0211. ELIGIBILITY OF CERTAIN DISABLED PERSONS. A permanently disabled individual is considered to be able to work under Section 207.021(a)(3) and available for work for purposes of Section 207.021(a)(4) if, as a result of the individual's disability, the individual:

(1) is unable to work full-time;

(2) has worked part-time during a substantial part of the individual's base period;

(3) is seeking part-time work consistent with the limitations imposed by the individual's disability; and

(4) is receiving disability insurance benefits under 42 U.S.C. Section 423.

Added by Acts 2005, 79th Leg., Ch. 493 (H.B. 481), Sec. 1, eff. June 17, 2005.

Sec. 207.0212. ELIGIBILITY OF CERTAIN PERSONS UNEMPLOYED BECAUSE OF DISASTER. (a) In this section, "disaster unemployment assistance benefits" means benefits authorized under Section 410, Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5177), and rules adopted under that section.

(b) Notwithstanding Section 207.021, the governor, by executive order, may suspend the waiting period requirement imposed under Section 207.021(a)(8) to authorize an individual to receive benefits for that waiting period if the individual:

(1) is unemployed as a direct result of a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.);

(2) is otherwise eligible for unemployment compensation benefits under this subtitle; and

(3) is not receiving disaster unemployment assistance benefits for the period included in that waiting period.

Added by Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 1.19, eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 107 (S.B. 920), Sec. 2, eff. May 18, 2013.

Sec. 207.022. COMMISSION-APPROVED TRAINING. (a) An individual may not be denied benefits because the individual is in training with the approval of the commission.

(b) An individual may not be denied benefits for a benefit period in which the individual is in training with the approval of the commission because of the provisions of Section 207.021 relating to the individual's:

(1) availability for work;
(2) active search for work; or
(3) refusal to apply for or refusal to accept suitable work.

(c) Approval of training must be obtained as required by rules adopted by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.023. TRAINING UNDER THE TRADE ACT OF 1974. (a) This section applies only to training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. Section 2296(a)(1)).

(b) An otherwise eligible individual may not be denied benefits for a week:
(1) that the individual was in training;
(2) that the individual left work to enter training if the work the individual left was not suitable employment; or
(3) because of the application to the week in training of a provision of this subtitle or a federal unemployment compensation law relating to the individual's:
(A) availability for work;
(B) active search for work; or
(C) refusal to accept work.

(c) For the purposes of Subsection (b), "suitable employment" means work for an individual that:
(1) is of a skill level substantially equal to or higher than that of the individual's past adversely affected employment, as that term is used by the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.); and
(2) pays wages that are not less than 80 percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.024. CLAIM FILED OR RESIDENCE IN ANOTHER STATE OR COUNTRY. An individual's benefits may not be denied or reduced solely because at the time the individual filed the claim for unemployment compensation the individual:

(1) files a claim in another state or a contiguous country with which the United States has an agreement with respect to unemployment compensation; or

(2) resides in another state or contiguous country with which the United States has an agreement with respect to unemployment compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.025. PREGNANCY OR TERMINATION OF PREGNANCY. Benefits may not be denied to an individual solely because of pregnancy or termination of pregnancy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.026. DRUG SCREENING OR TESTING AS CONDITION OF BENEFIT ELIGIBILITY FOR CERTAIN APPLICANTS AND RECIPIENTS. (a) The commission by rule shall adopt a drug screening and testing program as part of the requirements for the receipt of benefits under this subtitle by an individual to whom Section 207.021(b-1) applies. The program must:

(1) comply with the drug testing requirements of 49 C.F.R. Part 382 or other similar national requirements for drug testing programs recognized by the commission; and

(2) be designed to protect the rights of benefit applicants and recipients.

(b) Under the program, each individual to whom Section 207.021(b-1) applies who files an initial claim must submit to and pass a drug screening assessment developed and administered by or on behalf of the commission for purposes of this subsection as a prerequisite to receiving benefits under this subtitle. The assessment tool used under this subsection must consist of a written questionnaire to be completed by the individual applying for benefits and must be designed to accurately determine the reasonable likelihood that an individual is using a substance that is subject to regulation under Chapter 481, Health and Safety Code. An individual whose drug screening assessment indicates a reasonable likelihood of use by the individual of a substance subject to regulation under that chapter must submit to and pass a drug test administered by or on

behalf of the commission to establish the individual's eligibility for benefits under this subtitle. An individual who fails a drug test required under this subsection under a final determination or decision under this section is not eligible to receive benefits under this subtitle until the individual has passed a subsequent drug test administered by or on behalf of the commission not earlier than four weeks after the date the individual submitted to the failed drug test.

(c) Notwithstanding Subsection (b), an individual is not ineligible to receive benefits based on the individual's failure to pass a drug test if, on the basis of evidence presented by the individual, the commission determines that, subject to Section 207.021(a)(4):

(1) the individual is participating in a treatment program for drug abuse;

(2) the individual enrolls in and attends a treatment program for drug abuse not later than the seventh day after the date initial notice of the failed drug test is sent to the individual; or

(3) the failure to pass the test is caused by the use of a substance that was prescribed by a health care practitioner as medically necessary for the individual.

(d) The commission shall prescribe procedures for providing initial notice to an individual who fails a drug test under Subsection (b), for an appeal under Chapter 212, and for the retaking of a failed drug test by an individual under this section. The procedures must provide:

(1) for prompt initial notice by mail to an individual who fails a drug test under Subsection (b) regarding:

(A) the fact of the individual's failure of the drug test;

(B) the manner in which the individual may notify the commission that the individual has enrolled in and is attending a treatment program for drug abuse;

(C) the manner in which the individual may appeal and retake the failed drug test; and

(D) common potential causes of a false positive test result;

(2) for privacy with regard to the individual's drug test result until not later than the 14th day after the date the initial notice of the failed drug test was mailed to the individual during

which time the individual may appeal and retake the failed drug test; and

(3) that a determination or decision that an individual has failed a drug test under this section becomes final on:

(A) the 15th day after the date the initial notice of the failed drug test was mailed to the individual if the individual does not appeal and retake the individual's failed drug test as provided by this section; or

(B) the date that a retest conducted pursuant to an appeal by the individual as provided by this section confirms the positive drug test result.

(e) The commission shall administer the program under this section using existing administrative funds and any funds appropriated to the commission for the purposes of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1141 (S.B. 21), Sec. 3, eff. September 1, 2013.

SUBCHAPTER C. EXCEPTIONS TO AND DISQUALIFICATION FOR BENEFITS

Sec. 207.041. SERVICES IN EDUCATIONAL INSTITUTIONS. (a) Benefits are not payable to an individual based on services performed in an instructional, research, or principal administrative capacity for an educational institution for a week beginning during the period between two successive academic years or terms or under an agreement providing for a similar period between two regular but not successive terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years or terms.

(b) Benefits are not payable to an individual based on services performed for an educational institution in a capacity other than a capacity described by Subsection (a) for a week that begins during a period between two successive academic years or terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a reasonable assurance that the individual will perform the services in the second of the academic years or

terms.

(c) Notwithstanding Subsection (b), if benefits are denied to an individual for any week under Subsection (b) and the individual is not offered an opportunity to perform services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week that:

(1) the individual filed a timely claim for benefits; and

(2) the benefits were denied solely because of Subsection (b).

(d) Benefits are not payable to an individual based on services performed for an educational institution for a week that begins during an established and customary vacation period or holiday recess if:

(1) the individual performed the services in the period immediately before the vacation period or holiday recess; and

(2) there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) Benefits are not payable as provided under this section to an individual based on services performed in an educational institution if the individual performed the services while employed by an educational service agency. For the purposes of this subsection, "educational service agency" means a governmental agency or other governmental entity that is established and operated exclusively to provide services to one or more educational institutions.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.042. ATHLETES. Benefits are not payable to an individual based on services substantially all of which consist of participating in a sport or athletic event or training or preparing to participate in a sport or athletic event for a week that begins during the period between two successive sport seasons or similar periods if:

(1) the individual performed the services in the first of the seasons or periods; and

(2) there is a reasonable assurance that the individual

will perform the services in the later of the seasons or periods.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.043. ALIENS. (a) Benefits are not payable based on services performed by an alien unless the alien:

(1) is an individual who was lawfully admitted for permanent residence at the time the services were performed;

(2) was lawfully present for purposes of performing the services; or

(3) was permanently residing in the United States under color of law at the time the services were performed, including being lawfully present in the United States as a result of the application of Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)).

(b) Information required of an individual applying for benefits to determine whether benefits are payable to the individual because of the individual's alien status shall be uniformly required from all applicants for benefits.

(c) A determination that benefits are not payable to an individual whose application for the benefits would otherwise be approved except for the individual's alien status must be made from a preponderance of the evidence.

(d) A modification of Section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(14)) that specifies other conditions or another effective date for the denial of benefits based on services performed by aliens that must be implemented under state law as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) is applicable under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.044. DISCHARGE FOR MISCONDUCT. (a) An individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual's last work.

(b) Disqualification under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.045. VOLUNTARILY LEAVING WORK. (a) An individual is disqualified for benefits if the individual left the individual's last work voluntarily without good cause connected with the individual's work.

(b) Except as provided by Subsection (c), a disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

(c) Disqualification for benefits under this section for an individual who left work to move with the individual's spouse from the area where the individual worked continues for not less than six benefit periods and not more than 25 benefit periods following the filing of a valid claim as determined by the commission according to the circumstances of the case.

(d) Notwithstanding any other provision of this section, an individual who is available to work may not be disqualified for benefits because the individual left work because of:

(1) a medically verified illness of the individual or the individual's minor child;

(2) injury;

(3) disability;

(4) pregnancy;

(5) an involuntary separation as described by Section 207.046; or

(6) a move from the area of the individual's employment that:

(A) was made with the individual's spouse who is a member of the armed forces of the United States; and

(B) resulted from the spouse's permanent change of station of longer than 120 days or a tour of duty of longer than one year.

(e) For the purposes of Subsection (d), a medically verified

illness of a minor child prevents disqualification only if reasonable alternative care was not available to the child and the employer refused to allow the individual a reasonable amount of time off during the illness.

(f) Military personnel who do not reenlist have not left work voluntarily without good cause connected with work.

(g) An individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits under this section.

(g-1) An individual who voluntarily leaves the individual's last work is not disqualified for benefits under this section if:

(1) at the time the last work began, the individual was receiving benefits under this subtitle;

(2) the work did not constitute suitable work for the individual, as determined under Section 207.008; and

(3) the individual was employed at the last work for less than four weeks.

(h) A temporary employee of a temporary help firm is considered to have left the employee's last work voluntarily without good cause connected with the work if the temporary employee does not contact the temporary help firm for reassignment on completion of an assignment. A temporary employee is not considered to have left work voluntarily without good cause connected with the work under this subsection unless the temporary employee has been advised:

(1) that the temporary employee is obligated to contact the temporary help firm on completion of assignments; and

(2) that unemployment benefits may be denied if the temporary employee fails to do so.

(i) A covered employee of a professional employer organization is considered to have left the covered employee's last work without good cause if the professional employer organization demonstrates that:

(1) at the time the employee's assignment to a client concluded, the professional employer organization, or the client acting on the professional employer organization's behalf, gave written notice and written instructions to the covered employee to contact the professional employer organization for a new assignment; and

(2) the covered employee did not contact the professional

employer organization regarding reassignment or continued employment; provided that the covered employee may show that good cause existed for the covered employee's failure to contact the professional employer organization.

(j) An individual is not disqualified for benefits under this section if:

(1) the individual left the individual's last work to attend commission-approved training under Section 207.022; and

(2) the individual's last work did not constitute suitable work for the individual, as determined under Section 207.008.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.33(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1379, Sec. 21, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 7A.03, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 39 (S.B. 1342), Sec. 2, eff. May 9, 2005.

Acts 2005, 79th Leg., Ch. 987 (H.B. 1939), Sec. 1, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 19, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 310 (H.B. 1580), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1398 (H.B. 2034), Sec. 2, eff. September 1, 2013.

Sec. 207.046. INVOLUNTARY SEPARATION. (a) An individual is not disqualified for benefits under this subchapter if:

(1) the work-related reason for the individual's separation from employment was urgent, compelling, and necessary so as to make the separation involuntary;

(2) the individual leaves the workplace to protect the individual from family violence or stalking or the individual or a member of the individual's immediate family from violence related to a sexual assault as evidenced by:

(A) an active or recently issued protective order documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the

stalking of, the individual or the potential for family violence against, or the stalking of, the individual;

(B) a police record documenting sexual assault of the individual or a member of the individual's immediate family or family violence against, or the stalking of, the individual;

(C) a physician's statement or other medical documentation that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual that:

(i) is recorded in any form or medium that identifies the individual or member of the individual's immediate family, as applicable, as the patient; and

(ii) relates to the history, diagnosis, treatment, or prognosis of the patient; or

(D) written documentation from a family violence center or rape crisis center that describes the sexual assault of the individual or a member of the individual's immediate family or family violence against the individual; or

(3) the individual leaves the workplace to care for the individual's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available.

(b) Except as provided by law, evidence regarding an employee described by Subsection (a)(2) may not be disclosed to any person without the consent of the employee.

(c) In this section:

(1) "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2) "Stalking" means conduct described by Section 42.072, Penal Code.

(3) "Immediate family" means an individual's parent, spouse, or child under the age of 18.

(4) "Sexual assault" means conduct described by Section 22.011 or 22.021, Penal Code.

(5) "Family violence center" has the meaning assigned by Section 51.002, Human Resources Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 7A.04, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1180 (H.B. 550), Sec. 3, eff. June 15, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 3, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 841 (H.B. 26), Sec. 4, eff. June 14, 2013.

Sec. 207.047. FAILURE TO APPLY FOR, ACCEPT, OR RETURN TO WORK. (a) An individual is disqualified for benefits if during the individual's current benefit year, the individual failed, without good cause, to:

(1) apply for available, suitable work when directed to do so by the commission;

(2) accept suitable work offered to the individual; or

(3) return to the individual's customary self-employment, if any, when directed to do so by the commission.

(b) Disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.048. LABOR DISPUTES. (a) An individual is disqualified for benefits for a benefit period in which the individual's total or partial unemployment is caused by:

(1) the individual's stoppage of work because of a labor dispute at the factory, establishment, or other premises where the individual is or was last employed; or

(2) a labor dispute at another place that:

(A) is owned or operated by the same employing unit that owns or operates the premises where the individual is or was last employed; and

(B) supplies material or services necessary to the continued and usual operation of the premises where the individual is or was last employed.

(b) Disqualification for benefits under this section does not

apply to an individual who shows to the satisfaction of the commission that the individual:

(1) is not participating in, financing, or directly interested in the labor dispute; and

(2) does not belong to a grade or class of workers any members of which were employed at the premises of the labor dispute immediately before the beginning of the labor dispute and any of whom are participating in, financing, or directly interested in the dispute.

(c) For the purposes of Subsection (b)(1), failure or refusal to cross a picket line or refusal for any reason during the continuance of the labor dispute to accept and perform an individual's available and customary work at the factory, establishment, or other premises where the individual is or was last employed constitutes participation and interest in the labor dispute.

(d) An individual may not be disqualified for benefits under Subsection (b)(2) if the individual shows that the individual:

(1) is not, and at the time of the labor dispute, was not:

(A) a member of a labor organization that is the same as, represented by, or directly affiliated, acting in concert, or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; or

(B) acting in concert or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; and

(2) has made an unconditional offer to return to work at the premises where the individual is or was last employed.

(e) If separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department is a separate factory, establishment, or other premises.

(f) For the purposes of this section, "premises" includes a vessel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.049. RECEIPT OF REMUNERATION. (a) An individual is disqualified for benefits for a benefit period for which the individual is receiving or has received remuneration in the form of:

(1) wages in lieu of notice;

(2) severance pay; or

(3) compensation under a state worker's compensation law or a similar law of the United States for:

(A) temporary partial disability;

(B) temporary total disability; or

(C) total and permanent disability.

(b) In this section, "severance pay" means dismissal or separation income paid on termination of employment in addition to the employee's usual earnings from the employer at the time of termination. The term does not include any remuneration received by an employee under:

(1) a release of claims or settlement agreement entered into between the employee and the employer:

(A) based on an alleged violation of the Civil Rights Act of 1991 (Pub. L. No. 102-166); or

(B) pursuant to a claim or cause of action filed in connection with the employment relationship; or

(2) a written contract, including a collective bargaining agreement, negotiated with the employer before the date of separation from employment of the employee.

(c) The commission may adopt rules as necessary to administer this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 906, Sec. 1, eff. June 16, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 212 (H.B. 14), Sec. 1, eff. September 1, 2011.

Sec. 207.050. RECEIPT OF PENSION OR ANNUITY. (a) Except as provided by Subsection (b), an individual is disqualified for benefits for a benefit period for which the individual is receiving or has received a governmental or other pension, retirement or retired pay, an annuity, or any other similar periodic payment based on the previous work of the individual and reasonably attributable to the benefit period.

(b) If a periodic payment described by Subsection (a) is received by an individual under the federal Social Security Act, the

commission shall consider the individual's contribution and may not reduce the weekly benefit amount.

(c) Notwithstanding Subsection (a), if the remuneration received by an individual is less than the benefits that the individual would otherwise be eligible to receive, the individual is entitled to receive benefits for the benefit period that are reduced by the amount of the remuneration, adjusted as provided by Section 207.006.

(d) This section is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) requires that this provision be enacted in state law as of January 1, 1978, as a condition for full tax credit against the tax imposed by that Act. If Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) is amended to modify these federal requirements, the modified requirements are applicable under this section to the extent required for full tax credit rather than this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 906, Sec. 2, eff. June 16, 1995.

Sec. 207.051. SALE OF BUSINESS. (a) An individual is disqualified for benefits if the individual left the individual's last work because of the sale of:

(1) a corporation and the individual was:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership; or

(3) a sole proprietorship and the individual was the proprietor who sold the business.

(b) The disqualification under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1997, 75th Leg., ch. 93, Sec. 2, eff. Sept. 1, 1997.

Sec. 207.053. REFUSAL TO TREAT COMMUNICABLE DISEASE. (a) An individual is disqualified for benefits if the individual:

(1) left the individual's last work voluntarily rather than provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease; or

(2) was discharged from the individual's last work because the individual refused to provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease.

(b) An individual is not disqualified under this section unless the person for whom the individual last worked made available to the individual the facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with the communicable disease.

(c) Disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's weekly benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PROTECTION OF BENEFIT RIGHTS

Sec. 207.071. WAIVER, RELEASE, OR COMMUTATION AGREEMENT INVALID. (a) Except for an employer's waiver under Chapter 204 and Section 205.011, an agreement by an individual to waive, release, or commute the individual's right to benefits or any other rights under this subtitle is not valid.

(b) An agreement by an individual employed by an employer to pay all or a portion of a contribution or reimbursement required to be paid by the employer under this subtitle is not valid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.072. ACCEPTANCE OR REQUIREMENT OF WAIVER PROHIBITED. An employer may not require or accept a waiver of a right of an individual employed by the employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.073. PROHIBITED DEDUCTION FROM WAGES. An employer may not, directly or indirectly, make, require, or accept a deduction from wages to finance a contribution or reimbursement required to be paid by the employer under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.074. CRIMINAL OFFENSE; PENALTY. An employer, or officer or agent of an employer, commits an offense if the person violates Section 207.072 or 207.073. An offense under this section is punishable by:

(1) a fine of not less than $100 and not more than $1,000;
(2) imprisonment for not more than six months; or
(3) both a fine and imprisonment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.075. ASSIGNMENT OF BENEFITS PROHIBITED; BENEFIT EXEMPTIONS. (a) An assignment, pledge, or encumbrance of a right to benefits is not valid.

(b) A right to benefits is exempt from levy, execution, attachment, or any other remedy for debt collection.

(c) Benefits received by an individual are exempt from debt collection if the benefits are not mingled with other funds of the individual except for debts incurred for necessaries furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed.

(d) A waiver of an exemption provided by this section is not valid.

(e) Subchapter E prevails over this section to the extent of any conflict.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.076. EQUAL TREATMENT. Benefits based on services for all employers in employment are payable in the same amount, on the same terms, and subject to the same conditions, except to the extent that Section 207.041 is applicable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. CHILD SUPPORT OBLIGATIONS

Sec. 207.091. DEFINITIONS. In this subchapter:

(1) "Benefit" includes amounts payable by the commission under an agreement entered under federal law that provides for compensation, assistance, or allowances with respect to unemployment.

(2) "Child support obligation" includes only an obligation that is enforced under a plan described by Section 454 of the Social Security Act (42 U.S.C. Section 654) that has been approved by the secretary of health and human services under Subtitle IV, Part D, Social Security Act (42 U.S.C. Section 651 et seq.).

(3) "State or local child support enforcement agency" means an agency of the state or a political subdivision of the state operating under a plan described by Subdivision (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.092. DISCLOSURE OF CHILD SUPPORT OBLIGATIONS. (a) An individual at the time of filing a new claim for benefits shall disclose whether the individual owes a child support obligation.

(b) If the individual discloses a child support obligation and the individual is determined to be eligible for benefits, the commission shall notify the state or local child support enforcement agency enforcing the child support obligation that the individual has been determined to be eligible for benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 207.093. WITHHOLDING OF CHILD SUPPORT BY COMMISSION. (a)

The commission shall withhold from the benefits payable to an individual that owes a child support obligation an amount equal to:

(1) any amount required to be withheld under legal process properly served on the commission;

(2) if Subdivision (1) does not apply, the amount determined under an agreement submitted to the commission under Section 454(19)(B)(i) of the Social Security Act (42 U.S.C. Section 654) by the state or local child support enforcement agency; or

(3) if neither Subdivision (1) or (2) applies, the amount the individual specifies to the commission to be withheld.

(b) The commission shall pay the amount withheld under Subsection (a) to the appropriate state or local child support enforcement agency. The amount withheld shall be treated for all purposes as if it were benefits paid to the individual and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.

(c) This section applies only if appropriate arrangements have been made for reimbursement to the commission by a state or local child support enforcement agency for the administrative costs incurred by the commission under this subchapter that are attributable to the enforcement of child support obligations by the state or local child support enforcement agency.

(d) In this section, "legal process" has the meaning assigned by Section 459(i)(5) of the Social Security Act (42 U.S.C. Section 659).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 972 (S.B. 228), Sec. 63, eff. September 1, 2007.

Sec. 207.094. FEDERAL LAW REQUIREMENT. (a) This subchapter and Section 207.075(e) are enacted because Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) requires the enactment of these provisions into state law as a condition for federal funding of administration of the state unemployment compensation laws.

(b) If Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) is repealed, this subchapter and Section 207.075(e) are repealed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. TAX WITHHOLDING

Sec. 207.101. WITHHOLDING FROM BENEFITS FOR FEDERAL INCOME TAX. (a) An eligible individual may elect to have federal income tax withheld from benefits. The commission shall withhold federal income taxes from the benefits of an individual who elects the withholding as provided by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) and Section 303, Social Security Act (42 U.S.C. Section 503).

(b) The commission may not withhold federal income tax from benefits as provided by this section until January 1, 1997.

Added by Acts 1995, 74th Leg., ch. 1033, Sec. 1, eff. Aug. 28, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1104 (H.B. 2273), Sec. 3, eff. September 1, 2005.

SUBCHAPTER G. WITHHOLDING FROM UNEMPLOYMENT BENEFITS FOR UNCOLLECTED OVERISSUANCES OF FOOD STAMPS

Sec. 207.111. DEFINITIONS. In this subchapter:

(1) "State agency" has the meaning assigned by Section 3(n), Food Stamp Act of 1977 (7 U.S.C. Section 2012(n)).

(2) "Uncollected overissuance" has the meaning assigned by Section 13(c)(1), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(1)).

(3) "Unemployment benefits" means benefits payable under this subtitle and any other amounts payable by the commission under an agreement entered into under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.112. APPLICATION. This subchapter applies only if arrangements have been made for reimbursement by the state agency for the administrative costs incurred by the commission under this subchapter that are attributable to the repayment of uncollected overissuances to the state agency.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.113. REQUIRED DISCLOSURE; NOTICE TO FOOD STAMP AGENCY. (a) An individual who files a new claim for unemployment benefits shall disclose, at the time of filing of that claim, whether the individual owes an uncollected overissuance.

(b) If an individual who discloses under Subsection (a) that the individual does owe an uncollected overissuance is found eligible for unemployment benefits, the commission shall notify the state agency of the identity of that individual.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

Sec. 207.114. WITHHOLDING. (a) The commission shall deduct and withhold from unemployment benefits payable to an individual who owes an uncollected overissuance:

(1) the amount the individual specifies to the commission to be deducted and withheld under this section;

(2) the amount determined under an agreement submitted to the state agency under Section 13(c)(3)(A), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(A)); or

(3) any amount otherwise required to be deducted and withheld from unemployment benefits under Section 13(c)(3)(B), Food Stamp Act of 1977 (7 U.S.C. Section 2022(c)(3)(B)).

(b) The commission shall pay any amount deducted and withheld under this section to the state agency in this state.

(c) An amount deducted and withheld under this section shall be treated for all purposes as if it were paid to the individual as unemployment benefits and submitted by that individual to the state agency as repayment of the individual's uncollected overissuance.

Added by Acts 1997, 75th Leg., ch. 93, Sec. 3, eff. Sept. 1, 1997.

CHAPTER 208. BENEFIT CLAIMS

SUBCHAPTER A. FILING OF CLAIM

Sec. 208.001. FILING; INFORMATION NOTICES. (a) Claims for benefits shall be made in accordance with rules adopted by the commission. An unemployed individual who does not have a current

benefit year may file an initial claim in accordance with commission rules.

(b) The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.34, eff. Sept. 1, 1995.

Sec. 208.002. INITIAL CLAIM; LAST WORK. (a) When used in connection with an initial claim, "last work" and "person for whom the claimant last worked" refer to:

(1) the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or

(2) the employer, as defined by Subchapter C, Chapter 201, or by the unemployment law of any other state, for whom the claimant last worked.

(b) The commission shall mail a notice of the filing of an initial claim to the person for whom the claimant last worked before the effective date of the initial claim. If the person for whom the claimant last worked has more than one branch or division operating at different locations, the commission shall mail the notice to the branch or division at which the claimant last worked.

(c) Mailing of a notice under this section to the correct address of the person, branch, or division for which the claimant last worked constitutes notice of the claim to the person.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 12 (S.B. 458), Sec. 1, eff. September 1, 2011.

Sec. 208.003. NOTICE TO EMPLOYER. (a) An employer may designate in writing to the commission an address for mail service.

(b) If an employer designates a mailing address under Subsection (a), mailing of notice of claims, determinations, or other

decisions to that address constitutes notice to the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 3, eff. Sept. 1, 1997.

Sec. 208.004. NOTIFICATION OF ADVERSE FACTS AFFECTING CLAIM; WAIVER. (a) A person to whom notice is mailed under Section 208.002 shall notify the commission promptly of any facts known to the person that may:

(1) adversely affect the claimant's right to benefits; or

(2) affect a charge to the person's account.

(a-1) A notification provided by a person under Subsection (a), including an initial response to a notice mailed to the person under Section 208.002, must include sufficient factual information to allow the commission to make a determination regarding the claimant's entitlement to benefits under this subtitle.

(b) A person who does not mail or otherwise deliver that notification to the commission within 14 days after the date notice of a claim was mailed to the person by the commission waives all rights in connection with the claim, including rights the person may have under Subchapter B, Chapter 204, other than rights relating to a clerical or machine error as to the amount of the person's chargeback or maximum potential chargeback in connection with the claim for benefits.

(c) Notwithstanding Subchapter B, Chapter 204, benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle shall be charged to the account of a person if:

(1) the person, or the person's agent, without good cause, fails to provide adequate or timely notification under this section; and

(2) the commission determines that the person, or the person's agent, has failed to provide timely or adequate notification under this section on at least two prior occasions.

(d) For purposes of Subsection (c), a notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information, other than a general statement of the law, to support the allegation.

(e) For purposes of Subsection (c), good cause is established only by showing that a person, or the person's agent, was prevented from complying with this section due to compelling circumstances that were beyond the person's control.

(f) The commission may adopt rules as necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 2, eff. October 1, 2013.

SUBCHAPTER B. CLAIM DETERMINATION

Sec. 208.021. INITIAL CLAIM DETERMINATION. (a) The commission shall determine whether an initial claim is valid.

(b) For each valid initial claim, the commission shall determine:

(1) the claimant's benefit year;

(2) the benefit amount for total unemployment; and

(3) the duration of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 208.022. NOTICE OF INITIAL CLAIM DETERMINATION. The commission shall mail a notice of the determination of an initial claim to the claimant's last known address as shown by the commission's records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 208.023. REQUEST FOR REDETERMINATION OR APPEAL BY CLAIMANT. A claimant, within 14 days after the date the commission mailed notice of the commission's determination to the claimant under Section 208.022, may request a redetermination of or may appeal the commission's determination of the validity of an initial claim in the manner provided by Chapter 212.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.35, eff. Sept. 1, 1995.

CHAPTER 209. EXTENDED BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 209.001. DEFINITIONS. In this chapter:

(1) "Eligibility period" means the period consisting of the benefit periods in an individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any subsequent benefit periods that begin in the extended benefit period.

(2) "Extended benefit" means a benefit payable to an individual under this chapter for a benefit period of unemployment in the individual's eligibility period, including a benefit payable to a federal civilian employee or to an ex-servicemember under 5 U.S.C. Chapter 85.

(3) "Regular benefit" means a benefit, other than an extended benefit, payable to an individual under this subtitle or another state unemployment compensation law, including a benefit payable to a federal civilian employee or an ex-servicemember under 5 U.S.C. Chapter 85.

(4) "Secretary" means the United States secretary of labor.

(5) "State unemployment compensation law" means the unemployment compensation law of a state if the law is approved by the secretary under Section 3304 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304).

(6) "Employment service" has the meaning assigned by Section 301.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.09, eff. Sept. 1, 1995.

Sec. 209.002. APPLICATION OF PROVISIONS RELATING TO REGULAR BENEFITS. A provision of this subtitle or a commission rule applicable to a claim for or the payment of regular benefits applies to a claim for or the payment of extended benefits unless the result of the application of the provision or rule is inconsistent with this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.003. FINDINGS. (a) The commission shall make findings as necessary to determine an extended benefit period, compute the rate of insured unemployment, and determine the eligibility or ineligibility or disqualification of an individual for extended benefits.

(b) A finding of an extended benefit period and a computation of the rate of insured unemployment shall be made in accordance with the rules of the secretary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. DETERMINATION OF EXTENDED BENEFIT PERIOD

Sec. 209.021. BEGINNING AND ENDING DATES FOR EXTENDED BENEFIT PERIOD. (a) Except as provided by Subsection (b), an extended benefit period begins with the third week after a week with a state "on" indicator.

(b) An extended benefit period may not begin before the 14th week after the end of a previous extended benefit period in effect for this state.

(c) An extended benefit period ends with the later of:

(1) the third week after the first week with a state "off" indicator; or

(2) the 13th consecutive week of the period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.022. STATE "ON" AND "OFF" INDICATOR WEEKS. (a) Except for a week to which Subsection (b) applies, a week is a state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks:

(1) is five percent or more; and

(2) equalled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(b) If the determination that the week is a state "on" indicator week would begin an extended benefit period, the week is a

state "on" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is six percent or more.

(c) Except for a week to which Subsection (d) applies, a week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than:

(1) five percent; or

(2) 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(d) If the determination that a week is a state "off" indicator week would end an extended benefit period, the week is a state "off" indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than six percent.

(e) Notwithstanding Subsection (d), any week that would otherwise be a state "on" indicator week under Subsection (a) may not be a state "off" indicator week.

(f) The rate of insured unemployment as used in this section is not to be seasonally adjusted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.023. RATE OF INSURED UNEMPLOYMENT. For the purpose of Section 209.022, the rate of insured unemployment is computed by:

(1) dividing:

(A) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commission from the commission's reports to the secretary; by

(B) the average monthly employment covered under this subtitle for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period; and

(2) multiplying the quotient by 100 to determine a percentage rate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.024. PUBLIC ANNOUNCEMENT OF EXTENDED BENEFIT PERIOD. The commission shall publicly announce, in accordance with commission rule, the beginning of each extended benefit period and the termination of each extended benefit period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.025. FEDERAL FUNDING OF EXTENDED BENEFITS. Notwithstanding any other provision of this subchapter, the commission by rule may adjust the extended benefit eligibility period as necessary to maximize the receipt of any fully funded federal extended unemployment benefits, if full federal funding for those benefits is available.

Added by Acts 2011, 82nd Leg., R.S., Ch. 163 (H.B. 2831), Sec. 1, eff. May 28, 2011.

SUBCHAPTER C. ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS

Sec. 209.041. ELIGIBILITY FOR EXTENDED BENEFITS. An individual is eligible to receive extended benefits for a benefit period of unemployment in the individual's eligibility period if, with respect to the benefit period, the individual:

(1) has exhausted all regular benefits;

(2) satisfies the requirements of this subtitle for the receipt of regular benefits that are applicable to an individual claiming extended benefits, including not being disqualified for the receipt of benefits; and

(3) has within the individual's base period received benefit wage credits for employment by employers in an amount not less than:

(A) 40 times the individual's weekly benefit amount; or

(B) 1-1/2 times the individual's high-quarter benefit wage credits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 760, Sec. 1, eff. June 16, 1995.

Sec. 209.042. EXHAUSTION OF REGULAR BENEFITS. (a) An individual has exhausted regular benefits with respect to a benefit period of unemployment in the individual's eligibility period if the individual:

(1) before that period:

(A) has received all of the regular benefits available to the individual in the individual's current benefit year that includes the benefit period; or

(B) had a benefit year expire and does not have benefit wage credits sufficient to establish a new benefit year that would include the benefit period;

(2) is not entitled to unemployment benefits or allowances under the Railroad Unemployment Insurance Act (45 U.S.C. Section 351 et seq.) or other federal law as specified in regulations issued by the secretary; and

(3) has not received unemployment benefits under the unemployment compensation law of Canada and is not seeking those benefits, or has sought those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law.

(b) For the purposes of Subsection (a)(1)(A), an individual is considered to have received all of the regular benefits available to the individual even if, as a result of a pending appeal with respect to benefit wage credits not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.043. REQUIREMENT TO SEEK WORK. (a) An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to actively seek work.

(b) For purposes of Subsection (a), an individual is actively seeking work during a benefit period if the individual:

(1) engages in a systematic and sustained effort to obtain work during the benefit period; and

(2) furnishes tangible evidence of that effort.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.044. REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to:

(1) accept an offer of suitable work; or

(2) apply for suitable work to which the individual was referred by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.045. EMPLOYMENT SERVICE REFERRALS TO SUITABLE WORK. The employment service shall refer a claimant entitled to extended benefits to suitable work that meets the standards prescribed in Sections 209.046, 209.047(a), and 209.047(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.046. EXCEPTIONS TO REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual may not be denied extended benefits for failure to accept a job offer of suitable work or apply for suitable work if:

(1) the work was not offered to the individual in writing and was not listed with the employment service; or

(2) failure to accept or apply for the work would not result in a denial of benefits under the applicable suitable work requirements for a regular benefit claimant in Section 207.008, to the extent that the standards of suitability in that section are not inconsistent with Section 209.047.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.047. SUITABLE WORK. (a) For the purposes of this subchapter, and subject to Subsections (b) and (c), suitable work for an individual is work:

(1) within the individual's capabilities;

(2) for which the gross average weekly remuneration payable

exceeds the sum of:

(A) the individual's weekly extended benefit amount computed under Section 209.061; and

(B) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(17)(D)), payable to the individual for that week; and

(3) that pays wages not less than the greater of:

(A) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 206(a)(1)), without regard to any exemption; or

(B) the applicable state or local minimum wage.

(b) If an individual furnishes satisfactory evidence to the commission that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether work is suitable for that individual shall be made in accordance with the provisions of Section 207.008 applicable to suitable work for a claimant for regular benefits, without regard to the standards of suitability in Section 209.046 and this section.

(c) Work that does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304(a)(5)) is not suitable work for an individual.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.048. DURATION OF INELIGIBILITY; WORK REQUIREMENTS. An individual ineligible for extended benefits under Section 209.043 or 209.044 is ineligible for benefits for a period:

(1) beginning with the first day of the week following the week in which the individual is ineligible under those sections; and

(2) ending when the individual has been employed in each of four subsequent weeks, consecutive or nonconsecutive, and has earned remuneration in an amount not less than four times the weekly extended benefit amount.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.049. INELIGIBILITY DUE TO DISQUALIFICATION. (a) Except as provided by Subsection (b), an individual is ineligible to receive extended benefits for a benefit period in the individual's eligibility period if the individual has been disqualified for regular or extended benefits under this subtitle because the individual:

(1) voluntarily left work;

(2) was discharged for misconduct; or

(3) failed to accept an offer of or apply for suitable work.

(b) Subsection (a) does not apply if the disqualification is terminated in accordance with specific conditions established under this subtitle requiring the individual to perform service for remuneration after the date of the disqualification.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.050. INTERSTATE CLAIM. (a) An individual is ineligible for extended benefits payable for a benefit period under an interstate claim filed in any state under an interstate benefit payment plan if an extended benefit period is not in effect for the benefit period in that state.

(b) Subsection (a) does not apply to the first two benefit periods for which extended benefits are payable under an interstate claim filed under an interstate benefit payment plan, regardless of whether an extended benefit period is in effect for the state, to the individual from the extended benefit account established for the individual with respect to the benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. AMOUNT OF EXTENDED BENEFITS

Sec. 209.061. WEEKLY EXTENDED BENEFIT AMOUNT. The weekly extended benefit amount payable to an individual for a benefit period of total unemployment in the individual's eligibility period is equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.062. MAXIMUM TOTAL EXTENDED BENEFIT AMOUNT. The total extended benefit amount payable to an eligible individual for the individual's eligibility period is 50 percent of the total amount of regular benefits that were payable to the individual under this subtitle in the individual's applicable benefit year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.063. EFFECT OF TRADE READJUSTMENT ALLOWANCES. (a) Notwithstanding any other provision of this subtitle, the remaining balance of extended benefits that an individual would otherwise be entitled to receive in an extended benefit period for benefit periods beginning after the end of a benefit year is reduced as provided by Subsections (b) and (c) if:

(1) the benefit year of the individual ends within an extended benefit period; and

(2) the individual receives trade readjustment allowances under the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.) within that benefit year.

(b) The balance is reduced by an amount equal to the product of:

(1) the number of benefit periods for which the individual received trade readjustment allowances within that benefit year; and

(2) the individual's weekly benefit amount for extended benefits.

(c) The balance may not be reduced to less than zero.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. FINANCING OF EXTENDED BENEFITS

Sec. 209.081. UNEMPLOYMENT COMPENSATION FUND. (a) Extended benefits shall be paid from the compensation fund.

(b) Payments made by the federal government for its share of extended benefits shall be deposited in the compensation fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.082. CHARGES TO REIMBURSING EMPLOYER. Fifty percent of the extended benefit payments based on benefit wage credits from a reimbursing employer shall be charged to the employer's account and reimbursed by the employer in the same manner as a regular benefit payment. Those payments may not be used in determining the replenishment ratio in Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.083. CHARGES TO TAXED EMPLOYER. (a) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer are chargebacks and must be used in determining the employer's benefit ratio unless regular benefits paid to the individual were determined not to be charged back against the employer's account.

(b) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer, regardless of whether charged to an employer, shall be used in the numerator of the replenishment ratio in Section 204.045(b). Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio in Section 204.045.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.084. CHARGES TO GOVERNMENTAL EMPLOYER. The total amount of extended benefit payments shall be charged to the employer if the payments are based on benefit wage credits earned from:

(1) a state;

(2) any political subdivision of a state; or

(3) any instrumentality of any one or more states or political subdivisions that is wholly owned by one or more states or political subdivisions.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 209.0845. CHARGES TO INDIAN TRIBE. The total amount of extended benefit payments that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal

government shall be charged to the Indian tribe.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 9, eff. June 11, 2001.

Sec. 209.085. NOTICE TO TAXED BASE PERIOD EMPLOYER. (a) The notice to a taxed base period employer of a claim for benefits under Section 204.023 or 204.027 must state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as 25 percent. Further notice to the employer of the potential chargeback is not required when the extended benefits are paid.

(b) A taxed employer subject to Section 209.084 is entitled to receive notice that its maximum potential chargeback may be increased by as much as 50 percent rather than 25 percent as provided for other employers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 210. BACK PAY AWARDS; LOST OR MISPLACED WARRANTS

SUBCHAPTER A. BACK PAY AWARDS

Sec. 210.001. NOTICE OF BACK PAY AWARD REDUCTION. If a back pay award to a claimant is reduced because of the receipt of unemployment compensation benefits by the claimant, the employer against whom the back pay award was made shall notify the commission of the back pay award in writing not later than the 12th day after the date on which the employer learns about the reduction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 210.002. REIMBURSEMENT BY EMPLOYER FOR REDUCTION OF BACK PAY AWARD. (a) Subject to Subsection (b), an employer who is assessed a back pay award that is reduced because of the receipt of unemployment compensation benefits by the claimant shall reimburse the compensation fund for benefits paid from the compensation fund in an amount equal to the amount of the reduction in the back pay award.

(b) An employer is not liable under this section to pay more than the amount that the commission determines the claimant was overpaid unemployment compensation benefits because of the back pay

award.

(c) An employer shall reimburse the compensation fund as provided by rules adopted by the commission.

(d) The commission shall credit the payment of reimbursement by an employer against the overpayment of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 210.003. EMPLOYEE'S LIABILITY; SOLE LIABILITY OF EMPLOYER. A claimant is not liable for an overpayment of benefits that results from a back pay award and for which the employer against whom the award is made is required under Section 210.002 to reimburse the compensation fund, and the employer's liability is the only liability because of the overpayment. This section prevails over any conflicting provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. LOST OR MISPLACED WARRANTS

Sec. 210.011. REPLACEMENT FOR LOST OR MISPLACED WARRANT. (a) The comptroller may issue to a claimant a replacement warrant for a warrant issued in payment of benefits under this subtitle if the claimant who was entitled to receive the original warrant:

(1) loses or for any reason fails to receive the warrant; and

(2) furnishes satisfactory proof to the comptroller of the loss or failure to receive the warrant.

(b) Subject to Section 210.013, the replacement warrant shall be issued as provided by Section 403.054, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(a), eff. Sept. 1, 1995.

Sec. 210.012. DEADLINE FOR PAYMENT OF WARRANT. The comptroller may not pay a warrant issued for benefits unless the warrant is presented for payment before the first anniversary of the date on which the warrant was issued.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(b), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 12.11, eff. Sept. 1, 1997.

Sec. 210.013. DEADLINE FOR ISSUANCE OF REPLACEMENT WARRANT. A replacement warrant may not be issued under this chapter after the first anniversary of the date of the original warrant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.36(c), eff. Sept. 1, 1995.

CHAPTER 211. RECIPROCAL ARRANGEMENTS

Sec. 211.001. LOCATION OF SERVICE FOR UNEMPLOYMENT INSURANCE PURPOSES. The commission may enter into arrangements with an appropriate agency of another state or a federal agency under which an individual performing services in this and one or more other states for an employing unit is considered to be engaged in employment entirely in:

(1) this state;

(2) one of the other states in which the individual performs some of the services;

(3) the state of the individual's residence; or

(4) the state in which the employing unit maintains a place of business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.002. LOCATION OF SERVICE OF STATE EMPLOYEES. (a) The commission may enter into a reciprocal arrangement with the appropriate agency of another state under which a state employee who performs services in the state that is not the employing state is considered to be engaged in employment performed entirely in the employing state.

(b) The commission shall enter the arrangement on request of an agency of this state that has an employee performing a service in another state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.003. COMBINATION OF WAGES AND EMPLOYMENT. The commission shall participate in an arrangement for the payment of benefits determined by combining an individual's wages and employment covered under this subtitle and the wages and employment covered under the unemployment compensation laws of another state or the United States, or both, if the arrangement is approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to ensure the prompt and full payment of benefits. The arrangement must provide for:

(1) applying the base period of one unemployment compensation law to a claim that combines an individual's wages and employment covered under two or more unemployment compensation laws; and

(2) avoiding the duplicate use of wages and employment because of the combination.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.004. OFFSET FOR OVERPAYMENT OF UNEMPLOYMENT BENEFITS. (a) Notwithstanding any other provision of this subtitle, the commission may enter into a reciprocal arrangement with an appropriate state or federal agency, or both, that provides:

(1) an overpayment of benefits under this subtitle is recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state or of the United States; and

(2) an overpayment of unemployment benefits under the unemployment compensation law of the other state or the United States are recovered by offset from benefits payable under this subtitle.

(b) A procedure for notice and opportunity for a hearing that applies to the recovery of an overpayment of unemployment benefits paid under this subtitle applies to an offset of those benefits under this section.

(c) In this section, "unemployment benefits" means unemployment compensation benefits, trade adjustment allowances, and other unemployment assistance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.005. INTERSTATE OR FOREIGN COMMERCE. The commission may enter into a reciprocal arrangement with the appropriate agency of another state or federal agency, or both, under which service on a vessel or aircraft engaged in interstate or foreign commerce for a single employer is considered to be performed in this state or in another state, regardless of where the service is performed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.006. RECIPROCAL TREATMENT BY FEDERAL AGENCY. (a) The commission may enter into an agreement with the proper agency under an Act of Congress establishing an unemployment compensation system to provide reciprocal treatment to an individual:

(1) who has acquired a right to unemployment compensation under the Act of Congress after acquiring a potential right to benefits under this subtitle; or

(2) who has acquired a right to benefits under this subtitle after acquiring a potential right to unemployment compensation under the Act of Congress.

(b) An agreement under this section takes effect 10 days after the date on which the agreement is published in the manner provided for a rule.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 212. DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 212.001. PROCEDURES. The manner in which disputed claims are presented, the reports on disputed claims required from claimants, employers, or other persons, and the conduct of hearings and appeals must be in accordance with rules adopted by the commission for determining the rights of parties to disputed claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.002. RECORD. (a) A complete record shall be kept of

proceedings in connection with a disputed claim.

(b) Testimony at any hearing on a disputed claim shall be recorded.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.003. WITNESS FEES. (a) A witness subpoenaed under this chapter is entitled to a fee at a rate set by the commission.

(b) The witness fee is an expense of administering this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.004. PAYMENT OF BENEFITS PENDING APPEAL. (a) Except as otherwise provided by this section, benefits shall be paid in accordance with a final determination.

(b) Benefits shall be paid promptly in accordance with:

(1) a determination or redetermination of an examiner;

(2) a decision of an appeal tribunal;

(3) a decision of the commission; or

(4) a decision of a reviewing court.

(c) Subsection (b) applies without regard to:

(1) any provision of this subtitle under which benefits may be paid or denied; or

(2) the pendency of:

(A) a period to:

(i) apply for reconsideration;

(ii) file an appeal; or

(iii) petition for judicial review;

(B) an application for reconsideration;

(C) an appeal; or

(D) a petition for judicial review.

(d) Benefits paid under a determination, redetermination, or decision continue until the determination, redetermination, or decision is modified or reversed by a subsequent redetermination or decision, and shall be paid or denied in accordance with the modifying or reversing redetermination or decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.005. CHARGEBACK ON REVERSAL OF DETERMINATION OR DECISION ALLOWING BENEFITS PROHIBITED; EXCEPTION. (a) Except as provided by Subsection (b), a chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision.

(b) A chargeback shall be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle if the benefits were paid due to the failure of the employer, or the employer's agents, to comply with Section 208.004.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 119 (S.B. 1537), Sec. 3, eff. October 1, 2013.

Sec. 212.006. RECOVERY OF BENEFITS PAID. (a) Benefits paid to a claimant that are not in accordance with the final decision shall be:

(1) refunded by the claimant to the commission; or

(2) in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.

(b) Benefits paid that are not in accordance with the final decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.37, eff. Sept. 1, 1995.

SUBCHAPTER B. EXAMINERS

Sec. 212.051. DETERMINATION BY EXAMINER ON NOTIFICATION. (a) If the person for which a claimant last worked files a notification with the commission as provided by Section 208.004, an examiner shall determine:

(1) whether the claimant is disqualified from receiving benefits under Sections 207.044-207.053;

(2) the resolution of any other issue affecting the claimant's right to receive benefits that arises under any other provision of this subtitle; and

(3) whether, if benefits are to be paid to the claimant, a chargeback is to be made to the person's account.

(b) The examiner shall mail a copy of the determination to the claimant and:

(1) the person for which the claimant last worked;

(2) the branch or division for which the claimant last worked; or

(3) the address for mail service designated by a governmental employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.052. DETERMINATION BY EXAMINER ON EXAMINER'S OWN MOTION. (a) If a notification as provided by Section 208.004 from the person for which a claimant last worked is not filed, and information on the claim or other information secured raises an issue affecting the claimant's right to benefits under this subtitle, an examiner shall determine whether the claimant is to receive benefits.

(b) The examiner shall mail a copy of the determination to the claimant at the claimant's last known address.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.053. DETERMINATION FINAL; APPEAL. An examiner's determination is final for all purposes unless:

(1) the claimant or the person or branch for which the claimant last worked and to whom the copy of the determination is mailed files an appeal from the determination not later than the 14th calendar day after the date on which the copy of the determination is mailed to the last known address of the claimant, person, or branch as shown by commission records;

(2) an examiner files an appeal from the determination within the period specified in Subdivision (1); or

(3) an examiner makes a redetermination as provided by

Section 212.054.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.054. REDETERMINATION BY EXAMINER. (a) Except as otherwise provided by this subsection, if an examiner discovers an error in connection with a determination or discovers additional information not previously available, the examiner, within the period specified in Section 212.053(1), may reconsider and redetermine the determination. An examiner may issue a redetermination to correct a clerical or machine error at any time during a claimant's benefit year.

(b) An examiner's redetermination replaces the original determination and becomes final unless the claimant or the person for which the claimant last worked files an appeal from the redetermination not later than the 14th calendar day after the date on which a copy of the redetermination is mailed to the claimant's or person's last known address as shown by commission records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 5, eff. Sept. 1, 1997.

SUBCHAPTER C. APPEAL TRIBUNALS

Sec. 212.101. ESTABLISHMENT OF APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial appeal tribunals to hear and decide disputed claims if the establishment of those appeal tribunals is necessary to ensure prompt disposal of cases on appeal.

(b) An appeal tribunal is composed of a salaried examiner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.102. ACTION BY APPEAL TRIBUNAL. Unless the appeal is withdrawn, an appeal tribunal shall affirm or modify the determination of the examiner after giving the parties reasonable opportunity for fair hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.103. NOTICE OF APPEAL TRIBUNAL ACTION. The parties to an appeal shall be notified of the appeal tribunal's decision and the reasons for the decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.104. DECISION CONSIDERED FINAL COMMISSION DECISION. The decision of an appeal tribunal is the final decision of the commission unless further appeal is initiated as provided by Section 212.151 not later than the 14th day after the date the decision is mailed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.105. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE APPEAL TRIBUNAL. (a) The commission may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal.

(b) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

(c) The commission promptly shall mail to the parties before it a copy of its findings and decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.106. RULES REGARDING HEARINGS CONDUCTED BY TELEPHONE CONFERENCE. The commission by rule shall develop procedures to ensure that an appeal tribunal makes every effort in a hearing conducted by telephone conference under this subchapter to obtain all relevant facts and evidence from the parties to the appeal.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 7A.02, eff. Sept. 1, 2003.

SUBCHAPTER D. COMMISSION REVIEW

Sec. 212.151. REVIEW OF APPEAL TRIBUNAL DECISION. The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties to the decision to initiate a further appeal before the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.152. NOTICE OF COMMISSION ACTION. The commission promptly shall mail to the parties before it a copy of its findings and decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.153. FINALITY OF COMMISSION DECISION. A decision of the commission becomes final 14 days after the date the decision is mailed unless before that date:

(1) the commission by order reopens the appeal; or

(2) a party to the appeal files a written motion for rehearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. JUDICIAL REVIEW OF COMMISSION DECISION

Sec. 212.201. COMMENCEMENT OF JUDICIAL REVIEW; DEFENDANTS. (a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

(b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.202. STANDARD OF JUDICIAL REVIEW; EXCEPTIONS NOT NECESSARY. (a) Judicial review under this subchapter is by trial de novo based on the substantial evidence rule.

(b) It is not necessary in a judicial proceeding under this subchapter to enter exceptions to the rulings of the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1208, Sec. 1, eff. June 20, 2003.

Sec. 212.203. EXHAUSTION OF REMEDIES. (a) A party claiming to be aggrieved by a final decision of the commission may not obtain judicial review of the decision unless the party has exhausted the party's remedies before the commission as provided by this subtitle.

(b) The exhaustion of those remedies does not include a motion for rehearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.204. FILING OF ACTION. An action under this subchapter must be filed:

(1) in the county of the claimant's residence; or

(2) if the claimant is not a resident of this state, in:

(A) Travis County;

(B) the county in this state in which the claimant's last employer has its principal place of business; or

(C) the county of the claimant's last residence in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.205. PETITION; SUPERSEDEAS. (a) A petition in an action under this subchapter must state the grounds on which review is sought.

(b) A petition for judicial review does not act as a supersedeas.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.206. COMMISSION CONSIDERED PARTY TO JUDICIAL REVIEW; NOTICE OF PETITION. (a) The commission is considered a party to any judicial action involving a final decision of the commission.

(b) A petition to bring an action under this subchapter must be served on:

(1) a member of the commission; or

(2) a person designated by the commission.

(c) As many copies of the petition as there are defendants must be left with the party served under Subsection (b). The commission immediately shall mail one copy of the petition to each defendant.

(d) Service in compliance with this section constitutes completed service on all defendants.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.207. REPRESENTATION OF COMMISSION. The commission may be represented in any judicial action involving a final decision of the commission by any qualified attorney who:

(1) is a regular salaried employee of the commission; and

(2) has been appointed for that purpose by the attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.208. PRECEDENCE OVER OTHER CIVIL ACTIONS. An action under this subchapter shall be given precedence over all other civil cases except cases arising under the workers' compensation laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 212.210. APPEAL BOND NOT REQUIRED. An appeal bond is not required in an appeal from a decision of a trial court in an action under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT COMPENSATION ACT

SUBCHAPTER A. GENERAL ENFORCEMENT PROVISIONS

Sec. 213.001. REPRESENTATION IN COURT. (a) The attorney general shall designate an assistant attorney general to represent the commission and the state in a civil action to enforce this subtitle and to perform legal duties as the commission requires.

(b) The assistant attorney general shall institute in the name of the state and the attorney general any civil action requested by the commission.

(c) The commission shall pay the assistant attorney general for a service performed by the assistant attorney general solely for the commission.

(d) A qualified attorney who is regularly employed by the commission may assist the assistant attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.002. PROSECUTION OF CRIMINAL ACTIONS. The prosecuting attorney for a county in which a criminal violation of this subtitle or a rule adopted under this subtitle is alleged to have occurred shall prosecute the criminal action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.003. ADMISSIBILITY OF CERTIFIED COPY OF COMMISSION RECORD. In a civil or criminal proceeding brought under this subtitle, a certified copy of a document from commission records is admissible in evidence instead of the original document.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.004. ADMISSIBILITY OF REPORT OR AUDIT; PRIMA FACIE EVIDENCE. (a) In a judicial proceeding in which the establishment or collection of a contribution, penalty, or interest is sought because an employer does not pay a contribution, a penalty, or interest within the time and in the manner required by this subtitle or by a rule adopted under this subtitle, the following are admissible:

(1) a report filed in an office of the commission by the employer or the employer's representative that shows the amount of wages paid by the employer or the employer's representative for which a contribution, a penalty, or interest has not been paid;

(2) a copy of a report described in Subdivision (1) that is certified by a member of the commission or by an employee designated for that purpose by the commission; and

(3) an audit made by the commission or its representative from the books of the employer that is signed and sworn to by the representative as being made from the records of the employer.

(b) A report or audit admissible under this section is prima facie evidence of the truth of its contents. The incorrectness of the report or audit may be shown.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.005. COSTS ADJUDGED AGAINST STATE OR COMMISSION. The commission shall pay from the administration fund established under Subchapter D, Chapter 203, costs adjudged against the state or the commission in a suit instituted on behalf or at the request of the commission under this chapter or Section 204.086.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.006. PRIORITY OF CLAIM FOR CONTRIBUTION. If an employer's assets are distributed under a court order issued under the laws of this state, including a receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, a contribution due at the time of distribution or that becomes due after the distribution has the same priority as other tax claims under the laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.007. COLLATERAL ESTOPPEL DOCTRINE INAPPLICABLE. A finding of fact, conclusion of law, judgment, or final order made under this subtitle is not binding and may not be used as evidence in an action or proceeding, other than an action or proceeding brought

under this subtitle, even if the action or proceeding is between the same or related parties or involves the same facts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 6, eff. Sept. 1, 1997.

Sec. 213.008. ELECTION OF COLLECTION REMEDIES. An action taken under this chapter is not an election by the commission to pursue a particular remedy or action under this chapter to the exclusion of another remedy or action under this subtitle or under another law of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.009. COMMISSION ENFORCEMENT OF OUT-OF-STATE JUDGMENT. (a) A qualified attorney who is a regular salaried employee of the commission may represent an employment security agency of another state in a proceeding in a court in this state to collect a contribution, a penalty, interest, or a court cost for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of the other state, if:

(1) the liability has been reduced to judgment in a court of record in the state of the requesting agency; and

(2) the unemployment compensation law or unemployment insurance law of the requesting state provides for a similar action on behalf of the commission by the requesting state agency.

(b) The venue for a proceeding under this section is the same as the venue for an action to collect an overdue contribution, penalty, or interest due under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.010. NOTICE TO INDIAN TRIBES. A notice of payment or notice of delinquency provided to an Indian tribe under this chapter must inform the Indian tribe that failure to make full payment within the required time:

(1) will cause the Indian tribe to be liable for taxes

under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.), as amended;

(2) will cause the Indian tribe to lose the option to pay reimbursements for benefits instead of contributions; and

(3) may cause the Indian tribe to no longer be considered an employer and services for the Indian tribe to no longer be considered employment for purposes of Section 201.048.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 10, eff. June 11, 2001.

Sec. 213.011. EFFECT OF PREVIOUS EMPLOYMENT DETERMINATION. (a) Subject to Subsection (c), it is reasonable for an employer to rely on a court ruling or commission determination that, for the purposes of this subtitle, service performed by an individual, including service in interstate commerce, is not employment under this subtitle if:

(1) the ruling is:

(A) a judicial decision or precedent, including a published opinion, from a court in this state; or

(B) a commission decision involving the employer as a party or a subject; and

(2) the ruling or determination has not been reversed or otherwise invalidated.

(b) The commission shall relieve an employer that reasonably relies on a ruling or determination described by Subsection (a) from penalties, interest, or sanctions under this chapter or Chapter 214 that result from a subsequent ruling or determination that the service in question is employment. An employer who receives relief under this subsection is not indebted to the state for the penalties, interest, or sanctions from which the employer is relieved and may not be considered delinquent on the payment of taxes, to the extent of the amount from which the employer is relieved.

(c) An employer may reasonably rely on a ruling or determination under Subsection (a) until the earlier of:

(1) the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or

(2) the third anniversary of the due date of a contribution based on the service in question.

(d) This section applies only if the commission determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued or the initial determination was made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 534 (H.B. 2579), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. EMPLOYER PENALTIES AND INTEREST

Sec. 213.021. INTEREST ON PAST DUE CONTRIBUTION. (a) An employer who does not pay a contribution on or before the date prescribed by the commission is liable to the state for interest of one and one-half percent of the contribution for each month or portion of a month that the contribution and interest payments are not paid in full. The total interest applied may not exceed 37-1/2 percent of the amount of contribution due at the due date.

(b) Liability for interest under Subsection (a) does not apply to an employer who:

(1) failed to pay a contribution because of the bona fide belief that all or some of its employees were covered under the unemployment insurance law of another state; and

(2) paid when due a contribution on all the wages of those employees under that law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.38(a), eff. Sept. 1, 1995.

Sec. 213.022. PENALTY FOR FAILURE TO FILE REPORT. An employer who does not file a report of wages paid or contributions due as required by this subtitle or commission rule shall pay to the commission a penalty in the amount equal to:

(1) $15, if the completed report is filed not later than the 15th day after the report's due date;

(2) $30 plus one-twentieth of one percent of wages that the employer failed to report, if the completed report is filed after the 15th day after the report's due date but during the first month after the report's due date;

(3) the sum of the amount computed under Subdivision (2) and the amount equal to $30 plus one-tenth of one percent of wages

that the employer failed to report, if the completed report is filed during the second month after the report's due date; or

(4) the sum of the amount computed under Subdivision (3) and the amount equal to $30 plus one-fifth of one percent of wages that the employer failed to report, if the completed report is filed during the third month after the report's due date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.023. PENALTY FOR OTHER VIOLATION. An employing unit shall pay a penalty of $30 if a civil penalty is not otherwise provided by this subtitle and the employing unit:

(1) does not keep records required under this subtitle or commission rule;

(2) makes a false report to the commission; or

(3) violates this subtitle or a commission rule adopted under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.024. PENALTY FOR CONTINUING VIOLATION. (a) In addition to the penalty imposed under Section 213.023, an employing unit shall pay a penalty of $30 for each consecutive day that a violation of this subtitle or of a rule adopted under this subtitle continues after notice is given as provided by Subsection (b).

(b) The penalty is imposed and becomes cumulative on the 10th day after the date written notice is given or mailed to the employing unit by the commission or its authorized representative.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.025. ADDITIONAL INTEREST ON JUDGMENT OR FINAL ASSESSMENT FOR PAST DUE CONTRIBUTION. For a judgment or final assessment that grants recovery of the amount of a contribution and the amount of interest computed at the maximum rate permitted under Section 213.021(a), the part of the judgment or final assessment for the amount of the contribution earns additional interest at the rate of one percent for each month or part of a month it remains unpaid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.38(b), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 398, Sec. 3, eff. Sept. 1, 2001.

SUBCHAPTER C. COLLECTION OF CONTRIBUTION BY CIVIL SUIT OR NOTICE OF ASSESSMENT

Sec. 213.031. COLLECTION REQUIRED; METHODS. If after notice an employer does not pay a contribution or a penalty or interest on a contribution, the commission shall collect the amount due by:

(1) bringing a civil action in the name of the state and the attorney general in a district court in Travis County; or

(2) serving a notice of assessment on the defaulting employer, stating the amount of the contribution, penalty, and interest outstanding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.032. SERVICE OF NOTICE OF ASSESSMENT; CONTENTS AS PRIMA FACIE EVIDENCE; JUDICIAL REVIEW; EFFECT. (a) A notice of assessment shall be served in the manner provided by law for service of process on a defendant in a civil action in district court.

(b) A notice of assessment is prima facie evidence of the truth of contents of the notice. The incorrectness of the notice may be shown.

(c) An employer aggrieved by the determination of the commission as stated in a notice of assessment may file a petition for judicial review of the assessment with a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition must be served on a member of the commission or on a person designated by the commission in the manner provided by law for service of process on a defendant in a civil action in a district court.

(d) If an employer does not seek judicial review under Subsection (c), a commission assessment is final for all purposes.

(e) An assessment that is not contested by the employer or that is upheld after judicial review has the effect of a final judgment of a district court and shall be recorded, enforced, and renewed in the same manner. An assessment described by this subsection is a final

assessment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 4, eff. Sept. 1, 2001.

Sec. 213.033. LIMITATIONS. (a) The commission may not begin a civil action in court or make an assessment under this subchapter to collect a contribution, a penalty, or interest from an employer after the third anniversary after the due date of the contribution.

(b) The following actions suspend the running of the limitations period prescribed under Subsection (a):

(1) an administrative hearing to redetermine the liability for a contribution, a penalty, or interest pending before the commission; and

(2) a bankruptcy case begun under Title 11 of the United States Code pending before the court.

(c) After a hearing or case described by Subsection (b) is closed, the running of the limitations period prescribed under Subsection (a) resumes.

(d) In the case of a wilful attempt to evade the provisions of this subtitle or a commission rule adopted under this subtitle, the action or assessment may be begun or made at any time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 398, Sec. 5, eff. Sept. 1, 2001.

Sec. 213.034. STATEMENT AS EVIDENCE IN CIVIL ACTION; DENIAL. (a) If a civil action filed under this subchapter is supported by a statement, report, or audit issued by the commission and the commission certifies that the contribution, penalty, and interest shown to be due by the statement, report, or audit are delinquent and that all offsets, payments, and credits have been allowed, the statement, report, or audit is prima facie evidence of the truth of its contents unless before an announcement of ready for trial the defendant files an affidavit that:

(1) denies that all or part of the contribution, penalty, or interest is due; and

(2) states the details relating to any part of the

contribution, penalty, or interest claimed not due.

(b) If the defendant files an affidavit described by Subsection (a) on the day of the trial, the court at the request of the plaintiff shall postpone the cause for a reasonable time.

(c) A defendant who does not file an affidavit in accordance with this section may not deny the claim for the contribution, penalty, or interest or an item of the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.035. COSTS. Unless the employer prevails in a civil action brought under this subchapter or the notice of assessment is reversed by a reviewing court, the employer shall pay all costs of either action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.036. ABSTRACT OF JUDGMENT; ABSTRACT OF ASSESSMENT; FEE; RELEASE. (a) The commission shall pay the fee for filing and recording an abstract of a judgment or an abstract of an assessment against an employer for a contribution, a penalty, or interest by warrant drawn by the comptroller to the county clerk of each county in which the abstract is recorded.

(b) The amount of the fee paid under Subsection (a) shall be added to the amount due under the judgment or assessment.

(c) When the liability secured by the lien is paid, the commission shall mail a release of the lien to the employer. The employer is responsible for filing the release with the appropriate county clerk and for paying the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 8, eff. Sept. 1, 1997.

SUBCHAPTER D. OTHER ENFORCEMENT REMEDIES AGAINST EMPLOYER

Sec. 213.051. FORFEITURE OF RIGHT TO EMPLOY INDIVIDUALS IN THIS STATE; BOND. (a) After a judgment is entered against an employer for a contribution, a penalty, or interest or an assessment against

an employer under this chapter is final and execution returned unsatisfied, an employer liable for the unpaid judgment or final assessment may not employ an individual in this state until the employer furnishes a surety bond.

(b) The amount of the bond may not exceed twice the amount due at the time the bond is furnished plus contributions estimated by the commission to become due from the employer during the succeeding calendar year. The bond must be conditioned on payment of the contribution, penalty, interest, and court costs due from the employer not later than January 30 of the succeeding calendar year. The bond must be approved by the commission.

(c) If the employer does not furnish the bond or pay the contribution, penalty, and interest due, the commission may apply to the court that entered the judgment for an injunction to prohibit the employer from employing a person in this state without first furnishing a bond as required by this section. After reasonable notice of not less than 10 days by the court, the court may grant a temporary injunction. The temporary injunction may be made permanent on final hearing and remains in effect until the requirements of this chapter are satisfied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 398, Sec. 6, eff. Sept. 1, 2001.

Sec. 213.052. INJUNCTION RESTRAINING CERTAIN VIOLATIONS. (a) If an individual or employing unit appears to be violating or threatening to violate this subtitle or any rule or order of the commission adopted under this subtitle relating to the collection of a contribution, a penalty, or interest or to the filing of a report relating to employment, the commission shall bring suit against the individual or employing unit to restrain the violation. The court may grant a temporary or permanent, prohibitory or mandatory injunction, including a temporary restraining order, as warranted by the facts.

(b) A suit under this section must be brought through the attorney general in the name of the state in a court of competent jurisdiction in Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.053. VIOLATION OF INJUNCTION; RECEIVER. (a) If an individual or an employing unit violates an injunction granted under this subtitle, the court on its own motion or the commission's motion in the name of the state, after notice and hearing, may appoint a receiver. The receiver may exercise the powers that, in the judgment of the court, are necessary to provide compliance with the injunction, including taking charge of the property of the individual or employing unit.

(b) The power to appoint a receiver under this section is in addition to the power to punish for contempt.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.054. OFFSET AGAINST STATE WARRANT. Any contribution, penalty, interest, or court cost owed by an employer under this subtitle is a debt owed by the employer to the state under Section 403.055, Government Code, only for withholding of a warrant for:

(1) the refund of taxes, fees, assessments, or other deposits required under the law of this state; or

(2) compensation for goods and services, other than a warrant for:

(A) payment for services performed as an elected or appointed employee of this state; or

(B) reimbursement of expenses incurred in the performance of employment as an elected or appointed employee of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 9, eff. Sept. 1, 1997.

Sec. 213.055. AUDIT OF EMPLOYER. (a) The commission may employ an auditor or other person to determine the amount of a contribution due and prepare a report due from an employer who does not properly pay a contribution or make a report as required by this subtitle or a rule adopted under this subtitle.

(b) An employer who has not paid the correct amount or made a correct report shall pay, as an additional penalty, the reasonable expenses incurred in the investigation under Subsection (a). The commission may collect this penalty in accordance with this chapter.

(c) This section does not prevent the commission from using other available funds as necessary for the purpose of auditing an employer or preparing or assisting in preparing a report of an employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.056. ESTIMATED TAXABLE WAGES IF REPORT NOT FILED. (a) If an employer does not make a report to the commission that is required by this subtitle or by commission rule, the commission may estimate the taxable wages paid by the employer during the period to have been covered by the report. In making this estimate, the commission may use any available source of information.

(b) The commission may collect contributions and penalties using an estimate made under this section as if the estimated wages had been properly reported by the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.057. TAX LIEN. (a) The amount due from an employing unit under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time the contribution, penalty, interest, or other charge becomes overdue.

(c) The lien may be recorded in a "State Tax Liens" book kept by a county clerk under Section 113.004, Tax Code.

(d) The lien may be released in the manner provided for other state tax liens under Chapter 113, Tax Code.

(e) The commission shall pay by warrant drawn by the comptroller to the county clerk of the county in which the notice of lien is filed the fee for filing and recording similar instruments. The fee shall be added to the amount due from the employer.

(f) When the liability secured by the lien is fully paid, the commission shall mail to the employer a release of the lien. The employer is responsible for filing the release with the appropriate county clerk and to pay the county clerk's fee for recording the release.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.058. ADDITIONAL TAX LIEN ENFORCED BY COMMISSION. (a) The amount due from an employing unit to the commission under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time a contribution, a penalty, interest, or another charge becomes overdue.

(c) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien under this section. In administering and enforcing a lien created under this section, the commission has the powers and duties imposed and conferred on the comptroller for the enforcement of other liens under those subchapters.

(d) A lien under this section is cumulative of the lien created under Section 213.057.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.059. DELINQUENCY; NOTICE OF LEVY. (a) If a person is delinquent in the payment of any amount, including contributions, penalties, and interest due under this subtitle, the commission may notify personally or by mail any other person who:

(1) possesses or controls an asset belonging to the delinquent person; or

(2) owes a debt to the delinquent person.

(b) A notice under this section to a state officer, department, or agency must be given before the officer, department, or agency presents to the comptroller the claim of the delinquent person.

(c) A notice under this section may be given at any time after the amount due under this subtitle becomes delinquent. The notice must state the amount of contributions, penalties, interest, or other amounts due, and any additional amount that will accrue by operation of law in a period not to exceed 30 days after the date on which the notice is given, and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

(d) On receipt of a notice under this section, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date the notice is received of each asset belonging to the

delinquent person that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent person; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person receiving the notice as of the time the person received the notice during the 60-day period after the date of receipt of the notice.

(e) A notice under this section that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is effective if it is delivered or mailed to the principal or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.

(f) A person who has received a notice under this section and who transfers or disposes of an asset or debt in a manner that violates Subsection (d) is liable to the commission for the amount of the indebtedness of the delinquent person with respect to whose obligation the notice was given to the extent of the value of that asset or debt.

(g) At any time during the 60-day period described by Subsection (d), the commission may levy on the asset or debt by delivery of a notice of levy. On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent person.

(h) A notice delivered under this section is effective:

(1) at the time of delivery against all property, rights to property, credits, and debts involving the delinquent person that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process; and

(2) against all property, rights to property, credits, and debts involving the delinquent party that come into the possession or control of the person served with the notice within the 60-day period described by Subsection (d).

(i) A person acting in accordance with the terms of the notice of freeze or levy issued by the commission is discharged from any obligation or liability to the delinquent person with respect to the affected property, rights to property, credits, and debts of the person affected by compliance with the notice of freeze or levy.

(j) In this section, "asset" means:
(1) a credit, bank, or savings account or deposit; or
(2) any other intangible or personal property.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.39(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 94, Sec. 10, eff. Sept. 1, 1997.

Sec. 213.060. ENFORCEMENT AGAINST INDIAN TRIBE. (a) Services performed for an Indian tribe that fails to make a required payment, including payment of a penalty and interest, are not considered, after the exhaustion of all necessary collection activities by the commission, to be employment for purposes of Section 201.048.

(b) Services for an Indian tribe that loses coverage under Subsection (a) may be considered to be employment for purposes of Section 201.048 if the Indian tribe has paid all contributions, payments instead of contributions for benefits paid, penalties, and interest owed by the Indian tribe.

(c) The commission shall notify the Internal Revenue Service and the United States Department of Labor of an Indian tribe that fails to make required payments.

Added by Acts 2001, 77th Leg., ch. 518, Sec. 11, eff. June 11, 2001.

SUBCHAPTER E. ADJUSTMENT OR REFUND FOR EMPLOYER'S OVERPAYMENT

Sec. 213.071. CREDIT OR REFUND OF OVERPAYMENT. (a) The commission shall allow the employing unit on application under Section 213.072 to adjust its contribution payments then due for a contribution or penalty erroneously collected from the employer.

(b) If an adjustment cannot be made under Subsection (a), the commission shall refund the amount erroneously collected.

(c) The commission may not approve an application for adjustment or refund if making the adjustment or refund would require removing or disregarding benefit wages that became benefit wage credits or that were charged as benefit wages more than three years before the date on which the application was filed. For the purpose of this subsection, removing or disregarding benefit wages does not include transferring compensation experience described in Subchapter E, Chapter 204.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.072. APPLICATION. (a) An employing unit that pays the commission a contribution or penalty that is allegedly due and that later is determined not due, in whole or in part, may apply to the commission for:

(1) an adjustment for a contribution payment then due; or

(2) a refund of the overpaid amount if an adjustment cannot be made.

(b) An application for adjustment or refund must be filed before the third anniversary of the date on which the contribution or penalty was allegedly due.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.073. APPEAL OF COMMISSION DETERMINATION. (a) If the commission denies a timely application made under this subchapter, the employing unit may bring an action in a court of competent jurisdiction in Travis County against the commission for review of the commission's refusal to allow an adjustment or a refund.

(b) An action under this section must be filed before the first anniversary of the date on which notice of the denial was mailed to the employing unit.

(c) Trial of an action filed under this section is by trial de novo.

(d) The employing unit may not bring an action for the refund under any other law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.074. INTEREST NOT ALLOWED. Interest is not allowed on an adjustment or refund made under this subchapter or a recovery made in a court action filed under this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 213.075. ADJUSTMENT OR REFUND ON COMMISSION INITIATIVE.

The commission may make an adjustment or refund on its own initiative under this subchapter within the period prescribed by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS

Sec. 214.001. FRAUDULENTLY OBTAINING BENEFITS OR OTHER PAYMENT. (a) A person commits an offense if, to obtain or increase a benefit or other payment, either for the person or another person, under this subtitle, the unemployment compensation law of another state, or any act or program of the United States that is administered by the commission, the person:

(1) makes a false statement or representation, knowing it to be false; or

(2) knowingly fails to disclose a material fact.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.002. LIABILITY FOR IMPROPERLY OBTAINING BENEFITS. (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:

(1) deducting the amount of the improper benefits from any future benefits payable to the person; or

(2) collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

(b) In this section, "improper benefit" means the benefit obtained by a person:

(1) because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and

(2) while:

(A) any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's

case; or

(B) the person was disqualified from receiving benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.003. FORFEITURE OR CANCELLATION OF BENEFITS PAID AND REMAINING BENEFITS; PENALTY. (a) If, by wilful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit:

(1) the person forfeits the:

(A) benefit received; and

(B) rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred; and

(2) the commission shall require the person to pay a penalty in an amount equal to 15 percent of the amount forfeited under Subdivision (1)(A).

(b) If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.

(c) A forfeiture, cancellation, or penalty imposed under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative.

(d) A person who is assessed a penalty by the commission under Subsection (a)(2) is liable for the amount of the penalty. The commission may collect the penalty in the same manner as provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past-due contributions. The commission shall deposit a penalty assessed under Subsection (a)(2) in the unemployment compensation fund established under Section 203.021.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 2, eff.

October 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 756 (S.B. 658), Sec. 3, eff. October 1, 2013.

Sec. 214.004. FRAUDULENTLY AVOIDING CONTRIBUTION OR PAYMENT OF BENEFITS. (a) A person commits an offense if the person makes a false representation, knowing it to be false, or knowingly fails to disclose a material fact, to:

(1) prevent or reduce the payment of benefits to an individual entitled to the benefits;

(2) avoid becoming or remaining subject to this subtitle; or

(3) avoid or reduce any contribution or other payment required from an employing unit under this subtitle.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.005. FAILURE OR REFUSAL TO MAKE CONTRIBUTION OR OTHER PAYMENT. (a) A person commits an offense if the person wilfully fails or refuses to make a contribution or other payment required from an employing unit under this subtitle.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.006. OFFENSES REGARDING REPORTS AND RECORDS. (a) A person commits an offense if the person wilfully fails or refuses to:

(1) furnish a report required under this subtitle; or

(2) produce or permit the inspection or copying of records as required under this subtitle.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.007. GENERAL OFFENSE. (a) A person commits an offense if the person wilfully violates a provision of this subtitle

or a rule adopted under this subtitle:

(1) the violation of which is made unlawful or the observance of which is required under this subtitle; and

(2) for which a penalty is not otherwise provided by this subtitle or any other applicable statute.

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

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 214.008. MISCLASSIFICATION OF CERTAIN WORKERS; PENALTY. (a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract.

(b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.

(c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to $200 for each individual that the person has not properly classified.

(d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

Added by Acts 2013, 83rd Leg., R.S., Ch. 335 (H.B. 2015), Sec. 1, eff. January 1, 2014.

Sec. 214.009. RECOVERY OF COVERED UNEMPLOYMENT COMPENSATION DEBT THROUGH FEDERAL TREASURY OFFSET PROGRAM. (a) In this section, "program" means the federal Treasury Offset Program authorized by 26 U.S.C. Section 6402(f).

(b) The commission may collect the following covered unemployment compensation debt through the program:

(1) a past-due debt for erroneous payment of benefits due to fraud that has become final under law and remains uncollected;

(2) a past-due debt for erroneous payment of benefits due to a person's failure to report earnings, even if non-fraudulent, that has become final under law and remains uncollected;

(3) a past-due employer contribution owed to the compensation fund for which the commission has determined the person to be liable and that remains uncollected; and

(4) any penalties and interest assessed by the commission on a debt described by Subdivision (1), (2), or (3).

(c) Before submitting covered unemployment compensation debt for recovery under the program, the commission must:

(1) notify the debtor by regular United States mail that the commission plans to recover the debt through the offset of any federal tax refund;

(2) provide the debtor at least 60 days following the date the notice is provided under Subdivision (1) to present to the commission evidence that all or part of the debt is not:

(A) legally enforceable;

(B) due to fraud or unreported earnings; or

(C) a contribution owed to the compensation fund; and

(3) consider any evidence presented by the debtor to determine the amount of debt that is legally enforceable and owed.

(d) In considering evidence presented by a debtor under Subsection (c), the commission may determine only whether the debtor has demonstrated that the debt is not subject to recovery through the program so that the commission is able to minimize erroneous offsets. The commission may not review the initial determination establishing the debtor's liability.

(e) The commission shall assess against the debtor the cost of any administrative fee charged by the United States Department of the Treasury for each offset. The commission may add the assessed amount to the covered unemployment compensation debt that is offset under the program.

Added by Acts 2015, 84th Leg., R.S., Ch. 414 (H.B. 2732), Sec. 1, eff. September 1, 2015.
Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 15,

eff. September 1, 2015.

CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 215.001. DEFINITIONS. In this chapter:

(1) "Affected unit" means a unit of two or more employees, including a department or shift, designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a defined benefit plan, as defined by 26 U.S.C. Section 414(j), or under a defined contribution plan, as defined by 26 U.S.C. Section 414(i), a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.

(3) "Normal weekly hours of work" means the number of hours in a week that an employee ordinarily works for a participating employer or an average of 40 hours per week over a two-week pay period, whichever is less.

(4) "Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.

(5) "Participating employer" means an employer who has a shared work plan in effect.

(6) "Shared work benefit" means an unemployment compensation benefit that is payable to a participating employee.

(7) "Shared work plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(8) "Shared work program" means the shared work unemployment compensation program.

(9) "Training" means commission-approved voluntary training sponsored by an employer or funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) that is designed to enhance a participant's job skills.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 42 (H.B. 1637), Sec. 1, eff. May 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 2, eff. September 1, 2013.

Sec. 215.002. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM. (a) The commission, under a voluntary shared work unemployment compensation program designed to reduce unemployment and stabilize the work force, shall allow participating employees shared work benefits.

(b) The commission may adopt rules and establish procedures necessary to administer the shared work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. SHARED WORK PLAN

Sec. 215.021. APPROVAL REQUIRED FOR EMPLOYER PLAN. (a) Before an employer may participate in the shared work program, the commission must approve the employer's shared work plan. The plan must be submitted in writing to the commission.

(b) If an employee who participates in a shared work plan is covered by a collective bargaining agreement, the collective bargaining agent must approve the plan in writing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.022. REQUIREMENTS OF SHARED WORK PLAN. (a) The commission may approve a shared work plan if:

(1) the plan:

(A) applies to and identifies a specific affected unit;

(B) identifies the employees in the affected unit by name and social security number and describes how the employees will be notified in advance of the plan, if feasible;

(C) provides an estimate of the number of employees who would be laid off if the employer does not participate in the shared work plan;

(D) reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;

(E) applies to at least 10 percent of the employees in

the affected unit; and

(F) permits eligible employees to participate in training;

(2) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would:

(A) affect at least 10 percent of the employees in the affected unit; and

(B) result in an equivalent reduction in work hours;

(3) the employer certifies that:

(A) if the employer currently provides fringe benefits, the fringe benefits continue for employees in the affected unit unless those benefits are not continued for employees not participating in the shared work plan; and

(B) participation in the shared work plan is consistent with the employer's obligations under state and federal law; and

(4) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission and any other information the United States secretary of labor determines is appropriate.

(b) A shared work plan may not be implemented to subsidize a seasonal employer during the off-season.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 13 (H.B. 2035), Sec. 3, eff. September 1, 2013.

Sec. 215.023. APPROVAL OR DENIAL OF SHARED WORK PLAN; NOTICE. (a) The commission shall approve or deny a shared work plan in writing not later than the 30th day after the date the commission receives the plan.

(b) If the commission denies the plan, the commission shall give the employer the reasons for denial.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.024. EFFECTIVE DATE OF SHARED WORK PLAN; EXPIRATION OR TERMINATION. (a) A shared work plan takes effect on the date the

commission approves the plan.

(b) A shared work plan expires on the last day of the 12th calendar month beginning after the effective date of the plan.

(c) The commission may terminate a shared work plan for good cause if the plan is not being executed according to the terms and intent of the shared work program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.025. MODIFICATION OF SHARED WORK PLAN. (a) An employer may modify a shared work plan to meet changed conditions if the modification conforms to the basic provisions of the plan as approved by the commission.

(b) Before implementing a proposed change, the employer must report the change in writing to the commission.

(c) The commission shall reevaluate a plan that is proposed to be substantially modified.

(d) If a proposed plan modification is substantial, the commission may approve the modified plan according to the requirements of Sections 215.022(a)(1) and (2) or shall deny the modification subject to Section 215.023.

(e) Approval of a modified plan does not affect the plan's original expiration date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.026. PARTICIPATING EMPLOYER'S REPORT ON PLAN OPERATION. A participating employer shall:

(1) monitor and evaluate the operation of its established shared work plan as requested by the commission; and

(2) report the findings to the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. SHARED WORK BENEFITS

Sec. 215.041. EMPLOYEE'S ELIGIBILITY FOR SHARED WORK BENEFITS. (a) Notwithstanding any other provision of this subtitle, an individual is unemployed for the purposes of this subtitle in a week

in which the individual works under an approved shared work plan in effect for that week for less than the individual's normal weekly hours of work.

(b) An individual is eligible to receive shared work benefits for a week in which:

(1) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before that week and is in effect for that week;

(2) the individual is able to work and is available for additional hours of work or for full-time work with the participating employer; and

(3) the individual's normal weekly hours of work have been reduced by at least 10 percent but not more than 40 percent, with a corresponding reduction in wages.

(c) The commission may not deny shared work benefits for a week to an otherwise eligible individual because of a provision of this subtitle that relates to:

(1) availability for work;

(2) active search for work; or

(3) refusal to apply for or to accept work with an employer other than the participating employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.042. SHARED WORK BENEFITS FORMULA. (a) The commission shall pay an individual who is eligible for shared work benefits a weekly shared work benefit in an amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's wages under the employer's shared work plan.

(b) The commission shall round to the next highest dollar a shared work benefit that is not a multiple of one dollar.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.043. LIMITATIONS ON BENEFITS. (a) An individual is not entitled to receive shared work benefits and regular unemployment compensation benefits that exceed the maximum total benefits payable to the individual in a benefit year as provided by Section 207.005.

(b) An individual who receives shared work benefits is not entitled to receive benefits for partial unemployment under Section 207.003 for any week in which the individual works as a participating employee.

(c) The commission may not pay an individual shared work benefits for a week in which the individual performs paid work for the participating employer that exceeds the reduced hours established under a shared work plan.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 215.044. EXTENDED BENEFITS. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under Section 209.042 and is entitled to receive extended benefits under Chapter 209 if the individual is otherwise eligible under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBTITLE B. TEXAS WORKFORCE COMMISSION; WORKFORCE DEVELOPMENT; EMPLOYMENT SERVICES

CHAPTER 301. TEXAS WORKFORCE COMMISSION

SUBCHAPTER A. ORGANIZATION OF COMMISSION

Sec. 301.001. PURPOSE; AGENCY GOALS; DEFINITIONS. (a) The Texas Workforce Commission is a state agency established to operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related educational programs available in this state, and to administer the unemployment compensation insurance program in this state.

(b) The commission shall meet the needs of:

(1) the businesses of this state for the development of a highly skilled and productive workforce;

(2) the workers of this state for education, skills training, and labor market information to enhance their employability, earnings, and standard of living and for an efficient unemployment compensation system;

(3) the people of this state who are making a transition

into the workforce, particularly persons receiving public assistance, displaced homemakers, and students making the transition from school to work;

(4) the communities of this state to provide economic incentive programs for job creation, attraction, and expansion; and

(5) the taxpayers of this state to ensure that tax revenues for workforce development are spent efficiently and effectively.

(c) A reference in this code or another law to the Texas Employment Commission means the Texas Workforce Commission.

(d) In this title:

(1) "Chair" means the chair of the commission.

(2) "Commission" means the Texas Workforce Commission.

(3) "Council" means the Texas Workforce Investment Council.

(4) "Employment service" means the commission or the entity designated by the commission to implement duties imposed under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.).

(5) "Executive director" means the executive director of the commission.

(6) "Local workforce development board" means an entity formed under Chapter 2308, Government Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 818, Sec. 6.09, eff. Sept. 1, 2003.

Sec. 301.0015. GUIDELINES REGARDING FUNCTIONS OF COMMISSION AND STAFF. (a) In administering its functions under this title or another law, the commission shall limit its activities to:

(1) setting commission policies, including policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and commission staff;

(2) giving general direction to the executive director regarding the implementation of the commission's policies, and holding the executive director accountable for implementing the policies;

(3) approving the commission's budget recommendation to the legislature;

(4) reviewing under Subchapter D, Chapter 212, the decision

of an appeal tribunal regarding unemployment compensation;

(5) reviewing under Subchapter D, Chapter 61, the decision of a wage claim appeal tribunal regarding a wage claim;

(6) adopting rules necessary to administer the commission's policies, including rules necessary for the administration of this title and rules governing required reports, procedures, and orders;

(7) responding to questions and comments that are directed to the commission by the executive director and that relate to setting or clarifying commission policies or relate to other matters of general interest to the commission; and

(8) requesting information from commission staff.

(b) Except as provided by Subsection (c), the commission may conduct the activities listed in Subsection (a) only when acting as a governmental body.

(c) The commission, acting as a governmental body, or an individual member of the commission may conduct the activities listed in Subsections (a)(7) and (8).

(d) In administering its functions under this title or another law, the commission, acting as a governmental body, or an individual member of the commission may not:

(1) direct the day-to-day operations of the executive director or other commission staff; or

(2) establish the details for the implementation of commission policies or direct the executive director or other commission staff about those details.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 1.01, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 14, eff. September 1, 2005.

Sec. 301.002. MEMBERSHIP REQUIREMENTS. (a) The commission is composed of three members:

(1) one member who is a representative of labor;

(2) one member who is a representative of employers; and

(3) one member who is a representative of the public.

(b) The governor shall appoint the members and make the appointments without regard to the race, color, disability, sex,

religion, age, or national origin of the appointees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.001 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.01, eff. Sept. 1, 2003.

Sec. 301.003. MEMBER RESTRICTIONS. (a) In this section:

(1) "Business" does not mean personal investment in real property, financial instruments or tangible assets, or the provision of personal services, other than workforce services in the State of Texas, as an independent contractor.

(2) "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A member of the commission or the member's spouse may not be employed by any business or other organization receiving money from the commission during the member's term on the commission.

(c) A person may not be a member of the commission or an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of labor, business, workforce development, child care, or career schools and colleges.

(d) A person may not serve as a member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a career school or college or a business entity or other organization receiving money from the commission;

(2) owns or controls, directly or indirectly, more than a

10 percent interest in a career school or college or a business entity or other organization receiving money from the commission; or

(3) is registered, certified, licensed, permitted, or otherwise authorized by the commission; for purposes of this subdivision, "registered, certified, licensed, permitted, or otherwise authorized by the commission" does not include the following:

(A) the commission's role under Subtitle A; or

(B) employment of domestic service workers under Section 201.027.

(e) If a member of the commission or the member's spouse is engaged in any other employment, the member of the commission shall refrain from voting on or participating in any commission decision that involves the other employment.

(f) A member of the commission or the member's spouse may not enter into a contract, either directly with a local workforce development board or with an entity that contracts with a local workforce development board, under which the member or the member's spouse receives compensation for services provided by the member or the member's spouse.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.02, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 118 (S.B. 1309), Sec. 1, eff. May 20, 2005.

Sec. 301.004. EFFECT OF LOBBYING ACTIVITY. A person may not be 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. If the person ceases to engage in lobbying activity and files a notice of termination as prescribed by Section 305.008, Government Code, the person may serve as a member of the commission or act as the general counsel to the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Renumbered from Labor Code Sec. 202.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.03, eff. Sept. 1, 2003.

Sec. 301.005. TERMS; VACANCY. (a) Members of the commission are appointed for staggered six-year terms, with one member's term expiring on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.006. CHAIR. (a) The governor shall designate the chair of the commission from among the members of the commission. The chair shall serve in that capacity at the pleasure of the governor for a two-year term. The governor may redesignate the same member to serve consecutive terms.

(b) Notwithstanding Subsection (a), the member of the commission who represents the public shall serve as chair:

(1) when the commission acts under:

(A) Chapter 21;

(B) Subchapter D, Chapter 61;

(C) Subchapter D, Chapter 212; or

(D) Chapter 301, Property Code; and

(2) in commission hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.005 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.04, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 378 (S.B. 1408), Sec. 15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 16, eff. September 1, 2015.

Sec. 301.007. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission that a member:

(1) during any 60-day period, is absent from each commission meeting for which the member received at least 48 hours' notice;

(2) does not have at the time of taking office the qualifications required by Section 301.002;

(3) does not maintain during service as a member of the commission the qualifications required by Section 301.002;

(4) is ineligible for membership on the commission under Section 301.003 or 301.004;

(5) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(6) is absent from more than half of the regularly scheduled meetings of the members that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the members.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for the removal of a member of the commission existed.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the chair of the potential ground. The chair shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the chair, the executive director shall notify the next highest ranking member, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.006 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 2.05, eff. Sept. 1, 2003.

Sec. 301.0075. MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the members until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws;

(8) civil rights laws relevant to employment programs offered by the commission; and

(9) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed as a member of the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 2.06, eff. Sept. 1, 2003.

Sec. 301.008. APPLICATION OF SUNSET ACT. The Texas Workforce Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2027.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1169, Sec. 2.08, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 1.01, eff. Sept.

1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 4.02, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 2.22, eff. June 17, 2011.
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 17, eff. September 1, 2015.

Sec. 301.009. COMMISSION DIVISIONS. (a) The commission shall have:

(1) a division of workforce development;
(2) a division of unemployment compensation; and
(3) a civil rights division.

(b) In addition to the divisions listed in Subsection (a), the executive director may establish additional divisions within the commission for effective administration and performance of commission functions.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 18, eff. September 1, 2015.

SUBCHAPTER B. COMMISSION ADMINISTRATION

Sec. 301.021. DONATIONS. (a) The commission may accept a donation of services, money, or property that the commission determines furthers the lawful objectives of the commission. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission with the name of the donor and the purpose of the donation.

(b) The commission may not accept a donation from a person who is a party to an administrative proceeding pending before the

commission until the 30th day after the date the commission's final order is issued. The commission may not accept a donation from a person who is a party to a suit in which the commission is also a party.

(c) The commission may not accept a donation from a for-profit entity that has a contract with the commission or has submitted a bid in response to a pending request for proposal issued by the commission for services or products having a value of not less than $50,000. This subsection does not apply to a contract or bid that relates only to providing child-care services.

(d) A for-profit entity may not enter into a contract with the commission or submit a bid in response to a request for proposal issued by the commission before the first anniversary of the date of making a donation to the commission unless the contract or bid relates only to providing child-care services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.021 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 361, Sec. 1, eff. Sept. 1, 1997.

Sec. 301.022. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.022 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.023. COMPLAINTS AGAINST COMMISSION. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 655, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.023 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.01, eff. Sept. 1, 2003.

Sec. 301.024. OFFICIAL SEAL; USE OF FACSIMILES. (a) The commission has an official seal. A court shall take judicial notice of the seal.

(b) The commission may execute, certify, authenticate, or sign, with a facsimile signature and seal, any instrument authorized under this subtitle to be issued by the commission or by an authorized representative of the commission, including a claim, statement, or audit report relating to the establishment or collection of delinquent contributions or penalties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.024 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

SUBCHAPTER C. EXECUTIVE DIRECTOR; AGENCY PERSONNEL

Sec. 301.041. EXECUTIVE DIRECTOR; AGENCY PERSONNEL. (a) The commission shall appoint an executive director to administer the daily operations of the commission in compliance with federal law.

(b) A reference in this code or another law to the "agency administrator" of the commission means the executive director.

(c) The executive director may:

(1) appoint and prescribe the powers and duties of all commission staff, including officers, accountants, attorneys, experts, and other persons as necessary in the performance of the commission's duties;

(2) delegate authority to a person appointed under this section as the executive director considers reasonable and proper for the effective administration of this title;

(3) employ and terminate the employment of commission staff members; and

(4) bond any person that handles money or signs checks under this title.

(d) The executive director or a person designated by the executive director shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 265, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(48), eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 202.041 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.042. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) The commission may request an applicant for a security sensitive position to provide either a complete set of fingerprints or the applicant's complete name, driver's license number, and social security number. The executive director may deny employment in a security sensitive position to an applicant who fails to provide the requested fingerprints or information.

(b) The executive director may use information obtained under this section only to evaluate an applicant for employment in a security sensitive position. A security sensitive position must be so identified in the job description and in the announcement of the position.

(c) In this section, "security sensitive position" means a position of employment that requires as an incident of the employment:

(1) the performance of duties in:

(A) the automated data processing, controller, or

fiscal department; or

(B) a position designated to handle receipts or disbursements of cash in a local or regional office;

(2) access to a computer terminal, if the information available from the terminal is required by law to be confidential;

(3) access to a master key for access to the premises other than during regular working hours; or

(4) the performance of duties considered to be security sensitive by the state auditor or the Inspector General of the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(48), eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 202.042 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.043. STANDARDS OF CONDUCT INFORMATION. The executive director or the executive director's designee shall provide to the members of the commission and employees of the commission, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.043 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.02, eff. Sept. 1, 2003.

Sec. 301.044. CAREER LADDER. The executive director shall develop an intra-agency career ladder program for employees of the commission. The program shall require the intra-agency posting of all nonentry-level positions concurrently with any public posting.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.045. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The

executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(a-1) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(b) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Commission on Human Rights for compliance with Subsection (a-1)(1); and

(3) be filed with the governor's office.

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

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.03, eff. Sept. 1, 2003.

Sec. 301.047. COMMISSION EMPLOYEES ACCOUNTABLE TO EXECUTIVE DIRECTOR. In performing functions required or authorized by law, employees of the commission are directly accountable to the executive director.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.04, eff. Sept. 1, 2003.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR

Sec. 301.061. GENERAL POWERS AND DUTIES OF COMMISSION AND

EXECUTIVE DIRECTOR. (a) The commission shall provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the commission.

(b) The executive director shall:

(1) administer this title as provided by rules adopted by the commission;

(2) oversee and manage:

(A) the daily operation and administrative affairs of the commission; and

(B) the implementation of commission policies set by the commission;

(3) coordinate the activities of the commission staff and hold commission staff accountable for the staff's performance of its duties;

(4) determine the organization of the agency and methods of procedure of the agency in accordance with this title; and

(5) make expenditures necessary for the operation of this title.

(c) Repealed by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(6).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.061 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3.05, 3.06, 9.01(c), eff. Sept. 1, 2003.

Sec. 301.0611. COORDINATION OF CERTAIN AWARDS AND INCENTIVES. The commission, in cooperation with the Texas Education Agency, the comptroller, and the Texas Higher Education Coordinating Board, shall prepare and make available to the public a list of all awards and incentives available for business participation in:

(1) a school district's career and technology education program under Subchapter F, Chapter 29, Education Code; or

(2) any other career and technology education training.

Added by Acts 2003, 78th Leg., ch. 61, Sec. 9, eff. Sept. 1, 2003.

Sec. 301.0615. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. (a) Except as otherwise provided by this title, a hearing conducted

under this title is not subject to:

(1) Section 2001.038, Government Code; or

(2) Subchapters C-H, Chapter 2001, Government Code.

(b) A commission order or decision that results from a hearing conducted under this title is not subject to the requirements imposed under:

(1) Section 2001.004(3), Government Code; or

(2) Section 2001.005, Government Code.

Added by Acts 1997, 75th Leg., ch. 631, Sec. 1, eff. Sept. 1, 1997.

Sec. 301.062. FINDINGS. Both the commission and the executive director may make findings and determine issues under this title as necessary to administer this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.062 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.063. STATE AND FEDERAL COOPERATION. (a) The commission is designated as the agency of this state for implementation in this state of:

(1) the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.); and

(2) the Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(b) In administering this title the commission and executive director shall:

(1) cooperate with the secretary under the Social Security Act (42 U.S.C. Section 301 et seq.) to the fullest extent consistent with this title;

(2) make reports in the form and containing information required by the secretary and comply with provisions the secretary finds necessary to ensure that the reports are correct and verified;

(3) comply with the regulations prescribed by the secretary governing the expenditures of funds allotted and paid to the state under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) to assist in the administration of this title; and

(4) cooperate with any official or agency of the United

States having powers or duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) and take all actions necessary to secure to this state the benefits of that Act and necessary to perform the commission's duties under Chapter 307.

(c) The commission may provide reasonable cooperation to each agency of the United States charged with the administration of any unemployment insurance law.

(d) On request, the commission shall furnish to an agency of the United States responsible for the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits, including each nonrecipient parent as defined by Section 31.0021, Human Resources Code, who is receiving benefits, and shall inform the agency of the recipient's right to further benefits under Subtitle A.

(e) In this section, "secretary" means the United States secretary of labor.

(f) The commission shall contract with the Texas Department of Transportation for the Texas Department of Transportation to deliver public transportation services to clients of eligible programs, except that the Texas Department of Transportation may not assume responsibility for client case review, case management, or coordination or authorization of benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.063 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., ch. 1325, Sec. 13.11, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 281 (H.B. 2702), Sec. 4.09, eff. June 14, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 8, eff. June 15, 2007.

Sec. 301.064. INTERPRETER SERVICES; BILINGUAL FORMS. (a) The executive director shall provide language interpreters for agency programs through a comprehensive language services program for persons whose primary language is Spanish and may provide language interpreters through the program for agency programs for persons whose primary language is other than Spanish or English.

(b) The language services program must provide services, including translation services, both to employers and to employees or prospective employees.

(c) The executive director shall print essential agency forms and instructional information in both English and Spanish. A form shall be written in Spanish only when revised or when new or additional forms are printed or prepared.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.064 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.065. ANNUAL REPORT. (a) As soon as practicable after the close of each fiscal year, the commission shall submit to the governor and the legislature a report on the administration and operation of the commission's activities under this title during the preceding fiscal year, including each recommendation of the commission for amendments to this title.

(b) The annual report must include:

(1) a balance sheet of the money in the compensation fund;

(2) the commission's long-term and short-term objectives; and

(3) any other information requested by the legislature or the Legislative Budget Board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.065 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.066. PUBLICATIONS. (a) The executive director shall print:

(1) the text of Subtitle A;

(2) the commission's rules; and

(3) the commission's annual report to the governor and the legislature.

(b) The executive director shall prepare information describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission.

(c) The executive director shall make the information required

to be printed or prepared under this section and any other material that the executive director determines to be relevant and suitable for distribution available to the public and appropriate state agencies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.066 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.067. TAX ASSISTANCE; INFORMATION ON EARNED INCOME TAX CREDIT. (a) The commission may work in conjunction with the Internal Revenue Service to make certain offices of the commission volunteer income tax assistance sites during the two months preceding the date federal income taxes are due.

(b) In conjunction with the comptroller's office, the commission may use existing resources to distribute information and educational materials on the federal earned income tax credit provided by the comptroller under Section 403.025, Government Code, to local workforce development boards and workforce development centers for use in providing federal income tax assistance to persons who participate in workforce development programs.

(c) In addition to providing information under Subsection (b) to a person who participates in a workforce development program, the commission may provide the information to any other person who uses services provided through the commission.

(d) The commission may adopt rules as necessary to implement this section, including rules regarding the information that employers must provide under Chapter 104 regarding employee eligibility for the federal earned income tax credit.

Added by Acts 1997, 75th Leg., ch. 1321, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(33), eff. Sept. 1, 1997.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1300 (H.B. 2360), Sec. 2, eff. September 1, 2009.

Sec. 301.0671. FEDERAL WORK OPPORTUNITY TAX CREDIT AND STATE TAX REFUND FOR CERTAIN EMPLOYERS. (a) The commission is the lead

agency in promoting awareness of the federal work opportunity tax credit program and the state tax refund for employers under Subchapter H.

(b) The commission, in coordination with the comptroller's office and the Texas Department of Human Services, shall develop and distribute educational materials designed to increase awareness of the tax credit and tax refund described by Subsection (a) to encourage employers to hire recipients of the financial assistance program for persons with dependent children under Chapter 31, Human Resources Code.

Added by Acts 1997, 75th Leg., ch. 228, Sec. 1, eff. Sept. 1, 1997. Renumbered from Labor Code Sec. 301.067 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(81), eff. Sept. 1, 1999.

Sec. 301.0675. VOCATIONAL REHABILITATION AND CERTAIN OTHER SERVICES FOR PERSONS WITH DISABILITIES. Subject to federal approval, if required, to administer vocational rehabilitation services and other services and programs to persons with disabilities under Subtitle C, Title 4, the commission has primary responsibility for providing those services and programs.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 19, eff. September 1, 2016.

Sec. 301.0681. POLICY ON TECHNOLOGICAL SOLUTIONS. The commission shall develop and implement a policy requiring the executive director and commission employees to research and propose appropriate technological solutions to improve the commission's ability to perform its functions. The technological solutions must:

(1) ensure that:

(A) the public is able to easily find information about the commission on the Internet; and

(B) persons who want to use the commission's services are able to:

(i) interact with the commission through the Internet; and

(ii) access any service that can be provided effectively through the Internet;

(2) be cost-effective; and

(3) be developed through the commission's planning processes.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 301.0682. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of the commission's rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction, other than proceedings conducted by the commission under Title 2 and this title of this code that are not subject to Subchapters C-H, Chapter 2001, Government Code.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy developed under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

Sec. 301.069. PARTNERSHIP WITH BUSINESS COMMUNITY. To meet the needs of businesses in this state and to equip workers and job seekers with the skills required to compete for jobs in this state, the commission shall:

(1) partner with the business community to:

(A) identify:

(i) skills required by the business community;

(ii) key industry sectors in the business community that are likely to benefit from skill development services and programs offered by the commission; and

(iii) employment opportunities offered by the business community; and

(B) develop services and programs that are designed to equip workers and job seekers with the skills required by the business community; and

(2) support business and community economic development activities of local workforce development boards and the state.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3.07, eff. Sept. 1, 2003.

SUBCHAPTER E. INVESTIGATIVE AND SUBPOENA POWERS

Sec. 301.071. INVESTIGATIVE AND SUBPOENA POWERS. (a) In discharging duties imposed under this title, an appeal tribunal established under this title, an examiner or other hearings officer employed or appointed by the commission or the executive director, a member of the commission, or a representative authorized by the commission may:

(1) administer oaths;

(2) take depositions;

(3) certify to official acts; and

(4) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a disputed claim or the administration of this title.

(b) The commission's authority to conduct an investigation, assemble information, or require the submission of documentary or oral testimony is limited to the power necessary to properly administer this title.

(c) Notwithstanding Section 154.004, Local Government Code, or any other law, the executive director shall pay the fee of a sheriff or constable who serves a subpoena under this section. The fee shall be paid from the commission's administrative funds, and the comptroller shall issue a warrant for the fee as directed by the

executive director.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.071 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 631, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.072. ENFORCEMENT OF SUBPOENA; OFFENSE; PENALTIES. (a) If a person is guilty of contumacy or refuses to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county or district court, on application by the commission or its authorized representative, may order the person to appear before a member of the commission, the commission, or its authorized representative to produce evidence or give testimony regarding the matter under investigation or in question. Only a court within the jurisdiction where the commission conducts the inquiry or where the person is found, resides, or transacts business may issue the order.

(b) Failure to obey a court order issued under Subsection (a) is punishable as contempt.

(c) A person commits an offense if the person, without just cause, does not obey a subpoena of the commission. An offense under this subsection is punishable by a fine of not less than $200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 202.072 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.073. SELF-INCRIMINATION. (a) In any cause or proceeding before the commission, a person is not excused from attending and testifying, from producing books, papers, correspondence, memoranda, and other records, or from obeying a subpoena of the commission, a member of the commission, or a representative of the commission on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a penalty or forfeiture.

(b) A person may not be prosecuted or subjected to penalty or

forfeiture for or because of a transaction or thing for which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination except for perjury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.073 by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.074. DEFAMATION. An oral or written statement made to the commission or to an employee of the commission in connection with the discharge of the commission's or the employee's duties under Subtitle A may not be the basis for an action for defamation of character.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.074 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

SUBCHAPTER F. RECORDS

Sec. 301.081. EMPLOYEE RECORDS OF EMPLOYING UNIT; OFFENSE; PENALTY. (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this title. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this title.

(c) Employment information obtained or otherwise secured under this section may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this title or as provided by commission rule and consistent with federal law.

(d) A person commits an offense if the person violates any provision of this section. An offense under this subsection is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.091 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1333 (S.B. 1619), Sec. 1, eff. September 1, 2007.

Sec. 301.082. COPIES OF RECORDS. (a) The executive director may furnish a photostatic or certified copy of a record in the commission's possession to a person entitled to receive a copy of the record on application by the person.

(b) The executive director shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.092 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.083. ACCESS TO RECORDS BY RAILROAD RETIREMENT BOARD. (a) The executive director may make state records relating to the administration of Subtitle A available to the Railroad Retirement Board.

(b) The executive director may furnish the Railroad Retirement Board with copies of the records requested by the board at the board's expense.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.093 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.084. DESTRUCTION OF RECORDS. The executive director may destroy any of the records of the agency under safeguards that protect the confidential nature of the records if the executive director:

(1) determines that the records no longer serve a legal,

administrative, or other useful purpose; or

(2) has made an authentic reproduction of the records to be destroyed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.094 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.02(b), eff. Sept. 1, 1995.

Sec. 301.085. UNEMPLOYMENT COMPENSATION AND JOB MATCHING SERVICES INFORMATION; OFFENSE; PENALTY. (a) In this section:

(1) "Job matching services information" means information in the records of the commission that pertains to the commission's job matching services provided to employers and job seekers through the Internet, workforce centers, or other means.

(2) "Unemployment compensation information" means information in the records of the commission that pertains to the administration of Subtitle A, including any information collected, received, developed, or maintained in the administration of unemployment compensation benefits or the unemployment compensation tax system.

(b) Consistent with federal law, the commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of unemployment compensation information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in unemployment compensation information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as applicable.

(b-1) The commission shall adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of job matching services information. The rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in job matching services information, including any information that foreseeably could be combined with other publicly available information to reveal identifying information regarding the individual, employer, or employing unit, as

applicable.

(c) Unemployment compensation information and job matching services information are not public information for purposes of Chapter 552, Government Code.

(d) Unless permitted by this subchapter or commission rule, a person commits an offense if the person solicits, discloses, receives, or uses, or authorizes, permits, participates in, or acquiesces in another person's use of, unemployment compensation information or job matching services information that reveals:

(1) identifying information regarding any individual or past or present employer or employing unit; or

(2) information that foreseeably could be combined with other publicly available information to reveal identifying information regarding any individual or past or present employer or employing unit.

(e) An offense under Subsection (d) is a Class A misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 1052 (H.B. 2120), Sec. 4, eff. June 15, 2007.
Added by Acts 2007, 80th Leg., R.S., Ch. 1333 (S.B. 1619), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1225 (S.B. 563), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1225 (S.B. 563), Sec. 3, eff. September 1, 2011.

Sec. 301.086. PROVISION OF CERTAIN INFORMATION TO COMPTROLLER. (a) Not later than June 1 of every fifth year, the commission shall provide to the comptroller, for the purpose of assisting the comptroller in the identification of persons entitled to unclaimed property reported to the comptroller, the name, address, social security number, and date of birth of each person about whom the commission has such information in its records.

(b) Information provided to the comptroller under this section is confidential and may not be disclosed to the public.

(c) The commission shall provide the information in the format prescribed by rule of the comptroller.

Added by Acts 2009, 81st Leg., R.S., Ch. 232 (S.B. 1589), Sec. 8, eff.

September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 47.03, eff. September 28, 2011.

SUBCHAPTER H. TAX REFUND FOR WAGES PAID TO EMPLOYEE RECEIVING FINANCIAL ASSISTANCE

Sec. 301.101. DEFINITION. In this subchapter, "wages" has the meaning assigned by Sections 51(c)(1), (2), and (3), Internal Revenue Code of 1986 (26 U.S.C. Section 51).

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.071 by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.102. TAX REFUND VOUCHER. (a) The commission shall issue a tax refund voucher in the amount allowed by this subchapter and subject to the restrictions imposed by this subchapter to a person that meets the eligibility requirements under this subchapter.

(b) A person issued a tax refund voucher may, subject to the provisions of this subchapter, apply for the amount of the refund of a tax that is paid by the person to this state if the tax is administered by the comptroller and deposited to the credit of the general revenue fund without dedication.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.072 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.103. AMOUNT OF REFUND; LIMITATION. (a) The amount of the refund allowed under this subchapter is equal to 20 percent of the total wages, up to a maximum of $10,000 in wages for each employee, paid or incurred by a person for services rendered by an employee of the person during the period beginning with the date the employee begins work for the person and ending on the first anniversary of that date.

(b) The refund claimed for a calendar year may not exceed the amount of net tax paid by the person to this state, after any other

applicable tax credits, in that calendar year.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.073 by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.104. ELIGIBILITY. A person is eligible for the refund for wages paid or incurred by the person, during each calendar year for which the refund is claimed, only if:

(1) the wages paid or incurred by the person are for services of an employee who is:

(A) a resident of this state; and

(B) a recipient of:

(i) financial assistance and services in accordance with Chapter 31, Human Resources Code; or

(ii) medical assistance in accordance with Chapter 32, Human Resources Code;

(2) the person satisfies the certification requirements under Section 301.105; and

(3) the person, under an arrangement under Section 32.0422, Human Resources Code, provides and pays for the benefit of the employee a part of the cost of coverage under:

(A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code;

(B) a health benefit plan approved by the commissioner of insurance;

(C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.); or

(D) a medical savings account or other health reimbursement arrangement authorized by law.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.074 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1165, Sec. 4, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.535, eff. Sept. 1, 2003.

Sec. 301.105. CERTIFICATION. A person is not eligible for the refund for wages paid or incurred by the person unless the person has received a written certification from the commission that the employee is a recipient of medical assistance or financial assistance and services on or before the day the employee begins employment with the person.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.075 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1, 2003.

Sec. 301.106. APPLICATION FOR REFUND; ISSUANCE. (a) A person may apply for a tax refund voucher for wages paid an employee in a calendar year only on or after January 1 and before April 1 of the following calendar year.

(b) The commission shall promulgate a form for the application for the tax refund voucher. A person must use this form in applying for the refund.

(c) On issuance of the tax refund voucher to the person by the commission, the person may apply the voucher against a tax paid by the person to this state only for the calendar year for which the voucher is issued.

Added by Acts 1993, 73rd Leg., ch. 486, Sec. 4.01, eff. Jan. 1, 1994. Redesignated from Human Resources Code Sec. 31.076 and amended by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.107. RULES. (a) The commission shall adopt rules as necessary to carry out its powers and duties under this subchapter.

(b) The Texas Department of Human Services shall provide to the commission information as necessary to enable the commission to determine whether a person is eligible for the tax refund authorized by this subchapter.

Added by Acts 1997, 75th Leg., ch. 228, Sec. 2, eff. Sept. 1, 1997.

Sec. 301.108. LIMITATION ON CONVEYANCE, ASSIGNMENT, OR TRANSFER

OF REFUND. A person may convey, assign, or transfer a refund under this subchapter to another person only if:

(1) the employing unit is sold, conveyed, assigned, or transferred, in the same transaction or in a related transaction, to the person to whom the refund is conveyed, assigned, or transferred; or

(2) the person to whom the refund is conveyed, assigned, or transferred:

(A) is subject to a tax administered by the comptroller and deposited to the credit of the general revenue fund without dedication; and

(B) directly or indirectly owns, controls, or otherwise directs, in whole or in part, an interest in the person from whom the refund is conveyed, assigned, or transferred.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 3A.02, eff. Sept. 1, 2003.

SUBCHAPTER I. CIVIL RIGHTS DIVISION

Sec. 301.151. DEFINITIONS. In this subchapter:

(1) "Director" means the director of the division.

(2) "Division" means the civil rights division of the commission.

(3) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1138 , Sec. 30(7), eff. September 1, 2015.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 30(7), eff. September 1, 2015.

Sec. 301.153. GOVERNANCE; AUTHORITY. (a) The commission shall establish policies for the division and the executive director shall supervise the director in administering the activities of the division.

(b) The commission is the state authority established as a fair employment practice agency and is authorized, with respect to an unlawful employment practice, to:

(1) grant relief from the practice;

(2) seek relief from the practice; or

(3) institute criminal proceedings.

(c) The commission shall administer Chapter 21 of this code and Chapter 301, Property Code, including the powers and duties formerly exercised by the former Commission on Human Rights under those laws.

(d) A reference in Chapter 21 of this code, Chapter 301, Property Code, or any other law to the former Commission on Human Rights means the commission.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 20, eff. September 1, 2015.

Sec. 301.154. DIRECTOR. (a) The director shall be appointed by the executive director to administer the powers and duties of the division.

(b) To be eligible for appointment, the director must have relevant experience in the area of civil rights, specifically in working to prevent the types of discrimination the division is charged with preventing. The director must demonstrate a commitment to equal opportunity for minorities, women, and the disabled. The director should also have relevant experience with housing and employment discrimination claims.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 21, eff. September 1, 2015.

Sec. 301.155. INVESTIGATOR TRAINING PROGRAM; PROCEDURES MANUAL. (a) A person who is employed under this chapter by the division as an investigator may not conduct an investigation until the person completes a comprehensive training and education program for investigators that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the requirements relating to employment adopted under the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.)

and its subsequent amendments, with a special emphasis on requirements regarding reasonable accommodations;

(2) various types of disabilities and accommodations appropriate in an employment setting for each type of disability; and

(3) fair employment and housing practices.

(c) Each investigator shall annually complete a continuing education program designed to provide investigators with the most recent information available regarding the issues described by Subsection (b), including legislative and judicial changes in the law.

(d) The director shall develop and biennially update an investigation procedures manual. The manual must include investigation procedures and information and may include information regarding the Equal Employment Opportunity Commission and the United States Department of Housing and Urban Development.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.

Sec. 301.156. ANALYSIS OF DISCRIMINATION COMPLAINTS; REPORT. (a) The division shall collect and report statewide information relating to employment and housing discrimination complaints as required by this section.

(b) Each state fiscal year, the division shall collect and analyze information regarding employment and housing discrimination complaints filed with the division, the Equal Employment Opportunity Commission, the United States Department of Housing and Urban Development, and local commissions in this state. The information must include:

(1) an analysis of employment complaints filed by the basis of the complaint, including:

(A) sex, race, color, age, disability, national origin, religion, and genetic information; and

(B) retaliatory actions against the complainant;

(2) an analysis of housing complaints filed by the basis of the complaint, including sex, race, color, disability, national origin, religion, and familial status;

(3) an analysis of employment complaints filed by issue, including discharge, terms and conditions, sexual harassment,

promotion, hiring, demotion, and layoff;

(4) an analysis of housing complaints filed by issue, including terms and conditions, refusal to rent or sell, discriminatory financing or advertising, and false representation;

(5) an analysis of employment and housing cases closed by the reason the case was closed, including findings or determinations of cause or no cause, successful conciliation, right to sue issued, complaint withdrawn after resolution, no-fault settlement, failure to cooperate by the complainant, and lack of jurisdiction; and

(6) the average processing time for complaints resolved by the division in each state fiscal year, regardless of whether the complaint was filed in the same fiscal year in which the complaint was resolved.

(c) The results of an analysis required under this section shall be included in the commission's annual report to the governor and legislature.

Added by Acts 2003, 78th Leg., ch. 302, Sec. 2.

Sec. 301.157. ANALYSIS OF STATE AGENCY DISCRIMINATION COMPLAINTS; REPORT. (a) Each state fiscal year, the division shall collect and analyze information regarding employment discrimination complaints, other than complaints determined to be without merit, filed with the division against a state agency. The information must include:

(1) an analysis of the complaints, both by number and by type; and

(2) key findings or trends the division identifies during the division's review of state agency personnel policies and procedures under Section 21.453.

(b) The commission shall include the results of the division's analysis under this section in the commission's annual report to the governor and the legislature. The division shall exclude from the report any identifying information of a complainant or a state agency complaint as necessary to maintain confidentiality required by the commission's contract with the federal Equal Employment Opportunity Commission or by other law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 22, eff. September 1, 2015.

SUBCHAPTER J. ADULT EDUCATION AND LITERACY

Sec. 301.171. COOPERATION WITH TEXAS EDUCATION AGENCY TO IMPROVE ADULT EDUCATION AND LITERACY SERVICES. The commission shall collaborate with the Texas Education Agency to improve the coordination and implementation of adult education and literacy services in this state.

Acts 2003, 78th Leg., ch. 817, Sec. 5.01, eff. Sept. 1, 2003. Renumbered from Labor Code, Section 301.151 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(63), eff. September 1, 2005.

SUBCHAPTER K. DETECTION AND PREVENTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE

Sec. 301.191. PREVENTION AND DETECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall develop risk assessment protocols to identify and assess possible instances of fraud, waste, and abuse in child-care programs, including:

(1) the use of unemployment insurance wage records to identify:

(A) potential ineligible parents due to a change in income or underreporting of income;

(B) relative child-care providers who are engaged in other employment; and

(C) parents who do not have the required work history; and

(2) the identification of parents who apply for or receive child-care services in multiple workforce areas simultaneously.

(b) The commission shall ensure that local workforce development boards implement procedures to prevent and detect fraud, waste, and abuse in child-care programs.

(c) The commission may use a motor vehicle record, including a photographic image and signature, to prevent and detect fraud, waste, and abuse in child-care programs.

(d) The commission may use the information under Subsection (c) otherwise for enforcement under this title.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 2, eff. September 1, 2011.

Sec. 301.192. CORRECTION OF CHILD-CARE FRAUD, WASTE, AND ABUSE. (a) The commission shall ensure that corrective action is initiated against a child-care provider who commits fraud, including:

(1) temporarily or permanently withholding payments to the provider for child-care services already delivered;

(2) recovering money paid for child care from the child-care provider;

(3) stopping the provision of authorized child care at the provider's facility or location; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(b) The commission shall ensure that corrective action is initiated against a parent who commits fraud, including:

(1) recovering money paid for child care from the parent;

(2) declaring the parent ineligible for future child care under a commission program;

(3) limiting the enrollment of the parent's child to a regulated child-care provider; or

(4) taking any other action consistent with the intent of the governing statutes or rules to investigate, prevent, or stop suspected fraud.

(c) If the commission proposes to take a corrective action under Subsection (a) or (b), the provider or parent is entitled to appeal the proposed corrective action in accordance with procedures adopted by the commission by rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 2, eff. September 1, 2011.

CHAPTER 302. DIVISION OF WORKFORCE DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Director" means the director of the division.

(2) "Division" means the division of workforce development of the commission.

(3) "Nonrecipient parent" has the meaning assigned by

Section 31.0021, Human Resources Code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 9, eff. June 15, 2007.

Sec. 302.002. GENERAL WORKFORCE DEVELOPMENT POWERS AND DUTIES OF COMMISSION AND EXECUTIVE DIRECTOR. (a) The executive director shall:

(1) to the extent feasible under federal law, consolidate the administrative and programmatic functions of the programs under the authority of the commission to achieve efficient and effective delivery of services;

(2) administer each program and implement corresponding federal and state legislation consolidated under the authority of the commission under this chapter and other applicable state law;

(3) determine the organization and methods of procedure of the division in accordance with applicable state and federal legislation;

(4) appoint and prescribe the duties of all officers, administrators, accountants, attorneys, experts, and other employees as necessary in the performance of the division's duties;

(5) delegate authority to persons appointed under this section as the executive director considers reasonable and proper for the effective administration of the division;

(6) bond any person who handles money or signs checks for the division;

(7) implement workforce training and services policies and programs, consistent with recommendations from the council and as approved by the governor;

(8) serve as an advocate at the state and federal levels for local workforce development boards;

(9) contract with local workforce development boards for program planning and service delivery;

(10) provide training and professional development services for division staff, local workforce development boards, and the staff of those boards;

(11) support research and demonstration projects designed to develop new programs and approaches to service delivery;

(12) provide technical assistance and support to local workforce development boards;

(13) prepare an annual agency performance report for submission to the governor, the legislature, the commission, and the council;

(14) design and administer a statewide comprehensive labor market information system;

(15) serve as the chair of the State Occupational Information Coordinating Committee; and

(16) perform other functions and duties as may be required by law or assigned by the commission.

(b) The executive director may make expenditures, enter into contracts with public, private, and nonprofit organizations, require reports, conduct investigations, and take other action the executive director or commission considers necessary or suitable to fulfill the division's administrative duties.

(c) The executive director may enter interagency contracts and memoranda of understanding with other state agencies for the performance of administrative functions of the agency.

(d) The commission shall adopt rules in accordance with Chapter 2001, Government Code, as necessary for the proper administration of the division.

(e) The executive director may obligate funds from the skills development fund in a manner consistent with the rules adopted by the commission for that program. The executive director shall report to the governor, the legislature, the commission, and the council on a quarterly basis regarding actions taken under this subsection.

(f) In addition to the services provided under Subsection (a)(12), the executive director may enter into contracts with local workforce development boards or other entities to establish service level agreements for technology assistance and support. The executive director may charge fees for services based on the service level options selected by those entities. All fees collected under this subsection may be used only by the commission to pay costs incurred in providing those services.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 1021, Sec. 1, eff. Sept.

1, 1999.

Sec. 302.0025. EMPLOYMENT PLAN AND POSTEMPLOYMENT STRATEGIES. (a) The commission shall ensure that an individual employment plan developed for a recipient of financial assistance or a nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code, includes specific postemployment strategies to assist the recipient or the nonrecipient parent in making a transition to stable employment at a wage that enables the person and the person's family to maintain self-sufficiency.

(b) The individual employment plan must:

(1) consider the person's individual circumstances and needs in determining the person's initial job placement;

(2) identify a target wage that enables the person and the person's family to maintain self-sufficiency;

(3) provide specific postemployment goals and include methods and time frames by which the person is to achieve those goals; and

(4) refer the person to additional educational and training opportunities.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 10, eff. June 15, 2007.

Sec. 302.0026. EMPLOYMENT SERVICES REFERRAL PROGRAM. (a) The commission and local workforce development boards shall develop an employment services referral program for recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients or nonrecipient parents, higher levels of barriers to employment. The referral program must be designed to provide to a recipient or a nonrecipient parent referrals to preemployment and postemployment services offered by community-based organizations.

(b) In developing the referral program, the commission and

local workforce development boards shall, subject to the availability of funds, coordinate partnerships and contract with community-based organizations that provide employment services specifically for persons with high levels of barriers to employment.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 11, eff. June 15, 2007.

Sec. 302.0027. FINANCIAL LITERACY TRAINING. (a) The commission and local workforce development boards shall ensure that each workforce development program offered in this state includes training in financial literacy.

(b) The division shall develop materials and information to be included in the training required by Subsection (a).

(c) The commission may accept a donation of services, money, or property that the commission determines furthers the financial literacy training program. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public records of the commission along with the name of the donor and the purpose of the donation.

Added by Acts 2005, 79th Leg., Ch. 1214 (H.B. 900), Sec. 1, eff. June 18, 2005.

Sec. 302.003. JOB RETENTION AND REEMPLOYMENT ASSISTANCE. The division may provide ongoing job retention and reemployment assistance for a recipient of public assistance or nonrecipient parent who has participated in a job training program.

Added by Acts 1997, 75th Leg., ch. 828, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 12, eff. June 15, 2007.

Sec. 302.0031. COLLEGE CREDIT FOR HEROES PROGRAM. (a) In this

section, "institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(b) The commission shall establish and administer the College Credit for Heroes program to identify, develop, and support methods to maximize academic or workforce education credit awarded by institutions of higher education to veterans and military servicemembers for military experience, education, and training obtained during military service in order to expedite the entry of veterans and military servicemembers into the workforce.

(c) The commission shall work cooperatively with other state agencies, including the Texas Higher Education Coordinating Board, public junior colleges, and other institutions of higher education, to accomplish the purposes of this section.

(d) The commission may award grants to state, local, or private entities that perform activities related to the purposes of this section.

(e) The commission shall administer the program using money previously appropriated to the commission or received from federal or other sources.

(f) The commission may adopt rules as necessary for the administration of this section.

(g) Not later than November 1 of each year, the commission, after consultation with the Texas Higher Education Coordinating Board, shall report to the legislature and the governor on:

(1) the results of any grants awarded under this section;

(2) the best practices for veterans and military servicemembers to achieve maximum academic or workforce education credit at institutions of higher education for military experience, education, and training obtained during military service;

(3) measures needed to facilitate the award of academic or workforce education credit by institutions of higher education for military experience, education, and training obtained during military service; and

(4) other related measures needed to facilitate the entry of trained, qualified veterans and military servicemembers into the workforce.

Added by Acts 2011, 82nd Leg., R.S., Ch. 931 (S.B. 1736), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1164 (S.B. 806), Sec. 1, eff. June 19, 2015.

Sec. 302.0032. TEXAS FAST START PROGRAM. (a) In this section:

(1) "Fast start program" means a career and technical education program designed to help students earn postsecondary certificates and degrees and enter into the workforce quickly.

(2) "Public junior college," "public state college," and "public technical institute" have the meanings assigned by Section 61.003, Education Code.

(b) The commission, in partnership with the Texas Higher Education Coordinating Board, shall establish and administer the Texas Fast Start Program to identify and develop methods to support, and shall provide support for, competency-based, rapid-deployment education delivery models for use by public junior colleges, public state colleges, and public technical institutes. The models must be designed to assist students in maximizing academic or workforce education program credit from public junior colleges, public state colleges, and public technical institutes to expedite the entry of those students into the workforce.

(c) The commission shall work collaboratively with the Texas Higher Education Coordinating Board, public junior colleges, public state colleges, and public technical institutes to accomplish the purposes of this section.

(d) A public junior college, public state college, or public technical institute may use the competency-based, rapid-deployment education delivery models described by Subsection (b) in developing or expanding a fast start program at the college or institute.

(e) A fast start program offered by a public junior college, public state college, or public technical institute must:

(1) focus on the current and future needs of employers in this state;

(2) enable students to obtain postsecondary certificates and degrees at an accelerated pace in high-demand fields or occupations, as identified by local employers;

(3) incorporate competency-based learning techniques;

(4) feature a variety of access channels that are uniquely designed to maximize job preparedness for identified groups such as veterans, high school graduates, and current workforce members

seeking retraining; and

(5) be designed for rapid deployment statewide.

(f) Through the collaboration, the commission may award grants to public junior colleges, public state colleges, and public technical institutes for:

(1) the expansion of existing fast start programs;

(2) the development of new fast start programs; and

(3) any other activities related to the purposes of this section.

(g) A grant received under this section may be used only to:

(1) support a course or program that prepares students for career employment in fields or occupations that are identified as high-demand by local employers;

(2) finance the initial costs of developing a fast start program, including the costs of constructing or renovating facilities, purchasing equipment, and other associated expenses;

(3) finance the development or expansion of a fast start program leading to a postsecondary certificate or degree; or

(4) offer a new or expanded dual credit fast start program jointly with a public high school.

(h) The commission and the Texas Higher Education Coordinating Board shall administer the program using money appropriated to the commission or board, money received from federal or other sources, or money from holding accounts that may be used by the commission for the purpose of skills development.

(i) The commission and the Texas Higher Education Coordinating Board may adopt rules as necessary for the administration of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 216 (S.B. 441), Sec. 1, eff. June 10, 2013.

Sec. 302.0034. EMPLOYMENT ASSISTANCE PROGRAM FOR CERTAIN FAMILIES OF MILITARY PERSONNEL. (a) The commission shall provide employment assistance services, including job placement and other employment-related services, to the spouses and dependents of military personnel who are assigned to duty in this state.

(b) The commission shall provide the services described by Subsection (a) in cooperation with the local workforce development

boards in areas of the state having a defense community, as that term is defined by Section 481.501, Government Code.

(c) The commission may accept and apply for gifts, grants, donations, and appropriations from public and private sources to fund the commission's duties under this section. The commission may use money from job training funds and other money appropriated by the legislature to implement the requirements of this section.

Added by Acts 2005, 79th Leg., Ch. 682 (S.B. 212), Sec. 1, eff. June 17, 2005.

Sec. 302.0035. EMPLOYMENT ASSISTANCE PROGRAM FOR CERTAIN PARENTS. The commission shall provide employment assistance services, including skills training, job placement, and employment-related services, to a person referred to the commission by:

(1) the Title IV-D agency under Chapter 231, Family Code; or

(2) a court under Section 157.211, Family Code.

Added by Acts 1999, 76th Leg., ch. 1072, Sec. 7, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 311, Sec. 4, eff. Sept. 1, 2001.

Sec. 302.0036. TRANSPORTATION ASSISTANCE. (a) To the extent funds are available, the commission and local workforce development boards shall provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code, that enables the recipients and nonrecipient parents to maintain a stable work history and attain financial stability and self-sufficiency.

(b) The commission and local workforce development boards may provide the assistance described by Subsection (a) by implementing new initiatives or expanding existing initiatives that provide transportation assistance to recipients of financial assistance or nonrecipient parents for whom transportation is a barrier to employment.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 13, eff. June 15, 2007.

Sec. 302.0037. MAXIMIZING FEDERAL FUNDS FOR TRANSPORTATION ASSISTANCE. (a) The commission and local workforce development boards shall maximize the state's receipt of federal funds available to provide transportation assistance to recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code.

(b) The commission and local workforce development boards may, within any applicable appropriation limits, take any action required by federal law to receive federal funds to provide transportation assistance.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 14, eff. June 15, 2007.

Sec. 302.0038. HOUSING RESOURCES FOR CERTAIN RECIPIENTS OF FINANCIAL ASSISTANCE AND CERTAIN NONRECIPIENT PARENTS. (a) The commission, in cooperation with local workforce development boards, shall, for a recipient of financial assistance or nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code:

(1) identify unmet housing needs and assess whether those needs are barriers to the person's full participation in the workforce and attainment of financial stability and self-sufficiency; and

(2) develop a service plan that takes into consideration the person's unmet housing needs.

(b) The commission by rule shall develop and implement a program through which a recipient or a nonrecipient parent identified under Subsection (a) as having unmet housing needs is referred by the commission or local workforce development board to agencies and organizations providing housing programs and services and connected to other housing resources. To provide those referrals and

connections, the commission shall establish collaborative partnerships between:

(1) the commission;

(2) local workforce development boards;

(3) municipal, county, and regional housing authorities; and

(4) sponsors of local housing programs and services.

(c) The commission shall ensure that commission and local workforce development board staff members receive training regarding the programs and services offered by agencies and organizations with which the commission establishes partnerships under Subsection (b) and other available housing resources.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.93(a), eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 15, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 16, eff. June 15, 2007.

Sec. 302.004. FUNDS FOR JOB TRAINING, EMPLOYMENT SERVICES, ADULT EDUCATION AND LITERACY ACTIVITIES, AND CHILD CARE. In providing job training, employment services, adult education and literacy services, and child care to eligible persons, the commission, notwithstanding the provisions in this chapter or other law, may establish a need-based formula to allocate funds available under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. No. 104-193) and the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) for job training, employment services, adult education and literacy activities, and child care to local workforce development areas so as to:

(1) ensure compliance with federal participation rates and requirements and full utilization of the funding; and

(2) achieve integrated education and training.

Added by Acts 1997, 75th Leg., ch. 828, Sec. 2, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.02, eff. September 1, 2013.

Sec. 302.0041. CHILD-CARE DEMONSTRATION PROJECT GRANTS. (a) The commission may make grants available on a one-time basis to local workforce development boards to enable the boards to design and implement child-care demonstration projects.

(b) A local workforce development board that receives a grant under this section shall use the grant to design and implement a demonstration project that:

(1) expands child-care services in underserved rural local workforce development areas, including:

(A) home-based child-care services;

(B) child-care services at nontraditional times, including services that accommodate the child-care needs of parents who work shift-schedules, evenings, and weekends; or

(C) services to link child-care programs, prekindergarten programs under Subchapter E, Chapter 29, Education Code, and the federal Head Start program;

(2) creates or expands existing pilot programs, based on demonstration models from other states, that provide strategies for successfully recruiting and retaining child-care providers;

(3) creates pilot programs designed to assist low-income, at-risk parents receiving child-care services provided by the commission for extended periods who may benefit from career counseling and employment location services that promote the potential for career advancement; or

(4) develops initiatives that foster school readiness in young children and encourage pre-reading and problem-solving skills in those children.

(c) To be eligible for a grant under this section, a local workforce development board must:

(1) conduct the demonstration project for which the grant is made in a manner that allows replication of the project in whole or part by other local workforce development boards to address similar child-care service needs in underserved local workforce development areas; and

(2) use the grant to develop direct child-care services that, at the conclusion of the demonstration project, may be funded.

(d) Child-care services that may continue to be funded under Subsection (c)(2) at the conclusion of the demonstration project may

be funded through existing local workforce development board resources for child-care services or other local resources.

Added by Acts 2001, 77th Leg., ch. 495, Sec. 1, eff. June 11, 2001.

Sec. 302.0042. EVALUATION OF ALLOCATION FORMULAS FOR CHILD CARE DEVELOPMENT FUNDS. (a) The commission shall annually evaluate the formulas used by the commission to distribute federal child care development funds to local workforce development boards in order to ensure that the formulas address the child care needs of each local workforce development board.

(b) The commission's evaluation must assess:

(1) the use of current federal child care funds by each local workforce development board;

(2) the ability of each local workforce development board to meet child care performance measures;

(3) the average cost of child care in each local workforce development area;

(4) the poverty rate of each local workforce development area compared to the state's poverty rate;

(5) the number of children on waiting lists for child care in each local workforce development area; and

(6) the number of vacant slots available for child care placement in each local workforce development area.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.0043. EVALUATION OF EFFECTIVENESS OF SUBSIDIZED CHILD CARE PROGRAM. (a) To evaluate the effectiveness of the commission's child care program in helping parents who receive subsidized child care to maintain employment, the commission shall compile, regarding each parent receiving subsidized child care from the commission's child care program, the following information regarding the wage and employment status of the parent:

(1) if the parent receives both financial assistance under Chapter 31, Human Resources Code, and subsidized child care, whether the parent:

(A) finds employment; and

(B) maintains the parent's employment after one year;

(2) if the parent receives only subsidized child care, whether the parent:

(A) maintains the parent's employment; and

(B) experiences a change in the parent's earnings after one year of employment; and

(3) if the parent leaves the child care program:

(A) the parent's reason for leaving the program; and

(B) whether the parent returns to financial assistance under Chapter 31, Human Resources Code, or becomes a recipient of financial assistance under that chapter for the first time.

(b) The commission may use the wage and employment records of the parents to determine the employment outcome of the parents.

(c) The commission shall also measure and evaluate the effectiveness of the commission's child care program in:

(1) improving the training of child care professionals; and

(2) facilitating collaboration with Head Start, the Texas Education Agency, the Department of Protective and Regulatory Services, and the Health and Human Services Commission.

(d) The commission shall periodically analyze the information collected by the commission under this section and shall compile its findings regarding the effectiveness of the commission's child care program.

(e) The commission shall make the information collected by the commission and the commission's findings available to local workforce development boards.

(f) Not later than January 15 of each odd-numbered year, the commission shall report to the legislature regarding the commission's findings regarding the effectiveness of the commission's child care program. The report must:

(1) include employment outcome information, disaggregated by local workforce development area, regarding parents receiving subsidized care under the program; and

(2) identify multiyear trends in the information collected and analyzed by the commission under this section, including trends in the information for at least the five state fiscal years preceding the date of the report.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1,

2003.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 23, eff. September 1, 2015.

Sec. 302.00435. SUBSIDIZED CHILD CARE PROGRAM; INPUT POLICY. The commission shall develop a policy for obtaining, through appropriate methods, input from interested parties regarding its subsidized child care program and for using that input in administering that program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 24, eff. September 1, 2015.

Sec. 302.0044. WAGE TRACKING OF TANF CHOICES PROGRAM RECIPIENTS. (a) The commission, in consultation with local workforce development boards, shall compile the following information with regard to each recipient of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program:

(1) whether the recipient is placed in employment paying wages equal to or exceeding 200 percent of the federal poverty level for a family that is the size of the recipient's family; and

(2) if the recipient is placed in employment earning wages equal to or exceeding the amount described by Subdivision (1), whether the recipient has earned that amount before the first anniversary of the date of the recipient's initial date of employment.

(b) Not later than December 15 of each year, the commission shall report to the legislature the percentage of recipients of employment services under the Temporary Assistance for Needy Families (TANF) CHOICES program who meet the wage criteria described by Subsections (a)(1) and (2).

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.0045. QUALITY INITIATIVES BY COMMISSION. (a) The commission shall collect state and local information relating to the

effectiveness of the use of four percent quality dollars by local workforce development boards. The commission shall produce a report that highlights promising practices in expanding quality early education.

(b) In performing its duties under this section, the commission shall report to the legislature and other interested persons on local programs and services that show promise in expanding access to quality early education.

Added by Acts 2001, 77th Leg., ch. 547, Sec. 1, eff. Sept. 1, 2001.

Sec. 302.0046. NOTICE REGARDING TERMINATION OF CERTAIN CHILD-CARE SERVICES. (a) The commission shall direct each local workforce development board to notify a working poor subsidy recipient who resides in that board's local workforce development area and who receives child-care services from a child-care services program financed through state or federal funds of any termination of the subsidy for any reason other than involuntary termination resulting from the recipient's actions or failure to act.

(b) Except as otherwise provided by this subsection, the local workforce development board shall provide the notice in writing to the recipient not later than the 30th day before the scheduled date of termination of the affected child-care services subsidy. The notice must include information regarding other child-care services programs under which the recipient may be eligible for services. If providing notice on or before the deadline specified by this subsection would interfere with the ability of the local workforce development board to comply with its duties regarding the number of children to be served or would require the expenditure of funds in excess of the amount appropriated to the board, the board may provide the notice on the earliest date on which it is practicable for the board to provide notice.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.0047. ELECTRONIC VALIDATION OF CHILD-CARE SERVICES AND ATTENDANCE. If feasible, the commission shall use an electronic validation system to ensure that parents verify that a provider of

relative child care is providing care and that the child for whom the care is provided is in attendance during the period for which the child-care provider is being reimbursed for services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 4, eff. September 1, 2011.

Sec. 302.005. CHILD-CARE TRAINING CENTER PILOT PROGRAMS. (a) The commission shall establish four pilot programs in which the division shall certify day-care facilities licensed under Chapter 42, Human Resources Code, as training centers that offer training and certification for recipients of public assistance in basic skills, child care, child-care vendor entrepreneurial training, and early childhood education. The commission shall determine the pilot sites, with at least one site in an urban area and at least one site in a rural area.

(b) The commission shall cooperate with the Department of Protective and Regulatory Services in the adoption of rules under this section. The commission may not adopt a rule under this section that conflicts with a rule of the Department of Protective and Regulatory Services.

(c) The commission shall award a contract to a child-care facility to act as a training center based on:

(1) the level of training of the facility's staff; and

(2) the history of the facility in delivering high-quality care.

(d) The child-care subsidy for a person who participates in training through a pilot program and who qualifies for a subsidy for the person's child shall be paid directly to the facility. The facility may not count such a person in the facility's child-to-staff ratio.

(e) A person who is a recipient of financial assistance under Chapter 31, Human Resources Code, may qualify to participate in training through a pilot program by applying to the commission and:

(1) providing proof of possession of a high school diploma or the equivalent or enrollment in a program leading to a high school diploma or the equivalent;

(2) demonstrating possession of general skills and competence, as determined by commission rule; and

(3) demonstrating, to the satisfaction of the commission, a long-term commitment to the early childhood care profession.

(f) Funding for a person who participates in training through a pilot program shall be provided through a work supplement program for 12 months. The commission may provide additional funding for the person to participate in training through the pilot program for an additional 12 months.

(g) The commission may also provide funding for a person who participates in training through a pilot program to:

(1) complete the person's Child Development Associate national credential, Certified Child-Care Professional Credential, or other child-care certification, as determined by the commission;

(2) participate in ongoing interactive training; and

(3) provide start-up grants and loans to establish the person's own child-care business.

(h) A facility that provides training through a pilot program shall maintain a mentor relationship with each person who participates in training through the program at the facility. A person who participates in training at a facility may be required to participate in additional training programs after the date the person completes the pilot program.

(i) The child of a person who participates in training through a pilot program is entitled to the same discounted rate for child-care services at the facility in which the person is participating in training that the facility offers to the facility's employees. The child-care subsidy provided for the person's child shall be paid to the facility in which the person is participating in training at the rate that the facility offers to the facility's employees. The money saved by the commission under this subsection may be used by the commission to administer the pilot program established under this section.

(j) The commission shall adopt rules that establish eligibility criteria for a facility to participate in a pilot program and provide requirements for implementation of the pilot program.

(k) Repealed by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(7).

(l) In this section, "work supplement program" means a program under which the state reserves all or part of the amounts that would be payable as benefits to welfare recipients and uses those amounts to provide and subsidize jobs for the recipients.

Added by Acts 1997, 75th Leg., ch. 684, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 302.003 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(83), eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 817, Sec. 9.01(7), eff. Sept. 1, 2003.

Sec. 302.006. PROFESSIONAL CHILD-CARE TRAINING SCHOLARSHIPS, BONUSES, AND WAGE SUPPLEMENTATION. (a) The commission may develop and administer a program under which the commission awards scholarships in the amount of $1,000 each for professional child-care training to eligible recipients.

(b) A recipient may use a scholarship awarded under this section only to pay expenses associated with obtaining:

(1) Child Development Associate (CDA) national credentials;

(2) Certified Child-Care Professional (CCP) credentials; or

(3) a level one certificate or associate's degree in the area of child development or early childhood education from a public or private institution of higher education.

(c) To be eligible to receive a scholarship awarded under this section, a person must:

(1) be employed in a child-care facility, as defined by Section 42.002, Human Resources Code;

(2) intend to obtain a credential, certificate, or degree specified in Subsection (b);

(3) agree to work for at least 18 additional months in a child-care facility, as defined by Section 42.002, Human Resources Code, that accepts federal Child Care Development Fund subsidies and that, at the time the person begins to fulfill the work requirement imposed by this subdivision, is located:

(A) within the attendance zone of a public school campus considered low-performing under Subchapter E, Chapter 39, Education Code; or

(B) in an economically disadvantaged community, as determined by the commission; and

(4) satisfy any other requirements adopted by the commission.

(d) A person may not receive more than one scholarship awarded under this section.

(e) In addition, the commission may provide for payment of a

bonus or wage supplementation to a scholarship recipient who for 18 months after the date of receiving the scholarship provides care for children younger than six years of age while remaining in the employment of the child-care facility that employed the person when the scholarship was awarded and that meets the requirements of Subsection (c)(3). Any bonus or wage supplementation provided under this subsection shall be paid in equal shares by the scholarship recipient's employer and the commission. The commission shall determine the amount of any bonus and the amount and duration of any wage supplementation provided under this subsection.

(f) The commission shall fund scholarships and any bonuses or wage supplementation provided under this section through federal Child Care Development funds or other funding sources available to the commission. Total funding may not exceed $2 million per state biennium.

(g) The commission shall adopt rules necessary to implement this section. The rules must include provisions that:

(1) address the computation of the 18-month service requirement prescribed by Subsection (c); and

(2) ensure that the commission may recover scholarship money from a recipient who fails to comply with that service requirement or any other requirement imposed by the commission.

Added by Acts 1999, 76th Leg., ch. 1433, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 494, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 342, Sec. 6, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 4.05, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 895 (H.B. 3), Sec. 65, eff. June 19, 2009.

Sec. 302.007. REPORT ON TRADE ADJUSTMENT PROGRAMS. (a) The commission shall submit an annual report to the legislature on the effectiveness of federal programs designed to provide trade adjustment assistance to persons in this state.

(b) The report shall include the following information regarding persons who have participated in a program described by Subsection (a):

(1) the number of persons who enter employment;

(2) the occupations in which the persons are placed;

(3) the wages earned by persons before and after participation in the program;

(4) whether a person who enters employment after completion of a program retains that employment for at least six months;

(5) the number of persons participating in integrated vocational and language training programs; and

(6) whether a participant has acquired basic skills to enhance employability in the participant's local labor market.

Added by Acts 1999, 76th Leg., ch. 482, Sec. 1, eff. Sept. 1, 1999. Renumbered from Sec. 302.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(82), eff. Sept. 1, 2001.

Sec. 302.008. STATEWIDE TECHNOLOGY WORKFORCE CAMPAIGN. The commission shall develop an information and marketing campaign designed to encourage residents of the state to enter the technology workforce. The campaign shall target populations that are traditionally economically disadvantaged and underrepresented in the technology workforce.

Added by Acts 1999, 76th Leg., ch. 540, Sec. 1, eff. June 18, 1999.

Sec. 302.009. JOB PLACEMENT INCENTIVE PROGRAM. (a) The commission by rule shall develop a job placement incentive program under which persons with whom local workforce development boards contract for employment services under Chapter 2308, Government Code, are provided incentives for placing recipients of financial assistance and nonrecipient parents participating in employment programs under Chapter 31, Human Resources Code, in higher-wage jobs, as determined by the commission.

(b) In developing guidelines for the job placement incentive program, the commission shall:

(1) define measures for higher-wage jobs based on:

(A) locally appropriate indicators of the wages necessary to lift recipients of employment services out of poverty and into self-sufficiency; and

(B) the self-sufficiency wage developed for each local workforce development board under the Workforce Investment Act of

1998 (29 U.S.C. Section 2801 et seq.); and

(2) involve representatives of local workforce development boards in developing guidelines for the program and the measures for higher-wage jobs.

(c) The commission shall administer the job placement incentive program through the local workforce development boards.

(d) A local workforce development board that provides a monetary incentive under the job placement incentive program to a person with whom the board contracts for employment services shall require the person to use the money for expenses relating to education, training, and support services necessary to prepare, place, and maintain recipients of financial assistance and nonrecipient parents in jobs paying wages that allow those persons to attain self-sufficiency.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 17, eff. June 15, 2007.

Sec. 302.010. POSTEMPLOYMENT SERVICES GUIDELINES. (a) The commission by rule shall develop guidelines under which local workforce development boards provide postemployment services to a recipient of financial assistance or nonrecipient parent participating in an employment program under Chapter 31, Human Resources Code.

(b) In developing the guidelines, the commission must consider the difficulties the recipient or nonrecipient parent is likely to encounter in acquiring additional education and training after becoming employed.

(c) The commission shall assist local workforce development boards in meeting the guidelines by providing information about model programs and best practices, including employer involvement in past employment services.

(d) The commission shall involve representatives of local workforce development boards and other appropriate organizations in developing the guidelines and identifying model programs and best practices.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 18, eff. June 15, 2007.

Sec. 302.011. POSTEMPLOYMENT CASE MANAGEMENT AND MENTORING. The commission shall encourage local workforce development boards to provide postemployment case management services for and use mentoring techniques to assist recipients of financial assistance and nonrecipient parents who participate in employment programs under Chapter 31, Human Resources Code, and have, in comparison to other recipients and nonrecipient parents, higher levels of barriers to employment. The case management services and mentoring techniques must be designed to increase the person's potential for wage growth and development of a stable employment history.

Added by Acts 2001, 77th Leg., ch. 466, Sec. 1, eff. Sept. 1, 2001.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.94, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 19, eff. June 15, 2007.

Sec. 302.012. MONITORING OF EMPLOYMENT HISTORY OF CERTAIN FORMER RECIPIENTS OF PUBLIC ASSISTANCE. (a) The division shall develop and implement a system to monitor the long-term employment history of persons who are former recipients of assistance under employment programs operated by the division under:

(1) Chapter 31, Human Resources Code; and

(2) 7 U.S.C. Section 2015(d).

(b) In designing the system, the division shall cooperate with the Texas Department of Human Services.

(c) For each former recipient of assistance, the system must be designed to:

(1) establish a baseline earnings measure based on the recipient's earnings on leaving the employment program;

(2) track the wage and employment outcomes of the recipient for a period of up to but not more than three years;

(3) provide, to the extent possible, information regarding

the recipient's household composition and earnings;

(4) provide, to the extent possible, information regarding additional training or education received by the recipient;

(5) compute:

(A) the recipient's individual earnings as a percentage of the federal poverty level; and

(B) if data is available, the recipient's household earnings as a percentage of the federal poverty level; and

(C) if data is available, the recipient's income as a percentage of the federal poverty level adjusted for the total value of any public assistance utilized by the recipient's household, including, but not limited to, medical assistance, food stamps, child care, transportation assistance, the federal earned income tax credit, and job training activities; and

(6) compare the recipient's individual earnings to a self-sufficiency standard similar to that required under 20 C.F.R. Section 663.230.

(d) The commission shall report to the legislature not later than January 1 of each odd-numbered year regarding the information obtained from the system developed under Subsection (a). The report required under this subsection may be made separately or as a part of any other required report submitted to the legislature by the commission.

Added by Acts 2001, 77th Leg., ch. 837, Sec. 1, eff. Sept. 1, 2001. Renumbered from Labor Code Sec. 302.009 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(102), eff. Sept. 1, 2003.

Sec. 302.013. LOCAL WORKFORCE DEVELOPMENT BOARD ADVISORY COMMITTEE. (a) In this section, "advisory committee" means the local workforce development board advisory committee created under this section.

(b) The organization composed of a member of and the staff director of each local workforce development board in this state shall establish a local workforce development board advisory committee composed of nine members appointed by the executive officers of that organization.

(c) The advisory committee shall be composed of:

(1) six members of local workforce development boards who

serve as members of the organization described by Subsection (b); and

(2) three staff directors of local workforce development boards who serve as members of the organization described by Subsection (b).

(d) The members of the advisory committee must represent different geographic areas of the state.

(e) The advisory committee shall:

(1) meet at least quarterly;

(2) report to the commission at least annually; and

(3) advise the commission and commission staff regarding the programs, policies, and rules of the commission that affect the operations of local workforce development boards and the local workforce delivery system.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.06, eff. Sept. 1, 2003.

Sec. 302.014. EMPLOYMENT INFORMATION FOR SECONDARY SCHOOL STUDENTS. (a) The commission shall provide the Texas Education Agency with information at least each quarter regarding current and projected employment opportunities in this state, disaggregated by county or other appropriate region.

(b) The Texas Education Agency shall provide the information obtained under Subsection (a) to school districts for use in local planning and implementation of career and technical education and training programs.

Added by Acts 2013, 83rd Leg., R.S., Ch. 212 (H.B. 809), Sec. 1, eff. September 1, 2013.

Sec. 302.015. PROVISION OF EMPLOYMENT SERVICES TO CERTAIN NONRECIPIENT PARENTS. The commission shall provide employment services, including needs assessment, job training, postemployment, and related support services, to nonrecipient parents to the same extent the services are provided to recipients of financial assistance under Chapter 31, Human Resources Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1300 (S.B. 589), Sec. 20,

eff. June 15, 2007.

Sec. 302.016. RULES REGARDING PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS. The commission shall adopt rules necessary to implement Section 497.0596(a)(4), Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1282 (H.B. 1914), Sec. 19, eff. June 19, 2009.

Sec. 302.017. PEACE OFFICER EMPLOYMENT OPPORTUNITY INTERNET WEBSITE. (a) In this section, "peace officer" has the meaning assigned by Section 1701.001, Occupations Code.

(b) The commission shall develop, maintain, and promote a statewide employment opportunity Internet website to facilitate:

(1) public awareness of peace officer employment opportunities with state and local law enforcement agencies; and

(2) an exchange of information between individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers.

(c) The Internet website must:

(1) be accessible to members of the public; and

(2) provide to individuals seeking employment as peace officers and state and local law enforcement agencies that have posted employment opportunities on the website an organized means of exchanging information.

(d) The commission shall contract with the Texas Commission on Law Enforcement to develop a license verification interface to verify whether an applicant for employment as a peace officer:

(1) holds a current license issued by the Texas Commission on Law Enforcement under Chapter 1701, Occupations Code, and, if so, the level of that license; and

(2) has had the applicant's license revoked or suspended by the Texas Commission on Law Enforcement.

(e) The Texas Commission on Law Enforcement shall provide the commission with technical assistance in the development and testing of the license verification interface under Subsection (d).

(f) If the development and operation of the Internet website

and the associated license verification interface is not possible due to a lack of available funding, the commission shall:

(1) enter into a memorandum of understanding with the Texas Commission on Law Enforcement to integrate a peace officer job matching database for individuals seeking employment as peace officers in this state and state and local law enforcement agencies seeking applicants for employment as peace officers into the commission's existing Labor Exchange System; and

(2) ensure that:

(A) the commission registers an Internet domain name that is unique and that identifies on its face the purpose of the peace officer job matching database; and

(B) the registered domain name and associated link directs users of the Internet to a web page that instructs users on how to use the Labor Exchange System and includes a link to enter that system.

Added by Acts 2009, 81st Leg., R.S., Ch. 460 (H.B. 2580), Sec. 1, eff. June 19, 2009.
Redesignated from Labor Code, Section 302.016 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(42), eff. September 1, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 93 (S.B. 686), Sec. 2.45, eff. May 18, 2013.

Sec. 302.019. OCCUPATIONAL SHORTAGE STUDY; REPORT. (a) The commission shall gather and study information relating to existing and projected shortages in high-wage, high-demand occupations in this state. The study conducted by the commission under this section must include information on existing and projected shortages in high-wage, high-demand occupations in industrial job sectors, including:

(1) construction;

(2) manufacturing;

(3) agriculture;

(4) forestry;

(5) health care and social services;

(6) education;

(7) transportation and warehousing;

(8) mining, quarrying, and oil and gas extraction;
(9) utilities;
(10) wholesale trade;
(11) retail trade;
(12) finance and insurance;
(13) professional, scientific, and technical services; and
(14) hospitality and food services.

(b) Not later than January 1 of each year, the commission shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of each standing committee or subcommittee of the legislature with primary jurisdiction over workforce development matters a detailed report summarizing the results of the commission's study under this section for the most recent state fiscal year and any suggestions and recommendations for legislative action the commission considers appropriate resulting from that study.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1009 (H.B. 2478), Sec. 1, eff. June 14, 2013.

SUBCHAPTER B. JURISDICTION OF DIVISION OF WORKFORCE DEVELOPMENT

Sec. 302.021. CONSOLIDATION OF WORKFORCE DEVELOPMENT PROGRAMS. (a) The following job-training, employment, and employment-related educational programs and functions are consolidated under the authority of the commission:

(1) career school and college programs under Chapter 132, Education Code;
(2) apprenticeship programs under Chapter 133, Education Code;
(3) postsecondary vocational and technical job-training programs that are not a part of approved courses or programs that lead to licensing, certification, or an associate degree under Chapters 61, 130, and 135, Education Code, Subchapter E, Chapter 88, Education Code, and Subchapter E, Chapter 96, Education Code;
(4) employment programs under Chapter 31, Human Resources Code;
(5) the senior citizens employment program under Chapter 101, Human Resources Code;
(6) the work and family policies program under Chapter 81;

(7) job-training programs funded under the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.);

(8) the job counseling program for displaced homemakers under Chapter 304;

(9) the reintegration of offenders program under Chapter 306;

(10) the inmate employment counseling program;

(11) the continuity of care program under Section 501.095, Government Code;

(12) a literacy program from state, local, federal, and private funds available to the state for that purpose;

(13) the employment service;

(14) [Blank];

(15) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(16) education, employment, employment support, training services, activities and programs funded under Temporary Assistance for Needy Families (42 U.S.C. Section 601 et seq.);

(17) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d); and

(18) the functions of the State Occupational Information Coordinating Committee.

(b) In addition to the programs consolidated under the authority of the commission under Subsection (a), the commission shall administer:

(1) child-care services provided under Chapter 44, Human Resources Code; and

(2) programs established in this state through federal funding to conduct full service career development centers and school-to-work transition services.

(c) To the extent permitted under federal law, the commission shall administer the programs funded through the education coordination funds under Section 123, Job Training Partnership Act (29 U.S.C. Section 1533).

(d) To the extent permitted under federal law, the commission shall promote and monitor services provided to persons with disabilities, including persons referred from the Texas Rehabilitation Commission.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1,

1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.67, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 393, Sec. 24, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 489, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 110, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 656, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 5.02, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 1294 (H.B. 2604), Sec. 2, eff. September 1, 2005.

Sec. 302.022. CLIENT ACCESSIBILITY. The director shall develop a uniform, statewide client application and enrollment process to determine an applicant's eligibility for workforce training and services funded through the division.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.023. DELEGATION OF FUNCTIONS. The executive director shall delegate all or part of the administration of a program listed under Section 302.021 that is eligible for block grant funding under Section 302.062 to a local workforce development board in an area in which a board has been certified and a local plan approved by the governor, or to another appropriate state or local entity in an area in which a local workforce development board has not been certified and a local plan approved by the governor.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

SUBCHAPTER C. STATE-LOCAL PLANNING; LOCAL WORKFORCE DEVELOPMENT BOARDS

Sec. 302.041. STATE-LOCAL PLANNING PROCESS. The director shall design and implement a state-local planning process for workforce training and services provided through the programs under the jurisdiction of the division.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1,

1995.

Sec. 302.042. REVIEW OF LOCAL PLANS; RECOMMENDATIONS. The commission shall review the local plans developed under Section 2308.304, Government Code, and shall make recommendations to the council regarding the implementation of those plans.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.02, eff. Sept. 1, 1997.

Sec. 302.043. TRAINING FOR LOCAL WORKFORCE DEVELOPMENT BOARD MEMBERS. (a) The division shall provide management and board development training for all members of local workforce development boards that includes information regarding client eligibility determination, early childhood education, vendor management, the importance of high-quality workforces, and the complexity of managing multiple state and federal child-care funding sources and that encourages board members to be advocates in their communities for effective and efficient workforce development programs and for the improvement of child-care quality. If a member of a local workforce development board does not receive training under this section before the 91st day after the date on which the member begins service on the board, the person is ineligible to continue serving on the board unless the training required under this subsection was requested by the member but not provided by the division.

(b) Training may be provided directly by the division or by a third party that has demonstrated experience in providing training to local workforce development or similar boards.

(c) The division shall ensure that a local workforce development board receives training under Subsection (a) before the board begins to manage the delivery of child-care services.

(d) The training under this section must include training for local workforce development board members and board employees regarding the collection and analysis of data in the commission's reporting and information system for performance reports.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 251, Sec. 1, 2, eff.

Sept. 1, 1997; Acts 2001, 77th Leg., ch. 650, Sec. 1, eff. Sept. 1, 2001.

Sec. 302.044. OUTREACH ACTIVITIES. The commission shall require that local workforce development boards participate in outreach activities provided by the commission that are designed by the commission to allow board members and employees to become more proficient in the administration and operation of local workforce development activities. The commission shall adopt policies establishing the number of outreach activities in which a board is required to participate.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.045. SANCTIONS PLAN. The commission shall adopt a detailed and understandable plan to be used by local workforce development boards in the implementation of the sanction process. The plan adopted under this section must include:

(1) a requirement that the commission provide technical assistance to the boards in avoiding or responding to sanctions; and

(2) specific provisions regarding the time in which a board is to be allowed to address concerns and improve the board's performance.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.046. PLAN REGARDING LACK OF SERVICE PROVIDERS. (a) The commission shall adopt a plan to address the lack of service providers in specific local workforce development areas.

(b) The plan adopted under this section must include provisions:

(1) for offering incentives to attract exceptional service providers and to encourage those providers to cooperate and assist in improving the practices of other providers;

(2) relating to the imposition of sanctions by a board against a service provider; and

(3) requiring, under certain circumstances, the commission to assist in providing services until a provider is designated.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 2, eff. Sept. 1, 2001.

Sec. 302.047. FLEXIBILITY RATING SYSTEM FOR COMMISSION DIRECTIVES. (a) The commission shall develop and implement a flexibility rating system for directives sent by the commission to local workforce development boards. A rating assigned to a directive under the system shall indicate the degree of flexibility that a local workforce development board has in implementing the directive. The commission shall provide an explanation of the ratings assigned under the system to each local workforce development board.

(b) The commission shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 299, Sec. 1, eff. Sept. 1, 2001. Renumbered from Labor Code Sec. 302.044 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(103), eff. Sept. 1, 2003.

Sec. 302.048. ASSESSMENT OF LOCAL WORKFORCE DEVELOPMENT BOARD'S CAPACITY TO OVERSEE AND MANAGE LOCAL FUNDS AND DELIVERY OF SERVICES. (a) In consultation with local workforce development boards, the commission by rule shall establish criteria to be used by the commission to evaluate each local workforce development board's overall capacity to oversee and manage local funds and the delivery of local workforce services.

(b) The criteria established under Subsection (a) must address a local workforce development board's ability to:

(1) develop, maintain, and upgrade comprehensive fiscal management systems;

(2) hire, train, and retain qualified staff to carry out the board's oversight activities;

(3) select and oversee local contractors to improve the delivery of workforce services;

(4) oversee and improve the operations of local career development centers in the area served by the board;

(5) manage the contractors' performance across multiple board programs; and

(6) identify and resolve long-standing oversight problems of the board and performance problems of contract providers.

(c) Based on the criteria prescribed under this section, the commission shall develop performance measures to be used by the commission to evaluate each local workforce development board.

(d) The commission shall post the results of the commission's evaluation of each local workforce development board on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

(e) The commission annually shall compile information provided to the commission by local workforce development boards that aggregates existing performance measure data on each local career development center in a consistent format demonstrating overall performance across multiple programs.

(f) The commission shall post the information compiled by the commission under Subsection (e) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.07, eff. Sept. 1, 2003.

SUBCHAPTER D. ALLOCATION OF FUNDS; BLOCK GRANT PROGRAM

Sec. 302.061. ADMINISTRATION FUNDING. Unless superseded by federal law, the commission may use an amount not to exceed 20 percent of the amount of funds available to the commission for workforce training and services to implement state-level responsibilities, including administration, research and planning, system design and development, and training and technical assistance.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.062. BLOCK GRANTS TO LOCAL WORKFORCE DEVELOPMENT AREAS. (a) Effective July 1, 1996, the commission shall provide to the local workforce development areas in which local workforce development boards have been certified and local plans approved by the governor, through a block grant process, funds available to the commission for workforce training and employment services, unless superseded by federal law. Administrative costs under this subsection may not exceed five percent of the total amount of funds

available to the commission for block grants for workforce training and services.

(b) In the case of funds that are allocated to this state or regions of this state through the application of established formulas, the commission shall allocate amounts across the state using the same formula that was used to provide the funds to the state or that region.

(c) In the case of funds that are not allocated by formula to this state or regions of this state, the commission shall develop a need-based formula that will equitably allocate funds among local workforce development areas throughout this state.

(d) Contingent on the availability of funds, in any state fiscal biennium, the commission may not allocate to a local workforce development area less than 90 percent or more than 125 percent of the amount received by that area during the preceding state fiscal biennium.

(e) In each area of the state not yet designated as a local workforce development area or that has been so designated but in which a local workforce development board has not been certified and a local plan approved by the governor, the executive director shall:

(1) provide workforce training and services in that area to the extent allowed by federal law; and

(2) specify an entity, which may be the commission, for the performance of employment services in that area.

(f) At least 80 percent of the funds available to the commission for workforce training and services in an area shall be provided to the local workforce development board under Subsection (a) or, in an area in which a local workforce development board has not been certified and a local plan approved by the governor, to the entity specified by the executive director under Subsection (e). If a local workforce development board has been certified and a local plan approved by the governor, the funds shall be provided through the block grant process described by this section. Unless superseded by federal law, total administrative costs for local workforce training and services may not exceed 15 percent of the funds allocated under this subsection, whether the training and services are provided through a local workforce development board or through the commission or other entity specified under Subsection (e).

(g) Block grant funding under this section does not apply to:

(1) the work and family policies program under Chapter 81;

(2) a program under the skills development fund created under Chapter 303;

(3) the job counseling program for displaced homemakers under Chapter 304;

(4) the Communities In Schools program under Subchapter E, Chapter 33, Education Code, to the extent that funds are available to the commission for that program;

(5) the reintegration of offenders program under Chapter 306;

(6) apprenticeship programs under Chapter 133, Education Code;

(7) the continuity of care program under Section 501.095, Government Code;

(8) employment programs under Chapter 31, Human Resources Code;

(9) the senior citizens employment program under Chapter 101, Human Resources Code;

(10) the programs described by Section 302.021(b)(2);

(11) the community service program under the National and Community Service Act of 1990 (42 U.S.C. Section 12501 et seq.);

(12) the trade adjustment assistance program under Part 2, Subchapter II, Trade Act of 1974 (19 U.S.C. Section 2271 et seq.);

(13) the programs to enhance the employment opportunities of veterans;

(14) the functions of the State Occupational Information Coordinating Committee; and

(15) the adult education and literacy programs under Chapter 315.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.68, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 489, Sec. 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 198, Sec. 2.118(b), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1205, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1294 (H.B. 2604), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.03, eff. September 1, 2013.

Sec. 302.063. WAIVERS. The commission shall develop objective criteria for the granting of waivers allowed under this chapter.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995.

Sec. 302.064. COLLABORATION WITH LOCAL BOARDS. (a) The commission shall collaborate with local workforce development boards when determining the use of funds at the local level.

(b) The commission shall develop funding guidelines and strategies allowing boards to exercise flexibility in identifying and addressing the needs of persons who live in remote areas or who face other barriers to employment.

Added by Acts 2001, 77th Leg., ch. 650, Sec. 3, eff. Sept. 1, 2001.

Sec. 302.065. INTEGRATION OF BLOCK GRANT PROGRAMS AND WORKFORCE SERVICES. (a) To streamline the delivery of services provided in local career development centers, the commission and local workforce boards shall integrate the administration of the following federal block grant programs and the caseworker functions associated with those programs as provided by this section:

(1) Temporary Assistance for Needy Families (TANF) CHOICES training and employment programs under Chapters 31 and 34, Human Resources Code;

(2) child care programs under Chapter 44, Human Resources Code;

(3) employment and training programs under Title I of the Workforce Investment Act of 1998 (29 U.S.C. Section 2801 et seq.) or any subsequent applicable federal legislation; and

(4) the food stamp employment and training program authorized under 7 U.S.C. Section 2015(d).

(b) The commission, in consultation with local workforce development boards, shall ensure that state-level performance measures, rules, policies, procedures, and organizational structures support the integration of the federal block grant programs described by Subsection (a) and the caseworker functions associated with those programs at the local level.

(c) Each local career development center that provides services

through the federal block grant programs described by Subsection (a) shall provide:

(1) integrated services across the programs;

(2) an integrated determination through a single point of contact of a customer's eligibility for services under more than one program; and

(3) integrated case management through a single point of contact for a customer receiving services under more than one program.

Added by Acts 2003, 78th Leg., ch. 817, Sec. 4.08, eff. Sept. 1, 2003.

SUBCHAPTER E. WORKFORCE DEVELOPMENT EVALUATION SYSTEM

Sec. 302.081. MAINTENANCE AND OPERATION OF WORKFORCE DEVELOPMENT EVALUATION SYSTEM. (a) The commission shall maintain and operate an automated follow-up and evaluation system derived from appropriate available information, including:

(1) unemployment insurance wage records maintained by the commission; and

(2) student follow-up information available through the Texas Higher Education Coordinating Board.

(b) The agencies represented on the council shall fund the maintenance and operation of the evaluation system by using funds available to the agencies for evaluation of each agency's workforce development programs.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.082. INFORMATION AND DATA FOR EVALUATION SYSTEM. (a) Each state agency represented on the council shall provide information to support the commission's follow-up and evaluation system as requested.

(b) Evaluation data in the system must include:

(1) placement rates;

(2) wages paid;

(3) retention in employment statistics;

(4) the number of education and training-related

placements; and

(5) other appropriate factors, including public welfare dependency and the pursuit of additional education.

(c) The commission may develop a method for collecting occupational information to supplement wage record information collected by the commission. The commission may request employers, providers, and other appropriate sources to provide placement, employment, and earnings information to the commission.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.083. ANALYSIS. (a) At least annually, the commission shall issue an analysis, by occupation and by the provider of the job placement performance, of each workforce development program for the previous one-year, three-year, and five-year periods to:

(1) each provider of workforce education or workforce training and services;

(2) the Texas Higher Education Coordinating Board for each provider of workforce education approved and administered by the coordinating board;

(3) each local workforce development board for each provider of workforce training and services in the workforce development area; and

(4) the division.

(b) The commission shall post each analysis issued under Subsection (a) on the commission's Internet website in a format that is readily accessible to and understandable by a member of the public.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.084. USE BY TEXAS HIGHER EDUCATION COORDINATING BOARD. The Texas Higher Education Coordinating Board shall use the job placement information received under this subchapter and other information to:

(1) evaluate the effectiveness of workforce education;

(2) determine whether a public or private workforce

education program is effective in placing persons who successfully complete the program in jobs related to the persons' training; and

(3) determine whether to continue, expand, or terminate a program established under Section 61.051, Education Code.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.085. USE BY COUNCIL AND WORKFORCE DEVELOPMENT BOARD. The council and each local workforce development board shall use the information developed under this subchapter and other information to determine whether a specific workforce training and services program administered by or funded by the local board is effective and whether to continue the training and services program.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

Sec. 302.086. USE OF EVALUATION SYSTEM. The follow-up and evaluation system shall be used to assist the commission, the council, local workforce development boards, institution boards, the Texas Higher Education Coordinating Board, the Texas Education Agency, and other agencies in evaluating the labor market success and effectiveness of workforce development in this state.

Added by Acts 2003, 78th Leg., ch. 818, Sec. 4.03, eff. Sept. 1, 2003.

SUBCHAPTER F. EMPLOYMENT AND TRAINING INVESTMENT ASSESSMENT

Sec. 302.101. TRAINING STABILIZATION FUND. (a) The training stabilization fund is established as a special trust fund outside of the state treasury in the custody of the comptroller separate and apart from all public money or funds of this state. The fund is composed of:

(1) money deposited to the fund under Section 204.123; and

(2) any other money received for deposit in the fund.

(b) Money in the training stabilization fund may be used in a year in which the amounts in the employment and training investment

holding fund are insufficient to meet the legislative appropriation for that fiscal year for the skills development program strategies and activities.

(c) Money in the training stabilization fund shall be transferred to the skills development fund under Subsection (b) not later than September 30. The amount transferred from the training stabilization fund may not exceed the amounts appropriated to the skills development program strategies and activities in the fiscal year in which the transfer is made.

(d) Interest that accrues on the money in the training stabilization fund shall be deposited quarterly to the credit of the compensation fund.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 4, eff. June 18, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1297 (H.B. 2457), Sec. 14, eff. September 1, 2011.

SUBCHAPTER G. PRIORITY OF SERVICE IN JOB TRAINING AND EMPLOYMENT ASSISTANCE PROGRAMS

Sec. 302.151. DEFINITIONS. In this subchapter:

(1) "Active military, naval, or air service" has the meaning assigned by 38 U.S.C. Section 101(24).

(2) "Covered person" has the meaning assigned by 38 U.S.C. Section 4215(a). The term includes the spouse of any member of the armed forces who died while serving on active military, naval, or air service.

(3) "Veteran" has the meaning assigned by 38 U.S.C. Section 101(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.152. PRIORITY OF SERVICE REQUIRED. (a) A covered person is entitled to priority in obtaining services or resources under this subchapter. In the implementation of this section, a covered person may take precedence in obtaining services or resources under this subchapter over persons who are not covered persons.

(b) For purposes of Subsection (a), "taking precedence" may mean that:

(1) the covered person receives access to a service or resource before a person who is not a covered person; or

(2) if the service or resource is limited, the covered person receives access to the service or resource instead of a person who is not a covered person.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.153. PARTICIPATION IN STATE-FUNDED PROGRAMS. In selecting applicants to receive training or assistance under a job training or employment assistance program or service that is funded wholly or partly with state money, priority of service must be given to a covered person who meets the minimum eligibility requirements to participate or enroll in the program or receive the service.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

Sec. 302.154. PARTICIPATION IN TEXAS VETERANS COMMISSION PROGRAMS. (a) The Texas Veterans Commission shall operate programs funded under 38 U.S.C. Chapters 41 and 42. The commission may provide services to enhance the employment and training opportunities of veterans, covered persons, active duty service members, spouses of active duty service members, and members of the Texas National Guard. The services provided under this section must be provided by state employees.

(b) The Texas Veterans Commission may adopt rules necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 378 (H.B. 1452), Sec. 1, eff. June 19, 2009.

CHAPTER 303. SKILLS DEVELOPMENT FUND

Sec. 303.001. PURPOSE; DEFINITIONS. (a) The purpose of this chapter is to remove administrative barriers that impede the response

of public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service to industry and workforce training needs and to develop incentives for public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service to provide customized assessment and training in a timely and efficient manner.

(b) For purposes of this chapter:

(1) "Assessment" means the evaluation of an employer's workforce needs and requirements.

(2) "Community-based organization" means a private nonprofit organization, including a development corporation and faith-based organization, that:

(A) provides for education, vocational education, rehabilitation, job training, or internship services or programs; and

(B) is exempt from the payment of federal income taxes under Section 501(a) of the Internal Revenue Code of 1986, and its subsequent amendments, by being listed as an exempt entity under Section 501(c)(3) of that code.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 1, eff. May 20, 1997; Acts 1999, 76th Leg., ch. 1120, Sec. 1, eff. Sept. 1, 1999.

Sec. 303.002. WAIVER. (a) The commission may review and recommend to the legislature the waiver of any requirements set forth in Title 3, Education Code, as they may apply to public community and technical colleges, that impede the ability of such a college to develop in a timely manner customized training for demand occupations in particular industries, including statutes or regulations limiting costs that may be recovered by a public community or technical college from state funds.

(b) A public community or technical college or the Texas Engineering Extension Service may recover customized assessment and training costs incurred by the institution if:

(1) there is an actual or projected labor shortage in the occupation in which training is provided that is not being met by an existing institution or program in the area; and

(2) the wages at the time of job placement for individuals

who successfully complete customized training at the public community or technical college or the Texas Engineering Extension Service are equal to the prevailing wage for that occupation in the local labor market area.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 2, eff. May 20, 1997.

Sec. 303.003. SKILLS DEVELOPMENT FUND. (a) To achieve the purposes of this chapter, the skills development fund is created. The fund is composed of:

(1) money transferred into the fund under Section 204.123; and

(2) any amounts appropriated by the legislature for the purpose of this chapter from the general revenue fund.

(b) The skills development fund may be used by public community and technical colleges, community-based organizations, and the Texas Engineering Extension Service as start-up or emergency funds for the following job-training purposes:

(1) developing customized training programs for businesses and trade unions; and

(2) sponsoring small and medium-sized business networks and consortiums.

(b-1) The commission by rule may establish and develop additional job incentive programs that use the skills development fund to create incentives for public community and technical colleges in partnership with one or more employers, including prospective employers who commit to establishing a place of business in this state, to provide workforce training in an effort to create and retain employment opportunities in this state. Under a program established under this subsection, the commission may commit money to a prospective employer described by this subsection contingent on the employer's establishment of a place of business in this state.

(b-2) In addition to the purposes described by Subsections (b) and (b-1), in each state fiscal biennium, an amount of money from the skills development fund not to exceed five percent of the amount of general revenue appropriated to the skills development fund for that biennium may be used as provided by this subsection. Funds available

to the commission from other sources may also be used as provided by this subsection. Funds may be awarded under this subsection to a lower-division institution of higher education to be used under an agreement with a school district, or to a school district to be used under an agreement with a lower-division institution of higher education, to support courses offered for joint high school and college-level credit or offered under a college credit career or technical education program that leads to an industry-recognized license, credential, or certificate. Appropriate uses of funds awarded under this subsection include purchasing or repairing necessary equipment for a course and developing a course curriculum. A course or program supported under this subsection must:

(1) have the endorsement of, or a letter of support from, at least one employer in this state; and

(2) be targeted to address the needs of high-demand fields or occupations, as identified by the applicable local workforce development board.

(c) Money from the skills development fund may not be used to pay the training costs and other related costs of an employer who relocates the employer's worksite from one location in this state to another in-state location.

(d) The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the skills development fund.

(e) It is the intent of the legislature that, to the greatest extent practicable, money from the skills development fund shall be spent in all areas of this state.

(f) The Texas Engineering Extension Service shall focus the service's training activities under this chapter on programs that:

(1) are statewide in nature; or

(2) are not available from a local junior college district, a local technical college, or a consortium of junior college districts.

(g) This section does not prohibit the Texas Engineering Extension Service from participating in a consortium of junior college districts or with a technical college that provides training under this chapter.

(h) A community-based organization may apply for money to participate in a training program only in partnership with a

community and technical college or the Texas Engineering Extension Service. A community-based organization providing services regulated by the state shall provide evidence of any certification, license, or registration required by law.

(i) In this section, "lower-division institution of higher education" means a public junior college, public state college, or public technical institute.

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 3, eff. May 20, 1997; Acts 1999, 76th Leg., ch. 1120, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1485, Sec. 2.01, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1289 (H.B. 2169), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1047 (H.B. 3028), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 988 (H.B. 18), Sec. 8, eff. June 19, 2015.

Sec. 303.0035. USE OF MONEY IN HOLDING FUND (GENERAL REVENUE ACCOUNT 5069) FOR SKILLS DEVELOPMENT. Money in the holding fund (general revenue account 5069) may be used only for the purposes for which the money in the skills development fund created under Section 303.003 may be used.

Added by Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 5, eff. June 18, 2005.

Sec. 303.004. FUND REVIEW. (a) The Texas Higher Education Coordinating Board shall review all customized training programs biennially to verify that state funds are being used appropriately by public community and technical colleges and the Texas A&M Engineering Extension Service under this chapter.

(b) Not later than October 1 of each even-numbered year, the Texas A&M Engineering Extension Service and each public community or technical college that provides workforce training under this chapter shall:

(1) conduct a review of the service's or college's training

programs to:

(A) determine the effectiveness of the programs in improving the wages of participants who complete the programs; and

(B) identify strategies for improving the delivery of workforce training in order to more effectively impact economic development in this state; and

(2) submit to the commission a detailed written report summarizing the results of the review for inclusion by the executive director in the report to the governor and the legislature required by Section 303.006(c).

Added by Acts 1995, 74th Leg., ch. 655, Sec. 11.03, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 153, Sec. 4, eff. May 20, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 911 (H.B. 1297), Sec. 1, eff. June 14, 2013.

Sec. 303.005. PARTICIPATION IN ADDITIONAL PROGRAMS; APPLICATION REQUIREMENTS; PRIORITY. (a) An employer may not apply both to a public community or technical college for customized training and assessment from the college through a grant issued to the college under the skills development fund program established under this chapter and for a grant under the Texas Enterprise Fund program established under Subchapter E, Chapter 481, Government Code, unless the employer and the college file an application for concurrent participation in both programs that complies with any rules adopted by the Texas Workforce Commission on concurrent participation.

(b) In awarding any grant under this chapter, the commission shall consider giving priority to training incentives for small businesses.

Added by Acts 1999, 76th Leg., ch. 1485, Sec. 2.02, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1115 (H.B. 2421), Sec. 6, eff. June 18, 2005.

Sec. 303.006. REPORTING REQUIREMENTS. (a) In this section:

(1) "Employee" means an individual who performs services for another under a contract of hire, whether express or implied, or oral or written.

(2) "Employer" means a person that employs one or more employees.

(3) "Existing employer" means an employer that:

(A) has been liable to pay contributions under Subtitle A, Title 4, for more than one year;

(B) has employees; and

(C) is in compliance with the reporting and payment requirements of Subtitle A, Title 4, as determined by the Texas Workforce Commission.

(4) "In-kind contribution" means a noncash contribution of goods and services provided by an employer as all or part of the employer's matching share of a grant or project.

(5) "Job" means employment on a basis customarily considered full-time for the applicable occupation and industry.

(6) "Large employer" means a business entity that employs at least 500 employees.

(7) "Medium employer" means a business entity that employs more than 99 but fewer than 500 employees.

(8) "Micro-employer" means a business entity that employs not more than 20 employees.

(9) "Program" means the skills development fund program created under this chapter.

(10) "Small employer" means a business entity that employs more than 20 but fewer than 100 employees.

(11) "Trainee" means a participant in a project funded under this chapter.

(12) "Wages" means all forms of compensation or remuneration, excluding benefits, payable for a specific period to an employee for personal services rendered by that employee.

(b) In implementing provisions under this section regarding the classification of this state into regions, the executive director shall use the uniform service regions established by the comptroller under Section 120, Article V, Chapter 19, Acts of the 72nd Legislature, 1st Called Session, 1991 (the General Appropriations Act).

(c) The executive director shall report to the governor and the legislature at the end of each fiscal year the status of the program

established under this chapter.

(d) The annual report must include for that fiscal year:

(1) the total number of applications submitted, the total number of applications approved, and the total number of applications rejected by region of the state;

(2) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by:

(A) current employees undergoing retraining;

(B) new hires; and

(C) region of the state;

(3) the average and median weekly wage levels of trainees under this chapter entering or returning to the workforce, broken down by region of the state;

(4) the number and percentage of trainees covered by health care insurance coverage, workers' compensation insurance coverage, and other analogous benefit programs;

(5) the total amount of money awarded in each region of the state and the percentage that amount represents of the total amount of money awarded on a statewide basis;

(6) a comparison of the percentage of total dollars awarded to each region versus each region's percentage of:

(A) the state's population;

(B) the civilian labor force;

(C) the number of unemployed persons; and

(D) the number of qualified grant applications submitted to the commission by public community and technical colleges;

(7) the total amount of money awarded to micro-employers, small employers, medium employers, and large employers, reported by region of the state; and

(8) the total number of jobs created or persons retrained under the program:

(A) by region of the state;

(B) by occupation classified by the two-digit standard industrial classification;

(C) by wage level; and

(D) whether attributable to:

(i) relocation of businesses to this state; or

(ii) training or retraining of employees of

existing employers.

Added by Acts 1999, 76th Leg., ch. 1485, Sec. 2.02, eff. Sept. 1, 1999.

CHAPTER 304. COUNSELING FOR DISPLACED HOMEMAKERS OR WORKERS

Sec. 304.001. DEFINITION. In this chapter, "displaced homemaker" means a person who:

(1) has worked without pay as a homemaker for the person's family;

(2) is not gainfully employed;

(3) has had, or would have, difficulty in obtaining employment; and

(4) has depended on:

(A) the income of a family member for financial support and has lost that income; or

(B) government assistance as the parent of dependent children and is no longer eligible for that assistance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Renumbered from Labor Code Sec. 302.001 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.002. JOB COUNSELING PROGRAM. (a) The commission, through a special assistance job counseling program, shall:

(1) provide counseling for displaced homemakers;

(2) assist displaced homemakers in obtaining training and education; and

(3) place displaced homemakers in suitable employment.

(b) The counseling must:

(1) consider and build on the skills and experiences of the homemaker; and

(2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.

(c) The commission shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a valuable role in the paid work force commensurate with the homemakers' talents and abilities.

(d) The commission may not charge a fee for participation in the program by a displaced homemaker.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.003. PERSONNEL; OFFICE. The commission shall use its personnel, services, facilities, and equipment to operate the job counseling program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.004. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS. State agencies and political subdivisions of the state shall cooperate with the commission in obtaining suitable employment for displaced homemakers counseled by the commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 302.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.04, eff. Sept. 1, 1995.

Sec. 304.005. HOME OWNERSHIP COUNSELING FOR DISPLACED WORKERS. (a) The commission shall provide written notice in English and in Spanish of eligibility for home ownership counseling under federal law to each worker residing in this state who is eligible for home ownership counseling under 12 U.S.C. Section 1701x, as amended, and who:

(1) is covered by a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2331, as amended; or

(2) is threatened to become totally or partially separated, or has become totally or partially separated, from a firm that is certified eligible for adjustment assistance under 19 U.S.C. Section 2341, as amended.

(b) The notice must contain:

(1) a list of home ownership counseling organizations that:

(A) receive assistance under 12 U.S.C. Section 1701x, as amended; and

(B) serve the area in which the worker's home is located; or

(2) any toll-free telephone number through which the worker can obtain the list prescribed by Subdivision (1).

(c) A firm located in this state that has requested a certification of eligibility for adjustment assistance under 19 U.S.C. Section 2341, as amended, shall notify the commission of that request.

(d) In this section, "firm" has the meaning assigned by 19 U.S.C. Section 2351, as amended.

Added by Acts 1999, 76th Leg., ch. 289, Sec. 2, eff. Sept. 1, 1999.

CHAPTER 305. TEXAS CAREER OPPORTUNITY GRANT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 305.001. PURPOSE. The purpose of the Texas Career Opportunity Grant Program is to help ensure a qualified workforce to meet the needs of this state by reducing the financial barriers to postsecondary career education and training for economically disadvantaged Texans.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Coordinating board" means the Texas Higher Education Coordinating Board.

(3) "Eligible institution" means a career school or college in this state that:

(A) holds a certificate of approval under Chapter 132, Education Code; and

(B) is approved by the commission under Section 305.023 for its students to participate in the grant program established under this chapter.

(4) "Public technical institute" has the meaning assigned by Section 61.003, Education Code.

(5) "Qualified education program" means a postsecondary

education program that meets the requirements provided by Section 305.024.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 364, Sec. 2.29, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 8.43, eff. Sept. 1, 2003.

Sec. 305.003. MEMORANDUM OF UNDERSTANDING. The commission and the coordinating board shall enter into a memorandum of understanding for the coordination and administration of the grant program established under Subchapter B. Functions assigned to the commission under this chapter may be assigned to the coordinating board pursuant to the memorandum of understanding.

Added by Acts 2009, 81st Leg., R.S., Ch. 197 (H.B. 3519), Sec. 1, eff. May 27, 2009.

SUBCHAPTER B. GRANT PROGRAM

Sec. 305.021. TUITION ASSISTANCE GRANT; AMOUNT OF GRANT. (a) The commission may provide tuition assistance grants to Texas residents enrolled in a qualified education program at an eligible institution.

(b) In selecting applicants to receive grants under this chapter and the amount of the grant for each applicant, the commission may consider:

(1) the financial need and resources of an applicant;

(2) the state's need for workforce development in the applicant's proposed career field;

(3) the efficient use of the money available for grants;

(4) the fair allocation of grants to promote workforce development in different career fields;

(5) the opportunity of applicants from all regions of this state to receive financial assistance under this chapter; and

(6) any other factor the commission considers appropriate to further the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.022. LIMITATIONS ON GRANT AMOUNT. (a) The amount of a grant under this chapter may not exceed the lower of:

(1) the maximum grant amount, if any, specified by the legislature in an appropriation act; or

(2) the amount by which the tuition and required fees at the eligible institution attended exceeds the average amount of tuition and required fees that would be charged at a public technical institute, as determined by the commission based on information provided by the coordinating board.

(b) The total amount of grants paid under this chapter on behalf of a student during a state fiscal year may not exceed an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at a public technical institute, as determined by the coordinating board and certified to the commission.

(c) The amount of a grant to a part-time student shall be made on a pro rata basis in relation to the amount of the grant the person would be entitled to receive if enrolled as a full-time student.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.023. APPROVAL OF INSTITUTIONS. The commission shall approve a career school or college for its students to participate in the grant program established under this chapter if the school or college:

(1) has been accredited for not less than five years by an accrediting agency recognized by the United States Department of Education and maintains that accreditation;

(2) has held a certificate of approval under Chapter 132, Education Code, for at least five years; and

(3) offers one or more qualified education programs.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 364, Sec. 2.30, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 817, Sec. 8.44, eff. Sept. 1, 2003.

Sec. 305.024. QUALIFIED EDUCATION PROGRAMS. For purposes of this chapter, a qualified education program is a postsecondary course

of instruction in a specific career field that:

(1) is at least one academic year in length as defined by the United States Department of Education; and

(2) leads to a certificate, certification, degree, or diploma in the career field.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.025. NONDISCRIMINATION. The commission in administering this chapter shall ensure compliance with Title VI, Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.), as amended, in regard to nondiscrimination under any program or activity receiving federal financial assistance.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.026. APPLICATION; ELIGIBILITY FOR GRANT. (a) To receive a grant under this chapter, a person must apply to the eligible institution in which the person enrolls in the manner provided by commission rule.

(b) To be eligible to receive a grant under this chapter, an applicant must:

(1) be a Texas resident and meet the requirements to qualify as a Texas resident under Subchapter B, Chapter 54, Education Code, and the rules of the coordinating board for the payment of resident tuition at a public institution of higher education;

(2) be enrolled in a qualified education program at an eligible institution for at least one-half of a full course load;

(3) be required to pay more tuition and required fees than the amount required at a public technical institute and be charged not less than the regular tuition and required fees paid by other students enrolled at the eligible institution the person attends;

(4) establish financial need and eligibility for student financial assistance in accordance with procedures and regulations of the United States Department of Education for financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.), as amended;

(5) not be in default on a loan made under the Federal Perkins Loan Program, Federal Family Education Loan Program, or

William D. Ford Federal Direct Loan Program;

(6) not owe a refund on a grant received under the federal Pell Grant program or the federal Supplemental Education Opportunity Grant program; and

(7) comply with any other requirements adopted by the commission under this chapter.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.027. PAYMENT OF GRANT. (a) On receipt of an enrollment report for a student awarded a grant under this chapter and certification of the amount of the student's financial need from the approved institution, the commission shall certify the amount of the grant awarded to the student.

(b) The grant shall be paid to the student through the eligible institution in which the student is enrolled.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.028. ADOPTION AND DISTRIBUTION OF RULES. (a) The commission may adopt reasonable rules to administer and enforce this chapter.

(b) The commission shall distribute a copy of the rules to each eligible institution.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

Sec. 305.029. ANNUAL REPORT. The commission shall prepare and deliver to the legislature an annual report regarding the grant program established under this chapter. The report shall include for the period covered by the report:

(1) the number of students who received grants under this chapter; and

(2) the number of those students who attended each eligible institution, including information on the race or ethnicity of those students attending each institution.

Added by Acts 2001, 77th Leg., ch. 713, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 306. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Sec. 306.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Criminal Justice.

(2) "Correctional institutions division" means the correctional institutions division of the department.

(3) "Project RIO" means the project for reintegration of offenders.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.016, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.001 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 4, eff. September 1, 2005.

Sec. 306.002. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.016, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.002 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 132, eff. September 1, 2015.

Sec. 306.003. ADMINISTRATION. The department, the Texas Juvenile Justice Department, and the commission shall cooperate to

maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.003 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 133, eff. September 1, 2015.

Sec. 306.004. MEMORANDUM OF UNDERSTANDING--ADOPTION. (a) The department, the commission, and the Texas Juvenile Justice Department shall each adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commission shall coordinate the development of the memoranda of understanding. The department and the Texas Juvenile Justice Department shall adopt rules as necessary to implement their respective memoranda and may amend the memorandum and those rules as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.004 by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 134, eff. September 1, 2015.

Sec. 306.005. MEMORANDUM OF UNDERSTANDING--CONTENTS. (a) The memorandum of understanding between the department and the commission must establish the role of:

(1) the correctional institutions division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental,

educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer or supervision officer;

(2) the community justice assistance division and the parole division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

(b) The memorandum of understanding between the Texas Juvenile Justice Department and the commission must establish the roles of the institutional and community services division in the Texas Juvenile Justice Department and the role of the commission in the same manner the roles of the department and commission are established under Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 321, Sec. 3.018, eff. Sept. 1, 1995. Renumbered from Labor Code Sec. 217.005 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.03, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 6, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 135, eff. September 1, 2015.

Sec. 306.006. PROJECT DIRECTOR. (a) The executive director shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.

(b) The project director shall:

(1) propose, for adoption by the commission, standards and

guidelines for the operation of the project;

(2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;

(3) disseminate information statewide about the project; and

(4) train commission staff to assist in the operation of affiliated services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 262, Sec. 92, eff. Jan. 1, 1996. Renumbered from Labor Code Sec. 217.006 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.06, eff. Sept. 1, 1995.

Sec. 306.007. PROVISION OF INFORMATION ON STATE SERVICES FOR EX-OFFENDERS AND EMPLOYERS. (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department, the commission through Project RIO shall provide:

(1) to those persons:

(A) information from local workforce development boards on job training and employment referral services;

(B) information from the Department of State Health Services on substance abuse treatment services;

(C) information from the Texas Department of Housing and Community Affairs on housing services;

(D) information from the Texas Veterans Commission on services for veterans; and

(E) information on tax refund voucher programs under Subchapter H, Chapter 301; and

(2) to the employers and potential employers of those persons:

(A) information from the Texas Economic Development and Tourism Office on the enterprise zone program; and

(B) information from local workforce development boards on services listed in Section 2308.304, Government Code.

(b) The commission shall adopt a memorandum of understanding with each of the following agencies that establishes the respective responsibilities of the commission and the agencies in providing

information described by Subsection (a) to persons formerly sentenced to the institutional division or the state jail division of the Texas Department of Criminal Justice, to employers or potential employers of those persons, and to local workforce development boards:

(1) the Department of State Health Services;

(2) the Texas Department of Housing and Community Affairs;

(3) the Texas Veterans Commission; and

(4) the Health and Human Services Commission.

Added by Acts 1995, 74th Leg., ch. 611, Sec. 2, eff. Aug. 28, 1995. Renumbered from Labor Code Sec. 217.007 and amended by Acts 1997, 75th Leg., ch. 165, Sec. 22.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 817, Sec. 10.14, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 818, Sec. 6.10, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 7, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 136, eff. September 1, 2015.

Sec. 306.008. DATA SHARING. (a) To assist in the reintegration into the labor force of persons formerly sentenced to the correctional institutions division or committed to the Texas Juvenile Justice Department, the commission, the Texas Juvenile Justice Department, and the department shall establish a data interface that, at a minimum, provides to the commission:

(1) detailed information about persons released from a correctional facility who might benefit from post-release Project RIO services, including:

(A) demographic and identifying information;

(B) the person's address on release;

(C) a comprehensive state offense history, including the date of release from the correctional facility, sentence discharge date, and conditions of parole;

(D) assessment information;

(E) educational and work history;

(F) information related to participation in the work against recidivism program operated by the department's manufacturing and logistics division under the Texas Correctional Industries

office; and

(G) other services provided under this title before release from the correctional facility; and

(2) referral information from the department and the Texas Juvenile Justice Department necessary to implement the provision of post-release employment services.

(b) The data interface established under Subsection (a) must be designed to provide to a person's supervising officer on release information about the person's participation in employment services and entry into the workforce.

(c) Information received from the Texas Juvenile Justice Department under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

Added by Acts 2005, 79th Leg., Ch. 1142 (H.B. 2837), Sec. 8, eff. September 1, 2005.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 137, eff. September 1, 2015.

CHAPTER 307. EMPLOYMENT SERVICE

Sec. 307.001. EMPLOYMENT SERVICE. The commission is the agency of this state designated to cooperate with the United States Employment Service as necessary to perform the duties of this state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) required to establish and maintain free public employment offices.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.081 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.07, eff. Sept. 1, 1995.

Sec. 307.002. EMPLOYMENT SERVICES AGREEMENTS. (a) To ensure the establishment and maintenance of public employment offices under this chapter, the executive director may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization, including a local workforce development board, and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.

(b) Except as provided by Subsection (c), to establish and

maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the employment service on terms and conditions agreed to by the commissioners court or other governing body and the employment service. The county or other political subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:

(1) the rent of premises;

(2) services rendered;

(3) the purchase of equipment; and

(4) any other purpose considered advisable by the commissioners court or other governing body.

(c) In an area in which a local workforce development board has been certified and a local plan approved by the governor, that board shall provide employment services in its local workforce development area, and a person employed by the commission to provide employment services on the day before the approved local plan takes effect shall be given preference in employment at a career development center administered by that board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 202.082 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.07, eff. Sept. 1, 1995.

Sec. 307.003. EMPLOYMENT SERVICE FINANCING. Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account in the general revenue fund. The money in the account may be used by the commission as provided by this chapter and the Wagner-Peyser Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 203.153 and amended by Acts 1995, 74th Leg., ch. 655, Sec. 11.08, eff. Sept. 1, 1995.

CHAPTER 308. TEXANS WORK PROGRAM

Sec. 308.001. LEGISLATIVE INTENT. It is the intent of the

legislature that this chapter is enacted to enlist employers in a partnership with this state to assist recipients of public assistance in developing marketable work skills and obtaining employment.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.002. DEFINITIONS. In this chapter:

(1) "Division" means the division of workforce development of the commission.

(2) "Employer" has the meaning assigned by Section 61.001.

(3) "JOBS training program" means the job opportunities and basic skills (JOBS) training program under Part F, Subchapter IV, Social Security Act (42 U.S.C. Section 682).

(4) "Local workforce development board" means a board created under Subchapter F, Chapter 2308, Government Code.

(5) "Program" means the Texans Work program established under this chapter.

(6) "Trainee" means a recipient of food stamps under the food stamp program administered under Chapter 33, Human Resources Code, and financial assistance under Chapter 31, Human Resources Code, who:

(A) is eligible to participate in the JOBS training program; and

(B) receives on-the-job training through a training course offered under the program.

(7) "Training course" means a course for the development of practical employment skills that is:

(A) offered to trainees by an employer who participates in the program; and

(B) approved as required by this chapter.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.003. TEXANS WORK PROGRAM. (a) The Texans Work program is created as an integrated system of on-the-job training for certain persons who receive food stamps under the food stamp program administered under Chapter 33, Human Resources Code, and financial assistance under Chapter 31, Human Resources Code, and are eligible to participate in the JOBS training program. The program shall be

considered a means-tested program and shall be operated through courses conducted by participating employers and shall offer direct work experience and skills training.

(b) The program shall be offered in each area of this state in which an employer is located who elects to participate and whose participation is approved by the local workforce development board or, if a local workforce development board does not exist in the employer's area, by the division.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.004. TRAINING COURSES; APPROVAL. (a) Each training course shall be designed by a local participating employer to meet the needs of that employer. The training course must instruct the trainee in a prearranged curriculum of skills that uses systems specific to and produced by the employer's industry.

(b) The length of a training course may not be less than six months or more than 12 months unless an exception is approved by the division. The duration of a course shall be based on specific training needs.

(c) An employer whose participation is approved under Section 308.003 shall submit to the division in the manner prescribed by the commission a description of the employer's proposed training course. The employer shall work with the division and the Texas Skill Standards Board to develop a training course that incorporates instruction in the skill standards applicable to that industry. A training course may not be used by an employer participating in the plan until the course is approved by the commission.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.005. POWERS AND DUTIES OF COMMISSION AND DIVISION; GUIDELINES FOR TRAINING COURSE APPROVAL. (a) The commission shall adopt rules as necessary to implement the program, including establishing the criteria for determining which persons described by Section 308.003(a) may be required to participate in the program.

(b) With the cooperation of the Texas Skill Standards Board, the commission shall develop guidelines for the approval of employer training courses.

(c) In developing guidelines under Subsection (b), the commission shall condition approval on the expectation that a participating employer will develop job descriptions that are relevant to regular paid positions in the employer's workplace or that are available in the community in which the employer is located. In determining whether to approve a particular training course, the commission shall specifically consider:

(1) the administrative burden imposed by participation in the program by the participating employer;

(2) whether the proposed training reasonably may be expected to enhance the employability of individual trainees;

(3) whether the proposed training produces a realistic and usable level of skills;

(4) whether the proposed training is composed of a greater ratio of training-to-work than regular employees receive under analogous conditions;

(5) whether the employer has any intention of retaining successful trainees as regular employees;

(6) the extent to which the proposed training includes nonspecific work skills; and

(7) if the employer has previously participated in the program, the prior performance of the employer in meeting the guidelines described by this subsection.

(d) The commission may develop incentives for employers who have completed a training course offered through the program to hire as a regular employee for a period of at least one year a trainee who has successfully completed the training course.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.006. POWERS AND DUTIES OF TEXAS DEPARTMENT OF HUMAN SERVICES. The Texas Department of Human Services shall provide to the commission and a local workforce development board information and technical assistance as necessary to implement the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.007. RIGHTS AND DUTIES OF PARTICIPATING EMPLOYER. (a) Each employer who participates in the program shall provide a work-

training position for trainees under a contract entered into with the local workforce development board or with the commission.

(b) The employer shall interview and select the employer's trainees from a list of eligible clients that is provided to the employer by the local workforce development board or the commission.

(c) In the operation of a training course, a participating employer may use training methods selected by the employer as long as those methods instruct the trainees in the applicable skill at the applicable standards.

(d) An employer who participates in the program is not liable for the payment of payroll taxes or contributions to the unemployment compensation system for a trainee and is not obligated to provide health insurance coverage or retirement or pension benefits for the trainee. An employer is responsible to the JOBS training program only for quality training, skills certification, and reporting of attendance.

(e) During the training course, the employer shall pay $300 per month for each trainee to the commission in the manner prescribed by the commission. The commission shall deposit the amount in the general revenue fund to the credit of the Texas employment and training account.

(f) A trainee is considered an employee of the employer for purposes of Section 401.012.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.008. RIGHTS OF REGULAR EMPLOYEES. (a) Except as provided by Subsection (b), not more than 20 percent of an employer's workforce may consist of trainees under the program.

(b) Subsection (a) does not apply to an employer who has fewer than 50 employees.

(c) As a condition of participation in the program, an employer whose regular employees are subject to a collective bargaining agreement shall notify the applicable collective bargaining agent of the employer's intent to participate in the program. The employer shall provide the notice required under this subsection before accepting trainees at the employer's workplace.

(d) A participating employer may not accept a trainee for participation in a training course conducted under the program if

that participation will:

(1) result in:

(A) the displacement or partial displacement of a regular employee from an existing position;

(B) the elimination of a vacant position created by the laying off of a regular employee during the 90 days preceding the employer's participation in the program;

(C) the elimination of a position that would otherwise constitute a promotion for a regular employee; or

(D) a hiring freeze implemented by the employer; or

(2) impair a collective bargaining agreement in effect on the date that the employer proposes to begin participation in the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.009. RIGHTS AND DUTIES OF PARTICIPATING TRAINEES. (a) Each trainee who participates in the program shall work during the training course not less than the minimum number of hours required under applicable federal law for work participation for recipients of public assistance.

(b) Each trainee is entitled to:

(1) the rights provided under Chapters 21 and 101 as if the trainee were a regular employee; and

(2) participation in an administrative dispute resolution procedure conducted by the commission to resolve grievances involving participation in the program.

(c) Each trainee shall receive a skill standards certification on successful completion of a training course offered under the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.010. ACCOUNT. (a) The Texas employment and training account is established as a special account in the general revenue fund. The account is composed of:

(1) employer contributions paid under Section 308.007; and

(2) state matching funds obtained through the block grant received by this state under the JOBS training program.

(b) Money in the account may be used only for the payment of training stipends and for other training activities authorized under the program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.011. TRAINING STIPEND. (a) The state shall pay to each trainee who demonstrates satisfactory participation in a training program approved under this chapter a monthly training stipend in the manner prescribed by Subsection (c).

(b) The training stipend is composed of $600 paid to the trainee from the Texas employment and training account. In addition to the stipend, the trainee shall continue to receive the amount of benefits that the trainee is eligible to receive under the program of financial assistance under Chapter 31, Human Resources Code, and the food stamp program administered under Chapter 33, Human Resources Code.

(c) The state may transfer the monthly training stipend to a trainee by electronic benefits transfer (EBT) to an account if that method is determined by the Texas Department of Human Services to be cost-effective.

(d) The training stipend does not constitute income to the trainee for purposes of determining eligibility for and the amount of benefits received under Chapter 31, Human Resources Code. A trainee who participates in a training program in a satisfactory manner is entitled to full JOBS benefits and benefits under the financial assistance program and food stamp program during the training program. A trainee who terminates participation in the training program before the conclusion of the training loses eligibility for the training stipend and the JOBS benefits but remains eligible to receive benefits under the financial assistance program and food stamp program.

(e) Excessive unexcused absences from participation subjects a trainee to a reduction in the training stipend in an amount set by the commission.

(f) The training stipend shall be paid on the first workday of each month following the month in which the trainee participates in the training program.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

Sec. 308.012. REPORT; RECORDS. (a) The commission shall collect information and maintain records regarding:

(1) the operation and outcome of the program;

(2) impediments identified by the commission that affect the successful operation of the program; and

(3) complaints or other comments regarding the program received by the commission from employers, trainees, regular employees, and local workforce development boards.

(b) Information maintained by the commission under Subsection (a) is a public record.

(c) Expired.

Added by Acts 1997, 75th Leg., ch. 456, Sec. 1, eff. Sept. 1, 1997.

CHAPTER 309. SELF-SUFFICIENCY FUND

Sec. 309.001. DEFINITIONS. In this chapter:

(1) "Community-based organization" means a private nonprofit organization that is representative of a community or a significant segment of a community and that provides education, vocational education or rehabilitation, job training, or internship services or programs. The term includes a neighborhood group or organization, community action agency, community development corporation, union-related organization, employer-related organization, faith-based organization, tribal government, or organization serving Native Americans.

(2) "Fund" means the self-sufficiency fund created under Section 309.002.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.

Sec. 309.002. SELF-SUFFICIENCY FUND. (a) Subject to the availability of funds, the self-sufficiency fund is created as an account in the general revenue fund for use by public community and technical colleges, community-based organizations, and state extension agencies to develop for certain recipients of financial assistance under Chapter 31, Human Resources Code, customized job-training programs in which the recipients will be provided job

training by:

(1) an entity that develops a job-training program under this section;

(2) a small or medium-sized business or trade union; or

(3) an informal partnership between an entity that develops a job-training program under this section and a small or medium-sized business network or consortium.

(b) Money from the fund may also be used for support services as necessary for participants to prepare for and participate in training activities and to make the transition from training activities to employment.

(c) The commission shall administer the fund. The executive director, or a person appointed by the executive director who is knowledgeable in the administration of grants, is responsible for the distribution of money from the fund.

(d) To the greatest extent practicable, money from the fund shall be spent in all areas of the state.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.

Sec. 309.003. JOB-TRAINING PROGRAMS. (a) A job-training program financed by the fund:

(1) must be specifically designed to:

(A) ensure that participants meet applicable state and federal work requirements;

(B) enable participants to find and apply for existing jobs; and

(C) include the involvement of employers who provide assistance in setting curricula and standards for job-training programs developed with money from the fund and are committed to hiring graduates of the programs; and

(2) is considered a work or employment activity for purposes of Section 31.012, Human Resources Code.

(b) An entity that receives money from the fund for a job-training program shall work in conjunction with employers to place graduates of the program in positions of employment in which the graduates will be earning wages sufficient to enable the graduates to become independent of financial assistance under Chapter 31, Human Resources Code, and if applicable, assistance provided under the food

stamp program administered by the Texas Department of Human Services under Chapter 33, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.

Sec. 309.004. RULEMAKING AUTHORITY. The commission shall adopt rules to implement this chapter, including rules to determine which recipients of financial assistance under Chapter 31, Human Resources Code, are eligible to participate in job-training programs developed with money from the fund.

Added by Acts 1999, 76th Leg., ch. 126, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 310. CHILD-CARE RESOURCE AND REFERRAL NETWORK

Sec. 310.001. DEFINITIONS. In this chapter:

(1) "Member" means a member of the child-care resource and referral network that provides child-care resource and referral services in this state.

(2) "Network" means the child-care resource and referral network administered by a nonprofit public or private organization that contracts with the commission to provide child-care resource and referral services in this state.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.002. CHILD-CARE RESOURCE AND REFERRAL NETWORK. (a) The commission, through funds allocated to the commission as the agency designated to administer the grant under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.), as amended, and specifically appropriated to the commission for that purpose, shall:

(1) contract with a child-care resource and referral network to provide child-care resource and referral services in this state; and

(2) require the network to be administered in compliance with the requirements of the block grant program.

(b) The commission shall use a system of competitive procurement to award a contract to a child-care resource and referral

network that has proven experience in providing child-care resource and referral services.

(c) To the extent funds from the block grant program are available for that purpose, the commission shall award the contract under this section in a manner that will allow for the provision of child-care resource and referral services throughout this state.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.003. STATEWIDE CHILD-CARE NEEDS ASSESSMENT. (a) The network shall conduct a needs assessment to determine the supply of and demand for child-care services in this state and to identify discrepancies between that supply and demand.

(b) Based on the needs assessment, the network shall make recommendations to the commission regarding collaborative solutions to address the identified child-care supply and demand discrepancies. The recommended solutions must involve collaboration between:

(1) local workforce development boards;

(2) community-based social services agencies;

(3) employers;

(4) child-care providers; and

(5) parents who are consumers of child-care services.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.004. RESOURCE SERVICES. The network, through its members, shall provide and continually update resource information regarding:

(1) child-care and early childhood education services in this state; and

(2) assistance in becoming a child-care provider, including information about:

(A) the general requirements for applying for and maintaining a license, listing, or registration under Chapter 42, Human Resources Code; and

(B) the availability of financial resources and educational, technical, and other training opportunities, including management skills training and continuing education programs for operators and employees of child-care facilities, regardless of

whether the network or another person provides those opportunities.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.005. REFERRAL SERVICES. (a) The network, through its members, shall provide referral services to:

(1) a person who is seeking child-care and early childhood education services; and

(2) an employer seeking child-care assistance for the employer or an employee through:

(A) a consultation regarding the availability of child-care and early childhood education services; or

(B) specialized services for the employer or its employees.

(b) In addition to providing referrals to child-care and early childhood education services, the network, through its members, shall provide:

(1) referrals to available support services, including:

(A) parenting education classes; and

(B) services for parents or children offered by health and human services agencies, as defined by Section 531.001, Government Code, or otherwise available in the community; and

(2) information for consumers of child-care and early childhood education services, including:

(A) information regarding early childhood development;

(B) criteria for identifying quality child-care and early childhood education services that support the healthy development of children; and

(C) other information that will assist consumers in making informed and effective choices regarding child-care and early childhood education services.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.006. ADVERTISEMENT OF SERVICES. (a) The network, through its members, shall inform parents, child-care consumers, child-care providers, and employers located in the member's service area of:

(1) the resource and referral services available from the

network; and

(2) the methods by which a person may contact the member to access resource and referral services.

(b) A member may provide the information under Subsection (a) through the media and alternative means, including:

(1) state and local community, job, and health fairs;

(2) public service announcements and advertisements;

(3) career development centers;

(4) offices of health and human services agencies;

(5) Texas workforce centers that comprise the Texas Workforce Network; and

(6) direct contacts with employers and child-care providers.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.007. COLLECTION OF CHILD-CARE DATA. (a) The network, through its members, shall:

(1) collect and continuously update statewide data regarding the supply of and demand for child-care and early childhood education services in this state;

(2) report the data to the commission each calendar quarter; and

(3) make the information available statewide.

(b) The data required by this section must include a comprehensive compilation of all available child-care and early childhood education services in this state and information concerning unmet needs of consumers with respect to those services.

(c) The commission and the Department of Protective and Regulatory Services shall provide assistance to the network and members of the network in collecting, aggregating, and updating the data required by this section.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

Sec. 310.008. RULES. The commission may adopt rules necessary to implement this chapter.

Added by Acts 2001, 77th Leg., ch. 1445, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 311. VOLUNTARY WORKFORCE TRAINING FOR CERTAIN STUDENTS

Sec. 311.001. DEFINITIONS. In this chapter:

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

(2) "Certified program" means a career and technology secondary and postsecondary education program conducted under an agreement as described by Section 311.003 or a voluntary program certified by the agency in conjunction with the commission as meeting the standards prescribed by Section 311.002, and that:

(A) integrates a secondary school academic curriculum with private sector workplace training and a postsecondary curriculum;

(B) places students in job internships;

(C) is designed to continue into postsecondary education and lead to the participant earning an associate's degree or a bachelor's degree;

(D) will result in teaching new skills and adding value to the wage-earning potential of participants and increasing a participant's long-term employability in this state; and

(E) meets recognized or accepted industry standards.

(3) "Participant" means a person at least 16 years of age who is enrolled in a public or private secondary or postsecondary school, or an equivalent program, and who began to voluntarily participate in a certified voluntary workforce training program as part of secondary school education.

(4) "Sponsor" means any person operating a certified program and in whose name the program is registered.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.002. CERTIFICATION STANDARDS. To be eligible for certification by the agency under this chapter, a program must:

(1) be conducted under an organized, written plan embodying the terms and conditions of employment, job training, classroom instruction, and supervision of participants and be subscribed to by a sponsor who has undertaken to carry out the program;

(2) comply with all state and federal laws, including laws pertaining to fair labor standards and workplace health and safety;

(3) comply with recognized industry standards applicable to the program in which the participant is engaged; and

(4) include an agreement by the employer to assign an employee to serve as a mentor for the participant.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.003. CERTIFIED PROGRAM AGREEMENTS. (a) A certified program must be conducted under a signed written agreement between each participant and the employer. The agreement may include the following:

(1) the name and signature of the participant, the sponsor, and the employer, and a parent or guardian of the participant if the participant is under 18 years of age;

(2) a description of the career field in which the participant is to be trained, the academic and technical skills to be attained, and the beginning date and duration of the broad-based training; and

(3) the employer's agreement to provide paid employment, at a base wage not less than the minimum wage, for the participant during the participant's junior and senior years in high school and after the participant's first year of postsecondary education.

(b) A participant's time spent in a program under Subsection (a) may not exceed 15 hours a week, without regard to whether the participant is paid for the time.

(c) A participant may, but is not required to, enter into a postsecondary education agreement with the participant's employer. An agreement under this subsection must include:

(1) the participant's agreement to pay half of the participant's wages to be held in trust to be applied toward the participant's postsecondary education and the employer's agreement to pay into the trust an additional amount equal to the amount paid by the participant;

(2) the participant's agreement to work for the employer for at least two years following the date of completion of the participant's postsecondary education;

(3) the employer's agreement to pay the participant during the period described by Subdivision (2) at least the prevailing wage for employees having a similar education or license and performing

similar work and to provide other employee benefits to which employees performing similar work are entitled; and

(4) the participant's agreement to reimburse the employer if the participant fails to perform the two years of employment described by Subdivision (2) for the employer's contribution to the trust established under Subdivision (1), plus interest at the prime interest rate at the time the participant defaults on the agreement.

(d) If a participant decides not to continue in the program before beginning the participant's postsecondary education, the participant and employer each shall be refunded, not later than the 30th day after the last date of participation in the program, their respective contributions to the trust established under Subsection (c)(1) and a pro rata share of the interest earned on the money in the trust.

(e) The money held in trust under Subsection (c)(1) must be held in trust for the benefit of the participant under rules adopted by the agency. Payment into a trust approved under 29 U.S.C. Section 1103 for the benefit of the participant satisfies the requirement of this subsection. The fund must be specified in the agreement.

(f) An employer who enters into an agreement under this section may not retain participants solely to replace the employer's current employees.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.004. RULEMAKING. (a) The agency and commission shall adopt rules as necessary to administer each entity's duties under this chapter. To the extent possible, the agency and commission shall cooperate with each other in adopting rules so that all rules adopted under this chapter are consistent and easily administered.

(b) Rules adopted under this section must include a requirement that participation in a certified program under this chapter is voluntary.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

Sec. 311.005. COMMISSION DUTIES; LOCAL WORKFORCE DEVELOPMENT BOARDS. (a) The commission shall:

(1) administer its responsibilities under this chapter as

part of the commission's workforce development system;

(2) cooperate with other state agencies as appropriate; and

(3) provide information and technical assistance to the agency, secondary and postsecondary schools, employers, local workforce development boards, and other entities.

(b) A local workforce development board, working in partnership with other local and regional entities, shall provide to secondary and postsecondary schools and employers in the area in which the board is established information and technical assistance as necessary to implement this chapter.

Added by Acts 1999, 76th Leg., ch. 1422, Sec. 1, eff. Sept. 1, 1999.

CHAPTER 313. REQUIREMENTS FOR PROVIDERS OF RELATIVE CHILD CARE

Sec. 313.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of Family and Protective Services.

(2) "Relative child care" means child care that is:

(A) funded wholly or partly from money received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. Section 9858 et seq.); and

(B) provided by a provider who:

(i) is at least 18 years of age;

(ii) complies with any federal or state requirements regarding subsidized child care that apply to the provider;

(iii) provides child-care services for less than 24 hours a day to a child who is, by marriage, blood relationship, or court decree:

(a) the grandchild of the provider;

(b) the great-grandchild of the provider;

(c) the sibling of the provider, and the child resides in a separate residence from the provider; or

(d) the niece or nephew of the provider; and

(iv) operates a listed family home under Chapter 42, Human Resources Code, that provides care for one or more children related to the provider and does not hold any other license or permit to provide child care under Chapter 42, Human Resources Code.

(3) "Teen parent" means an individual 18 years of age or younger, or 19 years of age and fully enrolled in a secondary school in a program leading toward a high school diploma, who is the parent of a child.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.002. LOCATION OF CARE. (a) Except as provided by Subsections (b) and (c), relative child care must be provided in the child-care provider's home.

(b) The commission shall allow relative child care in the child's home:

(1) for a disabled child and the child's siblings;

(2) for a child under 18 months of age and the child's siblings;

(3) for a child of a teen parent; and

(4) when the parent's work schedule necessitates child–care services during the evening, overnight, or on the weekend and taking the child outside of the child's home would be disruptive to the child.

(c) The commission may allow relative child care in the child's home if the commission determines that other child-care provider arrangements are not available in the community.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.003. LISTING AS FAMILY HOME. A relative child-care provider must list the provider's home with the department as a family home.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.004. NOTICE OF BACKGROUND AND CRIMINAL HISTORY CHECKS. The commission must provide notice of the background and criminal history check requirement to the parent or guardian of the child who

will receive care through a relative child-care provider before the parent or guardian selects the provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

Sec. 313.005. MEMORANDUM OF UNDERSTANDING. The commission and the department shall adopt a memorandum of understanding regarding the administration and payment of costs of listing a relative child-care provider as required by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 869 (S.B. 76), Sec. 1, eff. September 1, 2011.

CHAPTER 314. TEXAS BACK TO WORK PROGRAM

Sec. 314.001. DEFINITION. In this chapter, "qualified applicant" means a person who made less than $40 per hour at the person's last employment before becoming unemployed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

Sec. 314.002. INITIATIVE ESTABLISHED. (a) The Texas Back to Work Program is established within the commission.

(b) The purpose of the program is to establish public-private partnerships with employers to transition residents of this state from receiving unemployment compensation to becoming employed as members of the workforce.

(c) An employer that participates in the initiative may receive a wage subsidy for hiring one or more qualified applicants who are unemployed at the time of hire.

(d) The commission, for the purposes of this section, may use:

(1) money appropriated to the commission; and

(2) money that is transferred to the commission from trusteed programs within the office of the governor, including:

(A) appropriated money from the Texas Enterprise Fund;

(B) available federal funds; and

(C) money from other appropriate, statutorily

authorized funding sources.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

Sec. 314.003. RULES. The commission may adopt rules as necessary to implement this chapter.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 35.02, eff. September 28, 2011.

CHAPTER 315. ADULT EDUCATION AND LITERACY PROGRAMS

Sec. 315.001. DEFINITIONS. In this chapter:

(1) "Adult" means any individual who is over the age of compulsory school attendance prescribed by Section 25.085, Education Code.

(2) "Adult education" means services and instruction provided below the college level for adults by public school districts, public junior colleges, regional education service centers, nonprofit agencies, or community-based organizations.

(3) "Community-based organization" has the meaning assigned by 20 U.S.C. Section 7801.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.002. COMMISSION DUTIES. (a) The commission shall:

(1) provide adequate staffing, including by hiring a director, to develop, administer, and support a comprehensive statewide adult education program and coordinate related federal and state programs for the education and training of adults;

(2) develop the mechanism and guidelines for the coordination of comprehensive adult education and related skill training services for adults with other entities, including public agencies and private organizations, in planning, developing, and implementing related programs;

(3) administer all state and federal funds for adult education and related skill training services in this state, other

than funds that another entity is specifically authorized to administer under other law;

(4) prescribe and administer standards and accrediting policies for adult education;

(5) prescribe and administer rules for teacher certification for adult education;

(6) accept and administer grants, gifts, services, and funds from available sources for use in adult education;

(7) adopt or develop and administer a standardized assessment mechanism for assessing all adult education program participants who need literacy instruction, adult basic education, or secondary education leading to an adult high school diploma or the equivalent;

(8) monitor and evaluate educational and employment outcomes of students who participate in the commission's adult education and literacy programs; and

(9) provide, within the context of administering adult education and literacy programs, training opportunities for parents regarding how to be the primary teachers for their children and full partners in their children's education.

(b) The assessment mechanism prescribed by Subsection (a)(7) must include an initial basic skills screening instrument and must provide comprehensive information concerning baseline student skills before and student progress after participation in an adult education program.

(c) Not later than December 1 of each even-numbered year, the commission shall report to the legislature regarding the educational and employment outcomes of students who participate in the commission's adult education and literacy programs.

(d) The commission may adopt rules for the administration of this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.003. PROVISION OF ADULT EDUCATION PROGRAMS. Adult education programs must be provided by public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations approved in accordance

with state statutes and rules adopted by the commission. The programs must be designed to meet the education and training needs of adults to the extent possible using available public and private resources. Bilingual education may be used to instruct students who do not function satisfactorily in English whenever it is appropriate for those students' optimum development.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.004. ADULT EDUCATION ASSESSMENT. The commission shall, in consultation with the Texas Higher Education Coordinating Board and the Texas Education Agency, review the standardized assessment mechanism required under Section 315.002(a)(7) and recommend any changes necessary to align the assessment with the assessments designated under Section 51.3062, Education Code, to allow for the proper placement of a student in an adult basic education course or to provide the student with the proper developmental or English as a second language coursework, as appropriate.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.005. ADULT EDUCATION AND LITERACY ADVISORY COMMITTEE. (a) In this section, "advisory committee" means the adult education and literacy advisory committee created under this section.

(b) The commission shall establish an adult education and literacy advisory committee composed of not more than nine members appointed by the commission. Members of the advisory committee must have expertise in the field of adult education and literacy and may include adult educators, providers, advocates, current or former adult education and literacy program students, and leaders in the nonprofit community engaged in literacy promotion efforts. The advisory committee's membership must include at least one representative of the business community and at least one representative of a local workforce development board.

(c) The advisory committee shall:

(1) meet at least quarterly;

(2) report to the commission at least annually; and

(3) advise the commission on:

(A) the development of:

(i) policies and program priorities that support the development of an educated and skilled workforce in this state;

(ii) statewide curriculum guidelines and standards for adult education and literacy services that ensure a balance of education and workplace skill development;

(iii) a statewide strategy for improving student transitions to postsecondary education and career and technical education training; and

(iv) a centralized system for collecting and tracking comprehensive data on adult basic education and literacy program performance outcomes;

(B) the exploration of potential partnerships with entities in the nonprofit community engaged in literacy promotion efforts, entities in the business community, and other appropriate entities to improve statewide literacy programs; and

(C) any other issue the commission considers appropriate.

(d) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the advisory committee.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.006. STATE FUNDING. (a) Funds shall be appropriated to implement statewide adult basic education, adult bilingual education, high school equivalency, and high school credit programs to eliminate illiteracy in this state and to implement and support a statewide program to meet the total range of adult needs for adult education and related skill training. The commission shall ensure that public school districts, public junior colleges, regional education service centers, nonprofit agencies, and community-based organizations have direct and equitable access to those funds.

(b) In addition to any amount appropriated under Subsection (a), the legislature may appropriate an additional amount to the commission for the purpose of skill training in direct support of industrial expansion and new business development in locations,

industries, and occupations designated by the commission, if the training supports the basic purposes of this chapter. To support the basic purposes of this chapter, the legislature may also appropriate an additional amount to the commission for skill training that is conducted to support the expansion of civilian employment opportunities on United States military reservations.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.007. PERFORMANCE INCENTIVE FUNDING. (a) The commission by rule shall develop and establish a performance-based process for annually awarding funds to entities that deliver adult education and literacy services under this chapter. The process must be designed to reward those entities demonstrating exemplary performance in the delivery of services.

(b) In developing the process for awarding funds under this section, the commission shall prescribe:

(1) criteria, including fiscal and programmatic performance criteria, to be used to evaluate the performance by the entities described by Subsection (a); and

(2) procedures for taking corrective action, including contract termination or the discontinuation of an award of funds, against an entity for the entity's failure to satisfy the performance criteria prescribed under Subdivision (1).

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

Sec. 315.008. SERVICE PROVIDER CONTRACTS: COMPETITIVE PROCUREMENT REQUIREMENT. The commission shall use a competitive procurement process to award a contract to a service provider of an adult education program.

Added by Acts 2013, 83rd Leg., R.S., Ch. 73 (S.B. 307), Sec. 1.01, eff. September 1, 2013.

SUBTITLE C. VOCATIONAL REHABILITATION AND CERTAIN OTHER SERVICES FOR PERSONS WITH DISABILITIES

CHAPTER 351. GENERAL PROVISIONS; RESPONSIBILITY FOR ADMINISTRATION OF SERVICES

Sec. 351.001. DEFINITIONS. In this subtitle:

(1) "Department" means the Department of Assistive and Rehabilitative Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

For expiration of Subsections (b), (c), and (d), see Subsection (d).

Sec. 351.002. RESPONSIBILITY FOR ADMINISTRATION OF SERVICES AND PROGRAMS. (a) Notwithstanding any other provision of this subtitle, the department shall administer the services and programs under this subtitle until September 1, 2016. On that date, the department shall cease administering the services and programs and the commission shall begin administering the services and programs, subject to receipt of any required federal approval.

(b) The department or commission, as appropriate, shall seek federal approval, if required:

(1) for the commission, beginning on September 1, 2016, to administer the following services and programs under this subtitle that the department operated before that date under the federal Rehabilitation Act of 1973 (29 U.S.C. Sections 720 through 751):

(A) the vocational rehabilitation program for individuals with visual impairments;

(B) the vocational rehabilitation program for individuals with other disabilities;

(C) the Independent Living Services Program for older individuals who are blind; and

(D) the Criss Cole Rehabilitation Center;

(2) for the commission, beginning on September 1, 2016, to administer the program for vending facilities operated by blind persons under Chapter 355, including the Business Enterprises Program under the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.), that the department operated before that date; and

(3) to designate within the commission the state unit under 29 U.S.C. Section 721 that is responsible for administering the

state's vocational rehabilitation program.

(c) The Rehabilitation Council of Texas transfers to the commission on September 1, 2016.

(d) Subsections (b) and (c) and this subsection expire September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

For expiration of this section, see Subsection (d).

Sec. 351.0021. ADDITIONAL DUTIES OF HEALTH AND HUMAN SERVICES TRANSITION LEGISLATIVE OVERSIGHT COMMITTEE. (a) In this section, "committee" means the Health and Human Services Transition Legislative Oversight Committee established under Section 531.0203, Government Code.

(b) In addition to the requirements of Section 531.0203(h), Government Code, the committee shall:

(1) facilitate the transfer of vocational rehabilitation services and other services and programs under this subtitle with, to the greatest degree possible, no negative effect on the delivery of services to clients; and

(2) advise the executive director, the commissioner of assistive and rehabilitative services, and the executive commissioner concerning:

(A) the services and programs to be transferred under this subtitle and the funds and obligations that are related to the services and programs; and

(B) the transfer of the services and programs and related records, property, funds, and obligations from the department to the commission as provided by this subtitle.

(c) In addition to the requirements for the report specified by Section 531.0203(j), Government Code, the committee shall include in the report under that subsection an update on the progress of and issues related to the transfer of vocational rehabilitation services and other services and programs under this subtitle from the department to the commission, including the need for any additional statutory changes required to complete the transfer of services and programs to the commission in accordance with this subtitle.

(d) This section expires September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 27(b), eff. September 1, 2015.

For expiration of this section, see Subsection (e).

Sec. 351.0022. TRANSITION PLAN. (a) In addition to the requirements under Section 531.0204, Government Code, the executive commissioner shall work with the executive director and the commissioner of assistive and rehabilitative services to ensure the transition plan under that section includes a plan for the transfer of vocational rehabilitation services and other services and programs from the department to the commission that ensures the transfer is accomplished in a careful and deliberative manner. Specifically, the transition plan must include:

(1) the specific steps and methods for the transfer or disposition of all obligations, rights, contracts, leases, records, property, and funds, including unexpended and unobligated appropriations, relating to the services and programs transferred from the department to the commission under this subtitle, including the plans for leased office or building space and the transition of data and information technology systems supporting the services and programs;

(2) the identification of all full-time equivalent employee positions that are associated with the department's administration of the services and programs to be transferred to the commission, including the full-time equivalent employee positions that are associated with the Health and Human Services Commission's administrative support of those transferring services and programs;

(3) measures to ensure that unnecessary disruption to the provision of transferred services and programs does not occur;

(4) a strategy for integrating the department's vocational rehabilitation staff into the commission's local workforce development boards and centers as required by Section 351.004;

(5) a strategy for integrating vocational rehabilitation programs for individuals with visual impairments and for individuals with other disabilities as required by Section 352.101;

(6) a schedule for implementing the transfer of the services and programs; and

(7) a strategy for exchanging data with other state agencies that refer clients for vocational rehabilitation services.

(b) To the extent allowed by federal law, public hearings held under Section 531.0204(c), Government Code, if appropriate, may be combined with other public hearings required under federal law in relation to the adoption of a state plan for vocational rehabilitation services.

(c) The plan for the transfer of vocational rehabilitation services and other services and programs required by this section must be included as part of the transition plan submitted to the Health and Human Services Transition Legislative Oversight Committee, the governor, and the Legislative Budget Board under Section 531.0204(e), Government Code, by the date prescribed by that subsection. In addition, the plan must be separately submitted to that committee and the governor as soon as practicable after September 1, 2015. The committee shall comment on the plan in conjunction with making comments on the transition plan as required by Section 531.0204(e), Government Code.

(d) If in making comments and recommendations on the transition plan under Section 531.0204(e), Government Code, the Health and Human Services Transition Legislative Oversight Committee has comments, concerns, or recommendations regarding the elements of the plan required by this section, the committee shall provide those comments, concerns, and recommendations to the executive director and the commissioner of assistive and rehabilitative services in addition to the executive commissioner. The executive director, the commissioner of assistive and rehabilitative services, and the executive commissioner may not finalize the plan required by this section until the comments, concerns, and recommendations of the committee specifically regarding that plan have been reviewed and considered.

(e) This section expires September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 27(b), eff. September 1, 2015.

Sec. 351.003. DESIGNATED STATE UNIT FOR VOCATIONAL REHABILITATION SERVICES. In accordance with the requirements of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 701 et seq.), the commission shall establish a designated state unit within the commission that:

(1) is an organizational unit designated to be primarily

responsible for and concerned with vocational rehabilitation of individuals with disabilities;

(2) has a full-time director;

(3) has a staff employed on the rehabilitation work of the organizational unit, all or substantially all of whom are employed full-time on such work; and

(4) is located at an organizational level and has an organizational status within the commission comparable to that of other major organizational units of the commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

For expiration of this section, see Subsection (b).

Sec. 351.004. INTEGRATION OF VOCATIONAL REHABILITATION PROGRAMS; PROGRAM STAFF. (a) Not later than August 31, 2018, the commission shall integrate the vocational rehabilitation staff from department offices into the commission's local workforce development boards and centers.

(b) This section expires September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 351.005. MEANING OF CERTAIN REFERENCES IN LAW. Until the administration of this subtitle is transferred from the department to the commission, a reference to the commission or the executive director in this subtitle means the department, commissioner of assistive and rehabilitative services, or executive commissioner, as applicable.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

CHAPTER 352. VOCATIONAL REHABILITATION SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 352.001. DEFINITIONS. In this chapter:

(1) "Direct services" means services provided to a client

by a commission employee, including counseling, facilitating the purchase of services from a source other than the commission, and purchasing equipment and other items and providing other services necessary for the client to successfully complete a commission program.

(2) "Direct services program" means a program operated by the commission through which direct services are provided.

(3) "Individual with a disability" means an individual who has a physical impairment, including a visual impairment, or mental impairment that constitutes a substantial impediment to employment, but that is of a nature that rehabilitation services may be expected to enable the individual to engage in a gainful occupation.

(4) "Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation.

(5) "Occupational license" means a license, permit, or other written authorization required by a governmental entity as a condition for engaging in an occupation.

(6) "Physical restoration" means medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a substantial impediment to employment of an individual with a disability within a reasonable period of time. The term includes medical, surgical, dental, and psychiatric treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances. The term excludes treatment to cure acute or transitory conditions.

(7) "Prosthetic appliance" means an artificial device necessary to support or replace a part of the body or to increase the acuity of a sensory organ.

(8) "Rehabilitation training" means all necessary training provided to an individual with a disability to compensate for a substantial impediment to employment. The term includes manual, preconditioning, prevocational, vocational, and supplementary training and training to achieve broader and more lucrative skills and capacities.

(9) "Substantial impediment to employment" means a physical or mental condition that obstructs or impairs, or if not corrected will probably obstruct or impair, an individual's performance in an occupation.

(10) "Vocational rehabilitation" or "vocational rehabilitation services" means services that are provided directly by

the commission or through a public or private agency and that the commission determines are necessary to compensate an individual with a disability for a substantial impediment to employment so that the individual may engage in a remunerative occupation. The terms include:

(A) medical and vocational diagnosis;
(B) vocational guidance, counseling, and placement;
(C) rehabilitation training;
(D) physical restoration;
(E) transportation;
(F) occupational licenses;
(G) customary occupational tools and equipment;
(H) maintenance;
(I) training books and materials; and
(J) other goods and services for which the commission receives financial support under federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.002. PURPOSE. It is the policy of this state to provide vocational rehabilitation services to eligible individuals with disabilities so that those individuals may prepare for and engage in a gainful occupation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.003. REHABILITATION COUNCIL OF TEXAS. (a) The Rehabilitation Council of Texas operates in accordance with the federal Rehabilitation Act Amendments of 1992, Pub. L. No. 102-569, and the federal Rehabilitation Act Amendments of 1998, Pub. L. No. 105-220.

(b) The Rehabilitation Council of Texas shall report to and advise the commission on the council's activities and the results of the council's work. For the purpose of performing its advisory functions, the council shall work with the commission, the executive director, and other commission staff.

(c) The commission shall adopt rules for the administration of

the council.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.004. RECEIPT AND DISBURSEMENT OF STATE AND FEDERAL FUNDS. (a) The comptroller is custodian of federal funds received by the state to implement federal law relating to vocational rehabilitation.

(b) The commission shall certify for disbursement funds available for the vocational rehabilitation program in accordance with regulations.

(c) The comptroller shall disburse state and federal vocational rehabilitation funds on certification by the commission.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.005. GIFTS, DONATIONS, AND OTHER MONEY. (a) The commission shall deposit all money paid to the commission under this chapter in the state treasury. The money may be used only for the administration of this chapter.

(b) The commission may receive and use gifts and donations for carrying out the purposes of this chapter. A person may not receive payment for solicitation of any funds.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.006. MISUSE OF INFORMATION. Except for purposes directly connected with the administration of the vocational rehabilitation program and according to commission rules, no person may solicit, disclose, receive, use, or knowingly permit the use of records or other information concerning an applicant for or recipient of vocational rehabilitation services that is directly or indirectly acquired by an officer or employee of the state or its political subdivisions in the course of the person's official duties.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.007. CRIMINAL HISTORY RECORD INFORMATION. (a) The commission may obtain criminal history record information from the Texas Department of Criminal Justice and the Texas Department of Public Safety if the criminal history records relate to:

(1) an applicant selected for employment with the commission whose potential duties include direct contact with clients to provide vocational rehabilitation services or other services under this subtitle;

(2) an applicant for vocational rehabilitation services or other services under this subtitle from the commission; or

(3) a client receiving vocational rehabilitation services or other services under this subtitle.

(b) The Texas Department of Criminal Justice and the Texas Department of Public Safety on request shall supply to the commission criminal history record information relating to applicants selected for employment with the commission whose potential duties include direct contact with clients to provide vocational rehabilitation services, applicants for vocational rehabilitation services from the commission, or vocational rehabilitation clients of the commission. The commission shall treat all criminal history record information as privileged and confidential and for commission use only.

(c) The commission by rule shall establish criteria for denying a person's application for employment with the commission to provide vocational rehabilitation services based on criminal history record information obtained as authorized by this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.008. HEARINGS. An applicant for or recipient of vocational rehabilitation services who is aggrieved by an action or inaction under this chapter is entitled to a hearing by the commission in accordance with law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES

Sec. 352.051. VOCATIONAL REHABILITATION PROGRAM FOR INDIVIDUALS WITH DISABILITIES. (a) The commission shall conduct a program to provide vocational rehabilitation services to eligible individuals with disabilities.

(b) To achieve the purposes of the program, the commission may:

(1) cooperate with other public and private agencies in studying the problems involved in providing vocational rehabilitation and in establishing, developing, and providing necessary or desirable facilities and services;

(2) enter into reciprocal agreements with other states to provide vocational rehabilitation for the residents of the states concerned; and

(3) conduct research and compile statistics relating to the vocational rehabilitation of individuals with disabilities.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.052. COOPERATION WITH FEDERAL GOVERNMENT; OBTAINING FEDERAL FUNDS. (a) The commission shall cooperate with the federal government to accomplish the purposes of federal laws relating to vocational rehabilitation for individuals with disabilities and closely related activities.

(b) The commission shall negotiate agreements or plans with the federal government and shall use efficient methods of administration and comply with other conditions required to secure the full benefits of the federal laws. If the commission determines that a provision of state law precludes conformity with a federal requirement and limits federal financial support, the commission may waive or modify the state law to the extent necessary to obtain the full benefits of the federal law.

(c) The commission may comply with any requirements necessary to obtain federal funds to be used for vocational rehabilitation services in the maximum amount and most advantageous proportion possible.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25,

eff. September 1, 2015.

Sec. 352.053. CONTRACTS FOR SERVICE. (a) The commission shall include in its contracts with service providers under this chapter provisions relating to:

(1) clearly defined and measurable program performance standards that directly relate to the service provided;

(2) clearly defined penalties for nonperformance of a contract term; and

(3) clearly specified accounting, reporting, and auditing requirements applicable to money received under the contract.

(b) The commission shall monitor a service provider's performance under a contract for service under this chapter. In monitoring performance, the commission shall:

(1) use a risk-assessment methodology to institute statewide monitoring of contract compliance of service providers; and

(2) evaluate service providers based on clearly defined and measurable program performance objectives.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.054. RATES FOR MEDICAL SERVICES. (a) The commission by rule shall adopt standards governing the determination of rates paid for medical services provided under this chapter. The rules must provide for an annual reevaluation of the rates.

(b) The commission shall establish a schedule of rates based on the standards adopted under Subsection (a). In adopting the rate schedule, the commission shall:

(1) compare the proposed rate schedule to other cost-based and resource-based rates for medical services, including rates paid under Medicaid and the Medicare program; and

(2) for any rate adopted that exceeds the Medicaid or Medicare rate for the same or a similar service, document the reasons why the adopted rate reflects consideration of the best value, provider availability, and consumer choice.

(c) The commission shall provide notice to interested persons and allow those persons to present comments before adopting the

standards and schedule of rates under Subsections (a) and (b).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.055. CONTRACT PAYMENT. The commission shall base payment under a contract for vocational rehabilitation services on outcome-based performance standards defined in the contract.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.056. CONTRACTS FOR ADAPTIVE TECHNOLOGY. The commission shall include in a contract under this chapter with a supplier of adaptive technology equipment provisions that require the supplier to provide training for clients receiving the adaptive technology equipment.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.057. LOANS FOR VISUAL AIDS. (a) The commission may establish a program to make loans to finance the purchase of technological aids for individuals with visual impairments. Interest on the loans may not exceed 10 percent per year.

(b) The commission may adopt rules to administer the loan program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.058. SUBROGATION. (a) By providing a person rehabilitation services, including medical care services, under this subchapter, the commission is subrogated to the person's right of recovery from:

(1) personal insurance;

(2) another person for personal injury caused by the other

person's negligence or wrongdoing; or

(3) any other source.

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

(c) The commission may totally or partially waive the commission's right of subrogation when the commission finds that enforcement would tend to defeat the purpose of rehabilitation.

(d) The commission may adopt rules for the enforcement of the commission's right of subrogation.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.059. WORK INCENTIVES AND SUPPLEMENTAL SECURITY INCOME (SSI). The commission shall employ a person at the commission's central office to:

(1) train counselors to understand and use work incentives; and

(2) review cases to ensure that commission clients are informed of the availability of and assisted in obtaining work incentives and Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.).

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

SUBCHAPTER C. PROVISION OF AND ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES

For expiration of this section, see Subsection (c).

Sec. 352.101. INTEGRATION OF VOCATIONAL REHABILITATION PROGRAMS. (a) Not later than October 1, 2017, and subject to federal approval, the commission shall integrate into a single vocational rehabilitation program the following programs that are operated under the federal Rehabilitation Act of 1973 (29 U.S.C. Sections 720 through 751):

(1) the vocational rehabilitation program for individuals with visual impairments; and

(2) the vocational rehabilitation program for individuals

with other disabilities.

(b) Not later than October 1, 2017, to facilitate the integration of the vocational rehabilitation programs identified in Subsection (a), the commission shall at a minimum:

(1) reorganize the commission's vocational rehabilitation services in order to provide services based on an individual's functional need instead of an individual's type of disability;

(2) develop a plan to support specialization of vocational rehabilitation counselors in serving different client populations, including sufficient specialization in individuals with visual impairments to maintain expertise in serving that population;

(3) redesign performance measures for the provision of vocational rehabilitation services;

(4) consolidate policies for the provision of vocational rehabilitation services; and

(5) recommend the adoption of any rules necessary to implement this section.

(c) This section expires September 1, 2019.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.102. ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES. The commission shall provide vocational rehabilitation services to individuals with disabilities eligible for those services under federal law.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.103. PROVISION OF VOCATIONAL REHABILITATION SERVICES. (a) The commission by rule shall establish and maintain guidelines for providing vocational rehabilitation services that are consistent with state and federal laws and that include:

(1) a system of organization for the delivery of vocational rehabilitation services statewide;

(2) eligibility requirements for vocational rehabilitation services;

(3) requirements for the rehabilitation planning process;

(4) the types of services that may be provided to a client through a vocational rehabilitation program; and

(5) requirements for client participation in the costs of vocational rehabilitation services, including documentation that a client has sought benefits for which the client is eligible from sources other than the commission and that may assist the client in obtaining vocational rehabilitation goods or services.

(b) The commission shall annually assess the effectiveness of the state's vocational rehabilitation program.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.104. TRAINING AND SUPERVISION OF COUNSELORS. (a) The commission shall provide specific guidance to vocational rehabilitation counselors in:

(1) selecting vocational objectives according to a client's skills, experience, and knowledge;

(2) documenting a client's impediment to employment;

(3) selecting rehabilitation services that are reasonable and necessary to achieve a client's vocational objective;

(4) measuring client progress toward the vocational objective, including the documented, periodic evaluation of the client's rehabilitation and participation; and

(5) determining eligibility of employed and unemployed applicants for rehabilitation services using criteria defined by commission rule to document whether a client is substantially underemployed or at risk of losing employment.

(b) The commission by rule shall require monitoring and oversight of vocational rehabilitation counselor performance and decision making in accordance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.105. SPECIALIZED TRAINING FOR CERTAIN EMPLOYEES. (a) The commission shall establish and require employee participation in a specialized training program for certain employees, including vocational rehabilitation transition specialists and transition

counselors, whose duties involve assisting youth with disabilities to transition to post-schooling activities, services for adults, or community living.

(b) The training program must provide employees with information regarding:

(1) supports and services available from health and human services agencies, as defined by Section 531.001, Government Code, for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and

(B) adults with disabilities;

(2) community resources available to improve the quality of life for:

(A) youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living; and

(B) adults with disabilities; and

(3) other available resources that may remove transitional barriers for youth with disabilities who are transitioning into post-schooling activities, services for adults, or community living.

(c) In developing the training program required by this section, the commission shall collaborate with health and human services agencies, as defined by Section 531.001, Government Code, as necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.106. PAYMENT OF SHIFT DIFFERENTIALS. The commission by rule may develop and implement policies allowing shift differentials to be paid to employees in the vocational rehabilitation program under this chapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

Sec. 352.107. CLIENT ORIENTATION MATERIALS. The commission shall develop and distribute at intake client orientation materials

for the vocational rehabilitation program that include information on the commission's decision-making criteria.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

For expiration of Subsections (f) and (g), see Subsection (g).

Sec. 352.108. COORDINATION WITH TEXAS EDUCATION AGENCY. (a) For purposes of this section, "transition services" means services provided to students with disabilities to assist the students in making the transition from secondary school to postsecondary education programs or competitive integrated employment.

(b) The commission and the Texas Education Agency shall collaborate to develop a mechanism to identify the areas of the state with the greatest needs for transition services for students with disabilities. The mechanism must account for the commission's limited resources and a school district's needs, including:

(1) the school district's resources for special education;

(2) the number of students with disabilities in the school district; and

(3) other factors that the commission and the Texas Education Agency consider important.

(c) The commission and the Texas Education Agency shall update the mechanism developed under Subsection (b) on a periodic basis.

(d) The commission shall develop uniform, statewide policies for transition services that include:

(1) the goal that a transition counselor initiate contact with a student approximately three years before the student is expected to graduate from high school;

(2) the minimum level of services to be provided to a student at the time that a transition counselor initiates contact with the student;

(3) standards, based on the mechanism developed under Subsection (b), for assigning a transition counselor to a school that ensure consistency among regions but that are not too restrictive;

(4) expectations for transition counselors to develop relationships with school personnel, including the employee designated to serve as the school district's designee on transition and employment services under Section 29.011(b), Education Code; and

(5) expectations for regional commission staff to work with education service center representatives on a regular basis to identify areas of greatest need and to discuss local strategies for coordination between transition counselors and schools.

(e) The commission and the Texas Education Agency shall enter into a memorandum of understanding to comply with the policies under this section and to improve coordination between the agencies. The memorandum of understanding must include:

(1) strategies to better inform transition clients, clients' families, and school personnel regarding the commission's available services and contact information for commission transition counselors; and

(2) a process to be used by the commission and the Texas Education Agency to develop and update the mechanism used to identify students who may need services.

(f) On or after September 1, 2016, but not later than September 1, 2017:

(1) the commission and the Texas Education Agency shall develop the mechanism required in Subsection (b) and enter into the memorandum of understanding required in Subsection (e); and

(2) the commission shall develop the policies described in Subsection (d).

(g) Subsection (f) and this subsection expire September 1, 2018.

Added by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 25, eff. September 1, 2015.

CHAPTER 355. VENDING FACILITIES OPERATED BY BLIND PERSONS

Sec. 355.001. DEFINITIONS. In this chapter:

(1) "Blind person" means a person having not more than 20/200 visual acuity in the better eye with correcting lenses or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(2) "Vending facility" means a facility in which food, drinks, drugs, novelties, souvenirs, tobacco products, notions, or related items are sold regularly. The term excludes facilities consisting solely of vending machines that do not compete directly or

indirectly with a facility that is or could be operated by a person with a disability.

(3) "State property" means land and buildings owned, leased, or otherwise controlled by the state.

(4) "Agency" means the state agency in charge of state property.

(5) "Disability" means a physical or mental condition that the commission determines to constitute a substantial vocational disadvantage.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.002. LICENSE OR PERMIT REQUIRED. (a) No person may operate a vending facility or a facility with vending machines or other coin-operated devices on state property unless the person is licensed to do so by the commission or is authorized to do so by an agency granted a permit to arrange for vending facilities.

(b) Subsection (a) does not apply to a building in which the Texas Facilities Commission leases space to a private tenant under Subchapter E, Chapter 2165, Government Code.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.003. LICENSING PROCEDURE. (a) On its own initiative or at the request of an agency that controls state property, the commission shall survey the property, or blueprints and other available information concerning the property, to determine whether the installation of a vending facility is feasible and consonant with the commission's vocational rehabilitation objectives.

(b) If the installation of the facility is feasible, the commission shall either license a blind person to operate a facility to be installed by the commission or install a facility to be operated by a person with a disability who is not blind according to rules and procedures adopted by the commission.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.004. LOCATION OF VENDING FACILITIES. (a) With the concurrence of the agency in charge of state property, the commission shall designate the location of vending facilities that have been requested by the agency.

(b) The agency responsible for state property shall alter the property to make it suitable for the proper operation of the vending facilities. To this end, the agency in charge of constructing new state property shall consult with the commission during the planning stage on the construction.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.005. ISSUANCE OF LICENSES; ELIGIBILITY. (a) The commission may issue a license to operate its vending facilities on state property to blind citizens of the state who are capable of operating the facilities in a manner that is reasonably satisfactory to all parties concerned.

(b) Before issuing a license to a person, the commission shall determine whether the person has the physical, psychological, and personal traits and abilities required to operate a vending facility in a satisfactory manner.

(c) The commission shall maintain a roster of the names of each person who has been certified as suitable for licensing. If two or more equally qualified persons are listed on the roster and apply for a license to operate an available vending facility, the commission shall issue the license to the person who is most in need of employment.

(d) The granting of a license does not vest the licensee with property or other rights which may constitute the basis of a cause of action, at law or in equity, against the state or its officers or employees.

Transferred, redesignated and amended from Human Resources Code,

Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.006. EXPIRATION, RENEWAL, AND REVOCATION OF LICENSES. (a) A license or general permit to operate a vending facility on state property is valid for a period of three years from the date it is issued.

(b) The commission shall review each license or permit prior to its expiration and shall issue a new or different license or permit as the circumstances warrant.

(c) The commission and the agency may consent mutually to revoke a general permit prior to its expiration if changed circumstances warrant that action.

(d) A blind person's wilful failure to comply with the commission's rules or the provisions of this chapter constitutes grounds for the automatic revocation of the person's license.

(e) The commission shall adopt substantive and procedural rules governing the revocation of licenses.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.007. OPERATION OF VENDING FACILITIES BY CERTAIN PERSONS WHO ARE NOT BLIND. If the commission determines that a blind person could not properly operate a vending facility at a particular location, the commission may survey the property to determine whether a person with a disability that is not of a visual nature could operate the facility in a proper manner.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.008. CLOSING CERTAIN FACILITIES PROHIBITED. Neither a vending facility operated by an individual with a disability, nor a vending facility location surveyed by the commission, may be closed as a result of the transfer of state property from one agency to

another, the alteration of a state building, or the reorganization of a state agency unless the commission agrees to the closing.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.009. EMPLOYMENT OF ASSISTANTS. (a) If an individual licensed to operate a vending facility on state property requires an assistant, a qualified person with a disability of a visual nature must be given preference for employment. If the commission determines that a person with a disability of a visual nature could not perform the labor for which an assistant is required, or if a person with a disability of a visual nature is not available, a person with a disability that is not of a visual nature must be given preference for employment.

(b) An assistant employed by a blind person licensed by the commission must be approved by the commission, and the deliberate refusal of a blind licensee to comply with this section constitutes grounds for the revocation of the person's license.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.010. COMPETING VENDING MACHINES. (a) If the commission and an agency agree to the installation and operation of an additional vending facility or vending machine on property that already has a commission-sponsored vending facility, no additional permit or license is required. However, the installation of a competing vending facility consisting of vending machines or other coin-operated devices must be authorized by the commission. The commission's authorization must be made with a view toward providing the greatest economic benefits for blind persons consonant with supplying the additional services required at the building.

(b) State agencies shall cooperate and negotiate in good faith to accomplish the purposes of this chapter.

(c) Individuals with disabilities who operate vending facilities on state property are entitled to receive all commissions

from vending machines installed on the same property. If two or more vending facilities are operated by individuals with disabilities in a building in which vending machines are installed, the commission shall divide the commissions from the vending machines among the operators with disabilities in a manner that will achieve equity and equality in the incomes of those operators. If the commission has decided not to locate a vending facility in a building, the agency to whom a general permit has been issued shall determine the assignment of the commissions from vending machines installed in the building.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.011. VENDING FACILITY EQUIPMENT AND STOCK. (a) The commission may supply a blind vending facility operator with equipment and initial stock necessary for the operator to begin business.

(b) The commission shall collect and set aside from the proceeds of the operation of its vending facilities enough money:

(1) to insure a sufficient amount of initial stock for the facilities and for their proper maintenance;

(2) to pay the costs of supervision and other expenses incidental to the operation of the facilities; and

(3) to pay other program costs to the extent necessary to assure fair and equal treatment of the blind persons licensed to operate the facilities and to the extent allowed under federal programs that provide financial support to the commission.

(c) Except for purchasing and installing original equipment, the operation of commission-sponsored vending facilities must be as self-supporting and self-sustaining as possible. To achieve this end, the commission shall periodically review and, when necessary, revise its schedules for collecting and setting aside money from the proceeds of its vending facilities.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.012. DUTIES AND PRIVILEGES OF PARTIES. (a) The commission may promulgate rules and initiate procedures necessary to implement this chapter.

(b) A blind person licensed to operate a vending facility on state property shall operate the facility in accordance with law and the commission's rules and policies.

(c) The agency in charge of state property shall cooperate with the commission and its blind licensees to accomplish the purposes of this chapter. The agency shall also furnish all necessary utility service, including connections and outlets required for the installation of the facility, janitorial and garbage disposal services where feasible, and other related assistance.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.013. TRAINING PROGRAMS. The commission may establish training or experimentation locations necessary to train blind persons who desire to be licensed to operate vending facilities and to develop techniques which will allow blind persons to operate the facilities or related types of small businesses more efficiently and productively.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.014. CONFORMITY WITH FEDERAL STATUTES. (a) This chapter shall be construed in a manner consistent with the requirements of federal programs that provide financial assistance to the commission.

(b) If a provision of this chapter conflicts with a federal program requirement, the commission may waive or modify the provision to the extent necessary to secure the full benefits of the federal program.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec.

28, eff. September 1, 2015.

Sec. 355.015. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) property over which the federal government maintains partial or complete control;

(2) property maintained and operated by state-supported institutions of higher education; provided, however, that the commission may enter into agreements with state institutions of higher education concerning the use of blind labor in vending facilities at the institutions; or

(3) property purchased by the state or an agency of the state, property to which title is transferred from one state agency to another, or property control of which is transferred from one state agency to another, if:

(A) at the time of purchase or transfer of title or control, a vending facility is being operated on the property under lease, license, or contract; and

(B) prior to the time of purchase or transfer of title or control, the provisions of this chapter were rendered inapplicable to such property by this section or other law.

(b) This chapter does not apply to vending facilities operated by an institution for persons with mental illness or intellectual disabilities that is under the control of the Department of State Health Services, the Department of Aging and Disability Services, or a successor to one of those departments, if the vending facilities are operated without profit for the benefit of the patients at the institution.

(c) This chapter does not prohibit the commission from selecting blind persons to operate other suitable types of vending facilities or business enterprises, and the chapter does not prohibit the installation of automated vending facilities serviced by blind persons.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

Sec. 355.016. BUSINESS ENTERPRISES PROGRAM. (a) The commission is authorized to administer the Business Enterprises Program in accordance with the provisions of the Randolph-Sheppard Act (20 U.S.C. Section 107 et seq.).

(b) The commission is authorized to administer a retirement program for individuals licensed to operate vending facilities in accordance with applicable state and federal laws.

(c) A trust fund for a retirement program for individuals licensed to operate vending facilities under the Business Enterprises Program is established with the comptroller. This trust fund will be set up in the state treasury.

(d) All federal vending machine income shall be credited to this Business Enterprises Program trust fund. Vending machine income, as defined by 34 C.F.R. Section 395.1(z), means receipts (other than those of a blind vendor) from vending machine operations on federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs) in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(e) All expenditures authorized by the Randolph-Sheppard Act from federal vending revenue funds shall be paid from the Business Enterprises Program trust fund.

(f) The commission may contract with a professional management service to administer the Business Enterprises Program trust fund. In administering the trust fund, the professional management service may acquire, exchange, sell, or retain any kind of investment that a prudent investor, exercising reasonable care, skill, and caution, would acquire, exchange, sell, or retain under the circumstances, taking into consideration the investment of all the assets of the trust fund.

(g) With the approval of the comptroller, the commission may select a commercial bank, depository trust company, or other entity to serve as a custodian of the Business Enterprises Program trust fund's securities, and money realized from those securities, pending completion of an investment transaction. Money realized from those

securities must be:

(1) reinvested not later than one business day after the date it is received; or

(2) deposited in the treasury not later than the fifth business day after the date it is received.

Transferred, redesignated and amended from Human Resources Code, Chapter 94 by Acts 2015, 84th Leg., R.S., Ch. 1138 (S.B. 208), Sec. 28, eff. September 1, 2015.

TITLE 5. WORKERS' COMPENSATION

SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

CHAPTER 401. GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 401.001. SHORT TITLE. This subtitle may be cited as the Texas Workers' Compensation Act.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.003. ACTIVITIES OF THE STATE AUDITOR. (a) The division is subject to audit by the state auditor in accordance with Chapter 321, Government Code. The state auditor may audit:

(1) the structure and internal controls of the division;

(2) the level and quality of service provided by the division to employers, injured employees, insurance carriers, self-insured governmental entities, and other participants;

(3) the implementation of statutory mandates by the division;

(4) employee turnover;

(5) information management systems, including public access to nonconfidential information;

(6) the adoption and implementation of administrative rules by the commissioner; and

(7) assessment of administrative violations and the penalties for those violations.

(b) Nothing in this section limits the authority of the state auditor under Chapter 321, Government Code.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 7.02, eff. June 17,

2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.002, eff. September 1, 2005.

SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Adjuster" means a person licensed under Chapter 4101, Insurance Code.

(2) "Administrative violation" means a violation of this subtitle, a rule adopted under this subtitle, or an order or decision of the commissioner that is subject to penalties and sanctions as provided by this subtitle.

(3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States.

(5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

(5-a) "Case management" means a collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet an individual's health needs through communication and application of available resources to promote quality, cost-effective outcomes.

(6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

(8) "Commissioner" means the commissioner of workers' compensation.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(11) "Compensation" means payment of a benefit.

(12) "Course and scope of employment" means an activity of

any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(12-a) "Credentialing" has the meaning assigned by Chapter 1305, Insurance Code.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(13-a) "Department" means the Texas Department of Insurance.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter 408.

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the division to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(16-a) "Division" means the division of workers'

compensation of the department.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(18-a) "Evidence-based medicine" means the use of current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthetic or orthotic device, including the fitting of, change or repair to, or training in the use of the appliance, brace, member, or device.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or

health care practitioner.

(22-a) "Health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with:

(A) evidence-based medicine; or

(B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(25-a) "Independent review organization" has the same meaning as in Section 1305.004(a)(11), Insurance Code.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance;

(C) a certified self-insurance group under Chapter 407A; or

(D) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting

improvement to an injury can no longer reasonably be anticipated;

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue; or

(C) the date determined as provided by Section 408.104.

(31) "Medical benefit" means payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(31-a) "Network" or "workers' compensation health care network" means an organization that is:

(A) formed as a health care provider network to provide health care services to injured employees;

(B) certified in accordance with Chapter 1305, Insurance Code, and rules of the commissioner of insurance; and

(C) established by, or operates under contract with, an insurance carrier.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(34-a) "Orthotic device" means a custom-fitted or custom-fabricated medical device that is applied to a part of the human body to correct a deformity, improve function, or relieve symptoms related to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(35-a) "Prosthetic device" means an artificial device designed to replace, wholly or partly, an arm or leg.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(37) "Representative" means a person, including an attorney, authorized by the commissioner to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation.

(38) "Research center" means the research functions of the Texas Department of Insurance required under Chapter 405.

(38-a) "Retrospective review" means the utilization review process of reviewing the medical necessity and reasonableness of health care that has been provided to an injured employee.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule, order, or decision of the commissioner.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(42-a) "Utilization review" has the meaning assigned by Chapter 4201, Insurance Code.

(42-b) "Utilization review agent" has the meaning assigned by Chapter 4201, Insurance Code.

(42-c) "Violation" means an administrative violation subject to penalties and sanctions as provided by this subtitle.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage" means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to secure the payment of compensation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 275, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.003, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 147 (S.B. 458), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 13, eff. September 1, 2009.

Sec. 401.012. DEFINITION OF EMPLOYEE. (a) In this subtitle, "employee" means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term "employee" includes:

(1) an employee employed in the usual course and scope of the employer's business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer's business;

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the

premises of the employer; and

(3) a person who is a trainee under the Texans Work program established under Chapter 308.

(c) The term "employee" does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer's business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 456, Sec. 6, eff. Sept. 1, 1997.

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, "intoxication" means the state of:

(1) having an alcohol concentration to qualify as intoxicated under Section 49.01(2), Penal Code; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term "intoxication" does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee's doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee's work.

(c) On the voluntary introduction into the body of any substance listed under Subsection (a)(2)(B), based on a blood test or urinalysis, it is a rebuttable presumption that a person is intoxicated and does not have the normal use of mental or physical faculties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 14.48, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.004, eff. September 1, 2005.

Sec. 401.014. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this subtitle, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this subtitle made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 6, eff. September 1, 2015.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 401.021. APPLICATION OF OTHER ACTS. Except as otherwise provided by this subtitle:

(1) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by the following subchapters and sections of Chapter 2001, Government Code:

(A) Subchapters A, B, D, E, G, and H, excluding Sections 2001.004(3) and 2001.005;

(B) Sections 2001.051, 2001.052, and 2001.053;

(C) Sections 2001.056 through 2001.062; and

(D) Section 2001.141(c);

(2) a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Subchapters A and B, Chapter 2002, Government Code, excluding Sections 2002.001(3) and 2002.023;

(3) Chapter 551, Government Code, applies to a proceeding under this subtitle, other than:

(A) a benefit review conference;

(B) a contested case hearing;

(C) a proceeding of the appeals panel;

(D) arbitration; or

(E) another proceeding involving a determination on a workers' compensation claim; and

(4) Chapter 552, Government Code, applies to a workers' compensation record of the division, the department, or the office of injured employee counsel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.92, 5.95(82), (88), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.005, eff. September 1, 2005.

Sec. 401.022. DISCRIMINATION PROHIBITED. (a) This subtitle may not be applied to discriminate because of race, sex, national origin, or religion.

(b) This section does not prohibit consideration of an anatomical difference in application of the impairment guidelines under Chapter 408 in rating an injury or a disease such as, but not

limited to, breast cancer or an inguinal hernia. If an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 401.023. INTEREST OR DISCOUNT RATE. (a) Interest or a discount under this subtitle shall be computed at the rate provided by this section.

(b) The division shall compute and publish the interest and discount rate quarterly, using the treasury constant maturity rate for one-year treasury bills issued by the United States government, as published by the Federal Reserve Board on the 15th day preceding the first day of the calendar quarter for which the rate is to be effective, plus 3.5 percent. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 2, eff. Oct. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 15.01, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.006, eff. September 1, 2005.

Sec. 401.024. TRANSMISSION OF INFORMATION. (a) In this section, "electronic transmission" means the transmission of information by facsimile, electronic mail, electronic data interchange, or any other similar method.

(b) Notwithstanding another provision of this subtitle that specifies the form, manner, or procedure for the transmission of specified information, the commissioner by rule may permit or require the use of an electronic transmission instead of the specified form, manner, or procedure. If the electronic transmission of information is not authorized or permitted by rule, the transmission of that information is governed by any applicable statute or rule that prescribes the form, manner, or procedure for the transmission, including standards adopted by the Department of Information Resources.

(c) The commissioner may designate and contract with one or

more data collection agents to fulfill the data collection requirements of this subtitle. To qualify as a data collection agent, an organization must demonstrate at least five years of experience in data collection, data maintenance, data quality control, accounting, and related areas.

(d) The commissioner may prescribe the form, manner, and procedure for transmitting any authorized or required electronic transmission, including requirements related to security, confidentiality, accuracy, and accountability.

(e) A data collection agent may collect from a reporting insurance carrier, other than a governmental entity, any fees necessary for the agent to recover the necessary and reasonable costs of collecting data from that reporting insurance carrier.

(f) A reporting insurance carrier, other than a governmental entity, shall pay the fee to the data collection agent for the data collection services provided by the data collection agent.

(g) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 954, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.007, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. 800), Sec. 1, eff. June 17, 2011.

Sec. 401.025. REFERENCES TO COMMISSION AND EXECUTIVE DIRECTOR. (a) A reference in this code or other law to the Texas Workers' Compensation Commission or the executive director of that commission means the division or the commissioner as consistent with the respective duties of the commissioner and the division under this code and other workers' compensation laws of this state.

(b) A reference in this code or other law to the executive director of the Texas Workers' Compensation Commission means the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.008, eff. September 1, 2005.

Sec. 401.026. APPLICABILITY TO CERTAIN EMERGENCY RESPONSE PERSONNEL. For purposes of this subtitle, the travel of a firefighter or emergency medical personnel en route to an emergency call is considered to be in the course and scope of the firefighter's or emergency medical personnel's employment.

Added by Acts 2015, 84th Leg., R.S., Ch. 365 (H.B. 2771), Sec. 1, eff. September 1, 2015.

CHAPTER 402. OPERATION AND ADMINISTRATION OF WORKERS' COMPENSATION SYSTEM

SUBCHAPTER A. GENERAL ADMINISTRATION OF SYSTEM; WORKERS' COMPENSATION DIVISION

Sec. 402.001. ADMINISTRATION OF SYSTEM: TEXAS DEPARTMENT OF INSURANCE; WORKERS' COMPENSATION DIVISION. (a) Except as provided by Section 402.002, the Texas Department of Insurance is the state agency designated to oversee the workers' compensation system of this state.

(b) The division of workers' compensation is established as a division within the Texas Department of Insurance to administer and operate the workers' compensation system of this state as provided by this title.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.02, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.003, eff. September 1, 2005.

Sec. 402.00111. RELATIONSHIP BETWEEN COMMISSIONER OF INSURANCE AND COMMISSIONER OF WORKERS' COMPENSATION; SEPARATION OF AUTHORITY; RULEMAKING. (a) The division is administered by the commissioner of workers' compensation as provided by this subchapter. Except as otherwise provided by this title, the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under this title.

(b) The commissioner of insurance may delegate to the commissioner of workers' compensation or to that person's designee and may redact any delegation, and the commissioner of workers'

compensation may delegate to the commissioner of insurance or to that person's designee, any power or duty regarding workers' compensation imposed on the commissioner of insurance or the commissioner of workers' compensation under this title, including the authority to make final orders or decisions. A delegation made under this subsection must be made in writing.

(c) The commissioner of insurance shall develop and implement policies that clearly separate the respective responsibilities of the department and the division.

(d) The commissioner of insurance may provide advice, research, and comment regarding the adoption of rules by the commissioner of workers' compensation under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00112. INVESTIGATION OF DIVISION. The department shall investigate the conduct of the work of the division. For that purpose, the department shall have access at any time to all division books and records and may require an officer or employee of the division to furnish written or oral information.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00113. ADMINISTRATIVE ATTACHMENT TO DEPARTMENT. (a) The division of workers' compensation is administratively attached to the department.

(b) The department shall provide the staff and facilities necessary to enable the division to perform the duties of the division under this title, including:

(1) administrative assistance and services to the division, including budget planning and purchasing;

(2) personnel and financial services; and

(3) computer equipment and support.

(c) The commissioner of workers' compensation and the commissioner of insurance may enter into agreements as necessary to implement this title.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00114. DUTIES OF DIVISION; SINGLE POINT OF CONTACT. (a) In addition to other duties required under this title, the division shall:

(1) regulate and administer the business of workers' compensation in this state; and

(2) ensure that this title and other laws regarding workers' compensation are executed.

(b) To the extent determined feasible by the commissioner, the division shall establish a single point of contact for injured employees receiving services from the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00115. COMPOSITION OF DIVISION. The division is composed of the commissioner of workers' compensation and other officers and employees as required to efficiently implement:

(1) this title;

(2) other workers' compensation laws of this state; and

(3) other laws granting jurisdiction or applicable to the division or the commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00116. CHIEF EXECUTIVE. (a) The commissioner of workers' compensation is the division's chief executive and administrative officer. The commissioner shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the division or the commissioner. Except as otherwise specifically provided by this title, a reference in this title to the "commissioner" means the commissioner of workers' compensation.

(b) The commissioner has the powers and duties vested in the division by this title and other workers' compensation laws of this

state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00117. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the commissioner. The commissioner serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the commissioner without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00118. QUALIFICATIONS. The commissioner must:

(1) be a competent and experienced administrator;

(2) be well-informed and qualified in the field of workers' compensation; and

(3) have at least five years of experience as an executive in the administration of business or government or as a practicing attorney, physician, or certified public accountant.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00119. INELIGIBILITY FOR PUBLIC OFFICE. The commissioner is ineligible to be a candidate for a public elective office in this state unless the commissioner has resigned and the governor has accepted the resignation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00120. COMPENSATION. The commissioner is entitled to compensation as provided by the General Appropriations Act.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00121. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the commissioner:

(1) does not have at the time of appointment the qualifications required by Section 402.00118;

(2) does not maintain during service as commissioner the qualifications required by Section 402.00118;

(3) violates a prohibition established by Section 402.00122, 402.00124, 402.00125, or 402.00126; or

(4) cannot because of illness or incapacity discharge the commissioner's duties for a substantial part of the commissioner's term.

(b) The validity of an action of the commissioner or the division is not affected by the fact that it is taken when a ground for removal of the commissioner exists.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00122. PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION. (a) The commissioner or an employee of the division may not accept a gift, a gratuity, or entertainment from a person having an interest in a matter or proceeding pending before the division.

(b) A violation of Subsection (a) is an administrative violation and constitutes a ground for removal from office or termination of employment.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00123. CIVIL LIABILITY OF COMMISSIONER. The commissioner is not liable in a civil action for an act performed in good faith in the execution of duties as commissioner.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00124. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be the commissioner and may not be a division employee employed in a "bona fide executive, administrative, or professional capacity" as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of workers' compensation; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00125. PROHIBITION ON CERTAIN EMPLOYMENT OR REPRESENTATION. (a) A former commissioner or former employee of the division involved in hearing cases under this title may not:

(1) be employed by an insurance carrier that was subject to the scope of the commissioner's or employee's official responsibility while the commissioner or employee was associated with the division; or

(2) represent a person before the division or a court in a matter:

(A) in which the commissioner or employee was personally involved while associated with the division; or

(B) that was within the commissioner's or employee's official responsibilities while the commissioner or employee was associated with the division.

(b) The prohibition under Subsection (a)(1) applies until the:

(1) second anniversary of the date the commissioner ceases

to serve as the commissioner; and

(2) first anniversary of the date the employee's employment with the division ceases.

(c) The prohibition under Subsection (a)(2) applies to a current commissioner or employee of the division while the commissioner or employee is involved in hearing cases under this title and at any time thereafter.

(d) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00126. LOBBYING ACTIVITIES. A person may not serve as commissioner or act as general counsel to the commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department or the division.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00127. TRAINING PROGRAM FOR COMMISSIONER. (a) Not later than the 90th day after the date on which the commissioner takes office, the commissioner shall complete a training program that complies with this section.

(b) The training program must provide the commissioner with information regarding:

(1) the legislation that created the division;

(2) the programs operated by the division;

(3) the role and functions of the division;

(4) the rules of the commissioner of insurance relating to the division, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the division;

(6) the results of the most recent formal audit of the division;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government

Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the division or the Texas Ethics Commission.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff. September 1, 2005.

Sec. 402.00128. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall conduct the daily operations of the division and otherwise implement division policy.

(b) The commissioner or the commissioner's designee may:

(1) investigate misconduct;

(2) hold hearings;

(3) issue subpoenas to compel the attendance of witnesses and the production of documents;

(4) administer oaths;

(5) take testimony directly or by deposition or interrogatory;

(6) assess and enforce penalties established under this title;

(7) enter appropriate orders as authorized by this title;

(8) institute an action in the division's name to enjoin the violation of this title;

(9) initiate an action under Section 410.254 to intervene in a judicial proceeding;

(10) prescribe the form, manner, and procedure for the transmission of information to the division;

(11) correct clerical errors in the entry of orders; and

(12) exercise other powers and perform other duties as necessary to implement and enforce this title.

(c) The commissioner is the agent for service of process on out-of-state employers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.004, eff.

September 1, 2005.

Sec. 402.002. ADMINISTRATION OF SYSTEM: OFFICE OF INJURED EMPLOYEE COUNSEL. The office of injured employee counsel established under Chapter 404 shall perform the functions regarding the provision of workers' compensation benefits in this state designated by this subtitle as under the authority of that office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1170, Sec. 47.01, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.005, eff. September 1, 2005.

SUBCHAPTER B. SYSTEM GOALS; GENERAL ADMINISTRATION OF SYSTEM

Sec. 402.021. GOALS; LEGISLATIVE INTENT; GENERAL WORKERS' COMPENSATION MISSION OF DEPARTMENT. (a) The basic goals of the workers' compensation system of this state are as follows:

(1) each employee shall be treated with dignity and respect when injured on the job;

(2) each injured employee shall have access to a fair and accessible dispute resolution process;

(3) each injured employee shall have access to prompt, high-quality medical care within the framework established by this subtitle; and

(4) each injured employee shall receive services to facilitate the employee's return to employment as soon as it is considered safe and appropriate by the employee's health care provider.

(b) It is the intent of the legislature that, in implementing the goals described by Subsection (a), the workers' compensation system of this state must:

(1) promote safe and healthy workplaces through appropriate incentives, education, and other actions;

(2) encourage the safe and timely return of injured employees to productive roles in the workplace;

(3) provide appropriate income benefits and medical benefits in a manner that is timely and cost-effective;

(4) provide timely, appropriate, and high-quality medical care supporting restoration of the injured employee's physical condition and earning capacity;

(5) minimize the likelihood of disputes and resolve them promptly and fairly when identified;

(6) promote compliance with this subtitle and rules adopted under this subtitle through performance-based incentives;

(7) promptly detect and appropriately address acts or practices of noncompliance with this subtitle and rules adopted under this subtitle;

(8) effectively educate and clearly inform each person who participates in the system as a claimant, employer, insurance carrier, health care provider, or other participant of the person's rights and responsibilities under the system and how to appropriately interact within the system; and

(9) take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants.

(c) This section may not be construed as:

(1) creating a cause of action; or

(2) establishing an entitlement to benefits to which a claimant is not otherwise entitled by this subtitle.

(d) As provided by this subtitle, the division shall work to promote and help ensure the safe and timely return of injured employees to productive roles in the workforce.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 7, eff. Sept. 1, 1997. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.0065, eff. September 1, 2005.

Sec. 402.0215. REFERENCE TO COMMISSION DIVISIONS. A reference in this title or any other law to the division of workers' health and safety, the division of medical review, the division of compliance and practices, the division of hearings, and the division of self-insurance regulation of the former Texas Workers' Compensation Commission means the division of workers' compensation of the Texas Department of Insurance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.001, eff. September 1, 2005.

Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The commissioner shall prepare information of public interest describing the functions of the division and the procedures by which complaints are filed with and resolved by the division.

(b) The commissioner shall make the information available to the public and appropriate state agencies.

(c) The commissioner by rule shall ensure that each division form, standard letter, and brochure under this subtitle:

(1) is written in plain language;

(2) is in a readable and understandable format; and

(3) complies with all applicable requirements relating to minimum readability requirements.

(d) The division shall make informational materials described by this section available in English and Spanish.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.002, eff. September 1, 2005.

Sec. 402.023. COMPLAINT INFORMATION. (a) The commissioner shall:

(1) adopt rules regarding the filing of a complaint under this subtitle against an individual or entity subject to regulation under this subtitle; and

(2) ensure that information regarding the complaint process is available on the division's Internet website.

(b) The rules adopted under this section must, at a minimum:

(1) ensure that the division clearly defines in rule the method for filing a complaint; and

(2) define what constitutes a frivolous complaint under this subtitle.

(c) The division shall develop and post on the division's Internet website:

(1) a simple standardized form for filing complaints under

this subtitle; and

(2) information regarding the complaint filing process.

(c-1) The division shall adopt a policy outlining the division's complaint process from receipt of the initial complaint to the complaint's disposition.

(d) The division shall keep an information file about each written complaint filed with the division under this subtitle that is unrelated to a specific workers' compensation claim, including a complaint regarding the administration of the workers' compensation system. The information must include:

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the division took no action, an explanation of the reason the complaint was closed without action.

(e) For each written complaint that is unrelated to a specific workers' compensation claim that the division has authority to resolve, the division shall provide to the person filing the complaint and the person about whom the complaint is made information about the division's policies and procedures under this subtitle relating to complaint investigation and resolution. The division, at least quarterly and until final disposition of the complaint, shall notify those persons about the status of the complaint unless the notice would jeopardize an undercover investigation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.08, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 6, eff. September 1, 2011.

Sec. 402.0231. DOCUMENTATION AND ANALYSIS OF COMPLAINTS. (a) The division shall develop procedures to formally document and

analyze complaints received by the division.

(b) The division shall compile detailed statistics on all complaints received and analyze complaint information trends, including:

(1) the number of complaints;

(2) the source of each complaint;

(3) the types of complaints;

(4) the length of time from the receipt of the complaint to its disposition; and

(5) the disposition of complaints.

(c) The division shall further analyze the information compiled under Subsection (b) by field office and by program.

(d) The division shall report the information compiled and analyzed under Subsections (b) and (c) to the commissioner at regular intervals.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 7, eff. September 1, 2011.

Sec. 402.0235. PRIORITIES FOR COMPLAINT INVESTIGATIONS. (a) The division shall assign priorities to complaint investigations under this subtitle based on risk. In developing priorities under this section, the division shall develop a formal, risk-based complaint investigation system that considers:

(1) the severity of the alleged violation;

(2) whether the alleged violator showed continued or wilful noncompliance; and

(3) whether a commissioner order has been violated.

(b) The commissioner may develop additional risk-based criteria as determined necessary.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.003, eff. September 1, 2005.

Sec. 402.024. PUBLIC PARTICIPATION. (a) The commissioner shall develop and implement policies that provide the public with a reasonable opportunity to appear before the division and to speak on issues under the general jurisdiction of the division.

(b) The division shall comply with federal and state laws

related to program and facility accessibility.

(c) In addition to compliance with Subsection (a), the commissioner shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the division's programs and services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.09, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.004, eff. September 1, 2005.

SUBCHAPTER C. PERSONNEL

Sec. 402.041. APPOINTMENTS. (a) Subject to the General Appropriations Act or other law, the commissioner shall appoint deputies, assistants, and other personnel as necessary to carry out the powers and duties of the commissioner and the division under this title, other workers' compensation laws of this state, and other laws granting jurisdiction or applicable to the division or the commissioner.

(b) A person appointed under this section must have the professional, administrative, and workers' compensation experience necessary to qualify the person for the position to which the person is appointed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.10, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.042. DIVISION OF RESPONSIBILITIES. The commissioner shall develop and implement policies that clearly define the respective responsibilities of the commissioner and the staff of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff.

September 1, 2005.

Sec. 402.043. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The commissioner or the commissioner's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the division. The program shall require intra-agency postings of all positions concurrently with any public posting.

(b) The commissioner or the commissioner's designee shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for division employees must be based on the system established under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

Sec. 402.044. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, 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 that are in compliance with the requirements of Chapter 21;

(2) a comprehensive analysis of the division work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the division 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 underuse.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated annually;

(3) be reviewed by the civil rights division of the Texas Workforce Commission for compliance with Subsection (a)(1); and

(4) be filed with the Texas Workforce Commission.

(c) The Texas Workforce Commission shall deliver a biennial report to the legislature based on the information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.11, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 1.007, eff. September 1, 2005.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF DIVISION AND COMMISSIONER

Sec. 402.061. ADOPTION OF RULES. The commissioner shall adopt rules as necessary for the implementation and enforcement of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.006, eff. September 1, 2005.

Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS. (a) The division may accept gifts, grants, or donations as provided by rules adopted by the commissioner.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(15), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1195, Sec. 2.08, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.007, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(15), eff. September 1, 2005.

Sec. 402.064. FEES. In addition to fees established by this subtitle, the commissioner shall set reasonable fees for services provided to persons requesting services from the division, including services provided under Subchapter E.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.008, eff. September 1, 2005.

Sec. 402.065. EMPLOYMENT OF COUNSEL. Notwithstanding Article 1.09-1, Insurance Code, or any other law, the commissioner may employ counsel to represent the division in any legal action the division is authorized to initiate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.009, eff. September 1, 2005.

Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The commissioner shall consider and recommend to the legislature changes to this subtitle, including any statutory changes required by an evaluation conducted under Section 402.074.

(b) The commissioner shall forward the recommended changes to the legislature not later than December 1 of each even-numbered year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.010, eff. September 1, 2005.

Sec. 402.0665. LEGISLATIVE OVERSIGHT. The legislature may adopt requirements relating to legislative oversight of the division

and the workers' compensation system of this state. The division shall comply with any requirements adopted by the legislature under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.13, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.011, eff. September 1, 2005.

Sec. 402.067. ADVISORY COMMITTEES. The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.012, eff. September 1, 2005.

Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES. Except as expressly provided by this subtitle, the division may not delegate rights and duties imposed on it by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.14, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.013, eff. September 1, 2005.

Sec. 402.069. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION. The commissioner or the commissioner's designee shall provide to division employees, as often as necessary, information regarding their:

(1) qualifications for office or employment under this subtitle; and

(2) responsibilities under applicable law relating to standards of conduct for state officers or employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 980, Sec. 1.15, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.014, eff. September 1, 2005.

Sec. 402.071. REPRESENTATIVES. (a) The commissioner shall establish qualifications for a representative and shall adopt rules establishing procedures for authorization of representatives.

(b) A representative may receive a fee for providing representation under this subtitle only if the representative is:

(1) an adjuster representing an insurance carrier; or

(2) licensed to practice law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.015, eff. September 1, 2005.

Sec. 402.073. COOPERATION WITH STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) The commissioner and the chief administrative law judge of the State Office of Administrative Hearings shall adopt a memorandum of understanding governing administrative procedure law hearings under this subtitle conducted by the State Office of Administrative Hearings in the manner provided for a contested case hearing under Chapter 2001, Government Code. The memorandum of understanding must address the payment of costs by parties to a medical fee dispute under Section 413.0312.

(b) In a case in which a hearing is conducted by the State Office of Administrative Hearings under Section 413.031 or 413.055, the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall enter the final decision in the case after completion of the hearing.

(c) In a case in which a hearing is conducted in conjunction with Section 402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Subsection (b), the administrative law judge who conducts the hearing for the State Office of Administrative Hearings shall propose a decision to the commissioner for final consideration and decision by the

commissioner.

(d) The notice of the commissioner's order must include a statement of the right of the person to judicial review of the order.

(e) In issuing an order under this section, the commissioner shall comply with the requirements applicable to a state agency under Section 2001.058, Government Code.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.17, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.017, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 8, eff. September 1, 2011.

Sec. 402.074. STRATEGIC MANAGEMENT; EVALUATION. The commissioner shall implement a strategic management plan that:

(1) requires the division to evaluate and analyze the effectiveness of the division in implementing:

(A) the statutory goals adopted under Section 402.021, particularly goals established to encourage the safe and timely return of injured employees to productive work roles; and

(B) the other standards and requirements adopted under this code, the Insurance Code, and other applicable laws of this state; and

(2) modifies the organizational structure and programs of the division as necessary to address shortfalls in the performance of the workers' compensation system of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.075. INCENTIVES; PERFORMANCE-BASED OVERSIGHT. (a) The commissioner by rule shall adopt requirements that:

(1) provide incentives for overall compliance in the workers' compensation system of this state; and

(2) emphasize performance-based oversight linked to regulatory outcomes.

(b) The commissioner shall develop key regulatory goals to be used in assessing the performance of insurance carriers and health care providers. The goals adopted under this subsection must align with the general regulatory goals of the division under this subtitle, such as improving workplace safety and return-to-work outcomes, in addition to goals that support timely payment of benefits and increased communication.

(c) At least biennially, the division shall assess the performance of insurance carriers and health care providers in meeting the key regulatory goals. The division shall examine overall compliance records and dispute resolution and complaint resolution practices to identify insurance carriers and health care providers who adversely impact the workers' compensation system and who may require enhanced regulatory oversight. The division shall conduct the assessment through analysis of data maintained by the division and through self-reporting by insurance carriers and health care providers.

(d) Based on the performance assessment, the division shall develop regulatory tiers that distinguish among insurance carriers and health care providers who are poor performers, who generally are average performers, and who are consistently high performers. The division shall focus its regulatory oversight on insurance carriers and health care providers identified as poor performers.

(e) The commissioner by rule shall develop incentives within each tier under Subsection (d) that promote greater overall compliance and performance. The regulatory incentives may include modified penalties, self-audits, or flexibility based on performance.

(f) The division shall:

(1) ensure that high-performing entities are publicly recognized; and

(2) allow those entities to use that designation as a marketing tool.

(g) In conjunction with the division's accident prevention services under Subchapter E, Chapter 411, the division shall conduct audits of accident prevention services offered by insurance carriers based on the comprehensive risk assessment. The division shall periodically review those services, but may provide incentives for less regulation of carriers based on performance.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.076. GENERAL DUTIES; FUNDING. (a) The division shall perform the workforce education and safety functions of the workers' compensation system of this state.

(b) The operations of the division under this section are funded through the maintenance tax assessed under Section 403.002.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.077. EDUCATIONAL PROGRAMS. (a) The division shall provide education on best practices for return-to-work programs and workplace safety.

(b) The division shall evaluate and develop the most efficient, cost-effective procedures for implementing this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

Sec. 402.078. REGIONAL OFFICES. The department shall operate regional offices throughout this state as necessary to implement the duties of the division and the department under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.018, eff. September 1, 2005.

SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

Sec. 402.081. DIVISION RECORDS. (a) The commissioner is the custodian of the division's records and shall perform the duties of a custodian required by law, including providing copies and the certification of records.

(b) The division shall comply with records retention schedules as provided by Chapter 441.185, Government Code.

(c) A record maintained by the division may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted

by the Texas State Library and Archives Commission under that chapter.

(d) The division may charge a reasonable fee for making available for inspection any of its information that contains confidential information that must be redacted before the information is made available. However, when a request for information is for the inspection of 10 or fewer pages, and a copy of the information is not requested, the division may charge only the cost of making a copy of the page from which confidential information must be redacted. The fee for access to information under Chapter 552, Government Code, shall be in accord with the rules of the attorney general that prescribe the method for computing the charge for copies under that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1270, Sec. 1 eff. June 20, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.019, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 329 (S.B. 727), Sec. 13, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 716 (S.B. 452), Sec. 11, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 10.003, eff. September 1, 2007.

Sec. 402.082. INJURY INFORMATION MAINTAINED BY DIVISION. (a) The division shall maintain information on every compensable injury as to the:

(1) race, ethnicity, and sex of the claimant;

(2) classification of the injury;

(3) identification of whether the claimant is receiving medical care through a workers' compensation health care network certified under Chapter 1305, Insurance Code;

(4) amount of wages earned by the claimant before the injury; and

(5) amount of compensation received by the claimant.

(b) On request from the office of injured employee counsel, the division shall provide to the office the identity, claim number, and

contact information of claimants receiving assistance from the office.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.020, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 5, eff. September 1, 2011.

Sec. 402.083. CONFIDENTIALITY OF INJURY INFORMATION. (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle or other law.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 is not confidential.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.42, 14.49, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.021, eff. September 1, 2005.

Sec. 402.084. RECORD CHECK; RELEASE OF INFORMATION. (a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided by

Subsection (a) to:

(1) the employee or the employee's legal beneficiary;

(2) the employee's or the legal beneficiary's representative;

(3) the employer at the time of injury;

(4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association established under Subchapter G, Chapter 407, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company;

(7) a third-party litigant in a lawsuit in which the cause of action arises from the incident that gave rise to the injury; or

(8) with regard to information described by Subsection (c-3), an insurance carrier that has adopted an antifraud plan under Subchapter B, Chapter 704, Insurance Code, or the authorized representative of such an insurance carrier.

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7).

(c-1) For purposes of this section only, "insurance carrier" means:

(1) a certified self-insurer; or

(2) an entity authorized under the Insurance Code or another insurance law of this state that provides health insurance coverage or health benefits in this state, including:

(A) an insurance company, including an insurance company that holds a certificate of authority issued by the commissioner of insurance to engage in the business of workers' compensation insurance in this state;

(B) a group hospital service corporation under Chapter 842, Insurance Code;

(C) a health maintenance organization under Chapter 843, Insurance Code;

(D) a stipulated premium company under Chapter 884, Insurance Code;

(E) a fully self-insured plan, as described by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

(F) a governmental plan, as defined by Section 3(32),

Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32));

(G) an employee welfare benefit plan, as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)); and

(H) an insurer authorized by the Texas Department of Insurance to offer disability insurance in this state.

(c-2) An insurance carrier is not required to demonstrate that a subclaim exists in order to obtain information under Subsection (b)(8).

(c-3) An insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may submit to the commission on a monthly basis a written request for claims information. The request must contain a list of the names of persons about whom claims information is requested. The insurance carrier must certify in the carrier's request that each person listed is, or has been, an insured under the carrier's insurance program. The commission shall examine the commission's records to identify all claims related to the listed persons. If a claims record exists for a listed person, the commission promptly shall provide information on each workers' compensation claim filed by that person to the carrier or the carrier's representative in an electronic format. The information provided under this subsection must include, if available:

(1) the full name of the workers' compensation claimant;

(2) the social security number of the workers' compensation claimant;

(3) the date of birth of the workers' compensation claimant;

(4) the name of the employer of the workers' compensation claimant;

(5) the date of the injury;

(6) a description of the type of injury or the body part affected, including the workers' compensation claimant's description of how the injury occurred;

(7) the name of the treating doctor;

(8) the name, address, and claim number of the insurance carrier handling the claim;

(9) the name of the insurance adjustor handling the claim; and

(10) the identifying number assigned to the claim by the commission and the commission field office handling the claim.

(c-4) A potential subclaim identified by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier may form the basis for the identification and filing of a subclaim against an insurance carrier under this subtitle.

(c-5) Information received under this section by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier remains subject to confidentiality requirements of this subtitle while in the possession of the insurance carrier or representative. However, the following laws do not prohibit the commission from disclosing full information regarding a claim as necessary to determine if a valid subclaim exists:

(1) Chapter 552, Government Code;

(2) Chapter 159, Occupations Code; or

(3) any other analogous law restricting disclosure of health care information.

(c-6) The commission may not redact claims records produced in an electronic data format under a request made under this section.

(c-7) An insurance carrier and its authorized representative may request full claims data under Subsection (b)(8), and the records shall be produced once each month. For purposes of this subsection, "full claims data" means an electronic download or tape in an electronic data format of the information listed in Subsection (c-3) on all cases relating to the workers' compensation claimants listed as insureds of the requesting insurance carrier.

(d) The commissioner by rule may establish a reasonable fee, not to exceed five cents for each claimant listed in an information request, for all information requested by an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance carrier in an electronic data format. The commissioner shall adopt rules under Section 401.024(d) to establish:

(1) reasonable security parameters for all transfers of information requested under this section in electronic data format; and

(2) requirements regarding the maintenance of electronic data in the possession of an insurance carrier described by Subsection (b)(8) or an authorized representative of the insurance

carrier.

(e) The insurance carrier or the carrier's authorized representative must execute a written agreement with the commission before submitting the carrier's first request under Subsection (c-3). The agreement must contain a provision by which the carrier and the representative agree to comply with the commission's rules governing security parameters applicable to the transfer of information under Subsection (d)(1) and the maintenance of electronic data under Subsection (d)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1033, Sec. 5, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.022, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.132, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1190 (H.B. 251), Sec. 1, eff. June 18, 2005.

Text of section effective until September 1, 2018

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The division shall release information on a claim to:

(1) the Texas Department of Insurance for any statutory or regulatory purpose, including a research purpose under Chapter 405;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

(4) the attorney general or another entity that provides child support services under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), relating to:

(A) establishing, modifying, or enforcing a child support or medical support obligation; or

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support or medical support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.43(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.023, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 71, eff. September 1, 2018.

Text of section effective on September 1, 2018

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The division shall release information on a claim to:

(1) the Texas Department of Insurance for any statutory or regulatory purpose, including a research purpose under Chapter 405;

(2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the division;

(4) the attorney general or another entity that provides child support services under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), relating to:

(A) establishing, modifying, or enforcing a child support, medical support, or dental support obligation; or

(B) locating an absent parent; or

(5) the office of injured employee counsel for any statutory or regulatory purpose that relates to a duty of that office as provided by Section 404.111(a).

(b) The division may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

(1) investigate an allegation of a criminal offense or licensing or regulatory violation;

(2) provide:

(A) unemployment compensation benefits;

(B) crime victims compensation benefits;

(C) vocational rehabilitation services; or

(D) health care benefits;

(3) investigate occupational safety or health violations;

(4) verify income on an application for benefits under an income-based state or federal assistance program; or

(5) assess financial resources in an action, including an administrative action, to:

(A) establish, modify, or enforce a child support, medical support, or dental support obligation;

(B) establish paternity;

(C) locate an absent parent; or

(D) cooperate with another state in an action authorized under Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), or Chapter 231, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.43(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1426, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.023, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1150 (S.B. 550), Sec. 71, eff. September 1, 2018.

Sec. 402.086. TRANSFER OF CONFIDENTIALITY. (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

(b) This section does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) A prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information on the prior injuries of an applicant for employment if the employer obtains written authorization from the applicant before making the request.

(b) The employer must make the request by telephone or file the request in writing not later than the 14th day after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) If the request is made in writing, the authorization must be filed simultaneously. If the request is made by telephone, the employer must file the authorization not later than the 10th day after the date on which the request is made.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 402.088. REPORT OF PRIOR INJURY. (a) On receipt of a

valid request made under and complying with Section 402.087, the division shall review its records.

(b) If the division finds that the applicant has made two or more general injury claims in the preceding five years, the division shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) If the employer requests information on three or more applicants at the same time, the division may refuse to release information until it receives the written authorization from each applicant.

(e) In this section, "general injury" means an injury other than an injury limited to one or more of the following:

(1) an injury to a digit, limb, or member;

(2) an inguinal hernia; or

(3) vision or hearing loss.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.024, eff. September 1, 2005.

Sec. 402.089. FAILURE TO FILE AUTHORIZATION. An employer who receives information by telephone from the division under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.025, eff. September 1, 2005.

Sec. 402.090. STATISTICAL INFORMATION. The division, the Texas Department of Insurance, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.026, eff. September 1, 2005.

Sec. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the division.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this subchapter and that the person is not authorized to receive.

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

(d) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(e) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.18, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.027, eff. September 1, 2005.

Sec. 402.092. INVESTIGATION FILES CONFIDENTIAL; DISCLOSURE OF CERTAIN INFORMATION. (a) In this section, "investigation file" means any information compiled or maintained by the division with respect to a division investigation authorized under this subtitle or other workers' compensation law. The term does not include information or material acquired by the division that is relevant to an investigation by the insurance fraud unit and subject to Section 701.151, Insurance Code.

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except:

(1) in a criminal proceeding;

(2) in a hearing conducted by the division;

(3) on a judicial determination of good cause;

(4) to a governmental agency, political subdivision, or regulatory body if the disclosure is necessary or proper for the enforcement of the laws of this or another state or of the United States; or

(5) to an insurance carrier if the investigation file relates directly to a felony regarding workers' compensation or to a claim in which restitution is required to be paid to the insurance carrier.

(c) Division investigation files are not open records for purposes of Chapter 552, Government Code.

(d) Information in an investigation file that is information in or derived from a claim file, or an employer injury report or occupational disease report, is governed by the confidentiality provisions relating to that information.

(e) The division, upon request, shall disclose the identity of a complainant under this section if the division finds:

(1) the complaint was groundless or made in bad faith;

(2) the complaint lacks any basis in fact or evidence;

(3) the complaint is frivolous; or

(4) the complaint is done specifically for competitive or economic advantage.

(f) Upon completion of an investigation in which the division determines a complaint is described by Subsection (e), the division shall notify the person who was the subject of the complaint of its finding and the identity of the complainant.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.19, eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.028, eff. September 1, 2005.

SUBCHAPTER F. COOPERATION WITH OFFICE OF INJURED EMPLOYEE COUNSEL

Sec. 402.251. COOPERATION; FACILITIES. (a) The department and the division shall cooperate with the office of injured employee counsel in providing services to claimants under this subtitle.

(b) The department shall provide facilities to the office of injured employee counsel in each regional office operated to

administer the duties of the division under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 2.029, eff. September 1, 2005.

CHAPTER 403. DIVISION FINANCING

Sec. 403.001. FUNDS. (a) Except as provided by Sections 403.006, 403.007, and 403.008, or as otherwise provided by law, money collected under this subtitle, including advance deposits for purchase of services, shall be deposited in the general revenue fund of the state treasury to the credit of the Texas Department of Insurance operating account.

(b) The money may be spent as authorized by legislative appropriation on warrants issued by the comptroller under requisitions made by the commissioner of insurance.

(c) Money deposited in the general revenue fund under this section may be used to satisfy the requirements of Section 201.052, Insurance Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.44(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.010, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 9, eff. September 1, 2011.

Sec. 403.002. MAINTENANCE TAXES. (a) Each insurance carrier, other than a governmental entity, shall pay an annual maintenance tax to pay the costs of administering this subtitle and to support the prosecution of workers' compensation insurance fraud in this state.

(b) The assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Article 5.55C, Insurance Code. The rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

(c) A workers' compensation insurance company is taxed at the

rate established under Section 403.003. The tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Chapter 255, Insurance Code.

(d) Each certified self-insurer shall pay a fee and maintenance taxes as provided by Subchapter F, Chapter 407.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1274, Sec. 21, eff. April 1, 2005.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.134, eff. September 1, 2005.

Sec. 403.003. RATE OF ASSESSMENT. (a) The commissioner of insurance shall set and certify to the comptroller the rate of maintenance tax assessment taking into account:

(1) any expenditure projected as necessary for the division and the office of injured employee counsel to:

(A) administer this subtitle during the fiscal year for which the rate of assessment is set; and

(B) reimburse the general revenue fund as provided by Section 201.052, Insurance Code;

(2) projected employee benefits paid from general revenues;

(3) a surplus or deficit produced by the tax in the preceding year;

(4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this subtitle; and

(5) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud.

(b) In setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to:

(1) the State Office of Risk Management;

(2) the workers' compensation research functions of the department under Chapter 405; or

(3) any other revenue or expenditure excluded from consideration by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 9.45(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 8, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1443, Sec. 4, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.011, eff. September 1, 2005.

Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS. The commissioner or the commissioner of insurance immediately shall proceed to collect taxes due under this chapter from an insurance carrier that withdraws from business in this state, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.012, eff. September 1, 2005.

Sec. 403.005. TAX RATE. The commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under Section 403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.013, eff. September 1, 2005.

Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is a dedicated account in the general revenue fund. Money in the account may be appropriated only for the purposes of this section or as provided by other law. Section 403.095, Government Code, does not apply to the subsequent injury fund.

(b) The subsequent injury fund is liable for:

(1) the payment of compensation as provided by Section 408.162;

(2) reimbursement of insurance carrier claims of overpayment of benefits made under an interlocutory order or decision of the commissioner as provided by this subtitle, consistent with the priorities established by rule by the commissioner;

(3) reimbursement of insurance carrier claims as provided by Sections 408.042 and 413.0141, consistent with the priorities established by rule by the commissioner; and

(4) the reimbursement of an insurance carrier as provided by Section 408.0041(f-1).

(c) The commissioner shall appoint an administrator for the subsequent injury fund.

(d) Based on an actuarial assessment of the funding available under Section 403.007(e), the commissioner may make partial payment of insurance carrier claims under Subsection (b)(3).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 211, Sec. 2.01, eff. June 16, 2003; Acts 2003, 78th Leg., ch. 1296, Sec. 5(a), eff. June 20, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.014, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 3, eff. September 1, 2007.

Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and no legal beneficiary survives or a claim for death benefits is not timely made, the insurance carrier shall pay to the division for deposit to the credit of the subsequent injury fund an amount equal to 364 weeks of the death benefits otherwise payable.

(b) The insurance carrier may elect or the commissioner may order that death benefits payable to the fund be commuted on written approval of the commissioner. The commutation may be discounted for present payment at the rate established in Section 401.023, compounded annually.

(c) If a claim for death benefits is not filed with the division by a legal beneficiary on or before the first anniversary of the date of the death of the employee, it is presumed, for purposes

of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom a guardian has not been appointed.

(d) If the insurance carrier makes payment to the subsequent injury fund and it is later determined by a final award of the commissioner or the final judgment of a court of competent jurisdiction that a legal beneficiary is entitled to the death benefits, the commissioner shall order the fund to reimburse the insurance carrier for the amount overpaid to the fund.

(e) If the commissioner determines that the funding under Subsection (a) is not adequate to meet the expected obligations of the subsequent injury fund established under Section 403.006, the fund shall be supplemented by the collection of a maintenance tax paid by insurance carriers, other than a governmental entity, as provided by Sections 403.002 and 403.003. The rate of assessment must be adequate to provide 120 percent of the projected unfunded liabilities of the fund for the next biennium as certified by an independent actuary or financial advisor.

(f) The commissioner's actuary or financial advisor shall report biannually to the department on the financial condition and projected assets and liabilities of the subsequent injury fund. The commissioner shall make the reports available to members of the legislature and the public. The division may purchase annuities to provide for payments due to claimants under this subtitle if the commissioner determines that the purchase of annuities is financially prudent for the administration of the fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.02, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.015, eff. September 1, 2005.

Sec. 403.008. DEPOSIT OF ADMINISTRATIVE PENALTIES. Administrative penalties collected under this subtitle shall be deposited in the general revenue fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 10, eff. September 1, 2011.

CHAPTER 404. OFFICE OF INJURED EMPLOYEE COUNSEL

SUBCHAPTER A. OFFICE; GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

(1) "Office" means the office of injured employee counsel.

(2) "Public counsel" means the injured employee public counsel.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.002. ESTABLISHMENT OF OFFICE; ADMINISTRATIVE ATTACHMENT TO TEXAS DEPARTMENT OF WORKERS' COMPENSATION. (a) The office of injured employee counsel is established to represent the interests of workers' compensation claimants in this state.

(b) The office is administratively attached to the department but is independent of direction by the commissioner, the commissioner of insurance, and the department.

(c) The department shall provide the staff and facilities necessary to enable the office to perform the duties of the office under this subtitle, including:

(1) administrative assistance and services to the office, including budget planning and purchasing;

(2) personnel services; and

(3) computer equipment and support.

(d) The public counsel may enter into interagency contracts and other agreements with the commissioner of workers' compensation and the commissioner of insurance as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.003. SUNSET PROVISION. The office of injured employee counsel is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 2021.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff.

September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 3.10, eff. June 15, 2007.
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 1, eff. September 1, 2011.
Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 4.03, eff. June 14, 2013.

Sec. 404.004. PUBLIC INTEREST INFORMATION. (a) The office shall prepare information of public interest describing the functions of the office.
(b) The office shall make the information available to the public and appropriate state agencies.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.005. ACCESS TO PROGRAMS AND FACILITIES. (a) The office shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the office's programs.
(b) The office shall comply with federal and state laws for program and facility accessibility.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.006. RULEMAKING. (a) The public counsel shall adopt rules as necessary to implement this chapter.
(b) Rulemaking under this section is subject to Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.007. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE

RESOLUTION. (a) The office shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The office's alternative dispute resolution policy does not affect the manner in which the office participates in the division's administrative dispute resolution process or the department's alternative dispute resolution process through the office's administrative attachment to the department.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 2, eff. September 1, 2011.

Sec. 404.008. COMPLAINTS. (a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. INJURED EMPLOYEE PUBLIC COUNSEL

Sec. 404.051. APPOINTMENT; TERM. (a) The governor, with the advice and consent of the senate, shall appoint the injured employee public counsel. The public counsel serves a two-year term that expires on February 1 of each odd-numbered year.

(b) The governor shall appoint the public counsel without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Section 401.011(16) does not apply to the use of the term "disability" in this subchapter.

(c) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term.

(d) In appointing the public counsel, the governor may consider recommendations made by groups that represent wage earners.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.052. QUALIFICATIONS. To be eligible to serve as public counsel, a person must:

(1) be a resident of Texas;

(2) be licensed to practice law in this state;

(3) have demonstrated a strong commitment to and involvement in efforts to safeguard the rights of the working public;

(4) have management experience;

(5) possess knowledge and experience with the workers' compensation system; and

(6) have experience with legislative procedures and administrative law.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.053. BUSINESS INTEREST; SERVICE AS PUBLIC COUNSEL. A person is not eligible for appointment as public counsel if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization that holds a license,

certificate of authority, or other authorization from the department or division or that receives funds from the department or division;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the department, division, or the office; or

(3) uses or receives a substantial amount of tangible goods or funds from the department, division, or the office, other than compensation or reimbursement authorized by law.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.054. LOBBYING ACTIVITIES. A person may not serve as public counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation related to the operation of the department, the division, or the office.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.055. GROUNDS FOR REMOVAL. (a) It is a ground for removal from office that the public counsel:

(1) does not have at the time of appointment or maintain during service as public counsel the qualifications required by Section 404.052;

(2) violates a prohibition established by Section 404.053, 404.054, 404.056, or 404.057; or

(3) cannot, because of illness or disability, discharge the public counsel's duties for a substantial part of the public counsel's term.

(b) The validity of an action of the public counsel or the office is not affected by the fact that the action is taken when a ground for removal of the public counsel exists.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.056. PROHIBITED REPRESENTATION OR EMPLOYMENT. (a) A former public counsel may not make any communication to or appearance before the division, the department, the commissioner, the commissioner of insurance, or an employee of the division or the department before the second anniversary of the date the person ceases to serve as public counsel if the communication or appearance is made:

(1) on behalf of another person in connection with any matter on which the person seeks official action; or

(2) with the intent to influence a commissioner or commissioner of insurance decision or action, unless the person is acting on the person's own behalf and without remuneration.

(b) A former public counsel may not represent any person or receive compensation for services rendered on behalf of any person regarding a matter before the division or the department before the second anniversary of the date the person ceases to serve as public counsel.

(c) A person commits an offense if the person violates this section. An offense under this section is a Class A misdemeanor.

(d) A former employee of the office may not:

(1) be employed by an insurance carrier regarding a matter that was in the scope of the employee's official responsibility while the employee was associated with the office; or

(2) represent a person before the division or the department or a court in a matter:

(A) in which the employee was personally involved while associated with the office; or

(B) that was within the employee's official responsibility while the employee was associated with the office.

(e) The prohibition of Subsection (d)(1) applies until the first anniversary of the date the employee's employment with the office ceases.

(f) The prohibition of Subsection (d)(2) applies to a current employee of the office while the employee is associated with the office and at any time after.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.057. TRADE ASSOCIATIONS. (a) In this section, "trade association" means a nonprofit, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not serve as public counsel if the person has been, within the previous two years:

(1) an officer, employee, or paid consultant of a trade association in the field of workers' compensation; or

(2) the spouse of an officer, manager, or paid consultant of a trade association in the field of workers' compensation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

SUBCHAPTER C. GENERAL POWERS AND DUTIES OF OFFICE

Sec. 404.101. GENERAL DUTIES. (a) The office shall, as provided by this subtitle:

(1) provide assistance to workers' compensation claimants;

(2) advocate on behalf of injured employees as a class regarding rulemaking by the commissioner and commissioner of insurance relating to workers' compensation;

(3) assist injured employees with contacting appropriate licensing boards for complaints against a health care provider; and

(4) assist injured employees with referral to local, state, and federal financial assistance, rehabilitation, and work placement programs, as well as other social services that the office considers appropriate.

(b) The office:

(1) may assess the impact of workers' compensation laws, rules, procedures, and forms on injured employees in this state; and

(2) shall, as provided by this subtitle:

(A) monitor the performance and operation of the workers' compensation system, with a focus on the system's effect on the return to work of injured employees;

(B) assist injured employees, through the ombudsman program, with the resolution of complaints pending at the division or department;

(C) assist injured employees, through the ombudsman program, in the division's administrative dispute resolution system; and

(D) advocate in the office's own name positions determined by the public counsel to be most advantageous to a substantial number of injured employees.

(b-1) The office may seek and accept grant funding to enable the office to perform its duties under this subtitle. This subsection does not authorize the office to seek or accept payment from an injured employee.

(c) The office may not appear or intervene, as a party or otherwise, before the commissioner, commissioner of insurance, division, or department on behalf of an individual injured employee, except through the ombudsman program.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 3, eff. September 1, 2011.

Sec. 404.1015. REFUSAL TO PROVIDE OR TERMINATION OF SERVICES. (a) The public counsel may refuse to provide or may terminate the services of the office to any claimant who:

(1) is abusive or violent to or who threatens any employee of the office;

(2) requests assistance in claiming benefits not provided by law; or

(3) commits or threatens to commit a criminal act in pursuit of a workers' compensation claim.

(b) If the public counsel determines under Subsection (a) that the services of the office should be refused or terminated, the office shall inform the affected claimant in writing and notify the division.

(c) The office shall notify and cooperate with the appropriate law enforcement authority and the Department of Insurance, Fraud Unit, if the office becomes aware that the claimant or a person acting on the claimant's behalf commits or threatens to commit a criminal act.

Added by Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 1, eff. September 1, 2009.

Sec. 404.102. GENERAL POWERS AND DUTIES OF PUBLIC COUNSEL. The public counsel shall administer and enforce this chapter, including preparing and submitting to the legislature a budget for the office and approving expenditures for professional services, travel, per diem, and other actual and necessary expenses incurred in administering the office.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.103. OPERATION OF OMBUDSMAN PROGRAM. (a) The office shall operate the ombudsman program under Subchapter D.

(b) The public counsel shall assign staff attorneys, as the public counsel considers appropriate, to supervise the work of the ombudsman program and advise ombudsmen in providing assistance to claimants and preparing for informal and formal hearings.

(c) The office shall coordinate services provided by the ombudsman program with services provided by the Department of Assistive and Rehabilitative Services.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.104. AUTHORITY TO APPEAR OR INTERVENE. The public counsel:

(1) may appear or intervene, as a party or otherwise, as a matter of right before the commissioner, commissioner of insurance, division, or department on behalf of injured employees as a class in matters involving rules, agency policies, and forms affecting the workers' compensation system that the commissioner or the commissioner of insurance adopts or approves;

(2) may intervene as a matter of right or otherwise appear in a judicial proceeding involving or arising from an action taken by an administrative agency in a proceeding in which the public counsel previously appeared under the authority granted by this chapter;

(3) may appear or intervene, as a party or otherwise, as a matter of right on behalf of injured employees as a class in any proceeding in which the public counsel determines that the interests of injured employees as a class are in need of representation, except that the public counsel may not intervene in an enforcement or parens patriae proceeding brought by the attorney general; and

(4) may appear or intervene before the commissioner, commissioner of insurance, division, or department, as a party or otherwise, on behalf of injured employees as a class in a matter involving rates, rules, agency policies, or forms affecting injured employees as a class in any proceeding in which the public counsel determines that injured employees are in need of representation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.105. AUTHORITY TO ASSIST INDIVIDUAL INJURED EMPLOYEES IN ADMINISTRATIVE PROCEDURES. (a) The office, through the ombudsman program, may appear before the commissioner, division, or State Office of Administrative Hearings to provide assistance to an individual injured employee during:

(1) a workers' compensation administrative dispute resolution process; or

(2) an enforcement action by the department or division against an employee for a violation of the Texas Workers' Compensation Act.

(b) This chapter may not be construed as requiring or allowing legal representation for an individual injured employee by an office attorney or ombudsman in any proceeding.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 2, eff. September 1, 2009.

Sec. 404.106. LEGISLATIVE REPORT. (a) The office shall report to the governor, lieutenant governor, speaker of the house of representatives, and the chairs of the legislative committees with

appropriate jurisdiction not later than January 1 of each odd-numbered year. The report must include:

(1) a description of the activities of the office;

(2) identification of any problems in the workers' compensation system from the perspective of injured employees as a class, as considered by the public counsel, with recommendations for regulatory and legislative action; and

(3) an analysis of the ability of the workers' compensation system to provide adequate, equitable, and timely benefits to injured employees at a reasonable cost to employers.

(b) The office shall coordinate with the workers' compensation research and evaluation group to obtain needed information and data to make the evaluations required for the report.

(c) The office shall publish and disseminate the legislative report to interested persons, and may charge a fee for the publication as necessary to achieve optimal dissemination.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 7, eff. September 1, 2011.

Sec. 404.107. ACCESS TO INFORMATION BY PUBLIC COUNSEL. The public counsel:

(1) is entitled to the same access as a party, other than division staff or department staff, to division or department records available in a proceeding before the commissioner, commissioner of insurance, division, or department under the authority granted to the public counsel by this chapter; and

(2) is entitled to obtain discovery under Chapter 2001, Government Code, of any nonprivileged matter that is relevant to the subject matter involved in a proceeding or submission before the commissioner, commissioner of insurance, division, or department as authorized by this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.108. LEGISLATIVE RECOMMENDATIONS. The public counsel may recommend proposed legislation to the legislature that the public counsel determines would positively affect the interests of injured employees as a class.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Sec. 404.109. INJURED EMPLOYEE RIGHTS; NOTICE. The public counsel shall adopt, in the form and manner prescribed by the public counsel and after consultation with the commissioner of workers' compensation, a notice of injured employee rights and responsibilities to be distributed by the division as provided by commissioner or commissioner of insurance rules. A right or responsibility adopted under this section must be consistent with the requirements of this subtitle and division rules. This section may not be construed as establishing an entitlement to benefits to which the claimant is not otherwise entitled under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 3, eff. September 1, 2009.

Sec. 404.110. APPLICABILITY TO PUBLIC COUNSEL OF CONFIDENTIALITY REQUIREMENTS. (a) Confidentiality requirements applicable to examination reports and to the commissioner of insurance under Sections 401.058, 401.105, 401.106, 441.201, and 501.158, Insurance Code, as applicable, and Section 404.111, apply to the public counsel.

(b) An employee of the office may not be compelled to disclose information communicated to the employee by a claimant on any matter relating to the claimant's claim. This subsection does not prohibit or alter the office's duty to notify and cooperate with appropriate law enforcement authorities under Section 404.1015(c).

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 4, eff. September 1, 2009.

Sec. 404.111. ACCESS TO INFORMATION. (a) When assisting an injured employee, the office is entitled to the same access to information related to the employee's injury and workers' compensation claim as the employee or any other party to the claim.

(b) The office may not access information under Subsection (a) that is an attorney-client communication or an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) In furtherance of assisting an employee under Section 404.105(a)(2), the office may not access information under Section 404.111(a) to which the employee is not otherwise entitled. If the office possesses any information made confidential by the Texas Workers' Compensation Act or any other laws of this state to which the employee is not otherwise entitled, that information may not be disclosed to the employee or any other party assisting an employee under Section 404.105(a)(2). Nothing in this subsection prohibits or alters the office's duty to notify appropriate law enforcement authorities under Section 404.1015(c).

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 289, Sec. 8, eff. September 1, 2011.

(e) The office may not make public any confidential information provided to the office under this chapter. Except as provided by Subsection (c), the office may disclose a summary of the information that does not directly or indirectly identify the individual or entity that is the subject of the information. The office may not release, and an individual or entity may not gain access to, any information that:

(1) could reasonably be expected to reveal the identity of a health care provider or an injured employee;

(2) reveals the zip code of an injured employee's primary residence;

(3) discloses a health care provider discount or a differential between a payment and a billed charge; or

(4) relates to an actual payment made by a payer to an identified health care provider.

(f) Information collected or used by the office under this chapter is subject to the confidentiality provisions and criminal penalties of Section 402.091.

(g) Information on health care providers and injured employees that is in the possession of the office, and any compilation, report, or analysis produced from the information that identifies providers and injured employees is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any individual or entity; or

(2) admissible in any civil, administrative, or criminal proceeding.

(h) Notwithstanding Subsection (e)(2), the office may use zip code information to analyze information on a geographical basis.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.016, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1261 (H.B. 673), Sec. 5, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 289 (H.B. 1774), Sec. 8, eff. September 1, 2011.

SUBCHAPTER D. OMBUDSMAN PROGRAM

Sec. 404.151. OMBUDSMAN PROGRAM. (a) The office shall maintain an ombudsman program as provided by this subchapter to assist injured employees and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

(1) meet with or otherwise provide information to injured employees;

(2) investigate complaints;

(3) communicate with employers, insurance carriers, and health care providers on behalf of injured employees;

(4) assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and

(5) meet with an unrepresented claimant privately for a minimum of 15 minutes prior to any informal or formal hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995. Redesignated from Labor Code, Section 409.041 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.152. DESIGNATION AS OMBUDSMAN; ELIGIBILITY AND TRAINING REQUIREMENTS; CONTINUING EDUCATION REQUIREMENTS. (a) At least one specially qualified employee in each division office shall be an ombudsman designated by the office of injured employee counsel, who shall perform the duties under this subchapter as the person's primary responsibility.

(b) To be eligible for designation as an ombudsman, a person must:

(1) demonstrate satisfactory knowledge of the requirements of:

(A) this subtitle and the provisions of Subtitle C that relate to claims management;

(B) other laws relating to workers' compensation; and

(C) rules adopted under this subtitle and the laws described under Subdivision (1)(B);

(2) have demonstrated experience in handling and resolving problems for the general public;

(3) possess strong interpersonal skills; and

(4) have at least one year of demonstrated experience in the field of workers' compensation.

(c) The public counsel shall by rule adopt training guidelines and continuing education requirements for ombudsmen. Training provided under this subsection must:

(1) include education regarding this subtitle, rules adopted under this subtitle, and decisions of the appeals panel, with emphasis on benefits and the dispute resolution process;

(2) require an ombudsman undergoing training to be observed and monitored by an experienced ombudsman during daily activities conducted under this subchapter; and

(3) incorporate the requirements of Section 404.103(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Redesignated from Labor Code Sec. 409.041(c) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995. Amended by

Acts 1997, 75th Leg., ch. 1443, Sec. 8, eff. Sept. 1, 1997.
Redesignated from Labor Code, Section 409.042 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.153. EMPLOYER NOTIFICATION; ADMINISTRATIVE VIOLATION. (a) Each employer shall notify its employees of the ombudsman program in the manner prescribed by the office.

(b) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Redesignated from Labor Code Sec. 409.041(d) and amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.043 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.154. PUBLIC INFORMATION. The office shall widely disseminate information about the ombudsman program.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Renumbered from Labor Code Sec. 409.042 by Acts 1995, 74th Leg., ch. 980, Sec. 1.31, eff. Sept. 1, 1995.
Redesignated from Labor Code, Section 409.044 and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.017, eff. September 1, 2005.

Sec. 404.155. COST FOR CERTAIN COPIES OF MEDICAL RECORDS; ADMINISTRATIVE VIOLATION. (a) At the written request of an ombudsman designated under this subchapter who is assisting a specific injured employee, a health care provider shall provide copies of the injured employee's medical records to the ombudsman at no cost to the ombudsman or the office.

(b) The workers' compensation insurance carrier is liable to the health care provider for the cost of providing copies of the employee's medical records under this section. The insurance carrier may not deduct that cost from any benefit to which the employee is entitled.

(c) The amount charged for providing copies of an injured employee's medical records under this section is the amount

prescribed by rules adopted by the commissioner for copying medical records.

(d) A health care provider may not require payment for the cost of providing copies of an injured employee's medical records under this section before providing the copies to the ombudsman.

(e) The public counsel may adopt rules regarding a time frame for the provision of copies of an injured employee's medical records under this section and any other matter relating to provision of those copies.

(f) A health care provider or insurance carrier that fails to comply with the requirements of this section or rules adopted under this section commits an administrative violation. The commissioner shall enforce a violation under this subsection in accordance with Chapter 415.

Added by Acts 2007, 80th Leg., R.S., Ch. 1009 (H.B. 888), Sec. 1, eff. June 15, 2007.

CHAPTER 405. WORKERS' COMPENSATION RESEARCH

Sec. 405.001. DEFINITION. In this chapter, "group" means the workers' compensation research and evaluation group.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.018, eff. September 1, 2005.

Sec. 405.002. WORKERS' COMPENSATION RESEARCH DUTIES OF DEPARTMENT. (a) The workers' compensation research and evaluation group is located within the department and serves as a resource for the commissioner of insurance on workers' compensation issues.

(b) The department may apply for and spend grant funds to implement this chapter.

(c) The department shall ensure that all research reports prepared under this chapter or by the former Research and Oversight Council on Workers' Compensation are accessible to the public through the Internet to the extent practicable.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.019, eff. September 1, 2005.

Sec. 405.0025. RESEARCH DUTIES OF GROUP. (a) The group shall conduct professional studies and research related to:

(1) the delivery of benefits;

(2) litigation and controversy related to workers' compensation;

(3) insurance rates and ratemaking procedures;

(4) rehabilitation and reemployment of injured employees;

(5) the quality and cost of medical benefits;

(6) employer participation in the workers' compensation system;

(7) employment health and safety issues; and

(8) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

(b) The group shall:

(1) objectively evaluate the impact of the workers' compensation health care networks certified under Chapter 1305, Insurance Code, on the cost and the quality of medical care provided to injured employees; and

(2) report the group's findings to the governor, the lieutenant governor, the speaker of the house of representatives, and the members of the legislature not later than December 1 of each even-numbered year.

(c) At a minimum, the report required under Subsection (b) must evaluate the impact of workers' compensation health care networks on:

(1) the average medical and indemnity cost per claim;

(2) access and utilization of health care;

(3) injured employee return-to-work outcomes;

(4) injured employee satisfaction;

(5) injured employee health-related functional outcomes;

(6) the frequency, duration, and outcome of complaints; and

(7) the frequency, duration, and outcome of disputes regarding medical benefits.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.020, eff. September 1, 2005.

Sec. 405.0026. RESEARCH AGENDA. (a) The group shall prepare and publish annually in the Texas Register a proposed workers' compensation research agenda for the commissioner of insurance review and approval.

(b) The commissioner of insurance shall:

(1) accept public comments on the research agenda; and

(2) hold a public hearing on the proposed research agenda if a hearing is requested by interested persons.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.020, eff. September 1, 2005.

Sec. 405.003. FUNDING; MAINTENANCE TAX. (a) The group's duties under this chapter are funded through the assessment of a maintenance tax collected annually from all insurance carriers, and self-insurance groups that hold certificates of approval under Chapter 407A, except governmental entities.

(b) The department shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax rate for insurance companies may not exceed one-tenth of one percent of the correctly reported gross workers' compensation insurance premiums. The tax rate for certified self-insurers may not exceed one-tenth of one percent of the total tax base of all certified self-insurers, as computed under Section 407.103(b). The tax rate for self-insurance groups described by Subsection (a) may not exceed one-tenth of one percent of the group's gross premium for the group's retention, excluding premium collected by the group for excess insurance.

(c) The tax imposed under Subsection (a) is in addition to all other taxes imposed on those insurance carriers for workers' compensation purposes.

(d) The tax on insurance companies and on self-insurance groups described by Subsection (a) shall be assessed, collected, and paid in the same manner and at the same time as the maintenance tax established for the support of the department under Chapter 255,

Insurance Code. The tax on certified self-insurers shall be assessed, collected, and paid in the same manner and at the same time as the self-insurer maintenance tax collected under Section 407.104.

(e) Amounts received under this section shall be deposited in the general revenue fund in accordance with Section 251.004, Insurance Code, to be used:

(1) for the operation of the group's duties under this chapter; and

(2) to reimburse the general revenue fund in accordance with Section 201.052, Insurance Code.

(f) Section 403.095, Government Code, does not apply in relation to amounts received under this section or to any special account into which the amounts are deposited.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.021, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.136, eff. September 1, 2005.

Sec. 405.004. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY. (a) As required to fulfill the group's objectives under this chapter, the group is entitled to access to the files and records of:

(1) the division;

(2) the Texas Workforce Commission;

(3) the Department of Assistive and Rehabilitative Services;

(4) the office of injured employee counsel;

(5) the State Office of Risk Management; and

(6) other appropriate state agencies.

(b) A state agency shall assist and cooperate in providing information to the group.

(c) Information that is confidential under state law is accessible to the department under rules of confidentiality and remains confidential.

(d) Except as provided by this subsection, the identity of an

individual or entity selected to participate in a survey conducted by the group or who participates in such a survey is confidential and is not subject to public disclosure under Chapter 552, Government Code. This subsection does not prohibit the identification of a workers' compensation health care network in a report card issued under Section 1305.502, Insurance Code, provided that the report card may not identify any injured employee or other individual.

(e) A working paper, including all documentary or other information, prepared or maintained by the group in performing the group's duties under this chapter or other law to conduct an evaluation and prepare a report is excepted from the public disclosure requirements of Section 552.021, Government Code.

(f) A record held by another entity that is considered to be confidential by law and that the group receives in connection with the performance of the group's functions under this chapter or another law remains confidential and is excepted from the public disclosure requirements of Section 552.021, Government Code.

(g) The commissioner of insurance shall adopt rules as necessary to establish data reporting requirements to support the research duties under this chapter. This section may not be construed as requiring additional reporting requirements on nonsubscribing employers.

Added by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.01, eff. Oct. 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.022, eff. September 1, 2005.

CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

Sec. 406.001. DEFINITION. In this subchapter, "employer" means a person who employs one or more employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.002. COVERAGE GENERALLY ELECTIVE. (a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.

(b) An employer who elects to obtain coverage is subject to this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.003. METHODS OF OBTAINING COVERAGE. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as provided by this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.004. EMPLOYER NOTICE TO DIVISION. (a) An employer who does not obtain workers' compensation insurance coverage shall notify the division in writing, in the time and as prescribed by commissioner rule, that the employer elects not to obtain coverage.

(b) The commissioner shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the division about the employer's business.

(c) The division may contract with the Texas Workforce Commission or the comptroller for assistance in collecting the notification required under this section. Those agencies shall cooperate with the division in enforcing this section.

(d) The employer notification filing required under this section shall be filed with the division in accordance with Section 406.009.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.47(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.023, eff. September 1, 2005.

Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION. (a) An employer shall notify each employee as provided by this section whether or not the employer has workers' compensation

insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired.

(c) Each employer shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. The commissioner may adopt rules relating to the form and content of the notice. The employer shall revise the notice when the information contained in the notice is changed.

(d) An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination or cancellation of the coverage, takes effect.

(e) An employer commits an administrative violation if the employer fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.024, eff. September 1, 2005.

Sec. 406.006. INSURANCE COVERAGE AND CLAIM ADMINISTRATION REPORTING REQUIREMENTS; ADMINISTRATIVE VIOLATION. (a) An insurance company from which an employer has obtained workers' compensation insurance coverage, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, and a political subdivision shall file notice of the coverage and claim administration contact information with the division not later than the 10th day after the date on which the coverage or claim administration agreement takes effect, unless the commissioner adopts a rule establishing a later date for filing. Coverage takes effect on the date on which a binder is issued, a later date and time agreed to by the parties, on the date provided by the certificate of self-insurance, or on the date provided in an interlocal agreement that provides for self-insurance. The commissioner may adopt rules that establish the coverage and

claim administration contact information required under this subsection.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) An insurance company, a certified self-insurer, a workers' compensation self-insurance group under Chapter 407A, or a political subdivision commits an administrative violation if the person fails to file notice with the division as provided by this section.

(d) In this section, "political subdivision" has the meaning assigned by Section 504.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.48(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 2.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.025, eff. September 1, 2005.

Sec. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE. (a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the division by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.

(b) The notice required under this section shall be filed with the division in accordance with Section 406.009.

(c) Termination of coverage takes effect on the later of:

(1) the 30th day after the date of filing of notice with the division under Subsection (a); or

(2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.49(a), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.026, eff.

September 1, 2005.

Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE. (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the division not later than:

(1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or

(2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

(A) fraud in obtaining coverage;

(B) misrepresentation of the amount of payroll for purposes of premium calculation;

(C) failure to pay a premium when due;

(D) an increase in the hazard for which the employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:

(i) reasonable recommendations for loss control; or

(ii) recommendations designed to reduce a hazard under the employer's control within a reasonable period; or

(E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interest of subscribers, creditors, or the general public.

(b) The notice required under this section shall be filed with the division.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.50(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.027, eff. September 1, 2005.

Sec. 406.009. COLLECTING AND MAINTAINING INFORMATION; MONITORING AND ENFORCING COMPLIANCE. (a) The division shall collect and maintain the information required under this subchapter and shall monitor compliance with the requirements of this subchapter.

(b) The commissioner may adopt rules as necessary to enforce this subchapter.

(c) The commissioner may designate a data collection agent, implement an electronic reporting and public information access program, and adopt rules as necessary to implement the data collection requirements of this subchapter. The commissioner may establish the form, manner, and procedure for the transmission of information to the division. A data collection agent designated under this subsection must be qualified and may collect fees in the manner described by Section 401.024.

(d) The division may require an employer or insurance carrier subject to this subtitle to identify or confirm an employer's coverage status and claim administration contact information as necessary to achieve the purposes of this subtitle.

(e) An employer or insurance carrier commits an administrative violation if that person fails to comply with Subsection (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.51(a), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 954, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.028, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 410 (S.B. 800), Sec. 2, eff. June 17, 2011.

Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall provide claims service:

(1) through offices of the insurance carrier located in this state; or

(2) by other resident representatives with full power to act for the insurance carrier.

(b) Each insurance carrier shall designate persons to provide

claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier. If an insurance carrier uses the services of a person required to hold a certificate of authority under Chapter 4151, Insurance Code, the carrier must comply with the requirements of that chapter.

(c) The commissioner by rule shall further specify the requirements of this section.

(d) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.029, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.01, eff. September 1, 2007.

Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. (a) The commissioner by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the division in Austin. Notice to the designated agent constitutes notice to the insurance carrier.

(b) A person commits an administrative violation if the person violates a rule adopted under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.030, eff. September 1, 2005.

Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The commission shall enforce the administrative penalties established under this subchapter in accordance with Chapter 415.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE REQUIREMENTS

Sec. 406.031. LIABILITY FOR COMPENSATION. (a) An insurance

carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

(1) at the time of injury, the employee is subject to this subtitle; and

(2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.032. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF. (a) In an action against an employer by or on behalf of an employee who is not covered by workers' compensation insurance obtained in the manner

authorized by Section 406.003 to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

(1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of defenses at common law, including the defenses described by Subsection (a).

(c) The employer may defend the action on the ground that the injury was caused:

(1) by an act of the employee intended to bring about the injury; or

(2) while the employee was in a state of intoxication.

(d) In an action described by Subsection (a), the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment.

(e) A cause of action described in Subsection (a) may not be waived by an employee before the employee's injury or death. Any agreement by an employee to waive a cause of action or any right described in Subsection (a) before the employee's injury or death is void and unenforceable.

(f) A cause of action described by Subsection (a) may not be waived by an employee after the employee's injury unless:

(1) the employee voluntarily enters into the waiver with knowledge of the waiver's effect;

(2) the waiver is entered into not earlier than the 10th business day after the date of the initial report of injury;

(3) the employee, before signing the waiver, has received a medical evaluation from a nonemergency care doctor; and

(4) the waiver is in a writing under which the true intent of the parties is specifically stated in the document.

(g) The waiver provisions required under Subsection (f) must be conspicuous and appear on the face of the agreement. To be conspicuous, the waiver provisions must appear in a type larger than the type contained in the body of the agreement or in contrasting colors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 16.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.031, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. 1714), Sec. 1, eff. September 1, 2011.

Sec. 406.034. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:

(1) begins the employment; or

(2) receives written notice from the employer that the employer has obtained workers' compensation insurance coverage if the employer is not a covered employer at the time of the employment but later obtains the coverage.

(c) An employer may not require an employee to retain common-law rights under this section as a condition of employment.

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state unless the employee has waived coverage in connection with an agreement with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1108 (S.B. 1714), Sec. 2, eff.

September 1, 2011.

Sec. 406.035. WAIVER OF COMPENSATION PROHIBITED. Except as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this subchapter.

(b) The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

(c) The employer may not transfer:

(1) the obligation to accept a report of injury under Section 409.001;

(2) the obligation to maintain records of injuries under Section 409.006;

(3) the obligation to report injuries to the insurance carrier under Section 409.005;

(4) liability for a violation of Section 415.006 or 415.008 or of Chapter 451; or

(5) the obligation to comply with a commissioner order.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 4, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.032, eff. September 1, 2005.

Sec. 406.052. EFFECT OF OTHER INSURANCE COVERAGE. (a) A contract entered into to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this subtitle is void unless the contract also covers liability for payment of compensation under this subtitle.

(b) This section does not prohibit an employer who is not

required to have workers' compensation insurance coverage and who has elected not to obtain workers' compensation insurance coverage from obtaining insurance coverage on the employer's employees if the insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.053. ALL STATES COVERAGE. The Texas Department of Insurance shall coordinate with the appropriate agencies of other states to:

(1) share information regarding an employer who obtains all states coverage; and

(2) ensure that the department has knowledge of an employer who obtains all states coverage in another state but fails to file notice with the department.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

Sec. 406.071. EXTRATERRITORIAL COVERAGE. (a) An employee who is injured while working in another jurisdiction or the employee's legal beneficiary is entitled to all rights and remedies under this subtitle if:

(1) the injury would be compensable if it had occurred in this state; and

(2) the employee has significant contacts with this state or the employment is principally located in this state.

(b) An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

(1) was injured not later than one year after the date of hire; or

(2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.072. PRINCIPAL LOCATION. The principal location of a

person's employment is where:

(1) the employer has a place of business at or from which the employee regularly works; or

(2) the employee resides and spends a substantial part of the employee's working time.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.073. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION. (a) An employee whose work requires regular travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the division on request.

(c) A person commits an administrative violation if the person violates Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.033, eff. September 1, 2005.

Sec. 406.074. INTERJURISDICTIONAL AGREEMENTS. (a) The commissioner may enter into an agreement with an appropriate agency of another jurisdiction with respect to:

(1) conflicts of jurisdiction;

(2) assumption of jurisdiction in a case in which the contract of employment arises in one state and the injury is incurred in another;

(3) procedures for proceeding against a foreign employer who fails to comply with this subtitle; and

(4) procedures for the appropriate agency to use to proceed against an employer of this state who fails to comply with the workers' compensation laws of the other jurisdiction.

(b) An executed agreement that has been adopted as a rule by the commissioner binds all subject employers and employees.

(c) In this section, "appropriate agency" means an agency of another jurisdiction that administers the workers' compensation laws

of that jurisdiction.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.034, eff. September 1, 2005.

Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION. (a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have received had the claim been made under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE. (a) The following employees are not subject to this subtitle:

(1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;

(2) a person covered by a method of compensation established under federal law; or

(3) except as provided by Subchapter H, a farm or ranch employee.

(b) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees exempted from coverage under Subsection (a)(1) or (a)(3). Obtaining that coverage constitutes acceptance by the employer of the rights and responsibilities imposed under this subtitle as of the effective date of the coverage for as long as the coverage remains in effect.

(c) An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses described by Section 406.033, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES. (a) A resident or nonresident alien employee or legal beneficiary is entitled to compensation under this subtitle.

(b) A nonresident alien employee or legal beneficiary, at the election of the employee or legal beneficiary, may be represented officially by a consular officer of the country of which the employee or legal beneficiary is a citizen. That officer may receive benefit payments for distribution to the employee or legal beneficiary. The receipt of the payments constitutes full discharge of the insurance carrier's liability for those payments.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES. (a) The guardian of an injured employee who is a minor or is otherwise legally incompetent may exercise on the employee's behalf the rights and privileges granted to the employee under this subtitle.

(b) The commissioner by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.035, eff. September 1, 2005.

Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. (a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesperson or broker who is:

(1) licensed under Chapter 1101, Occupations Code; and

(2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesperson or broker. The coverage continues while the policy is in effect and the named salesperson or broker is endorsed on the policy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 14A.788, eff. Sept. 1, 2003.

Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES. (a) A professional athlete employed under a contract for hire or a collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this subtitle may not receive benefits under this subtitle and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the athlete's employment shall elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement.

(b) The commissioner by rule shall establish the procedures and requirements for an election under this section.

(c) In this section, "professional athlete" means a person employed as a professional athlete by a franchise of:

(1) the National Football League;

(2) the National Basketball Association;

(3) the American League of Professional Baseball Clubs;

(4) the National League of Professional Baseball Clubs;

(5) the International Hockey League;

(6) the National Hockey League; or

(7) the Central Hockey League.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.036, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 815 (S.B. 742), Sec. 1, eff. September 1, 2005.

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers'

compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

(A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;

(B) remodeling, extending, repairing, or demolishing a structure; or

(C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.097. EXECUTIVE EMPLOYEES OF CERTAIN BUSINESS ENTITIES. (a) A sole proprietor, partner, or corporate executive officer of a business entity that elects to provide workers' compensation insurance coverage is entitled to benefits under that coverage as an employee unless the sole proprietor, partner, or corporate executive officer is specifically excluded from coverage through an endorsement to the insurance policy or certificate of authority to self-insure.

(b) The dual capacity doctrine does not apply to a corporate executive officer with an equity ownership in the covered business entity of at least 25 percent and will not invalidate the exclusion of such a corporate executive officer from coverage under Subsection (a).

(c) A sole proprietor or partner of a covered business entity or a corporate officer with an equity ownership in a covered business entity of at least 25 percent may be excluded from coverage under this section notwithstanding Section 406.096.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.20, eff. Sept. 1, 1995.

Sec. 406.098. VOLUNTEER EMERGENCY SERVICE MEMBERS AND PERSONNEL. (a) An emergency service organization which is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law.

(b) In this section, unless a different meaning is plainly required by law:

(1) "Emergency service organization" means any organization established to provide for the general public:

(A) fire prevention and suppression;

(B) hazardous materials response operations; or

(C) emergency medical services.

(2) "Volunteer members" means individuals who are carried on the membership list of the organization as active participants and who receive no remuneration for their services.

(3) "Normal functions" means any response to, participation in, or departure from an incident scene; training; meetings; performance of equipment maintenance; or organizational functions.

(4) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state.

(c) The commissioner of insurance shall adopt rules governing the method of calculating premiums for workers' compensation insurance coverage for volunteer members who are covered pursuant to this section.

Added by Acts 1995, 74th Leg., ch. 849, Sec. 1, eff. Aug. 28, 1995.
Renumbered from Labor Code Sec. 406.097 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(63), eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.037, eff. September 1, 2005.

SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

Sec. 406.121. DEFINITIONS. In this subchapter:

(1) "General contractor" means a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service.

(3) "Motor carrier" means a person who operates a motor vehicle over a public highway in this state to provide a transportation service or who contracts to provide that service.

(4) "Owner operator" means a person who provides transportation services under contract for a motor carrier. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services

that the general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle, with a driver under contract, to transport passengers or property.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.122. STATUS AS EMPLOYEE. (a) For purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this subtitle is an employee of that general contractor or motor carrier, unless the person is:

(1) operating as an independent contractor; or

(2) hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(b) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(c) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this subtitle if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.

(b) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if, in the course

and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this subtitle and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (d).

(c) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator.

(d) If a general contractor or a motor carrier elects to provide coverage under Subsection (a) or (c), then, notwithstanding Section 415.006, the actual premiums, based on payroll, that are paid or incurred by the general contractor or motor carrier for the coverage may be deducted from the contract price or other amount owed to the subcontractor or owner operator by the general contractor or motor carrier.

(e) An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.

(f) A general contractor shall file a copy of an agreement entered into under this section with the general contractor's workers' compensation insurance carrier not later than the 10th day after the date on which the contract is executed. If the general contractor is a certified self-insurer, the copy must be filed with the division.

(g) A general contractor who enters into an agreement with a subcontractor under this section commits an administrative violation if the contractor fails to file a copy of the agreement as required by Subsection (f).

(h) Notwithstanding Subsection (b), a person who performs work or provides a service for an oil or gas well operator and who is an independent contractor that has no employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the general contractor's workers' compensation insurance policy unless the independent contractor and the general contractor enter into an agreement under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1997, 75th Leg., ch. 88, Sec. 1, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.038, eff. September 1, 2005.

Sec. 406.124. CAUSE OF ACTION. If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the intent to avoid liability as an employer under this subtitle, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall have a separate right of action against the subcontractor. The right of action against the subcontractor does not affect the employee's right to compensation under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED. This subchapter does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to stop or change an unsafe work practice.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.126. EXEMPTION. This subchapter does not apply to farm or ranch employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE. An insurance company may not demand an insurance premium from an employer for coverage of an independent contractor or an employee of an independent contractor if the independent contractor is under a contract of hire with the employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

Sec. 406.141. DEFINITIONS. In this subchapter:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of regular business, subcontracts all or part of the work to be performed to other persons.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job and not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as desired and may determine the pay of each helper; and

(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.142. APPLICATION. This subchapter applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing:

(1) a residential structure;

(2) a commercial structure that does not exceed three stories in height or 20,000 square feet in area; or

(3) an appurtenance to a structure described by Subdivision (1) or (2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES. (a) Unless the independent contractor and hiring contractor enter into an agreement under Section 406.144, the independent contractor is responsible for any workers' compensation insurance coverage provided to an employee of the independent contractor, and the independent contractor's employees are not entitled to workers' compensation insurance coverage from the hiring contractor.

(b) An independent contractor without employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy unless the independent contractor and hiring contractor enter into an agreement under Section 406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT. (a) Except as provided by this section, a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor or the independent contractor's employee, helper, or subcontractor. An independent contractor and a hiring contractor may enter into a written agreement under which the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance coverage from the contract price and that, for the purpose of providing workers' compensation insurance coverage, the hiring contractor is the employer of the independent contractor and the independent contractor's employees.

(b) A hiring contractor and independent contractor may enter into an agreement under Subsection (a) even if the independent contractor does not have an employee.

(c) An agreement under this section shall be filed with the division either by personal delivery or by registered or certified mail and is considered filed on receipt by the division.

(d) The hiring contractor shall send a copy of an agreement under this section to the hiring contractor's workers' compensation insurance carrier on filing of the agreement with the division.

(e) An agreement under this section makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of the workers' compensation laws of this state.

(f) The deduction of the cost of the workers' compensation insurance coverage from the independent contractor's contract price is permitted notwithstanding Section 415.006.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.039, eff. September 1, 2005.

Sec. 406.145. JOINT AGREEMENT. (a) A hiring contractor and an independent subcontractor may make a joint agreement declaring that the subcontractor is an independent contractor as defined in Section 406.141(2) and that the subcontractor is not the employee of the hiring contractor. If the joint agreement is signed by both the hiring contractor and the subcontractor and filed with the division, the subcontractor, as a matter of law, is an independent contractor and not an employee, and is not entitled to workers' compensation insurance coverage through the hiring contractor unless an agreement is entered into under Section 406.144 to provide workers' compensation insurance coverage. The commissioner shall prescribe forms for the joint agreement.

(b) A joint agreement shall be delivered to the division by personal delivery or registered or certified mail and is considered filed on receipt by the division.

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to the hiring contractor's workers' compensation insurance carrier on filing of the joint agreement with the division.

(d) The division shall maintain a system for accepting and maintaining the joint agreements.

(e) A joint agreement signed under this section applies to each hiring agreement between the hiring contractor and the independent contractor until the first anniversary of its filing date, unless a subsequent hiring agreement expressly states that the joint agreement does not apply.

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify the division and the hiring contractor's workers' compensation insurance carrier in writing.

(g) If a hiring contractor and an independent contractor have filed a joint agreement under this section, an insurance company may not require the payment of an insurance premium by a hiring contractor for coverage of an independent contractor or an independent contractor's employee, helper, or subcontractor other than under an agreement entered into in compliance with Section

406.144.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.040, eff. September 1, 2005.

Sec. 406.146. WRONGFUL INDUCEMENT PROHIBITED. (a) A hiring contractor may not:

(1) wrongfully induce an employee to enter into a joint agreement under Section 406.145 stating that the employee is an independent contractor; or

(2) exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests.

(b) A hiring contractor does not exert employer-like controls over an independent contractor or an independent contractor's employee solely because of:

(1) controlling the hours of labor, if that control is exercised only to:

(A) establish the deadline for the completion of the work called for by the contract;

(B) schedule work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) schedule work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely to prevent or correct an unsafe work practice or condition or to control work to ensure that the end product is in compliance with the contracted for result.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

Sec. 406.161. DEFINITIONS. In this subchapter:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who work for the benefit of a third party.

(4) "Migrant worker" means an individual who is:

(A) employed in agricultural labor of a seasonal or temporary nature; and

(B) required to be absent overnight from the worker's permanent place of residence.

(5) "Seasonal worker" means an individual who is:

(A) employed in agricultural or ranch labor of a seasonal or temporary nature; and

(B) not required to be absent overnight from the worker's permanent place of residence.

(6) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.162. SCOPE. (a) This subtitle applies to an action to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker:

(A) employed on a truck farm, orchard, or vineyard;

(B) employed by a person with a gross annual payroll for the preceding year in an amount not less than the greater of the required payroll for the year preceding that year, adjusted for inflation, or $25,000; or

(C) working for a farmer, ranch operator, or labor agent who employs a migrant worker and doing the same work at the

same time and location as the migrant worker; or

(3) an employee, other than a migrant or seasonal worker:

(A) for years before 1991, employed by a person with a gross annual payroll for the preceding year of at least $50,000; and

(B) for 1991 and subsequent years, employed by a person:

(i) with a gross annual payroll in an amount required for coverage of seasonal workers under Subdivision (2)(B); or

(ii) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the division before October 1 of each year. The division shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

(c) For the purposes of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for the agent's services and for the services of migrant or seasonal workers but does not include wages paid to:

(1) the person or a member of the person's family, if the person is a sole proprietor;

(2) a partner in a partnership or a member of the partner's family; or

(3) a shareholder of a corporation in which all shareholders are family members or a member of the shareholder's family.

(d) This subchapter does not affect the application or interpretation of this subtitle as it relates to persons engaged in activities determined before January 1, 1985, not to be farm or ranch labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.041, eff. September 1, 2005.

Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY. (a) A labor agent who furnishes a migrant or seasonal

worker is liable under this subtitle as if the labor agent were the employer of the worker, without regard to the right of control or other factors used to determine an employer-employee relationship.

(b) If the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal worker is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by the migrant or seasonal worker as provided by this subtitle, and, for that purpose, the migrant or seasonal worker is considered the employee of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for that worker as provided by this subtitle. If a migrant or seasonal worker is covered by workers' compensation insurance coverage, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this subtitle.

(c) A labor agent shall notify each person with whom the agent contracts of whether the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent shall present evidence of the coverage to each person with whom the agent contracts.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS. (a) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover the person, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered.

(b) The elective coverage continues while the policy is in effect and the named individual is endorsed on the policy.

(c) A member of an employer's family is exempt from coverage under the policy unless an election for that coverage is made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS. (a) A farm or ranch employee who performs work or provides a service for

a farm or ranch employer subject to this subchapter is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of an independent contractor.

(b) In this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of the employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 407. SELF-INSURANCE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407.001. DEFINITIONS. In this chapter:

(1) "Association" means the Texas Certified Self-Insurer Guaranty Association.

(2) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(17), eff. September 1, 2005.

(3) "Impaired employer" means a certified self-insurer:

(A) who has suspended payment of compensation as determined by the division;

(B) who has filed for relief under bankruptcy laws;

(C) against whom bankruptcy proceedings have been filed; or

(D) for whom a receiver has been appointed by a court of this state.

(4) "Incurred liabilities for compensation" means the amount equal to the sum of:

(A) the estimated amount of the liabilities for outstanding workers' compensation claims, including claims incurred

but not yet reported; and

(B) the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who holds a certificate of authority under Chapter 4151.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.042, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(17), eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.137, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.02, eff. September 1, 2007.

SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION

Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSIONER. The commissioner shall:

(1) approve or deny the issuance or revocation of a certificate of authority to self-insure; and

(2) certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0421, eff. September 1, 2005.

Sec. 407.024. CLAIM OR SUIT. (a) A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]."

(b) The commissioner is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor of a certified self-insurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0422, eff. September 1, 2005.

SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE

Sec. 407.041. APPLICATION. (a) An employer who desires to self-insure under this chapter must submit an application to the division for a certificate of authority to self-insure.

(b) The application must be:

(1) submitted on a form adopted by the commissioner; and

(2) accompanied by a nonrefundable $1,000 application fee.

(c) Not later than the 60th day after the date on which the application is received, the commissioner shall approve or deny the application.

(d) During the pendency of the approval or denial of the application, the applicant may not operate as a self-insurer under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.043, eff. September 1, 2005.

Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval of the Texas Certified Self-Insurer Guaranty Association, the commissioner shall issue a certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.044, eff. September 1, 2005.

Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commissioner determines that an applicant for a certificate of authority to self-insure does not meet the certification

requirements, the division shall notify the applicant in writing of the commissioner's determination, stating the specific reasons for the denial and the conditions to be met before approval may be granted.

(b) The applicant is entitled to a reasonable period, as determined by the commissioner, to meet the conditions for approval before the application is considered rejected for purposes of appeal.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.045, eff. September 1, 2005.

Sec. 407.044. TERM OF CERTIFICATE OF AUTHORITY; RENEWAL. (a) A certificate of authority to self-insure is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commissioner.

(b) The commissioner may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.046, eff. September 1, 2005.

Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commissioner. The commissioner shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commissioner that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer.

(b) A certified self-insurer who withdraws from self-insurance shall surrender to the division the certificate of authority to self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.047, eff. September 1, 2005.

Sec. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commissioner may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with requirements or conditions established by this chapter or a rule adopted by the commissioner under this chapter.

(b) If the commissioner believes that a ground exists to revoke a certificate of authority to self-insure, the commissioner shall refer the matter to the State Office of Administrative Hearings. That office shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case hearing under Chapter 2001, Government Code.

(c) The State Office of Administrative Hearings shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date.

(d) If the certified self-insurer fails to show cause why the certificate should not be revoked, the commissioner immediately shall revoke the certificate.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.21, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.048, eff. September 1, 2005.

Sec. 407.047. EFFECT OF REVOCATION. (a) A certified self-insurer whose certificate of authority to self-insure is revoked is not relieved of the obligation for compensation to an employee for an accidental injury or occupational disease that occurred during the period of self-insurance.

(b) The security required under Sections 407.064 and 407.065 shall be maintained with the division or under the division's control

until each claim for workers' compensation benefits is paid, is settled, or lapses under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.049, eff. September 1, 2005.

SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Sec. 407.061. GENERAL REQUIREMENTS. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commissioner and the association of sufficient financial strength and liquidity, under standards adopted by the commissioner, to ensure that all workers' compensation obligations incurred by the applicant under this chapter are met promptly.

(b) The applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(c) The applicant must present a plan for claims administration that:

(1) is acceptable to the commissioner;

(2) designates a qualified claims servicing contractor; and

(3) complies with Chapter 4151, Insurance Code.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) The applicant must provide to the commissioner a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant. The contract must be acceptable to the commissioner and must be

submitted in a standard form adopted by the commissioner, if the commissioner adopts such a form.

(f) The commissioner shall adopt rules for the requirements for the financial statements required by Subsection (b)(2).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.050, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.03, eff. September 1, 2007.

Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS. In assessing the financial strength and liquidity of an applicant, the commissioner shall consider:

(1) the applicant's organizational structure and management background;

(2) the applicant's profit and loss history;

(3) the applicant's compensation loss history;

(4) the source and reliability of the financial information submitted by the applicant;

(5) the number of employees affected by self-insurance;

(6) the applicant's access to excess insurance markets;

(7) financial ratios, indexes, or other financial measures that the commissioner finds appropriate; and

(8) any other information considered appropriate by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.051, eff. September 1, 2005.

Sec. 407.063. PREMIUM REQUIREMENTS. (a) In addition to meeting the other certification requirements imposed under this chapter, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commissioner of a total unmodified workers' compensation insurance premium in this state in the calendar year of application of at least $500,000.

(b) Instead of the state premium required under this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least $10 million.

(c) Expired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.052, eff. September 1, 2005.

Sec. 407.064. GENERAL SECURITY REQUIREMENTS. (a) Each applicant shall provide security for incurred liabilities for compensation through a deposit with the division, in a combination and from institutions approved by the commissioner, of the following security:

(1) cash or negotiable securities of the United States or of this state;

(2) a surety bond that names the commissioner as payee; or

(3) an irrevocable letter of credit that names the commissioner as payee.

(b) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant shall notify the division in writing not later than the 60th day before the effective date of the cancellation of the original letter of credit.

(c) An estimate of the applicant's incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with the application.

(d) The sum of the deposited securities must be at least equal to the greater of:

(1) $300,000; or

(2) 125 percent of the applicant's incurred liabilities for compensation.

(e) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under this section while the cash or securities are on deposit with the division shall be paid to the applicant quarterly.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.053, eff. September 1, 2005.

Sec. 407.065. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or document indicating issuance of an irrevocable letter of credit must be in a form approved by the commissioner and must be issued by an institution acceptable to the commissioner. The instrument may be released only according to its terms but may not be released by the deposit of additional security.

(c) The certified self-insurer shall deposit the security with the comptroller on behalf of the division. The comptroller may accept securities for deposit or withdrawal only on the written order of the commissioner.

(d) On receipt by the division of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the commissioner to the extent of any then unsecured portion of the self-insurer's incurred liabilities for compensation. That perfected security interest transfers to cash or securities deposited by the self-insurer with the division after the date of the request and may be released only on:

(1) the acceptance by the commissioner of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the division.

(e) The certified self-insurer loses all right to, title to, interest in, and control of the assets or obligations submitted or deposited as security. The commissioner may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) If the commissioner determines that a security deposit is not immediately available for the payment of compensation, the commissioner shall determine the appropriate method of payment and claims administration, which may include payment by the surety that

issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.12, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.054, eff. September 1, 2005.

Sec. 407.066. EFFECT OF DISPUTE. (a) The commissioner, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) an issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.

(b) A party aggrieved by a decision of the commissioner is entitled to judicial review. Venue for an appeal is in Travis County.

(c) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.055, eff. September 1, 2005.

Sec. 407.067. EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE

VIOLATION. (a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the commissioner.

(b) The commissioner shall require excess insurance or reinsurance in at least the amount of $5 million per occurrence.

(c) A certified self-insurer shall notify the division not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits an administrative violation if the person violates Subsection (c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.056, eff. September 1, 2005.

Sec. 407.068. GUARANTEE BY PARENT ORGANIZATION. If an applicant for a certificate of authority to self-insure is a subsidiary, the parent organization of the applicant must guarantee the obligations imposed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER

Sec. 407.081. ANNUAL REPORT. (a) Each certified self-insurer shall file an annual report with the division. The commissioner shall prescribe the form of the report and shall furnish blank forms for the preparation of the report to each certified self-insurer.

(b) The report must:

(1) include payroll information, in the form prescribed by this chapter and the commissioner;

(2) state the number of injuries sustained in the three preceding calendar years; and

(3) indicate separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries.

(c) Each certified self-insurer shall file with the division as

part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The division shall make a financial statement filed under this subsection available for public review.

(d) The division may require that the report include additional financial and statistical information.

(e) The certified self-insurer shall present evidence in the report of sufficient financial ability to meet all obligations under this chapter.

(f) The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commissioner.

(g) If the commissioner considers it necessary, the commissioner may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.057, eff. September 1, 2005.

Sec. 407.082. EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION. (a) Each certified self-insurer shall maintain the books, records, and payroll information necessary to compile the annual report required under Section 407.081 and any other information reasonably required by the commissioner.

(b) The certified self-insurer may maintain the books, records, and payroll information in locations outside this state.

(c) The material maintained by the certified self-insurer shall be open to examination by an authorized agent or representative of the division at reasonable times to ascertain the correctness of the information.

(d) The examination may be conducted at any location, including the division's Austin offices, or, at the certified self-insurer's option, in the offices of the certified self-insurer. The certified self-insurer shall pay the reasonable expenses, including travel expenses, of an inspector who conducts an inspection at its offices.

(e) An unreasonable refusal on the part of a certified self-insurer to make available for inspection the books, records, payroll information, or other required information constitutes grounds for the revocation of the certificate of authority to self-insure and is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.058, eff. September 1, 2005.

Sec. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM

Sec. 407.101. FUND. (a) The workers' compensation self-insurance fund is a fund in the state treasury. The fund may be used only for the regulation of certified self-insurers.

(b) The department shall deposit the application fee for a certificate of authority to self-insure in the Texas Department of Insurance operating account to the credit of the division.

(c) Any amount remaining in the fund at the end of a fiscal year shall be used to reduce the regulatory fee assessed under Section 407.102 in the succeeding fiscal year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.059, eff. September 1, 2005.

Sec. 407.102. REGULATORY FEE. (a) Each certified self-insurer shall pay an annual fee to cover the administrative costs incurred by the division in implementing this chapter.

(b) The division shall base the fee on the total amount of income benefit payments made in the preceding calendar year. The

division shall assess each certified self-insurer a pro rata share based on the ratio that the total amount of income benefit payments made by that certified self-insurer bears to the total amount of income benefit payments made by all certified self-insurers.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.060, eff. September 1, 2005.

Sec. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the division and the office of injured employee counsel and to support the prosecution of workers' compensation insurance fraud in this state. Not more than two percent of the total tax base of all certified self-insurers, as computed under Subsection (b), may be assessed for a maintenance tax under this section.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02.

(c) The tax liability of a certified self-insurer under this section is the tax base computed under Subsection (b) multiplied by the rate assessed workers' compensation insurance companies under Sections 403.002 and 403.003.

(d) In setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.22, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1443, Sec. 6, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.061, eff. September 1, 2005.

Sec. 407.104. COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION. (a) The regulatory fee imposed by Section 407.102 and the taxes imposed by Section 407.103 are due on the 60th day after the issuance of a certificate of authority to self-insure and on the 60th day after each annual renewal date.

(b) The department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fees shall be remitted to the division.

(c) The regulatory fee imposed under Section 407.102 shall be deposited in the Texas Department of Insurance operating account to the credit of the division. The self-insurer maintenance tax shall be deposited in the Texas Department of Insurance operating account to the credit of the division.

(d) A certified self-insurer commits an administrative violation if the self-insurer does not pay the taxes and fee imposed under Sections 407.102 and 407.103 in a timely manner.

(e) If the certificate of authority to self-insure of a certified self-insurer is terminated, the commissioner or the commissioner of insurance shall proceed immediately to collect taxes due under this subtitle, using legal process as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.062, eff. September 1, 2005.

SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

Sec. 407.121. GUARANTY ASSOCIATION. (a) The Texas Certified Self-Insurer Guaranty Association provides for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer.

(b) Each employer who desires to become a certified self-insurer must be a member of the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.122. BOARD OF DIRECTORS. (a) The members of the

association shall elect a board of directors.

(b) The board of directors is composed of the following voting members:

(1) three certified self-insurers;

(2) one member designated by the commissioner; and

(3) the public counsel of the office of public insurance counsel.

(c) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(19), eff. September 1, 2005.

(d) A member of the board of directors or a member of the staff of the board of directors is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.23, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.063, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(19), eff. September 1, 2005.

Sec. 407.123. BOARD RULES. (a) The board of directors may adopt rules for the operation of the association.

(b) Rules adopted by the board are subject to the approval of the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.064, eff. September 1, 2005.

Sec. 407.124. IMPAIRED EMPLOYER; ASSESSMENTS. (a) On determination by the division that a certified self-insurer has become an impaired employer, the commissioner shall secure release of the security deposit required by this chapter and shall promptly estimate:

(1) the amount of additional funds needed to supplement the security deposit;

(2) the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation; and

(3) the funds maintained by the association for the emergency payment of compensation liabilities.

(b) The commissioner shall advise the board of directors of the association of the estimate of necessary additional funds, and the board shall promptly assess each certified self-insurer to collect the required funds. An assessment against a certified self-insurer shall be made in proportion to the ratio that the total paid income benefit payment for the preceding reported calendar year for that self-insurer bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(c) A certified self-insurer designated as an impaired employer is exempt from assessments beginning on the date of the designation until the division determines that the employer is no longer impaired.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.065, eff. September 1, 2005.

Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through suit. Venue is in Travis County.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.126. TRUST FUND; FEE; SCHEDULE. (a) Each member of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 1993, a Texas certified self-insurer guaranty trust fund of at least $1 million for the emergency payment of the

compensation liabilities of an impaired employer. The fund may not exceed $2 million.

(b) The board of directors shall adopt a year-by-year schedule of assessments to meet the 10-year funding goal of the trust fund.

(c) The assessment for the first year after an employer is issued a certificate of authority to self-insure shall be based on the income benefit payments paid by the employer's insurance carrier on the employer's policy in the year before the certificate was issued.

(d) The board of directors shall administer the trust fund in accordance with rules adopted by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.24, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.066, eff. September 1, 2005.

Sec. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION. (a) If the commissioner determines that the payment of benefits and claims administration shall be made through the association, the association assumes the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director.

(b) The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association.

(c) Notwithstanding Subsection (a), the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(a), eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.067, eff. September 1, 2005.

Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On the assumption of obligations by the association under the commissioner's

determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of an irrevocable letter of credit shall deliver the security to the association with any accrued interest.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.068, eff. September 1, 2005.

Sec. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION. Information on a workers' compensation claim may be released to the association as provided by Section 402.084(a), if the association has assumed the obligations of an impaired employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.130. ASSOCIATION AS PARTY IN INTEREST. (a) The association is a party in interest in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association.

(b) The association has the same rights and defenses as the impaired employer, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 407.131. PREFERENCE. The benefit payments made by the association or the surety under this chapter are entitled to the same preference over other debts of the impaired employer or the impaired employer's estate as provided by law to benefit payments owed by the employer or employer's estate to the person entitled to the benefits.

Acts 1993, 73rd Leg., ch. 269 , Sec. 1, eff. Sept. 1, 1993.

Sec. 407.132. SPECIAL FUND. Funds advanced by the association under this subchapter do not become assets of the impaired employer but are a special fund advanced to the commissioner, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the costs of claims administration and legal costs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.069, eff. September 1, 2005.

Sec. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT. (a) The commissioner may suspend or revoke the certificate of authority to self-insure of a certified self-insurer who fails to pay an assessment. The association promptly shall report such a failure to the director.

(b) A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.52(b), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.070, eff. September 1, 2005.

CHAPTER 407A. GROUP SELF-INSURANCE COVERAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407A.001. DEFINITIONS. (a) In this chapter:

(1) "Administrator" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(2) "Commissioner" means the commissioner of insurance.

(3) "Department" means the Texas Department of Insurance.

(4) "Estimated premium subject to experience modifier" means the premium derived from applying the filed rates to estimated payrolls and before the adjustment of the premium by experience modifiers, schedule rating plan factors, deductible credits, minimum premiums, and premium discounts.

(5) "Group" means a workers' compensation self-insurance group that holds a certificate of approval under this chapter.

(5-a) "Managing company" means an individual, partnership, or corporation engaged by the board of trustees of a group to implement the policies established by the board of trustees and to provide day-to-day management of the group.

(6) "Modified schedule rating premium" means premium derived from applying filed rates to estimated payrolls and then adjusted by the experience modifier and any schedule rating plan factors.

(7) "Same or similar" means, with regard to members of a group, that:

(A) the governing classification code of the members of the group is the same; or

(B) the members of the group are engaged in similar operations.

(8) "Service company" means a person that provides services to the group other than services provided by the managing company, including:

(A) claims adjustment;

(B) safety engineering;

(C) compilation of statistics and the preparation of premium, loss, and tax reports;

(D) preparation of other required self-insurance reports;

(E) development of members' assessments and fees; and

(F) administration of a claim fund.

(b) For purposes of this chapter, when used as a modifier of "benefits," "liabilities," or "obligations," the term "workers' compensation" includes both workers' compensation and employers' liability.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.04, eff. September 1, 2007.

Sec. 407A.002. APPLICATION OF CHAPTER; ESTABLISHMENT OF PRIVATE GROUP. (a) An unincorporated association or business trust composed of five or more private employers may establish a workers' compensation self-insurance group under this chapter if the employers:

(1) are engaged in the same or a similar type of business;

(2) are members of a bona fide trade or professional association that has been in existence in this state for purposes other than insurance for at least five years before the establishment of the group; and

(3) enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

(b) This chapter does not apply to public employees or governmental entities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.003. MERGER OF GROUPS. (a) Subject to the approval of the commissioner, a group may merge with another group engaged in the same or a similar type of business if the resulting group assumes in full all obligations of the merging groups.

(b) The commissioner may conduct a hearing on a proposed merger and shall conduct a hearing if any party, including a member of either group, requests a hearing.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.004. GROUP NOT INSURER. A group issued a certificate of approval by the commissioner under this chapter is not:

(1) an insurer based on that certificate; and

(2) subject to the insurance laws and rules of this state except as otherwise provided by this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.005. CERTIFICATE OF APPROVAL REQUIRED. An association of employers may not act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner under this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.006. SERVICE OF PROCESS. (a) Each group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against the group in this state.

(b) The appointment of the commissioner is irrevocable, binds any successor in interest, and remains in effect as long as any obligation or liability of the group for workers' compensation benefits exists in this state.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.007. HEARINGS. A hearing required under this chapter shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.008. RULES. The commissioner shall adopt rules as necessary to implement this chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.009. CERTIFICATE OF AUTHORITY REQUIRED FOR CERTAIN ADMINISTRATORS AND SERVICE COMPANIES. (a) An administrator or service company under this chapter that performs the acts of an administrator as defined in Chapter 4151, Insurance Code, must hold a certificate of authority under that chapter.

(b) An entity is required to hold only one certificate of authority under Chapter 4151, Insurance Code, if:

(1) the entity acts as an administrator and a service company as defined in this chapter; and

(2) performs the acts of an administrator as that term is defined in Chapter 4151, Insurance Code.

(c) Exemptions in Chapter 4151, Insurance Code, as provided in Sections 4151.002(18), (19), and (20), apply to an administrator or service company under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1176 (H.B. 472), Sec. 3.05, eff. September 1, 2007.

SUBCHAPTER B. APPLICATION REQUIREMENTS FOR CERTIFICATE OF APPROVAL FOR SELF-INSURANCE GROUP

Sec. 407A.051. APPLICATION FOR INITIAL CERTIFICATE OF APPROVAL; APPROVAL REQUIREMENTS. (a) An association of employers that proposes to organize as a workers' compensation self-insurance group shall file with the department an application for a certificate of approval.

(b) The application must be in the form prescribed by the commissioner and must include:

(1) the name of the group;

(2) the location of the group's principal office;

(3) the date of organization of the group;

(4) the name and address of each employer that is a member of the group;

(5) the name, mailing address, and telephone number of the trade or professional association to which each group member belongs as required by Section 407A.002(a)(2);

(6) the governing classification code of the group or a description of the operations of each member of the group showing that the members of the group are engaged in similar operations; and

(7) any other information reasonably required by the commissioner.

(c) The application must be accompanied by:

(1) a nonrefundable $1,000 filing fee;

(2) proof of compliance with the financial requirements under Section 407A.053;

(3) proof of compliance with the excess insurance requirements under Section 407A.054;

(4) a copy of the articles of association or declaration of trust of the group, if any;

(5) a copy of any agreements entered into with an administrator or a service company;

(6) a copy of the bylaws of the proposed group;

(7) a copy of the agreement between the group and each employer who is a member of the group that:

(A) secures the payment of workers' compensation benefits; and

(B) includes provisions for payment of assessments as provided by Section 407A.355;

(8) designation of the initial board of trustees and administrator of the group;

(9) the address in this state where the books and records of the group will be maintained at all times;

(10) a pro forma financial statement, in a form acceptable to the commissioner, that shows the financial ability of the group to pay the workers' compensation obligations of the employers who are members of the group;

(11) proof of one of the following:

(A) payment to the group, or a bona fide promise to pay on approval of the group, by each employer who is a member of the group of not less than 25 percent of that member's first year estimated modified schedule rating premium on a date prescribed by the commissioner, which shall be considered part of the first year premium payment of each member; or

(B) if the group is formed from a trust existing on September 1, 2003, that the assets of the trust are sufficient to cover the workers' compensation obligations of the trust;

(12) a $250,000 fidelity bond for the administrator in the form prescribed by the commissioner;

(13) a $250,000 fidelity bond for the service company in the form prescribed by the commissioner; and

(14) an indemnity agreement that meets the requirements of Section 407A.056.

(d) Not later than the 30th day after the effective date of the change, a group shall notify the commissioner of any change in:

(1) the information required to be filed under Subsection

(c); or

(2) the manner of the group's compliance with Subsection (c).

(e) The commissioner shall evaluate the financial information provided with the application as necessary to ensure that:

(1) the funding is sufficient to cover expected losses and expenses; and

(2) the funds necessary to pay workers' compensation benefits will be available on a timely basis.

(f) Except as otherwise provided by this subsection, the commissioner shall act on a complete application for a certificate of approval not later than the 90th day after the date on which the application is filed with the department. If, because of the number of applications, the commissioner is unable to act on an application in a timely manner, the commissioner may extend the period for an additional 30 days.

(g) Fees collected under this section shall be deposited in the department's operating account.

(h) In lieu of the bonds required under Subsections (c)(12) and (c)(13), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 2, eff. September 1, 2005.

Sec. 407A.052. ISSUANCE OF CERTIFICATE OF APPROVAL; REFUSAL. (a) The commissioner shall issue a certificate of approval to a proposed group on finding that the group has met the requirements of this subchapter.

(b) If the commissioner determines that a proposed group has not satisfied the requirements under this subchapter for a certificate of approval, the commissioner shall issue an order refusing the certificate. The order must set forth the reasons for the refusal.

(c) On issuance of the certificate of approval, the group is

authorized to provide workers' compensation benefits.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.053. FINANCIAL REQUIREMENTS. (a) To obtain a certificate of approval, each group shall comply with the financial requirements adopted under this section.

(b) The combined net worth of all employers who are members of the group must be at least $2 million. A member of the group may not be required to submit an audited financial statement to establish the $2 million combined net worth, but the group must file a report compiled by a certified public accountant and based on financial statements or tax returns to support the existence of a combined net worth of at least $2 million for the initial group. In the case of a group composed of a trust existing on September 1, 2003, the trust may satisfy the financial requirements of this section by showing that the trust has participant surplus, including accrued participant dividends of at least $2 million, in lieu of the requirement of the $2 million combined net worth of its members. Discounted reserves may not be considered in determining whether a trust existing on September 1, 2003, has a surplus of at least $2 million.

(c) The group must post security in the form and amount prescribed by the commissioner, equal to the greater of $300,000 or 25 percent of the group's total incurred liabilities for workers' compensation. The security may be provided by a surety bond, security deposit, or any combination of those securities. If a surety bond is used to meet the security requirement, the surety bond must be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, the following are acceptable securities:

(1) a bond or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America or by an agency or instrumentality of the United States of America;

(2) certificates of deposit in a federally insured bank;

(3) shares or savings deposits in a federally insured savings and loan association or credit union;

(4) a bond or security issued by a state and backed by the full faith and credit of that state;

(5) public securities described by Subsection (f); and

(6) commercial paper payable in United States currency that is rated in one of the two highest credit rating categories by each rating agency.

(d) Any securities posted must be deposited in the state treasury and must be assigned to and made negotiable by the commissioner of workers' compensation under a trust document acceptable to the commissioner of insurance. Interest accruing on a negotiable security deposited under this subsection shall be collected and transmitted to the depositor if the depositor is not in default.

(e) A bond or security deposit must be:

(1) made for the benefit of the state, to be used solely to pay claims and associated expenses; and

(2) payable on the failure of the group to pay workers' compensation benefits that it is legally obligated to pay.

(f) Public securities may be used as security under this section if the public securities bear interest or are sold at a discount and are issued by any corporation, denominated in United States dollars.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.071, eff. September 1, 2005.

Sec. 407A.054. EXCESS INSURANCE REQUIREMENTS. (a) To obtain an initial certificate of approval and to be eligible to renew its certificate of approval, each group must comply with the excess insurance requirements adopted under this section.

(b) Each group shall obtain specific excess insurance for losses that exceed the group's retention in a form prescribed by the commissioner. The commissioner may establish minimum requirements for the amount of specific excess insurance based on differences among groups in size, types of employment, years in existence, and other relevant factors.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.055. PREMIUM REQUIREMENTS. Each group must have an

estimated premium subject to experience modifier of at least $250,000 during the group's first year of operation. Thereafter, the annual standard premium must be at least $500,000.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.056. INDEMNITY AGREEMENT REQUIREMENTS. (a) An indemnity agreement filed under Section 407A.051 must jointly and severally bind the group and each employer who is a member of the group to meet the workers' compensation obligations of each member.

(b) The indemnity agreement must be in the form prescribed by the commissioner and must include minimum uniform substantive provisions as prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions necessary because of that group's particular circumstances.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.057. ADDITIONAL PERFORMANCE BOND REQUIREMENTS. (a) In addition to the requirements under Section 407A.051, the commissioner may require a service company providing claim services to furnish a performance bond of $250,000 in the form prescribed by the commissioner.

(b) In lieu of a performance bond under Subsection (a), a security deposit of cash or securities acceptable to the commissioner may be deposited with the commissioner to be held in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 3, eff. September 1, 2005.

SUBCHAPTER C. TERMINATION OF CERTIFICATE OF APPROVAL

Sec. 407A.101. CERTIFICATE OF APPROVAL; TERMINATION. (a) A certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner.

(b) The commissioner may not grant the request of any group to

terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. For purposes of this subsection, those obligations include:

(1) known claims and expenses associated with those claims; and

(2) incurred but not reported claims and expenses associated with those claims.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER D. BOARD OF TRUSTEES

Sec. 407A.151. BOARD MEMBERSHIP. (a) Each group shall be operated by a board of trustees composed of at least five persons whom the members of the group elect for stated terms of office. The trustees must be employees, officers, or directors of employers who are members of the group. Each board member shall be a resident of this state or an officer of a corporation authorized to do business in this state.

(b) An administrator or service company of the group, or owner, officer, employee of, or any other person affiliated with the administrator or service company, may not serve on the board of trustees.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.152. BOARD GENERAL POWERS AND DUTIES. The board of trustees shall:

(1) maintain minutes of its meetings and make the minutes available to the commissioner;

(2) designate an administrator and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; and

(3) retain an independent certified public accountant to audit the financial statements required by Section 407A.251.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.153. PROHIBITED ACTIVITIES. The board of trustees may not:

(1) extend credit to individual members for payment of a premium, except under payment plans approved by the commissioner; or

(2) without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner, borrow any money from the group or in the name of the group except in the ordinary course of business.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.154. GROUP FUNDS. The board of trustees shall maintain responsibility for all money collected or disbursed from the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER E. GROUP MEMBERSHIP; TERMINATION; LIABILITY

Sec. 407A.201. ADMISSION OF EMPLOYER AS MEMBER. (a) An employer who joins an approved workers' compensation self-insurance group shall:

(1) submit an application for membership to the board of trustees or its administrator; and

(2) enter into the indemnity agreement as required by Section 407A.056.

(b) The board of trustees shall maintain as a permanent record the employer's application for membership and the approval of the application.

(c) The membership of an individual member of a group is subject to cancellation by the group as provided by the bylaws of the group. An individual member may also elect to terminate participation in the group. The group shall notify the commissioner and the commissioner of workers' compensation of the cancellation or termination of a membership not later than the 10th day after the date on which the cancellation or termination takes effect and shall maintain coverage of each canceled or terminated member until the 30th day after the date of the notice, at the terminating member's expense, unless before that date the commissioner of workers' compensation notifies the group that the canceled or terminated

member has:

(1) obtained workers' compensation insurance coverage;

(2) become a certified self-insurer; or

(3) become a member of another group.

(d) The group shall pay each workers' compensation claim for which a member of the group incurs liability during the period of membership. A member who elects to terminate membership or whose membership is canceled by the group remains jointly and severally liable for the workers' compensation obligations of the group and its members incurred during the canceled or terminated member's period of membership.

(e) A member of a group is not relieved of workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.

(f) The insolvency or bankruptcy of a member does not relieve a group or any other member of the group of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.072, eff. September 1, 2005.

SUBCHAPTER F. EXAMINATIONS, FINANCIAL STATEMENTS, AND OTHER REPORTS

Sec. 407A.251. FINANCIAL STATEMENT. (a) Each group shall submit to the commissioner financial statements audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year.

(b) The financial statement must include a balance sheet, income statement, and statement of cash flow and must be prepared on the basis of accounting principles generally accepted in the United States.

(c) Loss reserves may be discounted subject to generally accepted accounting principles. The discounting must be documented in the notes accompanying the financial statement. Notwithstanding this subsection, dividends paid to members of the group must be based on undiscounted loss reserves.

(d) The audited financial statements required by this section must be accompanied by an actuarial opinion on the adequacy of the group's loss reserves, including the reasonableness of any reserve discount. The actuarial opinion must be given by a member in good standing of the American Academy of Actuaries and the Casualty Actuarial Society.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.252. EXAMINATION. (a) The commissioner shall examine the financial condition of each group to determine the group's ability to meet the group's obligations under this subtitle. An examination under this section is subject to Article 1.15, Insurance Code, except that, to the extent of a conflict between this chapter and that article, this chapter prevails. The commissioner may examine a group annually for the first three years of the group's operation. Beginning with the fourth year of operation, the commissioner may not examine a group more frequently than once every three years unless the commissioner determines that the group:

(1) is in an impaired financial condition; or

(2) otherwise may not be able to continue to meet the group's obligations under this subtitle.

(b) The commissioner has full access to the records, officers, agents, and employees of a group as necessary to complete an examination under this section. The commissioner may recover the expenses of the examination under Article 1.16, Insurance Code, to the extent the maintenance tax under Section 407A.302 does not cover those expenses.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER G. TAXES, FEES, AND ASSESSMENTS

Sec. 407A.301. MAINTENANCE TAX FOR DIVISION AND RESEARCH FUNCTIONS OF DEPARTMENT. (a) Each group shall pay a self-insurance group maintenance tax under this section for:

(1) the administration of the division of workers' compensation of the department;

(2) the prosecution of workers' compensation insurance fraud in this state;

(3) the research functions of the department under Chapter 405; and

(4) the administration of the office of injured employee counsel under Chapter 404.

(b) The tax liability of a group under Subsections (a)(1) and (2) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Sections 403.002 and 403.003.

(c) The tax liability of a group under Subsection (a)(3) is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Section 405.003.

(d) The tax under this section does not apply to premium collected by the group for excess insurance.

(e) The tax under this section shall be collected by the comptroller as provided by Section 201.051 and Chapter 255, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.073, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.074, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.138, eff. September 1, 2005.

Sec. 407A.302. MAINTENANCE TAX FOR DEPARTMENT. (a) Subject to Subsection (b), each group shall pay the maintenance tax imposed under Chapter 255, Insurance Code, for the administrative costs incurred by the department in implementing this chapter.

(b) The tax liability of a group under this section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance.

(c) The maintenance tax assessed under this section is subject to Chapter 255, Insurance Code, and shall be collected by the comptroller in the manner provided by that chapter.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.139, eff.

September 1, 2005.

Sec. 407A.303. COLLECTION AND PAYMENT OF TAXES. (a) The group shall remit the taxes for deposit in the Texas Department of Insurance operating account to the credit of the division.

(b) A group commits an administrative violation if the group does not pay the taxes imposed under Sections 407A.301 and 407A.302 in a timely manner.

(c) If the certificate of approval of a group is terminated, the commissioner or the commissioner of insurance shall immediately notify the comptroller to collect taxes as directed under Sections 407A.301 and 407A.302.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.075, eff. September 1, 2005.

Sec. 407A.304. PREMIUM TAX. (a) Each group shall pay to the comptroller a premium tax on gross premiums for the group's retention. The premium tax assessed under this subsection does not apply to premium collected for excess insurance.

(b) The rate for the premium tax under this section is the rate assessed under Chapter 221, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.140, eff. September 1, 2005.

SUBCHAPTER H. RATES; REFUNDS; PREMIUM PAYMENTS; RESERVES; DEFICITS

Sec. 407A.351. RATES. (a) Except as provided by Subsection (b), each group shall use the uniform classification system, experience rating plan, and rate relativities of the department.

(b) A group may:

(1) use the relativities promulgated by the department modified to produce rates in accordance with the group's historical

experience; or

(2) file its own rates with the department, including any reasonable and supporting information required by the commissioner.

(c) As approved by the commissioner, a group may use rating debits or credits and optional rating plans.

(d) Rates of the group may not be excessive, inadequate, or unfairly discriminatory.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.352. AUDITS. Each member of a group shall be audited annually by the administrator or by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll, and rates. The group shall maintain a record of the audit as part of the group's records that are available to the commissioner during an examination conducted under Section 407A.252. The audit shall be performed at the expense of the group.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.353. REFUNDS. (a) The board of trustees may declare refundable any money for a fund year in excess of the amount necessary to fund all obligations.

(b) The board of trustees shall give each member a written description of the group's refund plan at the time of application for membership.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.354. PREMIUM PAYMENT PLAN; RESERVES. (a) Until the assets of a group reach a level sufficient to cover the group's liabilities, each group shall establish to the satisfaction of the commissioner a premium payment plan.

(b) As long as the assets of the group remain sufficient to cover the group's liabilities, the group may determine its own premium plan if the premium plan is disclosed to each member at the time of application and is filed with the commissioner.

(c) Each group shall establish and maintain actuarially

appropriate loss reserves, which must include reserves for:

(1) known claims and expenses associated with those claims; and

(2) claims incurred but not reported and expenses associated with those claims.

(d) Each group shall establish and maintain bad debt reserves based on the historical experience of the group or of other groups composed of similar employer members.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.355. DEFICITS; INSOLVENCIES. (a) For purposes of this section, "insolvent" means:

(1) the inability of a group to pay the group's outstanding lawful obligations as they mature in the regular course of business; or

(2) that the group's liabilities exceed the group's assets, determined without reducing liabilities by any reserve discount.

(b) If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required under this chapter, the group shall make up the deficiency or levy an assessment on its members for the amount needed to make up the deficiency.

(c) In the event of a deficiency in any fund year, the deficiency shall be made up immediately from:

(1) surplus from a fund year other than the current fund year;

(2) administrative funds;

(3) assessments of the membership, if ordered by the group; or

(4) any alternate method that the commissioner approves or directs.

(d) The commissioner shall be notified before any transfer of surplus funds from one fund year to another under Subsection (c).

(e) If the group fails to assess its members or to otherwise make up a deficit, the commissioner shall order the group to do so. If the commissioner determines that the group is in a hazardous financial condition, the commissioner may take action as provided by Article 21.28-A, Insurance Code, and may order the group to rectify

the condition through an alternate method under Subsection (c)(4). The group is considered an insurer only for purposes of Article 21.28-A, Insurance Code. Otherwise, to the extent of a conflict between this chapter and that article, this chapter prevails.

(f) If the group fails to make the required assessment of its members after the commissioner's order under Subsection (e), or if the deficiency is not fully made up, the group shall be deemed to be insolvent.

(g) If a group is liquidated, the commissioner shall secure release of the security deposit and levy an assessment on the members of the group in an amount determined necessary by the commissioner to discharge all liabilities of the group, including the reasonable cost of liquidation.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER I. DISCIPLINARY ACTIONS; PENALTIES

Sec. 407A.401. PROHIBITED SOLICITATION. In connection with the solicitation of membership in a group, a person may not make an untrue statement of a material fact, or omit to state a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.402. FINES. After notice and an opportunity for a hearing, the commissioner may impose a fine on any person or group found to be in violation of this chapter or a rule adopted under this chapter. A fine assessed under this section may not exceed $1,000 for each act or violation and may not exceed $10,000 in the aggregate. The amount of any fine assessed under this section shall be paid to the commissioner and deposited in the state treasury.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.403. CEASE AND DESIST ORDERS. (a) After notice and an opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an

act or practice found to be in violation of this chapter or a rule adopted under this chapter.

(b) On a finding, after notice and opportunity for a hearing, that a person or group has violated a cease and desist order issued under this section, the commissioner may:

(1) impose a fine not to exceed $1,000 for each violation of the order, not to exceed an aggregate fine of $100,000;

(2) revoke the group's certificate of approval or any license held by the person issued under the Insurance Code; or

(3) impose the fine and revoke the certificate or license.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

Sec. 407A.404. REVOCATION OF CERTIFICATE OF APPROVAL. (a) After notice and an opportunity for a hearing, the commissioner may revoke a group's certificate of approval if the group:

(1) is found to be insolvent;

(2) fails to pay a tax, assessment, or special fund contribution imposed on the group; or

(3) fails to comply in a timely manner with this chapter, a rule adopted under this chapter, or an order of the commissioner.

(b) In addition, the commissioner may revoke a group's certificate of approval if, after notice and an opportunity for hearing, the commissioner determines that:

(1) a certificate of approval issued to the group was obtained by fraud;

(2) there was a material misrepresentation in the application for the certificate of approval; or

(3) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay on proper demand any money that belongs to a member, an employee of a member, or a person otherwise entitled to the money and that has been entrusted to the group or its administrator in their fiduciary capacities.

Added by Acts 2003, 78th Leg., ch. 275, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER J. TEXAS SELF-INSURANCE GROUP GUARANTY FUND

Sec. 407A.451. DEFINITIONS. In this subchapter:

(1) "Board" means the board of directors of the guaranty

fund.

(2) "Guaranty fund" means the Texas self-insurance group guaranty fund.

(3) "Trust fund" means the trust fund established under Section 407A.457.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.452. GUARANTY FUND. (a) The Texas self-insurance group guaranty fund is a nonprofit association established to provide for the payment of workers' compensation insurance benefits for injured employees covered by a group declared insolvent under Section 407A.355.

(b) Each group that desires to be certified under this chapter must participate as a member of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.453. BOARD OF DIRECTORS. (a) The guaranty fund is managed by a board of directors.

(b) The board is composed of the following voting members:

(1) three members elected as provided by Subsection (c), each of whom represents a different group certified under this chapter;

(2) one member to represent wage earners designated by the commission;

(3) one member designated by the commissioner; and

(4) the public counsel of the office of public insurance counsel.

(c) Representatives of each group certified under this chapter may participate equally in the election of the three members of the board elected under Subsection (b)(1). A person elected under Subsection (b)(1) must be approved by the commissioner before the person may serve on the board.

(d) Notwithstanding Subsection (c), the commissioner shall appoint the initial board members representing groups. A person appointed as an initial board member under this subsection is

eligible to serve additional terms on election by the members of the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.454. IMMUNITY. A board member or a member of the staff of the board is not liable in a civil action for an act performed in good faith in the execution of that person's powers or duties.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.455. BOARD GENERAL POWERS AND DUTIES. (a) The board shall:

(1) create and maintain a trust fund for payment of the workers' compensation liabilities of an insolvent group;

(2) hire staff as necessary;

(3) provide recommendations to the commissioner regarding rules or guidelines applicable to groups;

(4) receive reports from the department on the financial condition of groups, including examination and audit reports;

(5) engage consulting experts as necessary to review information provided by or filed with the department to ensure financial solvency of groups under this chapter;

(6) provide advisory recommendations to the commissioner as necessary regarding an applicant's compliance with Subchapter B relating to application requirements for certification; and

(7) take action, in response to a finding by the commissioner that a group is insolvent, to use the trust fund's resources to ensure the payment of the group's valid workers' compensation claims and related administrative expenses.

(b) The board shall control all amounts in the trust fund, including investment of those amounts.

(c) The guaranty fund may not disclose confidential information received from the department in a financial report under Subsection (a)(4), including an examination or audit report. Information received from the department remains confidential and not subject to

disclosure under Chapter 552, Government Code.

(d) The board may make recommendations under Subsection (a)(6) outside of regular board meetings.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.456. PLAN OF OPERATION. (a) The board shall adopt a plan of operation governing the board's activities and the operation of the guaranty fund and the trust fund.

(b) The plan of operation adopted by the board is subject to approval by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.457. TRUST FUND; SCHEDULE. (a) Each group shall contribute an amount, based on the total amount of income benefit payments made in this state for the preceding reported calendar year, to create, over a period of 10 years beginning January 1, 2006, a trust fund of at least $1 million for:

(1) the emergency payment of the compensation liabilities of an insolvent group; and

(2) the administrative expenses of the guaranty fund.

(b) The board may adopt provisions in the plan of operation that provide for the indexing of the amount of the trust fund to a risk analysis.

(c) At least annually, the board shall adopt a year-by-year schedule of assessments to meet the funding goal of the trust fund.

(d) The board may:

(1) defer assessments if the fund equals or exceeds $2 million; and

(2) allow the trust fund to accrete based on its investment earnings.

(e) The contribution required for the first year after a group is issued a certificate of approval under this chapter shall be based on the group's estimated income benefit payments for the group's first year of operation.

(f) Each group certified under this chapter shall make

contributions under this section to the trust fund, and the board shall provide a mechanism in the plan of operation to ensure that all groups contribute equitably to the trust fund.

(g) The board shall administer the trust fund in accordance with the plan of operation adopted by the board and approved by the commissioner.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.458. EFFECT OF INSOLVENCY OF GROUP. (a) On determining that a group has become insolvent, the commissioner shall secure release of the surety bond or security deposit required under Section 407A.053 and shall promptly estimate:

(1) the amount of additional funds needed to supplement the bond or security deposit; and

(2) the assets of the insolvent group available to pay all incurred compensation liabilities.

(b) If the bond or security deposit and the available assets of the insolvent group are insufficient to cover all of the group's incurred compensation liabilities, the commissioner shall direct the insolvent group to immediately assess its members to cover all incurred liabilities under a schedule approved by the commissioner.

(c) If the assessments under Subsection (b) will be insufficient to cover the incurred liabilities, the commissioner shall estimate the additional funds necessary to cover the incurred liabilities for benefit compensation and related administration expenses for the insolvent group. On receipt of the commissioner's estimate, the board shall provide from the trust fund the additional funds needed for benefit compensation and related administrative expenses for the insolvent group.

(d) Disbursements from the trust fund under Subsection (c) shall be replenished:

(1) if within the 10-year funding period of the trust fund, by adjusting the next year's schedule of assessments from groups; or

(2) if beyond the initial 10-year funding period, by assessment of all groups.

(e) If, after application of Subsections (b)-(d), the amount available in the trust fund is still insufficient, the board shall

assess all groups for the remaining deficiency.

(f) The commissioner may exempt a group from assessment under this section on a determination that the payment of the assessment would render the group insolvent.

(g) The commissioner may, on a finding of insolvency, commence a delinquency proceeding for the purpose of liquidating, rehabilitating, reorganizing, or conserving a group. Such a group shall be considered an insurer for purposes of Article 21.28, Insurance Code, and an insurance company for purposes of 11 U.S.C. Section 109. The conservator, receiver, or other statutory successor of a group shall coordinate with the board in the furtherance of the purposes of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.459. COLLECTION OF ASSESSMENTS FROM GROUP MEMBERS; CONTINUATION OF JOINT AND SEVERAL LIABILITY. (a) Each member of an insolvent group shall pay the amount of its assessment under this chapter to the commissioner not later than the 30th day after the date on which the commissioner notifies the member of the assessment. The commissioner shall collect assessments and costs from the members of the insolvent group.

(b) The joint and several liability of the members of a group under Section 407A.056 continues and is not terminated by payment of benefits through the guaranty fund.

(c) If the guaranty fund assumes payment of benefits for compensation liabilities on behalf of an insolvent group, the guaranty fund may collect delinquent assessments and costs through suit. Venue for a suit under this subsection is in Travis County.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.460. PAYMENT OF BENEFITS THROUGH GUARANTY FUND. (a) If the commissioner determines that the payment of benefits and claims administration shall be made through the guaranty fund, the guaranty fund assumes the workers' compensation obligations on behalf of the insolvent group and shall begin the payment of the obligations

for which it is liable not later than the 30th day after the date of notification by the commissioner.

(b) The guaranty fund shall make payments to claimants whose entitlement to benefits can be ascertained by the guaranty fund.

(c) Notwithstanding Subsection (a), the guaranty fund is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.461. POSSESSION OF SECURITY BY GUARANTY FUND. On the assumption of obligations on behalf of an insolvent group by the guaranty fund under the commissioner's determination, the guaranty fund is entitled to immediate possession of any assets of the insolvent group and any security deposited or the proceeds of any surety bond deposited by the insolvent group, along with all interest on the security. All assessments from members of the insolvent group shall be paid to the guaranty fund.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.462. RELEASE OF CLAIM INFORMATION TO GUARANTY FUND. If the guaranty fund has assumed compensation obligations on behalf of an insolvent group, information on a workers' compensation claim may be released to the guaranty fund as provided by Section 402.084(a).

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.463. GUARANTY FUND AS PARTY IN INTEREST. (a) The guaranty fund is a party in interest in a proceeding involving a workers' compensation claim against an insolvent group whose compensation obligations have been paid or assumed by the guaranty fund.

(b) The guaranty fund has the same rights and defenses as the

insolvent group, including the right to:

(1) appear, defend, or appeal a claim;

(2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and

(3) investigate, handle, or deny a claim.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.464. PREFERENCES. (a) Benefit payments made by the guaranty fund under this subchapter are entitled to the same preference over other debts of the insolvent group as provided by law to benefit payments owed by the insolvent group to the person entitled to the benefits.

(b) The guaranty fund has the priority status provided by Section 8, Article 21.28, Insurance Code.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

Sec. 407A.465. SPECIAL FUND. Monies advanced by the association under this chapter do not become assets of the insolvent group but constitute a special fund advanced to the commissioner, receiver, or other statutory successor only for the payment of compensation liabilities, including the costs of claim administration and legal costs.

Added by Acts 2005, 79th Leg., Ch. 1055 (H.B. 1353), Sec. 1, eff. September 1, 2005.

CHAPTER 408. WORKERS' COMPENSATION BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence.

(c) In this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code.

(d) A determination under Section 406.032, 409.002, or 409.004 that a work-related injury is noncompensable does not adversely affect the exclusive remedy provisions under Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.077, eff. September 1, 2005.

Sec. 408.002. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1991.

Sec. 408.003. REIMBURSABLE EMPLOYER PAYMENTS; SALARY CONTINUATION; OFFSET AGAINST INCOME BENEFITS; LIMITS. (a) After an injury, an employer may:

(1) initiate benefit payments, including medical benefits; or

(2) on the written request or agreement of the employee, supplement income benefits paid by the insurance carrier by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's net preinjury wages.

(b) If an injury is found to be compensable and an insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of benefits paid by the employer to which the employee was entitled under this subtitle. Payments that are not reimbursed or reimbursable under this section may be reimbursed under Section 408.127.

(c) The employer shall notify the division and the insurance carrier on forms prescribed by the commissioner of the initiation of and amount of payments made under this section.

(d) Employer payments made under this section:

(1) may not be construed as an admission of compensability; and

(2) do not affect the payment of benefits from another source.

(e) If an employer does not notify the insurance carrier of the injury in compliance with Section 409.005, the employer waives the right to reimbursement under this section.

(f) Salary continuation payments made by an employer for an employee's disability resulting from a compensable injury shall be considered payment of income benefits for the purpose of determining the accrual date of any subsequent income benefits under this subtitle.

(g) If an employer is subject to a contractual obligation with an employee or group of employees, such as a collective bargaining agreement or a written agreement or policy, under which the employer is required to make salary continuation payments, the employer is not eligible for reimbursement under this section for those payments.

(h) Payments made as salary continuation or salary supplementation do not affect the exclusive remedy provisions of Section 408.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 5, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1003, Sec. 1, 2, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.078, eff. September 1, 2005.

Sec. 408.004. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION. (a) The commissioner may require an employee to submit to medical examinations to resolve any question about the appropriateness of the health care received by the employee.

(a-1) A doctor, other than a chiropractor, who performs a required medical examination under this section is subject to Section 408.0043. A chiropractor who performs a required medical examination under this section is subject to Section 408.0045.

(b) The commissioner may require an employee to submit to a medical examination at the request of the insurance carrier, but only

after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee for the examination. Except as otherwise provided by this subsection, the insurance carrier is entitled to the examination only once in a 180-day period. The commissioner may adopt rules that require an employee to submit to not more than three medical examinations in a 180-day period under specified circumstances, including to determine whether there has been a change in the employee's condition and whether it is necessary to change the employee's diagnosis. The commissioner by rule shall adopt a system for monitoring requests made under this subsection by insurance carriers. That system must ensure that good cause exists for any additional medical examination allowed under this subsection that is not requested by the employee. A subsequent examination must be performed by the same doctor unless otherwise approved by the commissioner.

(c) The insurance carrier shall pay for:

(1) an examination required under Subsection (a) or (b); and

(2) the reasonable expenses incident to the employee in submitting to the examination.

(d) An injured employee is entitled to have a doctor of the employee's choice present at an examination required by the division at the request of an insurance carrier. The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee.

(e) An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (b) commits an administrative violation. The commissioner by rule shall ensure that an employee receives reasonable notice of an examination and that the employee is provided a reasonable opportunity to reschedule an examination missed by the employee for good cause.

(f) This section does not apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code.

(g) An insurance carrier who makes a frivolous request for a medical examination under Subsection (b), as determined by the commissioner, commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1997, 75th Leg., ch. 1133, Sec. 1, 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 8, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1456, Sec. 5.01, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.079, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 2, eff. September 1, 2007.

Sec. 408.0041. DESIGNATED DOCTOR EXAMINATION. (a) At the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about:

(1) the impairment caused by the compensable injury;

(2) the attainment of maximum medical improvement;

(3) the extent of the employee's compensable injury;

(4) whether the injured employee's disability is a direct result of the work-related injury;

(5) the ability of the employee to return to work; or

(6) issues similar to those described by Subdivisions (1)-(5).

(b) Except as provided by Section 408.1225(f), a medical examination requested under Subsection (a) shall be performed by the next available doctor on the division's list of certified designated doctors whose credentials are appropriate for the area of the body affected by the injury and the injured employee's diagnosis as determined by commissioner rule. The division shall assign a designated doctor not later than the 10th day after the date on which the request under Subsection (a) is approved, and the examination must be conducted not later than the 21st day after the date on which the commissioner issues the order under Subsection (a). An examination under this section may not be conducted more frequently than every 60 days, unless good cause for more frequent examinations exists, as defined by commissioner rules.

(b-1) A designated doctor, other than a chiropractor, is subject to Section 408.0043. A designated doctor who is a chiropractor is subject to Section 408.0045. To the extent of a conflict between this section and Section 408.0043 or 408.0045, this section controls.

(c) The treating doctor and the insurance carrier are both responsible for sending to the designated doctor all of the injured employee's medical records relating to the issue to be evaluated by the designated doctor that are in their possession. The treating doctor and insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(d) To avoid undue influence on a person selected as a designated doctor under this section, and except as provided by Subsection (c), only the injured employee or an appropriate member of the division's staff may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor or health care provider who has previously treated or examined the injured employee for the work-related injury or with peer reviewers identified by the insurance carrier.

(e) The designated doctor shall report to the division. The report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. An employer may make a bona fide offer of employment subject to Sections 408.103(e) and 408.144(c) based on the designated doctor's report.

(f) Unless otherwise ordered by the commissioner, the insurance carrier shall pay benefits based on the opinion of the designated doctor during the pendency of any dispute. If an insurance carrier is not satisfied with the opinion rendered by a designated doctor under this section, the insurance carrier may request the commissioner to order an employee to attend an examination by a doctor selected by the insurance carrier.

(f-1) The subsequent injury fund shall reimburse an insurance carrier for any overpayment of benefits made by the insurance carrier under Subsection (f) based on an opinion rendered by a designated

doctor if that opinion is reversed or modified by a final arbitration award or a final order or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing reimbursement at least annually.

(f-2) An employee required to be examined by a designated doctor may request a medical examination to determine maximum medical improvement and the employee's impairment rating from the treating doctor or from another doctor to whom the employee is referred by the treating doctor if:

(1) the designated doctor's opinion is the employee's first evaluation of maximum medical improvement and impairment rating; and

(2) the employee is not satisfied with the designated doctor's opinion.

(f-3) The commissioner shall provide the insurance carrier and the employee with reasonable time to obtain and present the opinion of a doctor selected under Subsection (f) or (f-2) before the commissioner makes a decision on the merits of the issue.

(f-4) The commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the employee's treating doctor or another doctor to whom the employee is referred by the treating doctor to determine any issue under Subsection (a), other than an examination under Subsection (f-2), may be appropriate.

(g) Except as otherwise provided by this subsection, an injured employee is entitled to have a doctor of the employee's choice present at an examination requested by an insurance carrier under Subsection (f). The insurance carrier shall pay a fee set by the commissioner to the doctor selected by the employee. If the injured employee is subject to a workers' compensation health care network under Chapter 1305, Insurance Code, the doctor must be the employee's treating doctor.

(h) The insurance carrier shall pay for:

(1) an examination required under Subsection (a), (f), or (f-2), unless otherwise prohibited by this subtitle or by an order or rule of the commissioner; and

(2) the reasonable expenses incident to the employee in submitting to the examination.

(i) An employee who, without good cause as determined by the commissioner, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (f) commits an administrative

violation. An injured employee may not be fined more than $10,000 for a violation of this subsection.

(j) An employee is not entitled to temporary income benefits, and an insurance carrier is authorized to suspend the payment of temporary income benefits, during and for a period in which the employee fails to submit to an examination required by Subsection (a) or (f) unless the commissioner determines that the employee had good cause for the failure to submit to the examination. The commissioner may order temporary income benefits to be paid for the period for which the commissioner determined that the employee had good cause. The commissioner by rule shall ensure that:

(1) an employee receives reasonable notice of an examination and the insurance carrier's basis for suspension; and

(2) the employee is provided a reasonable opportunity to reschedule an examination for good cause.

(k) If the report of a designated doctor indicates that an employee has reached maximum medical improvement or is otherwise able to return to work immediately, the insurance carrier may suspend or reduce the payment of temporary income benefits immediately.

(l) A person who makes a frivolous request for a medical examination under Subsection (a) or (f), as determined by the commissioner, commits an administrative violation.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 5.02, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.080, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 3, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 11, eff. September 1, 2011.

Sec. 408.0042. MEDICAL EXAMINATION BY TREATING DOCTOR TO DEFINE COMPENSABLE INJURY. (a) The division shall require an injured employee to submit to a single medical examination to define the compensable injury on request by the insurance carrier.

(b) A medical examination under this section shall be performed by the employee's treating doctor. The insurance carrier shall pay the costs of the examination.

(c) After the medical examination is performed, the treating doctor shall submit to the insurance carrier a report that details all injuries and diagnoses related to the compensable injury, on receipt of which the insurance carrier shall:

(1) accept all injuries and diagnoses as related to the compensable injury; or

(2) dispute the determination of specific injuries and diagnoses.

(d) Any treatment for an injury or diagnosis that is not accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) must be preauthorized before treatment is rendered. If the insurance carrier denies preauthorization because the treatment is for an injury or diagnosis unrelated to the compensable injury, the injured employee or affected health care provider may file an extent of injury dispute.

(e) Any treatment for an injury or diagnosis that is accepted by the insurance carrier under Subsection (c) as compensable at the time of the medical examination under Subsection (a) may not be reviewed for compensability, but may be reviewed for medical necessity.

(f) The commissioner may adopt rules relating to requirements for a report under this section, including requirements regarding the contents of a report.

(g) This section does not limit an injured employee or insurance carrier's ability to request an examination under Section 408.004 or 408.0041, as provided by those sections.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0805, eff. September 1, 2005.

Sec. 408.0043. PROFESSIONAL SPECIALTY CERTIFICATION REQUIRED FOR CERTAIN REVIEW. (a) This section applies to a person, other than a chiropractor or a dentist, who performs health care services under this title as:

(1) a doctor performing peer review;

(2) a doctor performing a utilization review of a health care service provided to an injured employee;

(3) a doctor performing an independent review of a health care service provided to an injured employee;

(4) a designated doctor;

(5) a doctor performing a required medical examination; or

(6) a doctor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a specific workers' compensation case must hold a professional certification in a health care specialty appropriate to the type of health care that the injured employee is receiving.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 14, eff. September 1, 2009.

Sec. 408.0044. REVIEW OF DENTAL SERVICES. (a) This section applies to a dentist who performs dental services under this title as:

(1) a doctor performing peer review of dental services;

(2) a doctor performing a utilization review of a dental service provided to an injured employee;

(3) a doctor performing an independent review of a dental service provided to an injured employee; or

(4) a doctor performing a required dental examination.

(b) A person described by Subsection (a) who reviews a dental service provided in conjunction with a specific workers' compensation case must be licensed to practice dentistry.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 15, eff. September 1, 2009.

Sec. 408.0045. REVIEW OF CHIROPRACTIC SERVICES. (a) This

section applies to a chiropractor who performs chiropractic services under this title as:

(1) a doctor performing peer review of chiropractic services;

(2) a doctor performing a utilization review of a chiropractic service provided to an injured employee;

(3) a doctor performing an independent review of a chiropractic service provided to an injured employee;

(4) a designated doctor providing chiropractic services;

(5) a doctor performing a required medical examination; or

(6) a chiropractor serving as a member of the medical quality review panel.

(b) A person described by Subsection (a) who reviews a chiropractic service provided in conjunction with a specific workers' compensation case must be licensed to engage in the practice of chiropractic.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 16, eff. September 1, 2009.

Sec. 408.0046. RULES. The commissioner may adopt rules as necessary to determine which professional health practitioner specialties are appropriate for treatment of certain compensable injuries. The rules adopted under this section must require an entity requesting a peer review to obtain and provide to the doctor providing peer review services all relevant and updated medical records.

Added by Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 1, eff. September 1, 2007.

Sec. 408.005. SETTLEMENTS AND AGREEMENTS. (a) A settlement may not provide for payment of benefits in a lump sum except as provided by Section 408.128.

(b) An employee's right to medical benefits as provided by Section 408.021 may not be limited or terminated.

(c) A settlement or agreement resolving an issue of impairment:

(1) may not be made before the employee reaches maximum medical improvement; and

(2) must adopt an impairment rating using the impairment rating guidelines described by Section 408.124.

(d) A settlement must be signed by the commissioner and all parties to the dispute.

(e) The commissioner shall approve a settlement if the commissioner is satisfied that:

(1) the settlement accurately reflects the agreement between the parties;

(2) the settlement reflects adherence to all appropriate provisions of law and the policies of the division; and

(3) under the law and facts, the settlement is in the best interest of the claimant.

(f) A settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the commissioner is considered to be approved by the commissioner on that date.

(g) A settlement takes effect on the date it is approved by the commissioner.

(h) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.081, eff. September 1, 2005.

Sec. 408.006. MENTAL TRAUMA INJURIES. (a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.007. DATE OF INJURY FOR OCCUPATIONAL DISEASE. For purposes of this subtitle, the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this subtitle only if:

(1) the attack can be identified as:

(A) occurring at a definite time and place; and

(B) caused by a specific event occurring in the course and scope of the employee's employment;

(2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and

(3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. MEDICAL BENEFITS

Sec. 408.021. ENTITLEMENT TO MEDICAL BENEFITS. (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

(1) cures or relieves the effects naturally resulting from the compensable injury;

(2) promotes recovery; or

(3) enhances the ability of the employee to return to or retain employment.

(b) Medical benefits are payable from the date of the compensable injury.

(c) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(d) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.022. SELECTION OF DOCTOR. (a) Except in an emergency, the division shall require an employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commissioner. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed. The employee is entitled to the employee's initial choice of a doctor from the division's list.

(b) If an employee is dissatisfied with the initial choice of a doctor from the division's list, the employee may notify the division and request authority to select an alternate doctor. The notification must be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

(c) The commissioner shall prescribe criteria to be used by the division in granting the employee authority to select an alternate doctor. The criteria may include:

(1) whether treatment by the current doctor is medically inappropriate;

(2) the professional reputation of the doctor;

(3) whether the employee is receiving appropriate medical care to reach maximum medical improvement; and

(4) whether a conflict exists between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired.

(d) A change of doctor may not be made to secure a new impairment rating or medical report.

(e) For purposes of this section, the following is not a selection of an alternate doctor:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second or subsequent opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable or unable to provide medical

care to the employee; or

(5) a change of doctors required because of a change of residence by the employee.

(f) This section does not apply to requirements regarding the selection of a doctor under a workers' compensation health care network established under Chapter 1305, Insurance Code, except as provided by that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.082, eff. September 1, 2005.

Sec. 408.0221. REQUEST FOR DESCRIPTION OF EMPLOYMENT. (a) This section applies only to an employee of an employer who has 10 or more employees.

(b) To facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's treating doctor, the treating doctor may request that the injured employee's employer provide the treating doctor with the information described by Subsection (d) on the form adopted under that subsection.

(c) Information provided to a treating doctor under Subsection (b) does not constitute:

(1) a request by the employer that the injured employee return to the employment;

(2) an offer of employment by the employer for the injured employee to return to employment; or

(3) an admission of the compensability of the injury of the employee.

(d) The commissioner shall prescribe a form to provide information from an employer to a treating doctor concerning the functions and physical responsibilities of an injured employee's job. To the extent possible, the form prescribed under this subsection shall be one page, use a check box format as appropriate, and be compatible with electronic mail. The form must include:

(1) the name and address of the employer and the contact information and availability of the individual representing the employer who has knowledge of the injured employee's job;

(2) the scope of the injured employee's employment, including any specific tasks, job duties, or work activities that the injured employee was required to perform at the time the employee sustained the injury; and

(3) an area for additional comments or information by the employer or individual representing the employer concerning:

(A) the injured employee's job; or

(B) the availability, if any, of other jobs that the employer may have that the employer would like the treating doctor to consider in determining whether an injured employee is able to return to work.

(e) The commissioner may adopt rules as necessary to implement this section and to facilitate communication between the employer and the treating doctor regarding return-to-work opportunities.

Added by Acts 2009, 81st Leg., R.S., Ch. 456 (H.B. 2547), Sec. 1, eff. September 1, 2009.

Sec. 408.023. LIST OF APPROVED DOCTORS; DUTIES OF TREATING DOCTORS. (a) The division shall develop a list of doctors licensed in this state who are approved to provide health care services under this subtitle. A doctor is eligible to be included on the division's list of approved doctors if the doctor:

(1) registers with the division in the manner prescribed by commissioner rules; and

(2) complies with the requirements adopted by the commissioner under this section.

(b) The commissioner by rule shall establish reasonable requirements for training for doctors as a prerequisite for inclusion on the list. Except as otherwise provided by this section, the requirements adopted under this subsection apply to doctors and other health care providers who:

(1) provide health care services as treating doctors;

(2) provide health care services as authorized by this chapter;

(3) perform medical peer review under this subtitle;

(4) perform utilization review of medical benefits provided under this subtitle; or

(5) provide health care services on referral from a

treating doctor, as provided by commissioner rule.

(c) The division shall issue to a doctor who is approved by the commissioner a certificate of registration. In determining whether to issue a certificate of registration, the commissioner may consider and condition approval on any practice restrictions applicable to the applicant that are relevant to services provided under this subtitle. The commissioner may also consider the practice restrictions of an applicant when determining appropriate sanctions under Section 408.0231.

(d) A certificate of registration issued under this section is valid, unless revoked, suspended, or revised, for the period provided by commissioner rule and may be renewed on application to the division. The division shall provide notice to each doctor on the approved doctor list of the pending expiration of the doctor's certificate of registration not later than the 60th day before the date of expiration of the certificate.

(e) Notwithstanding other provisions of this section, a doctor not licensed in this state but licensed in another state or jurisdiction who treats employees or performs utilization review of health care for an insurance carrier may apply for a certificate of registration under this section to be included on the division's list of approved doctors.

(f) Except in an emergency or for immediate post-injury medical care as defined by commissioner rule, or as provided by Subsection (h), (i), or (j), each doctor who performs functions under this subtitle, including examinations under this chapter, must hold a certificate of registration and be on the division's list of approved doctors in order to perform services or receive payment for those services.

(g) The commissioner by rule shall modify registration and training requirements for doctors who infrequently provide health care or who perform utilization review or peer review functions for insurance carriers as necessary to ensure that those doctors are informed of the regulations that affect health care benefit delivery under this subtitle.

(h) Notwithstanding Section 4201.152, Insurance Code, a utilization review agent or an insurance carrier that uses doctors to perform reviews of health care services provided under this subtitle, including utilization review, may only use doctors licensed to practice in this state.

(i) The commissioner may grant exceptions to the requirement imposed under Subsection (f) as necessary to ensure that:

(1) employees have access to health care; and

(2) insurance carriers have access to evaluations of an employee's health care and income benefit eligibility as provided by this subtitle.

(j) A doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not subject to the registration requirements of Subsections (a)-(i) for the purpose of providing health care services under that network contract. The doctor is subject to the requirements of Subsections (l)-(p), and Subsection (q) applies to health care services and functions provided by a doctor who contracts with a certified workers' compensation health care network.

(k) The requirements of Subsections (a)-(g) and Subsection (i) expire September 1, 2007. Before that date, the commissioner may waive the application of the provisions of Subsections (a)-(g) and Subsection (i) that require doctors to hold a certificate of registration and to be on the list of approved doctors if the commissioner determines that:

(1) injured employees have adequate access to health care providers who are willing to treat injured employees for compensable injuries through workers' compensation health care networks certified under Chapter 1305, Insurance Code; or

(2) injured employees who are not covered by a workers' compensation health care network certified under Chapter 1305, Insurance Code, do not have adequate access to health care providers who are willing to treat injured employees for compensable injuries.

(l) The injured employee's treating doctor is responsible for the efficient management of medical care as required by Section 408.025(c) and commissioner rules. The division shall collect information regarding:

(1) return-to-work outcomes;

(2) patient satisfaction; and

(3) cost and utilization of health care provided or authorized by a treating doctor on the list of approved doctors.

(m) The commissioner may adopt rules to define the role of the treating doctor and to specify outcome information to be collected for a treating doctor.

(n) The commissioner by rule shall establish reasonable

requirements for doctors, and health care providers financially related to those doctors, regarding training, impairment rating testing, and disclosure of financial interests as required by Section 413.041, and for monitoring of those doctors and health care providers as provided by Sections 408.0231, 413.0511, and 413.0512.

(o) A doctor, including a doctor who contracts with a workers' compensation health care network, shall:

(1) comply with the requirements established by commissioner rule under Subsections (l) and (m) and with Section 413.041 regarding the disclosure of financial interests; and

(2) if the doctor intends to provide certifications of maximum medical improvement or assign impairment ratings, comply with the impairment rating training and testing requirements established by commissioner rule under Subsection (n).

(p) A person required to comply with Subsection (o), including a doctor who contracts with a workers' compensation health care network, who does not comply with that section commits an administrative violation.

(q) An insurance carrier may not use, for the purpose of suspending temporary income benefits or computing impairment income benefits, a certification of maximum medical improvement or an impairment rating assigned by a doctor, including a doctor who contracts with a workers' compensation health care network certified under Chapter 1305, Insurance Code, who fails to comply with Subsection (o)(2).

(r) Notwithstanding the waiver or expiration of Subsections (a)-(g) and (i), there may be no direct or indirect provision of health care under this subtitle and rules adopted under this subtitle, and no direct or indirect receipt of remuneration under this subtitle and rules adopted under this subtitle by a doctor who:

(1) before September 1, 2007:

(A) was removed or deleted from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(B) was not admitted to the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor;

(C) was suspended from the list of approved doctors either by action of the Texas Workers' Compensation Commission or the division or by agreement with the doctor; or

(D) had the doctor's license to practice suspended by the appropriate licensing agency, including a suspension that was stayed, deferred, or probated, or voluntarily relinquished the license to practice; and

(2) was not reinstated or restored by the Texas Workers' Compensation Commission or the division to the list of approved doctors before September 1, 2007.

(s) The waiver or expiration of Subsections (a)-(g) and (i) do not limit the division's ability to impose sanctions as provided by this subtitle and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.25, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. Sept. 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.083, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 17, eff. September 1, 2009.

Sec. 408.0231. MAINTENANCE OF LIST OF APPROVED DOCTORS; SANCTIONS AND PRIVILEGES RELATING TO HEALTH CARE. (a) The commissioner shall delete from the list of approved doctors a doctor:

(1) who fails to register with the division as provided by this chapter and commissioner rules;

(2) who is deceased;

(3) whose license to practice in this state is revoked, suspended, or not renewed by the appropriate licensing authority; or

(4) who requests to be removed from the list.

(b) The commissioner by rule shall establish criteria for:

(1) deleting or suspending a doctor from the list of approved doctors;

(2) imposing sanctions on a doctor or an insurance carrier as provided by this section;

(3) monitoring of utilization review agents, as provided by a memorandum of understanding between the division and the Texas Department of Insurance; and

(4) authorizing increased or reduced utilization review and preauthorization controls on a doctor.

(c) Rules adopted under Subsection (b) are in addition to, and do not affect, the rules adopted under Section 415.023(b). The criteria for deleting a doctor from the list or for recommending or imposing sanctions may include anything the commissioner considers relevant, including:

(1) a sanction of the doctor by the commissioner for a violation of Chapter 413 or Chapter 415;

(2) a sanction by the Medicare or Medicaid program for:

(A) substandard medical care;

(B) overcharging;

(C) overutilization of medical services; or

(D) any other substantive noncompliance with requirements of those programs regarding professional practice or billing;

(3) evidence from the division's medical records that the applicable insurance carrier's utilization review practices or the doctor's charges, fees, diagnoses, treatments, evaluations, or impairment ratings are substantially different from those the commissioner finds to be fair and reasonable based on either a single determination or a pattern of practice;

(4) a suspension or other relevant practice restriction of the doctor's license by an appropriate licensing authority;

(5) professional failure to practice medicine or provide health care, including chiropractic care, in an acceptable manner consistent with the public health, safety, and welfare;

(6) findings of fact and conclusions of law made by a court, an administrative law judge of the State Office of Administrative Hearings, or a licensing or regulatory authority; or

(7) a criminal conviction.

(d) The commissioner by rule shall establish procedures under which a doctor may apply for:

(1) reinstatement to the list of approved doctors; or

(2) restoration of doctor practice privileges removed by the commissioner based on sanctions imposed under this section.

(e) The commissioner shall act on a recommendation by the medical advisor selected under Section 413.0511 and, after notice and the opportunity for a hearing, may impose sanctions under this section on a doctor or an insurance carrier or may recommend action

regarding a utilization review agent. The commissioner and the commissioner of insurance shall enter into a memorandum of understanding to coordinate the regulation of insurance carriers and utilization review agents as necessary to ensure:

(1) compliance with applicable regulations; and

(2) that appropriate health care decisions are reached under this subtitle and under Chapter 4201, Insurance Code.

(f) The sanctions the commissioner may recommend or impose under this section include:

(1) reduction of allowable reimbursement;

(2) mandatory preauthorization of all or certain health care services;

(3) required peer review monitoring, reporting, and audit;

(4) deletion or suspension from the approved doctor list and the designated doctor list;

(5) restrictions on appointment under this chapter;

(6) conditions or restrictions on an insurance carrier regarding actions by insurance carriers under this subtitle in accordance with the memorandum of understanding adopted under Subsection (e); and

(7) mandatory participation in training classes or other courses as established or certified by the division.

(g) The commissioner shall adopt rules regarding doctors who perform peer review functions for insurance carriers. Those rules may include standards for peer review, imposition of sanctions on doctors performing peer review functions, including restriction, suspension, or removal of the doctor's ability to perform peer review on behalf of insurance carriers in the workers' compensation system, and other issues important to the quality of peer review, as determined by the commissioner. A doctor who performs peer review under this subtitle must hold the appropriate professional license issued by this state. A doctor, other than a chiropractor or a dentist, who performs peer review is subject to Section 408.0043. A dentist who performs a peer review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a peer review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.01, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.084, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 134 (H.B. 1006), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 4, eff. September 1, 2007.

Sec. 408.024. NONCOMPLIANCE WITH SELECTION REQUIREMENTS. Except as otherwise provided, and after notice and an opportunity for hearing, the commissioner may relieve an insurance carrier of liability for health care that is furnished by a health care provider or another person selected in a manner inconsistent with the requirements of this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.085, eff. September 1, 2005.

Sec. 408.025. REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS. (a) The commissioner by rule shall adopt requirements for reports and records that are required to be filed with the division or provided to the injured employee, the employee's attorney, or the insurance carrier by a health care provider.

(b) The commissioner by rule shall adopt requirements for reports and records that are to be made available by a health care provider to another health care provider to prevent unnecessary duplication of tests and examinations.

(c) The treating doctor is responsible for maintaining efficient utilization of health care.

(d) On the request of an injured employee, the employee's attorney, or the insurance carrier, a health care provider shall furnish records relating to treatment or hospitalization for which compensation is being sought. The division may regulate the charge for furnishing a report or record, but the charge may not be less than the fair and reasonable charge for furnishing the report or record. A health care provider may disclose to the insurance carrier

of an affected employer records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 9, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.086, eff. September 1, 2005.

Sec. 408.0251. ELECTRONIC BILLING REQUIREMENTS. (a) The commissioner, by rule and in cooperation with the commissioner of insurance, shall adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers.

(b) Insurance carriers shall accept medical bills submitted electronically by health care providers in accordance with commissioner rule.

(c) The commissioner shall by rule establish criteria for granting exceptions to insurance carriers and health care providers who are unable to submit or accept medical bills electronically.

(d) On or after January 1, 2008, the commissioner may adopt rules regarding the electronic payment of medical bills by insurance carriers to health care providers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.087, eff. September 1, 2005.

Sec. 408.0252. UNDERSERVED AREAS. The commissioner by rule may identify areas of this state in which access to health care providers is less available and may adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.087, eff. September 1, 2005.

Sec. 408.026. SPINAL SURGERY. Except in a medical emergency,

an insurance carrier is liable for medical costs related to spinal surgery only as provided by Section 413.014 and commissioner rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.088, eff. September 1, 2005.

Sec. 408.027. PAYMENT OF HEALTH CARE PROVIDER. (a) A health care provider shall submit a claim for payment to the insurance carrier not later than the 95th day after the date on which the health care services are provided to the injured employee. Failure by the health care provider to timely submit a claim for payment constitutes a forfeiture of the provider's right to reimbursement for that claim for payment.

(b) The insurance carrier must pay, reduce, deny, or determine to audit the health care provider's claim not later than the 45th day after the date of receipt by the carrier of the provider's claim. The carrier may request additional documentation necessary to clarify the provider's charges at any time during the 45-day period. If the insurance carrier requests additional documentation under this subsection, the health care provider must provide the requested documentation not later than the 15th day after the date of receipt of the carrier's request. If the insurance carrier elects to audit the claim, the carrier must complete the audit not later than the 160th day after the date of receipt by the carrier of the health care provider's claim, and, not later than the 160th day after the receipt of the claim, must make a determination regarding the relationship of the health care services provided to the compensable injury, the extent of the injury, and the medical necessity of the services provided. If the insurance carrier chooses to audit the claim, the insurance carrier must pay to the health care provider not later than the 45th day after the date of receipt by the carrier of the provider's claim 85 percent of:

(1) the amount for the health care service established under the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305, Insurance Code; or

(2) the amount of the contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

(c) If the health care services provided are determined to be appropriate, the insurance carrier shall pay the health care provider the remaining 15 percent of the claim not later than the 160th day after the date of receipt by the carrier of the health care provider's documentation of the claim. An insurance carrier commits an administrative violation if the carrier, in violation of Subsection (b), fails to:

(1) pay, reduce, deny, or notify the health care provider of the intent to audit the claim by the 45th day after the date of receipt by the carrier of the health care provider's claim; or

(2) pay, reduce, or deny an audited claim by the 160th day after the date of receipt of the claim.

(d) If an insurance carrier contests the compensability of an injury and the injury is determined not to be compensable, the carrier may recover the amounts paid for health care services from the employee's accident or health benefit plan, or any other person who may be obligated for the cost of the health care services. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which a workers' compensation insurance carrier denies compensability, and the injury is later determined to be compensable, the accident or health insurance carrier or other person may recover the amounts paid for such services from the workers' compensation insurance carrier. If an accident or health insurance carrier or other person obligated for the cost of health care services has paid for health care services for an employee for an injury for which the workers' compensation insurance carrier or the employer has not disputed compensability, the accident or health insurance carrier or other person may recover reimbursement from the insurance carrier in the manner described by Section 409.009 or 409.0091, as applicable.

(e) If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the division, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as

provided by Section 413.031(d).

(f) Except as provided by Section 408.0281 or 408.0284, any payment made by an insurance carrier under this section shall be in accordance with the fee guidelines authorized under this subtitle if the health care service is not provided through a workers' compensation health care network under Chapter 1305, Insurance Code, or at a contracted rate for that health care service if the health care service is provided through a workers' compensation health care network under Chapter 1305, Insurance Code.

(g) Notwithstanding any other provision in this subtitle or Chapter 1305, Insurance Code, this section and Section 408.0271 apply to health care provided through a workers' compensation health care network established under Chapter 1305, Insurance Code. The commissioner shall adopt rules as necessary to implement the provisions of this section and Section 408.0271.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 10, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.089, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 4, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 1, eff. September 1, 2013.

Sec. 408.0271. REIMBURSEMENT BY HEALTH CARE PROVIDER. (a) If the health care services provided to an injured employee are determined by the insurance carrier to be inappropriate, the insurance carrier shall:

(1) notify the health care provider in writing of the carrier's decision; and

(2) demand a refund by the health care provider of the portion of payment on the claim that was received by the health care provider for the inappropriate services.

(b) The health care provider may appeal the insurance carrier's determination under Subsection (a). The health care provider must

file an appeal under this subsection with the insurance carrier not later than the 45th day after the date of the insurance carrier's request for the refund. The insurance carrier must act on the appeal not later than the 45th day after the date on which the provider files the appeal.

(c) A health care provider shall reimburse the insurance carrier for payments received by the provider for inappropriate charges not later than the 45th day after the date of the carrier's notice. The failure by the health care provider to timely remit payment to the carrier constitutes an administrative violation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.0895, eff. September 1, 2005.

Sec. 408.0272. CERTAIN EXCEPTIONS FOR UNTIMELY SUBMISSION OF CLAIM. (a) In this section:

(1) "Group accident and health insurance" has the meaning assigned by Chapter 1251, Insurance Code.

(2) "Health maintenance organization" has the meaning assigned by Chapter 843, Insurance Code.

(b) Notwithstanding Section 408.027, a health care provider who fails to timely submit a claim for payment to the insurance carrier under Section 408.027(a) does not forfeit the provider's right to reimbursement for that claim for payment solely for failure to submit a timely claim if:

(1) the provider submits proof satisfactory to the commissioner that the provider, within the period prescribed by Section 408.027(a), erroneously filed for reimbursement with:

(A) an insurer that issues a policy of group accident and health insurance under which the injured employee is a covered insured;

(B) a health maintenance organization that issues an evidence of coverage under which the injured employee is a covered enrollee; or

(C) a workers' compensation insurance carrier other than the insurance carrier liable for the payment of benefits under this title; or

(2) the commissioner determines that the failure resulted from a catastrophic event that substantially interfered with the

normal business operations of the provider.

(c) Notwithstanding Subsection (b), a health care provider who erroneously submits a claim for payment to an entity described by Subdivision (1) of that subsection forfeits the provider's right to reimbursement for that claim if the provider fails to submit the claim to the correct workers' compensation insurance carrier within 95 days after the date the provider is notified of the provider's erroneous submission of the claim.

(d) Notwithstanding any other provision of this section or Section 408.027, the period for submitting a claim for payment may be extended by agreement of the parties.

Added by Acts 2007, 80th Leg., R.S., Ch. 459 (H.B. 1005), Sec. 1, eff. September 1, 2007.

Sec. 408.028. PHARMACEUTICAL SERVICES. (a) A physician providing care to an employee under this subchapter shall prescribe for the employee any necessary prescription drugs, and order over-the-counter alternatives to prescription medications as clinically appropriate and applicable, in accordance with applicable state law and as provided by Subsection (b). A doctor providing care may order over-the-counter alternatives to prescription medications, when clinically appropriate, in accordance with applicable state law and as provided by Subsection (b).

(b) The commissioner by rule shall require the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law. The commissioner by rule shall adopt a closed formulary under Section 413.011. Rules adopted by the commissioner shall allow an appeals process for claims in which a treating doctor determines and documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury.

(c) Except as otherwise provided by this subtitle, an insurance carrier may not require an employee to use pharmaceutical services designated by the carrier.

(d) The commissioner shall adopt rules to allow an employee to purchase over-the-counter alternatives to prescription medications prescribed or ordered under Subsection (a) or (b) and to obtain

reimbursement from the insurance carrier for those medications.

(e) Notwithstanding Subsection (b), the commissioner by rule shall allow an employee to purchase a brand name drug rather than a generic pharmaceutical medication or over-the-counter alternative to a prescription medication if a health care provider prescribes a generic pharmaceutical medication or an over-the-counter alternative to a prescription medication. The employee shall be responsible for paying the difference between the cost of the brand name drug and the cost of the generic pharmaceutical medication or of an over-the-counter alternative to a prescription medication. The employee may not seek reimbursement for the difference in cost from an insurance carrier and is not entitled to use the medical dispute resolution provisions of Chapter 413 with regard to the prescription. A payment described by this subsection by an employee to a health care provider does not violate Section 413.042. This subsection does not affect the duty of a health care provider to comply with the requirements of Subsection (b) when prescribing medications or ordering over-the-counter alternatives to prescription medications.

(f) Notwithstanding any other provision of this title, the commissioner by rule shall adopt a fee schedule for pharmacy and pharmaceutical services that will:

(1) provide reimbursement rates that are fair and reasonable;

(2) assure adequate access to medications and services for injured workers;

(3) minimize costs to employees and insurance carriers; and

(4) take into consideration the increased security of payment afforded by this subtitle.

(g) Section 413.011(d) and the rules adopted to implement that subsection do not apply to the fee schedule adopted by the commissioner under Subsection (f).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.01, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 468, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.090, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 2, eff. June 17, 2011.

Sec. 408.0281. REIMBURSEMENT FOR PHARMACEUTICAL SERVICES; ADMINISTRATIVE VIOLATION. (a) In this section:

(1) "Informal network" means a network that:

(A) is established under a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider for the provision of pharmaceutical services; and

(B) includes a specific fee schedule.

(2) "Voluntary network" means a voluntary workers' compensation health care delivery network established under former Section 408.0223, as that section existed before repeal by Chapter 265 (H.B. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of pharmaceutical services.

(b) Notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, prescription medication or services, as defined by Section 401.011(19)(E):

(1) may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a contract rate in accordance with this section; and

(2) may not be delivered through:

(A) a workers' compensation health care network under Chapter 1305, Insurance Code; or

(B) a contract described by Section 504.053(b)(2).

(c) Notwithstanding any other provision of this title, including Section 408.028(f), or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for pharmaceutical services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for pharmaceutical services. If a carrier or the carrier's authorized agent chooses to use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or

voluntary network that authorizes the network to contract with health care providers for pharmaceutical services on the carrier's behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Notice to each health care provider:

(1) must include:

(A) the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may contact the network; and

(B) in the body of the notice:

(i) the name, physical address, and telephone number of any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(ii) the start date and any end date of the period during which any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) may be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) through an Internet website link, but only if the website:

(i) contains the information described by Subdivision (1); and

(ii) is updated at least monthly with current and correct information.

(e) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall document the delivery of the notice required under Subsection (d), including the method of delivery, to whom the notice was delivered, and the date of delivery. For purposes of Subsection (d), a notice is considered to

be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) An insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, shall provide copies of each contract described by Subsection (c) to the division on the request of the division. Information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Notwithstanding Subsection (c), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if:

(1) the contract:

(A) is not provided to the division on the division's request;

(B) does not include a specific fee schedule consistent with Subsection (c); or

(C) does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or

(2) the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Failure to provide documentation described by Subsection (e) to the division on the request of the division or failure to provide notice as required under Subsection (d) creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 413 that a health care provider did not receive the notice.

(h) An insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Any administrative penalty assessed under this subsection shall be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 3, eff.

June 17, 2011.

Sec. 408.0282. REQUIREMENTS FOR CERTAIN INFORMAL OR VOLUNTARY NETWORKS. (a) Each informal or voluntary network described by Section 408.0281 or 408.0284 shall, not later than the 30th day after the date the network is established, report the following information to the division:

(1) the name of the informal or voluntary network and federal employer identification number;

(2) an executive contact for official correspondence for the informal or voluntary network;

(3) a toll-free telephone number by which a health care provider may contact the informal or voluntary network;

(4) a list of each insurance carrier with whom the informal or voluntary network contracts, including the carrier's federal employer identification number; and

(5) a list of, and contact information for, each entity with which the informal or voluntary network has a contract or other business relationship that benefits or is entered into on behalf of an insurance carrier, including an insurance carrier's authorized agent or a subsidiary or other affiliate of the network.

(b) Each informal or voluntary network shall report any changes to the information provided under Subsection (a) to the division not later than the 30th day after the effective date of the change.

(c) An informal or voluntary network shall submit a report required under this section, including a report of changes required under Subsection (b), to the division through the division's online reporting system available through the division's Internet website.

(d) An informal or voluntary network commits an administrative violation if the informal or voluntary network violates any provision of this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 705 (H.B. 528), Sec. 3, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 2, eff. September 1, 2013.

Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) In this section:

(1) "Durable medical equipment" includes prosthetics and orthotic devices and related medical equipment and supplies. The term does not include:

(A) an object or device that is surgically implanted, embedded, inserted, or otherwise applied;

(B) related equipment necessary to operate, program, or recharge the object or device described by Paragraph (A); or

(C) an intrathecal pump.

(2) "Informal network" means a network that:

(A) is established under a contract between an insurance carrier or an insurance carrier's authorized agent and a health care provider for the provision of durable medical equipment or home health care services; and

(B) includes a specific fee schedule.

(3) "Voluntary network" means a voluntary workers' compensation health care delivery network established under former Section 408.0223, as that section existed before repeal by Chapter 265 (House Bill No. 7), Acts of the 79th Legislature, Regular Session, 2005, by an insurance carrier for the provision of durable medical equipment or home health care services.

(b) Notwithstanding any provision of Chapter 1305, Insurance Code, or Section 504.053 of this code, durable medical equipment and home health care services may be reimbursed in accordance with the fee guidelines adopted by the commissioner or at a voluntarily negotiated contract rate in accordance with this section.

(c) Notwithstanding any other provision of this title or any provision of Chapter 1305, Insurance Code, an insurance carrier may pay a health care provider fees for durable medical equipment or home health care services that are inconsistent with the fee guidelines adopted by the commissioner only if the carrier or the carrier's authorized agent has a contract with the health care provider and that contract includes a specific fee schedule. An insurance carrier or the carrier's authorized agent may use an informal or voluntary network to obtain a contractual agreement that provides for fees different from the fees authorized under the fee guidelines adopted by the commissioner for durable medical equipment or home health care services. If a carrier or the carrier's authorized agent chooses to

use an informal or voluntary network to obtain a contractual fee arrangement, there must be a contractual arrangement between:

(1) the carrier or authorized agent and the informal or voluntary network that authorizes the network to contract with health care providers for durable medical equipment or home health care services on the carrier's behalf; and

(2) the informal or voluntary network and the health care provider that includes a specific fee schedule and complies with the notice requirements of this section.

(d) An informal or voluntary network, or the carrier or the carrier's authorized agent shall, at least quarterly, notify each health care provider of any person, other than an injured employee, to which the network's contractual fee arrangements with the health care provider are sold, leased, transferred, or conveyed. Notice to each health care provider:

(1) must include:

(A) the contact information for the network, including the name, physical address, and toll-free telephone number at which a health care provider with which the network has a contract may contact the network; and

(B) in the body of the notice:

(i) the name, physical address, and telephone number of any person, other than an injured employee, to which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(ii) the start date and any end date of the period during which the network's contractual fee arrangement with the health care provider is sold, leased, transferred, or conveyed; and

(2) may be provided:

(A) in an electronic format, if a paper version is available on request by the division; and

(B) through an Internet website link, but only if the website:

(i) contains the information described by Subdivision (1); and

(ii) is updated at least monthly with current and correct information.

(e) An informal or voluntary network, or the carrier or the carrier's authorized agent, as appropriate, shall document the delivery of the notice required under Subsection (d), including the

method of delivery, to whom the notice was delivered, and the date of delivery. For purposes of Subsection (d), a notice is considered to be delivered on, as applicable:

(1) the fifth day after the date the notice is mailed via United States Postal Service; or

(2) the date the notice is faxed or electronically delivered.

(f) An insurance carrier, or the carrier's authorized agent or an informal or voluntary network at the carrier's request, shall provide copies of each contract described by Subsection (c) to the division on the request of the division. Information included in a contract under Subsection (c) is confidential and is not subject to disclosure under Chapter 552, Government Code. Notwithstanding Subsection (c), the insurance carrier may be required to pay fees in accordance with the division's fee guidelines if:

(1) the contract:

(A) is not provided to the division on the division's request;

(B) does not include a specific fee schedule consistent with Subsection (c); or

(C) does not clearly state that the contractual fee arrangement is between the health care provider and the named insurance carrier or the carrier's authorized agent; or

(2) the carrier or the carrier's authorized agent does not comply with the notice requirements under Subsection (d).

(g) Failure to provide documentation described by Subsection (e) to the division on the request of the division or failure to provide notice as required under Subsection (d) creates a rebuttable presumption in an enforcement action under this subtitle and in a medical fee dispute under Chapter 413 that a health care provider did not receive the notice.

(h) An insurance carrier or the carrier's authorized agent commits an administrative violation if the carrier or agent violates any provision of this section. Any administrative penalty assessed under this subsection shall be assessed against the carrier, regardless of whether the carrier or agent committed the violation.

(i) Notwithstanding Section 1305.003(b), Insurance Code, in the event of a conflict between this section and Section 413.016 or any other provision of Chapter 413 of this code or Chapter 1305, Insurance Code, this section prevails.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1202 (S.B. 1322), Sec. 3, eff. September 1, 2013.

Sec. 408.029. NURSE FIRST ASSISTANT SERVICES. An insurance carrier may not refuse to reimburse a health care practitioner solely because that practitioner is a nurse first assistant, as defined by Section 301.1525, Occupations Code, for a covered service that a physician providing health care services under this subtitle has requested the nurse first assistant to perform.

Added by Acts 2001, 77th Leg., ch. 812, Sec. 9, eff. Sept. 1, 2001.

Sec. 408.030. REPORTS OF PHYSICIAN VIOLATIONS. If the division discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of a state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the division shall immediately report that act or omission to the Texas State Board of Medical Examiners.

Added by Acts 2003, 78th Leg., ch. 202, Sec. 38, eff. June 10, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.091, eff. September 1, 2005.

Sec. 408.031. WORKERS' COMPENSATION HEALTH CARE NETWORKS. (a) Notwithstanding any other provision of this chapter, an injured employee may receive benefits under a workers' compensation health care network established under Chapter 1305, Insurance Code, in the manner provided by that chapter.

(b) In the event of a conflict between this title and Chapter 1305, Insurance Code, as to the provision of medical benefits for injured employees, the establishment and regulation of fees for medical treatments and services, the time frames for payment of medical bills, the operation and regulation of workers' compensation health care networks, the regulation of the health care providers who contract with those networks, or the resolution of disputes regarding medical benefits provided through those networks, Chapter 1305,

Insurance Code, prevails.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.092, eff. September 1, 2005.

Sec. 408.032. STUDY ON INTERDISCIPLINARY PAIN REHABILITATION PROGRAM AND FACILITY ACCREDITATION REQUIREMENT. The division shall study the issue of required accreditation of interdisciplinary pain rehabilitation programs or interdisciplinary pain rehabilitation treatment facilities that provide services to injured employees and shall report to the legislature regarding any statutory changes that the division considers necessary to require that accreditation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.093, eff. September 1, 2005.

SUBCHAPTER C. COMPUTATION OF AVERAGE WEEKLY WAGE

Sec. 408.041. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this subtitle, the average weekly wage of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

(b) The average weekly wage of an employee whose wage at the time of injury has not been fixed or cannot be determined or who has worked for the employer for less than the 13 weeks immediately preceding the injury equals:

(1) the usual wage that the employer pays a similar employee for similar services; or

(2) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for remuneration.

(c) If Subsection (a) or (b) cannot reasonably be applied because the employee's employment has been irregular or because the employee has lost time from work during the 13-week period immediately preceding the injury because of illness, weather, or another cause beyond the control of the employee, the commissioner may determine the employee's average weekly wage by any method that the commissioner considers fair, just, and reasonable to all parties

and consistent with the methods established under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.094, eff. September 1, 2005.

Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE OR EMPLOYEE WITH MULTIPLE EMPLOYMENT. (a) The average weekly wage of a part-time employee who limits the employee's work to less than a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; or

(B) if the employee has worked for the employer for less than 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(i) the weekly wage that the employer pays a similar employee for similar services based on a full-time workweek; or

(ii) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services based on a full-time workweek.

(c) For employees with multiple employment, the average weekly wage for determining temporary income benefits, impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits, is computed as follows:

(1) the average weekly wage for an employee with multiple employment is equal to the sum of the average weekly wages computed under Subdivisions (2) and (3);

(2) for each of the employers for whom the employee has worked for at least the 13 weeks immediately preceding the date of injury, the average weekly wage is equal to the sum of the wages paid by that employer to the employee in the 13 weeks immediately preceding the injury divided by 13;

(3) for each of the employers for whom the employee has worked for less than the 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(A) the weekly wage that employer pays similar employees for similar services; or

(B) if a similar employee does not exist, the usual weekly wage paid in that vicinity for the same or similar services; and

(4) the average weekly wage of an employee with multiple employment who limits the employee's work to less than a full-time workweek, but does not do so as a regular course of that employee's conduct, is adjusted to the weekly wage level the employee would have attained by working a full-time workweek at the employee's average rate of pay.

(d) The commissioner shall:

(1) prescribe a form to collect information regarding the wages of employees with multiple employment; and

(2) by rule, determine the manner by which the division collects and distributes wage information to implement this section.

(e) For an employee with multiple employment, only the employee's wages that are reportable for federal income tax purposes may be considered. The employee shall document and verify wage payments subject to this section.

(f) If the commissioner determines that computing the average weekly wage for an employee as provided by Subsection (c) is impractical or unreasonable, the commissioner shall set the average weekly wage in a manner that more fairly reflects the employee's average weekly wage and that is fair and just to both parties or is in the manner agreed to by the parties. The commissioner by rule may define methods to determine a fair and just average weekly wage consistent with this section.

(g) An insurance carrier is entitled to apply for and receive

reimbursement at least annually from the subsequent injury fund for the amount of income and death benefits paid to a worker under this section that are based on employment other than the employment during which the compensable injury occurred. The commissioner may adopt rules that govern the documentation, application process, and other administrative requirements necessary to implement this subsection.

(h) In this section:

(1) "Employee with multiple employment" means an employee who has more than one employer.

(2) "Full-time workweek" means a 40-hour workweek.

(3) "Part-time employee" means an employee who, at the time of the injury, was working less than a full-time workweek for the employer for whom the employee was working when the compensable injury occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 10.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.095, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 2, eff. September 1, 2007.

Sec. 408.043. AVERAGE WEEKLY WAGE FOR SEASONAL EMPLOYEE. (a) For determining the amount of temporary income benefits of a seasonal employee, the average weekly wage of the employee is computed as provided by Section 408.041 and is adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period that temporary income benefits are paid.

(b) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a seasonal employee, the average weekly wage of the employee is computed by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(c) If, for good reason, the commissioner determines that computing the average weekly wage for a seasonal employee as provided by this section is impractical, the commissioner shall compute the average weekly wage as of the time of the injury in a manner that is

fair and just to both parties.

(d) In this section, "seasonal employee" means an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.096, eff. September 1, 2005.

Sec. 408.044. AVERAGE WEEKLY WAGE FOR MINOR, APPRENTICE, TRAINEE, OR STUDENT. (a) For computing impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits, the average weekly wage of an employee shall be adjusted to reflect the level of expected wages during the period that the benefits are payable if:

(1) the employee is a minor, apprentice, trainee, or student at the time of the injury;

(2) the employee's employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages; and

(3) the employee's wages would reasonably be expected to change because of a change of employment during that period.

(b) An adjustment under Subsection (a) may not consider expected wage levels for a period occurring after the third anniversary of the date of the injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.0445. AVERAGE WEEKLY WAGE FOR MEMBERS OF STATE MILITARY FORCES AND TEXAS TASK FORCE 1. (a) For purposes of computing income benefits or death benefits under Section 437.227, Government Code, the average weekly wage of a member of the state military forces as defined by Section 437.001, Government Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment the member holds in addition to serving as a member of the state military

forces, disregarding any period during which the member is not fully compensated for that employment because the member is engaged in authorized military training or duty, and the member's regular weekly wage as a member of the state military forces, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047.

(b) For purposes of computing income benefits or death benefits under Section 88.303, Education Code, the average weekly wage of a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is engaged in authorized training or duty is an amount equal to the sum of the member's regular weekly wage at any employment, including self-employment, that the member holds in addition to serving as a member of Texas Task Force 1, except that the amount may not exceed 100 percent of the state average weekly wage as determined under Section 408.047. A member for whom an average weekly wage cannot be computed shall be paid the minimum weekly benefit established by the division.

Added by Acts 1999, 76th Leg., ch. 1205, Sec. 4, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 644, Sec. 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.097, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.14, eff. September 1, 2013.

Sec. 408.0446. AVERAGE WEEKLY WAGE; SCHOOL DISTRICT EMPLOYEE. (a) For determining the amount of temporary income benefits of a school district employee under Chapter 504, the average weekly wage is computed on the basis of wages earned in a week rather than on the basis of wages paid in a week. The wages earned in any given week are equal to the amount that would be deducted from an employee's salary if the employee were absent from work for one week and the employee did not have personal leave available to compensate the employee for lost wages for that week.

(b) An insurance carrier may adjust a school district employee's average weekly wage as often as necessary to reflect the wages the employee reasonably could expect to earn during the period for which temporary income benefits are paid. In adjusting a school

district employee's average weekly wage under this subsection, the insurance carrier may consider any evidence of the employee's reasonable expectation of earnings.

(c) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a school district employee under Chapter 504, the average weekly wage of the employee is computed by dividing the total amount of wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(d) If the commissioner determines that computing the average weekly wage of a school district employee as provided by this section is impractical because the employee did not earn wages during the 12 months immediately preceding the date of the injury, the commissioner shall compute the average weekly wage in a manner that is fair and just to both parties.

(e) The commissioner shall adopt rules as necessary to implement this section.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 10.04, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.098, eff. September 1, 2005.

Sec. 408.045. NONPECUNIARY WAGES. The division may not include nonpecuniary wages in computing an employee's average weekly wage during a period in which the employer continues to provide the nonpecuniary wages.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.099, eff. September 1, 2005.

Sec. 408.046. SIMILAR EMPLOYEES, SERVICES, OR EMPLOYMENT. For purposes of this subchapter and Subchapter D, the determination as to whether employees, services, or employment are the same or similar must include consideration of:

(1) the training and experience of the employees;

(2) the nature of the work; and
(3) the number of hours normally worked.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. (a) On and after October 1, 2006, the state average weekly wage is equal to 88 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

(c) Notwithstanding Subsection (a), the commissioner by rule may increase the state average weekly wage to an amount not to exceed 100 percent of the average weekly wage in covered employment computed by the Texas Workforce Commission under Section 207.002(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 6, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.100, eff. September 1, 2005.

SUBCHAPTER D. COMPUTATION OF BENEFITS

Sec. 408.061. MAXIMUM WEEKLY BENEFIT. (a) A weekly temporary income benefit may not exceed 100 percent of the state average weekly wage under Section 408.047 rounded to the nearest whole dollar.

(b) A weekly impairment income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(c) A weekly supplemental income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(d) A weekly death benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(e) A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(f) The division shall compute the maximum weekly income benefits for each state fiscal year not later than October 1 of each year.

(g) The maximum weekly income benefit in effect on the date of injury is applicable for the entire time that the benefit is payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.101, eff. September 1, 2005.

Sec. 408.062. MINIMUM WEEKLY INCOME BENEFIT. (a) The minimum weekly income benefit is 15 percent of the state average weekly wage as determined under Section 408.047, rounded to the nearest whole dollar.

(b) The division shall compute the minimum weekly income benefit for each state fiscal year not later than October 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire time that income benefits are payable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.102, eff. September 1, 2005.

Sec. 408.063. WAGE PRESUMPTIONS; ADMINISTRATIVE VIOLATION. (a) To expedite the payment of income benefits, the commissioner may by rule establish reasonable presumptions relating to the wages earned by an employee, including the presumption that an employee's last paycheck accurately reflects the employee's usual wage.

(b) Not later than the 30th day after the date the employer receives notice of an injury to the employee, the employer shall file a wage statement showing the amount of all wages paid to the employee.

(c) An employer who fails to file a wage statement in accordance with Subsection (b) commits an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.103, eff. September 1, 2005.

Sec. 408.064. INTEREST ON ACCRUED BENEFITS. (a) An order to pay income or death benefits accrued but unpaid must include interest on the amount of compensation due at the rate provided by Section 401.023.

(b) Accrued but unpaid compensation and interest shall be paid in a lump sum.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. INCOME BENEFITS IN GENERAL

Sec. 408.081. INCOME BENEFITS. (a) An employee is entitled to timely and accurate income benefits as provided in this chapter.

(b) Except as otherwise provided by this section or this subtitle, income benefits shall be paid weekly as and when they accrue without order from the commissioner. Interest on accrued but unpaid benefits shall be paid, without order of the commissioner, at the time the accrued benefits are paid.

(c) The commissioner by rule shall establish requirements for agreements under which income benefits may be paid monthly. Income benefits may be paid monthly only:

(1) on the request of the employee and the agreement of the employee and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner.

(d) An employee's entitlement to income benefits under this chapter terminates on the death of the employee. An interest in future income benefits does not survive after the employee's death.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 11, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.104, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1153 (H.B. 2089), Sec. 1, eff. September 1, 2011.

Sec. 408.0815. RESOLUTION OF OVERPAYMENT OR UNDERPAYMENT OF INCOME BENEFITS. (a) The commissioner by rule shall establish a procedure by which an insurance carrier:

(1) may recoup an overpayment of income benefits from future income benefit payments that are not reimbursable under Section 410.209; and

(2) shall pay an underpayment of income benefits, including interest on accrued but unpaid benefits, in accordance with this subtitle.

(b) The procedure under Subsection (a) must include:

(1) a process by which an injured employee may notify the insurance carrier of an underpayment;

(2) the time frame and methodology by which an insurance carrier shall pay to an injured employee an underpayment;

(3) a process by which an insurance carrier shall notify an injured employee of an overpayment of income benefits;

(4) the time frame and methodology by which an insurance carrier may recoup an overpayment through the reduction of a future income benefit payment; and

(5) a method for coordinating overpayments that may be recouped from future income benefits and reimbursements described by Section 410.209.

(c) The procedure for recouping overpayments under Subsection (a)(1) must take into consideration the cause of the overpayment and minimize the financial hardship to the injured employee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1153 (H.B. 2089), Sec. 2, eff. September 1, 2011.

Sec. 408.082. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Income benefits may not be paid under this subtitle for an injury that does not result in disability for at least one week.

(b) If the disability continues for longer than one week, weekly income benefits begin to accrue on the eighth day after the date of the injury. If the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

(c) If the disability continues for two weeks or longer after the date it begins, compensation shall be computed from the date the disability begins.

(d) This section does not preclude the recovery of medical

benefits as provided by Subchapter B.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.105, eff. September 1, 2005.

Sec. 408.083. TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. (a) Except as provided by Subsection (b), an employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date of injury.

(b) If an employee incurs an occupational disease, the employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates on the expiration of 401 weeks after the date on which benefits began to accrue.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.26, eff. Sept. 1, 1995.

Sec. 408.084. CONTRIBUTING INJURY. (a) At the request of the insurance carrier, the commissioner may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commissioner shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 408.161, the benefits for that injury shall be paid as provided by Section 408.162.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.106, eff. September 1, 2005.

Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If there is a likelihood that income benefits will be paid, the commissioner may grant an employee suffering financial hardship advances as provided by this subtitle against the amount of income benefits to which the employee may be entitled. An advance may be ordered before or after the employee attains maximum medical improvement. An insurance carrier shall pay the advance ordered.

(b) An employee must apply to the division for an advance on a form prescribed by the commissioner. The application must describe the hardship that is the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit for temporary income benefits as computed in Section 408.061. The commissioner may not grant more than three advances to a particular employee based on the same injury.

(d) The commissioner may not grant an advance to an employee who is receiving, on the date of the application under Subsection (b), at least 90 percent of the employee's net preinjury wages under Section 408.003 or 408.129.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.107, eff. September 1, 2005.

Sec. 408.086. DIVISION DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period that impairment income benefits or supplemental income benefits are being paid to an employee, the commissioner shall determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment.

(b) To make this determination, the commissioner may require periodic reports from the employee and the insurance carrier and, at the insurance carrier's expense, may require physical or other examinations, vocational assessments, or other tests or diagnoses necessary to perform the commissioner's duty under this section and Subchapter H.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.108, eff. September 1, 2005.

SUBCHAPTER F. TEMPORARY INCOME BENEFITS

Sec. 408.101. TEMPORARY INCOME BENEFITS. (a) An employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.

(b) On the initiation of compensation as provided by Section 409.021, the insurance carrier shall pay temporary income benefits as provided by this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.102. DURATION OF TEMPORARY INCOME BENEFITS. (a) Temporary income benefits continue until the employee reaches maximum medical improvement.

(b) The commissioner by rule shall establish a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.109, eff. September 1, 2005.

Sec. 408.103. AMOUNT OF TEMPORARY INCOME BENEFITS. (a) Subject to Sections 408.061 and 408.062, the amount of a temporary income benefit is equal to:

(1) 70 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or

(2) for the first 26 weeks, 75 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than $10 an hour.

(b) A temporary income benefit under Subsection (a)(2) may not exceed the employee's actual earnings for the previous year. It is presumed that the employee's actual earnings for the previous year

are equal to:

(1) the sum of the employee's wages as reported in the most recent four quarterly wage reports to the Texas Workforce Commission divided by 52;

(2) the employee's wages in the single quarter of the most recent four quarters in which the employee's earnings were highest, divided by 13, if the commissioner finds that the employee's most recent four quarters' earnings reported in the Texas Workforce Commission wage reports are not representative of the employee's usual earnings; or

(3) the amount the commissioner determines from other credible evidence to be the actual earnings for the previous year if the Texas Workforce Commission does not have a wage report reflecting at least one quarter's earnings because the employee worked outside the state during the previous year.

(c) A presumption under Subsection (b) may be rebutted by other credible evidence of the employee's actual earnings.

(d) The Texas Employment Commission shall provide information required under this section in the manner most efficient for transferring the information.

(e) For purposes of Subsection (a), if an employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.110, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 54 (S.B. 901), Sec. 1, eff. September 1, 2015.

Sec. 408.104. MAXIMUM MEDICAL IMPROVEMENT AFTER SPINAL SURGERY. (a) On application by either the employee or the insurance carrier, the commissioner by order may extend the 104-week period described by Section 401.011(30)(B) if the employee has had spinal surgery, or has been approved for spinal surgery under Section 408.026 and

commissioner rules, within 12 weeks before the expiration of the 104-week period. If an order is issued under this section, the order shall extend the statutory period for maximum medical improvement to a date certain, based on medical evidence presented to the commissioner.

(b) Either the employee or the insurance carrier may dispute an application for extension made under this section. A dispute under this subsection is subject to Chapter 410.

(c) The commissioner shall adopt rules to implement this section, including rules establishing procedures for requesting and disputing an extension.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 5, eff. Jan. 1, 1998.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.111, eff. September 1, 2005.

Sec. 408.105. SALARY CONTINUATION IN LIEU OF TEMPORARY INCOME BENEFITS. (a) In lieu of payment of temporary income benefits under this subchapter, an employer may continue to pay the salary of an employee who sustains a compensable injury under a contractual obligation between the employer and employee, such as a collective bargaining agreement, written agreement, or policy.

(b) Salary continuation may include wage supplementation if:

(1) employer reimbursement is not sought from the carrier as provided by Section 408.127; and

(2) the supplementation does not affect the employee's eligibility for any future income benefits.

Added by Acts 1999, 76th Leg., ch. 1003, Sec. 3, eff. Sept. 1, 1999.

SUBCHAPTER G. IMPAIRMENT INCOME BENEFITS

Sec. 408.121. IMPAIRMENT INCOME BENEFITS. (a) An employee's entitlement to impairment income benefits begins on the day after the date the employee reaches maximum medical improvement and ends on the earlier of:

(1) the date of expiration of a period computed at the rate of three weeks for each percentage point of impairment; or

(2) the date of the employee's death.

(b) The insurance carrier shall begin to pay impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement. Impairment income benefits shall be paid for a period based on the impairment rating, unless that rating is disputed under Subsection (c).

(c) If the insurance carrier disputes the impairment rating used under Subsection (a), the carrier shall pay the employee impairment income benefits for a period based on the carrier's reasonable assessment of the correct rating.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS. A claimant may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.27, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.112, eff. September 1, 2005.

Sec. 408.1225. DESIGNATED DOCTOR. (a) To be eligible to serve as a designated doctor, a doctor must maintain an active certification by the division.

(a-1) The commissioner by rule shall develop a process for the certification of a designated doctor.

(a-2) The rules adopted by the commissioner under Subsection (a-1) must:

(1) require the division to evaluate the qualification of designated doctors for certification using eligibility requirements, including:

(A) educational experience;

(B) previous training; and

(C) demonstrated ability to perform the specific designated doctor duties described by Section 408.0041; and

(2) require standard training and testing to be completed in accordance with policies and guidelines developed by the division.

(a-3) The division shall develop guidelines for certification training programs for certification of a designated doctor under Subsection (a-1) to ensure a designated doctor's competency and continued competency in providing assessments, including:

(1) a standard curriculum;

(2) standard course materials; and

(3) testing criteria.

(a-4) The division shall develop and implement a procedure to periodically review and update the guidelines developed under Subsection (a-3).

(a-5) The division may authorize an independent training and testing provider to conduct the certification program for the division under the guidelines developed under Subsection (a-3).

(b) The commissioner shall ensure the quality of designated doctor decisions and reviews through active monitoring of the decisions and reviews, and may take action as necessary to:

(1) restrict the participation of a designated doctor;

(2) deny renewal of a designated doctor's certification; or

(3) revoke a designated doctor's certification under Section 413.044.

(c) The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee has reached maximum medical improvement on the report unless the preponderance of the other medical evidence is to the contrary.

(d) The commissioner shall develop rules to ensure that a designated doctor called on to conduct an examination under Section 408.0041 has no conflict of interest in serving as a designated doctor in performing any examination.

(e) A designated doctor, other than a chiropractor, is subject to Section 408.0043. A designated doctor who is a chiropractor is subject to Section 408.0045. To the extent of a conflict between this section and Section 408.0043 or 408.0045, this section controls.

(f) A designated doctor shall continue providing services related to a case assigned to the designated doctor, including

performing subsequent examinations or acting as a resource for division disputes, unless the division authorizes the designated doctor to discontinue providing services. The commissioner by rule shall prescribe the circumstances under which a designated doctor is permitted to discontinue providing services, including:

(1) the doctor decides to stop practicing in the workers' compensation system; or

(2) the doctor relocates the doctor's residence or practice.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.112, eff. September 1, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 5, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 12, eff. September 1, 2011.

Sec. 408.123. CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING. (a) After an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating using the impairment rating guidelines described by Section 408.124. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor, and the treating doctor shall indicate agreement or disagreement with the certification and evaluation.

(b) A certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the commissioner to:

(1) the division;

(2) the employee; and

(3) the insurance carrier.

(c) The commissioner shall adopt a rule that provides that, at the conclusion of any examination in which maximum medical improvement is certified and any impairment rating is assigned by the treating doctor, written notice shall be given to the employee that

the employee may dispute the certification of maximum medical improvement and assigned impairment rating. The notice to the employee must state how to dispute the certification of maximum medical improvement and impairment rating.

(d) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the division shall notify the treating doctor of the requirements of this subchapter.

(e) Except as otherwise provided by this section, an employee's first valid certification of maximum medical improvement and first valid assignment of an impairment rating is final if the certification or assignment is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means.

(f) An employee's first certification of maximum medical improvement or assignment of an impairment rating may be disputed after the period described by Subsection (e) if:

(1) compelling medical evidence exists of:

(A) a significant error by the certifying doctor in applying the appropriate American Medical Association guidelines or in calculating the impairment rating;

(B) a clearly mistaken diagnosis or a previously undiagnosed medical condition; or

(C) improper or inadequate treatment of the injury before the date of the certification or assignment that would render the certification or assignment invalid; or

(2) other compelling circumstances exist as prescribed by commissioner rule.

(g) If an employee has not been certified as having reached maximum medical improvement before the expiration of 104 weeks after the date income benefits begin to accrue or the expiration date of any extension of benefits under Section 408.104, the impairment rating assigned after the expiration of either of those periods is final if the impairment rating is not disputed before the 91st day after the date written notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).

(h) If an employee's disputed certification of maximum medical improvement or assignment of impairment rating is finally modified,

overturned, or withdrawn, the first certification or assignment made after the date of the modification, overturning, or withdrawal becomes final if the certification or assignment is not disputed before the 91st day after the date notification of the certification or assignment is provided to the employee and the carrier by verifiable means. A certification or assignment may be disputed after the 90th day only as provided by Subsection (f).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 278, Sec. 1, eff. June 18, 2003; Acts 2003, 78th Leg., ch. 1190, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 2, eff. June 21, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.113, eff. September 1, 2005.

Sec. 408.124. IMPAIRMENT RATING GUIDELINES. (a) An award of an impairment income benefit, whether by the commissioner or a court, must be based on an impairment rating determined using the impairment rating guidelines described by this section.

(b) For determining the existence and degree of an employee's impairment, the division shall use "Guides to the Evaluation of Permanent Impairment," third edition, second printing, dated February 1989, published by the American Medical Association.

(c) Notwithstanding Subsection (b), the commissioner by rule may adopt the fourth edition of the "Guides to the Evaluation of Permanent Impairment," published by the American Medical Association, or a subsequent edition of those guides, for determining the existence and degree of an employee's impairment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 12, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.114, eff. September 1, 2005.

Sec. 408.125. DISPUTE AS TO IMPAIRMENT RATING. (a) If an impairment rating is disputed, the commissioner shall direct the employee to the next available doctor on the division's list of designated doctors, as provided by Section 408.0041.

(b) The designated doctor shall report in writing to the division.

(c) The report of the designated doctor shall have presumptive weight, and the division shall base the impairment rating on that report unless the preponderance of the other medical evidence is to the contrary. If the preponderance of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the division, the division shall adopt the impairment rating of one of the other doctors.

(d) To avoid undue influence on a person selected as a designated doctor under this section, only the injured employee or an appropriate member of the staff of the division may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate division staff members. The designated doctor may initiate communication with any doctor who has previously treated or examined the injured employee for the work-related injury.

(e) Notwithstanding Subsection (d), the treating doctor and the insurance carrier are both responsible for sending to the designated doctor all the injured employee's medical records that are in their possession and that relate to the issue to be evaluated by the designated doctor. The treating doctor and the insurance carrier may send the records without a signed release from the employee. The designated doctor is authorized to receive the employee's confidential medical records to assist in the resolution of disputes. The treating doctor and the insurance carrier may also send the designated doctor an analysis of the injured employee's medical condition, functional abilities, and return-to-work opportunities.

(f) A violation of Subsection (d) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.28, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 5.04, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.115, eff. September 1, 2005.

Sec. 408.126. AMOUNT OF IMPAIRMENT INCOME BENEFITS. Subject to Sections 408.061 and 408.062, an impairment income benefit is equal to 70 percent of the employee's average weekly wage.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.127. REDUCTION OF IMPAIRMENT INCOME BENEFITS. (a) An insurance carrier shall reduce impairment income benefits to an employee by an amount equal to employer payments made under Section 408.003 that are not reimbursed or reimbursable under that section.

(b) The insurance carrier shall remit the amount of a reduction under this section to the employer who made the payments.

(c) The commissioner shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.116, eff. September 1, 2005.

Sec. 408.128. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. (a) An employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage.

(b) An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.129. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. (a) On approval by the commissioner of a written request received from an employee, an insurance carrier shall accelerate the payment of impairment income benefits to the employee. The accelerated payment

may not exceed a rate of payment equal to that of the employee's net preinjury wage.

(b) The commissioner shall approve the request and order the acceleration of the benefits if the commissioner determines that the acceleration is:

(1) required to relieve hardship; and

(2) in the overall best interest of the employee.

(c) The duration of the impairment income benefits to which the employee is entitled shall be reduced to offset the increased payments caused by the acceleration taking into consideration the discount for present payment computed at the rate provided under Section 401.023.

(d) The commissioner may prescribe forms necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.117, eff. September 1, 2005.

SUBCHAPTER H. SUPPLEMENTAL INCOME BENEFITS

Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An award of a supplemental income benefit, whether by the commissioner or a court, shall be made in accordance with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.118, eff. September 1, 2005.

Sec. 408.1415. WORK SEARCH COMPLIANCE STANDARDS. (a) The commissioner by rule shall adopt compliance standards for supplemental income benefit recipients that require each recipient to demonstrate an active effort to obtain employment. To be eligible to receive supplemental income benefits under this chapter, a recipient must provide evidence satisfactory to the division of:

(1) active participation in a vocational rehabilitation program conducted by the Department of Assistive and Rehabilitative Services or a private vocational rehabilitation provider;

(2) active participation in work search efforts conducted through the Texas Workforce Commission; or

(3) active work search efforts documented by job applications submitted by the recipient.

(b) In adopting rules under this section, the commissioner shall:

(1) establish the level of activity that a recipient should have with the Texas Workforce Commission and the Department of Assistive and Rehabilitative Services;

(2) define the number of job applications required to be submitted by a recipient to satisfy the work search requirements; and

(3) consider factors affecting the availability of employment, including recognition of access to employment in rural areas, economic conditions, and other appropriate employment availability factors.

(c) The commissioner may consult with the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and other appropriate entities in adopting rules under this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.119, eff. September 1, 2005.

Sec. 408.142. SUPPLEMENTAL INCOME BENEFITS. (a) An employee is entitled to supplemental income benefits if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:

(1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;

(2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and

(4) has complied with the requirements adopted under Section 408.1415.

(b) If an employee is not entitled to supplemental income benefits at the time of payment of the final impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage, the employee may become entitled to

supplemental income benefits at any time within one year after the date the impairment income benefit period ends if:

(1) the employee earns wages for at least 90 days that are less than 80 percent of the employee's average weekly wage;

(2) the employee meets the requirements of Subsections (a)(1), (3), and (4); and

(3) the decrease in earnings is a direct result of the employee's impairment from the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.1195, eff. September 1, 2005.

Sec. 408.143. EMPLOYEE STATEMENT. (a) After the commissioner's initial determination of supplemental income benefits, the employee must file a statement with the insurance carrier stating:

(1) that the employee has earned less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(2) the amount of wages the employee earned in the filing period provided by Subsection (b); and

(3) that the employee has complied with the requirements adopted under Section 408.1415.

(b) The statement required under this section must be filed quarterly on a form and in the manner provided by the commissioner. The commissioner may modify the filing period as appropriate to an individual case.

(c) Failure to file a statement under this section relieves the insurance carrier of liability for supplemental income benefits for the period during which a statement is not filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.120, eff. September 1, 2005.

Sec. 408.144. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS. (a)

Supplemental income benefits are calculated quarterly and paid monthly.

(b) Subject to Section 408.061, the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408.143(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, 408.044, 408.0445, or 408.0446.

(c) For the purposes of this subchapter, if an employee is offered a bona fide position of employment that the employee is capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly wages are considered to be equal to the weekly wages for the position offered to the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.1205, eff. September 1, 2005.

Sec. 408.145. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS. An insurance carrier shall pay supplemental income benefits beginning not later than the seventh day after the expiration date of the employee's impairment income benefit period and shall continue to pay the benefits in a timely manner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.146. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION. (a) If an employee earns wages that are at least 80 percent of the employee's average weekly wage for at least 90 days during a time that the employee receives supplemental income benefits, the employee ceases to be entitled to supplemental income benefits for the filing period.

(b) Supplemental income benefits terminated under this section shall be reinitiated when the employee:

(1) satisfies the conditions of Section 408.142(b); and

(2) files the statement required under Section 408.143.

(c) Notwithstanding any other provision of this section, an

employee who is not entitled to supplemental income benefits for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. (a) An insurance carrier may request a benefit review conference to contest an employee's entitlement to supplemental income benefits or the amount of supplemental income benefits.

(b) If an insurance carrier fails to make a request for a benefit review conference within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to supplemental income benefits and the amount of supplemental income benefits for that period of supplemental income benefits.

(c) If an insurance carrier disputes the commissioner's determination that an employee is entitled to supplemental income benefits or the amount of supplemental income benefits due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for supplemental income benefits accrued but not paid and interest on that amount, according to Section 408.064. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b), (f), and (i).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.53, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 8.02, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.121, eff. September 1, 2005.

Sec. 408.148. EMPLOYEE DISCHARGE AFTER TERMINATION. The commissioner may reinstate supplemental income benefits to an employee who is discharged within 12 months of the date of losing

entitlement to supplemental income benefits under Section 408.146(c) if the commissioner finds that the employee was discharged at that time with the intent to deprive the employee of supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.122, eff. September 1, 2005.

Sec. 408.149. STATUS REVIEW; BENEFIT REVIEW CONFERENCE. (a) Not more than once in each period of 12 calendar months, an employee and an insurance carrier each may request the commissioner to review the status of the employee and determine whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury.

(b) Either party may request a benefit review conference to contest a determination of the commissioner at any time, subject only to the limits placed on the insurance carrier by Section 408.147.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.123, eff. September 1, 2005.

Sec. 408.150. VOCATIONAL REHABILITATION. (a) The division shall refer an employee to the Department of Assistive and Rehabilitative Services with a recommendation for appropriate services if the division determines that an employee could be materially assisted by vocational rehabilitation or training in returning to employment or returning to employment more nearly approximating the employee's preinjury employment. The division shall also notify insurance carriers of the need for vocational rehabilitation or training services. The insurance carrier may provide services through a private provider of vocational rehabilitation services under Section 409.012.

(b) An employee who refuses services or refuses to cooperate with services provided under this section by the Department of Assistive and Rehabilitative Services or a private provider loses

entitlement to supplemental income benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1426, Sec. 13, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.124, eff. September 1, 2005.

Sec. 408.151. MEDICAL EXAMINATIONS FOR SUPPLEMENTAL INCOME BENEFITS. (a) On or after the second anniversary of the date the commissioner makes the initial award of supplemental income benefits, an insurance carrier may not require an employee who is receiving supplemental income benefits to submit to a medical examination more than annually if, in the preceding year, the employee's medical condition resulting from the compensable injury has not improved sufficiently to allow the employee to return to work.

(b) If a dispute exists as to whether the employee's medical condition has improved sufficiently to allow the employee to return to work, the commissioner shall direct the employee to be examined by a designated doctor chosen by the division. The designated doctor shall report to the division. The report of the designated doctor has presumptive weight, and the division shall base its determination of whether the employee's medical condition has improved sufficiently to allow the employee to return to work on that report unless the preponderance of the other medical evidence is to the contrary.

Added by Acts 1999, 76th Leg., ch. 850, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.125, eff. September 1, 2005.

SUBCHAPTER I. LIFETIME INCOME BENEFITS

Sec. 408.161. LIFETIME INCOME BENEFITS. (a) Lifetime income benefits are paid until the death of the employee for:

(1) total and permanent loss of sight in both eyes;
(2) loss of both feet at or above the ankle;
(3) loss of both hands at or above the wrist;
(4) loss of one foot at or above the ankle and the loss of

one hand at or above the wrist;

(5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg;

(6) a physically traumatic injury to the brain resulting in incurable insanity or imbecility; or

(7) third degree burns that cover at least 40 percent of the body and require grafting, or third degree burns covering the majority of either both hands or one hand and the face.

(b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

(c) Subject to Section 408.061, the amount of lifetime income benefits is equal to 75 percent of the employee's average weekly wage. Benefits being paid shall be increased at a rate of three percent a year notwithstanding Section 408.061.

(d) An insurance carrier may pay lifetime income benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the lifetime income benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1443, Sec. 7, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1426, Sec. 14, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 9.01, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.126, eff. September 1, 2005.

Sec. 408.162. SUBSEQUENT INJURY FUND BENEFITS. (a) If a subsequent compensable injury, with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed.

(b) The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER J. DEATH AND BURIAL BENEFITS

Sec. 408.181. DEATH BENEFITS. (a) An insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death.

(b) Subject to Section 408.061, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage.

(c) The commissioner by rule shall establish requirements for agreements under which death benefits may be paid monthly. Death benefits may be paid monthly only:

(1) on the request of the legal beneficiary and the agreement of the legal beneficiary and the insurance carrier; and

(2) in compliance with the requirements adopted by the commissioner.

(d) An insurance carrier may pay death benefits through an annuity if the annuity agreement meets the terms and conditions for annuity agreements adopted by the commissioner by rule. The establishment of an annuity under this subsection does not relieve the insurance carrier of the liability under this title for ensuring that the death benefits are paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 15, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.127, eff. September 1, 2005.

Sec. 408.182. DISTRIBUTION OF DEATH BENEFITS. (a) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(b) If there is an eligible spouse and no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild and no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is no eligible spouse, no eligible child, and no eligible grandchild, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents, stepparents, siblings, or grandparents of the deceased.

(d-1) If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits made under this subsection may not exceed one payment per household. Total payments under this section may not exceed 104 weeks regardless of the number of surviving eligible parents.

(d-2) Except as otherwise provided by this subsection, to be eligible to receive death benefits under Subsection (d-1), an eligible parent must file with the division a claim for those benefits not later than the first anniversary of the date of the injured employee's death from the compensable injury. The claim must designate all eligible parents and necessary information for payment to the eligible parents. The insurance carrier is not liable for payment to any eligible parent not designated on the claim. Failure to file a claim in the time required bars the claim unless good cause exists for the failure to file a claim under this section.

(e) If an employee is not survived by legal beneficiaries or eligible parents, the death benefits shall be paid to the subsequent injury fund under Section 403.007.

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's death.

(2) "Eligible grandchild" means a grandchild of a deceased employee who is a dependent of the deceased employee and whose parent is not an eligible child.

(3) "Eligible spouse" means the surviving spouse of a

deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the division.

(4) "Eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent. The term does not include a parent whose parental rights have been terminated.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.128, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 344 (H.B. 1058), Sec. 1, eff. September 1, 2009.

Sec. 408.183. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of an employee's death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commissioner rule.

(b-1) Notwithstanding Subsection (b), an eligible spouse who remarried is eligible for death benefits for life if the employee was a first responder, as defined by Section 504.055, who suffered death in the course and scope of employment or while providing services as a volunteer.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.

(d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is

entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:

(1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution;

(2) the date the child attains the age of 25; or

(3) the date the child dies.

(e) A child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee's death is entitled to receive benefits until the earlier of:

(1) the date the child dies; or

(2) if the child is dependent:

(A) because the child is an individual with a physical or mental disability, the date the child no longer has the disability; or

(B) because of a reason other than a physical or mental disability, the date of the expiration of 364 weeks of death benefit payments.

(f) An eligible grandchild is entitled to receive death benefits until the earlier of:

(1) the date the grandchild dies; or

(2) if the grandchild is:

(A) a minor at the time of the employee's death, the date the grandchild ceases to be a minor; or

(B) not a minor at the time of the employee's death, the date of the expiration of 364 weeks of death benefit payments.

(f-1) An eligible parent who is not a surviving dependent of the deceased employee is entitled to receive death benefits until the earlier of:

(1) the date the eligible parent dies; or

(2) the date of the expiration of 104 weeks of death benefit payments.

(g) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

(1) the date the person dies; or

(2) the date of the expiration of 364 weeks of death benefit payments.

(h) Section 401.011(16) does not apply to the use of the term "disability" in this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.129, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 7, eff. September 1, 2007.
Acts 2015, 84th Leg., R.S., Ch. 1018 (H.B. 1094), Sec. 1, eff. September 1, 2015.

Sec. 408.184. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries as provided by Sections 408.182 and 408.183.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries remain constant for 104 weeks. After the 104th week, the spouse's share of benefits shall be redistributed as provided by Sections 408.182 and 408.183.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay to the subsequent injury fund an amount computed by subtracting the total amount paid from the amount that would be paid for 364 weeks of death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.185. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES. On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee not to exceed 25 percent of the settlement, paid periodically, and based on time and expenses.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.186. BURIAL BENEFITS. (a) If the death of an

employee results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

(1) the actual costs incurred for reasonable burial expenses; or

(2) $10,000.

(b) If the employee died away from the employee's usual place of employment, the insurance carrier shall pay the reasonable cost of transporting the body, not to exceed the cost of transporting the body to the employee's usual place of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 16, eff. Sept. 1, 1999.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 192 (S.B. 653), Sec. 1, eff. September 1, 2015.

Sec. 408.187. AUTOPSY. (a) If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy.

(b) A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The commissioner shall require the insurance carrier to pay the costs of a procedure ordered under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.130, eff. September 1, 2005.

SUBCHAPTER K. PROTECTION OF RIGHTS TO BENEFITS

Sec. 408.201. BENEFITS EXEMPT FROM LEGAL PROCESS. Benefits are exempt from:

(1) garnishment;

(2) attachment;

(3) judgment; and

(4) other actions or claims.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 408.202. ASSIGNABILITY OF BENEFITS. Benefits are not assignable, except a legal beneficiary may, with the commissioner's approval, assign the right to death benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.131, eff. September 1, 2005.

Sec. 408.203. ALLOWABLE LIENS. (a) An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, in the following order of priority:

(1) an attorney's fee for representing an employee or legal beneficiary in a matter arising under this subtitle;

(2) court-ordered child support; or

(3) a subrogation interest established under this subtitle.

(b) A benefit that is subject to a lien or claim for payment of court-ordered child support shall be paid as required by an order or writ of income withholding under Chapter 158, Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.53, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 610, Sec. 22, eff. Sept. 1, 2003.

SUBCHAPTER L. ATTORNEY'S FEES IN WORKERS' COMPENSATION BENEFIT MATTERS

Sec. 408.221. ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL. (a) An attorney's fee, including a contingency fee, for representing a claimant before the division or court under this subtitle must be approved by the commissioner or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the division or court. Except as provided by Subsection (c) or Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) An insurance carrier that seeks judicial review under Subchapter G, Chapter 410, of a final decision of the appeals panel regarding compensability or eligibility for, or the amount of, income or death benefits is liable for reasonable and necessary attorney's fees as provided by Subsection (d) incurred by the claimant as a result of the insurance carrier's appeal if the claimant prevails on an issue on which judicial review is sought by the insurance carrier in accordance with the limitation of issues contained in Section 410.302. If the carrier appeals multiple issues and the claimant prevails on some, but not all, of the issues appealed, the court shall apportion and award fees to the claimant's attorney only for the issues on which the claimant prevails. In making that apportionment, the court shall consider the factors prescribed by Subsection (d). This subsection does not apply to attorney's fees for which an insurance carrier may be liable under Section 408.147. An award of attorney's fees under this subsection is not subject to commissioner rules adopted under Subsection (f).

(d) In approving an attorney's fee under this section, the commissioner or court shall consider:

(1) the time and labor required;

(2) the novelty and difficulty of the questions involved;

(3) the skill required to perform the legal services properly;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved in the controversy;

(6) the benefits to the claimant that the attorney is responsible for securing; and

(7) the experience and ability of the attorney performing the services.

(e) The commissioner by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(f) The commissioner by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

(g) An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier

admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the division.

(h) An attorney's fee shall be paid to the attorney by separate draft.

(i) Except as provided by Subsection (c) or Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.01, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.132, eff. September 1, 2005.

Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a) The amount of an attorney's fee for defending an insurance carrier in a workers' compensation action brought under this subtitle must be approved by the division or court and determined by the division or court to be reasonable and necessary.

(b) In determining whether a fee is reasonable under this section, the division or court shall consider issues analogous to those listed under Section 408.221(d). The defense counsel shall present written evidence to the division or court relating to:

(1) the time spent and expenses incurred in defending the case; and

(2) other evidence considered necessary by the division or court in making a determination under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 8.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.133, eff. September 1, 2005.

CHAPTER 409. COMPENSATION PROCEDURES

SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS

Sec. 409.001. NOTICE OF INJURY TO EMPLOYER. (a) An employee or a person acting on the employee's behalf shall notify the employer

of the employee of an injury not later than the 30th day after the date on which:

(1) the injury occurs; or

(2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

(b) The notice required under Subsection (a) may be given to:

(1) the employer; or

(2) an employee of the employer who holds a supervisory or management position.

(c) If the injury is an occupational disease, for purposes of this section, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employee's injury;

(2) the division determines that good cause exists for failure to provide notice in a timely manner; or

(3) the employer or the employer's insurance carrier does not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.134, eff. September 1, 2005.

Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a person acting on the employee's behalf shall file with the division a claim for compensation for an injury not later than one year after the date on which:

(1) the injury occurred; or

(2) if the injury is an occupational disease, the employee

knew or should have known that the disease was related to the employee's employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.135, eff. September 1, 2005.

Sec. 409.004. EFFECT OF FAILURE TO FILE CLAIM FOR COMPENSATION. Failure to file a claim for compensation with the division as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

(1) good cause exists for failure to file a claim in a timely manner; or

(2) the employer or the employer's insurance carrier does not contest the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.136, eff. September 1, 2005.

Sec. 409.005. REPORT OF INJURY; MODIFIED DUTY PROGRAM NOTICE; ADMINISTRATIVE VIOLATION. (a) An employer shall report to the employer's insurance carrier if:

(1) an injury results in the absence of an employee of that employer from work for more than one day; or

(2) an employee of the employer notifies that employer of an occupational disease under Section 409.001.

(b) The report under Subsection (a) must be made not later than the eighth day after:

(1) the employee's absence from work for more than one day due to an injury; or

(2) the day on which the employer receives notice under Section 409.001 that the employee has contracted an occupational disease.

(c) The employer shall deliver a written copy of the report under Subsection (a) to the injured employee at the time that the report is made to the insurance carrier.

(d) The insurance carrier shall file the report of the injury on behalf of the policyholder. Except as provided by Subsection (e), the insurance carrier must electronically file the report with the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(e) The commissioner may waive the electronic filing requirement under Subsection (d) and allow an insurance carrier to mail or deliver the report to the division not later than the seventh day after the date on which the carrier receives the report from the employer.

(f) A report required under this section may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

(g) In addition to any information required under Subsection (h), the report provided to the injured employee under Subsection (c) must contain a summary written in plain language of the employee's statutory rights and responsibilities under this subtitle.

(h) The commissioner may adopt rules relating to:

(1) the information that must be contained in a report required under this section, including the summary of rights and responsibilities required under Subsection (g); and

(2) the development and implementation of an electronic filing system for injury reports under this section.

(i) An employer and insurance carrier shall file subsequent reports as required by commissioner rule.

(j) The employer shall, on the written request of the employee, a doctor, the insurance carrier, or the division, notify the employee, the employee's treating doctor if known to the employer, and the insurance carrier of the existence or absence of opportunities for modified duty or a modified duty return-to-work program available through the employer. If those opportunities or that program exists, the employer shall identify the employer's contact person and provide other information to assist the doctor, the employee, and the insurance carrier to assess modified duty or return-to-work options.

(k) This section does not prohibit the commissioner from imposing requirements relating to return-to-work under other authority granted to the division in this subtitle.

(l) A person commits an administrative violation if the person fails to comply with this section unless good cause exists.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.29, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 3.01, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.137, eff. September 1, 2005.

Sec. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION. (a) An employer shall maintain a record of each employee injury as reported by an employee or otherwise made known to the employer.

(b) The record shall be available to the division at reasonable times and under conditions prescribed by the commissioner.

(c) The commissioner may adopt rules relating to the information that must be contained in an employer record under this section.

(d) Information contained in a record maintained under this section is not an admission by the employer that:

(1) the injury did in fact occur; or

(2) a fact maintained in the record is true.

(e) A person commits an administrative violation if the person fails to comply with this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.138, eff. September 1, 2005.

Sec. 409.007. DEATH BENEFIT CLAIMS. (a) A person must file a claim for death benefits with the division not later than the first anniversary of the date of the employee's death.

(b) Failure to file in the time required by Subsection (a) bars the claim unless:

(1) the person is a minor or incompetent; or

(2) good cause exists for the failure to file a claim under this section.

(c) A separate claim must be filed for each legal beneficiary

unless the claim expressly includes or is made on behalf of another person.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.139, eff. September 1, 2005.

Sec. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 409.009. SUBCLAIMS. A person may file a written claim with the division as a subclaimant if the person has:

(1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and

(2) sought and been refused reimbursement from the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.140, eff. September 1, 2005.

Sec. 409.0091. REIMBURSEMENT PROCEDURES FOR CERTAIN ENTITIES. (a) In this section, "health care insurer" means an insurance carrier and an authorized representative of an insurance carrier, as described by Section 402.084(c-1).

(b) This section applies only to a request for reimbursement by

a health care insurer.

(c) Health care paid by a health care insurer may be reimbursable as a medical benefit.

(d) Except as provided by Subsection (e), this section does not prohibit or limit a substantive defense by a workers' compensation insurance carrier that the health care paid for by the health care insurer was not a medical benefit or not a correct payment. A subclaimant may not be reimbursed for payment for any health care that was previously denied by a workers' compensation insurance carrier under:

(1) a preauthorization review of the specific service or medical procedure; or

(2) a medical necessity review that determined the service was not medically necessary for the treatment of a compensable injury.

(e) It is not a defense to a subclaim by a health care insurer that:

(1) the subclaimant has not sought reimbursement from a health care provider or the subclaimant's insured;

(2) the subclaimant or the health care provider did not request preauthorization under Section 413.014 or rules adopted under that section; or

(3) the health care provider did not bill the workers' compensation insurance carrier, as provided by Section 408.027, before the 95th day after the date the health care for which the subclaimant paid was provided.

(f) Subject to the time limits under Subsection (n), the health care insurer shall provide, with any reimbursement request, the tax identification number of the health care insurer and the following to the workers' compensation insurance carrier, in a form prescribed by the division:

(1) information identifying the workers' compensation case, including:

(A) the division claim number;

(B) the name of the patient or claimant;

(C) the social security number of the patient or claimant; and

(D) the date of the injury; and

(2) information describing the health care paid by the health care insurer, including:

(A) the name of the health care provider;
(B) the tax identification number of the health care provider;
(C) the date of service;
(D) the place of service;
(E) the ICD-9 code;
(F) the CPT, HCPCS, NDC, or revenue code;
(G) the amount charged by the health care provider; and
(H) the amount paid by the health care insurer.

(g) The workers' compensation insurance carrier shall reduce the amount of the reimbursable subclaim by any payments the workers' compensation insurance carrier previously made to the same health care provider for the provision of the same health care on the same dates of service. In making such a reduction in reimbursement to the subclaimant, the workers' compensation insurance carrier shall provide evidence of the previous payments made to the provider.

(h) For each medical benefit paid, the workers' compensation insurance carrier shall pay to the health care insurer the lesser of the amount payable under the applicable fee guideline as of the date of service or the actual amount paid by the health care insurer. In the absence of a fee guideline for a specific service paid, the amount per service paid by the health care insurer shall be considered in determining a fair and reasonable payment under rules under this subtitle defining fair and reasonable medical reimbursement. The health care insurer may not recover interest as a part of the subclaim.

(i) On receipt of a request for reimbursement under this section, the workers' compensation insurance carrier shall respond to the request in writing not later than the 90th day after the date on which the request is received. If additional information is requested under Subsection (j), the workers' compensation insurance carrier shall respond not later than the 120th day unless the time is extended under Subsection (j).

(j) If the workers' compensation insurance carrier requires additional information from the health care insurer, the workers' compensation insurance carrier shall send notice to the health care insurer requesting the additional information. The health care insurer shall have 30 days to provide the requested information. The workers' compensation insurance carrier and the health care insurer may establish additional periods for compliance with this subsection

by written mutual agreement.

(k) Unless the parties have agreed to an extension of time under Subsection (j), the health care insurer must file a written subclaim under this section not later than the 120th day after:

(1) the workers' compensation insurance carrier fails to respond to a request for reimbursement; or

(2) receipt of the workers' compensation insurance carrier's notice of denial to pay or reduction in reimbursement.

(l) Any dispute that arises from a failure to respond to or a reduction or denial of a request for reimbursement of services that form the basis of the subclaim must go through the appropriate dispute resolution process under this subtitle and division rules. The commissioner of insurance and the commissioner of workers' compensation shall modify rules under this subtitle as necessary to allow the health care insurer access as a subclaimant to the appropriate dispute resolution process. Rules adopted or amended by the commissioner of insurance and the commissioner of workers' compensation must recognize the status of a subclaimant as a party to the dispute. Rules modified or adopted under this section should ensure that the workers' compensation insurance carrier is not penalized, including not being held responsible for costs of obtaining the additional information, if the workers' compensation insurance carrier denies payment in order to move to dispute resolution to obtain additional information to process the request.

(m) In a dispute filed under Chapter 410 that arises from a subclaim under this section, a hearing officer may issue an order regarding compensability or eligibility for benefits and order the workers' compensation insurance carrier to reimburse health care services paid by the health care insurer as appropriate under this subtitle. Any dispute over the amount of medical benefits owed under this section, including medical necessity issues, shall be determined by medical dispute resolution under Sections 413.031 and 413.032.

(n) Except as provided by Subsection (s), a health care insurer must file a request for reimbursement with the workers' compensation insurance carrier not later than six months after the date on which the health care insurer received information under Section 402.084(c-3) and not later than 18 months after the health care insurer paid for the health care service.

(o) The commissioner and the commissioner of insurance shall amend or adopt rules to specify the process by which an employee who

has paid for health care services described by Section 408.027(d) may seek reimbursement.

(p) Until September 1, 2011, a workers' compensation insurance carrier is exempt from any department and division data reporting requirements affected by a lack of information caused by reimbursement requests or subclaims under this section. If data reporting is required after that date, the requirement is prospective only and may not require any data to be reported between September 1, 2007, and the date required reporting is reinstated. The department and the division may make legislative recommendations to the 82nd Legislature for the collection of reimbursement request and subclaim data.

(q) An action or failure to act by a workers' compensation insurance carrier under this section may not serve as the basis for an examination or administrative action by the department or the division, or for any cause of action by any person, except for judicial review under this subtitle.

(r) The commissioner of insurance and the commissioner of workers' compensation may adopt additional rules to clarify the processes required by, fulfill the purpose of, or assist the parties in the proper adjudication of subclaims under this section.

(s) On or after September 1, 2007, from information provided to a health care insurer before January 1, 2007, under Section 402.084(c-3), the health care insurer may file not later than March 1, 2008:

(1) a subclaim with the division under Subsection (l) if a request for reimbursement has been presented and denied by a workers' compensation insurance carrier; or

(2) a request for reimbursement under Subsection (f) if a request for reimbursement has not previously been presented and denied by the workers' compensation insurance carrier.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 8, eff. September 1, 2007.

Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of an injury or death from any person, the division shall mail to the employee or legal beneficiary a clear and concise description of:

(1) the services provided by:

(A) the division; and

(B) the office of injured employee counsel, including the services of the ombudsman program;

(2) the division's procedures; and

(3) the person's rights and responsibilities under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.141, eff. September 1, 2005.

Sec. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS. (a) Immediately on receiving notice of an injury or death from any person, the division shall mail to the employer a description of:

(1) the services provided by the division and the office of injured employee counsel;

(2) the division's procedures; and

(3) the employer's rights and responsibilities under this subtitle.

(b) The information must include a clear statement of the following rights of the employer:

(1) the right to be present at all administrative proceedings relating to an employee's claim;

(2) the right to present relevant evidence relating to an employee's claim at any proceeding;

(3) the right to report suspected fraud;

(4) the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits;

(5) the right to receive notice, after making a written request to the insurance carrier, of:

(A) a proposal to settle a claim; or

(B) an administrative or a judicial proceeding relating to the resolution of a claim; and

(6) the right to contest the failure of the insurance carrier to provide accident prevention services under Subchapter E, Chapter 411.

(c) The division is not required to provide the information to an employer more than once during a calendar year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.142, eff. September 1, 2005.

Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION. (a) The division shall analyze each report of injury received from an employer under this chapter to determine whether the injured employee would be assisted by vocational rehabilitation.

(b) If the division determines that an injured employee would be assisted by vocational rehabilitation, the division shall notify:

(1) the injured employee in writing of the services and facilities available through the Department of Assistive and Rehabilitative Services and private providers of vocational rehabilitation; and

(2) the Department of Assistive and Rehabilitative Services and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(c) The division shall cooperate with the office of injured employee counsel, the Department of Assistive and Rehabilitative Services, and private providers of vocational rehabilitation in the provision of services and facilities to employees by the Department of Assistive and Rehabilitative Services.

(d) A private provider of vocational rehabilitation services may register with the division.

(e) The commissioner by rule may require that a private provider of vocational rehabilitation services maintain certain credentials and qualifications in order to provide services in connection with a workers' compensation insurance claim.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(127), eff. June 17, 2011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.143, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(127), eff. June 17, 2011.

Sec. 409.013. PLAIN LANGUAGE INFORMATION; NOTIFICATION OF INJURED EMPLOYEE. (a) The division shall develop information for public dissemination about the benefit process and the compensation procedures established under this chapter. The information must be written in plain language and must be available in English and Spanish.

(b) On receipt of a report under Section 409.005, the division shall contact the affected employee by mail or by telephone and shall provide the information required under Subsection (a) to that employee, together with any other information that may be prepared by the office of injured employee counsel or the division for public dissemination that relates to the employee's situation, such as information relating to back injuries or occupational diseases.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.30, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.144, eff. September 1, 2005.

SUBCHAPTER B. PAYMENT OF BENEFITS

Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the 15th day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

(1) begin the payment of benefits as required by this subtitle; or

(2) notify the division and the employee in writing of its refusal to pay and advise the employee of:

(A) the right to request a benefit review conference; and

(B) the means to obtain additional information from the division.

(a-1) An insurance carrier that fails to comply with Subsection

(a) does not waive the carrier's right to contest the compensability of the injury as provided by Subsection (c) but commits an administrative violation subject to Subsection (e).

(a-2) An insurance carrier is not required to comply with Subsection (a) if the insurance carrier has accepted the claim as a compensable injury and income or death benefits have not yet accrued but will be paid by the insurance carrier when the benefits accrue and are due.

(b) An insurance carrier shall notify the division in writing of the initiation of income or death benefit payments in the manner prescribed by commissioner rules.

(c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

(e) An insurance carrier commits an administrative violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section.

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 939, Sec. 1

(f) For purposes of this section, "written notice" to a certified self-insurer occurs only on written notice to the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c).

Text of subsec. (f) as added by Acts 2003, 78th Leg., ch. 1100, Sec. 1

(f) For purposes of this section:

(1) a certified self-insurer receives notice on the date the qualified claims servicing contractor designated by the certified self-insurer under Section 407.061(c) receives notice; and

(2) a political subdivision that self-insures under Section 504.011, either individually or through an interlocal agreement with other political subdivisions, receives notice on the date the intergovernmental risk pool or other entity responsible for

administering the claim for the political subdivision receives notice.

(j) Each insurance carrier shall establish a single point of contact in the carrier's office for an injured employee for whom the carrier receives a notice of injury.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 939, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1100, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.145, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 13, eff. September 1, 2011.

Sec. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal.

(b) The grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

(c) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commissioner.

(d) In this subsection, the terms "emergency medical technician" and "firefighter" have the meanings assigned by Section 607.051, Government Code. In addition to the other requirements of this section, if an insurance carrier's notice of refusal to pay benefits under Section 409.021 is sent in response to a claim for compensation resulting from an emergency medical technician's or a firefighter's disability or death for which a presumption is claimed to be applicable under Subchapter B, Chapter 607, Government Code, the notice must include a statement by the carrier that:

(1) explains why the carrier determined a presumption under that subchapter does not apply to the claim for compensation; and

(2) describes the evidence that the carrier reviewed in

making the determination described by Subdivision (1).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.146, eff. September 1, 2005.
Acts 2015, 84th Leg., R.S., Ch. 224 (H.B. 1388), Sec. 2, eff. May 29, 2015.

Sec. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall continue to pay benefits promptly as and when the benefits accrue without a final decision, order, or other action of the commissioner, except as otherwise provided.

(b) Benefits shall be paid solely to the order of the employee or the employee's legal beneficiary.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails to comply with this section.

(d) An insurance carrier that commits multiple violations of this section commits an additional administrative violation and is subject to:

(1) the sanctions provided under Section 415.023; and

(2) revocation of the right to do business under the workers' compensation laws of this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.147, eff. September 1, 2005.

Sec. 409.0231. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a) An insurance carrier shall offer employees entitled to the payment of benefits for a period of sufficient duration the option of receiving the payments by electronic funds transfer. The insurance carrier shall provide the necessary forms to an employee who requests that benefits be paid by electronic funds transfer.

(b) The commissioner shall adopt rules in consultation with the Texas Department of Information Resources as necessary to implement this section, including rules prescribing a period of benefits that is of sufficient duration to allow payment by electronic funds

transfer.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.148, eff. September 1, 2005.

Sec. 409.0232. TIMELINESS OF PAYMENTS. An insurance carrier is considered to have paid benefits in a timely manner if a payment:

(1) is made by electronic funds transfer and is deposited in the employee's account on or before the benefit payment due date;

(2) is made by mail and is mailed in time for the payment to be postmarked on or before the benefit payment due date; or

(3) is to be picked up by the employee and the payment is made available to the employee during regular business hours not later than the opening of business on the benefit payment due date.

Added by Acts 1999, 76th Leg., ch. 690, Sec. 1, eff. June 18, 1999.

Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file with the division a notice of termination or reduction of benefits, including the reasons for the termination or reduction, not later than the 10th day after the date on which benefits are terminated or reduced.

(b) An insurance carrier commits an administrative violation if the insurance carrier does not have reasonable grounds to terminate or reduce benefits, as determined by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.149, eff. September 1, 2005.

CHAPTER 410. ADJUDICATION OF DISPUTES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A proceeding before the division to determine the liability of an

insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.150, eff. September 1, 2005.

Sec. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Except as otherwise provided by this chapter, Chapter 2001, Government Code does not apply to a proceeding under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 410.005. VENUE FOR ADMINISTRATIVE PROCEEDINGS. (a) Unless the division determines that good cause exists for the selection of a different location, a benefit review conference or a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(b) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(c) All appeals panel proceedings shall be conducted in Travis County.

(d) Notwithstanding Subsection (a), the division may conduct a benefit review conference telephonically on agreement by the injured employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.151, eff. September 1, 2005.

Sec. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS. (a) A claimant may be represented at a benefit review conference, a

contested case hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee:

(1) is a relative of the claimant; and

(2) does not receive a fee.

(b) An insurance carrier may be represented by an attorney or adjuster.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.007. INFORMATION LIST. (a) The division shall determine the type of information that is most useful to parties to help resolve disputes regarding income benefits. That information may include:

(1) reports regarding the compensable injury;

(2) medical information regarding the injured employee; and

(3) wage records.

(b) The division shall publish a list developed from the information described under Subsection (a) in appropriate media, including the division's Internet website, to provide guidance to a party to a dispute regarding the type of information the party should have available at a benefit review conference or a contested case hearing.

(c) At the time a benefit review conference or contested case hearing is scheduled, the division shall make available a copy of the list developed under Subsection (b) to each party to the dispute.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.152, eff. September 1, 2005.

SUBCHAPTER B. BENEFIT REVIEW CONFERENCE

Sec. 410.021. PURPOSE. A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

(1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;

(2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the

disputed issues; and

(3) mediate and resolve disputed issues by agreement of the parties in accordance with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.153, eff. September 1, 2005.

Sec. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS. (a) A benefit review officer shall conduct a benefit review conference.

(b) A benefit review officer must:

(1) be an employee of the division;

(2) be trained in the principles and procedures of dispute mediation; and

(3) have documentation satisfactory to the commissioner that evidences the completion by the officer of at least 40 classroom hours of training in dispute resolution techniques from an alternative dispute resolution organization recognized by the commissioner.

(c) The division shall institute and maintain an education and training program for benefit review officers and shall consult or contract with the Federal Mediation and Conciliation Service or other appropriate organizations for this purpose.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.154, eff. September 1, 2005.

Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. (a) On receipt of a request from a party or on its own motion, the division may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim.

(b) The division shall require the party requesting the benefit review conference to provide documentation of efforts made to resolve the disputed issues before the request was submitted.

(c) The commissioner by rule shall:

(1) adopt guidelines regarding the type of information necessary to satisfy the requirements of Subsection (b); and

(2) establish a process through which the division evaluates the sufficiency of the documentation provided under Subsection (b).

(d) The division may deny a request for a benefit review conference if the party requesting the benefit review conference does not provide the documentation required under Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.155, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 14, eff. September 1, 2011.

Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise provided by law or commissioner rule, the parties to a disputed compensation claim are not entitled to a contested case hearing or arbitration on the claim unless a benefit review conference is conducted as provided by this subchapter.

(b) The commissioner by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing or arbitration.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.156, eff. September 1, 2005.

Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE. (a) The commissioner by rule shall prescribe the time within which a benefit review conference must be scheduled.

(b) The division shall schedule a contested case hearing to be held not later than the 60th day after the date of the benefit review conference if the disputed issues are not resolved at the benefit review conference.

(c) The division shall send written notice of the benefit review conference to the parties to the claim and the employer.

(d) The commissioner by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.157, eff. September 1, 2005.

Sec. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER. (a) A benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this subtitle and the policies of the division;

(2) thoroughly inform all parties of their rights and responsibilities under this subtitle, especially in a case in which the employee is not represented by an attorney or other representative;

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in a case in which the employee is not represented by an attorney or other representative; and

(4) prepare a written report that details each issue that is not resolved at the benefit review conference, as required under Section 410.031, including any issue raised for the first time at the conclusion of an additional benefit review conference conducted under Subsection (b).

(b) A benefit review officer may schedule an additional benefit review conference if:

(1) the benefit review officer determines that any available information pertinent to the resolution of disputed issues was not produced at the initial benefit review conference; and

(2) a second benefit review conference has not already been conducted.

(c) A benefit review officer may not take testimony but may

direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) A benefit review officer may not make a formal record.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.158, eff. September 1, 2005.

Sec. 410.027. RULES. (a) The commissioner shall adopt rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.159, eff. September 1, 2005.

Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION. (a) A scheduled benefit review conference shall be conducted even though a party fails to attend unless the benefit review officer determines that good cause, as defined by commissioner rule, exists to reschedule the conference.

(b) If a party to a benefit review conference under Section 410.023 requests that the benefit review conference be rescheduled under this section, the party must submit a request in the same manner as an initial request under Section 410.023. The division shall evaluate a request for a rescheduled benefit review conference received under this section in the same manner as an initial request received under Section 410.023.

(c) If a party fails to request that a benefit review conference be rescheduled in the time required by commissioner rule or fails to attend a benefit review conference without good cause as defined by commissioner rule, the party forfeits the party's entitlement to attend a benefit review conference on the issue in dispute, unless a benefit review officer is authorized to schedule an additional benefit review conference under Section 410.026(b).

(d) The commissioner shall adopt rules necessary to implement and enforce this section, including rules that:

(1) define good cause; and

(2) establish deadlines for requesting that a benefit review conference be rescheduled under Subsection (b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.160, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 15, eff. September 1, 2011.

Sec. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT. (a) A dispute may be resolved either in whole or in part at a benefit review conference.

(b) If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement.

(c) A settlement takes effect on the date it is approved by the director in accordance with Section 408.005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the division or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

(b) The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the division, unless the commissioner for good cause relieves the claimant of the effect of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.161, eff. September 1, 2005.

Sec. 410.031. INCOMPLETE RESOLUTION; REPORT. (a) If a dispute is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not resolved at the conference.

(b) The report must also include:

(1) a statement of each resolved issue;

(2) a statement of each issue raised but not resolved;

(3) a statement of the position of the parties regarding each unresolved issue;

(4) a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings; and

(5) the date of the contested case hearing scheduled in accordance with Section 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff. September 1, 2005.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1

For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4, see other Sec. 410.032.

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) The benefit review officer who presides at the benefit review conference shall consider a request for an interlocutory order and shall give the opposing party the opportunity to respond before issuing an interlocutory order.

(b) The interlocutory order may address the payment or suspension of accrued benefits, future benefits, or both accrued

benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1, eff. September 1, 2007.

Text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4

For text of section as amended by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 1, see other Sec. 410.032.

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER. (a) The benefit review officer who presides at the benefit review conference shall:

(1) consider a written or verbal request for an interlocutory order for the payment of benefits; and

(2) if the benefit review officer determines that issuance of an interlocutory order is appropriate, issue the interlocutory order not later than the third day after the date of receipt of the request under Subdivision (1).

(b) The interlocutory order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 2, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.162, eff. September 1, 2005.
Acts 2007, 80th Leg., R.S., Ch. 1150 (S.B. 1169), Sec. 4, eff. September 1, 2007.

Sec. 410.033. MULTIPLE CARRIERS. (a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the commissioner may issue an interlocutory order directing each insurance carrier to pay a

proportionate share of benefits due pending a final decision on liability. The proportionate share is computed by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, an insurance carrier determined to be not liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.163, eff. September 1, 2005.

Sec. 410.034. FILING OF AGREEMENT AND REPORT. (a) The benefit review officer shall file the signed agreement and the report with the division.

(b) The commissioner by rule shall prescribe the times within which the agreement and report must be filed.

(c) The division shall furnish a copy of the file-stamped report to:

(1) the claimant;

(2) the employer; and

(3) the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.164, eff. September 1, 2005.

SUBCHAPTER C. ARBITRATION

Sec. 410.101. PURPOSE. The purpose of arbitration is to:

(1) enter into formal, binding stipulations on issues on which the parties agree;

(2) resolve issues on which the parties disagree; and

(3) render a final award with respect to all issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An arbitrator must be an employee of the division, except that the division may contract with qualified arbitrators on a determination of special need.

(b) An arbitrator must:

(1) be a member of the National Academy of Arbitrators;

(2) be on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service; or

(3) meet qualifications established by the commissioner by rule.

(c) The division shall require that each arbitrator have appropriate training in the workers' compensation laws of this state. The commissioner shall establish procedures to carry out this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.165, eff. September 1, 2005.

Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

(1) protect the interests of all parties;

(2) ensure that all relevant evidence has been disclosed to the arbitrator and to all parties; and

(3) render an award consistent with this subtitle and the policies of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.166, eff. September 1, 2005.

Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) If issues remain unresolved after a benefit review conference, the parties, by agreement, may elect to engage in arbitration in the manner provided by this subchapter. Arbitration may be used only to resolve disputed benefit issues and is an alternative to a contested case hearing. A contested case hearing scheduled under Section 410.025(b) is canceled by an election under this subchapter.

(b) To elect arbitration, the parties must file the election with the division not later than the 20th day after the last day of the benefit review conference. The commissioner shall prescribe a form for that purpose.

(c) An election to engage in arbitration under this subchapter is irrevocable and binding on all parties for the resolution of all disputes arising out of the claims that are under the jurisdiction of the division.

(d) An agreement to elect arbitration binds the parties to the provisions of Chapter 408 relating to benefits, and any award, agreement, or settlement after arbitration is elected must comply with that chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.167, eff. September 1, 2005.

Sec. 410.105. LISTS OF ARBITRATORS. (a) The division shall establish regional lists of arbitrators who meet the qualifications prescribed under Sections 410.102(a) and (b). Each regional list shall be initially prepared in a random name order, and subsequent additions to a list shall be added chronologically.

(b) The commissioner shall review the lists of arbitrators annually and determine if each arbitrator is fair and impartial and makes awards that are consistent with and in accordance with this subtitle and the rules of the commissioner. The commissioner shall remove an arbitrator if, after the review, the commissioner determines that the arbitrator is not fair and impartial or does not make awards consistent with this subtitle and commissioner rules.

(c) The division's lists are confidential and are not subject to disclosure under Chapter 552, Government Code. The lists may not be revealed by any division employee to any person who is not a division employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section or Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that the violation is relevant to the issues in dispute.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.168, eff. September 1, 2005.

Sec. 410.106. SELECTION OF ARBITRATOR. The division shall assign the arbitrator for a particular case by selecting the next name after the previous case's selection in consecutive order. The division may not change the order of names once the order is established under this subchapter, except that once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.169, eff. September 1, 2005.

Sec. 410.107. ASSIGNMENT OF ARBITRATOR. (a) The division shall assign an arbitrator to a pending case not later than the 30th day after the date on which the election for arbitration is filed with the division.

(b) When an arbitrator has been assigned to a case under Subsection (a), the parties shall be notified immediately.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.170, eff. September 1, 2005.

Sec. 410.108. REJECTION OF ARBITRATOR. (a) Each party is entitled, in its sole discretion, to one rejection of the arbitrator in each case. If a party rejects the arbitrator, the division shall assign another arbitrator as provided by Section 410.106.

(b) A rejection must be made not later than the third day after the date of notification of the arbitrator's assignment.

(c) When all parties have exercised their right of rejection or if no rejection is registered, the assignment is final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.171, eff. September 1, 2005.

Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The arbitrator shall schedule arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the division of the scheduled date.

(b) If an arbitrator is unable to schedule arbitration in accordance with Subsection (a), the division shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator appointed under this subsection in the manner provided under Section 410.108.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.172, eff. September 1, 2005.

Sec. 410.110. CONTINUANCE. (a) A request by a party for a continuance of the arbitration to another date must be directed to the director. The director may grant a continuance only if the director determines, giving due regard to the availability of the arbitrator, that good cause for the continuance exists.

(b) If the director grants a continuance under this section, the rescheduled date may not be later than the 30th day after the original date of the arbitration.

(c) Without regard to whether good cause exists, the director may not grant more than one continuance to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.111. RULES. The commissioner shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.173, eff. September 1, 2005.

Sec. 410.112. EXCHANGE AND FILING OF INFORMATION; ADMINISTRATIVE VIOLATION. (a) Not later than the seventh day before the first day of arbitration, the parties shall exchange and file with the arbitrator:

(1) all medical reports and other documentary evidence not previously exchanged or filed that are pertinent to the resolution of the claim; and

(2) information relating to their proposed resolution of the disputed issues.

(b) A party commits an administrative violation if the party, without good cause as determined by the arbitrator, fails to comply with Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.174, eff. September 1, 2005.

Sec. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION. (a) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues on which it is prepared to stipulate.

(b) A party commits an administrative violation if the party does not attend the arbitration unless the arbitrator determines that the party had good cause not to attend.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.175, eff. September 1, 2005.

Sec. 410.114. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony

under oath if requested by a party.

(b) The division shall make an electronic recording of the proceeding.

(c) An official stenographic record is not required, but any party may at the party's expense make a stenographic record of the proceeding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.176, eff. September 1, 2005.

Sec. 410.115. EVIDENCE. (a) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to an understanding and determination of the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.116. CLOSING STATEMENTS; BRIEFS. The parties may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.117. EX PARTE CONTACTS PROHIBITED. A party and an arbitrator may not communicate outside the arbitration unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.118. AWARD. (a) The arbitrator shall enter the arbitrator's award not later than the seventh day after the last day

of arbitration.

(b) The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(c) The award must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(d) The arbitrator shall file a copy of the award as part of the permanent claim file at the division and shall notify the parties in writing of the decision.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.177, eff. September 1, 2005.

Sec. 410.119. EFFECT OF AWARD. (a) An arbitrator's award is final and binding on all parties. Except as provided by Section 410.121, there is no right to appeal.

(b) An arbitrator's award is a final order of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.178, eff. September 1, 2005.

Sec. 410.120. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.121. COURT VACATING AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or

misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the award was outside the jurisdiction of the division.

(b) If an award is vacated, the case shall be remanded to the division for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the appealing party knew or should have known of a basis for suit under this section, but in no event later than 12 months after an order denying compensation or after the expiration of the income or death benefit period.

(d) Venue for a suit to vacate an award is in the county in which the arbitration was conducted.

(e) In a suit to vacate an arbitrator's award, only the court may make determinations, including findings of fact or conclusions of law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.179, eff. September 1, 2005.

SUBCHAPTER D. CONTESTED CASE HEARING

Sec. 410.151. CONTESTED CASE HEARING; SCOPE. (a) If arbitration is not elected under Section 410.104, a party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 410.024 is entitled to a contested case hearing.

(b) An issue that was not raised at a benefit review conference or that was resolved at a benefit review conference may not be considered unless:

(1) the parties consent; or

(2) if the issue was not raised, the commissioner determines that good cause existed for not raising the issue at the conference.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.180, eff. September 1, 2005.

Sec. 410.152. HEARING OFFICERS; QUALIFICATIONS. (a) A hearing officer shall conduct a contested case hearing.

(b) A hearing officer must be licensed to practice law in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Chapter 2001, Government Code, applies to a contested case hearing to the extent that the commissioner finds appropriate, except that the following do not apply:

(1) Section 2001.054;

(2) Sections 2001.061 and 2001.062;

(3) Section 2001.202; and

(4) Subchapters F, G, I, and Z, except for Section 2001.141(c).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.93, eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.181, eff. September 1, 2005.

Sec. 410.154. SCHEDULING OF HEARING. The division shall schedule a contested case hearing in accordance with Section 410.024 or 410.025(b).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.182, eff. September 1, 2005.

Sec. 410.155. CONTINUANCE. (a) A written request by a party for a continuance of a contested case hearing to another date must be

directed to the division.

(b) The division may grant a continuance only if the division determines that there is good cause for the continuance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.183, eff. September 1, 2005.

Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION. (a) Each party shall attend a contested case hearing.

(b) A party commits an administrative violation if the party, without good cause as determined by the hearing officer, does not attend a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.184, eff. September 1, 2005.

Sec. 410.157. RULES. The commissioner shall adopt rules governing procedures under which contested case hearings are conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.185, eff. September 1, 2005.

Sec. 410.158. DISCOVERY. (a) Except as provided by Section 410.162, discovery is limited to:

(1) depositions on written questions to any health care provider;

(2) depositions of other witnesses as permitted by the hearing officer for good cause shown; and

(3) interrogatories as prescribed by the commissioner.

(b) Discovery under Subsection (a) may not seek information that may readily be derived from documentary evidence described in

Section 410.160. Answers to discovery under Subsection (a) need not duplicate information that may readily be derived from documentary evidence described in Section 410.160.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.186, eff. September 1, 2005.

Sec. 410.159. STANDARD INTERROGATORIES. (a) The commissioner by rule shall prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers.

(b) Standard interrogatories shall be answered by each party and served on the opposing party within the time prescribed by commissioner rule, unless the parties agree otherwise.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.187, eff. September 1, 2005.

Sec. 410.160. EXCHANGE OF INFORMATION. Within the time prescribed by commissioner rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents that a party intends to offer into evidence at the hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.188, eff. September 1, 2005.

Sec. 410.161. FAILURE TO DISCLOSE INFORMATION. A party who

fails to disclose information known to the party or documents that are in the party's possession, custody, or control at the time disclosure is required by Sections 410.158-410.160 may not introduce the evidence at any subsequent proceeding before the division or in court on the claim unless good cause is shown for not having disclosed the information or documents under those sections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.189, eff. September 1, 2005.

Sec. 410.162. ADDITIONAL DISCOVERY. For good cause shown, a party may obtain permission from the hearing officer to conduct additional discovery as necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.163. POWERS AND DUTIES OF HEARING OFFICER. (a) At a contested case hearing the hearing officer shall:

(1) swear witnesses;
(2) receive testimony;
(3) allow examination and cross-examination of witnesses;
(4) accept documents and other tangible evidence; and
(5) allow the presentation of evidence by affidavit.

(b) A hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. A hearing officer may permit the use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.164. RECORD. (a) The proceedings of a contested case hearing shall be recorded electronically. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(b) A party may request that the proceedings of the contested

case hearing be recorded by a court reporter. The party making the request shall bear the cost.

(c) At each contested case hearing, as applicable, the insurance carrier shall file with the hearing officer and shall deliver to the claimant a single document stating the true corporate name of the insurance carrier and the name and address of the insurance carrier's registered agent for service of process. The document is part of the record of the contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.01, eff. June 17, 2001.

Sec. 410.165. EVIDENCE. (a) The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Conformity to legal rules of evidence is not necessary.

(b) A hearing officer may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.166. STIPULATIONS. A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.167. EX PARTE CONTACTS PROHIBITED. A party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties or relates to procedural matters.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.168. DECISION. (a) The hearing officer shall issue a

written decision that includes:

(1) findings of fact and conclusions of law;

(2) a determination of whether benefits are due; and

(3) an award of benefits due.

(b) The decision may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(c) The hearing officer may enter an interlocutory order for the payment of all or part of medical benefits or income benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits. The order is binding during the pendency of an appeal to the appeals panel.

(d) On a form that the commissioner by rule prescribes, the hearing officer shall issue a separate written decision regarding attorney's fees and any matter related to attorney's fees. The decision regarding attorney's fees and the form may not be made known to a jury in a judicial review of an award, including an appeal.

(e) The commissioner by rule shall prescribe the times within which the hearing officer must file the decisions with the division.

(f) The division shall send a copy of the decision to each party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.190, eff. September 1, 2005.

Sec. 410.169. EFFECT OF DECISION. A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal to the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. APPEALS PANEL

Sec. 410.201. APPEALS JUDGES; QUALIFICATIONS. (a) Appeals judges, in a three-member panel, shall conduct administrative appeals proceedings.

(b) An appeals judge must be licensed to practice law in this

state.

(c) An appeals judge may not conduct a benefit review conference or a contested case hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.191, eff. September 1, 2005.

Sec. 410.202. REQUEST FOR APPEAL; RESPONSE. (a) To appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party.

(b) The respondent shall file a written response with the appeals panel not later than the 15th day after the date on which the copy of the request for appeal is served and shall on the same date serve a copy of the response on the appellant.

(c) A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought.

(d) Saturdays and Sundays and holidays listed in Section 662.003, Government Code, are not included in the computation of the time in which a request for an appeal under Subsection (a) or a response under Subsection (b) must be filed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 12.01, eff. June 17, 2001.

Sec. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND. (a) The appeals panel shall consider:

(1) the record developed at the contested case hearing; and

(2) the written request for appeal and response filed with the appeals panel.

(b) The appeals panel may:

(1) reverse the decision of the hearings officer and render a new decision;

(2) reverse the decision of the hearings officer and remand

the case to the hearing officer for further consideration and development of evidence; or

(3) affirm the decision of the hearings officer in a case described by Section 410.204(a-1).

(c) The appeals panel may not remand a case under Subsection (b)(2) more than once.

(d) A hearing on remand shall be accelerated and the commissioner shall adopt rules to give priority to the hearing over other proceedings.

(e) The appeals panel shall issue and maintain a precedent manual. The precedent manual shall be composed of precedent-establishing decisions and may include other information as identified by the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.192, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 16, eff. September 1, 2011.

Sec. 410.204. DECISION. (a) The appeals panel shall review each request and issue a written decision on each reversed or remanded case. The appeals panel may issue a written decision on an affirmed case as described by Subsection (a-1). The decision must be in writing and shall be issued not later than the 45th day after the date on which the written response to the request for appeal is filed. The appeals panel shall file a copy of the decision with the commissioner.

(a-1) An appeals panel may only issue a written decision in a case in which the panel affirms the decision of a hearings officer if the case:

(1) is a case of first impression;

(2) involves a recent change in law; or

(3) involves errors at the contested case hearing that require correction but do not affect the outcome of the hearing, including:

(A) findings of fact for which insufficient evidence exists;

(B) incorrect conclusions of law;

(C) findings of fact or conclusions of law regarding matters that were not properly before the hearings officer; and

(D) legal errors not otherwise described by this subdivision.

(b) A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the date the decision is filed with the division.

(c) If the appeals panel does not issue a decision in accordance with this section, the decision of the hearing officer becomes final and is the final decision of the appeals panel.

(d) Each final decision of the appeals panel shall conclude with a separate paragraph stating: "The true corporate name of the insurance carrier is (NAME IN BOLD PRINT) and the name and address of its registered agent for service of process is (NAME AND ADDRESS IN BOLD PRINT)."

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 11.02, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.193, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 17, eff. September 1, 2011.

Sec. 410.205. EFFECT OF DECISION. (a) A decision of the appeals panel regarding benefits is final in the absence of a timely appeal for judicial review.

(b) The decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 955, Sec. 4, eff. Sept. 1, 1999. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.194, eff. September 1, 2005.

Sec. 410.206. CLERICAL ERROR. The division may revise a decision in a contested case hearing on a finding of clerical error.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.195, eff. September 1, 2005.

Sec. 410.207. CONTINUATION OF DIVISION JURISDICTION. During judicial review of the appeals panel decision on any disputed issue relating to a workers' compensation claim, the division retains jurisdiction of all other issues related to the claim.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.196, eff. September 1, 2005.

Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION. (a) If a person refuses or fails to comply with an interlocutory order, final order, or decision of the commissioner, the division may bring suit in Travis County to enforce the order or decision.

(b) If an insurance carrier refuses or fails to comply with an interlocutory order, a final order, or a decision of the commissioner, the claimant may bring suit in the county of the claimant's residence at the time of the injury, or death if the employee is deceased, or, in the case of an occupational disease, in the county in which the employee resided on the date disability began or any county agreed to by the parties.

(c) If the division brings suit to enforce an interlocutory order, final order, or decision of the commissioner, the division is entitled to reasonable attorney's fees and costs for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision and any other remedy provided by law.

(d) A claimant who brings suit to enforce an interlocutory order, final order, or decision of the commissioner is entitled to a penalty equal to 12 percent of the amount of benefits recovered in the judgment, interest, and reasonable attorney's fees for the prosecution and collection of the claim, in addition to a judgment enforcing the order or decision.

(e) A person commits an administrative violation if the person fails or refuses to comply with an interlocutory order, final order, or decision of the commissioner within 20 days after the date the order or decision becomes final.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.197, eff. September 1, 2005.

Sec. 410.209. REIMBURSEMENT FOR OVERPAYMENT. The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an interlocutory order or decision if that order or decision is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 5, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.198, eff. September 1, 2005.

SUBCHAPTER F. JUDICIAL REVIEW--GENERAL PROVISIONS

Sec. 410.251. EXHAUSTION OF REMEDIES. A party that has exhausted its administrative remedies under this subtitle and that is aggrieved by a final decision of the appeals panel may seek judicial review under this subchapter and Subchapter G, if applicable.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.252. TIME FOR FILING PETITION; VENUE. (a) A party may seek judicial review by filing suit not later than the 45th day after the date on which the division mailed the party the decision of the appeals panel. For purposes of this section, the mailing date is considered to be the fifth day after the date the decision of the appeals panel was filed with the division.

(b) The party bringing suit to appeal the decision must file a petition with the appropriate court in:

(1) the county where the employee resided at the time of the injury or death, if the employee is deceased; or

(2) in the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the parties.

(c) If a suit under this section is filed in a county other than the county described by Subsection (b), the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in a county described by Subsection (b). Notice of the transfer of a suit shall be given to the parties. A suit transferred under this subsection shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

(d) If a suit is initially filed within the 45-day period in Subsection (a), and is transferred under Subsection (c), the suit is considered to be timely filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 663, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1200 (H.B. 4545), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 1, eff. September 1, 2011.

Sec. 410.253. SERVICE; NOTICE. (a) A party seeking judicial review shall simultaneously:

(1) file a copy of the party's petition with the court;

(2) serve any opposing party to the suit; and

(3) provide written notice of the suit or notice of appeal to the division.

(b) A party may not seek judicial review under Section 410.251 unless the party has provided written notice of the suit to the division as required by this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 397, Sec. 2, eff. Sept. 1, 2003.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.199, eff. September 1, 2005.

Sec. 410.254. INTERVENTION. On timely motion initiated by the commissioner, the division shall be permitted to intervene in any judicial proceeding under this subchapter or Subchapter G.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.200, eff. September 1, 2005.

Sec. 410.255. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) For all issues other than those covered under Section 410.301(a), judicial review shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code.
(b) Judicial review conducted under this section is governed by the substantial evidence rule.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995.

Sec. 410.256. COURT APPROVAL OF SETTLEMENT. (a) A claim or issue may not be settled contrary to the provisions of the appeals panel decision issued on the claim or issue unless a party to the proceeding has filed for judicial review under this subchapter or Subchapter G. The trial court must approve a settlement made by the parties after judicial review of an award is sought and before the court enters judgment.
(b) The court may not approve a settlement except on a finding that:
(1) the settlement accurately reflects the agreement between the parties;
(2) the settlement adheres to all appropriate provisions of the law; and
(3) under the law and facts, the settlement is in the best

interest of the claimant.

(c) A settlement may not provide for:

(1) payment of any benefits in a lump sum except as provided by Section 408.128; or

(2) limitation or termination of the claimant's right to medical benefits under Section 408.021.

(d) A settlement or agreement that resolves an issue of impairment may not be made before the claimant reaches maximum medical improvement and must adopt one of the impairment ratings under Subchapter G, Chapter 408.

(e) A party proposing a settlement before judgment is entered by the trial court may petition the court orally or in writing for approval of the settlement.

(f) Settlement of a claim or issue under this section does not constitute a modification or reversal of the decision awarding benefits for the purpose of Section 410.209.

(g) Settlement of a claim or issue must be in compliance with all appropriate provisions of the law, including this section and Section 410.258 of this subchapter. A settlement which on its face does not comply with this section is void.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1267, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 397, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2001, eff. September 1, 2005.

Sec. 410.257. JUDGMENT AFTER JUDICIAL REVIEW. (a) A judgment entered by a court on judicial review of the appeals panel decision under this subchapter or Subchapter G must comply with all appropriate provisions of the law.

(b) A judgment under this section may not provide for:

(1) payment of benefits in a lump sum except as provided by Section 408.128; or

(2) the limitation or termination of the claimant's right to medical benefits under Section 408.021.

(c) A judgment that resolves an issue of impairment may not be entered before the date the claimant reaches maximum medical

improvement. The judgment must adopt an impairment rating under Subchapter G, Chapter 408, except to the extent Section 410.307 applies.

(d) A judgment under this section may not order reimbursement from the subsequent injury fund.

(e) A judgment under this section based on default or on an agreement of the parties does not constitute a modification or reversal of a decision awarding benefits for the purpose of Section 410. 209.

(f) A judgment that on its face does not comply with this section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997.
Amended by Acts 2003, 78th Leg., ch. 397, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2002, eff. September 1, 2005.

Sec. 410.258. NOTIFICATION OF DIVISION OF PROPOSED JUDGMENTS AND SETTLEMENTS; RIGHT TO INTERVENE. (a) The party who initiated a proceeding under this subchapter or Subchapter G must file any proposed judgment or settlement made by the parties to the proceeding, including a proposed default judgment, with the division not later than the 30th day before the date on which the court is scheduled to enter the judgment or approve the settlement. The proposed judgment or settlement must be mailed to the division by certified mail, return receipt requested.

(b) The division may intervene in a proceeding under Subsection (a) not later than the 30th day after the date of receipt of the proposed judgment or settlement.

(c) The commissioner shall review the proposed judgment or settlement to determine compliance with all appropriate provisions of the law. If the commissioner determines that the proposal is not in compliance with the law, the division may intervene as a matter of right in the proceeding not later than the 30th day after the date of receipt of the proposed judgment or settlement. The court may limit the extent of the division's intervention to providing the information described by Subsection (e).

(d) If the division does not intervene before the 31st day

after the date of receipt of the proposed judgment or settlement, the court shall enter the judgment or approve the settlement if the court determines that the proposed judgment or settlement is in compliance with all appropriate provisions of the law.

(e) If the division intervenes in the proceeding, the commissioner shall inform the court of each reason the commissioner believes the proposed judgment or settlement is not in compliance with the law. The court shall give full consideration to the information provided by the commissioner before entering a judgment or approving a settlement.

(f) A judgment entered or settlement approved without complying with the requirements of this section is void.

Added by Acts 1997, 75th Leg., ch. 1267, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.201, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.202, eff. September 1, 2005.

SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS

Sec. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) Judicial review of a final decision of the appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this subchapter.

(b) A determination of benefits before a court shall be in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.203, eff. September 1, 2005.

Sec. 410.302. ADMISSIBILITY OF RECORDS; LIMITATION OF ISSUES. (a) The records of a contested case hearing conducted under this chapter are admissible in a trial under this subchapter in accordance with the Texas Rules of Evidence.

(b) A trial under this subchapter is limited to issues decided by the appeals panel and on which judicial review is sought. The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.204, eff. September 1, 2005.

Sec. 410.303. BURDEN OF PROOF. The party appealing the decision on an issue described in Section 410.301(a) has the burden of proof by a preponderance of the evidence.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION. (a) In a jury trial, the court, before submitting the case to the jury, shall inform the jury in the court's instructions, charge, or questions to the jury of the appeals panel decision on each disputed issue described by Section 410.301(a) that is submitted to the jury.

(b) In a trial to the court without a jury, the court in rendering its judgment on an issue described by Section 410.301(a) shall consider the decision of the appeals panel.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.205, eff. September 1, 2005.

Sec. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure or any other rules adopted by the supreme court, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, or any other law, the supreme court may not adopt rules in conflict with or inconsistent with this subchapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 410.306. EVIDENCE. (a) Evidence shall be adduced as in other civil trials.

(b) The division on payment of a reasonable fee shall make available to the parties a certified copy of the division's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of Evidence.

(c) Except as provided by Section 410.307, evidence of extent of impairment shall be limited to that presented to the division. The court or jury, in its determination of the extent of impairment, shall adopt one of the impairment ratings under Subchapter G, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.206, eff. September 1, 2005.

Sec. 410.307. SUBSTANTIAL CHANGE OF CONDITION. (a) Evidence of the extent of impairment is not limited to that presented to the division if the court, after a hearing, finds that there is a substantial change of condition. The court's finding of a substantial change of condition may be based only on:

(1) medical evidence from the same doctor or doctors whose testimony or opinion was presented to the division;

(2) evidence that has come to the party's knowledge since the contested case hearing;

(3) evidence that could not have been discovered earlier with due diligence by the party; and

(4) evidence that would probably produce a different result if it is admitted into evidence at the trial.

(b) If substantial change of condition is disputed, the court shall require the designated doctor in the case to verify the substantial change of condition, if any. The findings of the designated doctor shall be presumed to be correct, and the court shall base its finding on the medical evidence presented by the designated doctor in regard to substantial change of condition unless

the preponderance of the other medical evidence is to the contrary.

(c) The substantial change of condition must be confirmable by recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(d) If the court finds a substantial change of condition under this section, new medical evidence of the extent of impairment must be from and is limited to the same doctor or doctors who made impairment ratings before the division under Section 408.123.

(e) The court's finding of a substantial change of condition may not be made known to the jury.

(f) The court or jury in its determination of the extent of impairment shall adopt one of the impairment ratings made under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.207, eff. September 1, 2005.

Sec. 410.308. CERTIFIED COPY OF NOTICE SECURING COMPENSATION. (a) The division shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier, filed with the division.

(b) The certified copy of the notice is admissible in evidence on trial of the claim pending and is prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.208, eff. September 1, 2005.

CHAPTER 411. WORKERS' HEALTH AND SAFETY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 411.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(23), eff. September 1, 2005.

(2) "Employer" means a person who makes a contract of hire.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(23), eff. September 1, 2005.

Sec. 411.002. APPLICATION. (a) An employer who obtains workers' compensation insurance coverage is subject to this chapter.

(b) An employer is subject to this chapter if the employer:

(1) is not required to and does not obtain workers' compensation insurance coverage; and

(2) employs five or more employees not exempt from workers' compensation insurance coverage.

(c) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(b), eff. Sept. 1, 1995.

Sec. 411.003. IMMUNITY FROM CERTAIN LIABILITY. (a) An insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under this chapter has no liability for an accident, injury, or occupational disease based on an allegation that the accident, injury, or occupational disease was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in connection with operations of the employer.

(b) The immunity provided by Subsection (a) does not affect the liability of an insurance carrier for compensation or as otherwise provided in this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 1.01, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2085, eff. September 1, 2005.

Sec. 411.004. EXCLUSIVE REMEDY. Except as specifically

provided by Subchapter F, this chapter does not create an independent cause of action at law or in equity. This chapter provides the sole remedy for violation of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.005. FRANCHISORS EXCLUDED. (a) In this section, "franchisee" and "franchisor" have the meanings assigned by 16 C.F.R. Section 436.1.

(b) For purposes of this chapter, a franchisor is not considered to be an employer of:

(1) a franchisee; or

(2) a franchisee's employees.

(c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this section does not apply to a franchisor who has been found by a court of competent jurisdiction in this state to have exercised a type or degree of control over the franchisee or the franchisee's employees not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Added by Acts 2015, 84th Leg., R.S., Ch. 1156 (S.B. 652), Sec. 7, eff. September 1, 2015.

SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DIVISION

Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES. The division shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. (a) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use that information to:

(1) identify and assign priorities to safety needs; and

(2) better coordinate the safety services provided by

public or private organizations, including insurance carriers.

(b) The division shall coordinate or supervise the collection by state or federal entities of information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS. The division may:

(1) enter into contracts with the federal government to perform occupational safety projects; and

(2) apply for federal funds through any federal program relating to occupational safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.209, eff. September 1, 2005.

Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER ENTITIES. (a) The division shall promote workers' health and safety through educational and other innovative programs developed by the department, the division, or other state agencies.

(b) The division shall cooperate with other entities in the development and approval of safety courses, safety plans, and safety programs.

(c) The division shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers concerning workplace safety.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.2095, eff. September 1, 2005.

Sec. 411.015. EDUCATIONAL PUBLICATIONS. (a) The division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material.

(b) Specific educational material shall be directed to high-risk industries and employments and must specifically address means and methods of avoiding high frequency, but preventable, workers' injuries.

(c) Other educational material shall be directed to business and industry generally and must specifically address means and methods of avoiding common workers' injuries.

(d) The division shall make specific decisions regarding the issues and problems to be addressed by the educational materials after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations.

(e) The educational materials provided under this section must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) if needed, recommended work practices based on recommendations made by the division for the prevention of injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.016. PEER REVIEW SAFETY PROGRAM. The division shall certify safe employers to provide peer review safety programs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS. The division shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the division and of:

(1) hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed; or

(2) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.018. FEDERAL OSHA COMPLIANCE. In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 656), the division shall:

(1) consult with employers regarding compliance with federal occupational safety laws and rules; and

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. JOB SAFETY INFORMATION SYSTEM

Sec. 411.031. JOB SAFETY INFORMATION SYSTEM; COOPERATION WITH OTHER AGENCIES. (a) The division shall maintain a job safety information system.

(b) The division shall obtain from any appropriate state agency, including the Texas Workforce Commission, the Department of State Health Services, and the Department of Assistive and Rehabilitative Services, data and statistics, including data and statistics compiled for rate-making purposes.

(c) The division shall consult with the Texas Workforce Commission in the design of data information and retrieval systems to accomplish the mutual purposes of the division and the Texas Workforce Commission.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.210, eff. September 1, 2005.

Sec. 411.032. EMPLOYER INJURY AND OCCUPATIONAL DISEASE REPORT; ADMINISTRATIVE VIOLATION. (a) An employer shall file with the division a report of each:

(1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

(b) The commissioner shall adopt rules and prescribe the form and manner of reports filed under this section.

(c) An employer commits an administrative violation if the employer fails to report to the division as required under Subsection (a) unless good cause exists, as determined by the commissioner, for the failure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.32, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.211, eff. September 1, 2005.

Sec. 411.033. JOB SAFETY DATA BASE. The job safety information system must include a comprehensive data base that incorporates all pertinent information relating to each injury reported under Section 411.032, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior workers' compensation claims by the employee;

(7) the prior loss history of the employer;

(8) the standard industrial classification code of the employer;

(9) the classification code of the employer; and

(10) any other information considered useful for statistical analysis.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.034. CONFIDENTIALITY REQUIREMENT; OFFENSE; PENALTY.

(a) The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this section to a person not authorized to receive the information.

(c) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this section and that the person is not authorized to receive.

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

(e) An offense under this section may be prosecuted in a court in the county where the information was unlawfully received, published, disclosed, or distributed.

(f) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.33, eff. Sept. 1, 1995.

Sec. 411.035. USE OF INJURY REPORT. A report made under Section 411.032 may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the division or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.212, eff. September 1, 2005.

SUBCHAPTER E. ACCIDENT PREVENTION SERVICES

Sec. 411.061. ACCIDENT PREVENTION SERVICES; PREREQUISITE FOR LICENSE. (a) As a prerequisite for writing workers' compensation insurance in this state, an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its

policyholders' operations.

(b) To implement a program of accident prevention services, a facility must include:

(1) surveys;

(2) recommendations;

(3) training programs;

(4) consultations;

(5) analyses of accident causes;

(6) industrial hygiene; and

(7) industrial health services.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 172, Sec. 4, eff. Sept. 1, 2001.

Sec. 411.063. ACCIDENT PREVENTION PERSONNEL. (a) To provide qualified accident prevention personnel and services, an insurance company may:

(1) employ qualified personnel;

(2) retain qualified independent contractors;

(3) contract with the policyholder to provide the personnel and services; or

(4) use a combination of the methods provided by this subsection.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(26), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(26), eff. September 1, 2005.

Sec. 411.064. INSPECTIONS. (a) The division may conduct inspections to determine the adequacy of the accident prevention services required by Section 411.061 for each insurance company writing workers' compensation insurance in this state.

(b) If, after an inspection under Subsection (a), an insurance company's accident prevention services are determined to be inadequate, the division shall reinspect the accident prevention services of the insurance company not earlier than the 180th day or

later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(c) The insurance company shall reimburse the division for the reasonable cost of the reinspection, including a reasonable allocation of the division's administrative costs incurred in conducting the inspections.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 957, Sec. 3.01, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.213, eff. September 1, 2005.

Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY. (a) Each insurance company writing workers' compensation insurance in this state shall submit to the division at least once a year detailed information on the type of accident prevention facilities offered to that insurance company's policyholders.

(b) The information must include:

(1) the amount of money spent by the insurance company on accident prevention services;

(2) the number of site inspections performed;

(3) accident prevention services for which the insurance company contracts;

(4) a breakdown of the premium size of the risks to which services were provided;

(5) evidence of the effectiveness of and accomplishments in accident prevention; and

(6) any additional information required by the commissioner.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.214, eff. September 1, 2005.

Sec. 411.066. NOTICE TO POLICYHOLDERS. Notice that accident prevention services are available to the policyholder from the insurance company must appear in at least 10-point bold type on the

front of each workers' compensation insurance policy delivered or issued for delivery in this state.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.067. DIVISION PERSONNEL. (a) The division shall employ the personnel necessary to enforce this subchapter, including at least 10 safety inspectors to perform inspections at a job site and at an insurance company to determine the adequacy of the accident prevention services provided by the insurance company.

(b) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(27), eff. September 1, 2005.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.215, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.216, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(27), eff. September 1, 2005.

Sec. 411.068. ADMINISTRATIVE VIOLATION. (a) An insurance company commits a violation if the insurance company does not:

(1) maintain or provide the accident prevention services required by this subchapter; or

(2) use the services in a reasonable manner to prevent injury to employees of its policyholders.

(b) A violation under Subsection (a) is an administrative violation.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.217, eff. September 1, 2005.

SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS; EDUCATIONAL MATERIALS

Sec. 411.081. TELEPHONE HOTLINE. (a) The division shall maintain a 24-hour toll-free telephone service in English and Spanish for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the commissioner. The commissioner shall, by rule, require the notice to be posted in English and Spanish, as appropriate.

(c) The commissioner shall adopt rules requiring that the notice required by Subsection (b) be posted:

(1) in a conspicuous place in the employer's place of business; and

(2) in sufficient locations to be convenient to all employees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.219, eff. September 1, 2005.

Sec. 411.082. EMPLOYER RETALIATION PROHIBITED. An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.083. JUDICIAL RELIEF FOR EMPLOYER RETALIATION. (a) An employee whose employment is terminated or suspended in violation of Section 411.082 is entitled to:

(1) reinstatement to the employee's former position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.

(b) An employee seeking relief under this section must file suit not later than the 90th day after the alleged conduct of the employer occurred or was discovered or discoverable by the employee through reasonable diligence.

(c) An employee who prevails in a suit under this section is

entitled to recover court costs and reasonable attorney's fees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 411.084. EDUCATIONAL PUBLICATIONS. (a) The division shall provide to employers and employees educational material, including books, pamphlets, brochures, films, videotapes, or other informational material.

(b) Educational material shall be provided to employees in English and Spanish.

(c) The department shall adopt minimum content requirements for the educational material required under this section, including:

(1) information on an employee's right to report an unsafe working environment;

(2) instructions on how to report unsafe working conditions and safety violations; and

(3) information on state laws regarding retaliation by employers.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.220, eff. September 1, 2005.

SUBCHAPTER H. GENERAL REQUIREMENTS RELATING TO OCCUPATIONAL HEALTH AND SAFETY

Sec. 411.101. LEGISLATIVE POLICY; PURPOSE. It is the policy of this state to protect the health and welfare of its people and to reduce and, to every reasonable extent, eliminate the causes of loss of production, reduction of work hours, temporary and permanent incapacity of workers, and increases in certain insurance rates by:

(1) promoting the adoption, application, and implementation of safety measures in industry and enterprise;

(2) protecting workers against unsafe and hazardous working conditions; and

(3) encouraging correction of any unsafe and hazardous working conditions in industry and enterprise.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.102. DEFINITIONS. In this subchapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(28), eff. September 1, 2005.

(2) "Employee" means an individual who works for an employer for compensation. The term does not include an individual employed to perform domestic services in a private residence.

(3) "Employer" means a person who has control or custody of any employment, place of employment, or employee. The term does not include a carrier, as that term is used in Title 49, United States Code, that is regulated by the Interstate Commerce Commission, except that the term includes a railroad.

(4) "Place of employment" means a location, other than a private residence where domestic service is performed, where:

(A) a trade, industry, or business is temporarily or permanently conducted; or

(B) an employee is directly or indirectly employed by another for direct or indirect gain.

(5) "Safe" as applied to employment or places of employment means freedom from occupational injury for employees to the extent reasonably permitted by the nature of the employment.

(6) "Safeguard" means any practicable method of mitigating or preventing occupational injury.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(28), eff. September 1, 2005.

Sec. 411.103. DUTY OF EMPLOYER TO PROVIDE SAFE WORKPLACE. Each employer shall:

(1) provide and maintain employment and a place of employment that is reasonably safe and healthful for employees;

(2) install, maintain, and use methods, processes, devices, and safeguards, including methods of sanitation and hygiene, that are reasonably necessary to protect the life, health, and safety of the employer's employees; and

(3) take all other actions reasonably necessary to make the employment and place of employment safe.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.104. DIVISION DUTIES. (a) The division shall administer this subchapter.

(b) In addition to the duties specified in this chapter, the division shall perform other duties as required by the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.105. CONFIDENTIAL INFORMATION; PENALTY. (a) The division and its employees may not disclose at a public hearing or otherwise information relating to secret processes, methods of manufacture, or products.

(b) The commissioner or an employee of the division commits an offense if the commissioner or employee wilfully discloses or conspires to disclose information made confidential under this section. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $1,000 and by forfeiture of the person's appointment as commissioner or as an employee of the division.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.221, eff. September 1, 2005.

Sec. 411.106. SAFETY CLASSIFICATION. (a) To establish a safety classification for employers, the division shall:

(1) obtain medical and compensation cost information regularly compiled by the department in performing rate-making duties and functions regarding employer liability and workers' compensation insurance; and

(2) collect and compile information relating to:

(A) the frequency rate of accidents;

(B) the existence and implementation of private safety

programs;

(C) the number of work-hour losses because of injuries; and

(D) other facts showing accident experience.

(b) From the information obtained under Subsection (a), the division shall classify employers as appropriate to implement this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.222, eff. September 1, 2005.

Sec. 411.107. ELIMINATION OF SAFETY IMPEDIMENTS. The division may endeavor to eliminate an impediment to occupational or industrial safety that is reported to the division by an affected employer. In attempting to eliminate an impediment the division may advise and consult with an employer, or a representative of an employer, who is directly involved.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.223, eff. September 1, 2005.

Sec. 411.108. ACCIDENT REPORTS. The division may require an employer and any other appropriate person to report accidents, personal injuries, fatalities, or other statistics and information relating to accidents on forms prescribed by and covering periods designated by the commissioner.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.224, eff. September 1, 2005.

Sec. 411.109. EFFECT ON OTHER LAW. This subchapter and Chapters 341 and 755, Health and Safety Code, to the extent possible shall all be given effect.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

Sec. 411.110. LABOR DISPUTES. (a) It is the intent of the legislature that this subchapter, or an act performed under this subchapter, may not be:

(1) used as an issue involved in a labor dispute; or

(2) used or asserted to advantage in collective bargaining by employers, employees, or their respective representatives.

(b) Notwithstanding any other provision of this subchapter, this subchapter does not apply to a place of employment while that place of employment is subject to picketing or to a strike, slowdown, or other work stoppage.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.54(a), eff. Sept. 1, 1995.

CHAPTER 412. STATE OFFICE OF RISK MANAGEMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 412.001. DEFINITIONS. In this chapter:

(1) "Board" means the risk management board.

(2) "Director" means the executive director of the office.

(3) "Office" means the State Office of Risk Management.

(4) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state.

Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. OFFICE

Sec. 412.011. POWERS AND DUTIES OF OFFICE. (a) The State Office of Risk Management shall administer insurance services obtained by state agencies, including the government employees workers' compensation insurance program and the state risk management programs.

(b) The office shall:

(1) operate as a full-service risk manager and insurance manager for state agencies as provided by Subsection (c);

(2) maintain and review records of property, casualty, or liability insurance coverages purchased by or for a state agency;

(3) administer the program for the purchase of surety bonds for state officers and employees as provided by Chapter 653, Government Code;

(4) administer guidelines adopted by the board for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses;

(5) review, verify, monitor, and approve risk management programs adopted by state agencies;

(6) assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the guidelines established by the board;

(7) administer the workers' compensation insurance program for state employees established under Chapter 501; and

(8) provide risk management services for employees of community supervision and corrections departments established under Chapter 76, Government Code, as if the employees were employees of a state agency.

(c) The office shall:

(1) perform risk management for each state agency subject to this chapter, except to any extent limited by Subsection (j); and

(2) purchase insurance coverage under any line of insurance other than health or life insurance, including liability insurance authorized under Chapter 612, Government Code, for a state agency subject to Chapter 501, except for:

(A) an institution subject to Section 501.022; or

(B) the Texas State University System or a component institution of that system.

(d) The board by rule shall develop an implementation schedule for the purchase under this section of insurance for state agencies

by the office. The board shall phase in, by line of insurance, the requirement that a state agency purchase coverage only through the office.

(e) A state agency subject to Chapter 501, except for an institution subject to Section 501.022 or the Texas State University System or a component institution of that system, may not purchase property, casualty, or liability insurance coverage without the approval of the board.

(f) The office shall work with each state agency to develop an agency-level continuity of operations plan under Section 412.054.

(g) The office shall make available to each agency subject to Section 412.054 guidelines and models for each element listed in Section 412.054. The office shall assist the agency as necessary to ensure that:

(1) agency staff understands each element of the continuity of operations plan developed under Section 412.054; and

(2) each agency provides training and conducts testing and exercises that prepare the agency for implementing the plan.

(h) The office and the Texas Building and Procurement Commission shall adopt a memorandum of understanding that:

(1) includes the type, amount, and frequency of safety-related information that may be shared between the office and the commission; and

(2) designates points of contact within the office and the commission to coordinate the sharing of information.

(i) The office shall:

(1) maintain a system to promptly and efficiently act on complaints filed with the office;

(2) maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and disposition of the complaint;

(3) make information available describing the office's procedures for complaint investigation and resolution; and

(4) periodically notify the complaint parties of the status of the complaint until final disposition.

(j) The Texas State University System or a component institution of that system shall perform risk management services related to insurance coverage purchased by the system or institution without board approval.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.01, eff. Sept. 1, 2002; Acts 2003, 78th Leg., ch. 527, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 1, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 509 (H.B. 796), Sec. 1, eff. June 16, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 1, eff. June 19, 2015.

Sec. 412.0111. AFFILIATION WITH OFFICE OF ATTORNEY GENERAL. The office is administratively attached to the office of the attorney general and the office of the attorney general shall provide the facilities for the office, but the office shall be independent of the office of the attorney general's direction.

Added by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002. Redesignated from Labor Code Sec. 412.011(c).

Text of section as amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.012. FUNDING. The office shall be administered through money appropriated by the legislature and through the allocation program for the financing of state workers' compensation benefits and risk management costs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.012. FUNDING. The office shall be administered through money appropriated by the legislature and through:

(1) interagency contracts for purchase of insurance

coverage and the operation of the risk management program; and

(2) the allocation program for the financing of state workers' compensation benefits.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1 and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0121. INTERAGENCY CONTRACTS. (a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The costs of risk management services provided by a state agency under the interagency contract shall be allocated in the same proportion and determined in the same manner as the costs of workers' compensation.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) by Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.0121. INTERAGENCY CONTRACTS. (a) Each state agency shall enter into an interagency contract with the office under Chapter 771, Government Code, to pay the costs incurred by the office in administering this chapter for the benefit of that state agency.

(b) Costs payable under the contract include the cost of:

(1) services of office employees;

(2) materials; and

(3) equipment, including computer hardware and software.

(c) The amount of the costs to be paid by a state agency under the interagency contract is based on:

(1) the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;

(2) the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and

(3) the number and aggregate cost of claims and losses incurred by the state agency compared to those incurred by all state agencies to which this chapter applies.

(d) The board may by rule establish the formula for allocating the cost of this chapter in an interagency contract in a manner that gives consideration to the factors in Subsection (c) and any other factors it deems relevant, including an agency's risk management expenditures, unique risks, and established programs.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(b) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION. The state is self-insuring with respect to an employee's compensable injury.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(c) and

amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.0122. STATE SELF-INSURING FOR WORKERS' COMPENSATION.

(a) The state is self-insuring with respect to an employee's compensable injury.

(b) The legislature shall appropriate the amount designated by the appropriation structure for the payment of state workers' compensation claims costs to the office. This section does not affect the reimbursement of claims costs by funds other than general revenue funds, as provided by the General Appropriations Act.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(c) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Text of section as added by Acts 2001, 77th Leg., ch. 559, Sec. 1, and Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

Sec. 412.0123. ALLOCATION OF WORKERS' COMPENSATION AND RISK MANAGEMENT COSTS; RISK REWARD PROGRAM.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 559, Sec. 1

(a) The office shall establish an allocation program for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

Text of subsec. (a) as added by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01

(a) The office shall establish a risk reward for the payment of workers' compensation claims and risk management services that are incurred by a state agency subject to Chapter 501.

(b) The office shall establish a formula for allocating the state's workers' compensation costs among covered agencies based on the claims experience of each agency, the current and projected size of each agency's workforce, each agency's payroll, the related costs incurred in administering claims, and other factors that the office determines to be relevant. The agency may provide modifiers to the formula to promote the effective implementation of risk management programs by state agencies.

(c) The board has final authority to determine the assessments

to be paid by the covered agencies.

Added by 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001.

Text of section as renumbered from Labor Code Sec. 412.012(d) by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02

Sec. 412.0123. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. (a) All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

(b) Funds deposited under this section may be used for the payment of workers' compensation benefits to state employees.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.02, eff. Sept. 1, 2002.

Sec. 412.0124. DEPOSIT OF WORKERS' COMPENSATION SUBROGATION RECOVERIES. All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 4, eff. Sept. 1, 1999. Renumbered from Labor Code Sec. 412.012(d) and amended by Acts 2001, 77th Leg., ch. 1456, Sec. 14.01, eff. June 17, 2001; Acts 2001, 77th Leg., ch. 559, Sec. 1, eff. Sept. 1, 2001.

Sec. 412.0125. RETURN-TO-WORK COORDINATION SERVICES; CASE MANAGEMENT. (a) The office shall provide each state agency with return-to-work coordination services as necessary to facilitate an injured employee's return to employment. The office shall notify each state agency of the availability of return-to-work coordination services.

(b) As part of return-to-work coordination services under this section, the office shall:

(1) establish a time frame for case management of an injured employee that ensures services are provided to the injured employee as soon as practicable to improve the employee's chance of returning to work as quickly as possible;

(2) provide guidance to each state agency to identify appropriate services for an injured employee;

(3) adopt rules that set standards and provide guidance to a state agency interacting with an injured employee; and

(4) implement any other services provided under Section 413.021 that will facilitate the reintegration of an injured employee.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0126. ANALYSIS. (a) The board shall adopt rules as necessary to collect data on lost time and return-to-work outcomes of each state agency to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(b) The office shall:

(1) collect and analyze data from each state agency regarding lost time, including sick leave and annual leave used by an injured employee;

(2) identify state agencies that need additional training or case management services related to return-to-work services;

(3) modify as necessary the office's assessment computation to encourage state agencies to effectively reduce workers' compensation costs;

(4) incorporate as necessary return-to-work goals developed by the division of workers' compensation under Section 413.025;

(5) work with the workers' compensation research and evaluation group to develop analytical tools to assist the office with its duties under this section;

(6) require state agencies to report information in a standardized format;

(7) monitor the information reported by each state agency; and

(8) evaluate the information provided under this section to determine outcomes over time for each state agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0127. PAYMENT BY ELECTRONIC FUNDS TRANSFER. (a) Notwithstanding Section 403.016, Government Code, and except as provided by Subsection (b), the office shall pay an employee entitled to an indemnity benefit payment using the same payment method as the method by which the employee receives the employee's wages.

(b) The office shall adopt rules to facilitate the use of electronic funds transfer as the preferred method of payment under this section.

(c) The office may issue an indemnity benefit payment by check on request or if electronic funds transfer is not feasible.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.

Sec. 412.0128. CONFIDENTIALITY OF INFORMATION. (a) Information in or derived from a workers' compensation claim file regarding an employee, and information in or derived from a risk management review related to facility security or continuity of operations, is confidential and is exempt from disclosure under Chapter 552, Government Code, and may not be disclosed by the office except as provided by Subsection (b), other provisions of this subchapter, or other law. Classified or sensitive information specifically preempted from disclosure by federal law retains the confidentiality protection provided by this section for all purposes, including disclosure to the office.

(b) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under Section 412.054 are public information subject to disclosure under Chapter 552, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 2, eff. September 1, 2007.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 2, eff. June 19, 2015.

SUBCHAPTER C. BOARD

Sec. 412.021. RISK MANAGEMENT BOARD. (a) The office is governed by the risk management board. Members of the board must have demonstrated experience in the fields of:

(1) insurance and insurance regulation;

(2) workers' compensation; and

(3) risk management administration.

(a-1) A person may not be a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the office;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the office; or

(3) uses or receives a substantial amount of tangible goods, services, or money from the office other than compensation or reimbursement authorized by law for risk management board membership, attendance, or expenses.

(b) The board is composed of five members appointed by the governor.

(c) Members of the board hold office for staggered terms of six years with one or two members' terms expiring February 1 of each odd-numbered year. A member appointed to fill a vacancy shall hold office for the remainder of that term.

(d) The governor shall designate one member of the board as presiding officer. The presiding officer shall serve in that capacity at the pleasure of the governor.

(e) The board is subject to Chapters 552 and 2001, Government Code.

(f) The risk management board and the office are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this section expires September 1, 2019.

(g) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin

of the appointee.

(h) The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the director and the staff of the risk management office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.03, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1481, Sec. 3.02, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1170, Sec. 40.01, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 3, eff. September 1, 2007.

Sec. 412.022. TRAINING PROGRAM FOR BOARD MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) A training program established under this section must provide information to the member regarding:

(1) the enabling legislation that created the office and the office's programs, functions, rules, and budget;

(2) the results of the most recent formal audit of the office;

(3) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(4) any applicable ethics policies adopted by the office or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.04, eff. Sept. 1, 2002.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 4, eff. September 1, 2007.

Sec. 412.023. EFFECT OF LOBBYING ACTIVITY. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of insurance or health care; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of insurance or health care.

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

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 5, eff. September 1, 2007.

Sec. 412.024. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of taking office the qualifications required by Section 412.021;

(2) does not maintain during service on the board the qualifications required by Section 412.021;

(3) is ineligible for membership under Section 412.021 or 412.023;

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

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(a-1) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(b) If the director knows that a potential ground for removal exists, the director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the director shall notify the next highest officer of the board, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 6, eff. September 1, 2007.

Sec. 412.027. USE OF TECHNOLOGY. The board shall implement a policy requiring the office to use appropriate technological solutions to improve the office's ability to perform its functions. The policy must ensure that the public is able to interact with the office on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 7, eff. September 1, 2007.

SUBCHAPTER D. GENERAL POWERS AND DUTIES OF BOARD

Sec. 412.031. RULEMAKING AUTHORITY. The board shall adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.032. BOARD'S REPORT TO LEGISLATURE. (a) Based on the recommendations of the director, the board shall report to each legislature relating to:

(1) methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses;

(2) the operation, financing, and management of those risks;

(3) the handling of claims brought against the state;

(4) return-to-work outcomes under Section 412.0126 for each state agency; and

(5) the continuity of operations plan developed by state agencies under Section 412.054.

(b) The report must include:

(1) the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;

(2) the identification of each state agency that has not complied with the risk management guidelines and reporting requirements of this chapter;

(3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes;

(4) a report of outcomes by state agency of lost time due to employee injury and return-to-work programs based on the information collected and analyzed by the office in Section 412.0126; and

(5) an evaluation of continuity of operations plans developed by state agencies under Section 412.054 for completeness and viability.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 8, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 3, eff.

June 19, 2015.

Sec. 412.033. HIRING DIRECTOR. The board shall hire a qualified person to serve as director of the office. The director serves at the pleasure of the board.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.034. PUBLIC HEARING. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 9, eff. September 1, 2007.

Sec. 412.035. DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of office rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The office's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the office.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 10, eff. September 1, 2007.

SUBCHAPTER E. DIRECTOR

Sec. 412.041. DIRECTOR DUTIES. (a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency.

(c) In addition to other duties provided by this chapter, by Chapter 501, and by the board, the director shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501;

(4) hire staff as necessary to accomplish the objectives of the board and may delegate powers and duties to members of that staff as necessary;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(d) If necessary to the administration of this chapter and Chapter 501, the director, with the approval of the board, may secure and provide for services that are necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time

basis.

(e) The director also serves as the administrator of the government employees workers' compensation insurance program.

(f) In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury before September 1, 1995, the director shall act in the capacity of employer and insurer. In administering and enforcing Chapter 501 as regards a compensable injury with a date of injury on or after September 1, 1995, the director shall act in the capacity of insurer.

(g) The director shall act as an adversary before the division and courts and present the legal defenses and positions of the state as an employer and insurer, as appropriate.

(h) For the purposes of Subsection (f) and Chapter 501, the director is entitled to the legal counsel of the attorney general.

(i) In administering Chapter 501, the director is subject to the rules, orders, and decisions of the commissioner in the same manner as a private employer, insurer, or association.

(j) The director shall:

(1) prepare for adoption by the board procedural rules and prescribe forms necessary for the effective administration of this chapter and Chapter 501; and

(2) prepare for adoption by the board and enforce reasonable rules for the prevention of accidents and injuries.

(k) The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this chapter and Chapter 501.

(l) The director shall furnish copies of all rules to:

(1) the commissioner of insurance;

(2) the commissioner; and

(3) the administrative heads of all state agencies affected by this chapter and Chapter 501.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.05, eff. Sept. 1, 2002.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.225, eff. September 1, 2005.

Sec. 412.042. REPORTS TO THE LEGISLATURE. (a) The director shall report to the legislature at the beginning of each regular session regarding the services provided by the office to a state agency subject to Chapter 501.

The report required under this subsection shall be dated January 1 of the year in which the regular session is held and must include:

(1) a summary of administrative expenses;

(2) a statement:

(A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and

(B) estimating the amount of that balance necessary to administer Chapter 501 for the remainder of that fiscal year; and

(3) an estimate, based on experience factors, of the amount of money that will be required to administer Chapter 501 and pay for the compensation and services provided under Chapter 501 during the next succeeding biennium.

(b) In addition to the report required under Subsection (a), the director shall report to the legislature not later than February 1 of each odd-numbered year regarding insurance coverage purchased for state agencies, premium dollars spent to obtain that coverage, and losses incurred under that coverage.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1049, Sec. 9.01(a)(11), eff. September 1, 2011.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 953, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1017, Sec. 1.06, eff. Sept. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 9.01(a)(11), eff. September 1, 2011.

SUBCHAPTER F. STATE AGENCIES

Sec. 412.051. DUTIES OF STATE AGENCIES; INSURANCE NOTIFICATION REQUIREMENTS. (a) Each state agency shall actively manage the risks of that agency by:

(1) developing, implementing, and maintaining programs designed to assist employees who sustain compensable injuries to return to work; and

(2) cooperating with the office and the Texas Department of Insurance in the purchase of property, casualty, and liability lines of insurance coverage.

(b) Subject to Section 412.011, each state agency that intends to purchase property, casualty, or liability insurance coverage in a manner other than through the services provided by the office shall notify the office of the intended purchase in the manner prescribed by the office. The state agency shall notify the office of the intended purchase not later than the 30th day before the date on which the purchase of the coverage is scheduled to occur. The office may require a state agency to submit copies of insurance forms, policies, and other relevant information.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.07, eff. Sept. 1, 2002.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 81, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 82, eff. September 1, 2013.

Sec. 412.052. EXEMPTION OF CERTAIN STATE AGENCIES. This chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.

Sec. 412.053. ANNUAL REPORT BY STATE AGENCY. (a) Each state agency shall report to the director for each fiscal year:

(1) the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;

(2) loss information obtained by the state agency in the course of its administration of the workers' compensation program;

(3) detailed information on existing and potential exposure to loss, including property location and values, descriptions of

agency operations, and estimates of maximum probable and maximum possible losses by category of risk;

(4) estimates by category of risk of losses incurred but not reported;

(5) information the director determines necessary to prepare a Texas Workers' Compensation Unit Statistical Report; and

(6) additional information that the director determines to be necessary.

(b) The information shall be reported not later than the 60th day before the last day of each fiscal year.

(c) This section does not apply to an institution of higher education or university system. In this subsection, "institution of higher education" and "university system" have the meanings assigned by Section 61.003, Education Code.

Added by Acts 1997, 75th Leg., ch. 1098, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1017, Sec. 1.08, eff. Sept. 1, 2002.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.13, eff. June 17, 2011.

Sec. 412.054. CONTINUITY OF OPERATIONS PLAN. (a) Each state agency shall work with the office to develop an agency-level continuity of operations plan that outlines procedures to keep the agency operational in case of disruptions to production, finance, administration, or other essential operations. The plan must include detailed information regarding resumption of essential services after a catastrophe, including:

(1) coordination with public authorities;

(2) management of media;

(3) customer service delivery;

(4) assessing immediate financial and operational needs; and

(5) other services as determined by the office.

(b) A continuity of operations plan that meets the requirements of this section must be submitted by each state agency that is:

(1) involved in the delivery of emergency services as a member of the governor's Emergency Management Council;

(2) part of the State Data Center program; or

(3) subject to this chapter or Chapter 501.

(c) Except as otherwise provided by this section, the following information is confidential and is exempt from disclosure under Chapter 552, Government Code:

(1) a continuity of operations plan developed under this section; and

(2) any records written, produced, collected, assembled, or maintained as part of the development or review of a continuity of operations plan under this section.

(d) Forms, standards, and other instructional, informational, or planning materials adopted by the office to provide guidance or assistance to a state agency in developing a continuity of operations plan under this section are public information subject to disclosure under Chapter 552, Government Code.

(e) A state agency may disclose or make available information that is confidential under this section to another state agency, a governmental body, or a federal agency.

(f) Disclosing information to another state agency, a governmental body, or a federal agency under this section does not waive or affect the confidentiality of that information.

Added by Acts 2007, 80th Leg., R.S., Ch. 407 (S.B. 908), Sec. 11, eff. September 1, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1045 (H.B. 1832), Sec. 4, eff. June 19, 2015.

CHAPTER 413. MEDICAL REVIEW

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 413.002. MEDICAL REVIEW. (a) The division shall monitor health care providers, insurance carriers, independent review organizations, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commissioner relating to health care, including medical policies and fee guidelines.

(b) In monitoring health care providers who serve as designated doctors under Chapter 408 and independent review organizations who provide services described by this chapter, the division shall

evaluate:

(1) compliance with this subtitle and with rules adopted by the commissioner relating to medical policies, fee guidelines, treatment guidelines, return-to-work guidelines, and impairment ratings; and

(2) the quality and timeliness of decisions made under Section 408.0041, 408.122, 408.151, or 413.031.

(c) The division shall report the results of the monitoring of independent review organizations under Subsection (b) to the department on at least a quarterly basis.

(d) If the commissioner determines that an independent review organization is in violation of this chapter, rules adopted by the commissioner under this chapter, applicable provisions of this code or rules adopted under this code, or applicable provisions of the Insurance Code or rules adopted under that code, the commissioner or a designated representative shall notify the independent review organization of the alleged violation and may compel the production of any documents or other information as necessary to determine whether the violation occurred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.42, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.227, eff. September 1, 2005.

Sec. 413.003. AUTHORITY TO CONTRACT. The division may contract with a private or public entity to perform a duty or function of the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.228, eff. September 1, 2005.

Sec. 413.004. COORDINATION WITH PROVIDERS. The division shall coordinate its activities with health care providers as necessary to perform its duties under this chapter. The coordination may include:

(1) conducting educational seminars on commissioner rules

and procedures; or

(2) providing information to and requesting assistance from professional peer review organizations.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.229, eff. September 1, 2005.

Sec. 413.006. ADVISORY COMMITTEES. The commissioner may appoint advisory committees as the commissioner considers necessary.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.230, eff. September 1, 2005.

Sec. 413.007. INFORMATION MAINTAINED BY DIVISION. (a) The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by:

(1) the commissioner in adopting the medical policies and fee guidelines; and

(2) the division in administering the medical policies, fee guidelines, or rules.

(b) The division shall ensure that the data base:

(1) contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and

(2) can be used in a meaningful way to allow the commission to control medical costs as provided by this subtitle.

(c) The division shall ensure that the data base is available for public access for a reasonable fee established by the commissioner. The identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall take appropriate action to be aware of and to maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.231, eff. September 1, 2005.

Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION. (a) On request from the division for specific information, an insurance carrier shall provide to the division any information in the carrier's possession, custody, or control that reasonably relates to the division's duties under this subtitle and to health care:

(1) treatment;
(2) services;
(3) fees; and
(4) charges.

(b) The division shall keep confidential information that is confidential by law.

(c) An insurance carrier commits an administrative violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.232, eff. September 1, 2005.

SUBCHAPTER B. MEDICAL SERVICES AND FEES

Sec. 413.011. REIMBURSEMENT POLICIES AND GUIDELINES; TREATMENT GUIDELINES AND PROTOCOLS. (a) The commissioner shall adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems with minimal modifications to those reimbursement methodologies as necessary to meet occupational injury requirements. To achieve standardization, the commissioner shall adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary

to meet the requirements of Section 413.053.

(b) In determining the appropriate fees, the commissioner shall also develop one or more conversion factors or other payment adjustment factors taking into account economic indicators in health care and the requirements of Subsection (d). The commissioner shall also provide for reasonable fees for the evaluation and management of care as required by Section 408.025(c) and commissioner rules. This section does not adopt the Medicare fee schedule, and the commissioner may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by the federal Centers for Medicare and Medicaid Services.

(c) This section may not be interpreted in a manner that would discriminate in the amount or method of payment or reimbursement for services in a manner prohibited by Section 1451.104, Insurance Code, or as restricting the ability of chiropractors to serve as treating doctors as authorized by this subtitle. The commissioner shall also develop guidelines relating to fees charged or paid for providing expert testimony relating to an issue arising under this subtitle.

(d) Fee guidelines must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commissioner shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

(d-4) Notwithstanding this section or any other provision of this title, an insurance carrier, an insurance carrier's authorized agent, or a network certified under Chapter 1305, Insurance Code, arranging for non-network services or out-of-network services under Section 1305.006, Insurance Code, may continue to contract with a health care provider to secure health care for an injured employee for fees that exceed the fees adopted by the division under this section.

(d-5) The commissioner and the commissioner of insurance may adopt rules as necessary to implement this section.

(e) The commissioner by rule shall adopt treatment guidelines and return-to-work guidelines and may adopt individual treatment protocols. Treatment guidelines and protocols must be evidence-based, scientifically valid, and outcome-focused and designed to

reduce excessive or inappropriate medical care while safeguarding necessary medical care. Treatment may not be denied solely on the basis that the treatment for the compensable injury in question is not specifically addressed by the treatment guidelines.

(f) In addition to complying with the requirements of Subsection (e), medical policies or guidelines adopted by the commissioner must be:

(1) designed to ensure the quality of medical care and to achieve effective medical cost control;

(2) designed to enhance a timely and appropriate return to work; and

(3) consistent with Sections 413.013, 413.020, 413.052, and 413.053.

(g) The commissioner may adopt rules relating to disability management that are designed to promote appropriate health care at the earliest opportunity after the injury to maximize injury healing and improve stay-at-work and return-to-work outcomes through appropriate management of work-related injuries or conditions. The commissioner by rule may identify claims in which application of disability management activities is required and prescribe at what point in the claim process a treatment plan is required. The determination may be based on any factor considered relevant by the commissioner. Rules adopted under this subsection do not apply to claims subject to workers' compensation health care networks under Chapter 1305, Insurance Code.

(h) A dispute involving a treatment plan required under Subsection (g) may be appealed to an independent review organization in the manner described by Section 413.031.

(i) The division shall examine whether injured employees have reasonable access to surgically implanted, inserted, or otherwise applied devices or tissues and investigate whether reimbursement rates or any other barriers exist that reduce the ability of an injured employee to access those medical needs. The division shall recommend to the legislature any statutory changes necessary to ensure appropriate access to those medical needs.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 962, Sec. 1, 2, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.233, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 2, eff. January 1, 2011.

Sec. 413.0111. PROCESSING AGENTS. The rules adopted by the commissioner for the reimbursement of prescription medications and services must authorize pharmacies to use agents or assignees to process claims and act on the behalf of the pharmacies under terms and conditions agreed on by the pharmacies.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.234, eff. September 1, 2005.

Sec. 413.0115. REQUIREMENTS FOR CERTAIN VOLUNTARY OR INFORMAL NETWORKS. (a) In this section:

(1) "Informal network" means a health care provider network described by Section 413.011(d-1) that:

(A) is established under a contract between an insurance carrier and health care providers; and

(B) includes a specific fee schedule.

(2) "Voluntary network" means a voluntary workers' compensation health care delivery network established by an insurance carrier under former Section 408.0223, as that section existed before repeal by Chapter 265, Acts of the 79th Legislature, Regular Session, 2005.

(b) Not later than January 1, 2011, each informal network or voluntary network must be certified as a workers' compensation health care network under Chapter 1305, Insurance Code.

(c) Effective September 1, 2007, each informal network and voluntary network must provide the following information to the division:

(1) an executive contact for official correspondence for the network;

(2) a toll-free telephone number by which a health care provider may contact the informal network or voluntary network;

(3) a list of each insurance carrier with whom the network contracts; and

(4) a list of each entity associated with the network working on behalf of the insurance carrier, including contact information for each entity.

(d) Each informal network and voluntary network shall report any changes to the information provided under Subsection (c) to the division not later than the 30th day after the effective date of the change.

Added by Acts 2007, 80th Leg., R.S., Ch. 1177 (H.B. 473), Sec. 3, eff. September 1, 2007.

Sec. 413.012. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED. The medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.013. PROGRAMS. The commissioner by rule shall establish:

(1) a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services;

(2) a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the division to ensure that the medical policies or guidelines are not exceeded;

(3) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the division; and

(4) a program to increase the intensity of review for compliance with the medical policies or fee guidelines for any health care provider that has established a practice or pattern in charges

and treatments inconsistent with the medical policies and fee guidelines.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.235, eff. September 1, 2005.

Sec. 413.014. PREAUTHORIZATION REQUIREMENTS; CONCURRENT REVIEW AND CERTIFICATION OF HEALTH CARE. (a) In this section, "investigational or experimental service or device" means a health care treatment, service, or device for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, service, or device but that is not yet broadly accepted as the prevailing standard of care.

(b) The commissioner by rule shall specify which health care treatments and services require express preauthorization or concurrent review by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(c) The commissioner's rules adopted under this section must provide that preauthorization and concurrent review are required at a minimum for:

(1) spinal surgery, as provided by Section 408.026;

(2) work-hardening or work-conditioning services provided by a health care facility that is not credentialed by an organization recognized by commissioner rules;

(3) inpatient hospitalization, including any procedure and length of stay;

(4) physical and occupational therapy;

(5) outpatient or ambulatory surgical services, as defined by commissioner rule; and

(6) any investigational or experimental services or devices.

(d) The insurance carrier is not liable for those specified treatments and services requiring preauthorization unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commissioner.

(e) If a specified health care treatment or service is

preauthorized as provided by this section, that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service.

(f) The division may not prohibit an insurance carrier and a health care provider from voluntarily discussing health care treatment and treatment plans and pharmaceutical services, either prospectively or concurrently, and may not prohibit an insurance carrier from certifying or agreeing to pay for health care consistent with those agreements. The insurance carrier is liable for health care treatment and treatment plans and pharmaceutical services that are voluntarily preauthorized and may not dispute the certified or agreed-on preauthorized health care treatment and treatment plans and pharmaceutical services at a later date.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 4.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.236, eff. September 1, 2005.

Sec. 413.0141. INITIAL PHARMACEUTICAL COVERAGE. The commissioner may by rule provide that an insurance carrier shall provide for payment of specified pharmaceutical services sufficient for the first seven days following the date of injury if the health care provider requests and receives verification of insurance coverage and a verbal confirmation of an injury from the employer or from the insurance carrier as provided by Section 413.014. The rules adopted by the commissioner shall provide that an insurance carrier is eligible for reimbursement for pharmaceutical services paid under this section from the subsequent injury fund in the event the injury is determined not to be compensable.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 4.03, eff. June 17, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.237, eff. September 1, 2005.

Sec. 413.015. PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW. (a) Insurance carriers shall make appropriate payment of charges for medical services provided under this subtitle. An insurance carrier may contract with a separate entity to forward payments for medical services. Any payment due the insurance carrier from the separate entity must be made in accordance with the contract. The separate entity is subject to the direction of the insurance carrier, and the insurance carrier is responsible for the actions of the separate entity under this subsection.

(b) The commissioner shall provide by rule for the review and audit of the payment by insurance carriers of charges for medical services provided under this subtitle to ensure compliance of health care providers and insurance carriers with the medical policies and fee guidelines adopted by the commissioner.

(c) The rules must require the insurance carrier to pay the expenses of the review and audit.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.03, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.238, eff. September 1, 2005.

Sec. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES. (a) The division shall order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this subtitle to the division of compliance and practices.

(b) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical policies or fee guidelines adopted by the commissioner, the division shall investigate the potential violation. If the insurance carrier reduced a charge of a health care provider that was within the guidelines, the insurance carrier shall be directed to submit the difference to the provider unless the reduction is in accordance with an agreement between the health care provider and the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.239, eff. September 1, 2005.

Sec. 413.017. PRESUMPTION OF REASONABLENESS. The following medical services are presumed reasonable:

(1) medical services consistent with the medical policies and fee guidelines adopted by the commissioner; and

(2) medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the division and that are authorized by an insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.240, eff. September 1, 2005.

Sec. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED. (a) The commissioner by rule shall provide for the periodic review of medical care provided in claims in which guidelines for expected or average return to work time frames are exceeded.

(b) The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided.

(c) The division shall implement a program to encourage employers and treating doctors to discuss the availability of modified duty to encourage the safe and more timely return to work of injured employees. The division may require a treating or examining doctor, on the request of the employer, insurance carrier, or division, to provide a functional capacity evaluation of an injured employee and to determine the employee's ability to engage in physical activities found in the workplace or in activities that are required in a modified duty setting.

(d) The division shall provide through the division's health and safety information and medical review outreach programs information to employers regarding effective return to work programs. This section does not require an employer to provide modified duty or

an employee to accept a modified duty assignment. An employee who does not accept an employer's offer of modified duty determined by the division to be a bona fide job offer is subject to Section 408.103(e).

(e) The commissioner may adopt rules and forms as necessary to implement this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 956, Sec. 3, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.241, eff. September 1, 2005.

Sec. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVERPAYMENT. (a) Interest on an unpaid fee or charge that is consistent with the fee guidelines accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the health care provider submits the bill to an insurance carrier until the date the bill is paid.

(b) Interest on a refund from a health care provider accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the provider receives notice of alleged overpayment from the insurance carrier until the date the refund is paid.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.020. DIVISION CHARGES. The commissioner by rule shall establish procedures to enable the division to charge:

(1) an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges under this subtitle; and

(2) a health care provider who exceeds a fee or utilization guideline established under this subtitle or an insurance carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline established under this subtitle a reasonable fee for review of health care treatment, fees, or charges under this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.242, eff. September 1, 2005.

Sec. 413.021. RETURN-TO-WORK COORDINATION SERVICES. (a) An insurance carrier shall, with the agreement of a participating employer, provide the employer with return-to-work coordination services on an ongoing basis as necessary to facilitate an employee's return to employment, including on receipt of a notice that an injured employee is eligible to receive temporary income benefits. The insurance carrier shall notify the employer of the availability of the return-to-work reimbursement program under Section 413.022. The insurance carrier shall evaluate a compensable injury in which the injured employee sustains an injury that could potentially result in lost time from employment as early as practicable to determine if skilled case management is necessary for the injured employee's case. As necessary, case managers who are appropriately certified shall be used to perform these evaluations. A claims adjuster may not be used as a case manager. These services may be offered by insurance carriers in conjunction with the accident prevention services provided under Section 411.061. Nothing in this section supersedes the provisions of a collective bargaining agreement between an employer and the employer's employees, and nothing in this section authorizes or requires an employer to engage in conduct that would otherwise be a violation of the employer's obligations under the National Labor Relations Act (29 U.S.C. Section 151 et seq.).

(b) Return-to-work coordination services under this section may include:

(1) job analysis to identify the physical demands of a job;

(2) job modification and restructuring assessments as necessary to match job requirements with the functional capacity of an employee; and

(3) medical or vocational case management to coordinate the efforts of the employer, the treating doctor, and the injured employee to achieve timely return to work.

(c) An insurance carrier is not required to provide physical workplace modifications under this section and is not liable for the cost of modifications made under this section to facilitate an employee's return to employment.

(d) The division shall use certified rehabilitation counselors or other appropriately trained or credentialed specialists to provide training to division staff regarding the coordination of return-to-work services under this section.

(e) The commissioner shall adopt rules necessary to collect data on return-to-work outcomes to allow full evaluations of successes and of barriers to achieving timely return to work after an injury.

(f) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a).

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 3.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 10, Sec. 1.02(a), eff. Oct. 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.243, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 1, eff. June 19, 2009.

Sec. 413.022. RETURN-TO-WORK REIMBURSEMENT PROGRAM FOR EMPLOYERS; FUND. (a) In this section:

(1) "Account" means the workers' compensation return-to-work account.

(2) "Eligible employer" means any employer, other than this state or a political subdivision subject to Subtitle C, who has workers' compensation insurance coverage and who:

(A) employed at least two but not more than 50 employees on each business day during the preceding calendar year; or

(B) is a type of employer designated as eligible to participate in the program by the commissioner.

(3) "Program" means the return-to-work reimbursement program established under this section.

(b) The commissioner shall establish by rule a return-to-work reimbursement program designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury. The commissioner, by rule, may expand eligibility to participate in the program to types of employers who are not described by Subsection (a)(2)(A).

(c) The program shall reimburse from the account an eligible employer for expenses incurred by the employer to make workplace modifications necessary to accommodate an injured employee's return to modified or alternative work. Reimbursement under this section to an eligible employer may not exceed $5,000. The expenses must be incurred to allow the employee to perform modified or alternative work within doctor-imposed work restrictions. Allowable expenses may include:

(1) physical modifications to the worksite;

(2) equipment, devices, furniture, or tools; and

(3) other costs necessary for reasonable accommodation of the employee's restrictions.

(c-1) The commissioner by rule shall establish an optional preauthorization plan for eligible employers who participate in the program. To participate in the preauthorization plan, an employer must submit a proposal to the division, in the manner prescribed by the division, that describes the workplace modifications and other changes that the employer proposes to make to accommodate an injured employee's return to work. If the division approves the employer's proposal, the division shall guarantee reimbursement of the expenses incurred by the employer in implementing the modifications and changes from the account unless the division determines that the modifications and changes differ materially from the employer's proposal. If determined to be a public purpose by the commissioner, and in accordance with rules adopted by the commissioner, the division may provide the employer an advance of funds under this subsection. Reimbursement or an advance of funds under this subsection is subject to the limit imposed under Subsection (c).

(d) The account is established as a special account in the general revenue fund. From administrative penalties received by the division under this subtitle, the commissioner shall deposit in the account an amount not to exceed $100,000 annually. Money in the account may be spent by the division, on appropriation by the legislature, only for the purposes of implementing this section.

(e) An employer who wilfully applies for or receives reimbursement from the account under this section knowing that the employer is not an eligible employer commits a violation.

(f) Notwithstanding Subsections (a)-(e), this section may be implemented only to the extent funds are available.

(g) The commissioner shall adopt rules as necessary to

implement this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 106 (H.B. 886), Sec. 1, eff. May 17, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 2, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 3, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1388 (S.B. 1814), Sec. 4, eff. June 19, 2009.

Sec. 413.023. INFORMATION TO EMPLOYERS. (a) The division shall provide employers with information on methods to enhance the ability of an injured employee to return to work. The information may include access to available research and best practice information regarding return-to-work programs for employers.

(b) The division shall augment return-to-work program information provided to employers to include information regarding methods for an employer to appropriately assist an injured employee to obtain access to doctors who:

(1) provide high-quality care; and

(2) use effective occupational medicine treatment practices that lead to returning employees to productive work.

(c) The information provided to employers under this section must help to foster:

(1) effective working relationships with local doctors and with insurance carriers or workers' compensation health care networks certified under Chapter 1305, Insurance Code, to improve return-to-work communication; and

(2) access to return-to-work coordination services provided by insurance carriers.

(d) The division shall develop and make available the information described by this section.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

Sec. 413.024. INFORMATION TO EMPLOYEES. The division shall provide injured employees with information regarding the benefits of early return to work. The information must include information on how to receive assistance in accessing high-quality medical care through the workers' compensation system.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

Sec. 413.025. RETURN-TO-WORK GOALS AND ASSISTANCE. (a) The division shall assist recipients of income benefits to return to the workforce. The division shall develop improved data sharing, within the standards of federal privacy requirements, with all appropriate state agencies and workforce programs to inform the division of changes needed to assist income benefit recipients to successfully reenter the workforce.

(b) The division shall train staff dealing with income benefits to respond to questions and assist injured employees in their effort to return to the workforce. If the division determines that an injured employee is unable to ever return to the workforce, the division shall inform the employee of possible eligibility for other forms of benefits, such as social security disability income benefits.

(c) As necessary to implement the requirements of this section, the division shall:

(1) attempt to remove any barriers to successful employment that are identified at the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and private vocational rehabilitation programs;

(2) ensure that data is tracked among the division, the Texas Workforce Commission, the Department of Assistive and Rehabilitative Services, and insurance carriers, including outcome data;

(3) establish a mechanism to refer income benefit recipients to the Texas Workforce Commission and local workforce development centers for employment opportunities; and

(4) develop a mechanism to promote employment success that includes post-referral contacts by the division with income benefit recipients.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.244, eff. September 1, 2005.

SUBCHAPTER C. DISPUTE RESOLUTION

Sec. 413.031. MEDICAL DISPUTE RESOLUTION. (a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required or allowed by this subtitle or commissioner rules;

(3) ordered by the commissioner to refund a payment received; or

(4) ordered to make a payment that was refused or reduced for a medical service rendered.

(b) A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation. A claimant is entitled to a review of a medical service for which preauthorization is sought by the health care provider and denied by the insurance carrier. The commissioner shall adopt rules to notify claimants of their rights under this subsection.

(c) In resolving disputes over the amount of payment due for services determined to be medically necessary and appropriate for treatment of a compensable injury, the role of the division is to adjudicate the payment given the relevant statutory provisions and commissioner rules. The division shall publish on its Internet website the division's medical dispute decisions, including decisions of independent review organizations, and any subsequent decisions by the State Office of Administrative Hearings. Before publication, the division shall redact only that information necessary to prevent identification of the injured worker.

(d) A review of the medical necessity of a health care service requiring preauthorization under Section 413.014 or commissioner rules under that section or Section 413.011(g) shall be conducted by an independent review organization under Chapter 4202, Insurance

Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e) Except as provided by Subsections (d), (f), and (m), a review of the medical necessity of a health care service provided under this chapter or Chapter 408 shall be conducted by an independent review organization under Chapter 4202, Insurance Code, in the same manner as reviews of utilization review decisions by health maintenance organizations. It is a defense for the insurance carrier if the carrier timely complies with the decision of the independent review organization.

(e-1) In performing a review of medical necessity under Subsection (d) or (e), the independent review organization shall consider the division's health care reimbursement policies and guidelines adopted under Section 413.011. If the independent review organization's decision is contrary to the division's policies or guidelines adopted under Section 413.011, the independent review organization must indicate in the decision the specific basis for its divergence in the review of medical necessity.

(e-2) Notwithstanding Section 4202.002, Insurance Code, an independent review organization that uses doctors to perform reviews of health care services provided under this title may only use doctors licensed to practice in this state.

(e-3) Notwithstanding Subsections (d) and (e) of this section or Chapters 4201 and 4202, Insurance Code, a doctor, other than a dentist or a chiropractor, who performs a utilization review or an independent review of a health care service provided to an injured employee is subject to Section 408.0043. A dentist who performs a utilization review or an independent review of a dental service provided to an injured employee is subject to Section 408.0044. A chiropractor who performs a utilization review or an independent review of a chiropractic service provided to an injured employee is subject to Section 408.0045.

(f) The commissioner by rule shall specify the appropriate dispute resolution process for disputes in which a claimant has paid for medical services and seeks reimbursement.

(g) In performing a review of medical necessity under Subsection (d) or (e), an independent review organization may request that the commissioner order an examination by a designated doctor

under Chapter 408.

(h) The insurance carrier shall pay the cost of the review if the dispute arises in connection with:

(1) a request for health care services that require preauthorization under Section 413.014 or commissioner rules under that section; or

(2) a treatment plan under Section 413.011(g) or commissioner rules under that section.

(i) Except as provided by Subsection (h), the cost of the review shall be paid by the nonprevailing party.

(j) Notwithstanding Subsections (h) and (i), an employee may not be required to pay any portion of the cost of a review.

(k) A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing under Section 413.0311 or 413.0312, as applicable.

(k-1) A party who has exhausted all administrative remedies described by Subsection (k) and who is aggrieved by a final decision of the division or the State Office of Administrative Hearings may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that in the case of a medical fee dispute the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the State Office of Administrative Hearings mailed the party the notification of the decision. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision was issued by the State Office of Administrative Hearings.

(k-2) The division and the department are not considered to be parties to the medical dispute for purposes of Subsections (k) and (k-1).

(l) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(1), eff. September 1, 2011.

(m) The decision of an independent review organization under Subsection (d) is binding during the pendency of a dispute.

(n) The commissioner by rule may prescribe an alternate dispute resolution process to resolve disputes regarding medical services costing less than the cost of a review of the medical necessity of a health care service by an independent review organization. The cost of a review under the alternate dispute resolution process shall be

paid by the nonprevailing party.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.43, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1456, Sec. 6.04, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 980, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1323, Sec. 1, eff. June 21, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.245, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 133 (H.B. 1003), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1330 (H.B. 4290), Sec. 18, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 18, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(1), eff. September 1, 2011.

Sec. 413.0311. REVIEW OF MEDICAL NECESSITY DISPUTES; CONTESTED CASE HEARING. (a) This section applies only to an appeal of an independent review organization decision regarding determination of the medical necessity for a health care service.

(b) A party to a medical dispute described by Subsection (a) is entitled to a contested case hearing. A contested case hearing under this section shall be conducted by a hearings officer in the manner provided for contested case hearings under Subchapter D, Chapter 410. Notwithstanding Section 410.024, a benefit review conference is not a prerequisite to a contested case hearing under this section.

(c) The decision of a hearings officer under this section is final in the absence of a timely appeal by a party for judicial review under Subsection (d).

(d) A party who has exhausted all administrative remedies under Section 413.031 and this section and who is aggrieved by a final decision of the hearings officer under Subsection (c) may seek judicial review of the decision. Judicial review under this subsection shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, except that the party seeking judicial review under this section must file suit not later than the 45th day after the date on which the division mailed the party the decision of the hearings officer. For purposes of this subsection, the mailing date is considered to be the fifth day after the date the decision of the hearings officer was filed with the division.

(e) The division and the department are not considered to be parties to the medical dispute for purposes of this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1007 (H.B. 724), Sec. 2, eff. September 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1066 (S.B. 809), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 19, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 20, eff. September 1, 2011.

Sec. 413.0312. REVIEW OF MEDICAL FEE DISPUTES; BENEFIT REVIEW CONFERENCE. (a) This section applies only to a medical fee dispute that remains unresolved after any applicable review under Sections 413.031(b) through (i).

(b) Subject to Subsection (e), a party to a medical fee dispute described by Subsection (a) must adjudicate the dispute in the manner required by Subchapter B, Chapter 410.

(c) At a benefit review conference conducted under this section, the parties to the dispute may not resolve the dispute by negotiating fees that are inconsistent with any applicable fee guidelines adopted by the commissioner.

(d) If issues remain unresolved after a benefit review conference, the parties may elect to engage in arbitration as provided by Section 410.104.

(e) If arbitration is not elected as described by Subsection (d), a party to a medical fee dispute described by Subsection (a) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code.

(f) The commissioner or the division may participate in a contested case hearing conducted under Subsection (e) if the hearing involves the interpretation of fee guidelines adopted by the commissioner. The division and the department are not considered to be parties to the medical fee dispute for purposes of this section.

(g) Except as otherwise provided by this subsection, the nonprevailing party shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. If the injured employee is the nonprevailing party, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings under this section. The party required to reimburse the division under this subsection shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(h) The State Office of Administrative Hearings shall timely notify the division if a dispute is dismissed before issuance of a decision under this section. In the event of a dismissal, the party requesting the hearing, other than the injured employee, shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. If the injured employee requested the hearing, the insurance carrier shall reimburse the division for the costs for services provided by the State Office of Administrative Hearings unless otherwise agreed by the parties. The responsible party shall remit payment to the division not later than the 30th day after the date of receiving a bill or statement from the division.

(i) The State Office of Administrative Hearings shall identify the nonprevailing party and any costs for services provided by the office under this section in its final decision. Money collected by the division under this section shall be deposited in the general revenue fund to the credit of the Texas Department of Insurance operating account.

(j) Interest on the amount of reimbursement required by this

section that remains unpaid accrues at a rate provided by Section 401.023 beginning on the 45th day after the date the division submits the bill or statement to a party until the date the reimbursement is paid. Failure to pay the division as required by this section is an administrative violation under this subtitle.

(k) The commissioner by rule shall establish procedures to enable the division to charge a party to a medical fee dispute, other than an injured employee, for the costs of services provided by the State Office of Administrative Hearings.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 21, eff. September 1, 2011.

Sec. 413.032. INDEPENDENT REVIEW ORGANIZATION DECISION; APPEAL. (a) An independent review organization that conducts a review under this chapter shall specify the elements on which the decision of the organization is based. At a minimum, the decision must include:

(1) a list of all medical records and other documents reviewed by the organization;

(2) a description and the source of the screening criteria or clinical basis used in making the decision;

(3) an analysis of and explanation for the decision, including the findings and conclusions used to support the decision; and

(4) a description of the qualifications of each physician or other health care provider who reviews the decision.

(b) The independent review organization shall certify that each physician or other health care provider who reviews the decision certifies that no known conflicts of interest exist between that provider and the injured employee, the injured employee's employer, the injured employee's insurance carrier, the utilization review agent, or any of the treating doctors or insurance carrier health care providers who reviewed the case for decision before referral to the independent review organization.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.247, eff. September 1, 2005.

SUBCHAPTER D. HEALTH CARE PROVIDERS

Sec. 413.041. DISCLOSURE. (a) Each health care practitioner shall disclose to the division the identity of any health care provider in which the health care practitioner, or the health care provider that employs the health care practitioner, has a financial interest. The health care practitioner shall make the disclosure in the manner provided by commissioner rule.

(b) The commissioner shall require by rule that a doctor disclose financial interests in other health care providers as a condition of registration for the approved doctor list established under Section 408.023 and shall define "financial interest" for purposes of this section as provided by analogous federal regulations. The commissioner by rule shall adopt the federal standards that prohibit the payment or acceptance of payment in exchange for health care referrals relating to fraud, abuse, and antikickbacks.

(c) A health care provider that fails to comply with this section is subject to penalties and sanctions as provided by this subtitle, including forfeiture of the right to reimbursement for services rendered during the period of noncompliance.

(d) The division shall publish all final disclosure enforcement orders issued under this section on the division's Internet website.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.05, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.246, eff. September 1, 2005.

Sec. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the claimant by the provider unless:

(1) the injury is finally adjudicated not compensable under this subtitle; or

(2) the employee violates Section 408.022 relating to the selection of a doctor and the doctor did not know of the violation at the time the services were rendered.

(b) A health care provider commits an administrative violation if the provider violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.248, eff. September 1, 2005.

Sec. 413.043. OVERCHARGING PROHIBITED; OFFENSE. (a) A health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.
(b) An offense under this section is a Class A misdemeanor.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 413.044. SANCTIONS ON DESIGNATED DOCTOR. (a) In addition to or in lieu of an administrative penalty under Section 415.021 or a sanction imposed under Section 415.023, the commissioner may impose sanctions against a person who serves as a designated doctor under Chapter 408 who, after an evaluation conducted under Section 413.002(b), is determined by the division to be out of compliance with this subtitle or with rules adopted by the commissioner relating to:
(1) medical policies, fee guidelines, and impairment ratings; or
(2) the quality of decisions made under Section 408.0041 or Section 408.122.
(b) Sanctions imposed under Subsection (a) may include:
(1) revocation of certification for a designated doctor on the division list of designated doctors; or
(2) restrictions on the reviews made by the person as a designated doctor.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.44, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.249, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 22, eff. September 1, 2011.

SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES

Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS. (a) In this section, "health care provider professional review organization" includes an independent review organization.

(b) The division may contract with a health care provider, health care provider professional review organization, or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines.

(c) For purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the division may contract with a health care provider, health care provider professional review organization, or other entity that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

(d) The division may contract with a health care provider, health care provider professional review organization, or other entity for medical consultant services, including:

(1) independent medical examinations;

(2) medical case reviews; or

(3) establishment of medical policies and fee guidelines.

(e) The commissioner shall establish standards for contracts under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.250, eff. September 1, 2005.

Sec. 413.0511. MEDICAL ADVISOR. (a) The division shall employ or contract with a medical advisor, who must be a doctor as that term is defined by Section 401.011.

(b) The medical advisor shall make recommendations regarding the adoption of rules and policies to:

(1) develop, maintain, and review guidelines as provided by Section 413.011, including rules regarding impairment ratings;

(2) review compliance with those guidelines;

(3) regulate or perform other acts related to medical benefits as required by the commissioner;

(4) impose sanctions or delete doctors from the division's list of approved doctors under Section 408.023 for:

(A) any reason described by Section 408.0231; or

(B) noncompliance with commissioner rules;

(5) impose conditions or restrictions as authorized by Section 408.0231(f);

(6) receive, and share with the medical quality review panel established under Section 413.0512, confidential information, and other information to which access is otherwise restricted by law, as provided by Sections 413.0512, 413.0513, and 413.0514 from the Texas State Board of Medical Examiners, the Texas Board of Chiropractic Examiners, or other occupational licensing boards regarding a physician, chiropractor, or other type of doctor who applies for registration or is registered with the division on the list of approved doctors;

(7) determine minimal modifications to the reimbursement methodology and model used by the Medicare system as necessary to meet occupational injury requirements; and

(8) monitor the quality and timeliness of decisions made by designated doctors and independent review organizations, and the imposition of sanctions regarding those decisions.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.251, eff. September 1, 2005.

Sec. 413.05115. MEDICAL QUALITY REVIEW PROCESS. (a) The division shall develop, and the commissioner shall adopt, criteria concerning the medical case review process under this subchapter. In developing the criteria, and before adopting the criteria, the division and the commissioner, as applicable, must consult with the

medical advisor and seek input from potentially affected parties, including health care providers and insurance carriers.

(b) The criteria developed and adopted under this section must establish a clear process or processes:

(1) for handling complaint-based medical case reviews; and

(2) through which the division selects health care providers or other entities for a compliance audit or review.

(c) The division shall make the criteria developed and adopted under this section available on the Internet website maintained by the division.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.0512. MEDICAL QUALITY REVIEW PANEL. (a) The medical advisor shall establish a medical quality review panel of health care providers to assist the medical advisor in performing the duties required under Section 413.0511. The panel is not subject to Chapter 2110, Government Code.

(b) The agencies that regulate health professionals who are licensed or otherwise authorized to practice a health profession under Title 3, Occupations Code, and who are involved in the provision of health care as part of the workers' compensation system in this state shall develop lists of health care providers licensed or otherwise regulated by those agencies who have demonstrated experience in workers' compensation or utilization review. The medical advisor shall consider appointing some of the members of the medical quality review panel from the names on those lists and, when appointing members of the medical quality review panel, shall select specialists from various health care specialty fields to serve on the panel to ensure that the membership of the panel has expertise in a wide variety of health care specialty fields. The medical advisor shall also consider nominations for the panel made by labor, business, and insurance organizations.

(c) The medical quality review panel shall recommend to the medical advisor:

(1) appropriate action regarding doctors, other health care providers, insurance carriers, utilization review agents, and independent review organizations;

(2) the addition or deletion of doctors from the list of approved doctors under Section 408.023; and

(3) the certification, revocation of certification, or denial of renewal of certification of a designated doctor under Section 408.1225.

(d) A person who serves on the medical quality review panel is immune from suit and from civil liability for an act performed, or a recommendation made, within the scope of the person's functions as a member of the panel if the person acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to that person. In the event of a civil action brought against a member of the panel that arises from the person's participation on the panel, the person is entitled to the same protections afforded the commissioner under Section 402.00123.

(e) The actions of a person serving on the medical quality review panel do not constitute utilization review and are not subject to Chapter 4201, Insurance Code.

(f) A member of the medical quality review panel who reviews a specific workers' compensation case is subject to Section 408.0043, 408.0044, or 408.0045, as applicable.

(g) The medical advisor shall notify the division if the medical advisor determines that:

(1) it is no longer necessary for the medical quality review panel to include a member that practices in a particular health care specialty field; or

(2) there is a need for the panel to include a member that practices in a particular health care specialty field not represented on the panel.

(h) If the division receives notice from the medical advisor under Subsection (g)(2), the division may enter into agreements with other state agencies to access, as necessary, expertise in that health care specialty field.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.252, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1218 (H.B. 2004), Sec. 7, eff.

September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 23, eff. September 1, 2011.

Sec. 413.05121. QUALITY ASSURANCE PANEL. (a) The medical advisor shall establish the quality assurance panel within the medical quality review panel to:

(1) provide an additional level of evaluation in medical case reviews; and

(2) assist the medical advisor in performing the advisor's duties under Section 413.0511(b)(6) and the medical quality review panel in performing that panel's duties under Section 413.0512.

(b) Members of the quality assurance panel shall evaluate medical care and recommend enforcement actions to the medical advisor.

(c) The quality assurance panel shall meet periodically to discuss issues and otherwise offer assistance to the medical advisor and the medical quality review panel under Subsection (a)(2).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.05122. MEDICAL QUALITY REVIEW PANEL: RULES; TRAINING. (a) The commissioner, after consultation with the medical advisor, shall adopt rules concerning the operation of the medical quality review panel, including rules that establish:

(1) the qualifications necessary for a health care provider to serve on the medical quality review panel;

(2) the composition of the medical quality review panel, including the number of members to be included on the panel and the health care specialty fields required to be represented by the members of the panel;

(3) the maximum length of time a health care provider may serve on the medical quality review panel;

(4) a policy defining situations that constitute a conflict of interest for a member of the medical quality review panel;

(5) procedures and grounds for removing a member of the medical quality review panel from the panel, including as a ground

for removal that a member is repeatedly delinquent in conducting case reviews; and

(6) a procedure through which members of the medical quality review panel are notified concerning the status and enforcement outcomes of cases resulting from the medical quality review process.

(b) In addition to the rules required under Subsection (a), the commissioner shall adopt rules concerning the training requirements for members of the medical quality review panel. The rules adopted under this subsection must ensure that panel members are fully aware of any requirements imposed by this subtitle concerning the medical quality review process and the division's goals concerning the process. The rules adopted under this subsection may require members to receive training on any topic determined by the division or the commissioner to be relevant to the operations of the panel and must require members of the panel to receive training concerning:

(1) administrative violations that affect the delivery of appropriate medical care;

(2) the confidentiality requirements described by Section 413.0513 and the immunity from liability provided to members of the panel under Section 413.054; and

(3) the medical quality review criteria adopted under Section 413.05115.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 24, eff. September 1, 2011.

Sec. 413.0513. CONFIDENTIALITY REQUIREMENTS. (a) Information collected, assembled, or maintained by or on behalf of the division under Section 413.0511 or 413.0512 constitutes an investigation file for purposes of Section 402.092 and may not be disclosed under Section 413.0511 or 413.0512 except as provided by that section.

(b) Confidential information, and other information to which access is restricted by law, developed by or on behalf of the division under Section 413.0511 or 413.0512 is not subject to discovery or court subpoena in any action other than:

(1) an action to enforce this subtitle brought by the division, an appropriate licensing or regulatory agency, or an appropriate enforcement authority; or

(2) a criminal proceeding.

Added by Acts 2001, 77th Leg., ch. 1456, Sec. 1.02, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 963, Sec. 3, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.253, eff. September 1, 2005.

Sec. 413.0514. INFORMATION SHARING WITH OCCUPATIONAL LICENSING BOARDS. (a) This section applies only to information held by or for the division, the Texas State Board of Medical Examiners, and Texas Board of Chiropractic Examiners that relates to a person who is licensed or otherwise regulated by any of those state agencies.

(b) The division and the Texas State Board of Medical Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas State Board of Medical Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that the sending agency determines is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect. Furnishing information by the Texas State Board of Medical Examiners to the division or by the division to the Texas State Board of Medical Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(c) Information that is received by the division from the Texas State Board of Medical Examiners or by the Texas State Board of Medical Examiners from the division remains confidential, may not be disclosed by the division except as necessary to further the investigation, and shall be exempt from disclosure under Sections 402.092 and 413.0513.

(d) The division and the Texas Board of Chiropractic Examiners on request or on its own initiative, may share with each other confidential information or information to which access is otherwise restricted by law. The division and the Texas Board of Chiropractic

Examiners shall cooperate with and assist each other when either agency is conducting an investigation by providing information to each other that is relevant to the investigation. Except as provided by this section, confidential information that is shared under this section remains confidential under law and legal restrictions on access to the information remain in effect unless the agency sharing the information approves use of the information by the receiving agency for enforcement purposes. Furnishing information by the Texas Board of Chiropractic Examiners to the division or by the division to the Texas Board of Chiropractic Examiners under this subsection does not constitute a waiver of privilege or confidentiality as established by law.

(e) Information that is received by the division from the Texas Board of Chiropractic Examiners or by the Texas Board of Chiropractic Examiners from the division remains confidential and may not be disclosed by the division except as necessary to further the investigation unless the agency sharing the information and the agency receiving the information agree to use of the information by the receiving agency for enforcement purposes.

(f) The division and the Texas State Board of Medical Examiners shall provide information to each other on all disciplinary actions taken.

(g) The division and the Texas Board of Chiropractic Examiners shall provide information to each other on all disciplinary actions taken.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.254, eff. September 1, 2005.

Sec. 413.0515. REPORTS OF PHYSICIAN AND CHIROPRACTOR VIOLATIONS. (a) If the division or the Texas State Board of Medical Examiners discovers an act or omission by a physician that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

(b) If the division or the Texas Board of Chiropractic Examiners discovers an act or omission by a chiropractor that may constitute a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance law, an offense involving fraud or abuse under the Medicare or Medicaid program, or a violation of this subtitle, the agency shall report that act or omission to the other agency.

Added by Acts 2003, 78th Leg., ch. 963, Sec. 4, eff. June 20, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.255, eff. September 1, 2005.

Sec. 413.052. PRODUCTION OF DOCUMENTS. The commissioner by rule shall establish procedures to enable the division to compel the production of documents.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.256, eff. September 1, 2005.

Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The commissioner by rule shall establish standards of reporting and billing governing both form and content.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.257, eff. September 1, 2005.

Sec. 413.054. IMMUNITY FROM LIABILITY. (a) A person who performs services for the division as a designated doctor, an independent medical examiner, a doctor performing a medical case review, or a member of a peer review panel has the same immunity from liability as the commissioner under Section 402.00123.

(b) Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.258, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 25, eff. September 1, 2011.

Sec. 413.055. INTERLOCUTORY ORDERS; REIMBURSEMENT. (a) The commissioner may enter an interlocutory order for the payment of all or part of medical benefits. The order may address accrued benefits, future benefits, or both accrued benefits and future benefits.

(b) The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an order entered under Subsection (a) if the order is reversed or modified by final arbitration, order, or decision of the commissioner or a court. The commissioner shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually.

(c) A party that disputes an order entered under Subsection (a) is entitled to a hearing. The hearing shall be conducted by the State Office of Administrative Hearings in the manner provided for a contested case under Chapter 2001, Government Code. The order is binding during the pendency of the appeal.

Added by Acts 1999, 76th Leg., ch. 955, Sec. 6, eff. Sept. 1, 1999.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.259, eff. September 1, 2005.

CHAPTER 414. ENFORCEMENT OF COMPLIANCE AND PRACTICE REQUIREMENTS

Sec. 414.002. MONITORING DUTIES. (a) The division shall monitor for compliance with commissioner rules, this subtitle, and other laws relating to workers' compensation the conduct of persons subject to this subtitle. Persons to be monitored include:

(1) persons claiming benefits under this subtitle;
(2) employers;
(3) insurance carriers;
(4) attorneys and other representatives of parties; and

(5) health care providers.

(b) The division shall monitor conduct described by Sections 415.001, 415.002, and 415.003 and refer persons engaging in that conduct to the division of hearings.

(c) The division shall monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.260, eff. September 1, 2005.

Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this chapter that:

(1) violate this subtitle, commissioner rules, or a commissioner order or decision; or

(2) otherwise adversely affect the workers' compensation system of this state.

(b) The commissioner shall use the information compiled under this section to impose appropriate penalties and other sanctions under Chapters 415 and 416.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.261, eff. September 1, 2005.

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS. (a) The division shall review regularly the workers' compensation records of insurance carriers as required to ensure compliance with this subtitle.

(b) Each insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this subtitle shall:

(1) cooperate with the division;

(2) make available to the division any records or other necessary information; and

(3) allow the division access to the information at reasonable times at the person's offices.

(c) The insurance carrier, other than a governmental entity, shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 414.005. INVESTIGATION UNIT. (a) The division shall maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle, commissioner rules, or a commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416.

(b) As often as the commissioner considers necessary, the commissioner or the investigation unit may review the operations of a person regulated by the division, including an agent of the person performing functions regulated by the division, to determine compliance with this subtitle.

(c) The review described by Subsection (b) may include on-site visits to the person's premises. The commissioner is not required to announce an on-site visit in advance.

(d) During an on-site visit, a person regulated by the division shall make available to the division all records relating to the person's participation in the workers' compensation system.

(e) The commissioner by rule shall prescribe the procedures to be used for both announced and unannounced on-site visits authorized under this section, including specifying the types of records subject to inspection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.262, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 26, eff. September 1, 2011.

Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. For further investigation or the institution of appropriate proceedings, the division may refer the persons involved in a case subject to an investigation to other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.263, eff. September 1, 2005.

Sec. 414.007. MEDICAL REVIEW. The division shall review information concerning alleged violations of this subtitle regarding the provision of medical benefits, commissioner rules, or a commissioner order or decision, and, under Sections 414.005 and 414.006 and Chapters 415 and 416, may conduct investigations, make referrals to other authorities, and initiate administrative violation proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.264, eff. September 1, 2005.

CHAPTER 415. ADMINISTRATIVE VIOLATIONS

SUBCHAPTER A. PROHIBITED ACTS

Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee or legal beneficiary commits an administrative violation if the person:

(1) fails without good cause to attend a dispute resolution proceeding within the division;

(2) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate an agreement or settlement;

(3) commits an act of barratry under Section 38.12, Penal Code;

(4) withholds from the employee's or legal beneficiary's weekly benefits or from advances amounts not authorized to be withheld by the division;

(5) enters into a settlement or agreement without the knowledge, consent, and signature of the employee or legal beneficiary;

(6) takes a fee or withholds expenses in excess of the amounts authorized by the division;

(7) refuses or fails to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;

(8) violates the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas;

(9) misrepresents the provisions of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(10) violates a commissioner rule; or

(11) fails to comply with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.265, eff. September 1, 2005.

Sec. 415.002. ADMINISTRATIVE VIOLATION BY INSURANCE CARRIER. (a) An insurance carrier or its representative commits an administrative violation if that person:

(1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;

(2) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;

(3) instructs an employer not to file a document required to be filed with the division;

(4) instructs or encourages an employer to violate a claimant's right to medical benefits under this subtitle;

(5) fails to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;

(6) allows an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is

handled and settled;

(7) fails to confirm medical benefits coverage to a person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;

(8) fails, without good cause, to attend a dispute resolution proceeding within the division;

(9) attends a dispute resolution proceeding within the division without complete authority or fails to exercise authority to effectuate agreement or settlement;

(10) adjusts a workers' compensation claim in a manner contrary to license requirements for an insurance adjuster, including the requirements of Chapter 4101, Insurance Code, or the rules of the commissioner of insurance;

(11) fails to process claims promptly in a reasonable and prudent manner;

(12) fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(13) misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits;

(14) dates documents to misrepresent the actual date of the initiation of benefits;

(15) makes a notation on a draft or other instrument indicating that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the division;

(16) fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits;

(17) fails to pay an order awarding benefits;

(18) controverts a claim if the evidence clearly indicates liability;

(19) unreasonably disputes the reasonableness and necessity of health care;

(20) violates a commissioner rule;

(21) makes a statement denying all future medical care for a compensable injury; or

(22) fails to comply with a provision of this subtitle.

(b) An insurance carrier or its representative does not commit an administrative violation under Subsection (a)(6) by allowing an employer to:

(1) freely discuss a claim;

(2) assist in the investigation and evaluation of a claim; or

(3) attend a proceeding of the division and participate at the proceeding in accordance with this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.266, eff. September 1, 2005.

Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER. A health care provider commits an administrative violation if the person:

(1) submits a charge for health care that was not furnished;

(2) administers improper, unreasonable, or medically unnecessary treatment or services;

(3) makes an unnecessary referral;

(4) violates the division's fee and treatment guidelines;

(5) violates a commissioner rule; or

(6) fails to comply with a provision of this subtitle.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.267, eff. September 1, 2005.

Sec. 415.0035. ADDITIONAL VIOLATIONS BY INSURANCE CARRIER OR HEALTH CARE PROVIDER. (a) An insurance carrier or its representative commits an administrative violation if that person:

(1) fails to submit to the division a settlement or agreement of the parties;

(2) fails to timely notify the division of the termination or reduction of benefits and the reason for that action; or

(3) denies preauthorization in a manner that is not in accordance with rules adopted by the commissioner under Section

413.014.

(b) A health care provider commits an administrative violation if that person:

(1) fails or refuses to timely file required reports or records; or

(2) fails to file with the division the annual disclosure statement required by Section 413.041.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

(e) A person regulated by the division under this title commits an administrative violation if the person violates this subtitle or a rule, order, or decision of the commissioner.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(2), eff. September 1, 2011.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.45, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.06, eff. June 17, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.268, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 27, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(2), eff. September 1, 2011.

Sec. 415.0036. ADMINISTRATIVE VIOLATION BY PERSON PERFORMING CERTAIN CLAIM SERVICES. (a) This section applies to an insurance adjuster, case manager, or other person who has authority under this title to request the performance of a service affecting the delivery of benefits to an injured employee or who actually performs such a service, including peer reviews, performance of required medical examinations, or case management.

(b) A person described by Subsection (a) commits an administrative violation if the person offers to pay, pays, solicits, or receives an improper inducement relating to the delivery of benefits to an injured employee or improperly attempts to influence

the delivery of benefits to an injured employee, including through the making of improper threats. This section applies to each person described by Subsection (a) who is a participant in the workers' compensation system of this state and to an agent of such a person.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(3), eff. September 1, 2011.

Added by Acts 2007, 80th Leg., R.S., Ch. 198 (H.B. 34), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(3), eff. September 1, 2011.

Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION. (a) A health care provider commits a violation if the person charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) A violation under this section is an administrative violation. A health care provider may be liable for an administrative penalty regardless of whether a criminal action is initiated under Section 413.043.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.269, eff. September 1, 2005.

Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION. (a) An employer may not collect from an employee, directly or indirectly, a premium or other fee paid by the employer to obtain workers' compensation insurance coverage, except as provided by Sections 406.123 and 406.144.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a).

(c) A person commits an administrative violation if the person violates Subsection (a).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.270, eff. September 1, 2005.

Sec. 415.007. LOANS BY ATTORNEYS PROHIBITED. (a) An attorney who represents a claimant before the division may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable for the credit extended to the claimant.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.271, eff. September 1, 2005.

Sec. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION. (a) A person commits an administrative violation if the person, to obtain or deny a payment of a workers' compensation benefit or the provision of a benefit for the person or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact;

(3) fabricates, alters, conceals, or destroys a document; or

(4) conspires to commit an act described by Subdivision (1), (2), or (3).

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1162, Sec. 37(5), eff. September 1, 2011.

(c) A person who has obtained an excess payment in violation of this section is liable for full repayment plus interest computed at the rate prescribed by Section 401.023. If the person is an employee or person claiming death benefits, the repayment may be redeemed from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Subsection (a) that results in denial of payments is liable for the

past benefit payments that would otherwise have been payable by the insurance carrier during the period of denial, plus interest computed at the rate prescribed by Section 401.023. The insurance carrier is not liable for benefit payments during the period of denial.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death benefits, the division may not take final action on the person's benefits.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.272, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 28, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 37(5), eff. September 1, 2011.

Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION. A person commits an administrative violation if the person brings, prosecutes, or defends an action for benefits under this subtitle or requests initiation of an administrative violation proceeding that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.273, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 29, eff. September 1, 2011.

Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION. A party to an agreement approved by the division commits an administrative violation if the person breaches a provision of the agreement.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.274, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 29, eff. September 1, 2011.

Sec. 415.011. NOTICE OF PROFESSIONAL EMPLOYER ORGANIZATION WORKERS' COMPENSATION CLAIM AND PAYMENT INFORMATION; ADMINISTRATIVE VIOLATION. (a) In this section, "license holder" has the meaning assigned by Section 91.001.

(a-1) Except as provided by Subsection (c), a license holder commits a violation if the license holder fails to provide the information required by Sections 91.042(g) and (h).

(b) A violation under Subsection (a) is an administrative violation.

(c) A license holder does not commit an administrative violation under this section if the license holder requested the information required by Sections 91.042(g) and (h) from the license holder's workers' compensation insurance provider and the provider does not provide the information to the license holder within the required time. A license holder shall notify the Texas Department of Insurance of a provider's failure to comply with the requirements of Section 2051.151, Insurance Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 477 (H.B. 625), Sec. 3, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 20, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 117 (S.B. 1286), Sec. 21, eff. September 1, 2013.

SUBCHAPTER B. SANCTIONS

Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES. (a) In addition to any other provisions in this subtitle relating to violations, a person commits an administrative violation if the person violates, fails to comply with, or refuses to comply with this subtitle or a rule, order, or decision of the commissioner, including an emergency cease and desist order issued under Section 415.0211.

In addition to any sanctions, administrative penalty, or other remedy authorized by this subtitle, the commissioner may assess an administrative penalty against a person who commits an administrative violation. The administrative penalty shall not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation. The commissioner's authority under this chapter is in addition to any other authority to enforce a sanction, penalty, fine, forfeiture, denial, suspension, or revocation otherwise authorized by law.

(b) The commissioner may enter a cease and desist order against a person who:

(1) commits repeated administrative violations;

(2) allows, as a business practice, the commission of repeated administrative violations; or

(3) violates an order or decision of the commissioner.

(c) In assessing an administrative penalty:

(1) the commissioner shall consider:

(A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;

(B) the history and extent of previous administrative violations;

(C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;

(D) the penalty necessary to deter future violations; and

(E) other matters that justice may require; and

(2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.07, eff. June 17, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.275, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 31, eff.

September 1, 2011.

Sec. 415.0211. EMERGENCY CEASE AND DESIST ORDER. (a) The commissioner ex parte may issue an emergency cease and desist order if:

(1) the commissioner believes a person regulated by the division under this title is engaging in conduct violating a law, rule, or order; and

(2) the commissioner believes that the alleged conduct under Subdivision (1) will result in harm to the health, safety, or welfare of another person.

(b) On issuance of an order under Subsection (a), the commissioner shall serve on the affected person an order that contains a statement of the charges and requires the person immediately to cease and desist from the acts, methods, or practices stated in the order. The commissioner shall serve the order by registered or certified mail, return receipt requested, to the affected person's last known address. The order is final on the 31st day after the date the affected person receives the order, unless the affected person requests a hearing under Subsection (c).

(c) A person affected by an order is entitled to request a hearing to contest the order. The affected person must request the hearing not later than the 30th day after the date the person receives the order required by Subsection (b). A request to contest an order must:

(1) be in writing;

(2) be directed to the commissioner; and

(3) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing, the commissioner shall serve notice of the time and place of the hearing. The hearing is subject to the procedures for a contested case under Chapter 2001, Government Code. The hearing shall be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed. Following receipt of the proposal for decision from the State Office of Administrative Hearings regarding the hearing, the commissioner shall wholly or

partly affirm, modify, or set aside the order.

(e) Pending a hearing under this section, an order continues in effect unless the order is stayed by the commissioner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 32, eff. September 1, 2011.

Sec. 415.0215. SANCTIONS. (a) The division may impose sanctions against any person regulated by the division under this subtitle.

(b) Only the commissioner may impose:

(1) a sanction that deprives a person of the right to practice before the division or of the right to receive remuneration under this subtitle for a period exceeding 30 days; or

(2) another sanction suspending for more than 30 days or revoking a license, certification, or permit required for practice in the field of workers' compensation.

(c) A sanction imposed by the division is binding pending appeal.

Transferred and redesignated from Labor Code, Section 402.072 by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 33, eff. September 1, 2011.

Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION. (a) A person who commits an administrative violation under Section 415.001, 415.002, 415.003, or 415.0035 as a matter of practice is subject to an applicable rule adopted under Subsection (b) in addition to the penalty assessed for the violation.

(b) The commissioner may adopt rules providing for:

(1) a reduction or denial of fees;

(2) public or private reprimand by the commissioner;

(3) suspension from practice before the division;

(4) restriction, suspension, or revocation of the right to receive reimbursement under this subtitle; or

(5) referral and petition to the appropriate licensing authority for appropriate disciplinary action, including the restriction, suspension, or revocation of the person's license.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1456, Sec. 6.08, eff. June 17, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.276, eff. September 1, 2005.

Sec. 415.024. BREACH OF SETTLEMENT AGREEMENT; ADMINISTRATIVE VIOLATION. A material and substantial breach of a settlement agreement that establishes a compliance plan is an administrative violation. In determining the amount of the penalty, the commissioner shall consider the total volume of claims handled by the insurance carrier.

Added by Acts 1997, 75th Leg., ch. 1443, Sec. 9, eff. Sept. 1, 1997.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.277, eff. September 1, 2005.

Sec. 415.025. REFERENCES TO A CLASS OF VIOLATION OR PENALTY. A reference in this code or other law, or in rules of the former Texas Workers' Compensation Commission or the commissioner, to a particular class of violation, administrative violation, or penalty shall be construed as a reference to an administrative penalty. An administrative penalty may not exceed $25,000 per day per occurrence. Each day of noncompliance constitutes a separate violation.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.278, eff. September 1, 2005.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

SUBCHAPTER C. PROCEDURES

Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing a written allegation with the division.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.279, eff. September 1, 2005.

Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division indicates that an administrative violation has occurred, the division shall notify the person alleged to have committed the violation in writing of:

(1) the charge;

(2) the proposed sanction;

(3) the right to consent to the charge and the sanction; and

(4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

(1) remit the amount of the sanction to the division or otherwise consent to the imposed sanction; or

(2) submit to the division a written request for a hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.280, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a charged party fails to respond as required under Section 415.032, the division shall initiate enforcement proceedings.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.281, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.034. HEARING PROCEDURES. On the request of the charged party or the commissioner, the State Office of Administrative Hearings shall set a hearing. The hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code (the administrative procedure law).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 980, Sec. 1.46, eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.282, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 34, eff. September 1, 2011.

Sec. 415.035. JUDICIAL REVIEW. (a) A decision under Section 415.034 is subject to judicial review in the manner provided for judicial review under Chapter 2001, Government Code.
(b) If an administrative penalty is assessed, the person charged shall:
(1) forward the amount of the penalty to the division for deposit in an escrow account; or
(2) post with the division a bond for the amount of the penalty, effective until all judicial review of the determination is final.
(c) Failure to comply with Subsection (b) results in a waiver of all legal rights to contest the violation or the amount of the penalty.
(d) If the court determines that the penalty should not have been assessed or reduces the amount of the penalty, the division shall:
(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or
(2) release the bond.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.283, eff. September 1, 2005.

Sec. 415.036. STANDARD OF JUDICIAL REVIEW OF COMMISSIONER'S ORDER. An order of the commissioner is subject to judicial review under the substantial evidence rule.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 35, eff. September 1, 2011.

CHAPTER 416. ACTIONS AGAINST INSURANCE CARRIER FOR BREACH OF DUTY

Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier under an order of the commissioner or recommendations of a benefit review officer under Section 410.031, 410.032, or 410.033 may not be the basis of a cause of action against the insurance carrier for a breach of the duty of good faith and fair dealing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.284, eff. September 1, 2005.

Sec. 416.002. EXEMPLARY DAMAGES. (a) In an action against an insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to the greater of:

(1) four times the amount of actual damages; or

(2) $250,000.

(b) An action against a governmental entity or unit or an employee of a governmental entity or unit for a breach of the duty of good faith and fair dealing is governed by Chapters 101 and 104, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 417. THIRD-PARTY LIABILITY

Sec. 417.001. THIRD-PARTY LIABILITY. (a) An employee or legal beneficiary may seek damages from a third party who is or becomes liable to pay damages for an injury or death that is compensable

under this subtitle and may also pursue a claim for workers' compensation benefits under this subtitle.

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. The insurance carrier's subrogation interest is limited to the amount of the total benefits paid or assumed by the carrier to the employee or the legal beneficiary, less the amount by which the court reduces the judgment based on the percentage of responsibility determined by the trier of fact under Section 33.003, Civil Practice and Remedies Code, attributable to the employer. If the recovery is for an amount greater than the amount of the insurance carrier's subrogation interest, the insurance carrier shall:

(1) reimburse itself and pay the costs from the amount recovered; and

(2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.

(c) If a claimant receives benefits from the subsequent injury fund, the division is:

(1) considered to be the insurance carrier under this section for purposes of those benefits;

(2) subrogated to the rights of the claimant; and

(3) entitled to reimbursement in the same manner as the insurance carrier.

(d) The division shall remit money recovered under this section to the comptroller for deposit to the credit of the subsequent injury fund.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 12.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 204, Sec. 4.09, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.285, eff. September 1, 2005.

Sec. 417.002. RECOVERY IN THIRD-PARTY ACTION. (a) The net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical

benefits, that have been paid for the compensable injury.

(b) Any amount recovered that exceeds the amount of the reimbursement required under Subsection (a) shall be treated as an advance against future benefits, including medical benefits, that the claimant is entitled to receive under this subtitle.

(c) If the advance under Subsection (b) is adequate to cover all future benefits, the insurance carrier is not required to resume the payment of benefits. If the advance is insufficient, the insurance carrier shall resume the payment of benefits when the advance is exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST. (a) An insurance carrier whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the insurance carrier. In the absence of an agreement, the court shall award to the attorney payable out of the insurance carrier's recovery:

(1) a reasonable fee for recovery of the insurance carrier's interest that may not exceed one-third of the insurance carrier's recovery; and

(2) a proportionate share of expenses.

(b) An attorney who represents the claimant and is also to represent the subrogated insurance carrier shall make a full written disclosure to the claimant before employment as an attorney by the insurance carrier. The claimant must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be furnished to all concerned parties and made a part of the division file. A copy of the disclosure with the claimant's consent shall be filed with the claimant's pleading before a judgment is entered and approved by the court. The claimant's attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the insurance carrier unless the attorney complies with the requirements of this subsection.

(c) If an attorney actively representing the insurance carrier's interest actively participates in obtaining a recovery, the court shall award and apportion between the claimant's and the

insurance carrier's attorneys a fee payable out of the insurance carrier's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the insurance carrier as a result of each attorney's service. The total attorney's fees may not exceed one-third of the insurance carrier's recovery.

(d) For purposes of determining the amount of an attorney's fee under this section, only the amount recovered for benefits, including medical benefits, that have been paid by the insurance carrier may be considered.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.286, eff. September 1, 2005.

Sec. 417.004. EMPLOYER LIABILITY TO THIRD PARTY. In an action for damages brought by an injured employee, a legal beneficiary, or an insurance carrier against a third party liable to pay damages for the injury or death under this chapter that results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 418. CRIMINAL PENALTIES

Sec. 418.001. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING BENEFITS. (a) A person commits an offense if the person, with the intent to obtain or deny payment of benefits, including medical benefits, under this subtitle or Subtitle C, for himself or another, knowingly or intentionally:

(1) makes a false or misleading statement;

(2) misrepresents or conceals a material fact; or

(3) fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the value of the benefits is

less than $1,500; and

(2) a state jail felony if the value of the benefits is $1,500 or more.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995.

Sec. 418.002. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A person commits an offense if the person, with the intent to obtain workers' compensation insurance coverage under the workers' compensation insurance laws of this state or to avoid payment of premiums due for that coverage, for himself or another, knowingly or intentionally:

(1) makes a false statement;

(2) misrepresents or conceals a material fact; or

(3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) is:

(1) a Class A misdemeanor if the amount of premium avoided is less than $1,500; and

(2) a state jail felony if the amount of the premium avoided is $1,500 or more.

(c) The court may order a person to pay restitution to an insurance company, including the Texas Mutual Insurance Company, if the person commits an offense under this section.

Added by Acts 1995, 74th Leg., ch. 980, Sec. 1.47, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1195, Sec. 2.12, eff. Sept. 1, 2001.

Sec. 418.003. ELECTION OF PROSECUTION. A person who commits an offense under this chapter may be prosecuted under this chapter or any other law of this state under which the person may be prosecuted.

Added by Acts 2007, 80th Leg., R.S., Ch. 429 (S.B. 1627), Sec. 1, eff. June 15, 2007.

CHAPTER 419. MISUSE OF DIVISION NAME

Sec. 419.001. DEFINITIONS. (a) In this chapter:

(1) "Representation of the division's logo" includes a nonexact representation that is deceptively similar to the logo used by the division.

(2) "Representation of the state seal" has the meaning assigned by Section 17.08(a)(2), Business & Commerce Code.

(b) A term or representation is "deceptively similar" for purposes of this chapter if:

(1) a reasonable person would believe that the term or representation is in any manner approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the circumstances under which the term is used could mislead a reasonable person as to its identity.

(c) For purposes of this chapter, a person acts in a "deceptive manner" if the person knows or should know that the person's actions would convey, or could reasonably be interpreted or construed as conveying, the false impression that:

(1) an item is approved, endorsed, sponsored, authorized by, the same as, or associated with the division, the department, this state, or an agency of this state; or

(2) the person represents, speaks for, or has an authorization from the division, the department, this state, or an agency of this state.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 1, eff. September 1, 2013.

Sec. 419.002. MISUSE OF DIVISION'S NAME OR SYMBOLS PROHIBITED. (a) Except as authorized by law, a person, in connection with any impersonation, advertisement, solicitation, business name, business activity, business document, product, or service made or offered by the person regarding workers' compensation coverage or benefits, may not knowingly use or cause to be used in a deceptive manner:

(1) the words "Texas Department of Insurance," "Department of Insurance," "Texas Workers' Compensation," or "division of

workers' compensation";

(2) any term using both "Texas" and "Workers' Compensation" or any term using both "Texas" and "Workers' Comp";

(3) the initials "T.D.I."; or

(4) any combination or variation of the words or initials, or any term deceptively similar to the words or initials, described by Subdivisions (1)-(3).

(b) A person subject to Subsection (a) may not knowingly use or cause to be used in a deceptive manner a word, term, or initials described by Subsection (a) alone or in conjunction with:

(1) the state seal or a representation of the state seal;

(2) a picture or map of this state; or

(3) the official logo of the department or the division or a representation of the department's or division's logo.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 743 (S.B. 381), Sec. 2, eff. September 1, 2013.

Sec. 419.003. RULES. The commissioner may adopt rules relating to the regulation of the use of the division's name and other rules as necessary to implement this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.004. CIVIL PENALTY. (a) A person who violates Section 419.002 or a rule adopted under this chapter is liable for a civil penalty not to exceed $5,000 for each violation.

(b) The attorney general, at the request of the commissioner, shall bring an action to collect a civil penalty under this section in a district court in Travis County.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.005. ADMINISTRATIVE PENALTY. (a) The division may assess an administrative penalty against a person who violates Section 419.002 or a rule adopted under this chapter.

(b) An administrative penalty imposed under this section is subject to the procedural requirements adopted for administrative penalties imposed under Section 415.021.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.006. INJUNCTIVE RELIEF. (a) At the request of the commissioner, the attorney general or a district attorney may bring an action in district court in Travis County to enjoin or restrain a violation or threatened violation of this chapter on a showing that a violation has occurred or is likely to occur.

(b) The division may recover the costs of investigating an alleged violation of this chapter if an injunction is issued.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

Sec. 419.007. REMEDIES NOT EXCLUSIVE. The remedies provided by this chapter are not exclusive and may be sought in any combination determined by the commissioner as necessary to enforce this chapter.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.287, eff. September 1, 2005.

SUBTITLE B. DISCRIMINATION ISSUES

CHAPTER 451. DISCRIMINATION PROHIBITED

Sec. 451.001. DISCRIMINATION AGAINST EMPLOYEES PROHIBITED. A person may not discharge or in any other manner discriminate against an employee because the employee has:

(1) filed a workers' compensation claim in good faith;

(2) hired a lawyer to represent the employee in a claim;

(3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or

(4) testified or is about to testify in a proceeding under

Subtitle A.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 451.002. REMEDIES; BURDEN OF PROOF. (a) A person who violates Section 451.001 is liable for reasonable damages incurred by the employee as a result of the violation.

(b) An employee discharged in violation of Section 451.001 is entitled to reinstatement in the former position of employment.

(c) The burden of proof in a proceeding under this section is on the employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 451.003. INJUNCTION. A district court may restrain, for cause shown, a violation of Section 451.001.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE FOR CERTAIN GOVERNMENT EMPLOYEES

CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Compensable injury" has the meaning assigned to that term under Subtitle A.

(3) "Director" means the director of the State Office of Risk Management.

(4) "Office" means the State Office of Risk Management.

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political

subdivision of the state;

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under:

(i) Article 2.12, Code of Criminal Procedure; or

(ii) Articles 14.03(d) and (g), Code of Criminal Procedure;

(D) a member of the state military forces, as defined by Section 437.001, Government Code, who is engaged in authorized training or duty; or

(E) a Texas Task Force 1 member, as defined by Section 88.301, Education Code, who is activated by the Texas Division of Emergency Management or is injured during training sponsored or sanctioned by Texas Task Force 1.

(6) "State agency" includes a department, board, commission, or institution of this state.

(7) "Board" means the risk management board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 5, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1456, Sec. 14.02, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 644, Sec. 3, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.288, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1146 (H.B. 2730), Sec. 2B.09, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.15, eff. September 1, 2013.

Sec. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Subchapters B and D through H, Chapter 406, other than Sections 406.071(a), 406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

(b) For the purposes of this chapter and Chapter 451, the individual state agency shall be considered the employer.

(c) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "insurer" or "employer" means "state," "office," "director," or "state agency," as applicable.

(d) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the state, a state agency, or an employee of the state beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(e) For the purposes of this chapter and Chapter 451, the adjutant general is considered the employer of a member of the state military forces while engaged in authorized training or duty.

(f) For purposes of this chapter and Subchapter D, Chapter 88, Education Code, the Texas Engineering Extension Service of The Texas A&M University System shall perform all duties of an employer in relation to a Texas Task Force 1 member who is injured and receives benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.01, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1098, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1205, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 644, Sec. 4, eff. June 20, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.289, eff. September 1, 2005.

Sec. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) The provisions of this chapter and the rules of the board affecting an employee also apply to the legal beneficiary of a deceased employee.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 4, eff. Sept. 1, 1997.

SUBCHAPTER B. COVERAGE

Sec. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES. An employee with a compensable injury is entitled to compensation by the director as provided by this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.022. EMPLOYEES OF COMPONENT INSTITUTIONS OR SYSTEM ADMINISTRATION OF TEXAS TECH UNIVERSITY SYSTEM. (a) An eligible employee of Texas Tech University, Texas Tech University Health Sciences Center, Angelo State University, Texas Tech University System Administration, Texas Tech University Health Sciences Center at El Paso, or another agency under the direction and control of the board of regents of the Texas Tech University System is entitled to participate in the workers' compensation program for state employees provided under this chapter.

(b) For purposes of this chapter, Texas Tech University is a state agency and shall act in the capacity of employer.

(c) For purposes of this chapter, Texas Tech University Health Sciences Center is a state agency and shall act in the capacity of employer.

(d) For purposes of this chapter, Angelo State University is a state agency and shall act in the capacity of employer.

(e) For purposes of this chapter, Texas Tech University System Administration is a state agency and shall act in the capacity of employer.

(f) For purposes of this chapter, Texas Tech University Health Sciences Center at El Paso is a state agency and shall act in the capacity of employer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 980, Sec. 2.02, eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 179 (H.B. 3564), Sec. 12, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1173 (S.B. 907), Sec. 11, eff. June 19, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1173 (S.B. 907), Sec. 12, eff. June 19, 2015.

Sec. 501.024. EXCLUSIONS FROM COVERAGE. The following persons are excluded from coverage as an employee under this chapter:

(1) a person performing personal services for the state as an independent contractor or volunteer;

(2) a person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance;

(3) a prisoner or inmate of a prison or correctional institution, other than a work program participant participating in a Texas Correctional Industries contract described by Section 497.006, Government Code;

(4) a client or patient of a state agency;

(5) a person employed by the Texas Department of Transportation who is covered under Chapter 505;

(6) a person employed by The University of Texas System who is covered by Chapter 503; and

(7) a person employed by The Texas A&M University System who is covered by Chapter 502.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1188, Sec. 1.45, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1205, Sec. 7, eff. Sept. 1, 1999.

Sec. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside the state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.026. COVERAGE FOR CERTAIN SERVICES PROVIDED BY VOLUNTEERS. (a) In this section, "disaster" means an occurrence in which the governor has issued a declaration of a state of disaster under Chapter 418, Government Code, or another occurrence that initiates the state emergency management plan.

(b) A person not otherwise covered by workers' compensation insurance for the services performed under this section who performs volunteer services for the state in a disaster or in scheduled emergency response training under the direction of an officer or employee of the state is entitled to medical benefits under this chapter for an injury sustained by the person in the course of providing those services. For purposes of this subsection, an injury is not sustained in the course of providing services in a disaster unless the injury occurs while the state of disaster may reasonably be considered to be in existence.

(c) A person employed by a political subdivision who is injured in the course of providing services described by Subsection (b) is entitled to benefits as provided by that subsection only if the services are performed outside the jurisdiction of the political subdivision by which the person is employed.

(d) A person entitled to benefits under this section may receive the benefits only if the person seeks medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known the injury occurred. The person shall comply with the requirements of Section 409.001 by providing notice of the injury to the division or the state agency with which the officer or employee under Subsection (b) is associated.

Added by Acts 1999, 76th Leg., ch. 985, Sec. 1, eff. June 18, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.290, eff. September 1, 2005.

SUBCHAPTER C. ADMINISTRATION

Sec. 501.0431. COMPILATION OF STATISTICS RELATING TO FRAUD. The director shall maintain statistics on the number, type, and disposition of fraudulent claims for medical benefits under this chapter.

Added by Acts 1997, 75th Leg., ch. 1153, Sec. 6.02(b), eff. Sept. 1, 1997.

Sec. 501.044. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 953, Sec. 2, eff. Sept. 1, 1999.

Sec. 501.045. EFFECT OF EMERGENCY LEAVE. (a) Payments for emergency leave authorized by the administrative head of a state agency in accordance with the General Appropriations Act for an employee receiving income benefits under this chapter may not:

(1) exceed for a month the amount computed by subtracting the amount of income benefits received for the month from the basic monthly wage of the employee; and

(2) be paid for a period longer than six months after the date on which benefits begin.

(b) The administrative head authorizing the emergency leave payments shall review the merits of each case individually.

(c) If payment for emergency leave is authorized, the state agency shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES. In addition to other reports required by the board, the director shall file a subsequent report not later than the 10th day after the date of the termination of the injured employee's incapacity. If the employee's incapacity extends beyond 60 days, the director shall file a subsequent report before the 70th day after the date the employee's incapacity began.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1098, Sec. 5, eff. Sept. 1, 1997.

Sec. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS. Each state agency shall submit in the administrative statement of its biennial budget request a summary containing:

(1) the number of first reports of injury filed by the agency during the preceding biennium;

(2) the amount of workers' compensation indemnity and medical benefits paid to or for employees during the preceding biennium;

(3) the number of on-the-job injuries per 100 of its employees during each year of the preceding biennium; and

(4) a description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the division and others.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the

judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.291, eff. September 1, 2005.

Sec. 501.051. PAYMENT OF MEDICAL AND INDEMNITY BENEFITS. Medical benefit and income benefit payments made by the office are subject to this subtitle and are exempt from Chapter 2251, Government Code.

Added by Acts 1999, 76th Leg., ch. 953, Sec. 3, eff. Sept. 1, 1999.

CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM AND EMPLOYEES OF INSTITUTIONS OF THE TEXAS A&M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of an institution whose name appears on the institution's payroll.

(3) "Institution" means an institution of higher education or agency under the direction or governance of the board of regents of The Texas A&M University System.

(4) "System" has the meaning assigned by Section 85.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.293, eff. September 1, 2005.

Sec. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 502.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.294, eff. September 1, 2005.

Sec. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE

Sec. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES. (a) The system shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.295, eff. September 1, 2005.

Sec. 502.022. AUTHORITY TO SELF-INSURE. An institution may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.023. INSURANCE REQUIREMENT. (a) The board of regents of the system may require each employee, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

(b) This section does not apply to an employee who is paid on a piece-work basis or on any basis other than by the hour, day, week, month, or year.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.024. PREEXISTING DISQUALIFYING CONDITION. (a) An

institution may certify as an employee a person who indicates a preexisting disqualifying physical condition in a medical history obtained under Section 502.064 or who is found to have a preexisting disqualifying medical condition in a physical examination under Section 502.064 on the condition that the person execute in writing a waiver of coverage under this chapter for the preexisting disqualifying physical condition before becoming an employee of the institution.

(b) A waiver under Subsection (a) is valid and binding on the employee who executes the waiver. Compensation or death benefits may not be paid to the employee or the employee's beneficiaries for an injury or death of the employee that is attributable to the condition for which coverage was waived.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;

(2) does not work in this state;

(3) works both in this state and out of state;

(4) is injured outside this state; or

(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.02, eff. June 20, 2003.

SUBCHAPTER C. OFFSETS

Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is

exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.296, eff. September 1, 2005.

SUBCHAPTER D. ADMINISTRATION

Sec. 502.061. ADMINISTRATION AND RULES. (a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.297, eff. September 1, 2005.

Sec. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or an institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.298, eff. September 1, 2005.

Sec. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS. (a) An institution may obtain and record on a form prescribed by the institution the medical history of a person to be employed by the institution.

(b) The institution may require that an individual may not be certified as an employee of the institution under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician or chiropractor to be physically fit to perform the duties and services to which the individual is to be assigned.

(c) The institution may designate a convenient number of licensed practicing physicians and chiropractors to perform physical examinations under this section.

(d) A physician or chiropractor designated under Subsection (c) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(e) The institution shall maintain all reports and medical histories filed with the institution under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 502.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the division under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.299, eff. September 1, 2005.

Sec. 502.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The division may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee or the system, the employee, the institution, or the system is entitled to have a physician or chiropractor selected by the employee, the institution, or the system, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician or chiropractor selected by the system or the institution. The system or the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician or chiropractor selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee set by the division for the services of a physician or chiropractor selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.300, eff. September 1, 2005.

Sec. 502.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner of workers' compensation may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, chiropractic, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.301, eff. September 1, 2005.

Sec. 502.068. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization, medical treatment, or

chiropractic care to the employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a division order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.302, eff. September 1, 2005.

Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.303, eff. September 1, 2005.

Sec. 502.070. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM AND EMPLOYEES OF INSTITUTIONS OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the commissioner of workers' compensation.

(1-a) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means a person employed in the service of the system under an appointment or oral or written express contract for hire whose name appears on the system's payroll.

(3) "Institution" means an institution of higher education or agency under the direction of the board of regents of The University of Texas System.

(4) "System" has the meaning assigned by Section 65.01(1), Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.305, eff. September 1, 2005.

Sec. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.031-406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and

(9) Chapters 412-417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution," and "system" means the insurance carrier under Section 503.022.

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.306, eff. September 1, 2005.

Sec. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. COVERAGE

Sec. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTITUTION EMPLOYEES. (a) The system shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.307, eff. September 1, 2005.

Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may self-insure as part of a system insurance plan.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.308, eff. September 1, 2005.

Sec. 503.023. INSURANCE REQUIREMENT. The board of regents of the system may require each person employed by the system or an institution other than by appointment or express contract for hire, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.024. WAIVER OF RIGHTS. An agreement by an employee to waive the employee's rights under this chapter is valid if made in writing by the employee before becoming an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside this state is entitled to benefits under this chapter even if the person:

(1) is hired or not hired in this state;
(2) does not work in this state;
(3) works both in this state and out of state;
(4) is injured outside this state; or
(5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by this state where the injury occurred is not entitled to benefits under this chapter.

Added by Acts 2003, 78th Leg., ch. 1266, Sec. 4.03, eff. June 20, 2003.

SUBCHAPTER C. OFFSETS

Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.309, eff. September 1, 2005.

SUBCHAPTER D. ADMINISTRATION

Sec. 503.061. ADMINISTRATION AND RULES. (a) The system shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The system may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.310, eff. September 1, 2005.

Sec. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may

set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.063. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division shall furnish a certified copy of an order, award, decision, or paper on file in the division's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The system or the institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the division for making a copy under Subsection (a) that exceeds the fee charged for the copy.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.311, eff. September 1, 2005.

Sec. 503.064. EXAMINING PHYSICIANS. (a) The institution shall designate a convenient number of licensed practicing physicians to perform physical examinations of individuals employed or to be employed by the institution to determine if an individual is physically fit to be classified as an employee.

(b) A physician designated under Subsection (a) who conducts an examination shall file with the institution a complete transcript of

the examination. The transcript must be sworn to on a form provided by the institution.

(c) The institution shall maintain all reports under this section as part of the institution's permanent records.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 503.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the division under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.312, eff. September 1, 2005.

Sec. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The division may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) On the request of an employee, the system, or the institution, the employee, the system, or the institution is entitled to have a physician selected by the employee, the system, or the institution, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination

under Subsection (a) or Section 408.004.

(d) The system or the institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the system or the institution. The system or the institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician selected by the employee present to participate in an examination under this subsection.

(e) The system or the institution shall pay the fee, as set by the division, of a physician selected by the employee under Subsection (b) or (d).

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.313, eff. September 1, 2005.

Sec. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner may order or direct the system or the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.314, eff. September 1, 2005.

Sec. 503.068. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the system or the institution is providing hospitalization or medical treatment to the

employee, the division may postpone the hearing on the employee's claim. An appeal may not be taken from a commissioner order under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.315, eff. September 1, 2005.

Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.316, eff. September 1, 2005.

Sec. 503.070. VENUE FOR JUDICIAL REVIEW. (a) A party who does not consent to abide by the final decision of the commissioner shall file notice with the division as required by Section 410.253 and bring suit in the county in which the injury occurred to set aside

the final decision of the commissioner.

(b) If a suit under this section is filed in a county other than the county in which the injury occurred, the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in the county in which the injury occurred.

(c) Notice of the transfer of a suit under Subsection (b) shall be given to the parties. A suit transferred under Subsection (b) shall be considered for all purposes the same as if originally filed in the court to which it is transferred.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.317, eff. September 1, 2005.

Sec. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. In this chapter, unless a different meaning is plainly required by the context:

(1) "Division" means the division of workers' compensation of the Texas Department of Insurance.

(2) "Employee" means:

(A) a person in the service of a political subdivision who has been employed as provided by law; or

(B) a person for whom optional coverage is provided under Section 504.012 or 504.013.

(3) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and

Safety Code, or any other legally constituted political subdivision of the state.

(4) "Pool" means two or more political subdivisions collectively self-insuring under an interlocal contract under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.318, eff. September 1, 2005.

Sec. 504.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Sections 406.006-406.009 and Subchapters B and D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409-412;

(8) Chapter 413, except as provided by Section 504.053;

(9) Chapters 414-417; and

(10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "political subdivision."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against a political subdivision or an employee of a political subdivision beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

(d) For the purpose of applying the provisions listed by Subsection (a), "written notice" to a political subdivision that self-insures, either individually or collectively through an interlocal agreement as described by Section 504.011, occurs only on

written notice to the intergovernmental risk pool or other entity responsible for administering the claim.

Added by Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 954, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 939, Sec. 2, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.319, eff. September 1, 2005.

Sec. 504.003. ELECTION OF REMEDIES. A person may not bring an action for wrongful discharge under both Chapter 451 and Chapter 554, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(77), eff. Sept. 1, 1995.

SUBCHAPTER B. COVERAGE

Sec. 504.011. METHOD OF PROVIDING COVERAGE. A political subdivision shall extend workers' compensation benefits to its employees by:

(1) becoming a self-insurer;

(2) providing insurance under a workers' compensation insurance policy; or

(3) entering into an interlocal agreement with other political subdivisions providing for self-insurance.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.012. OPTIONAL COVERAGES. (a) A political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law. Notwithstanding any other law, the governing body of the political subdivision may elect to provide compensation payments to a person covered under this subsection that are greater than the minimum benefits provided under this title.

(b) By majority vote of the members of the governing body of a political subdivision, the political subdivision may cover as employees:

(1) an elected official;

(2) persons paid for jury service; or

(3) persons paid for service in the conduct of an election.

(c) A political subdivision may cover a child who is in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution under Section 54.041(b), Family Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 1426, Sec. 18, eff. Sept. 1, 1999.

Sec. 504.013. COVERAGE FOR TRUSTEES AND STAFF OF SELF-INSURANCE FUND. By majority vote of the board of trustees of a self-insurance fund created under this chapter, the fund may cover:

(1) members of the board of trustees;

(2) staff of the fund, including persons with whom the fund has contracted to perform staff functions; or

(3) any other self-insurance fund created under Chapter 791, Government Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.014. EXCLUSIONS. A person is not an employee and is not entitled to compensation under this chapter if the person:

(1) is in the service of a political subdivision and is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year;

(2) is a patient or client of a political subdivision involved in vocational training;

(3) is a prisoner incarcerated by a political subdivision; or

(4) performs services that may benefit a political subdivision, or is employed by or under contract with a performer providing those services, but does not receive payment from the political subdivision for the performance of the services, if the services are performed in connection with the operation or production

of:

(A) a stock show;
(B) a rodeo;
(C) a carnival;
(D) a circus;
(E) a musical, vocal, or theatrical performance;
(F) a professional baseball league or game;
(G) a professional hockey league or game;
(H) a wrestling event or match;
(I) a vehicle or motorcycle event; or
(J) another entertainment event.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 841, Sec. 1, eff. Sept. 1, 2003.

Sec. 504.015. MUNICIPAL UTILITIES. (a) This section applies to a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law.

(b) The board of trustees of a utility has the authority of the governing body of the municipality under this chapter to:

(1) adopt a self-insurance program or take out a policy of workers' compensation insurance; and

(2) adopt resolutions, give notices, and do all things concerning workers' compensation regarding the utility's employees that the governing body of the municipality would be authorized to do regarding other municipal employees or groups of employees.

(c) Funds set aside or spent for the purpose of workers' compensation insurance are considered operating expenses of the utility. Funds set aside or paid by the board of trustees for self-insurance or for premiums on insurance policies shall be paid out of utility revenues. A provision for self-insurance or an obligation incurred under an insurance policy is not a general liability of the municipality but is payable only out of utility revenues.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.282, eff. Sept. 1, 2001.

Sec. 504.016. JOINT INSURANCE FUND. (a) Two or more political subdivisions may establish a joint insurance fund as provided by this

section.

(b) A political subdivision may pay into the fund its proportionate part as due and may contract for the fund, by and through its directors, to make the payments due under this chapter to employees of the political subdivision.

(c) The fund may be operated under the rules and bylaws established by the participating political subdivisions.

(d) A joint insurance fund created under this section may provide to the Texas Department of Insurance loss data in the same manner as an insurance company writing workers' compensation insurance. The State Board of Insurance shall use the loss data as provided by Subchapter D, Chapter 5, Insurance Code.

(e) Except as provided by Subsection (d), a joint insurance fund created under this section is not considered insurance for purposes of any state statute and is not subject to State Board of Insurance rules.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. An entity is eligible to participate under Section 504.016 or Chapter 791 or 2259, Government Code, if the entity provides transportation subsidized in whole or in part by and provided to clients of:

(1) the Department of Assistive and Rehabilitative Services;

(2) the Department of State Health Services;

(3) the Cancer Prevention and Research Institute of Texas;

(4) the Texas Department of Housing and Community Affairs;

(5) the Health and Human Services Commission;

(6) the Department of Aging and Disability Services; or

(7) the Texas Juvenile Justice Department.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 266 (H.B. 14), Sec. 5, eff. November 6, 2007.

Acts 2015, 84th Leg., R.S., Ch. 734 (H.B. 1549), Sec. 138, eff. September 1, 2015.

Sec. 504.018. NOTICE TO DIVISION AND EMPLOYEES; EFFECT ON

COMMON-LAW OR STATUTORY LIABILITY. (a) A political subdivision shall notify the division of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(b) A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Employees of a political subdivision are conclusively considered to have accepted the compensation provisions instead of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries received in the course of employment.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.320, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.321, eff. September 1, 2005.

SUBCHAPTER C. BENEFITS AND OFFSETS

Sec. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY. (a) Benefits provided under this chapter shall be offset:

(1) to the extent applicable, by any amount for incapacity received as provided by:

(A) Chapter 143, Local Government Code; or

(B) any other statute in effect on June 19, 1975, that provides for the payment for incapacity to work because of injury on the job that is also covered by this chapter; and

(2) by any amount paid under Article III, Section 52e, of the Texas Constitution, as added in 1967.

(b) If benefits are offset, the employer may not withhold the offset portion of the employee's wages until the time that benefits under this chapter are received.

(c) If an employee's wages are offset, the employee and employer shall contribute to the pension fund on the amount of money by which the employee's wages were offset. An employee's pension benefit may not be reduced as a result of the employee's injuries or any compensation received under this chapter unless the reduction results from a pension revision passed by a majority vote of the

affected members of a pension system.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.052. SICK LEAVE BENEFITS. (a) The governing body of a political subdivision, by majority vote, may provide that while an employee of the political subdivision is receiving benefits under this chapter, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the benefits under this chapter and the weekly compensation that the employee was receiving before the injury that resulted in the claim.

(b) Sick leave benefits received under Subsection (a) shall be deducted proportionately from the employee's sick leave balance.

(c) This section does not limit the medical benefits to be paid to the employee. A sick leave plan may not require an employee to take sick leave benefits before receiving benefits under this chapter.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.053. ELECTION. (a) A political subdivision that self-insures either individually or collectively shall provide workers' compensation medical benefits to the injured employees of the political subdivision through a workers' compensation health care network certified under Chapter 1305, Insurance Code, if the governing body of the political subdivision determines that provision of those benefits through a network is available to the employees and practical for the political subdivision. A political subdivision may enter into interlocal agreements and other agreements with other political subdivisions to establish or contract with networks under this section.

(b) If a political subdivision or a pool determines that a workers' compensation health care network certified under Chapter 1305, Insurance Code, is not available or practical for the political subdivision or pool, the political subdivision or pool may provide medical benefits to its injured employees or to the injured employees of the members of the pool:

(1) in the manner provided by Chapter 408, other than

Sections 408.001(b) and (c) and Section 408.002, and by Subchapters B and C, Chapter 413; or

(2) by directly contracting with health care providers or by contracting through a health benefits pool established under Chapter 172, Local Government Code.

(c) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following do not apply:

(1) Sections 408.004 and 408.0041, unless use of a required medical examination or designated doctor is necessary to resolve an issue relating to the entitlement to or amount of income benefits under this title;

(2) Subchapter B, Chapter 408, except for Section 408.021;

(3) Chapter 413, except for Section 413.042; and

(4) Chapter 1305, Insurance Code, except for Sections 1305.501, 1305.502, and 1305.503.

(d) If the political subdivision or pool provides medical benefits in the manner authorized under Subsection (b)(2), the following standards apply:

(1) the political subdivision or pool must ensure that workers' compensation medical benefits are reasonably available to all injured workers of the political subdivision or the injured workers of the members of the pool within a designed service area;

(2) the political subdivision or pool must ensure that all necessary health care services are provided in a manner that will ensure the availability of and accessibility to adequate health care providers, specialty care, and facilities;

(3) the political subdivision or pool must have an internal review process for resolving complaints relating to the manner of providing medical benefits, including an appeal to the governing body or its designee and appeal to an independent review organization;

(4) the political subdivision or pool must establish reasonable procedures for the transition of injured workers to contract providers and for the continuity of treatment, including notice of impending termination of providers and a current list of contract providers;

(5) the political subdivision or pool shall provide for emergency care if an injured worker cannot reasonably reach a contract provider and the care is for medical screening or other evaluation that is necessary to determine whether a medical emergency

condition exists, necessary emergency care services including treatment and stabilization, and services originating in a hospital emergency facility following treatment or stabilization of an emergency medical condition;

(6) prospective or concurrent review of the medical necessity and appropriateness of health care services must comply with Article 21.58A, Insurance Code;

(7) the political subdivision or pool shall continue to report data to the appropriate agency as required by Title 5 of this code and Chapter 1305, Insurance Code; and

(8) a political subdivision or pool is subject to the requirements under Sections 1305.501, 1305.502, and 1305.503, Insurance Code.

(e) Nothing in this chapter waives sovereign immunity or creates a new cause of action.

Added by Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.322, eff. September 1, 2005.

Sec. 504.054. CONTESTED CASE HEARING ON AND JUDICIAL REVIEW OF INDEPENDENT REVIEW. (a) A party to a medical dispute that remains unresolved after the review described by Section 504.053(d)(3) is entitled to a contested case hearing. A hearing under this subsection shall be conducted by the division in the same manner as a hearing conducted under Section 413.0311.

(b) The hearing officer conducting the contested case hearing under Subsection (a) shall consider any treatment guidelines adopted by the political subdivision or pool that provides medical benefits under Section 504.053(b)(2) if those guidelines meet the standards provided by Section 413.011(e).

(c) A party that has exhausted all administrative remedies under Subsection (a) and is aggrieved by a final decision of the division may seek judicial review of the decision.

(d) Judicial review under Subsection (c) shall be conducted in the manner provided for judicial review of a contested case under Subchapter G, Chapter 2001, Government Code, and is governed by the substantial evidence rule.

(e) A decision of the independent review organization is binding during the pendency of a dispute.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.

Sec. 504.055. EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. (a) In this section, "first responder" means:

(1) an individual employed by a political subdivision of this state who is:

(A) a peace officer under Article 2.12, Code of Criminal Procedure;

(B) a person licensed under Chapter 773, Health and Safety Code, as an emergency care attendant, emergency medical technician, emergency medical technician-intermediate, emergency medical technician-paramedic, or licensed paramedic; or

(C) a firefighter subject to certification by the Texas Commission on Fire Protection under Chapter 419, Government Code, whose principal duties are firefighting and aircraft crash and rescue; or

(2) an individual covered under Section 504.012(a) who is providing volunteer services to a political subdivision of this state as:

(A) a volunteer firefighter, without regard to whether the volunteer firefighter is certified under Subchapter D, Chapter 419, Government Code; or

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code.

(b) This section applies only to a first responder who sustains a serious bodily injury, as defined by Section 1.07, Penal Code, in the course and scope of employment. For purposes of this section, an injury sustained in the course and scope of employment includes an injury sustained by a first responder providing services on a volunteer basis.

(c) The political subdivision, division, and insurance carrier shall accelerate and give priority to an injured first responder's claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (b).

(d) The division shall accelerate, under rules adopted by the commissioner of workers' compensation, a contested case hearing

requested by or an appeal submitted by a first responder regarding the denial of a claim for medical benefits, including all health care required to cure or relieve the effects naturally resulting from a compensable injury described by Subsection (b). The first responder shall provide notice to the division and independent review organization that the contested case or appeal involves a first responder.

(e) Except as otherwise provided by this section, a first responder is entitled to review of a medical dispute in the manner provided by Section 504.054.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.

Sec. 504.056. INTENT OF EXPEDITED PROVISION OF MEDICAL BENEFITS FOR CERTAIN INJURIES SUSTAINED BY FIRST RESPONDER IN COURSE AND SCOPE OF EMPLOYMENT. The purpose of Section 504.055 is to ensure that an injured first responder's claim for medical benefits is accelerated by a political subdivision, insurance carrier, and the division to the full extent authorized by current law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1162 (H.B. 2605), Sec. 36, eff. September 1, 2011.

SUBCHAPTER D. ADMINISTRATION

Sec. 504.071. RULES; FORMS. A political subdivision may:

(1) adopt and publish rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT. (a) A political subdivision may set aside from available appropriations, other than itemized salary appropriations, an amount sufficient to pay all costs, administrative expenses, benefits, insurance, and attorney's fees authorized by this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the political subdivision's records showing the disbursements authorized by this chapter. A statement of the amount set aside for disbursements from the account shall be included in an annual report made to the political subdivision's governing body and its treasurer.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS. (a) Except as provided by Subsection (b), in a proceeding in connection with workers' compensation benefits provided by a political subdivision as a self-insurer, the political subdivision may be represented by:

(1) the political subdivision's attorney or that attorney's assistants; or

(2) outside counsel.

(b) In a proceeding involving workers' compensation for employees of a municipal utility operated by a board of trustees established under Section 1502.070, Government Code, or a similar law, if the board of trustees is a self-insurer, the municipality shall be represented by the regularly employed attorney or outside counsel of the board of trustees.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.284, eff. Sept. 1, 2001.

CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITIONS. (a) In this chapter:

(1) Repealed by Acts 2005, 79th Leg., Ch. 265, Sec. 7.01(32), eff. September 1, 2005.

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

(3) "Employee" means a person in the service of the department under an appointment or express contract of hire and whose name appears on the department's payroll.

(4) "Legal beneficiary" has the meaning assigned to that term under Section 401.011.

(b) A reference in this chapter to an employee who has been injured includes the employee's legal beneficiary if the injured employee is dead.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 7.01(32), eff. September 1, 2005.

Sec. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.012, defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001-403.005;

(4) Chapters 404 and 405;

(5) Subchapters B, D, E, and H, Chapter 406, other than Sections 406.071-406.073, and 406.075;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409 and 410;

(8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;

(9) Chapters 412-417; and

(10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "department."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the department or an employee of the department beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.323, eff. September 1, 2005.

SUBCHAPTER B. COVERAGE

Sec. 505.011. WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EMPLOYEES. The department shall pay benefits as provided by this chapter to an employee with a compensable injury.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.012. AUTHORITY TO SELF-INSURE. The department may self-insure.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.013. INDIVIDUALS EMPLOYED BY SUBCONTRACTORS. (a) Except as provided by Subsection (b), an individual employed by a subcontractor performing work under contract with the department is not considered an employee for purposes of this chapter.

(b) The department shall treat a person leasing a tractor, a truck, mowing or cutting machinery, or other equipment to the department and using the equipment to perform work under a contract with the department:

(1) as an independent contractor, and the department shall require the person, while performing the contract, to provide life, health and accident, and disability insurance for the person and any individual employed by the person to perform the contract in an amount and with coverage approved by the Texas Department of Insurance as substantially the same as provided for under workers' compensation insurance;

(2) as an employee of the state for workers' compensation purposes, and the department shall require the person to provide workers' compensation insurance for each individual employed by the person to perform the contract, in which case this chapter applies to the person and the individuals employed by the person without regard to the number of individuals employed; or

(3) as an employee of the state for workers' compensation purposes, and each individual employed by that person to perform the contract as an employee of the state for workers' compensation purposes.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. ADMINISTRATION

Sec. 505.051. ADMINISTRATION; RULES; FORMS. (a) The department shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The department may:

(1) adopt rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) The department may set aside from its available appropriations, other than itemized appropriations, an amount not exceeding three and one-half percent of the department's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the department's records. The balance of the account at any time may not exceed an amount equal to three and one-half percent of the department's annual payroll.

(c) The account shall show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 505.053. CERTIFIED COPIES OF DIVISION DOCUMENTS. (a) The division of workers' compensation shall furnish a certified copy of an order, award, decision, or paper on file with the division to a person entitled to the copy on written request and payment of the fee for the copy. The fee shall be the same as that charged for similar services by the secretary of state's office.

(b) The department may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to an employee of the

division of workers' compensation for making the copies that exceeds the fee charged for the copies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.324, eff. September 1, 2005.
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.325, eff. September 1, 2005.

Sec. 505.054. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS. (a) An individual may not be certified as an employee of the department under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician to be physically fit to perform the duties and services to which the individual is to be assigned.

(b) Absence of a physical examination under this section does not bar recovery.

(c) The department shall designate a convenient number of regularly licensed practicing physicians to make physical examinations of individuals employed by or to be employed by the department to determine if the individuals are physically fit to be classified as department employees.

(d) A physician designated under Subsection (c) who conducts an examination shall file with the department a complete transcript of the examination on a form furnished by the department. The department shall maintain all reports under this subsection as part of the department's permanent records. A report under this subsection is admissible in evidence before the division of workers' compensation and in an appeal from a final award or ruling of the commissioner of workers' compensation in which the individual named in the examination is a claimant for compensation under this chapter. A report under this subsection that is admitted is prima facie evidence of the facts stated in the report.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.326, eff.

September 1, 2005.

Sec. 505.055. REPORTS OF INJURIES. (a) A report of an injury filed with the division of workers' compensation under Section 409.005, in addition to the information required by commissioner of workers' compensation rules, must contain:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) In addition to subsequent reports of an injury filed with the division of workers' compensation under Section 409.005(e), the department shall file a subsequent report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.327, eff. September 1, 2005.

Sec. 505.056. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The division of workers' compensation may require an employee who claims to have been injured to submit to an examination by the division or a person acting under the division's authority at a reasonable time and place in this state.

(b) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(c) The department may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the department. The department shall pay for an examination under

this subsection and for the employee's reasonable expenses incident to the examination.

(d) On the request of an employee or the department, the employee or the department is entitled to have a physician selected by the employee or the department present to participate in an examination under Subsection (a) or Section 408.004. The employee is entitled to have a physician selected by the employee present to participate in an examination under Subsection (c). The department shall pay the fee set by the commissioner of workers' compensation of a physician selected by the employee under this subsection.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.328, eff. September 1, 2005.

Sec. 505.057. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commissioner of workers' compensation may order or direct the department to reduce or suspend the compensation of an injured employee if the employee:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.329, eff. September 1, 2005.

Sec. 505.058. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the department is providing hospitalization or medical treatment to the employee, the division of workers' compensation may postpone the hearing of the employee's claim. An appeal may not be taken from an order of the

commissioner of workers' compensation under this section.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.330, eff. September 1, 2005.

Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the division of workers' compensation to a county or district court:

(1) the clerk of the court shall mail to the division:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed $250.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 265 (H.B. 7), Sec. 3.331, eff. September 1, 2005.

Sec. 505.060. EFFECT OF SICK LEAVE; ANNUAL LEAVE. (a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave.

(b) An employee may elect to use all or any number of weeks of

accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Added by Acts 2001, 77th Leg., ch. 706, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1017, Sec. 2.01, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1456, Sec. 14.03, eff. June 17, 2001.

CHAPTER 506. MISCELLANEOUS PROVISIONS APPLICABLE TO GOVERNMENT EMPLOYEES

Sec. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE. (a) In a workers' compensation case in which a claimant is awarded a judgment against the state or a political subdivision of the state under Chapter 501, 502, 503, 504, or 505, the state or political subdivision shall comply with the judgment not later than the 30th day after the judgment is entered.

(b) If the state or a political subdivision of the state fails or refuses to comply with a judgment as provided under Subsection (a) and the claimant secures a mandamus order against the state or political subdivision to force compliance with the judgment, the claimant is also entitled to an award of:

(1) a penalty of 12 percent of the amount of compensation recovered in the judgment; and

(2) reasonable attorney's fees for prosecution of the mandamus action.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Sec. 506.002. REIMBURSEMENT FROM NON-TREASURY FUNDS. (a) An agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund to former or current employees of the agency or other instrumentality shall reimburse the general revenue fund by writing a check to the comptroller:

(1) for deposit into the appropriate account in the general revenue fund; and

(2) not later than 30 days after receiving the statement of

amounts due.

(b) The workers' compensation division of the office of the attorney general shall send to the comptroller a copy of each statement of amounts due from an agency or other instrumentality of state government that, with funds that are held outside the state treasury, reimburses the general revenue fund for workers' compensation payments made out of the general revenue fund.

(c) An agency or other instrumentality of state government affected by this section may allocate appropriate funds to a revolving account on its books to receive contributions from funds other than general revenue funds, based on an assessment it determines to be appropriate for the purpose of reimbursing the general revenue fund for the workers' compensation payments made to its current or former employees.

(d) The state auditor may review affected entities for compliance with this section, subject to a risk assessment performed by the state auditor and to the legislative audit committee's approval of including the review in the audit plan under Section 321.013, Government Code.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.40, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 785, Sec. 64, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 83, eff. September 1, 2013.