

HEALTH & SAFETY CODE  
SUBTITLE H. PUBLIC HEALTH PROVISIONS  
CHAPTER 161. PUBLIC HEALTH PROVISIONS  
SUBCHAPTER A. IMMUNIZATIONS

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information a health care provider who administers a vaccine is required to record in a medical record under 42 U.S.C. Section 300aa-25, as amended, including:

(A) the date the vaccine is administered;  
(B) the vaccine manufacturer and lot number of the vaccine; and  
(C) the name, the address, and if appropriate, the title of the health care provider administering the vaccine.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations to a person younger than 18 years of age.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an injury caused by the vaccine or immunizing agent if the immunization is required by the board or is otherwise required by law or rule.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Chapter 32, Family Code.

(c) A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.40, eff. Sept. 1, 1997.

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The reminder notice must be addressed to an adult or parent and may not use:

(1) an indication of the marital status of the addressee; or

(2) the terms "Mr.," "Mrs.," "Miss," or "Ms."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN. (a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted by the board.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief; or

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The board shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.162, eff. Sept. 1, 2003.

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM. (a) A person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) A person claiming an exemption from a required immunization under this section may only obtain the affidavit form by submitting a written request for the affidavit form to the department.

(d) The department shall develop a blank affidavit form that contains a seal or other security device to prevent reproduction of the form. The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department shall maintain a record of the total number of affidavit forms sent out each year and shall report that information to the legislature each year. The department may not maintain a record of the names of individuals who request an affidavit under this section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.163, eff. Sept. 1, 2003.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a facility of the Texas Department of Mental Health and Mental Retardation, the Texas Department of Criminal Justice, or the Texas Youth Commission, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the board have the same powers and duties under this section as those entities have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.41, eff. Sept. 1, 1997.

Sec. 161.0051. REQUIRED IMMUNIZATIONS FOR NURSING HOMES. (a) This section applies only to a nursing home that:

(1) is an institution licensed under Chapter 242; and  
(2) serves residents who are elderly persons as defined by Section 242.002.

(b) The board by rule may require nursing homes to offer, in accordance with an immunization schedule adopted by the board, immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the board determines

to be:

- (1) caused by infectious agents;
- (2) potentially deadly; and
- (3) preventable by vaccine.

(c) The board by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted by the board:

- (1) pneumococcal vaccine to elderly residents; and
- (2) influenza vaccine to elderly residents and to

staff who are in contact with elderly residents.

Added by Acts 1999, 76th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.0052. IMMUNIZATION OF ELDERLY PERSONS BY HOSPITALS, END STAGE RENAL DISEASE FACILITIES, AND PHYSICIANS' OFFICES. (a) In this section:

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

(3) "Hospital" has the meaning assigned by Section 241.003.

(b) The executive commissioner of the Health and Human Services Commission by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner of the Health and Human Services Commission by rule shall require an end stage renal disease facility to offer, to the extent possible as determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas State Board of Medical Examiners by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(e) Rules adopted under this section must require that:

(1) a hospital, end stage renal disease facility, or physician's office:

(A) offer the influenza vaccine in October and November, and if the vaccine is available, December; and

(B) offer the pneumococcal vaccine year-round; and

(2) a person administering a vaccine:

(A) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(B) administer the vaccine under institution-approved or physician-approved protocols after making an assessment for contraindications; and

(C) permanently document the vaccination in the elderly person's medical records.

(f) In adopting rules under this section, the executive commissioner of the Health and Human Services Commission and the Texas State Board of Medical Examiners shall consider the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(g) Rules adopted under this section may consider the potential for a shortage of a vaccine.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas State Board of Medical Examiners shall make available to physicians' offices, educational and informational materials concerning vaccination

against influenza virus and pneumococcal disease.

Added by Acts 2005, 79th Leg., ch. 368, Sec. 1, eff. Sept. 1, 2005.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO DEPARTMENT. (a) The department, for purposes of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective childhood communicable disease prevention and control efforts, shall establish and maintain a childhood immunization registry. The department by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform a parent, managing conservator, or guardian of each patient about the registry;

(3) require the written consent of a parent, managing conservator, or guardian of a patient before any information relating to the patient is included in the registry; and

(4) permit a parent, managing conservator, or guardian to withdraw consent for the patient to be included in the registry.

(a-1) The written consent required by Subsection (a)(3) is required to be obtained only one time. The written consent is valid until the child becomes 18 years of age unless the consent is withdrawn in writing. A parent, managing conservator, or guardian of a child may provide the written consent by using an electronic signature on the child's birth certificate.

(b) The childhood immunization registry must contain information on the immunization history that is obtained by the department under this section of each person who is younger than 18 years of age and for whom consent has been obtained in accordance with guidelines adopted under Subsection (a). The department shall remove from the registry information for any person for whom consent has been withdrawn. The department may not retain individually identifiable information about any person for whom consent has been withdrawn.

(c) A payor that receives data elements from a health care provider who administers an immunization to a person younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified.

(d) A health care provider who administers an immunization to a person younger than 18 years of age shall provide data elements regarding an immunization to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for a person for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsection (a) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to a parent, managing conservator, or guardian regarding his or her child or ward who is due or overdue for a particular type of immunization according to the department's immunization schedule. The department shall consult with health care providers to determine the most efficient and cost-effective

manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith immunization data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Section 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written consent of the child's parent, managing conservator, or guardian.

(k) The board shall adopt rules to implement this section. Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.780, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1081, Sec. 2.

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for a child for whom the department has received consent to be included in the registry, from a person other than the child's parent, managing conservator, or guardian, the department shall send a written notice to the child's parent, managing conservator, or guardian disclosing:

(1) that providers and payors may be sending the child's immunization information to the department;

(2) the information that is included in the registry;

(3) the persons to whom the information may be released under Section 161.008(d);

(4) the purpose and use of the registry;

(5) the procedure to exclude a child from the registry; and

(6) the procedure to report a violation if a parent, managing conservator, or guardian discovers a child is included in the registry after exclusion has been requested.

(b) On discovering that consent to be included in the registry has not been granted, the department shall exclude the child's immunization records from the registry and any other registry-related department record that individually identifies the child.

(c) On receipt of a written request to exclude a child's immunization records from the registry, the department shall send to a parent, managing conservator, or guardian who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the child's records from the registry.

(d) The department commits a violation if the department fails to exclude a child's immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written statement from a parent, managing conservator, or guardian communicating to the department that a child should be excluded from the registry, including a statement on the child's birth certificate, as a request for exclusion under Subsection (c). The written statement may include the electronic signature on the child's birth certificate.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the parent, managing conservator, or guardian of a child has reasonable concern that the child's health care provider is not submitting the immunization history to the department and the parent, managing conservator, or guardian wants the child included in the registry, the parent, managing conservator, or guardian may provide the child's immunization history directly to the department to be included in the immunization registry.

(b) The parent, managing conservator, or guardian of a child may send evidence of the child's immunization history to the department by facsimile transmission or by mail. The evidence may

include a copy of:

(1) the child's medical record indicating the immunization history;

(2) an invoice from a health care provider for the immunization; or

(3) documentation showing that a claim for the immunization was paid by a payor.

(c) The board shall develop rules to ensure that the immunization history submitted by a parent, managing conservator, or guardian is medically verified immunization information.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) The information that individually identifies a child received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the person or, if a minor, the parent, managing conservator, or guardian of the child.

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information to any other person without written consent of the parent, managing conservator, or guardian of the child, except as provided by Chapter 159, Occupations Code, or Section 602.053, Insurance Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by Acts 2005, 79th Leg., ch. 728, Sec. 11.127, eff. Sept. 1, 2005.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization;

(10) include department recommendations about the best way to use, and communicate with, local registries in the state; and

(11) include ways to increase provider participation in the registry.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section 161.009, the following persons subject to this subchapter that act in compliance with Sections 161.007, 161.0071,

161.0073, 161.0074, and 161.008 are not civilly or criminally liable for furnishing the information required under this subchapter:

- (1) a payor;
- (2) a health care provider who administers immunizations; and
- (3) an employee of the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.008. IMMUNIZATION RECORD. (a) An immunization record is part of the immunization registry.

- (b) An immunization record contains the:
- (1) name and date of birth of the person immunized;
  - (2) dates of immunization;
  - (3) types of immunization administered; and
  - (4) name and address of the health care provider administering the immunization.

(c) The department may obtain the data constituting an immunization record for a child from a public health district, a local health department, the child's parent, managing conservator, or guardian, a physician to the child, a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified.

(d) The department may release the data constituting an immunization record for the child to any entity that is described by Subsection (c), to a school or child care facility in which the child is enrolled, or to a state agency having legal custody of the child.

(e) A parent, managing conservator, or legal guardian may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning his or her child or ward.

(f) A person, including a health care provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an immunization history or data from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify a child.

(h) The board shall adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 4, eff. Sept. 1, 2003.

Sec. 161.009. PENALTIES FOR DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person:

(1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;

(2) fails to exclude a child's immunization information in violation of Section 161.0071; or

(3) negligently uses information in the immunization registry to solicit new patients or clients or for other purposes that are not associated with immunization or quality-of-care purposes, unless authorized under this section.

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

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.  
Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 5.

Sec. 161.0095. PROVIDER EDUCATION PROGRAMS. The department shall develop continuing education programs for providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s, as amended. The department shall establish a work group to assist the department in developing the continuing education programs and

materials. The work group shall include physicians, nurses, department representatives, representatives of managed care organizations that provide health care services under Chapter 533, Government Code, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Added by Acts 2003, 78th Leg., ch. 613, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.010. IMMUNIZATION EDUCATION; STATEWIDE COALITION. (a) The department shall establish a continuous statewide education program to educate the public about the importance of immunizing children and the risks and contraindications of an immunization.

(b) The department shall increase coordination among public and private local, regional, and statewide entities that have an interest in immunizations.

Added by Acts 2003, 78th Leg., ch. 125, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0101. INCREASE IMMUNIZATION AWARENESS. (a) The department shall develop new public-private partnerships and work with existing public-private partnership programs, including the Seniors and Volunteers Program For Childhood Immunization, to increase public and private awareness of and support for early childhood immunizations.

(b) The department shall work with the Texas Education Agency to increase immunization awareness and participation among parents of preschool and school-age children by:

(1) jointly applying for federal funds for immunization awareness and vaccination programs; and

(2) creating partnerships with public and private health, service, and education organizations, including parent-teacher associations, the United Way, schools, local businesses, community-based organizations, chambers of commerce, and athletic booster clubs, to increase awareness and participation in the state's early childhood vaccination program.

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Code Sec. 161.010 by Acts 2005, 79th Leg., ch. 728, Sec. 23.001(44), eff. Sept. 1, 2005.

Sec. 161.0105. LIMITATION ON LIABILITY. (a) A health care provider who acts in compliance with Sections 161.007 and 161.008 and any rules adopted under those sections is not civilly or criminally liable for furnishing the information required under those sections. This subsection does not apply to criminal liability established under Section 161.009.

(b) A person who administers a vaccination under a department program may be held liable only to the extent the person would be liable if the person administered the vaccination outside the program. The person is not liable for damages arising from the acts or omissions of another person acting under the program or the department.

(c) The immunity created by this section is in addition to any immunity created by Sections 161.001 and 161.007(g).

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0106. RESPIRATORY SYNCYTIAL VIRUS; IMMUNIZATION. As part of the education programs under Sections 161.0095 and 161.010, the department shall include information about:

(1) respiratory syncytial virus and the importance of preventative activities for children at risk of contracting the virus;

(2) respiratory syncytial virus prophylaxis for children who are at high risk of complications from the disease; and

(3) immunization for respiratory syncytial virus when a vaccine is recommended and available.

Added by Acts 2005, 79th Leg., ch. 115, Sec. 1, eff. Sept. 1, 2005.

#### SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission obtained from a lawful adult occupant of the residence; or

(2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81,



or a health ordinance of a political subdivision.  
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended  
by Acts 2003, 78th Leg., ch. 198, Sec. 2.189, eff. Sept. 1, 2003.

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the state penitentiary for not more than two years, a fine of not more than \$1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than \$500, or both.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH  
CONDITIONS

Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY. (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing home, rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

- (1) the department;
- (2) a person that makes inquiries under immunization surveys conducted for the department;
- (3) a medical organization;
- (4) a hospital;
- (5) a hospital committee; or
- (6) a cancer registry, including a cancer registry of a cancer treatment center as defined by Section 82.002.

(b) A person is not liable for damages or other relief for:  
(1) providing the information;  
(2) releasing or publishing the findings or conclusions to advance medical research or medical education; or  
(3) releasing or publishing a general summary of those studies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended  
by Acts 1997, 75th Leg., ch. 343, Sec. 3, eff. May 27, 1997; Acts  
1999, 76th Leg., ch. 1411, Sec. 23.03, eff. Sept. 1, 1999.

Sec. 161.0211. EPIDEMIOLOGIC OR TOXICOLOGIC INVESTIGATIONS. (a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Natural Resource Conservation Commission and the two agencies shall coordinate corrective measures as appropriate. The department shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.  
Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0212. RIGHT OF ENTRY. To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Natural Resource Conservation Commission that relate to an epidemiologic or toxicologic investigation of human

illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) The department, a medical organization, a hospital, a hospital committee, or a cancer registry may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 4, eff. May 27, 1997.

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE. (a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION. This subchapter does not apply to a function of a health maintenance organization other than medical peer review and quality assurance conducted under Chapter 843, Insurance Code, the rules adopted under that chapter, or other applicable state and federal statutes and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.524, eff. Sept. 1, 2003.

SUBCHAPTER D. MEDICAL COMMITTEES, MEDICAL PEER REVIEW COMMITTEES, AND COMPLIANCE OFFICERS

Sec. 161.031. MEDICAL COMMITTEE DEFINED. (a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

(1) a hospital;

(2) a medical organization;

(3) a university medical school or health science center;

(4) a health maintenance organization licensed under Chapter 843, Insurance Code, including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;

(5) an extended care facility;

(6) a hospital district; or

(7) a hospital authority.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

(c) The term includes a committee, including a joint

committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 655, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 908, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.525, eff. Sept. 1, 2003.

Sec. 161.0315. AUTHORITY OF GOVERNING BODY TO FORM COMMITTEE TO EVALUATE MEDICAL AND HEALTH CARE SERVICES. (a) The governing body of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, hospital district, or hospital authority may form a medical peer review committee, as defined by Section 151.002, Occupations Code, or a medical committee, as defined by Section 161.031, to evaluate medical and health care services, except as provided by this section.

(b) Except as provided by Subsection (d), a medical peer review committee or medical committee formed by the governing body of a hospital district may not evaluate medical and health care services provided by a health care facility that:

(1) contracts with the district to provide those services; and

(2) has formed a medical peer review committee or medical committee to evaluate the services provided by the facility.

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.006, Occupations Code, is subject.

(d) If a hospital district and a health care facility described by Subsection (b) do not agree on a contract provision described by Subsection (c), the hospital district has, with respect to a review action for the evaluation of medical and health care services provided by the facility under a contract with the district, a right to:

(1) initiate the review action;

(2) appoint from the medical staff of the facility a number of members to the facility's medical peer review committee or medical committee equal to the number of members appointed to the committee by the facility to conduct the review action, without regard to whether the district initiates the action; and

(3) receive records, information, or reports from the medical peer review committee or medical committee related to the review action.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.006, Occupations Code, is subject.

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or

record compiled under this subsection is:

- (1) confidential;
- (2) not subject to disclosure under Chapter 552, Government Code; and
- (3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

Added by Acts 1999, 76th Leg., ch. 908, Sec. 6, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.781, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code, or medical committee; or

(2) a meeting of the governing body of a public hospital, hospital district, hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 625, Sec. 6, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 908, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1511, Sec. 3, eff. Sept. 1, 2001.

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS AND CONTROLLED SUBSTANCE OVERDOSES

Sec. 161.041. MANDATORY REPORTING OF GUNSHOT WOUNDS. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES. (a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

(b) A physician or other person who reports an overdose of a controlled substance under this section shall include in the report information regarding the date of the overdose, the type of controlled substance used, the sex and approximate age of the person attended or treated for the overdose or for whom treatment was sought, the symptoms associated with the overdose, the extent of treatment made necessary by the overdose, and the patient outcome. The physician or other person making the report may provide other demographic information concerning the person attended or treated or for whom treatment was sought but may not disclose the person's name or address or any other information concerning the person's identity.

(c) A hospital, sanatorium, or other institution that makes a report under this section is not subject to civil or criminal liability for damages arising out of the report. An individual who makes a good-faith report under this section is not subject to civil or criminal liability for damages arising out of the report.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.043. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than \$100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from V.T.C.A., Health and Safety Code Sec. 161.042 and amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.044. CONTROLLED SUBSTANCE OVERDOSE INFORMATION REPOSITORY. (a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the physician or other person is precluded from reporting under that section.

(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

#### SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.062. GROUNDS FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER G. HUMAN MILK BANKS

Sec. 161.071. MINIMUM GUIDELINES FOR HUMAN DONOR MILK BANKS. The department shall establish minimum guidelines for the procurement, processing, distribution, or use of human milk by donor milk banks.

Added by Acts 2001, 77th Leg., ch. 379, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Permit holder" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes or tobacco products.

(4) "Retailer" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.082. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette or tobacco product to someone who is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette or tobacco product to another person who intends to deliver it to someone who is younger than 18 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

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

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 18 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from V.T.C.A., Health and Safety Code Sec. 161.081 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose, including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Added by Acts 2005, 79th Leg., ch. 391, Sec. 1, eff. Sept. 1, 2005.

Sec. 161.083. SALE OF CIGARETTES OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 27 YEARS OF AGE. (a) Pursuant to federal regulation under 21 C.F.R. Section 897.14(b), a person may not sell, give, or cause to be sold or given a cigarette or tobacco product to someone who is younger than 27 years of age unless the person to whom the cigarette or tobacco product was sold or given presents an apparently valid proof of identification.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 154.1142 or 155.0592, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number).

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

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

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

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from V.T.C.A., Health and Safety Code Sec. 161.082 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS. (a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes or tobacco products to any person who is younger than 18 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by Subsection (a) must be provided within 72 hours of the date an individual begins to engage in retail

sales of tobacco products. The individual shall signify that the individual has received the notice required by Subsection (a) by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 2, eff. Sept. 1, 2001.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes or tobacco products for sale in a manner that permits a customer direct access to the cigarettes or tobacco products; or

(2) install or maintain a vending machine containing cigarettes or tobacco products.

(b) Subsection (a) does not apply to:

(1) a facility or business that is not open to persons younger than 18 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

(d) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 1999, 76th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.087. DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS. (a) A person may not distribute to persons younger than 18 years of age:

(1) a free sample of a cigarette or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product.

(b) Except as provided by Subsection (c), a permit holder may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem a coupon or other item that the recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product if the recipient is younger than 18 years of age. A coupon or other item that such a recipient may use to receive a free or discounted cigarette or tobacco product or a sample cigarette or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2) and (b) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor. Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.



Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a) The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter in a manner that can reasonably be expected to reduce the extent to which cigarettes and tobacco products are sold or distributed to persons who are younger than 18 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes and tobacco products are sold or distributed to ensure compliance with this subchapter. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter;

(2) at the time of the inspection, the minor decoy is younger than 17 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of cigarettes or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age.

(e) The comptroller shall annually prepare for submission by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26). Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1156, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.089. PREEMPTION OF LOCAL LAW. This subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.0901. REPORT OF OFFICE OF SMOKING AND HEALTH. (a) Not later than January 5th of each odd-numbered year the Office of

Smoking and Health of the department shall report to the governor, lieutenant governor, and the speaker of the house of representatives on the status of smoking and the use of tobacco and tobacco products in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter, Subchapter K, and Chapters 154 and 155, Tax Code;

(2) a baseline of statistics and analysis regarding illegal tobacco sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) tobacco controls and initiatives by the Office of Smoking and Health of the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the Office of Smoking and Health of the department to decrease the use of tobacco and tobacco products;

(5) the educational programs of the Office of Smoking and Health of the department and the effectiveness of those programs; and

(6) the incidence of use of tobacco and tobacco products by regions in this state, including use of cigarettes and tobacco products by ethnicity.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

#### SUBCHAPTER J. EXPOSURE TO LEAD

Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The board shall adopt rules to implement this section. Acts 1991, 72nd Leg., ch. 695, Sec. 1, eff. Aug. 26, 1991.

#### SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE OR TOBACCO PRODUCT ADVERTISING; FEE

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "School" means a private or public elementary or secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.

(d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by

the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 1, eff. Oct. 1, 2003.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee and deposit the money as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

- (1) production costs;
- (2) media cost; and
- (3) cost of sales or commissions paid to an agency or broker.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.124. USE OF ADVERTISING FEE. (a) The comptroller shall deposit the fee collected under Section 161.123 to a special account in the state treasury called the tobacco education and enforcement education fund.

(b) Money in the account may be appropriated only for administration and enforcement of this section, enforcement of law relating to cigarettes and tobacco products, and the education advertising campaign and grant program established under Subchapter O, Chapter 161.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

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

- (1) the amount of fees due and owing;
- (2) attempted concealment of misconduct by the person who committed the violation;
- (3) premeditated misconduct by the person who committed the violation;
- (4) intentional misconduct by the person who committed the violation;
- (5) the motive of the person who committed the violation;
- (6) prior misconduct of a similar or related nature by the person who committed the violation;
- (7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;
- (8) violation by the person who committed the violation of an order of the comptroller;
- (9) lack of rehabilitative potential or likelihood for future misconduct of a similar nature;
- (10) relevant circumstances increasing the seriousness of the misconduct; and
- (11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.  
Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

SUBCHAPTER L. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section 241.003.

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section 571.003.

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section 571.003.

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section 464.001.

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be

engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, Texas Commission on Alcohol and Drug Abuse, and each state health care regulatory agency by rule shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) Each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

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

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.41, eff. Sept. 1, 1997.

Sec. 161.133. MEMORANDUM OF UNDERSTANDING ON INSERVICE TRAINING. (a) The Texas Board of Mental Health and Mental Retardation, Texas Board of Health, and Texas Commission on Alcohol and Drug Abuse by rule shall adopt a joint memorandum of understanding that requires each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The memorandum must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) Each agency shall review and modify the memorandum as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a

violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

- (1) reinstatement in the plaintiff's former position;
- (2) compensation for lost wages; and
- (3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

- (1) the plaintiff was employed by the defendant; or
- (2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED. (a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule adopted by the Texas Board of Mental Health and Mental Retardation, the Texas Board of Health, or the Texas Commission on Alcohol and Drug Abuse.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the Texas Department of Mental Health and Mental Retardation;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or

restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section 161.134(j).

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION. (a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section 81.001, Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

#### SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession. Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

(1) Chapter 31, Human Resources Code;

(2) the state Medicaid program;

(3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);

(4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);

(5) Title XVIII, the federal Social Security Act, as

amended (42 U.S.C. Section 1395 et seq.);

(6) 38 U.S.C. Section 1101 et seq., as amended; or

(7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former patient requested under Subsection (a)(6) or (7) without charge. If additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 1999, 76th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section 161.202 not later than the 30th day after the date on which the provider or facility receives the request.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section 611.0045 of this code and Section 159.006, Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.783, eff. Sept. 1, 2001.

#### SUBCHAPTER N. TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 18 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette or tobacco product; or

(2) falsely represents himself or herself to be 18 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 18 years of age possessed the cigarette or tobacco product in the presence of:

(1) an adult parent, a guardian, or a spouse of the individual; or

(2) an employer of the individual, if possession or receipt of the tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 18 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(d) An offense under this section is punishable by a fine not to exceed \$250.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.253. TOBACCO AWARENESS PROGRAM; COMMUNITY



SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend a tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the tobacco awareness program with the defendant.

(b) On request, a tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to a tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of tobacco-related community service instead of attending the tobacco awareness program.

(d) The tobacco awareness program and the tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the tobacco awareness program or the tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.254. DRIVER'S LICENSE SUSPENSION OR DENIAL. (a) If the defendant does not provide the evidence required under Section 161.253(e) within the period specified by that subsection, the court shall order the Department of Public Safety to suspend or deny issuance of any driver's license or permit to the defendant. The order must specify the period of the suspension or denial, which may not exceed 180 days after the date of the order.

(b) The Department of Public Safety shall send to the defendant notice of court action under Subsection (a) by first class mail. The notice must include the date of the order and the reason for the order and must specify the period of the suspension or denial.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1409, Sec. 8, eff. Sept. 1, 1999.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a fee in the amount of \$30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998. Amended by Acts 2005, 79th Leg., ch. 886, Sec. 5, eff. Sept. 1, 2005.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may:

(1) impose a requirement that a defendant attend a tobacco awareness program or perform tobacco-related community service; or

(2) order the suspension or denial of a driver's

license or permit.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

#### SUBCHAPTER O. PREVENTION OF TOBACCO USE BY MINORS

Sec. 161.301. TOBACCO USE PUBLIC AWARENESS CAMPAIGN. (a) The commissioner shall develop and implement a public awareness campaign designed to reduce tobacco use by minors in this state. The campaign may use advertisements or similar media to provide educational information about tobacco use.

(b) The commissioner may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The commissioner may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter 305, Government Code;

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1); or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of tobacco use by the group's members.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

#### SUBCHAPTER P. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.351. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(2) "Manufacturer" has the meanings assigned by Sections 154.001 and 155.001, Tax Code.

(3) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.251 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating:

(1) the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

(A) tobacco;  
(B) water; or  
(C) a reconstituted tobacco sheet made wholly from tobacco; and

(2) a nicotine yield rating for the cigarette or tobacco product established under Section 161.353.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.

(c) The department by rule shall establish the time for filing an annual report under this section and shall prescribe the form for the report.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.252 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(12), eff. Sept. 1, 1999.

Sec. 161.353. NICOTINE YIELD RATES. (a) Each manufacturer shall assign a nicotine yield rating to each cigarette or tobacco product distributed in this state. The rating shall be assigned in accordance with standards adopted by the department.

(b) The department standards must be developed so that the nicotine yield rating reflects, as accurately as possible, nicotine intake for an average consumer of the cigarette or tobacco product. Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.253 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.254 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer; or

(2) grant any other injunctive relief warranted by the facts.

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.255 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(13), eff. Sept. 1, 1999.

#### SUBCHAPTER Q. INSTALLATION OF ASBESTOS

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and

actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The board shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed \$10,000 a day for each violation. Each day of violation constitutes a separate violation for purposes of penalty assessment.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) the contractor's previous violations;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) whether the health and safety of the public was threatened by the violation;

(4) the demonstrated good faith of the contractor; and

(5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

(1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section 161.403; or

(2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section 161.403 or 161.404 may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both,

including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates this subchapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) The penalty amount shall be based on:

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

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

(e) The attorney general may sue to collect the penalty.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

#### SUBCHAPTER R. DELIVERY SALES OF CIGARETTES

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(3) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes to an individual who is under the age prescribed by Section 161.082.

(b) A person taking a delivery sale order shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the shipping requirements prescribed by Section 161.455;

(4) the registration and reporting requirements prescribed by Section 161.456;

(5) the tax collection requirements prescribed by Section 161.457; and

(6) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping

requirement.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 18 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.454. DISCLOSURE REQUIREMENTS. The notice required by Section 161.453(a)(3) must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.455. SHIPPING REQUIREMENTS. (a) A person who mails or ships cigarettes in connection with a delivery sale order shall:

(1) include as part of the shipping documents a clear and conspicuous statement:

"CIGARETTES: TEXAS LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER 18 YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES";

(2) use a method of mailing or shipping that obligates the delivery service to require:

(A) the purchaser placing the delivery sale order, or an adult who is at least 18 years of age and who resides at the purchaser's address, to sign to accept delivery of the shipping container; and

(B) the person signing to accept delivery of the shipping container to provide proof, in the form of a government-issued identification bearing a photograph that the person is:

(i) the addressee or an adult who is at least 18 years of age and who resides at the purchaser's address; and

(ii) at least 18 years of age if the person appears to be younger than 27 years of age; and

(3) provide to the delivery service retained to make the delivery evidence of full compliance with Section 161.457.

(b) A person taking a delivery sale order who delivers the cigarettes without using a third-party delivery service shall

comply with the requirements prescribed by this subchapter that apply to a delivery service.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS. (a) A person may not make a delivery sale or ship cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

(1) the person's name and trade name; and  
(2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

(1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;

(2) the brand or brands of the cigarettes that were sold; and

(3) the quantity of cigarettes that were sold.

(c) A person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

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

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.461. FORFEITURE. (a) Cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

#### SUBCHAPTER S. ALLOCATION OF KIDNEYS AVAILABLE FOR TRANSPLANT

Sec. 161.471. DEFINITION. In this subchapter, "organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003.  
Renumbered from V.T.C.A., Health & Safety Code Sec. 161.451 by Acts

2005, 79th Leg., ch. 728, Sec. 23.001(45), eff. Sept. 1, 2005.

Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization that has a defined service area that includes all or part of this state is provided to a special pool for redistribution to patients who have been waiting the longest for transplantation in this state.

(b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool. As one of those patients receives a transplant, the patient will be replaced in the pool, in turn, by the next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003. Renumbered from V.T.C.A., Code Sec. 161.452 by Acts 2005, 79th Leg., ch. 728, Sec. 23.001(45), eff. Sept. 1, 2005.

#### SUBCHAPTER T. PARENTING AND POSTPARTUM COUNSELING INFORMATION

Sec. 161.501. RESOURCE LIST. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations; and

(D) the appropriate schedule for follow-up procedures for newborn screening;

(2) document in the woman's record that the woman received the information described in Subdivision (1); and

(3) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

(b) A hospital, birthing center, physician, nurse midwife, or midwife may use the pamphlet provided on the department's website or an alternative pamphlet that provides the information required by this section.

Added by Acts 2003, 78th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Health & Safety Code Sec. 161.451 and amended by Acts 2005, 79th Leg., ch. 696, Sec. 1, eff. Sept. 1,



2005; Acts 2005, 79th Leg., ch. 728, Sec. 23.001(46), eff. Sept. 1, 2005.

Sec. 161.502. DUTIES OF DEPARTMENT. (a) The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501;

(2) make available on the department's website a printable version of the pamphlet required by Section 161.501;

(3) update the list of resources and required immunizations in the pamphlet required under Subdivision (2) quarterly;

(4) make the pamphlet required by Section 161.501 available for distribution to hospitals, physicians, birthing centers, nurse midwives, and midwives; and

(5) coordinate funding for the development, publication, and distribution of the informational pamphlet with other health and human services agencies, and solicit funding for the department's duties under this subchapter through means other than appropriations, such as gifts, grants, and sales of sponsorship or advertising.

(b) The department may include additional information in the pamphlet as appropriate for parents of newborns.

Added by Acts 2003, 78th Leg., ch. 1011, Sec. 1, eff. Sept. 1, 2003.

Renumbered from V.T.C.A., Health & Safety Code Sec. 161.452 and

amended by Acts 2005, 79th Leg., ch. 696, Sec. 1, eff. Sept. 1, 2005;

Acts 2005, 79th Leg., ch. 728, Sec. 23.001(46), 23.002(8), eff. Sept. 1, 2005.

Sec. 161.503. LIABILITY NOT CREATED. This subchapter does not create civil or criminal liability.

Added by Acts 2005, 79th Leg., ch. 696, Sec. 1, eff. Sept. 1, 2005.