

HEALTH & SAFETY CODE

CHAPTER 432. FOOD, DRUG, DEVICE, AND COSMETIC SALVAGE ACT

Sec. 432.001. SHORT TITLE. This chapter may be cited as the Texas Food, Drug, Device, and Cosmetic Salvage Act.

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

Sec. 432.002. PURPOSE. The purpose of this chapter is to protect the health of the people of this state by preventing the sale or distribution of adulterated or misbranded food, drugs, devices, or cosmetics.

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

Sec. 432.003. DEFINITIONS. In this chapter:

(1) "Board" means the Texas Board of Health.

(2) "Commissioner" means the commissioner of health.

(3) "Cosmetic" means an article or a substance, or a component of an article or substance, that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance. The term does not include soap.

(4) "Department" means the Texas Department of Health.

(5) "Device" means an instrument, apparatus, or contrivance, or a component, part, or accessory of an instrument, apparatus, or contrivance, that is designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals, or that is designed or intended to affect the structure or any function of the body of a human or other animal.

(6) "Distressed merchandise" means any food, drug, device, or cosmetic that is adulterated or misbranded for purposes of Section 431.081 (Adulterated Food), 431.082 (Misbranded Food), 431.111 (Adulterated Drug or Device), 431.112 (Misbranded Drug or Device), 431.141 (Adulterated Cosmetic), or 431.142 (Misbranded Cosmetic), as interpreted by board rule and judicial decision. The term includes a food, drug, device, or cosmetic that:

(A) has lost its label or is otherwise unidentified;

(B) has been subjected to prolonged or improper storage;

(C) has been subjected for any reason to abnormal environmental conditions, including temperature extremes, humidity, smoke, water, fumes, pressure, or radiation;

(D) has been subjected to conditions that result in either its strength, purity, or quality falling below that which it purports or is represented to possess; or

(E) may have been rendered unsafe or unsuitable for human consumption or use for any reason other than those specified by this subdivision.

(7) "Drug" means an article or substance, other than a device, that is:

(A) recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, the official National Formulary, or a supplement to any of those publications;

(B) designed or intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) intended to affect the structure or any function of the body of a human or other animal, excluding food; or

(D) intended for use as a component of an article or substance specified by this subdivision.

(8) "Food" means an article or a component of an article of human food or drink, and includes chewing gum.

(9) "Manufacture" means the combining, purifying, processing, packing, or repacking of food, drugs, devices, or cosmetics for wholesale or retail sale.

(10) "Manufacturer" includes a person who represents himself as responsible for the purity and proper labeling of a food, drug, device, or cosmetic.

(11) "Nonprofit organization" means an organization that has received an exemption from federal taxation under 26 U.S.C. Section 501 and is described by Subsection (c)(3) of that section.

(12) "Reconditioning" means any appropriate process or procedure by which distressed merchandise can be brought into compliance with departmental standards for the consumption or use

of that merchandise by the public.

(13) "Sale or distribution" means the act of selling or distributing, whether or not for compensation. The term includes delivery, holding or offering for sale, transfer, auction, storage, or any other means of handling or trafficking.

(14) "Salvage broker" means a person who engages in the business of selling, distributing, or otherwise trafficking in distressed or salvaged merchandise, but who does not operate a salvage establishment.

(15) "Salvage establishment" means a place of business that is engaged in reconditioning or otherwise salvaging distressed merchandise, or that buys, sells, or distributes salvaged merchandise for human use.

(16) "Salvage operator" means a person who is engaged in the business of operating a salvage establishment.

(17) "Salvage warehouse" means a separate storage facility used by a salvage broker or salvage establishment to hold distressed or salvaged merchandise.

(18) "Salvaged merchandise" means distressed merchandise that has been reconditioned.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 5, eff. May 22, 2001.

Sec. 432.004. EXEMPTIONS. (a) This chapter does not apply to:

(1) a manufacturer, distributor, or processor of a food, drug, device, or cosmetic who, in the normal course of business, reconditions the items manufactured, distributed, or processed by or for that person and not purchased by that person solely for the purpose of reconditioning and sale;

(2) a common carrier, or the common carrier's agent, who disposes of or otherwise transfers undamaged or distressed food, drugs, devices, or cosmetics to a person who is exempt under this section or to a licensed salvage broker or salvage operator;

(3) a person who transfers distressed merchandise to a licensed salvage broker or salvage operator; or

(4) a nonprofit organization that distributes food to the needy under Chapter 76, Civil Practice and Remedies Code (Good Faith Donor Act), but that does not recondition the food.

(b) In this chapter, a pharmacist licensed under the law of this state is not considered a manufacturer when the pharmacist fills a prescription from a licensed practitioner or when the pharmacist compounds or mixes drugs or medicine in the pharmacist's professional capacity.

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

Sec. 432.005. LICENSE REQUIRED. (a) A person may not operate a salvage establishment in this state without a salvage operator license issued by the department.

(b) A person may not act as a salvage broker in this state without a salvage broker license issued by the department.

(c) A salvage operator or salvage broker who is engaging only within the scope of the license issued under this chapter is not required to also be licensed under Chapter 431.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 6, eff. May 22, 2001.

Sec. 432.006. LICENSE APPLICATION. An applicant for a salvage broker license or salvage operator license must:

(1) file a license application on a form prescribed by the department;

(2) pay a nonrefundable license fee to the department; and

(3) cooperate with the department in any required prelicensing inspections.

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

Sec. 432.007. ISSUANCE OF LICENSE. (a) The department shall issue a license to an applicant who complies with Section 432.006 and who meets the minimum qualifications established by the board.

(b) A license issued under this chapter expires one year after the date of issuance.

(c) A separate license is required for each salvage establishment.

(d) A license may not be transferred from one person to another or from one location to another.

(e) A salvage operator or salvage broker shall display the license in accordance with board rules.

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

Sec. 432.008. LICENSE RENEWAL. (a) A license holder under this chapter may renew the license by filing with the department, before the expiration date of the current license, a renewal application on a form prescribed by the department, accompanied by a nonrefundable renewal fee.

(b) After an inspection to determine the license holder's compliance with the rules adopted by the board, the department shall renew the license of a license holder who submits a renewal application and pays the renewal fee.

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

Sec. 432.009. FEES. (a) The board shall adopt, charge, and collect fees for each license application or renewal application submitted under this chapter and for inspections performed to enforce this chapter and the rules adopted under this chapter. The board may charge the fees annually.

(b) The board by rule shall set the fees in amounts sufficient for the department to recover not less than half of the actual annual expenditures of state funds by the department to:

(1) review and act on licenses;
(2) amend and renew licenses;
(3) inspect establishments operated by license holders; and

(4) implement and enforce this chapter and rules and orders adopted and licenses issued under this chapter.

(c) A nonprofit organization is exempt from the payment of a fee imposed under this chapter.

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

Sec. 432.0095. PROCESSING OF FOOD SALVAGE ESTABLISHMENT LICENSING FEES. (a) The commissioner shall establish a system for processing food salvage establishment licensing fees.

(b) Under the fee processing system, the maximum time for processing a fee payment made by a negotiable instrument may not exceed 48 hours, beginning at the time that the negotiable instrument is first received by the department and ending at the time that the fee payment is submitted for deposit by the department to the treasury division of the office of the comptroller.

(c) The comptroller shall cooperate with the commissioner in developing the fee processing system.

Added by Acts 1999, 76th Leg., ch. 697, Sec. 2, eff. Aug. 30, 1999.

Sec. 432.010. FUND. A fee collected by the department under this chapter shall be deposited in the state treasury to the credit of the food, drug, device, and cosmetic salvage fund. The fund may be used only to implement this chapter.

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

Sec. 432.011. MINIMUM STANDARDS. (a) The board shall adopt rules prescribing minimum standards or related requirements for:

(1) the operation of salvage establishments and salvage warehouses; and

(2) qualifications for licenses issued under this chapter.

(b) The rules shall prescribe standards for food, drugs, devices, and cosmetics in separate subchapters.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 265, Sec. 7, eff. May 22, 2001.

Sec. 432.012. POWERS OF DEPARTMENT. The department may:

(1) enter into contracts or agreements necessary to implement this chapter;

(2) conduct inspections and secure samples;

(3) establish and maintain educational programs for salvage operators and salvage brokers; and

(4) compile and publish statistical and other studies on the nature and scope of the salvage industry in this state.

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

Sec. 432.013. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke the license of an applicant or license holder who fails to comply with this chapter or the rules adopted under this chapter.

(b) When there is an imminent threat to the health or safety of the public, the department may suspend a license without notice in accordance with rules adopted by the board for the emergency suspension of licenses.

(c) The department's hearing rules and the applicable provisions of Chapter 2001, Government Code govern a hearing before the department for the denial, suspension, emergency suspension, or revocation of a license and any appeal from that hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 432.014. REINSTATEMENT OF LICENSE. (a) Not later than the 30th day after the date of the denial or emergency suspension, a person whose license application has been denied or whose license has been placed under an emergency suspension may request a reinspection for the purpose of granting or reinstating the license.

(b) The department shall perform the reinspection not later than the 10th day after the date of receipt of a written request for reinspection from the applicant or license holder.

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

Sec. 432.015. EFFECT OF OPERATION IN OTHER JURISDICTION; REPORTS. (a) A person who operates a salvage establishment or acts as a salvage broker outside this state may sell, distribute, or otherwise traffic in distressed or salvaged merchandise in this state if the person holds a license issued by the department.

(b) The department may accept reports from authorities in other jurisdictions to determine the extent of compliance with the minimum standards adopted under this chapter.

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

Sec. 432.016. MUNICIPAL REGULATION. A municipality by ordinance may regulate salvage operators, salvage brokers, and salvage establishments. An ordinance may be stricter than the minimum standards established under this chapter or by rules adopted under this chapter, but it may not be less strict.

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

Sec. 432.017. USE OF SALVAGE WAREHOUSE. A person may not use a salvage warehouse to recondition merchandise or to sell to consumers.

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

Sec. 432.018. CIVIL PENALTY; INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or municipal attorney of the municipality or county in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the act or an order directing compliance;

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person is engaged in or is about to engage in any of the acts;

(3) the assessment and recovery of a civil penalty; or

(4) both the injunctive relief and civil penalty.

(b) The penalty may be in an amount not to exceed \$25,000 for each violation. Each day a violation continues is a separate violation.

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

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health and safety of the public;

(4) the demonstrated good faith of the person charged;

and

(5) other matters as justice may require.

(d) Venue for a suit brought under this section is in the municipality or county in which the violation occurred or in Travis County.

(e) A civil penalty recovered in a suit instituted by a local government under this chapter shall be paid to the local government.

(f) The commissioner and the attorney general may each recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both under this section, including investigative costs, court costs, reasonable attorney fees, witness fees, and deposition expenses.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.019. CRIMINAL PENALTY. (a) A person commits an offense if the person:

(1) operates a salvage establishment or acts as a salvage broker without a license issued under this chapter; or

(2) fails to comply with a rule adopted under Section 432.011.

(b) An offense under this section is a Class A misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.020. EMERGENCY ORDER. (a) The commissioner or the commissioner's designee may issue an emergency order, either mandatory or prohibitory, concerning the sale or distribution of distressed foods, drugs, devices, or cosmetics in the department's jurisdiction if the commissioner or the commissioner's designee determines that:

(1) the sale or distribution of those foods, drugs, devices, or cosmetics creates or poses an immediate and serious threat to human life or health; and

(2) other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay.

(b) The commissioner or the commissioner's designee may issue the emergency order without notice and hearing if the commissioner or the commissioner's designee determines it is necessary under the circumstances.

(c) If an emergency order is issued without a hearing, the department, not later than the 30th day after the date on which the emergency order is issued, shall determine a time and place for a hearing at which the emergency order will be affirmed, modified, or set aside. The hearing shall be held under departmental formal hearing rules.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.021. ADMINISTRATIVE PENALTY. (a) The commissioner may assess an administrative penalty against a person who violates a rule adopted under Section 432.011 or an order adopted or license issued under this chapter.

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

- (1) the person's previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health and safety of the public;
- (4) the person's demonstrated good faith; and
- (5) other matters as justice may require.

(c) The penalty may not exceed \$25,000 for each violation. Each day a violation continues is a separate violation.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.022. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after a person charged with a violation is given an opportunity for a hearing.

(b) If a hearing is held, the commissioner shall make findings of fact and shall issue a written decision regarding the occurrence of the violation and the amount of the penalty.

(c) If the person charged with the violation does not request a hearing, the commissioner may assess a penalty after determining that a violation has occurred and the amount of the penalty.

(d) After making a determination under this section that a penalty is to be assessed, the commissioner shall issue an order requiring that the person pay the penalty.

(e) The commissioner may consolidate a hearing held under this section with another proceeding.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.023. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date of issuance of an order finding that a violation has occurred, the commissioner shall inform the person against whom the order is issued of the amount of the penalty.

(b) Not later than the 30th day after the date on which a decision or order charging a person with a penalty is final, the person shall:

- (1) pay the penalty in full; or
- (2) if the person seeks judicial review of the amount of the penalty, the fact of the violation, or both:
 - (A) send the amount of the penalty to the commissioner for placement in an escrow account; or
 - (B) post with the commissioner a bond for the amount of the penalty.

(c) A bond posted under this section must be in a form approved by the commissioner and be effective until all judicial review of the order or decision is final.

(d) A person who does not send money to the commissioner or post the bond within the period prescribed by Subsection (b) waives all rights to contest the violation or the amount of the penalty.
Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.024. REFUND OF ADMINISTRATIVE PENALTY. Not later than the 30th day after the date of a judicial determination that an administrative penalty against a person should be reduced or not assessed, the commissioner shall:

(1) remit to the person the appropriate amount of any penalty payment plus accrued interest; or

(2) execute a release of the bond if the person has posted a bond.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.025. RECOVERY OF ADMINISTRATIVE PENALTY BY ATTORNEY GENERAL. The attorney general, at the request of the commissioner, may bring a civil action to recover an administrative penalty under this chapter.

Added by Acts 1993, 73rd Leg., ch. 556, Sec. 1, eff. Sept. 1, 1993.

Sec. 432.026. DETAINED OR EMBARGOED ARTICLE. In accordance with Subchapter C, Chapter 431, the department may detain or embargo an article, including an article that is distressed merchandise, that is in the possession of a person licensed under this chapter and that is being held for the purpose of reconditioning in accordance with this chapter if the department makes the finding required by Section 431.048(e).

Added by Acts 2001, 77th Leg., ch. 265, Sec. 8, eff. May 22, 2001.