

GOVERNMENT CODE

CHAPTER 469. ELIMINATION OF ARCHITECTURAL BARRIERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 469.001. SCOPE OF CHAPTER; PUBLIC POLICY. (a) The intent of this chapter is to ensure that each building and facility subject to this chapter is accessible to and functional for persons with disabilities without causing the loss of function, space, or facilities.

(b) This chapter relates to nonambulatory and semiambulatory disabilities, sight disabilities, hearing disabilities, disabilities of coordination, and aging.

(c) This chapter is intended to further the policy of this state to encourage and promote the rehabilitation of persons with disabilities and to eliminate, to the extent possible, unnecessary barriers encountered by persons with disabilities whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.002. DEFINITIONS. In this chapter:

(1) "Architect" means a person registered as an architect under Chapter 1051, Occupations Code.

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

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

(4) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities.

(5) "Engineer" means a person licensed as an engineer under Chapter 1001, Occupations Code.

(6) "Executive director" means the executive director of the department.

(7) "Interior designer" means a person registered as an interior designer under Chapter 1053, Occupations Code.

(8) "Landscape architect" means a person registered as a landscape architect under Chapter 1052, Occupations Code.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.003. APPLICABILITY OF STANDARDS. (a) The standards adopted under this chapter apply to:

(1) a building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970, using funds from the state or a county, municipality, or other political subdivision of the state;

(2) a building or facility described by this subsection or Subsection (b) that is constructed on a temporary or emergency basis;

(3) a building leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972;

(4) a privately funded building or facility that is defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after January 1, 1992; and

(5) a privately funded building or facility that is defined as a "commercial facility" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after September 1, 1993.

(b) To the extent there is not a conflict with federal law and it is not beyond the state's regulatory power, the standards adopted under this chapter apply to a building or facility constructed in this state or leased or rented for use by the state using federal money.

(c) The standards adopted under this chapter do not apply to a place used primarily for religious rituals within a building or facility of a religious organization.

(d) If any portion of a building described by Subsection (a)(1) is occupied solely for residential use and the remaining occupied portion of the building is occupied for nonresidential use, the executive director shall consider only the nonresidential portion of the building in determining whether the building complies with the standards and specifications adopted under this

chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.004, eff. Sept. 1, 2005.

Sec. 469.004. APPLICABILITY OF OTHER LAW. Section 51.404, Occupations Code, does not apply to this chapter.

Added by Acts 2005, 79th Leg., ch. 728, Sec. 8.005, eff. Sept. 1, 2005.

SUBCHAPTER B. ADMINISTRATION AND ENFORCEMENT

Sec. 469.051. ADMINISTRATION AND ENFORCEMENT; ASSISTANCE OF OTHER AGENCIES. (a) The commission shall administer and enforce this chapter. The appropriate state rehabilitation agencies and the Governor's Committee on People with Disabilities shall assist the commission in the administration and enforcement of this chapter.

(b) In enforcing this chapter, the commission is entitled to the assistance of all appropriate elective or appointive state officials.

(c) The commission has all necessary powers to require compliance with the rules adopted under this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.052. ADOPTION OF STANDARDS AND SPECIFICATIONS; RULEMAKING. (a) The commission shall adopt standards, specifications, and other rules under this chapter that are consistent with standards, specifications, and other rules adopted under federal law.

(b) The standards and specifications adopted by the commission under this chapter must be consistent in effect with the standards and specifications adopted by the American National Standards Institute or that entity's federally recognized successor in function.

(c) The department shall publish the standards and specifications in a readily accessible form for use by interested parties.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.053. ADVISORY COMMITTEE; REVIEW OF AND COMMENT ON RULES. (a) The presiding officer of the commission, with the commission's approval, shall appoint an advisory committee for the architectural barriers program. The committee shall consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions. The committee shall consist of at least eight members. A majority of the members of the committee must be persons with disabilities.

(b) A committee member serves at the will of the presiding officer of the commission.

(c) A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

(d) The presiding officer of the commission, with the commission's approval, shall appoint a committee member as presiding officer for two years.

(e) The committee shall meet at least twice each calendar year at the call of the presiding officer or the commission.

(f) The committee periodically shall review the rules relating to the architectural barriers program and recommend changes in the rules to the commission.

(g) The commission must submit all proposed changes to any rule or procedure that relates to the architectural barriers program to the committee for review and comment before adopting or implementing the new or amended rule or procedure.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.006, eff. Sept. 1, 2005.

Sec. 469.054. FEES IN GENERAL. (a) The commission shall adopt fees in accordance with Section 51.202, Occupations Code, for performing the commission's functions under this chapter.

(b) The owner of a building or facility is responsible for paying a fee charged by the commission for performing a function under this chapter related to the building or facility.

(c) The commission may charge a fee for:

(1) the review of the plans or specifications of a building or facility;

(2) the inspection of a building or facility; and
(3) the processing of an application for a variance from accessibility standards for a building or facility.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.055. CONTRACT TO PERFORM REVIEW AND INSPECTION. The commission may contract with other state agencies and political subdivisions to perform the commission's review and inspection functions.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.056. INTERAGENCY CONTRACTS. A state agency that extends direct services to persons with disabilities may enter into an interagency contract with the department to provide additional funding required to ensure that the service objectives and responsibilities of the agency are achieved through the administration of this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.057. DUTY TO INFORM ABOUT LAW. (a) The department periodically shall inform professional organizations and others, including persons with disabilities, architects, engineers, and other building professionals, of this chapter and its application.

(b) Information about the architectural barriers program disseminated by the department must include:

(1) the type of buildings and leases subject to this chapter;

(2) the procedures for submitting plans and specifications for review;

(3) complaint procedures; and

(4) the address and telephone number of the department's program under this chapter.

(c) The department may enter into cooperative agreements to integrate information about the architectural barriers program with information produced or distributed by other public entities or by private entities.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.058. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty under Subchapter F, Chapter 51, Occupations Code, on a building owner for a violation of this chapter or a rule adopted under this chapter.

(b) Each day that a violation is not corrected is a separate violation.

(c) Before the commission may impose an administrative penalty for a violation described by Subsection (a), the commission must notify a person responsible for the building and allow the person 90 days to bring the building into compliance. The commission may extend the 90-day period if circumstances justify the extension.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.059. COMPLAINTS. (a) The department shall continue to monitor a complaint made under Section 51.252, Occupations Code, that alleges that a building or facility is not in compliance with the standards and specifications adopted by the commission under this chapter until the department determines that:

(1) the building or facility has been brought into compliance; or

(2) the building or facility is not required to be brought into compliance because of a rule or statute, including Section 469.151.

(b) If the building or facility is not required to be brought into compliance, the department shall, on final disposition of the complaint, notify in writing the person filing the complaint that the building or facility is not required to be brought into compliance because of a rule or statute and provide a reference to the rule or statute.

(c) The department, at least quarterly and for as long as the department continues to monitor the complaint under Subsection (a), shall notify the person filing the complaint of the status of the monitoring.

Added by Acts 2005, 79th Leg., ch. 728, Sec. 8.007, eff. Sept. 1, 2005.

SUBCHAPTER C. REVIEW AND APPROVAL REQUIRED FOR CERTAIN PLANS AND

SPECIFICATIONS

Sec. 469.101. SUBMISSION FOR REVIEW AND APPROVAL REQUIRED. All plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to the department for review and approval if:

- (1) the building or facility is subject to this chapter; and
- (2) the estimated construction cost is at least \$50,000.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.102. PROCEDURE FOR SUBMITTING PLANS AND SPECIFICATIONS. (a) The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required under Section 469.101.

(b) The person shall submit the plans and specifications not later than the fifth day after the date the person issues the plans and specifications. If plans and specifications are issued on more than one date, the person shall submit the plans and specifications not later than the fifth day after each date the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday, or legal holiday is not included.

(c) The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the department. On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under this chapter.

(d) A public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject to Section 469.101 unless the official verifies that the building or facility has been registered with the department as provided by rule.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.103. MODIFICATION OF APPROVED PLANS AND SPECIFICATIONS. Approved plans and specifications to which any substantial modification is made shall be resubmitted to the department for review and approval.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.104. FAILURE TO SUBMIT PLANS AND SPECIFICATIONS. The commission shall report to the Texas Board of Architectural Examiners, the Texas Board of Professional Engineers, or another appropriate licensing authority the failure of any architect, interior designer, landscape architect, or engineer to submit or resubmit in a timely manner plans and specifications to the department as required by this subchapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.105. INSPECTION OF BUILDING OR FACILITY. (a) The owner of a building or facility described by Section 469.101 is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the commission under this chapter not later than the first anniversary of the date the construction or substantial renovation or modification of the building or facility is completed.

(b) The inspection must be performed by:

- (1) the department;
- (2) an entity with which the commission contracts under Section 469.055; or
- (3) a person who holds a certificate of registration under Subchapter E.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.106. BUILDINGS AND FACILITIES USED TO PROVIDE DIRECT SERVICES TO PERSONS WITH MOBILITY IMPAIRMENTS; STATE LEASES. (a) Notwithstanding any other provision of this chapter,

the commission shall require complete compliance with the standards and specifications adopted by the commission under this chapter that apply specifically to a building or facility occupied by a state agency involved in extending direct services to persons with mobility impairments. Those standards and specifications also apply to a building or facility occupied by the Texas Rehabilitation Commission.

(b) The department and the Texas Building and Procurement Commission shall ensure compliance with the standards and specifications described by Subsection (a) for a building or facility described by Subsection (a) and leased for an annual amount of more than \$12,000 or built by or for the state.

(c) Before a building or facility to be leased by the state for an annual amount of more than \$12,000 is occupied in whole or in part by the state, a person described by Section 469.105(b) must perform an on-site inspection of the building or facility to determine whether it complies with all accessibility standards and specifications adopted under this chapter.

(d) If an inspection under Subsection (c) determines that a building or facility does not comply with all applicable standards and specifications, the leasing agency or the Texas Building and Procurement Commission, as applicable, shall cancel the lease unless the lessor brings the building or facility into compliance not later than:

(1) the 60th day after the date the person performing the inspection delivers the results of the inspection to the lessor or the lessor's agent; or

(2) a later date established by the commission if circumstances justify a later date.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.107. REVIEW OF PLANS AND SPECIFICATIONS FOR STRUCTURES NOT SUBJECT TO CHAPTER. The commission may:

(1) review plans and specifications and make inspections of a structure not otherwise subject to this chapter; and

(2) issue a certification that a structure not otherwise subject to this chapter is free of architectural barriers and in compliance with this chapter.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

SUBCHAPTER D. WAIVER OR MODIFICATION OF ACCESSIBILITY STANDARDS

Sec. 469.151. WAIVER OR MODIFICATION PERMITTED. (a) The commission may waive or modify accessibility standards adopted under this chapter if:

(1) the commission considers the application of the standards to be irrelevant to the nature, use, or function of a building or facility subject to this chapter; or

(2) the owner of the building or facility for which a request for a waiver or modification is made, or the owner's designated agent, presents proof to the commission that compliance with a specific standard is impractical.

(b) If a request is made for waiver or modification of an accessibility standard with respect to a building described by Section 469.003(a)(3) or a building or facility leased or rented for use by the state through the use of federal money, the owner of the building or facility, or the owner's designated agent, must present to the commission the proof required by Subsection (a)(2).

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.152. WAIVER OR MODIFICATION PROHIBITED. The commission may not waive or modify a standard or specification if:

(1) the waiver or modification would significantly impair the acquisition of goods and services by persons with disabilities or substantially reduce the potential for employment of persons with disabilities;

(2) the commission knows that the waiver or modification would result in a violation of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) and its subsequent amendments; or

(3) the proof presented to the commission under Section 469.151(a)(2) is not adequate.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.153. MAINTENANCE OF CERTAIN INFORMATION. All

evidence supporting a waiver or modification determination by the commission is a matter of public record and shall be made part of the file system maintained by the department.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

SUBCHAPTER E. REGISTRATION TO PERFORM REVIEWS OR INSPECTIONS

Sec. 469.201. CERTIFICATE OF REGISTRATION REQUIRED. (a) A person may not perform a review or inspection function of the commission on behalf of the owner of a building or facility unless the person holds a certificate of registration issued under this subchapter.

(b) This section does not apply to an employee of:

(1) the department; or

(2) an entity with which the commission contracts under Section 469.055.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.202. FEES RELATED TO CERTIFICATE OF REGISTRATION. The commission may charge a fee for:

(1) an application for a certificate of registration;

(2) an examination for a certificate of registration;

(3) an educational course required for eligibility for a certificate of registration;

(4) issuance of an original certificate of registration;

(5) a continuing education course required to renew a certificate of registration; and

(6) renewal of a certificate of registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.203. APPLICATION AND ELIGIBILITY. (a) An applicant for a certificate of registration must file with the commission an application on a form prescribed by the executive director.

(b) To be eligible for a certificate of registration, an applicant must satisfy any requirements adopted by the commission by rule, including education and examination requirements.

(c) The executive director may recognize, prepare, or administer educational courses required for obtaining a certificate of registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.008, eff. Sept. 1, 2005.

Sec. 469.204. EXAMINATION. (a) The executive director may administer separate examinations for applicants for certificates of registration to perform review functions, inspection functions, or both review and inspection functions.

(b) Repealed by Acts 2005, 79th Leg., ch. 728, Sec. 8.011.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.011, eff. Sept. 1, 2005.

Sec. 469.205. ISSUANCE OF CERTIFICATE. (a) The executive director shall issue an appropriate certificate of registration to an applicant who meets the requirements for a certificate.

(b) The executive director may issue a certificate of registration to perform review functions of the commission, inspection functions of the commission, or both review and inspection functions.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003.

Sec. 469.206. CERTIFICATE TERM. The commission by rule shall specify the term of a certificate of registration.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.009, eff. Sept. 1, 2005.

Sec. 469.208. PERFORMANCE OF REVIEWS AND INSPECTIONS. (a) A certificate holder shall perform a review or inspection function of the commission in a competent and professional manner and in compliance with:

(1) standards and specifications adopted by the commission under this chapter; and

(2) rules adopted by the commission under this chapter.

(b) A certificate holder may not engage in false or misleading advertising in connection with the performance of review or inspection functions of the commission.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 9.005(a), eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 728, Sec. 8.010, eff. Sept. 1, 2005.