

GOVERNMENT CODE

TITLE 10. GENERAL GOVERNMENT

SUBTITLE A. ADMINISTRATIVE PROCEDURE AND PRACTICE

CHAPTER 2001. ADMINISTRATIVE PROCEDURE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2001.001. PURPOSE. It is the public policy of the state through this chapter to:

- (1) provide minimum standards of uniform practice and procedure for state agencies;
- (2) provide for public participation in the rulemaking process; and
- (3) restate the law of judicial review of state agency action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.002. SHORT TITLE. This chapter may be cited as the Administrative Procedure Act.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.003. DEFINITIONS. In this chapter:

(1) "Contested case" means a proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(2) "License" includes the whole or a part of a state agency permit, certificate, approval, registration, or similar form of permission required by law.

(3) "Licensing" includes a state agency process relating to the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) "Party" means a person or state agency named or admitted as a party.

(5) "Person" means an individual, partnership, corporation, association, governmental subdivision, or public or private organization that is not a state agency.

(6) "Rule":

(A) means a state agency statement of general applicability that:

(i) implements, interprets, or prescribes law or policy; or

(ii) describes the procedure or practice requirements of a state agency;

(B) includes the amendment or repeal of a prior rule; and

(C) does not include a statement regarding only the internal management or organization of a state agency and not affecting private rights or procedures.

(7) "State agency" means a state officer, board, commission, or department with statewide jurisdiction that makes rules or determines contested cases. The term includes the State Office of Administrative Hearings for the purpose of determining contested cases. The term does not include:

(A) a state agency wholly financed by federal money;

(B) the legislature;

(C) the courts;

(D) the Texas Department of Insurance, as regards proceedings and activities under Title 5, Labor Code, of the department, the commissioner of insurance, or the commissioner of workers' compensation; or

(E) an institution of higher education.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 265, Sec. 6.007, eff. September 1, 2005.

Sec. 2001.004. REQUIREMENT TO ADOPT RULES OF PRACTICE AND INDEX RULES, ORDERS, AND DECISIONS. In addition to other requirements under law, a state agency shall:

(1) adopt rules of practice stating the nature and requirements of all available formal and informal procedures;

(2) index, cross-index to statute, and make available

for public inspection all rules and other written statements of policy or interpretations that are prepared, adopted, or used by the agency in discharging its functions; and

(3) index, cross-index to statute, and make available for public inspection all final orders, decisions, and opinions. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.005. RULE, ORDER, OR DECISION NOT EFFECTIVE UNTIL INDEXED. (a) A state agency rule, order, or decision made or issued on or after January 1, 1976, is not valid or effective against a person or party, and may not be invoked by an agency, until the agency has indexed the rule, order, or decision and made it available for public inspection as required by this chapter.

(b) This section does not apply in favor of a person or party that has actual knowledge of the rule, order, or decision. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.006. ACTIONS PREPARATORY TO IMPLEMENTATION OF STATUTE OR RULE. (a) In this section:

(1) "State agency" means a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government. The term includes an institution of higher education as defined by Section 61.003, Education Code, and includes those entities excluded from the general definition of "state agency" under Section 2001.003(7).

(2) Legislation is considered to have "become law" if it has been passed by the legislature and:

(A) the governor has approved it;

(B) the governor has filed it with the secretary of state, having neither approved nor disapproved it;

(C) the time for gubernatorial action has expired under Section 14, Article IV, Texas Constitution, the governor having neither approved nor disapproved it; or

(D) the governor has disapproved it and the legislature has overridden the governor's disapproval in accordance with Section 14, Article IV, Texas Constitution.

(b) In preparation for the implementation of legislation that has become law but has not taken effect, a state agency may adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

(c) In preparation for the implementation of a rule that has been finally adopted by a state agency but has not taken effect, a state agency may take administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the rule been in effect at the time of the action.

(d) A rule adopted under Subsection (b) may not take effect earlier than the legislation being implemented takes effect. Administrative action taken under Subsection (b) or (c) may not result in implementation or enforcement of the applicable legislation or rule before the legislation or rule takes effect.

Added by Acts 1999, 76th Leg., ch. 558, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.007. CERTAIN EXPLANATORY INFORMATION MADE AVAILABLE THROUGH INTERNET. (a) A state agency shall make available through a generally accessible Internet site:

(1) the text of its rules; and

(2) any material, such as a letter, opinion, or compliance manual, that explains or interprets one or more of its rules and that the agency has issued for general distribution to persons affected by one or more of its rules.

(b) A state agency shall design the generally accessible Internet site so that a member of the public may send questions about the agency's rules to the agency electronically and receive responses to the questions from the agency electronically. If the agency's rules and the agency's explanatory and interpretive materials are made available at different Internet sites, both sites shall be designed in compliance with this subsection.

(c) Repealed by Acts 2005, 79th Leg., Ch. 750, Sec. 2(a), eff. September 1, 2006.

(d) A state agency may comply with this section through the

actions of another agency, such as the secretary of state, on the agency's behalf.

Added by Acts 1999, 76th Leg., ch. 1233, Sec. 1, eff. June 18, 1999.
Renumbered from Sec. 2001.006 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(63), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 750, Sec. 2(a), eff. September 1, 2006.

SUBCHAPTER B. RULEMAKING

Sec. 2001.021. PETITION FOR ADOPTION OF RULES. (a) An interested person by petition to a state agency may request the adoption of a rule.

(b) A state agency by rule shall prescribe the form for a petition under this section and the procedure for its submission, consideration, and disposition.

(c) Not later than the 60th day after the date of submission of a petition under this section, a state agency shall:

(1) deny the petition in writing, stating its reasons for the denial; or

(2) initiate a rulemaking proceeding under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.022. LOCAL EMPLOYMENT IMPACT STATEMENTS. (a) A state agency shall determine whether a rule may affect a local economy before proposing the rule for adoption. If a state agency determines that a proposed rule may affect a local economy, the agency shall prepare a local employment impact statement for the proposed rule. The impact statement must describe in detail the probable effect of the rule on employment in each geographic area affected by the rule for each year of the first five years that the rule will be in effect and may include other factors at the agency's discretion.

(b) This section does not apply to the adoption of an emergency rule.

(c) Failure to comply with this section does not impair the

legal effect of a rule adopted under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 2001, 77th Leg., ch. 871, Sec. 1, eff. Sept. 1, 2001.

Sec. 2001.0225. REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES. (a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to:

(1) exceed a standard set by federal law, unless the rule is specifically required by state law;

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

(3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

(b) Before adopting a major environmental rule subject to this section, a state agency shall conduct a regulatory analysis that:

(1) identifies the problem the rule is intended to address;

(2) determines whether a new rule is necessary to address the problem; and

(3) considers the benefits and costs of the proposed rule in relationship to state agencies, local governments, the public, the regulated community, and the environment.

(c) When giving notice of a major environmental rule subject to this section, a state agency shall incorporate into the fiscal note required by Section 2001.024 a draft impact analysis describing the anticipated effects of the proposed rule. The draft impact analysis, at a minimum, must:

(1) identify the benefits that the agency anticipates from adoption and implementation of the rule, including reduced risks to human health, safety, or the environment;

(2) identify the costs that the agency anticipates state agencies, local governments, the public, and the regulated

community will experience after implementation of the rule;

(3) describe the benefits and costs anticipated from implementation of the rule in as quantitative a manner as feasible, but including a qualitative description when a quantitative description is not feasible or adequately descriptive;

(4) describe reasonable alternative methods for achieving the purpose of the rule that were considered by the agency and provide the reasons for rejecting those alternatives in favor of the proposed rule;

(5) identify the data and methodology used in performing the analysis required by this section;

(6) provide an explanation of whether the proposed rule specifies a single method of compliance, and, if so, explain why the agency determines that a specified method of compliance is preferable to adopting a flexible regulatory approach, such as a performance-oriented, voluntary, or market-based approach;

(7) state that there is an opportunity for public comment on the draft impact analysis under Section 2001.029 and that all comments will be addressed in the publication of the final regulatory analysis; and

(8) provide information in such a manner that a reasonable person reading the analysis would be able to identify the impacts of the proposed rule.

(d) After considering public comments submitted under Section 2001.029 and determining that a proposed rule should be adopted, the agency shall prepare a final regulatory analysis that complies with Section 2001.033. Additionally, the agency shall find that, compared to the alternative proposals considered and rejected, the rule will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of any alternative regulatory method considered.

(e) In preparing the draft impact analysis before publication for comment and the final regulatory analysis for the agency order adopting the rule, the state agency shall consider that the purpose of this requirement is to identify for the public and the regulated community the information that was considered by

the agency, the information that the agency determined to be relevant and reliable, and the assumptions and facts on which the agency made its regulatory decision. In making its final regulatory decision, the agency shall assess:

(1) all information submitted to it, whether quantitative or qualitative, consistent with generally accepted scientific standards;

(2) actual data where possible; and

(3) assumptions that reflect actual impacts that the regulation is likely to impose.

(f) A person who submitted public comment in accordance with Section 2001.029 may challenge the validity of a major environmental rule that is not proposed and adopted in accordance with the procedural requirements of this section by filing an action for declaratory judgment under Section 2001.038 not later than the 30th day after the effective date of the rule. If a court determines that a major environmental rule was not proposed and adopted in accordance with the procedural requirements of this section, the rule is invalid.

(g) In this section:

(1) "Benefit" means a reasonably identifiable, significant, direct or indirect, favorable effect, including a quantifiable or nonquantifiable environmental, health, or economic effect, that is expected to result from implementation of a rule.

(2) "Cost" means a reasonably identifiable, significant, direct or indirect, adverse effect, including a quantifiable or nonquantifiable environmental, health, or economic effect, that is expected to result from implementation of a rule.

(3) "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

(h) The requirements of this section do not apply to state agency rules that are proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from

environmental exposure.

Added by Acts 1997, 75th Leg., ch. 1034, Sec. 1, eff. Sept. 1, 1997.

Sec. 2001.023. NOTICE OF PROPOSED RULE. (a) A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule.

(b) A state agency shall file notice of the proposed rule with the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.024. CONTENT OF NOTICE. (a) The notice of a proposed rule must include:

(1) a brief explanation of the proposed rule;

(2) the text of the proposed rule, except any portion omitted under Section 2002.014, prepared in a manner to indicate any words to be added or deleted from the current text;

(3) a statement of the statutory or other authority under which the rule is proposed to be adopted, including:

(A) a concise explanation of the particular statutory or other provisions under which the rule is proposed;

(B) the section or article of the code affected;
and

(C) a certification that the proposed rule has been reviewed by legal counsel and found to be within the state agency's authority to adopt;

(4) a fiscal note showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) the estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) the estimated loss or increase in revenue to

the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule does not have foreseeable implications relating to cost or revenues of the state or local governments;

(5) a note about public benefits and costs showing the name and title of the officer or employee responsible for preparing or approving the note and stating for each year of the first five years that the rule will be in effect:

(A) the public benefits expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons required to comply with the rule;

(6) the local employment impact statement prepared under Section 2001.022, if required;

(7) a request for comments on the proposed rule from any interested person; and

(8) any other statement required by law.

(b) In the notice of a proposed rule that amends any part of an existing rule:

(1) the text of the entire part of the rule being amended must be set out;

(2) the language to be deleted must be bracketed and stricken through; and

(3) the language to be added must be underlined.

(c) In the notice of a proposed rule that is new or that adds a complete section to an existing rule, the new rule or section must be set out and underlined.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1067, Sec. 1, eff. Sept. 1, 1997.

Sec. 2001.025. EFFECTIVE DATE OF NOTICE. Notice of a proposed rule becomes effective as notice when published in the Texas Register, except as provided by Section 2001.028.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.026. NOTICE TO PERSONS REQUESTING ADVANCE NOTICE OF PROPOSED RULES. A state agency shall mail notice of a proposed rule to each person who has made a timely written request of the agency for advance notice of its rulemaking proceedings. Failure to mail the notice does not invalidate an action taken or rule adopted.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.027. WITHDRAWAL OF PROPOSED RULE. A proposed rule is withdrawn six months after the date of publication of notice of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.028. NOTICE OF PROPOSED LAW ENFORCEMENT RULES. Notice of the adoption of a proposed rule by the Commission on Jail Standards or the Commission on Law Enforcement Officer Standards and Education that affects a law enforcement agency of the state or of a political subdivision of the state is not effective until the notice is:

- (1) published as required by Section 2001.023; and
- (2) mailed to each law enforcement agency that may be affected by the proposed rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.029. PUBLIC COMMENT. (a) Before adopting a rule, a state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing.

(b) A state agency shall grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested by:

- (1) at least 25 persons;
- (2) a governmental subdivision or agency; or
- (3) an association having at least 25 members.

(c) A state agency shall consider fully all written and oral

submissions about a proposed rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.030. STATEMENT OF REASONS FOR OR AGAINST ADOPTION. On adoption of a rule, a state agency, if requested to do so by an interested person either before adoption or not later than the 30th day after the date of adoption, shall issue a concise statement of the principal reasons for and against its adoption. The agency shall include in the statement its reasons for overruling the considerations urged against adoption.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.031. INFORMAL CONFERENCES AND ADVISORY COMMITTEES. (a) A state agency may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rulemaking.

(b) A state agency may appoint committees of experts or interested persons or representatives of the public to advise the agency about contemplated rulemaking.

(c) The power of a committee appointed under this section is advisory only.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.032. LEGISLATIVE REVIEW. (a) Each house of the legislature by rule shall establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.

(b) A state agency shall deliver to the lieutenant governor and the speaker of the house of representatives a copy of the notice of a proposed rule when the agency files notice with the secretary of state under Section 2001.023.

(c) On the vote of a majority of its members, a standing committee may send to a state agency a statement supporting or opposing adoption of a proposed rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE. (a) A state agency order finally adopting a rule must include:

(1) a reasoned justification for the rule as adopted consisting solely of:

(A) a summary of comments received from parties interested in the rule that shows the names of interested groups or associations offering comment on the rule and whether they were for or against its adoption;

(B) a summary of the factual basis for the rule as adopted which demonstrates a rational connection between the factual basis for the rule and the rule as adopted; and

(C) the reasons why the agency disagrees with party submissions and proposals;

(2) a concise restatement of the particular statutory provisions under which the rule is adopted and of how the agency interprets the provisions as authorizing or requiring the rule; and

(3) a certification that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

(b) Nothing in this section shall be construed to require additional analysis of alternatives not adopted by an agency beyond that required by Subdivision (1)(C) or to require the reasoned justification to be stated separately from the statements required in Subdivision (1).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 558, Sec. 2, eff. Sept. 1, 1999.

Sec. 2001.034. EMERGENCY RULEMAKING. (a) A state agency may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and a hearing that it finds practicable, if the agency:

(1) finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice; and

(2) states in writing the reasons for its finding

under Subdivision (1).

(b) A state agency shall set forth in an emergency rule's preamble the finding required by Subsection (a).

(c) A rule adopted under this section may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. An identical rule may be adopted under Sections 2001.023 and 2001.029.

(d) A state agency shall file an emergency rule adopted under this section and the agency's written reasons for the adoption in the office of the secretary of state for publication in the Texas Register in the manner prescribed by Chapter 2002.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.035. SUBSTANTIAL COMPLIANCE REQUIREMENT; TIME LIMIT ON PROCEDURAL CHALLENGE. (a) A rule is voidable unless a state agency adopts it in substantial compliance with Sections 2001.0225 through 2001.034.

(b) A person must initiate a proceeding to contest a rule on the ground of noncompliance with the procedural requirements of Sections 2001.0225 through 2001.034 not later than the second anniversary of the effective date of the rule.

(c) A state agency substantially complies with the requirements of Section 2001.033 if the agency's reasoned justification demonstrates in a relatively clear and logical fashion that the rule is a reasonable means to a legitimate objective.

(d) A mere technical defect that does not result in prejudice to a person's rights or privileges is not grounds for invalidation of a rule.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 558, Sec. 3, eff. Sept. 1, 1999.

Sec. 2001.036. EFFECTIVE DATE OF RULES; EFFECT OF FILING WITH SECRETARY OF STATE. (a) A rule takes effect 20 days after the date on which it is filed in the office of the secretary of state, except that:

(1) if a later date is required by statute or specified in the rule, the later date is the effective date;

(2) if a state agency finds that an expedited effective date is necessary because of imminent peril to the public health, safety, or welfare, and subject to applicable constitutional or statutory provisions, a rule is effective immediately on filing with the secretary of state, or on a stated date less than 20 days after the filing date; and

(3) if a federal statute or regulation requires that a state agency implement a rule by a certain date, the rule is effective on the prescribed date.

(b) A state agency shall file with its rule the finding described by Subsection (a)(2), if applicable, and a brief statement of the reasons for the finding. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

(c) A rule adopted as provided by Subsection (a)(3) shall be filed in the office of the secretary of state and published in the Texas Register.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.037. OFFICIAL TEXT OF RULE. If a conflict exists, the official text of a rule is the text on file with the secretary of state and not the text published in the Texas Register or on file with the issuing state agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.038. DECLARATORY JUDGMENT. (a) The validity or applicability of a rule, including an emergency rule adopted under Section 2001.034, may be determined in an action for declaratory judgment if it is alleged that the rule or its threatened application interferes with or impairs, or threatens to interfere with or impair, a legal right or privilege of the plaintiff.

(b) The action may be brought only in a Travis County district court.

(c) The state agency must be made a party to the action.

(d) A court may render a declaratory judgment without regard

to whether the plaintiff requested the state agency to rule on the validity or applicability of the rule in question.

(e) An action brought under this section may not be used to delay or stay a hearing in which a suspension, revocation, or cancellation of a license by a state agency is at issue before the agency after notice of the hearing has been given.

(f) A Travis County district court in which an action is brought under this section, on its own motion or the motion of any party, may request transfer of the action to the Court of Appeals for the Third Court of Appeals District if the district court finds that the public interest requires a prompt, authoritative determination of the validity or applicability of the rule in question and the case would ordinarily be appealed. After filing of the district court's request with the court of appeals, transfer of the action may be granted by the court of appeals if it agrees with the findings of the district court concerning the application of the statutory standards to the action. On entry of an order by the court of appeals granting transfer, the action is transferred to the court of appeals for decision, and the validity or applicability of the rule in question is subject to judicial review by the court of appeals. The administrative record and the district court record shall be filed by the district clerk with the clerk of the court of appeals. The court of appeals may direct the district court to conduct any necessary evidentiary hearings in connection with the action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 894, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.039. AGENCY REVIEW OF EXISTING RULES. (a) A state agency shall review and consider for readoption each of its rules in accordance with this section.

(b) A state agency shall review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. The adoption of an amendment to an existing rule does not affect the dates on which the rule must be reviewed except that the effective date of an amendment is

considered to be the effective date of the rule if the agency formally conducts a review of the rule in accordance with this section as part of the process of adopting the amendment.

(c) The state agency shall readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

(d) The procedures of this subchapter relating to the original adoption of a rule apply to the review of a rule and to the resulting repeal, readoption, or readoption with amendments of the rule, except as provided by this subsection. Publishing the Texas Administrative Code citation to a rule under review satisfies the requirements of this subchapter relating to publishing the text of the rule unless the agency readopts the rule with amendments as a result of the review.

(e) A state agency's review of a rule must include an assessment of whether the reasons for initially adopting the rule continue to exist.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.11(a), eff. Sept. 1, 1999.

Sec. 2001.040. SCOPE AND EFFECT OF ORDER INVALIDATING AGENCY RULE. If a court finds that an agency has not substantially complied with one or more procedural requirements of Sections 2001.0225 through 2001.034, the court may remand the rule, or a portion of the rule, to the agency and, if it does so remand, shall provide a reasonable time for the agency to either revise or readopt the rule through established procedure. During the remand period, the rule shall remain effective unless the court finds good cause to invalidate the rule or a portion of the rule, effective as of the date of the court's order.

Added by Acts 1999, 76th Leg., ch. 558, Sec. 4, eff. Sept. 1, 1999. Renumbered from Sec. 2001.039 by Acts 2001, 77th Leg., ch. 1420, Sec. 21.001(64), eff. Sept. 1, 2001.

Sec. 2001.041. COMPLIANCE WITH LAW ON DECENTRALIZATION. A state agency rule, order, or guide relating to decentralization of agency services or programs must include a statement of the manner

in which the agency complied with Section 391.0091, Local Government Code.

Added by Acts 2003, 78th Leg., ch. 718, Sec. 2, eff. Sept. 1, 2003.

SUBCHAPTER C. CONTESTED CASES: GENERAL RIGHTS AND PROCEDURES

Sec. 2001.051. OPPORTUNITY FOR HEARING AND PARTICIPATION; NOTICE OF HEARING. In a contested case, each party is entitled to an opportunity:

(1) for hearing after reasonable notice of not less than 10 days; and

(2) to respond and to present evidence and argument on each issue involved in the case.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the matters asserted.

(b) If a state agency or other party is unable to state matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement shall be furnished not less than three days before the date set for the hearing.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.053. RIGHT TO COUNSEL. (a) Each party to a contested case is entitled to the assistance of counsel before a state agency.

(b) A party may expressly waive the right to assistance of counsel.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.054. LICENSES. (a) The provisions of this chapter concerning contested cases apply to the grant, denial, or renewal of a license that is required to be preceded by notice and opportunity for hearing.

(b) If a license holder makes timely and sufficient application for the renewal of a license or for a new license for an activity of a continuing nature, the existing license does not expire until the application has been finally determined by the state agency. If the application is denied or the terms of the new license are limited, the existing license does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) A revocation, suspension, annulment, or withdrawal of a license is not effective unless, before institution of state agency proceedings:

(1) the agency gives notice by personal service or by registered or certified mail to the license holder of facts or conduct alleged to warrant the intended action; and

(2) the license holder is given an opportunity to show compliance with all requirements of law for the retention of the license.

(d) A license described in Subsection (a) remains valid unless it expires without timely application for renewal, is amended, revoked, suspended, annulled, or withdrawn, or the denial of a renewal application becomes final. The term or duration of a license described in Subsection (a) is tolled during the period the license is subjected to judicial review. However, the term or duration of a license is not tolled if, during judicial review, the licensee engages in the activity for which the license was issued. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 589, Sec. 1, eff. Sept. 1, 1995.

Sec. 2001.055. INTERPRETERS FOR DEAF OR HEARING IMPAIRED PARTIES AND WITNESSES. (a) In a contested case, a state agency shall provide an interpreter whose qualifications are approved by

the Texas Commission for the Deaf and Hard of Hearing to interpret the proceedings for a party or subpoenaed witness who is deaf or hearing impaired.

(b) In this section, "deaf or hearing impaired" means having a hearing impairment, whether or not accompanied by a speech impairment, that inhibits comprehension of the proceedings or communication with others.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 835, Sec. 18, eff. Sept. 1, 1995.

Sec. 2001.056. INFORMAL DISPOSITION OF CONTESTED CASE. Unless precluded by law, an informal disposition may be made of a contested case by:

- (1) stipulation;
- (2) agreed settlement;
- (3) consent order; or
- (4) default.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.057. CONTINUANCES. (a) A state agency may continue a hearing in a contested case from time to time and from place to place.

(b) The notice of the hearing must indicate the times and places at which the hearing may be continued.

(c) If a hearing is not concluded on the day it begins, a state agency shall, to the extent possible, proceed with the hearing on each subsequent working day until the hearing is concluded.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.058. HEARING CONDUCTED BY STATE OFFICE OF ADMINISTRATIVE HEARINGS. (a) This section applies only to an administrative law judge employed by the State Office of Administrative Hearings.

(b) An administrative law judge who conducts a contested case hearing shall consider applicable agency rules or policies in

conducting the hearing, but the state agency deciding the case may not supervise the administrative law judge.

(c) A state agency shall provide the administrative law judge with a written statement of applicable rules or policies.

(d) A state agency may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

(e) A state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under Subsection (c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

The agency shall state in writing the specific reason and legal basis for a change made under this subsection.

(f) A state agency by rule may provide that, in a contested case before the agency that concerns licensing in relation to an occupational license and that is not disposed of by stipulation, agreed settlement, or consent order, the administrative law judge shall render the final decision in the contested case. If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule:

(1) the administrative law judge shall render the decision that may become final under Section 2001.144 not later than the 60th day after the latter of the date on which the hearing is finally closed or the date by which the judge has ordered all briefs, reply briefs, and other posthearing documents to be filed, and the 60-day period may be extended only with the consent of all parties, including the occupational licensing agency;

(2) the administrative law judge shall include in the findings of fact and conclusions of law a determination whether the

license at issue is primarily a license to engage in an occupation;

(3) the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion or extends a time period under Section 2001.146;

(4) the State Office of Administrative Hearings is the state agency responsible for sending a copy of the decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing to the parties, including the occupational licensing agency, in accordance with Section 2001.142; and

(5) the occupational licensing agency and any other party to the contested case is entitled to obtain judicial review of the final decision in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 1997.

Sec. 2001.059. TRANSCRIPT. (a) On the written request of a party to a contested case, proceedings, or any part of the proceedings, shall be transcribed.

(b) A state agency may pay the cost of a transcript or may assess the cost to one or more parties.

(c) This chapter does not limit a state agency to a stenographic record of proceedings.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.060. RECORD. The record in a contested case includes:

- (1) each pleading, motion, and intermediate ruling;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) each decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.061. EX PARTE CONSULTATIONS. (a) Unless required for the disposition of an ex parte matter authorized by law, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with a state agency, person, party, or a representative of those entities, except on notice and opportunity for each party to participate.

(b) A state agency member may communicate ex parte with another member of the agency unless prohibited by other law.

(c) Under Section 2001.090, a member or employee of a state agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with an agency employee who has not participated in a hearing in the case for the purpose of using the special skills or knowledge of the agency and its staff in evaluating the evidence.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.062. EXAMINATION OF RECORD BY STATE AGENCY; PROPOSAL FOR DECISION. (a) In a contested case, if a majority of the state agency officials who are to render a final decision have not heard the case or read the record, the decision, if adverse to a party other than the agency itself, may not be made until:

(1) a proposal for decision is served on each party; and

(2) an opportunity is given to each adversely affected party to file exceptions and present briefs to the officials who are to render the decision.

(b) If a party files exceptions or presents briefs, an opportunity shall be given to each other party to file replies to the exceptions or briefs.

(c) A proposal for decision must contain a statement of the

reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision. The statement must be prepared by the individual who conducted the hearing or by one who has read the record.

(d) A proposal for decision may be amended in response to exceptions, replies, or briefs submitted by the parties without again being served on the parties.

(e) The parties by written stipulation may waive compliance with this section.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. CONTESTED CASES: EVIDENCE, WITNESSES, AND DISCOVERY

Sec. 2001.081. RULES OF EVIDENCE. The rules of evidence as applied in a nonjury civil case in a district court of this state shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:

(1) necessary to ascertain facts not reasonably susceptible of proof under those rules;

(2) not precluded by statute; and

(3) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.082. EXCLUSION OF EVIDENCE. In a contested case, evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.083. PRIVILEGE. In a contested case, a state agency shall give effect to the rules of privilege recognized by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.084. OBJECTIONS TO EVIDENCE. An objection to an evidentiary offer in a contested case may be made and shall be noted in the record.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.085. WRITTEN EVIDENCE. Subject to the requirements of Sections 2001.081 through 2001.084, any part of the evidence in a contested case may be received in writing if:

(1) a hearing will be expedited; and

(2) the interests of the parties will not be substantially prejudiced.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.086. DOCUMENTARY EVIDENCE. A copy or excerpt of documentary evidence may be received in a contested case if an original document is not readily available. On request, a party shall be given an opportunity to compare the copy or excerpt with the original document.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.087. CROSS-EXAMINATION. In a contested case, a party may conduct cross-examination required for a full and true disclosure of the facts.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.088. WITNESSES. A state agency may swear witnesses and take their testimony under oath in connection with a contested case held under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.089. ISSUANCE OF SUBPOENA. On its own motion or on the written request of a party to a contested case pending before it, a state agency shall issue a subpoena addressed to the sheriff or to a constable to require the attendance of a witness or the production of books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding if:

(1) good cause is shown; and

(2) an amount is deposited that will reasonably ensure payment of the amounts estimated to accrue under Section 2001.103.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.090. OFFICIAL NOTICE; STATE AGENCY EVALUATION OF EVIDENCE. (a) In connection with a hearing held under this chapter, official notice may be taken of:

- (1) all facts that are judicially cognizable; and
- (2) generally recognized facts within the area of the state agency's specialized knowledge.

(b) Each party shall be notified either before or during the hearing, or by reference in a preliminary report or otherwise, of the material officially noticed, including staff memoranda or information.

(c) Each party is entitled to be given an opportunity to contest material that is officially noticed.

(d) The special skills or knowledge of the state agency and its staff may be used in evaluating the evidence.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.091. DISCOVERY FROM PARTIES: ORDERS FOR PRODUCTION OR INSPECTION. (a) On the motion of a party, on notice to each other party, and subject to limitations of the kind provided for discovery under the Texas Rules of Civil Procedure, a state agency in which a contested case is pending may order a party:

(1) to produce and to permit the party making the motion or a person on behalf of that party to inspect and to copy or photograph a designated document, paper, book, account, letter, photograph, or tangible thing in the party's possession, custody, or control that:

- (A) is not privileged; and
- (B) constitutes or contains, or is reasonably calculated to lead to the discovery of, evidence that is material to a matter involved in the contested case; and

(2) to permit entry to designated land or other property in the party's possession or control to inspect, measure, survey, or photograph the property or a designated object or operation on the property that may be material to a matter involved in the contested case.

(b) An order under this section:

- (1) must specify the time, place, and manner of making

the inspection, measurement, or survey or of making copies or photographs; and

(2) may prescribe other terms and conditions that are just.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.092. DISCOVERY FROM PARTIES: IDENTITY OF WITNESS OR POTENTIAL PARTY; EXPERT REPORTS. (a) The identity and location of a potential party or witness in a contested case may be obtained from a communication or other paper in a party's possession, custody, or control.

(b) A party may be required to produce and permit the inspection and copying of a report, including factual observations and opinions, of an expert who will be called as a witness.

(c) This section does not extend to other communications:

(1) made after the occurrence or transaction on which the contested case is based;

(2) made in connection with the prosecution, investigation, or defense of the contested case or the circumstances from which the case arose; and

(3) that are:

(A) written statements of witnesses;

(B) in writing and between agents, representatives, or employees of a party; or

(C) between a party and the party's agent, representative, or employee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.093. DISCOVERY FROM PARTIES: COPY OF PREVIOUS STATEMENT. (a) On request, a person, including a person who is not a party, is entitled to obtain a copy of a statement in a party's possession, custody, or control that the person has previously made about the contested case or its subject matter.

(b) A person whose request under Subsection (a) is refused may move for a state agency order under Section 2001.091.

(c) In this section, a statement is considered to be previously made if it is:

(1) a written statement signed or otherwise adopted or approved by the person making it; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription of the recording, which is a substantially verbatim recital of an oral statement by the person making it and that was contemporaneously recorded.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.094. ISSUANCE OF COMMISSION REQUIRING DEPOSITION. (a) On its own motion or on the written request of a party to a contested case pending before it, and on deposit of an amount that will reasonably ensure payment of the amount estimated to accrue under Section 2001.103, a state agency shall issue a commission, addressed to the officers authorized by statute to take a deposition, requiring that the deposition of a witness be taken.

(b) The commission shall authorize the issuance of any subpoena necessary to require that the witness appear and produce, at the time the deposition is taken, books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding.

(c) The commission shall require an officer to whom it is addressed to:

(1) examine the witness before the officer on the date and at the place named in the commission; and

(2) take answers under oath to questions asked the witness by a party to the proceeding, the state agency, or an attorney for a party or the agency.

(d) The commission shall require the witness to remain in attendance from day to day until the deposition is begun and completed.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.095. DEPOSITION OF STATE AGENCY BOARD MEMBER. The deposition of a member of a state agency board may not be taken after a date has been set for hearing in a contested case.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.096. PLACE OF DEPOSITION. A deposition in a contested case shall be taken in the county where the witness:

- (1) resides;
- (2) is employed; or
- (3) regularly transacts business in person.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.097. OBJECTIONS TO DEPOSITION TESTIMONY.

(a) The officer taking an oral deposition in a contested case may not:

- (1) sustain an objection to the testimony taken; or
- (2) exclude testimony.

(b) An objection to deposition testimony is reserved for the action of the state agency before which the matter is pending.

(c) The administrator or other officer conducting the contested case hearing may consider objections other than those made at the taking of the testimony.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.098. PREPARATION OF DEPOSITION. (a) A

deposition witness in a contested case shall be carefully examined.

(b) The testimony shall be reduced to writing or typewriting by the officer taking the deposition, a person under the officer's personal supervision, or the deposition witness in the officer's presence.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.099. SUBMISSION OF DEPOSITION TO WITNESS;

SIGNATURE. (a) A deposition in a contested case shall be submitted to the witness for examination after the testimony is fully transcribed and shall be read to or by the witness.

(b) The witness and the parties may waive in writing the examination and reading of a deposition under Subsection (a).

(c) If the witness is a party to the contested case pending before the agency with an attorney of record, the deposition officer shall notify the attorney of record in writing by registered or certified mail that the deposition is ready for

examination and reading at the office of the deposition officer and that if the witness does not appear and examine, read, and sign the deposition before the 21st day after the date on which the notice is mailed, the deposition shall be returned as provided by this subchapter for unsigned depositions.

(d) A witness must sign a deposition at least three days before the date of the hearing or the deposition shall be returned as an unsigned deposition as provided by this subchapter.

(e) The officer taking a deposition shall enter on the deposition:

(1) a change in form or substance that the witness desires to make; and

(2) a statement of the reasons given by the witness for making the change.

(f) After the deposition officer has entered any change and a statement of reasons for the change on the deposition under Subsection (e), the witness shall sign the deposition unless:

(1) the parties present at the taking of the deposition by stipulation waive the signing;

(2) the witness is ill;

(3) the witness cannot be found; or

(4) the witness refuses to sign.

(g) If a deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness's waiver, illness, absence, or refusal to sign and the reason given, if any, for failure to sign. The deposition may then be used as though signed by the witness.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.100. RETURN OF DEPOSITION TO STATE AGENCY.

(a) A deposition may be returned to the state agency before which the contested case is pending by mail or by a party interested in taking the deposition or another person.

(b) For a deposition returned by mail, the state agency shall:

(1) endorse on the deposition the fact that it was received from the post office; and

(2) have it signed by the agency employee receiving the deposition.

(c) For a deposition returned by means other than mail, the person delivering it to the state agency shall execute an affidavit before the agency stating that:

(1) the person received it from the hands of the officer before whom it was taken;

(2) it has not been out of the person's possession since the person received it; and

(3) it has not been altered.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.101. OPENING OF DEPOSITION BY STATE AGENCY EMPLOYEE. (a) At the request of a party or the party's counsel, a deposition in a contested case that is filed with a state agency may be opened by an employee of the agency.

(b) A state agency employee who opens a deposition shall:

(1) endorse on the deposition the day and at whose request it was opened; and

(2) sign the deposition.

(c) The deposition shall remain on file with the state agency for the inspection of any party.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.102. USE OF DEPOSITION. A party is entitled to use a deposition taken under this subchapter in the contested case pending before the state agency without regard to whether a cross-interrogatory has been propounded.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.103. EXPENSES OF WITNESS OR DEPONENT. (a) A witness or deponent in a contested case who is not a party and who is subpoenaed or otherwise compelled to attend a hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of a proceeding under this chapter is entitled to receive:

(1) 10 cents for each mile, or a greater amount

prescribed by state agency rule, for going to and returning from the place of the hearing or deposition if the place is more than 25 miles from the person's place of residence and the person uses the person's personally owned or leased motor vehicle for the travel;

(2) reimbursement of the transportation expenses of the witness or deponent for going to and returning from the place where the hearing is held or the deposition is taken, if the place is more than 25 miles from the person's place of residence and the person does not use the person's personally owned or leased motor vehicle for the travel;

(3) reimbursement of the meal and lodging expenses of the witness or deponent while going to and returning from the place where the hearing is held or deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(4) \$10, or a greater amount prescribed by state agency rule, for each day or part of a day that the person is necessarily present.

(b) Amounts required to be reimbursed or paid under this section shall be reimbursed or paid by the party or agency at whose request the witness appears or the deposition is taken. An agency required to make a payment or reimbursement shall present to the comptroller vouchers:

(1) sworn by the witness or deponent; and

(2) approved by the agency in accordance with Chapter 2103.

(c) An agency may directly pay a commercial transportation company for the transportation expenses or a commercial lodging establishment for the lodging expenses of a witness or deponent if this section otherwise requires the agency to reimburse the witness or deponent for those expenses.

(d) An agency may not pay a commercial transportation company or commercial lodging establishment or reimburse a witness or deponent for transportation, meal, or lodging expenses under this section at a rate that exceeds the maximum rates provided by law for state employees. An agency may not adopt rules that provide for payment or reimbursement rates that exceed those maximum rates.

(e) In this section:

(1) "Commercial lodging establishment" means a motel, hotel, inn, apartment, or similar entity that offers lodging to the public in exchange for compensation.

(2) "Commercial transportation company" means an entity that offers transportation of people or goods to the public in exchange for compensation.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.20(a), eff. Sept. 1, 1995.

SUBCHAPTER E. CONTESTED CASES: TESTIMONY OF CHILD

Sec. 2001.121. STATEMENT OR TESTIMONY BY CERTAIN CHILD ABUSE VICTIMS. (a) This section applies:

(1) to a contested case and judicial review of a final decision under this chapter, whether by trial de novo or under the substantial evidence rule, in which an issue is the abuse of a child younger than 12 years of age; and

(2) only to the statement or testimony of a child younger than 12 years of age who is alleged to have been abused.

(b) The recording of an oral statement recorded before the proceeding is admissible into evidence if:

(1) an attorney for a party to the proceeding was not present when the statement was made;

(2) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(3) the recording equipment was capable of making an accurate recording;

(4) the operator was competent;

(5) the recording is accurate and has not been altered;

(6) the statement was not made in response to questioning calculated to lead the child to make a particular statement;

(7) each voice on the recording is identified;

(8) the individual conducting the interview of the child in the recording is present at the proceeding and available to testify or to be cross-examined by either party; and

(9) each party to the proceeding is given an opportunity to view the recording before it is offered into evidence.

(c) On the motion of a party to the proceeding, the individual conducting the hearing may order that the testimony of the child be taken in a room other than the hearing room and be televised by closed circuit equipment in the hearing room to be viewed by the finder of fact and the parties to the proceeding. Only an attorney for each party, an attorney ad litem for the child or other individual whose presence would contribute to the welfare and well-being of the child, and individuals necessary to operate the equipment may be present in the room with the child during the child's testimony. Only the attorneys for the parties may question the child. The individuals operating the equipment shall be confined to an adjacent room or behind a screen or mirror that permits them to see and hear the child during the child's testimony but does not permit the child to see or hear them.

(d) On the motion of a party to the proceeding, the individual conducting the hearing may order that the testimony of the child be taken outside the hearing room and be recorded for showing in the hearing room before the individual conducting the hearing, the finder of fact, and the parties to the proceeding. Only those individuals permitted to be present at the taking of testimony under Subsection (c) may be present during the taking of the child's testimony. Only the attorneys for the parties may question the child, and the individuals operating the equipment shall be confined from the child's sight and hearing as provided by Subsection (c). The individual conducting the hearing shall ensure that:

(1) the recording is both visual and aural and is recorded on film or videotape or by other electronic means;

(2) the recording equipment was capable of making an accurate recording;

(3) the operator was competent;

(4) the recording is accurate and is not altered;

(5) each voice on the recording is identified; and

(6) each party to the proceeding is given an

opportunity to view the recording before it is shown in the hearing room.

(e) A child whose testimony is taken as provided by this section may not be compelled to testify in the presence of the individual conducting the hearing during the proceeding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.122. HEARSAY STATEMENT OF CHILD ABUSE VICTIM.

(a) This section applies:

(1) to a proceeding held under this chapter or a judicial review of a final decision under this chapter, whether by trial de novo or under the substantial evidence rule, in which an issue is the abuse of a child 12 years of age or younger; and

(2) only to a statement that describes an alleged incident of child abuse that:

(A) was made by the child who is the alleged victim of the incident; and

(B) was made to the first individual 18 years of age or older, other than the individual accused of abuse, to whom the child made a statement about the incident.

(b) A statement that meets the requirements of Subsection (a)(2) is not inadmissible as hearsay if:

(1) on or before the seventh day before the date on which the proceeding or hearing begins, the party intending to offer the statement:

(A) notifies each other party of the party's intention to do so;

(B) provides each other party with the name of the witness through whom it intends to offer the statement; and

(C) provides each other party with a written summary of the statement;

(2) the presiding official conducting the proceeding finds that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child who is the alleged victim testifies or is available to testify at the hearing in court, at the proceeding, or in any other manner provided by law.

(c) The finding required by Subsection (b)(2) shall be made in a hearing conducted outside the presence of the jury, if the hearing is before a jury.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. CONTESTED CASES: FINAL DECISIONS AND ORDERS;
MOTIONS FOR REHEARING

Sec. 2001.141. FORM OF DECISION; FINDINGS OF FACT AND CONCLUSIONS OF LAW. (a) A decision or order that may become final under Section 2001.144 that is adverse to a party in a contested case must be in writing or stated in the record.

(b) A decision that may become final under Section 2001.144 must include findings of fact and conclusions of law, separately stated.

(c) Findings of fact may be based only on the evidence and on matters that are officially noticed.

(d) Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(e) If a party submits under a state agency rule proposed findings of fact, the decision shall include a ruling on each proposed finding.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

(a) A party in a contested case shall be notified either personally or by first class mail of any decision or order.

(b) On issuance in a contested case of a decision that may become final under Section 2001.144 or an order ruling on a motion for rehearing, a state agency shall send a copy of the decision or order by first class mail to the attorneys of record and shall keep an appropriate record of the mailing. If a party is not represented by an attorney of record, the state agency shall send a copy of the decision or order by first class mail to the party and shall keep an appropriate record of the mailing.

(c) A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day

after the date on which the notice is mailed.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 18, Sec. 1, eff. Sept. 1, 1999.

Sec. 2001.143. TIME OF RENDERING DECISION. (a) A decision or order that may become final under Section 2001.144 in a contested case must be rendered not later than the 60th day after the date on which the hearing is finally closed.

(b) In a contested case heard by other than a majority of the officials of a state agency, the agency may extend the period in which the decision or order may be issued.

(c) Any extension shall be announced at the conclusion of the hearing.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.144. DECISIONS; WHEN FINAL. (a) A decision in a contested case is final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law;

(3) if a state agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision is rendered; or

(4) on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered.

(b) If a decision or order is final under Subsection (a)(3), a state agency must recite in the decision or order the finding made under Subsection (a)(3) and the fact that the decision or order is final and effective on the date rendered.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 611, Sec. 1, eff. Sept. 1, 1997.

Sec. 2001.145. MOTIONS FOR REHEARING: PREREQUISITES TO APPEAL. (a) A timely motion for rehearing is a prerequisite to an appeal in a contested case except that a motion for rehearing of a decision or order that is final under Section 2001.144(a)(3) or (4) is not a prerequisite for appeal.

(b) A decision that is final under Section 2001.144(a)(2), (3), or (4) is appealable.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 611, Sec. 2, eff. Sept. 1, 1997.

Sec. 2001.146. MOTIONS FOR REHEARING: PROCEDURES. (a) A motion for rehearing in a contested case must be filed by a party not later than the 20th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of a decision or order that may become final under Section 2001.144.

(b) A reply to a motion for rehearing must be filed with the state agency not later than the 30th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(c) A state agency shall act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144 or the motion for rehearing is overruled by operation of law.

(d) If a state agency board includes a member who does not receive a salary for work as a board member and who resides outside Travis County, the board may rule on a motion for rehearing at a meeting or by:

- (1) mail;
- (2) telephone;

(3) telegraph; or

(4) another suitable means of communication.

(e) A state agency may by written order extend the time for filing a motion or reply or taking agency action under this section, except that an extension may not extend the period for agency action beyond the 90th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(f) In the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.147. AGREEMENT TO MODIFY TIME LIMITS. The parties to a contested case, with state agency approval, may agree to modify the times prescribed by Sections 2001.143 and 2001.146.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER G. CONTESTED CASES: JUDICIAL REVIEW

Sec. 2001.171. JUDICIAL REVIEW. A person who has exhausted all administrative remedies available within a state agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.172. SCOPE OF JUDICIAL REVIEW. The scope of judicial review of a state agency decision in a contested case is as provided by the law under which review is sought.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.173. TRIAL DE NOVO REVIEW. (a) If the manner of review authorized by law for the decision in a contested case that is the subject of complaint is by trial de novo, the reviewing court shall try each issue of fact and law in the manner that applies to

other civil suits in this state as though there had not been an intervening agency action or decision but may not admit in evidence the fact of prior state agency action or the nature of that action except to the limited extent necessary to show compliance with statutory provisions that vest jurisdiction in the court.

(b) On demand, a party to a trial de novo review may have a jury determination of each issue of fact on which a jury determination could be obtained in other civil suits in this state. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.174. REVIEW UNDER SUBSTANTIAL EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW. If the law authorizes review of a decision in a contested case under the substantial evidence rule or if the law does not define the scope of judicial review, a court may not substitute its judgment for the judgment of the state agency on the weight of the evidence on questions committed to agency discretion but:

(1) may affirm the agency decision in whole or in part; and

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(A) in violation of a constitutional or statutory provision;

(B) in excess of the agency's statutory authority;

(C) made through unlawful procedure;

(D) affected by other error of law;

(E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or

(F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.175. PROCEDURES FOR REVIEW UNDER SUBSTANTIAL

EVIDENCE RULE OR UNDEFINED SCOPE OF REVIEW. (a) The procedures of this section apply if the manner of review authorized by law for the decision in a contested case that is the subject of complaint is other than by trial de novo.

(b) After service of the petition on a state agency and within the time permitted for filing an answer or within additional time allowed by the court, the agency shall send to the reviewing court the original or a certified copy of the entire record of the proceeding under review. The record shall be filed with the clerk of the court. The record may be shortened by stipulation of all parties to the review proceedings. The court may assess additional costs against a party who unreasonably refuses to stipulate to limit the record, unless the party is subject to a rule adopted under Section 2001.177 requiring payment of all costs of record preparation. The court may require or permit later corrections or additions to the record.

(c) A party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the state agency, the court may order that the additional evidence be taken before the agency on conditions determined by the court. The agency may change its findings and decision by reason of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.

(d) The party seeking judicial review shall offer, and the reviewing court shall admit, the state agency record into evidence as an exhibit.

(e) A court shall conduct the review sitting without a jury and is confined to the agency record, except that the court may receive evidence of procedural irregularities alleged to have occurred before the agency that are not reflected in the record.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.176. PETITION INITIATING JUDICIAL REVIEW.

(a) A person initiates judicial review in a contested case by filing a petition not later than the 30th day after the date on

which the decision that is the subject of complaint is final and appealable.

(b) Unless otherwise provided by statute:

(1) the petition must be filed in a Travis County district court;

(2) a copy of the petition must be served on the state agency and each party of record in the proceedings before the agency; and

(3) the filing of the petition vacates a state agency decision for which trial de novo is the manner of review authorized by law but does not affect the enforcement of an agency decision for which another manner of review is authorized.

(c) A Travis County district court in which an action is brought under this section, on its own motion or on motion of any party, may request transfer of the action to the Court of Appeals for the Third Court of Appeals District if the district court finds that the public interest requires a prompt, authoritative determination of the legal issues in the case and the case would ordinarily be appealed. After filing of the district court's request with the court of appeals, transfer of the action may be granted by the court of appeals if it agrees with the findings of the district court concerning the application of the statutory standards to the action. On entry of an order by the court of appeals granting transfer, the action is transferred to the court of appeals for decision, and the agency decision in the contested case is subject to judicial review by the court of appeals. The administrative record and the district court record shall be filed by the district clerk with the clerk of the court of appeals. The court of appeals may direct the district court to conduct any necessary evidentiary hearings in connection with the action.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1999, 76th Leg., ch. 894, Sec. 2, eff. Sept. 1, 1999.

Sec. 2001.177. COST OF PREPARING AGENCY RECORD. (a) A state agency by rule may require a party who appeals a final decision in a contested case to pay all or a part of the cost of

preparation of the original or a certified copy of the record of the agency proceeding that is required to be sent to the reviewing court.

(b) A charge imposed under this section is a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.1775. MODIFICATION OF AGENCY FINDINGS OR DECISION. Except as provided by Section 2001.175(c), an agency may not modify its findings or decision in a contested case after proceedings for judicial review of the case have been instituted under Section 2001.176 and during the time that the case is under judicial review.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.21(a), eff. Sept. 1, 1995.

Sec. 2001.178. CUMULATIVE EFFECT. This subchapter is cumulative of other means of redress provided by statute.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER H. COURT ENFORCEMENT

Sec. 2001.201. COURT ENFORCEMENT OF SUBPOENA OR COMMISSION. (a) If a person fails to comply with a subpoena or commission issued under this chapter, the state agency issuing the subpoena or commission, acting through the attorney general, or the party requesting the subpoena or commission may bring suit to enforce the subpoena or commission in a district court in Travis County or in the county in which a hearing conducted by the agency may be held.

(b) A court that determines that good cause exists for the issuance of the subpoena or commission shall order compliance with the subpoena or commission. The court may hold in contempt a person who does not obey the order.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.202. COURT ENFORCEMENT OF FINAL ORDERS,

DECISIONS, AND RULES. (a) The attorney general, on the request of a state agency to which it appears that a person is violating, about to violate, or failing or refusing to comply with a final order or decision or an agency rule, may bring an action in a district court authorized to exercise judicial review of the final order or decision or the rule to:

(1) enjoin or restrain the continuation or commencement of the violation; or

(2) compel compliance with the final order or decision or the rule.

(b) The action authorized by this section is in addition to any other remedy provided by law.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER I. EXCEPTIONS

Sec. 2001.221. DRIVER'S LICENSES. This chapter does not apply to a suspension, revocation, cancellation, denial, or disqualification of a driver's license or commercial driver's license as authorized by:

(1) Subchapter N, Chapter 521, Transportation Code, except Sections 521.304 and 521.305 of that subchapter, or by Subchapter O or P of that chapter;

(2) Chapter 522, Transportation Code;

(3) Chapter 601, Transportation Code; or

(4) Section 13, Article 42.12, Code of Criminal Procedure.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.22(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.197, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1117, Sec. 7, eff. Sept. 1, 2000.

Sec. 2001.222. STATE AGENCY PERSONNEL RULES AND PRACTICES. This chapter does not apply to matters related solely to the internal personnel rules and practices of a state agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.223. EXCEPTIONS FROM DECLARATORY JUDGMENT, COURT

ENFORCEMENT, AND CONTESTED CASE PROVISIONS. Section 2001.038 and Subchapters C through H do not apply to:

(1) except as provided by Section 531.019, the granting, payment, denial, or withdrawal of financial or medical assistance or benefits under service programs that were operated by the former Texas Department of Human Services before September 1, 2003, and are operated on and after that date by the Health and Human Services Commission or a health and human services agency, as defined by Section 531.001;

(2) action by the Banking Commissioner or the Finance Commission of Texas regarding the issuance of a state bank or state trust company charter for a bank or trust company to assume the assets and liabilities of a financial institution that the commissioner considers to be in hazardous condition as defined by Section 31.002(a) or 181.002(a), Finance Code, as applicable;

(3) a hearing or interview conducted by the Board of Pardons and Paroles or the pardons and paroles division of the Texas Department of Criminal Justice relating to the grant, rescission, or revocation of parole or other form of administrative release; or

(4) the suspension, revocation, or termination of the certification of a breath analysis operator or technical supervisor under the rules of the Department of Public Safety.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 914, Sec. 4, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 769, Sec. 2, eff. Sept. 1, 1997;

Acts 1999, 76th Leg., ch. 62, Sec. 7.62, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1161, Sec. 2, eff. September 1, 2007.

Sec. 2001.224. TEXAS EMPLOYMENT COMMISSION. Section 2001.038 and Subchapters C through H do not apply to a hearing by the Texas Employment Commission to determine whether or not a claimant is entitled to unemployment compensation, and the remainder of this chapter does not apply other than to matters of unemployment insurance maintained by the commission. Regarding unemployment insurance matters, the commission may not comply with

Section 2001.004(3) or 2001.005 relating to orders and decisions.
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.225. CERTAIN ALCOHOLIC BEVERAGE CODE APPEALS.
Section 2001.176(b)(1) does not apply to an appeal under Section 32.18, Alcoholic Beverage Code.
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.226. TEXAS DEPARTMENT OF CRIMINAL JUSTICE AND TEXAS BOARD OF CRIMINAL JUSTICE. This chapter does not apply to a rule or internal procedure of the Texas Department of Criminal Justice or Texas Board of Criminal Justice that applies to an inmate or any other person under the custody or control of the department or to an action taken under that rule or procedure.
Added by Acts 1995, 74th Leg., ch. 76, Sec. 5.23(b), eff. Sept. 1, 1995.

SUBCHAPTER Z. MISCELLANEOUS

Sec. 2001.901. APPEAL FROM DISTRICT COURT. (a) A party may appeal a final district court judgment under this chapter in the manner provided for civil actions generally.

(b) An appeal bond may not be required of a state agency.
Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 2001.902. SAVING CLAUSE. This chapter does not repeal a statutory provision that confers investigatory authority on a state agency, including a provision that grants an agency the power, in connection with investigatory authority, to:

- (1) take depositions;
- (2) administer oaths or affirmations;
- (3) examine witnesses;
- (4) receive evidence;
- (5) conduct hearings; or
- (6) issue subpoenas or summons.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.