

CHAPTER 931

H.B. No. 2091

An Act relating to the continuation, composition, powers, and duties of the Texas Department of Health and the Texas Board of Health; to certain health-related services, regulations, programs, facilities, and agencies; to the requirement that certain state agencies execute memoranda of understanding with the Texas Department of Health; and providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1

SECTION 1. Section 1.02, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.02. **CREATION.** (a) To better protect and promote the health of the people of Texas, the Texas Board of Health and the Texas Department of Health are created. The Texas Department of Health consists of the commissioner of health, an administrative staff, and the hospitals known as the San Antonio State Chest Hospital and the *South Texas* [~~Harlingen State Chest~~] Hospital.

(b) *The department shall develop and implement policies which clearly separate the respective responsibilities of the governing body of the department and the staff of the department.*

(c) *The board shall employ a qualified hospital administrator for the San Antonio State Chest Hospital and for the South Texas Hospital, each of whom have at least five years' experience in hospital administration in this state. A hospital administrator employed under this subsection is not required to be a licensed physician.*

(d) *The five-year experience requirement imposed by Subsection (c) of this section shall not apply to either hospital administrator employed by the board on September 1, 1985.*

SECTION 2. Section 1.03, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.03. **APPLICATION OF SUNSET ACT.** The Texas Board of Health and the Texas Department of Health are subject to the Texas Sunset Act [~~as amended~~] (Article 5429k, Vernon's Texas Civil Statutes), and unless continued in existence as provided by that Act the board and the department are abolished effective September 1, 1997 [~~1985~~].

SECTION 3. Section 1.04, Article 4414b, Revised Statutes, is amended to read as follows:

Sec. 1.04. **TEXAS BOARD OF HEALTH.** (a) The board consists of 18 members appointed by the governor with the advice and consent of the senate. The governor shall make appointments so that the board is composed of:

(1) six members who are physicians currently licensed under the laws of this state, each of whom has been engaged in the practice of medicine in this state for at least five years prior to appointment, *and one of whom specializes in the treatment of disabled children;*

(2) two members who are hospital administrators with at least five years' experience in hospital administration in this state prior to appointment;

(3) one member who is a dentist licensed under the laws of this state and who has been engaged in the practice of dentistry in this state for at least five years prior to appointment;

(4) one member who is a registered nurse licensed to practice professional nursing under the laws of this state and who has been engaged in the practice of nursing in this state for at least five years prior to appointment;

(5) one member who is a veterinarian licensed under the laws of this state and who has been engaged in the practice of veterinary medicine in this state for at least five years prior to appointment;

(6) one member who is a pharmacist licensed under the laws of this state and who has been engaged in the practice of pharmacy in this state for at least five years prior to appointment;

(7) one member who is a nursing home administrator licensed under the laws of this state and who has been engaged as a nursing home administrator in this state for at least five years prior to appointment;

(8) one member who is an optometrist licensed under the laws of this state and who has been engaged in the practice of optometry in this state for at least five years prior to appointment;

(9) one member who holds a civil engineering degree from an accredited university or college, is licensed by this state as a professional engineer, and has specialized in the practice of sanitary engineering in this state for at least five years prior to appointment;

(10) one member who is a doctor of chiropractic licensed under the laws of this state and who has been engaged in the practice of chiropractic in this state for at least five years prior to appointment; and

(11) two members who are citizens who have none of the qualifications required of the other 16 members.

(b) *A person is not eligible for appointment as a public member under Subsection (a)(11) of this section if the person or the person's spouse:*

(1) *is registered, certified, or licensed by an occupational regulatory agency in the field of health care;*

(2) *is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;*

(3) *owns, controls, or has, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department;*
or

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the department.*

(c) *An officer, employee, or paid consultant of a trade association in the field of health care may not be a member or employee of the board, nor may a person who is the spouse of an officer, managerial employee, or paid consultant of a trade association in the field of health care be a member or employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.*

(d) *A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9c, Vernon's Texas Civil Statutes), by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.*

(e) *Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.*

(f) ~~(h)~~ *Members of the board serve for staggered terms of six years, with the terms of six members expiring on February 1 of each odd-numbered year.*

(g) *Not later than September 1 of each odd-numbered year ~~(e) Biennially~~, the governor shall designate one member as chairman and one member as vice-chairman.*

(h) ~~(d)~~ *A majority of the members of the board constitute a quorum for the transaction of business.*

(i) ~~(e)~~ *The board shall meet in Austin or in other places fixed by the board.*

(j) ~~(f)~~ *The board shall meet at least once each month on dates determined by the board and shall hold special meetings when called by the chairman. The chairman shall give timely notice of any special meeting to each member.*

(k) *Meetings of board committees shall be held in compliance with the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes).*

(l) ~~(g)~~ *Members of the board receive no fixed salary. A board member is entitled to \$50 per day for each day spent in attending board meetings. A board member is also entitled to reimbursement for travel expenses and other necessary expenses incurred while performing an official duty.*

(m) ~~(h)~~ *Members of the board qualify by taking the constitutional oath of office. On presentation of the oath of office and the certificate of appointment, the secretary of state shall issue commissions to them, which are evidence of their authority to act.*

(n) *It is a ground for removal from the board if a member:*

(1) *does not have at the time of appointment the qualifications required by Subsection (a) of this section for appointment to the board;*

(2) *does not maintain during the service on the board the qualifications required by Subsection (a) of this section for appointment to the board;*

- (3) violates a prohibition established by Subsection (c) or (d) of this section;
- (4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or
- (5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.
- (o) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.
- (p) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the chairman of the board of that ground. The chairman of the board shall then notify the governor that a potential ground for removal exists.
- (q) The state auditor shall audit the financial transactions of the board at least once during each biennium.

SECTION 4. Section 1.05, Article 4414b, Revised Statutes, is amended to read as follows:
Sec. 1.05. DUTIES OF BOARD. (a) The board shall:

- (1) have general supervision and control of all matters pertaining to the health of citizens of this state;
- (2) employ the commissioner of health;
- (3) investigate the conduct of the work of the department and for this purpose shall have access at any time to all departmental books and records and may require written or oral information from a departmental officer or employee;
- (4) adopt rules, not inconsistent with law, for its own procedure and for the conduct and performance of every duty imposed on the board, the department, or the commissioner by law and shall file a copy of the rules with the department; and
- (5) examine, investigate, enter, and inspect as the board determines necessary any public place or public building for the discovery and suppression of disease and for the enforcement of any health or sanitation law of this state.
- (b) The board is responsible for the adoption of policies and rules and for the government of the department. The board shall supervise the commissioner's administration and enforcement of the health laws of the state. The board may delegate in writing any power or duty imposed on it by law, except the power or duty to adopt rules, to the commissioner of health or, in his absence, to the person acting as commissioner of health, including the authority to make final orders or decisions.
- (c) The board has all the powers, duties, and functions granted by law to the State Board of Health, the State Commissioner of Health, the State Department of Health, the Texas Department of Health, the Texas Board of Health Resources, and the Texas Department of Health Resources.
- (d) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding year. The form of the annual report and the reporting time shall be that provided in the General Appropriations Act.
- (e) The board shall have information of public interest prepared describing the functions of the board and the department and describing the board's and the department's procedures by which complaints are filed with and resolved by the board and the department. The department shall make the information available to the general public and appropriate state agencies.
- (f) The board shall adopt rules establishing methods by which consumers or service recipients can be notified of the names, mailing addresses, and telephone numbers of the board and the department for the purpose of directing complaints to the board and the department. The board may provide for that notification through inclusion of the information:
- (1) on each registration form, application, or written contract for services of a person or entity regulated by the board or department;
- (2) on a sign which is prominently displayed in the place of business of each person or entity regulated by the board or department; or
- (3) in a bill for service provided by a person or entity regulated by the board or department.
- (g) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.
- (h) The board shall develop and implement policies which will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board [The board may appoint advisory committees to assist the board in performing its duties. If not otherwise specified by law, a member of an advisory committee appointed by the board is entitled to receive \$50 for each advisory

committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees. Two members of each advisory committee must be representatives of the general public. A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field; are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance; do not govern or administer a health care facility, agency, or corporation; and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation].

SECTION 5. Section 1.06, Article 4414b, Revised Statutes, is amended by adding Subsections (f), (g), (h), and (i) to read as follows:

(f) *The commissioner or his designee shall develop an intra-agency career ladder program, one part of which shall require the intra-agency posting of all nonentry level positions concurrently with any public posting. The commissioner may waive the posting requirements under circumstances outlined in departmental policies.*

(g) *The commissioner or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for department employees must be based on the system established under this section.*

(h) *The commissioner or his designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement shall include:*

(1) *personnel policies including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel;*

(2) *a comprehensive analysis of the department work force that meets federal or state guidelines;*

(3) *procedures by which a determination can be made of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance; and*

(4) *reasonable methods to appropriately address areas of significant underutilization in the department work force of all persons for whom federal or state guidelines encourage a more equitable balance.*

(i) *The policy statements shall be filed with the governor's office not later than November 1, 1985, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. The report may be made separately or as a part of other biennial reports made to the legislature.*

SECTION 6. Article 4414b, Revised Statutes, is amended by adding Sections 1.08, 1.09, and 1.10 to read as follows:

Sec. 1.08. ADVISORY COMMITTEES. (a) *The board may appoint advisory committees to assist the board in performing its duties.*

(b) *The board shall appoint each advisory committee to provide for:*

(1) *a balanced representation of persons or groups with knowledge and interest in the committee's field of work;*

(2) *the inclusion on the committee of at least two members who represent the interests of the general public; and*

(3) *a balanced representation of the geographical regions of the state.*

(c) *A person is eligible to be appointed and to serve as a public member of an advisory committee if the person and the person's spouse are not licensed by an occupational regulatory agency in the health care field, are not employed by any health care facility, agency, or corporation or by a corporation authorized to underwrite health care insurance, do not govern or administer a health care facility, agency, or corporation, and do not have, other than as consumers, a financial interest in a health care facility, agency, or corporation.*

(d) *If not otherwise specified by law and contingent on the availability of department funds for this purpose, a member of an advisory committee appointed by the board is entitled to receive \$50 for each advisory committee meeting the member attends and the per diem and travel allowance authorized by the General Appropriations Act for state employees.*

(e) *The board shall specify each committee's purpose, powers, and duties and shall require each committee to report to the board in a manner specified by the board concerning the committee's activities and the results of its work.*

(f) *The board shall establish procedures for receiving reports concerning activities and accomplishments of advisory committees established by statute to advise the board or depart-*

ment. The board may appoint additional members to those advisory committees and establish additional duties of those committees as the board determines to be necessary.

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

Sec. 1.09. COMPLAINTS. (a) The department shall keep an information file about each complaint filed with the department relating to a licensee or entity regulated by the department or a service delivered by the department.

(b) If a written complaint is filed with the department relating to a licensee or entity regulated by the department or a service delivered by the department, the department at least as frequently as quarterly and until final disposition of the complaint shall notify the parties to the complaint of the status of the complaint unless notice would jeopardize an undercover investigation.

Sec. 1.10. COST CONTAINMENT. In awarding contracts or grants for services, or in selecting providers of services under any program administered by the department, the department shall give preference to those providers who can provide appropriate services of similar quality in the most cost-effective manner and shall not discriminate among licensed health care providers who can provide the services under the authority of their license.

SECTION 7. Section 1, Chapter 641, Acts of the 68th Legislature, Regular Session, 1983 (Article 4414c, Vernon's Texas Civil Statutes), is amended by adding Subdivision (3) to read as follows:

(3) "Public health services" means personal health promotion, maintenance, and treatment services; infectious disease control and prevention services; environmental and consumer health protection services; laboratory services; health facility architectural plan review; public health planning, data, and statistical services; public health education and information services; and administration services.

SECTION 8. Sections 4 and 7, Texas Hospital Survey and Construction Act (Article 4437d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. GENERAL POWERS AND DUTIES. In carrying out the purposes of the Act, the Commissioner of [State] Health [~~Officer, with the advice of the Advisory Hospital Council,~~] is authorized and directed:

(a) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(b) To provide such methods of administration, appoint a director and other personnel of the Division and take such other action as may be necessary to comply with the requirements of the Federal Act and the regulations thereunder;

(c) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(d) To the extent that he considers desirable to effectuate the purposes of this Act, to enter into agreements for the utilization of the facilities and service of other departments, agencies and institutions, public or private;

(e) To accept on behalf of the State and to deposit with the State Treasurer any grant, gift or contribution made to assist in meeting the cost of carrying out the purposes of this Act, and to expend the same for such purpose;

(f) To make an annual report to the Board on activities and expenditures pursuant to this Act, including recommendations for such additional legislation as the Commissioner of [State Health Officer] considers appropriate to furnish adequate hospital, clinic and similar facilities to the people of this State.

Sec. 7. COORDINATION OF FEDERAL ACT. The Board is authorized to establish methods of administration and [~~with the approval of the Hospital Advisory Council~~] promulgate regulations for the purpose of meeting the requirements prescribed by the Federal Act relative to survey, planning and construction of hospitals and public health centers.

SECTION 9. Chapter 641, Acts of the 68th Legislature, Regular Session, 1983 (Article 4414c, Vernon's Texas Civil Statutes), is amended by adding Section 2A to read as follows:

Sec. 2A. (a) The board by rule shall charge fees for the distribution and administration of vaccines and sera under Section 2.09, Education Code, Section 42.043, Human Resources Code, the Rabies Control Act of 1981 (Article 4477-6a, Vernon's Texas Civil Statutes), and the Communicable Disease Prevention and Control Act (Article 4419b-1, Vernon's Texas Civil Statutes).

(b) The board by rule may require department contractors to charge fees for public health services provided by department contractors participating in the department's programs under the laws specified by Subsection (a) of this section.

(c) *The board shall set the fees in amounts reasonable and necessary to defray the cost to the state of distributing and administering the vaccines and sera.*

(d) *The board may not deny public health services to a person because of the person's inability to pay for services.*

(e) *The commissioner may waive the fee requirement for any type of vaccine or serum if the commissioner determines that a public health emergency exists and that the vaccine or serum is needed to meet the emergency.*

SECTION 10. The following are repealed:

(1) Sections 10 and 11, Special Senses and Communication Disorders Act (Article 4419g, Vernon's Texas Civil Statutes);

(2) Section 5, Texas Hospital Survey and Construction Act (Article 4437d, Vernon's Texas Civil Statutes);

(3) Section 10, Chapter 874, Acts of the 67th Legislature, Regular Session, 1981 (Article 4447w, Vernon's Texas Civil Statutes);

(4) Section 2.02(c), Texas Youth Camp Safety and Health Act (Article 4447i, Vernon's Texas Civil Statutes); and

(5) Section 18, Chapter 467, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-13e, Vernon's Texas Civil Statutes).

ARTICLE 2

SECTION 1. Section 1.03(16), Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

(16) "Statewide Health Coordinating Council" means *a twenty-one person council, in accordance with federal law, appointed by the governor, to provide rules and regulations governing the development and implementation of the state health plan* [~~the council appointed by the governor in accordance with federal law to advise the department generally on the performance of its functions~~].

SECTION 2. Section 1.05, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.05. **AUTHORITY OF THE GOVERNOR.** (a) As the chief executive and planning officer of this state, the governor is authorized to perform those duties and functions assigned to him by federal law. The governor is authorized to transfer personnel, equipment, records, obligations, appropriations, functions, and duties of his office to *another agency* [~~the commission or the department~~].

(b) *The governor by executive order may establish a capital expenditure review program in compliance with federal law if the governor finds that such a review program is necessary to prevent the loss of federal funds. The governor's findings, including a brief description of the reason for the findings, must be included in the text of an order issued under this subsection. If necessary, the governor may use any available funds to implement this subsection.*

(c) *An executive order issued under Subsection (b) of this section expires on the September 1 that follows the next regular session of the legislature that begins after the date the order is issued, unless an earlier date is specified in the order, or unless the governor rescinds the order before that time.*

(d) *The program established by an executive order issued under Subsection (b) of this section, when authorized by the governor, may negotiate an agreement with the Secretary of Health and Human Services on behalf of the State of Texas to administer a state capital expenditure review program pursuant to Section 1122 of the Social Security Act, the federal rules and regulations promulgated under that Act, and other pertinent federal authority, if after thorough review and study, the governor determines that such a review program would be necessary to prevent the loss of federal funds.*

SECTION 3. Subchapter D, Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes), is revised to read as follows:

SUBCHAPTER D. FUNCTIONS OF DEPARTMENT

Sec. 4.01. **HEALTH PLANNING AND DEVELOPMENT AGENCY.** *The department is designated as the state health planning and development agency for the State of Texas.*

Sec. 4.02. **GENERAL POWERS AND DUTIES.** (a) *The department shall, in accordance with rules and regulations promulgated by the statewide health coordinating council, conduct the following duties:*

(1) *preparing, reviewing, and revising the preliminary state health plan for submission to the statewide health coordinating council;*

(2) collecting and disseminating data necessary to support specific state health plan goals; and
 (3) assisting the statewide health coordinating council in the performance of its functions and duties.

(b) The department shall perform the duties and functions prescribed by state and federal law regarding the development of the state health plan after consultation with the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and other appropriate health-related state agencies as designated by the governor.

Sec. 4.03. **COLLECTION OF DATA.** (a) The department shall adopt rules establishing reasonable procedures for the collection of data from facilities as defined by this Act and for the dissemination of data determined to be necessary to facilitate and expedite proper and effective health planning and resource development.

(b) The rules must specify what type of data are required, the entities that are required to submit the data, and the period during which the data must be submitted.

(c) The department shall file, index, and periodically publish in a coherent manner summaries or analyses of the data collected.

(d) If the department does not receive the data as required by the rules, the department shall notify the entity of the problem and shall require the entity to submit the data not later than 30 days after the entity receives the notification.

(e) An entity that does not timely submit the data after notification under Subsection (d) of this section is subject to a civil penalty of not more than \$500 for each day the entity fails to submit the data. At the request of the commissioner of health, the attorney general shall institute and conduct a suit in the name of the state to recover the civil penalty.

(f) All data received by the department under this section that contain information identifying specific patients are confidential and may not be released unless the information identifying the patient is removed from the data.

Sec. 4.04. **STATEWIDE HEALTH COORDINATING COUNCIL.** (a) The statewide health coordinating council is appointed by the governor in accordance with the requirements of applicable federal law.

(b) The statewide health coordinating council shall:

(1) provide guidance to the department in developing the state health plan;

(2) approve the state health plan for submission to the governor in accordance with applicable federal law; and

(3) promote the implementation of the state health plan's recommendations.

(c) The statewide health coordinating council may establish and charge fees related to public health planning, data, and statistical services.

(d) The statewide health coordinating council shall adopt rules in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) detailing the processes used to accomplish its functions.

Sec. 4.05. **STATE HEALTH PLAN.** (a) The state health plan must be developed and used in accordance with applicable state and federal law and shall identify:

(1) major statewide health concerns;

(2) the availability and use of current health resources of the state; and

(3) the future health service and facility needs of the state.

(b) The state health plan must:

(1) propose strategies for the correction of major deficiencies in the service delivery system; and

(2) provide direction for the state's legislative and executive decision-making processes to implement the strategies proposed by the plan.

(c) Information needed for the development of the state health plan shall be gathered through systematic methods designed to include local, regional, and statewide perspectives.

(d) The statewide health coordinating council, through consultation with the health and human services coordinating council, shall generate overall directives for the development of the state health plan.

(e) The department shall submit the preliminary state health plan to the statewide health coordinating council for approval.

(f) Before submitting the state health plan to the governor for adoption, the statewide health coordinating council shall submit the state health plan to the health and human services coordinating council for review and comment.

(g) The statewide health coordinating council shall submit the state health plan to the governor for adoption not later than November 1 of each even-numbered year.

Sec. 4.06. **COST DATA.** (a) Any state agency directly affected by a recommendation in the state health plan shall submit cost data concerning implementation of the recommendation to the

department and the statewide health coordinating council and shall indicate whether the agency is requesting funds in a manner consistent with the state health plan's recommendations. If the agency is not requesting funds consistent with the state health plan's recommendations, the agency shall submit an explanation and justification of any deviations.

(b) The department shall submit information received under this section to the Legislative Budget Board and the governor's budget office not later than November 1 of each even-numbered year. The submission is in addition to any other fiscal reporting requirements imposed on the department.

Sec. 4.07. ASSISTANCE UNDER TITLE XVI. No application for assistance under Title XVI of the Public Health Service Act may be considered by the department until the requirements of Subchapters B and C of this Act have been complied with.

Sec. 4.08. CONTRACTS. With the approval of the governor and after a public hearing, the department may contract with an appropriate state agency to perform specific state health planning and development agency functions of the department.

ARTICLE 3

SECTION 1. The Crippled Children's Services Act (Article 4419c, Vernon's Texas Civil Statutes) is amended to read as follows:

Sec. 1. **SHORT TITLE.** This Act may be cited as the *Disabled* [~~Crippled~~] Children's Services Act.

Sec. 2. **DEFINITIONS.** In this Act:

(1) "*Disabled* [~~Crippled~~] child" means a person whose physical function, *condition*, movement, or sense of hearing is impaired to the extent that the person is or may be expected to be partially or totally incapacitated for educational purposes or for acquiring remunerative occupation and who:

(A) is under 21 years of age and has:

(i) a joint, bone, ossicular chain, muscle, or neurological defect or deformity, including neurofibromatosis and spina bifida; [or]

(ii) cancer; or

(iii) a disease or condition specified by a rule adopted by the board under Section 8(b) of this Act; or

(B) has cystic fibrosis, regardless of the person's age.

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

(3) "Cancer" means a malignant disease, including leukemia, lymphoma, and histiocytosis, characterized by unrestricted growth of abnormal cells, the natural course of which is fatal.

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

(5) "Physician" means a person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(6) "Dentist" means a person licensed by the Texas State Board of Dental Examiners to practice dentistry in this state.

(7) "Program" means the *disabled* [~~crippled~~] children's services program.

(8) "Rehabilitation services" means a process of physical restoration of body function destroyed or impaired by congenital defect, disease, or injury, and may include hospitalization, medical and dental care, optometric care, braces, artificial appliances, durable medical equipment, medical supplies, and occupational and physical therapy.

Sec. 3. **PROGRAM.** (a) A program is created in the department to provide rehabilitation services to *disabled* [~~crippled~~] children who are eligible for the services. The program shall provide:

(1) early identification of *disabled* [~~crippled~~] children;

(2) diagnosis and evaluation of *disabled* [~~crippled~~] children;

(3) rehabilitation services to *disabled* [~~crippled~~] children; and

(4) development and improvement of standards and services for *disabled* [~~crippled~~] children.

(b) The program prescribed by Subsection (a) of this section may provide transportation and subsistence for eligible *disabled* [~~crippled~~] children. The program may also provide the following services for eligible *disabled* [~~crippled~~] children who die while hospitalized for a condition covered by the program, including:

(1) transportation of the deceased's remains, and a parent or other person accompanying the remains, from the hospital to the place of burial within the state designated by the parent or other person legally responsible for interment;

(2) expense of embalming if embalming is required for transportation;

(3) cost of a casket purchased at a minimum price, if a casket is required for transportation; and

(4) other necessary expenses directly related to the care of the deceased's remains and the return of the remains to the place of burial within the state.

(c) The State Commission for the Blind is responsible for providing services to *disabled* [crippled] children whose sole or primary handicap is blindness or some other substantial visual handicap.

(d) The program established by this Act is separate and distinct from a financial or medical assistance program established by Chapters 31 and 32, Human Resources Code.

Sec. 4. ELIGIBILITY REQUIREMENTS. (a) A child is not eligible to receive services provided under this Act, unless:

(1) the child is a resident of the state;

(2) at least one licensed physician or dentist has certified to the department that he examined the child and found the child to be a *disabled* [crippled] child whose disability meets the medical criteria established by the board;

(3) the physician or dentist has reason to expect that the services provided will improve the child's condition or will extend the child's ability to function independently; and

(4) the department has determined that every person who has a legal obligation to provide services for the child is unable to pay for the entire cost of the services.

(b) A child is not eligible to receive services provided by this Act to the extent that a person who has a legal obligation to provide for the child's care and treatment is financially able to pay for all or part of the services provided by this Act. The department shall require the child or a person who has a legal obligation to provide for the child's care and treatment and who is financially able to bear a portion of the expense to pay for or reimburse the department for the portion of the cost of the services provided by the department to the child for whom application is made or by whom the services are received.

Sec. 5. OTHER BENEFITS. (a) In this section, "other benefit" means a benefit, other than a benefit under this Act, to which a person is entitled for payment of the costs of medical or dental care and treatment or burial, including:

(1) benefits available from:

(A) an insurance policy, group health plan, or prepaid medical dental care plan;

(B) Title XVIII or Title XIX of the Social Security Act;

(C) the Veterans Administration;

(D) the Civilian Health and Medical Program of the Uniformed Services; or

(E) workers' compensation or any compulsory employers' insurance program;

(2) a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or

(3) benefits available from a cause of action for medical or dental expenses to a child applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this Act.

(b) A child is not eligible to receive services provided by this Act to the extent that the child or a person who has a legal obligation to support the child is eligible for some other benefit that would pay for all or part of the services provided by this Act.

(c) An applicant for or a recipient of services provided under this Act shall inform the department at the time of application or at the time the applicant receives services, of any other benefit to which the child, the child's parent, the child's managing conservator, or other person who has a legal obligation to support the child, may be entitled.

(d) The child's parent, the child's managing conservator, or other person who has a legal obligation to support a child who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.

Sec. 6. RECOVERY OF COSTS. The department may recover the cost of services provided under this Act from a person who does not reimburse the department as required by Sections 4(b) and 5(d) of this Act or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.

Sec. 7. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department may modify, suspend, or terminate services to a *disabled [crippled]* child who is eligible for or is receiving services from the department after notice to the persons affected and an opportunity for a fair hearing.

(b) The rules adopted by the board shall contain criteria for the department's action.

(c) The board shall conduct fair hearings under the board's informal hearing rules.

Sec. 8. GENERAL PROVISIONS. (a) The board shall:

(1) adopt rules prescribing the type, amount, and duration of rehabilitation and support services to be provided and the medical, financial, and other criteria for eligibility to receive services;

(2) adopt substantive and procedural rules for the selection of physicians, dentists, and hospitals for participation in the program;

(3) adopt substantive and procedural rules for the modification, suspension, or termination of services to a *disabled [crippled]* child who is eligible for or receiving services provided under this Act; and

(4) select physicians, dentists, *ambulatory surgical centers*, and hospitals to provide rehabilitation services.

(b) *The board may adopt rules to authorize the program to provide rehabilitation services to disabled children with a disease or condition specified by the rule. The board may adopt rules under this subsection covering disabled children with a specific disease or condition only if the General Appropriations Act in effect at that time provides a specific appropriation for services to disabled children with that disease or condition. If the subsequent General Appropriations Act does not specifically appropriate funds for services to disabled children with a disease or condition specified by rules adopted under this subsection, those rules expire and the program must stop providing services to those disabled children pending future specific appropriations.*

(c) ~~(b)~~ The department may:

(1) provide services only for conditions specified by the board;

(2) pay only for rehabilitation services provided by a physician, dentist, *ambulatory surgical center*, or hospital approved by the board, except in an emergency situation;

(3) adopt reasonable procedures and standards to govern the determination of fees and charges for program payment;

(4) take census, make surveys, and establish permanent records of *disabled [crippled]* children;

(5) receive and expend gifts and donations for the purposes of this Act;

(6) receive funds appropriated or granted by the state or federal government to provide rehabilitation services for *disabled [crippled]* children; and

(7) enter into contracts and agreements necessary to carry out this Act.

(d) ~~(c)~~ Except as prescribed by Subsection (e) ~~(d)~~ of this section, a recipient of services may select any physician, dentist, *ambulatory surgical center*, or hospital approved by the board to provide treatment. If the recipient is a minor, the person legally authorized to consent to the treatment may select the physician, dentist, or hospital.

(e) ~~(d)~~ The board shall require a person selecting a physician, dentist, or hospital as prescribed by Subsection (d) ~~(e)~~ of this section to use existing rehabilitation services in a location as close to the recipient's home as possible.

Sec. 9. DEVICES AND SUPPLIES. The department shall maintain a record of orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for *disabled [crippled]* children. Orthotic and prosthetic devices, durable medical equipment, and medical supplies purchased by the department for *disabled [crippled]* children may not be considered state owned personal property and are exempt from the personal property inventory requirements of the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes). The state auditor shall verify the purchase of the items in the records of the department.

Sec. 10. ENTERING HOMES. This Act does not entitle an employee, agent, or representative of the department, or other official agent to enter a home over the objection of a *disabled [crippled]* child or, if the *disabled [crippled]* child is a minor, over the objection of the child's parent, managing conservator, or guardian. This Act does not limit the authority of a parent, managing conservator, or guardian over the minor.

Sec. 11. INTERAGENCY COOPERATION ACT. The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes) does not apply to a payment made by the department for services provided by a publicly supported medical school facility to an eligible *disabled [crippled]* child. A facility receiving payment under this Act shall deposit the payment in local funds.

ARTICLE 4

SECTION 1. Section 4, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. APPLICATION FOR LICENSE; FEES. (a) An application for a license shall be made to the Licensing Agency upon forms provided by it and contain such information as the Licensing Agency requires which may include affirmative evidence of ability to comply with reasonable standards, rules and regulations as are lawfully prescribed hereunder.

(b) The application shall be accompanied by a license fee which shall be in the sum of Fifty Dollars (\$50) plus Two Dollars (\$2) for each unit of capacity or bed space for which a license is sought. Such license fee shall be paid annually in said amount with each application for renewal of the institution's license. All license fees provided for herein shall be waived for the State of Texas and its departments, divisions, boards and agencies. *Except as provided by Section 6C of this Act, all [All] license fees collected shall be deposited with the State Treasury to the credit of the Licensing Agency and said license fees may be [are hereby] appropriated to said Agency for its use in the administration and enforcement of this Act.*

(c) Upon receipt of an application for a license the Licensing Agency shall issue a license if upon inspection and investigation it finds that the applicant and facilities meet the requirements established under this law. A license, unless suspended or revoked, shall be renewed annually after an inspection and upon tender of the annual license fee together with the filing by the licensee and approval by the Licensing Agency of an annual report upon such date and containing such information in such form as the Licensing Agency prescribes by regulation. Such license shall be issued only for the premises and persons or governmental units and for the maximum number of beds named in the application and shall not be transferable or assignable. Any approved increase in the bed space shall be subject to an additional fee. Any violator of these provisions shall be guilty of a misdemeanor and upon conviction shall be subject to the penalties provided for in Section 12 of this Act.

SECTION 2. Section 5, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. INSPECTION. (a) The Licensing Agency or its duly authorized representative shall have the right to enter upon the premises at all reasonable times in order to make whatever inspection, survey, or investigation it deems necessary in accordance with the rules and regulations prescribed by the Licensing Agency. Licenses shall be posted in a conspicuous place on the licensed premises.

(b) *The Licensing Agency is entitled to access to books, records, and other documents maintained by or on behalf of an institution to the extent necessary to enforce this Act and the rules adopted under this Act. Any holder of a license or applicant for a license is deemed to have given consent to any authorized representative of the Licensing Agency to enter and inspect the institution in accordance with this Act.*

(c) *The Licensing Agency shall establish procedures to preserve, during the course of any inspection, survey, or investigation, all relevant evidence of conditions that the Licensing Agency has reason to believe threaten the health and safety of a patient or resident, including taking photographs and photocopying relevant documents such as a licensee's notes, a physician's orders, and pharmacy records for use in any legal proceeding. When photographing individuals, the Licensing Agency shall respect the privacy of a patient or resident to the greatest extent possible and may not make public the identity of that patient or resident.*

(d) *The institutions, including nursing homes, and their officers and employees and the patients' attending physicians, shall not be held liable civilly for surrendering physician's orders, pharmacy records, state-office notes and memorandums, patient files, and other confidential or private material under this provision.*

(e) *The Licensing Agency shall establish in clear and concise language a form to summarize each inspection report and complaint investigation report, and the Agency shall establish procedures to assure that copies of all such forms and reports are made available to consumers, service recipients, and/or their relatives as deemed proper by the Agency.*

SECTION 3. Section 6, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DENIAL OR REVOCATION OF LICENSE; HEARINGS AND REVIEW. The Licensing Agency, after providing notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke the license in a ~~any~~ case in which it finds that there has been a substantial failure to comply with the requirements established under this law. *The case is subject to the contested case provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [notice to the licensee shall be effected by registered mail or by personal service, and it shall set forth the particular*

reasons for the proposed action and fix a date, not less than thirty (30) days from the date of such mailing or service, at which the applicant or licensee shall be given an opportunity for a prompt and fair hearing. On the basis of any such hearing or upon default of the licensee, the Licensing Agency shall make a written determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision revoking, suspending or denying the license or application shall become final thirty (30) days after it is so mailed or served unless the applicant or licensee within such thirty (30) day period appeals the decision to the District Court pursuant to the provisions of this law.

[This procedure governing the hearing authorized by this Section shall be in accordance with rules promulgated by the Licensing Agency. A full and complete record shall be kept of all procedures in accordance with rules promulgated by the Licensing Agency. Witnesses may be subpoenaed by either party and their testimony taken in person; or by deposition under such regulations and for such purposes as the Licensing Agency may prescribe in its rules of procedure].

SECTION 4. Section 6C, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (f) through (j) to read as follows:

(a) The legislature finds that the closing of nursing and convalescent homes for violations of laws and regulations may, in certain circumstances, have an adverse effect on both the residents of the facilities and the families of the residents. *The legislature further finds that in some cases there are not funds readily available to meet the basic needs of those residents for food, shelter, medication, and personal services.* It is the purpose of this Act to provide for the appointment of a trustee to assume the operations of those [these] facilities in a manner calculated to emphasize resident care and reduce resident trauma. *It is also the purpose of this Act to provide for a fund to assist a court-appointed trustee in meeting the basic needs of the residents of those facilities.*

(f) *The nursing and convalescent home trust fund is created with the state treasurer and shall be available to the Licensing Agency for expenditure without legislative appropriation to make emergency assistance funds available to a facility. The trustee of a facility may use the emergency assistance funds only to alleviate immediate threats to the health or safety of the residents of the facility, including payments for food, medication, sanitation services, minor repairs, supplies necessary for personal hygiene, and services necessary for the personal care, health, and safety of the residents. In accordance with rules adopted by the Texas Board of Health, the Licensing Agency shall disburse money from the fund as ordered by the court. The court may order the Licensing Agency to disburse emergency assistance funds to a facility if the court finds that:*

- (1) the facility has inadequate funds accessible to the trustee for the operation of the facility;*
- (2) an emergency exists that presents an immediate threat to the health and safety of the residents of the facility; and*
- (3) it is in the best interests of the health and safety of the residents that funds be made available immediately.*

(g) *Any unencumbered balance in the nursing and convalescent home trust fund in excess of \$100,000 at the end of each fiscal year shall be transferred to the credit of the general revenue fund and may be appropriated to the Licensing Agency for its use in administering and enforcing this Act.*

(h) *In addition to the licensing fee required under Section 4 of this Act, the Licensing Agency shall adopt, charge, and collect an annual fee to be deposited to the credit of the nursing and convalescent home trust fund created by this section. The Licensing Agency shall set the fee for each nursing and convalescent home in the amount of one dollar for each licensed unit of capacity or bed space in that facility, or in an amount necessary to provide a fund balance of \$100,000. The Licensing Agency shall attempt to set fees under this subsection in amounts that will cause the fund balance to equal \$100,000 at the time the fee is adopted. Once the initial fee assessment is made, no additional annual fees will be assessed unless the nursing home trust fund balance falls below \$100,000.*

(i) *A facility that receives emergency assistance funds under this section shall reimburse the Licensing Agency for the amounts received not later than one year after the date on which the funds were received by the trustee. The person that owned the facility at the time that the trustee was appointed is responsible for the reimbursement and shall pay interest on the amount outstanding at a rate equal to the rate of interest determined under Section 2, Article 1.05, Title 79, Revised Statutes (Article 5069-1.05, Vernon's Texas Civil Statutes), to be applicable to judgments rendered during the month in which the money was disbursed to the facility. The interest begins to accrue on the date on which the funds were disbursed to the facility. Any amount that remains outstanding after the year has expired is delinquent and the facility that received the*

assistance funds may be determined by the Texas Department of Human Resources to be ineligible for a Medicaid provider contract. The Licensing Agency shall deposit the reimbursement and interest received under this subsection to the credit of the nursing and convalescent home trust fund. At the request of the Licensing Agency, the attorney general shall institute an action to collect the funds due under this subsection. Venue for an action brought under this subsection is in Travis County.

(j) The State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) does not apply to any payments made by a trustee under this section.

SECTION 5. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 6D to read as follows:

Sec. 6D. NOTIFICATION OF CLOSURE. (a) A nursing or convalescent home that is closing, whether temporarily or permanently and whether voluntarily or involuntarily, shall notify the residents of the facility of the closing and shall make reasonable efforts to notify in writing each resident's nearest relative or the person responsible for the support of the resident within a reasonable time before the closing.

(b) If the Licensing Agency orders the closing or if the closing is in any other way involuntary, the nursing or convalescent home shall make the notification immediately on receiving notice of the closing, in which case the notification is not required to be written. If the decision to close is made voluntarily by the nursing or convalescent home, the home shall make the notification not later than one week after making the decision to close.

(c) A nursing or convalescent home that fails or refuses to comply with this section commits an offense. An offense under this section is a Class A misdemeanor.

SECTION 6. Section 7, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. RULES, REGULATIONS AND ENFORCEMENTS. The Licensing Agency is authorized to adopt, amend, promulgate, publish and enforce minimum standards in relation to:

(a) Construction of the home or institution, including plumbing, heating, lighting, ventilation and other housing conditions, which shall insure the health, safety and comfort of residents and protection from fire hazard;

(b) Regulate the number and qualification of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents, and establish requirements for in-service education of all employees who have any contact with residents;

(c) All sanitary and related conditions within the institution and its surroundings, including water supply, sewage disposal, food handling and general hygiene, which shall insure the health, safety and comfort of the residents;

(d) Diet related to the needs of each resident and based upon good nutritional practice or on recommendations which may be made by the physician attending the resident;

(e) Equipment essential to the health and welfare of the residents;

(f) At least two unannounced inspections per year shall be mandatory; in order to ensure continuous compliance, a sufficient percentage of institutions shall be selected at random by the Licensing Agency for unannounced inspections to be conducted between the hours of 5 p.m. and 8 a.m., with those inspections to be cursory in nature in order to avoid to the greatest extent feasible any disruption of the patients or residents in the institution; further inspections may be required by the Licensing Agency;

(g) For at least two unannounced inspections in each year as required by Subsection (f) of this section, the Licensing Agency shall arrange to invite in the inspections at least one person as a citizen advocate from one of the following groups: American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly, except that this subsection does not apply to an institution that provides maternity care;

(h) The use and administration of medications in conformity with applicable law and rules and regulations on the use and administration of medications; all personnel administering medications must have completed a state-approved training program in medication administration;

(i) Grading each home or institution so as to recognize those homes or institutions that go beyond the minimum level of services and personnel, as established by the agency and a superior grade shall be prominently displayed for public view and as incentive to attain the superior grade, allow each home or institution to advertise such grade. The agency shall not award a superior grade to an institution if the institution has violated state or federal laws or regulations during a period of 12 months prior to the grading inspection. The agency shall cancel a superior grade granted to an institution if (1) the institution fails to meet the criteria established for a

superior grade; or (2) the institution has violated state or federal laws or regulations. For the purposes of this subsection, a "violation of state or federal laws or regulations" means a violation of a law or regulation which affects the health, safety, or welfare of the residents of an institution; resident funds; the confidentiality of records of a resident; the financial practices of an institution; and the control of medication within an institution. If a superior grade is cancelled, the institution is prohibited from advertising the superior grade. This subsection does not apply to an institution that provides maternity care.

(j) The Licensing Agency shall require one medical examination per resident per year. The details of this examination will be specified by the Licensing Agency.

(k) Unless another state or federal requirement prohibits, the Licensing Agency shall allow a licensed facility to operate a portion of the facility under the standards of a lesser licensing category. The Licensing Agency shall determine the rank of licensing categories and shall establish procedures and standards to accommodate a facility's operation under the lower category. Unless federal requirement prohibits, the operation of a portion of a facility under the standards of a lesser licensing category shall not constitute abandonment of the higher category of service under the certificate of need program, as provided in the Texas Health Planning and Development Act, as amended (Article 4418h, Vernon's Texas Civil Statutes).

The Licensing Agency is further authorized to provide for advice to and coordination of its personnel and facilities with any local agency of a city or county where such city or county shall see fit to supplement the state program with further regulations required to meet local conditions.

SECTION 7. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. POSTING INFORMATION. (a) Each facility shall prominently and conspicuously post the following for display in a public area of the facility that is readily accessible to residents, employees, and visitors:

- (1) the license issued under this Act;*
- (2) a sign prescribed by the Licensing Agency that specifies complaint procedures established under this Act or under rules adopted under this Act and that specifies how complaints may be registered with the Licensing Agency; and*
- (3) a notice in a form prescribed by the Licensing Agency stating that inspection reports and related reports are available at the facility for public inspection and providing the department's toll-free telephone number to be used to obtain information concerning the facility; and*
- (4) a concise summary of the most recent inspection report relating to the institution.*

SECTION 8. Section 10, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10. JUDICIAL REVIEW. Any applicant or licensee aggrieved by the decision of the Licensing Agency is entitled to judicial review in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). ~~Judicial review under this section shall be under the substantial evidence rule [; after a hearing, may within thirty (30) days after the mailing or service of notice of the decision as provided in Section 6, file a notice of appeal in the District Court of the county in which the institution is located or to be located, and serve a copy of the notice of appeal upon the Licensing Agency. Thereupon the Licensing Agency shall promptly certify and file with the Court a copy of the record and decisions including the transcript of the hearings on which the decision is based. The court may affirm, modify, or reverse the decision of the Licensing Agency and either the applicant or licensee or the Licensing Agency or State may apply for such further review as is provided by law. Such trial shall be de novo in the District Court].~~ Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved except as the Court otherwise orders in the public interest for the welfare and safeguard of the persons in the institution.

SECTION 9. Section 12, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. PENALTIES. (a) Any person establishing, conducting, managing, or operating any institution without a license under this law shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$1,000 [~~Two Hundred Dollars (\$200)~~] for the first offense and not more than \$500 [~~One Hundred Dollars (\$100)~~] for each subsequent offense and each day of a continuing violation after conviction shall be considered a separate offense.

(b) A person who violates this Act or who fails to comply with a rule or regulation authorized by this Act determined by the Licensing Agency to threaten the health and safety of the patient is subject to a civil penalty of not less than \$100 nor more than \$10,000 [~~\$500~~] for each act of violation, and each day of a continuing violation constitutes a separate ground of recovery.

(c) Except as expressly provided by this Act, any person commits an offense if he intentionally, knowingly, or recklessly discloses to any unauthorized person the date, time, or any other fact about an unannounced inspection of a facility before the inspection occurs. An offense under this subsection is a Class B misdemeanor.

(d) An "unauthorized person" as used in this section is defined as any person, organization, agency, or entity other than the Texas Department of Health, the *Office of Attorney General*, the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, any other statewide organization for the elderly, any ombudsman or representative of the Texas Department on Aging, any representative of other agencies or organizations when Medicare/Medicaid surveys are made concurrently with licensing inspections, or any other person, organization, agency, or entity authorized by law to make inspections or to accompany inspectors.

(e) Any person convicted of a violation of Subsection (c) of this section is ineligible for state employment.

SECTION 10. Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Section 12A to read as follows:

Sec. 12A. ADMINISTRATIVE PENALTY. (a) If a person violates this Act or a rule or order adopted or license issued under this Act, the licensing agency may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this Act or a rule, order, or regulation promulgated under this Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment. The board shall establish gradations of penalties imposed under this section in accordance with the relative seriousness of the violation.

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

- (1) the gradations of penalties established under Subsection (b) of this section;*
- (2) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;*
- (3) the history of previous violations;*
- (4) the amount necessary to deter future violations;*
- (5) efforts to correct the violation; and*
- (6) any other matters that justice may require.*

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the licensing agency concludes that a violation has occurred, the licensing agency may issue a preliminary report stating the facts on which it based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The licensing agency shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the licensing agency shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the licensing agency written consent to the licensing agency's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the licensing agency or fails to timely respond to the notice, the commissioner of health or his designee shall either assess that penalty or order that a hearing be held on the findings and recommendations in the licensing agency's report. If the commissioner or his designee assesses the penalty recommended by the report, the licensing agency shall give written notice to the person charged of the decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner or his designee orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) *The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.*

(j) *Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:*

(1) *pay the penalty in full; or*

(2) *if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:*

(A) *forward the amount of the penalty to the commissioner for placement in an escrow account;*
or

(B) *instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.*

(k) *Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.*

(l) *Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(m) *If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.*

(n) *A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.*

SECTION 11. Section 16, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4442c, Vernon's Texas Civil Statutes), is amended by adding Subsection (i) to read as follows:

(i) *Effect of Retaliation Because of Report. (1) A person has a cause of action against an institution, or the owner or employee of an institution, that suspends or terminates the employment of the person, or otherwise disciplines or discriminates against the person, for reporting the abuse or neglect of a nursing home patient to the person's supervisors, to the Licensing Agency, or to a law enforcement agency. The person may recover:*

(A) *actual damages, including damages for mental anguish even though no other injury is shown, or \$1,000, whichever amount is greater;*

(B) *exemplary damages;*

(C) *court costs; and*

(D) *reasonable attorney's fees.*

(2) *In addition to amounts recovered under Subdivision (1) of this subsection, a person whose employment is suspended or terminated in violation of this subsection is entitled to:*

(A) *reinstatement in his former position; and*

(B) *compensation for wages lost during the period of suspension or termination.*

(3) *A person who sues under this subsection has the burden of proof, but there is a rebuttable presumption that a person's employment was suspended or terminated for reporting abuse or neglect if the person is suspended or terminated within 60 days after the date on which the person made a report in good faith. A person who sues under this subsection must file the complaint not later than the 90th day after the day on which the person's employment is terminated. The person must make the complaint in a signed writing.*

(4) *An action under this subsection may be brought in the district court of the county:*

(A) *in which the plaintiff resides;*

(B) *in which the plaintiff was employed by the defendant; or*

(C) *in which the defendant conducts business.*

ARTICLE 5

SECTION 1. Section 5(a), Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any person who violates any of the provisions of Section 3 shall be guilty of a *Class A* misdemeanor ~~[and shall on conviction thereof be subject to a fine of not less than Twenty/ five Dollars (\$25.00) nor more than Two Hundred Dollars (\$200.00); and for the second or subsequent offense shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00); or imprisonment in the county jail for a period of not more than one year; or both such fine and imprisonment].~~

SECTION 2. Section 13, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 13. (a) Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof, cannot be avoided by good manufacturing practice, or serves a useful purpose, shall be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a); but when such substance is so required, cannot be so avoided, or serves a useful purpose, the *Texas Board [Commissioner]* of Health shall *adopt rules [promulgate regulations]* limiting the quantity therein or thereon to such extent as the *board [Commissioner of Health]* finds necessary for the protection of public health; and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of Section 10(a). *Rules adopted under this section limiting the quantity of poisonous or deleterious substances in food must provide equal or stricter standards than those adopted by the federal Food and Drug Administration or its successor.* While such a *rule [regulation]* is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1), Section 10(a). In determining the quantity of such added substance to be tolerated in or on different articles of food, the *board [Commissioner of Health]* shall take into account the extent to which the use of such substance is required, cannot be avoided in the production of each such article, or serves a useful purpose, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(b) *Notwithstanding the provisions of Section 1.05, Article 4414b, Revised Statutes, the Commissioner of Health may adopt emergency rules under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) to establish tolerance levels of poisonous or deleterious substances in food.*

SECTION 3. Section 20, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 20. (a) *The Texas Board of Health may adopt rules [authority to promulgate reasonable and necessary regulations; not inconsistent with any provision of this Act,] for the efficient enforcement of this Act [is hereby vested in the Commissioner of Health].* The violation of a *rule adopted [regulation promulgated]* under this Act shall be deemed to be a violation of this Act.

(b) Hearings authorized or required by this Act shall be conducted by the Commissioner of Health or such officer, agent, or employee as the Commissioner of Health may designate for the purpose.

(c) *Notwithstanding the provisions of Section 1.05, Article 4414b, Revised Statutes, the Commissioner of Health or his designee may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of food manufacturing within the jurisdiction of the Texas Department of Health if the Commissioner of Health or his designee determines that the activity is creating or posing an immediate and serious threat to human life or health and that other procedures available to the department to remedy or prevent the occurrence of the situation will result in unreasonable delay. The order may be issued without notice and hearing, or with such notice and hearing as the Commissioner of Health or his designee deems practicable under the circumstances. If an emergency order is issued under this authority without a hearing, the department shall fix a time and place for a hearing to be held in accordance with departmental rules so as to affirm, modify, or set aside the emergency order.*

(d) *The Texas Board of Health shall adopt rules that provide a system for removing adulterated items from grocery store shelves or the shelves of any other retail establishment selling those items.*

(e) ~~[Before promulgating any regulations, the Commissioner of Health shall give thirty (30) days notice of the proposal and of the time and place for a hearing thereon by publishing such notice in a newspaper of general circulation within the state and the Commissioner of Health shall place any person, firm or corporation so desiring said notices on a state mailing list which said list shall entitle said holder to a copy of any~~

notice of any regulation to be promulgated. To be entitled to receive such notices, said holder shall first pay in advance, an annual service charge to be determined by the Commissioner of Health, which same shall not be more than Five Dollars (\$5.00); except that the public hearing on regulations under Section 12 may be held at a time, to be fixed by the Commissioner of Health, after notice thereof. The regulation so promulgated shall become effective on a date fixed by the Commissioner of Health (which date shall not be prior to the ninetieth (90) day after its promulgation); except that if the Commissioner of Health finds that emergency conditions exist necessitating an earlier effective date, then the Commissioner of Health shall specify in the order his findings as to such conditions and the order shall take effect at such earlier date as the Commissioner of Health shall specify therein to meet the emergency. Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the Commissioner of Health, to such an extent as he deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(e1) In all appeals prosecuted in any of the courts of this state pursuant to the provisions of this Act, *excluding judicial review under Section 23b of this Act*, such trials shall be *de novo* as that term is used and understood in appeals from justice of the peace courts to county courts. When such an appeal is filed and the court thereby acquires jurisdiction, all administrative or executive action taken prior thereto shall be null and void and of no force and effect, and the rights of the parties thereto shall be determined by the court upon a trial of the matters in controversy under rules governing the trial of other civil suits in the same manner and to the same extent as though the matter had been committed to the courts in the first instance and there had been no intervening administrative or executive action or decision. Under no circumstance shall the substantial evidence rule as interpreted and applied by the courts of Texas in other cases ever be used or applied to appeals prosecuted under the provisions of this Act. If this Section, or any part thereof, is for any reason ever held by any court to be invalid, unconstitutional or inoperative in any way, then in that event such appeals shall be as provided in Section 20(f) [Section 20(d)] of this Act. It is specifically provided hereby that Section 20(f) [Section 20(d)] of this Act shall not be operative unless and until the appeal as provided by this section [Section 20(e1)] is held invalid, unconstitutional or inoperative.

(f) (d) If any party at interest be dissatisfied with any act, order, ruling or decision of the Commissioner of Health in connection with the administration of this Act, such party may file an action, naming the Commissioner of Health as defendant, in any of the district courts of Travis County to set aside the particular act, order, ruling or decision. The cause shall be tried by the court without a jury in the same manner as civil actions generally and all fact issues material to the validity of such act, order, ruling or decision shall be re-determined in such trial on the preponderance of the competent evidence but no evidence shall be admissible which was not either tendered to the Commissioner of Health or on file in his office while the matter was pending before him for decision. The burden of proof shall be on the plaintiff and judgment shall be entered by the court declaring the action, order, ruling or decision in question either valid or invalid. Appeals from any final judgment may be taken in the manner provided for in ordinary civil actions generally. No appeal bond shall be required by the Commissioner of Health. All acts, orders, rulings and decisions of the Commissioner of Health shall be final unless an action to set aside as herein authorized is filed within thirty (30) days after the action, order, ruling or decision is taken or made by the Commissioner of Health. *This section does not apply to judicial review under Section 23b of this Act.*

SECTION 4. The Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) is amended by adding Section 20A to read as follows:

Sec. 20A. (a) *The Texas Department of Health and the Department of Agriculture shall execute a memorandum of understanding that:*

(1) *requires each agency to disclose to the other agency any positive results of testing conducted by the agency for pesticides in food; and*

(2) *specifies how each agency will assist the other in performing its duties regarding pesticides in food.*

(b) *The Texas Department of Health and the Department of Agriculture shall adopt the memorandum of understanding as a rule.*

(c) *The Texas Department of Health and the Department of Agriculture shall request the federal Food and Drug Administration to join in execution of the memorandum of understanding.*

SECTION 5. Subsections 3, 4, and 5, Section 23, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), are amended to read as follows:

3. The registration statement shall be filed prior to commencing business as a wholesale drug distributor and annually thereafter. *The Texas Board of Health by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the registration expiration date is changed, registration fees payable before or on September 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable [on or before the first day of September in each calendar year].*

4. *The Texas Board of Health shall adopt, charge, and collect fees for each registration filed, renewed, or amended under this section and for inspections performed in enforcing this section and rules adopted under this section. The fees may be charged on an annual basis. The amount of the fees shall be established by rule adopted by the board and must be set so that the Texas Department of Health can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:*

- (a) reviewing and acting on registrations;
- (b) amending and renewing registrations;
- (c) inspecting registered facilities; and
- (d) implementing and enforcing this section and rules and orders adopted and registrations issued under this section [initial and annual fee for registration which shall accompany the registration statement shall be Twenty-five Dollars (\$25) for each place of business].

5. In the event the location of a registered place of business shall be changed, the registrant shall notify the Commissioner of Health, in writing, of the address of such new location and the name and resident address of the individual in charge thereof. The fee to accompany such notification shall be set by the Texas Board of Health under Subsection 4 of this section [Five Dollars (\$5) unless it shall appear to the satisfaction of the Commissioner of Health that the change of location is of a temporary nature due to fire, flood, or other disaster].

SECTION 6. Section 23a, Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23a. 1. All manufacturers of foods in the state shall annually register [on or before September 4] with the Texas Department of Health [and pay a fee set by the Texas Board of Health adequate to pay the cost of administering this program and not to exceed \$25]. Where a manufacturer operates more than one establishment, then a separate registration and fee shall be required for each establishment operated.

2. The registration statement, which shall be signed and verified, shall be made on forms furnished by the Texas Department of Health and shall provide the following information:

- (a) the name under which the business is conducted;
- (b) the address of each place of business in the state being registered;
- (c) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state; or if any other type of association, then the names of the principals of such association;
- (d) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity.

3. *The Texas Board of Health shall adopt, charge, and collect fees for each registration filed or renewed under this section and for inspections performed in enforcing this section and rules adopted under this section. The fees may be charged on an annual basis. The amount of the fees shall be established by rule adopted by the board and must be set so that the Texas Department of Health can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:*

- (a) reviewing and acting on registrations;
- (b) amending and renewing registrations;
- (c) inspecting registered facilities; and
- (d) implementing and enforcing this section and rules and orders adopted and registrations issued under this section.

4. *Not less than one-half of all registration fees collected shall be used for inspection and enforcement as provided by Subsections 3(c) and 3(d) of this section, and the remainder of those fees shall be used for the administration of this program.*

5. *The Texas Board of Health by rule may adopt a system under which registrations expire on various dates during the year. For the year in which the registration expiration date is changed, registration fees payable before or on September 1 shall be prorated on a monthly basis so that each registrant shall pay only that portion of the registration fee that is allocable to the number of*

months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable.

6. The term "manufacture" as used in this article shall mean the process of combining or purifying articles of food and packaging same for sale to the consumer, either by wholesale or retail. Any person, firm, or corporation who represents itself as responsible for the purity and the proper labeling of any article of food by placing or having placed its name and address upon the label of any food shall be deemed a manufacturer and shall be included within the meaning of this section.

7. [4.] All registration fees received by the Texas Department of Health shall be deposited in the State Treasury to the credit of the General Revenue Fund and are appropriated to the department for the administration of this Act.

8. [5.] The Commissioner of Health may, after notice and hearing, refuse to register or may cancel, revoke, or suspend the registration of any food manufacturer. The Texas Board of Health shall adopt rules establishing minimum standards for registering, cancelling, revoking, and suspending registrations under this section.

9. [6.] Procedures for notice and hearing shall be governed by Texas Department of Health rules for a contested case hearing and by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

10. [7.] (a) Any person who manufactures food in this state who does not comply with the registration requirements of this section commits an offense.

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

SECTION 7. The Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes) is amended by adding Section 23b to read as follows:

Sec. 23b. (a) If a person violates this Act or a rule or order adopted or registration issued under this Act, the Department of Health may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this Act or a rule, order, license or registration issued under this Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.

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

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report stating the facts on which it based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the department written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the department or fails to timely respond to the notice, the Commissioner of Health or his designee by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the department's report. If the commissioner or his designee assesses the penalty recommended by the report, the department shall give written notice to the person charged of the decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner or his designee orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation

and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.

(j) Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

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

(B) instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the General Revenue Fund.

ARTICLE 6

SECTION 1. Section 8(a), Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) An applicant for license as a salvage broker or salvage operator must:

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

(2) pay a nonrefundable license fee [~~of \$100~~] to the department; and

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

SECTION 2. Section 9, Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. RENEWAL OF LICENSE. (a) A person who holds a license issued under this Act may renew the license by filing an application for renewal on a form prescribed by the department accompanied by a nonrefundable renewal fee [~~of \$100~~]. A licensee must file for renewal before the expiration date of the current license.

(b) [~~A person who files a renewal application after the expiration date must pay an additional \$25 as a delinquency fee.~~

[~~(c)~~] The department shall renew the license of a licensee who submits a renewal application and pays the renewal fee after an inspection to determine the licensee's compliance with the rules adopted by the board.

SECTION 3. The Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes) is amended by adding Section 9A to read as follows:

Sec. 9A. FEES. The board shall adopt, charge, and collect fees for each application for a license or renewal license submitted under this Act and for inspections performed in enforcing this

Act and rules adopted under this Act. The fees may be charged on an annual basis. The amount of the fees shall be established by board rule and must be set so that the department can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:

- (1) reviewing and acting on licenses;
- (2) amending and renewing licenses;
- (3) inspecting establishments operated by licensees; and
- (4) implementing and enforcing this Act and rules and orders adopted and licenses issued under this Act.

SECTION 4. The Texas Food, Drug, Device, and Cosmetic Salvage Act (Article 4476-5e, Vernon's Texas Civil Statutes) is amended by adding Section 18 to read as follows:

Sec. 18. ADMINISTRATIVE PENALTY. If a person violates this Act or a rule or order adopted or license issued under this Act, the Commissioner may assess a civil penalty against that person as provided by the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).

ARTICLE 7

SECTION 1. Section 2, Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. (a) The Texas [State] Department of Health, hereinafter designated as "the department," shall establish, administer, and enforce such rules, regulations, and standards as it deems necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons.

(b) [To advise the department in the establishment, administration, and enforcement of such rules, regulations, and standards, an advisory committee shall be appointed as follows:

(1) One physician licensed to practice medicine in the State of Texas particularly informed about the problems arising from drug addiction shall be appointed by the Texas State Board of Medical Examiners:

(2) One pharmacist licensed to practice pharmacy in the State of Texas shall be appointed by the Texas State Board of Pharmacy:

(3) One attorney licensed to practice law in the State of Texas shall be appointed by the President of the State Bar of Texas:

(4) One law/enforcement officer shall be appointed by the Director of the Department of Public Safety of the State of Texas:

(5) One stabilized addict shall be appointed by the Commissioner of Mental Health and Mental Retardation:

(6) One social worker with particular experience in the treatment of narcotics addiction shall be appointed by the Commissioner of Mental Health and Mental Retardation:

(7) The Commissioner of Health shall appoint one officer or employee of his department:

(8) The Director of the Texas Department of Corrections shall appoint one officer or employee of his department:

(9) The Commissioner of the Texas Rehabilitation Commission shall appoint one officer or employee of the commission:

(10) The Commissioner of Mental Health and Mental Retardation shall serve as a permanent member of this advisory committee in the capacity of chairman:

(b) The initial appointments to this advisory committee pursuant to subparagraphs (1); (2); and (3) of Subsection (a) of this section shall serve for a period of two years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (4); (5); and (6) of Subsection (a) of this section shall serve for a period of four years and until their successors are appointed. The initial appointments to this advisory committee pursuant to subparagraphs (7); (8); and (9) of Subsection (a) of this section shall serve for a period of six years and until their successors are appointed. Each subsequent appointee to this advisory committee shall serve for a term of six years and until his successor is appointed:

(c) This advisory committee shall meet at least twice a year or at the call of its chairman. The advisory committee shall give written notice of the date, place, and subject of each of its meetings to the secretary of state, who shall then post the notice on a bulletin board to be located at a place convenient to the public in the State Capitol. Persons interested in the establishment of rules, regulations, and standards pursuant to this Act shall be given an opportunity to be heard by this committee:

~~[(d)]~~ The rules, regulations, and standards adopted by the department under this Act shall be filed with the secretary of state and shall be published and available on request from the secretary of state.

~~[(e) Members of the advisory committee who are not officers or employees of the State of Texas shall be entitled to \$25 each day while engaged in authorized business of the committee and in addition thereto shall be entitled to travel and other necessary expenses incurred in performing their duties on the committee. Such compensation and reimbursement will be made from monies appropriated to the department. Other members of the committee shall have their expenses paid by their respective agencies to the same extent as authorized for travel performed for such agencies.]~~

SECTION 2. Section 4, Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. (a) Any physician licensed by the Texas State Board of Medical Examiners or any institution, public or private, organized and operated under the laws of this state for the purpose of providing health services may apply to the department on forms approved by the department for a permit to prescribe and administer synthetic narcotic drugs to drug-dependent persons. The department shall issue a permit to applicants qualified according to its rules, regulations, and standards. A permit issued pursuant to this Act shall remain in effect until suspended or revoked by the department or surrendered by the holder thereof.

(b) *The Texas Board of Health shall adopt, charge, and collect fees for each application for a permit submitted under this section and for inspections performed in enforcing this Act and rules adopted under this Act. The fees may be charged on an annual basis. The amount of the fees shall be established by board rule and must be set so that the department can recover not less than 50 percent of the actual annual expenditures of state funds by the department in:*

- (1) reviewing and acting on permits;
- (2) amending permits;
- (3) inspecting facilities operated by permit holders; and
- (4) implementing and enforcing this Act and rules, regulations, standards, and orders adopted and permits issued under this Act.

(c) *Fees collected under this section shall be deposited to the credit of the general revenue fund and may be appropriated to the department for the administration of this Act.*

SECTION 3. Chapter 618, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4476-11, Vernon's Texas Civil Statutes), is amended by adding Section 13 to read as follows:

Sec. 13. *If a person violates this Act or a rule, regulation, standard, or order adopted or permit issued under this Act, the Commissioner may assess a civil penalty against that person as provided by the Texas Food, Drug and Cosmetic Act (Article 4476-5, Vernon's Texas Civil Statutes).*

SECTION 4. Section 22, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945 (Article 4477-1, Vernon's Texas Civil Statutes), is amended by adding Subsection (e) to read as follows:

(e) *The Texas Department of Health shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees. The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this subsection.*

ARTICLE 8

SECTION 1. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (f) to read as follows:

(f) *The department shall adopt as a rule any memorandum of understanding between the department and any other state agency. A revision of any memorandum of understanding must be adopted as a rule.*

SECTION 2. Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (k) to read as follows:

(k)(1) *The department shall charge a fee for the filing with the department and review by the department of a permit application under this section. A fee schedule shall be adopted by rule that shall be reasonably related to one or more of the following factors:*

- (A) the population served;
- (B) the volume of waste to be handled;
- (C) the type and size of the facility; or
- (D) the cost of the review of the permit application.

(2) The department shall charge an annual fee for each solid waste facility authorized by the department to be operated or maintained under this Act. The department shall adopt a fee schedule for determining the amount of the fee to be charged. The amount of the fee shall be reasonably related to one or more of the following factors:

- (A) the population served;
- (B) the volume of waste handled; or
- (C) the type and size of the facility.

(3) The department shall charge an annual fee to generators of hazardous waste and transporters of solid waste who are required to register with the department by rule adopted under this Act. Fee schedules shall be adopted by rule. The fees shall be reasonably related to the volume or the type of waste generated or transported, or both the volume and type of waste.

(4) The fees collected under this section shall be deposited in the state treasury to the credit of the general revenue fund. The board shall fix the amount of the fees to collect sufficient revenue to meet the expenses of administering this section.

SECTION 3. Section 8(a)(2), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) Any person who violates any provision of this Act or of any rule, permit, license, or other order of the department or the department of water resources, or a county or a political subdivision exercising the authority granted in Section 6 of this Act within whose jurisdiction the violation occurs [~~which is not a requirement applicable to hazardous waste;~~] is subject to a civil penalty of not less than \$100.00 nor more than \$25,000.00 [~~\$2,000.00~~] for each act of violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this Section 8. [~~Any person who violates any requirement applicable to hazardous waste shall be subject to a civil penalty of not less than \$100.00 nor more than \$25,000.00 for each act of violation and for each day of violation; as the court may deem proper, to be recovered in the manner provided in this Section 8(a).]~~

SECTION 4. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Section 8a to read as follows:

Sec. 8a. (a) If a person violates a provision of this Act within the department's jurisdiction or a rule or order adopted or license or permit issued by the department under this Act, the department may assess a civil penalty against that person as provided by this section.

(b) The penalty may be in an amount not to exceed \$10,000.00 a day for a person who violates this Act or a rule, order, license, permit or regulation issued under this Act. Each day a violation continues may be considered a separate violation for purposes of penalty.

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

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If, after examination of a possible violation and the facts surrounding that possible violation, the department concludes that a violation has occurred, the department may issue a preliminary report stating the facts on which it based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The department shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.

(e) Not later than the 10th day after the date on which the report is issued, the department shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date on which notice is sent, the person charged may either give to the commissioner written consent to the department's report, including the recommended penalty, or make a written request for a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the commissioner or fails to timely respond to the notice, the commissioner or his designee by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the department's report. If the commissioner or his designee assesses the penalty recommended by the report, the department shall give written notice to the person charged of the decision and the person charged shall pay the penalty.

(h) If the person charged requests or the commissioner orders a hearing, the commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the commissioner by order either may find a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(i) The commissioner shall give notice of his decision to the person charged, and if the commissioner finds that a violation has occurred and has assessed a civil penalty, the commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the commissioner's order.

(j) Within the 30-day period immediately following the day on which the commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:

(1) pay the penalty in full; or
 (2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

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

(B) instead of payment into an escrow account, post with the commissioner a supersedeas bond in a form approved by the commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the commissioner under Subsection (j) of this section and ending on the date the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

ARTICLE 9

SECTION 1. Section 1, Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Hemophilia" means a human physical condition characterized by bleeding resulting from a genetically determined deficiency of a blood coagulation factor or hereditarily resulting in an abnormal or deficient plasma procoagulant.

(2) [~~"Committee"~~] means the hemophilia advisory committee.

[~~(3)~~] "Department" means the Texas Department of Health [~~Resources~~].

[~~(4)~~] "~~Program~~" means the hemophilia assistance program.]

(3) "Commissioner" [~~(5)~~ "~~Director~~"] means the commissioner[~~director~~] of health [~~resources~~].

(4) [~~(6)~~] "Administrator" means a person employed or appointed by the commissioner [~~director~~] to administer the program.

SECTION 2. Section 2(b), Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall, in the order of priority listed:

(1) set standards of eligibility for assistance under this Act in conformance with Section 6 of this Act; and

(2) provide financial assistance for medically eligible persons, through approved providers, in obtaining blood, blood derivatives and concentrates, and other substances for use in medical or dental facilities or in the home.

SECTION 3. Section 3(b), Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The administrator shall report to the *commissioner* [~~director~~].

SECTION 4. Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is amended by adding Section 6 to read as follows:

Sec. 6. ELIGIBILITY; RECOVERY OF COSTS. (a) *A person is not eligible to receive services provided by this Act to the extent that a person who has a legal obligation to provide for the person's care and treatment is financially able to pay for all or part of the services provided by this Act. The department shall require the person or a person who has a legal obligation to provide for the person's care and treatment and who is financially able to bear a portion of the expense to pay for or reimburse the department for the portion of the cost of the services provided by the department to the person for whom application is made or by whom the services are received.*

(b) *In this section, "other benefit" means a benefit, other than a benefit under this Act, to which a person is entitled for payment of the costs of blood, blood derivatives and concentrates, and other substances provided under this Act, including:*

(1) *benefits available from:*

(A) *an insurance policy, group health plan, or prepaid medical dental care plan;*

(B) *Title XVIII or Title XIX of the Social Security Act;*

(C) *the Veterans Administration;*

(D) *the Civilian Health and Medical Program of the Uniformed Services; or*

(E) *workers' compensation or any compulsory employers' insurance program;*

(2) *a public program created by federal law, state law, or the ordinances or rules of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or the facilities of a publicly supported medical school; or*

(3) *benefits available from a cause of action for medical or dental expenses to a person applying for or receiving services from the department or a settlement or judgment based on the cause of action if the expenses are related to the need for services provided under this Act.*

(c) *A person is not eligible to receive services provided by this Act to the extent that the person or a person who has a legal obligation to support the person is eligible for some other benefit that would pay for all or part of the services provided by this Act.*

(d) *An applicant for or a recipient of services provided under this Act shall inform the department at the time of application, or at the time the applicant receives services, of any other benefit to which the person or any other person who has a legal obligation to support the person may be entitled.*

(e) *The person or any other person who has a legal obligation to support the person who has received services that are covered by some other benefit shall reimburse the department to the extent of the services provided when the other benefit is received.*

(f) *The department may recover the cost of services provided under this Act from a person who does not reimburse the department as required by Subsection (a) or (e) of this section or from any third party who has a legal obligation to pay other benefits and to whom notice of the department's interest has been given. At the request of the commissioner of health, the attorney general may bring suit in the appropriate court of Travis County on behalf of the department. The court may award attorney's fees, court costs, and interest accruing from the date the department provides the service to the date the department is reimbursed in a judgment in favor of the department.*

SECTION 5. Section 5, Chapter 274, Acts of the 65th Legislature, Regular Session, 1977 (Article 4477-30, Vernon's Texas Civil Statutes), is repealed.

ARTICLE 10

SECTION 1. Section 3(g), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(g) "Registration" means:

(1) *the notification of the Agency of the service or use of a product or device that has an electronic circuit that can generate or emit a physical field of radiation during operation; or*

(2) *the satisfaction of registration requirements imposed by rule under Section 6(d) of this Act for entities possessing other state or federal licenses [an activity involving the operation of radiation producing equipment or the manufacture, use, handling, or storage of radioactive material. Said notice shall state the location, nature, and scope of such operation, manufacture, use, handling, or storage].*

SECTION 2. Section 4(d), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The Agency shall, for the protection of the occupational and public health and safety and the environment:

(1) Develop programs for evaluation of hazards associated with use of sources of radiation;

(2) Develop programs with due regard for compatibility with federal programs for regulation of sources of radiation;

(3) Formulate, adopt, promulgate and repeal rules and guidelines, which shall provide for licensing and registration, relating to control and transport of sources of radiation with due regard for compatibility with the regulatory programs of the Federal Government;

(4) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this Act;

(5) Advise, consult, and cooperate with other agencies of the state, the Federal Government, other states and interstate agencies, local governments, and with groups concerned with control and transport of sources of radiation;

(6) Have the authority to accept and administer loans, grants or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the Federal Government and from other sources, public or private;

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation;

(8) Collect and disseminate information relating to control and transport of sources of radiation, including:

(A) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions and revocations;

(B) Maintenance of a file of registrants possessing sources of radiation requiring registration under the provisions of this Act and any administrative or judicial action pertaining thereto;

(C) Maintenance of a file of all rules and guidelines relating to regulation of sources of radiation, pending or promulgated, and proceedings thereon; and

(D) Maintenance of a file of all known locations in Texas where radioactive material has been disposed of and where soils or facilities have been contaminated, together with any information on inspection reports concerning the material disposed of and on radiation levels at the locations;

(9) Have the authority to acquire by purchase, gift, or under any other authority of law any by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act and fee simple title in any land, affected mineral rights, and in buildings at which by-product material as defined in Subdivision (2) of Subsection (a) of Section 3 of this Act has been disposed of and abandoned, so that it can be managed in a manner consistent with public health, safety, and the environment;

(9A) Have the authority to acquire, by purchase or gift, fee simple title in any land, affected mineral rights, and in buildings at which radioactive waste is being or can be disposed of in a manner consistent with public health and safety and the environment. Property acquired under this subsection shall be dedicated to use only for disposing of radioactive waste until the Agency determines that another use would not endanger the health, safety, or general welfare of the public or the environment. All right, title, and interest in, of, and to radioactive waste accepted for disposal at these facilities shall become the property of the state and shall be administered and controlled in the name of the state;

(9B) Have the authority to lease property acquired under Subsection (9A) of this section to persons to operate sites for disposing of radioactive waste. A person's actions in disposing of radioactive waste shall be under the direct regulation of the Agency and shall be in accordance with rules adopted by the Agency;

(9C) Formulate, adopt, promulgate, and repeal rules and guidelines providing for the transport and routing of radioactive material within the State of Texas;

(9D) Conduct studies of the need for radioactive waste processing and disposal facilities and technologies as considered necessary by the Agency to minimize the risks to the public and the environment from the management of radioactive waste;

(9E) Establish, as considered necessary by the Agency, a classification system for radioactive waste based on radiological, chemical, and biological characteristics and on physical state so that radioactive wastes can be managed safely and compatibly; and

(9F) Cooperate with and encourage the use of interstate compacts, including the Southern States Energy Board, for the development of regional sites that divide the burden of disposal of radioactive waste generated in the region among the states;

(10) Administer the fund in accordance with Section 16 of this Act; ~~and~~

(11) Prepare and update emergency and environmental surveillance plans for fixed nuclear facilities within the State of Texas; and

(12) Adopt as a rule any memorandum of understanding between the Agency and any other state agency.

SECTION 3. Section 5(a), Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) There is hereby established a Radiation Advisory Board consisting of eighteen (18) members. The Governor shall appoint to the Board individuals as follows: one (1) from industry, who shall be trained in the field of nuclear physics, science and/or nuclear engineering; one (1) from labor; one (1) from agriculture; one (1) from insurance; one (1) engaged in the use and application of nuclear physics in medicine; one (1) from public safety; one (1) hospital administrator; two (2) representatives of the general public; three (3) persons licensed by the Texas State Board of Medical Examiners specializing in: one (1) from nuclear medicine, one (1) from pathology, and one (1) from radiology; *one (1) representative [two (2) representatives]* from the nuclear utility industry; one (1) representative of the radioactive waste processing industry; one (1) representative of the petroleum well-servicing industry; one (1) health physicist; *one (1) representative licensed by the State Board of Dental Examiners;* and one (1) representative from the uranium mining industry. A person is not eligible for appointment as a representative of the general public if the person or the person's spouse is engaged in an occupation in the field of health care or is employed by, participates in the management of, or has, other than as a consumer, a financial interest in part of the nuclear utility industry or in a business entity or other organization that is licensed under Section 6A or 6B of this Act. Members of the Board hold office for staggered terms of six (6) years. Provided, members of the Board shall receive no salary for services but may be reimbursed for actual expenses incurred in connection with attendance at Board meetings or for authorized business of the Board.

SECTION 4. Section 7, Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) The Agency shall adopt rules regarding the frequency of inspection by the Agency of devices that have electronic circuits that can generate or emit physical fields of radiation during operation. In developing the rules required by this subsection, the Agency shall take into account the threat to human health and safety that the various devices may present. An inspection interval of five years for routine inspections shall be adopted for those devices that present a minimal threat to human health and safety.

SECTION 5. Section 11, Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW. (a) The Agency may promulgate, amend, and revoke rules and guidelines relating to control of sources of radiation in the manner provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) The Agency shall afford *notice and* an opportunity for a hearing in accordance with the Agency's formal hearing procedures and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), on written request of any person affected by the following procedures:

(1) the [~~grant,~~] denial, suspension, or revocation [~~; or amendment~~] of any license or registration; [~~or~~]

(2) the determination of compliance with or the grant of exemptions from a rule or order of the Agency; or

(3) *the grant or amendment of a specific license.*

(c) This subsection does not apply to license or registration activities for which notice and hearing are required under other provisions of this Act.

(d) Whenever the Agency finds that an emergency exists requiring immediate action to protect the public health and safety and the environment, the Agency may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as it shall direct to meet the emergency. Notwithstanding any other provision of this Act, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately. On written application to the Agency within thirty (30) days of the date of the emergency order, the person to whom the order was directed shall be afforded an opportunity for a hearing. The hearing shall be held within not less than ten (10) days nor more than twenty (20) days after the Agency receives the written application. On the basis of such hearing, the emergency order shall be continued, modified, or revoked by the Agency.

(e) ~~(d)~~ Judicial review of Agency decisions, rules, guidelines, and orders made, promulgated, issued, amended, or revoked under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), shall be under the substantial evidence rule. A person who has exhausted all administrative remedies available within the Agency and who is affected by a final decision of the Agency is entitled to judicial review under the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 6. Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Section 15C to read as follows:

Sec. 15C. ADMINISTRATIVE PENALTY. (a) *If a person violates this Act or a rule or order adopted or license or registration issued under this Act, the Agency may assess a civil penalty against that person as provided by this section.*

(b) *The penalty may be in an amount not to exceed \$10,000 a day for a person who violates this Act or a rule, order, license, registration or regulation issued under this Act. Each day a violation continues may be considered a separate violation for purposes of penalty assessment.*

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

(1) *the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard created to the health or safety of the public;*

(2) *the history of previous violations;*

(3) *the amount necessary to deter future violations;*

(4) *efforts to correct the violation; and*

(5) *any other matters that justice may require.*

(d) *If, after examination of a possible violation and the facts surrounding that possible violation, the Agency concludes that a violation has occurred, the Agency may issue a preliminary report stating the facts on which it based the conclusion that a violation has occurred, recommending that a civil penalty under this section be imposed on the person charged, and recommending the amount of that proposed penalty. The Agency shall base the recommended amount of the proposed penalty on the seriousness of the violation as determined from the facts surrounding the violation.*

(e) *Not later than the 10th day after the date on which the report is issued, the Agency shall give written notice of the report to the person charged with the violation. The notice shall include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty or both the occurrence of the violation and the amount of the penalty.*

(f) *Not later than the 20th day after the date on which notice is sent, the person charged may either give to the Agency written consent to the Agency's report, including the recommended penalty, or make a written request for a hearing.*

(g) *If the person charged with the violation consents to the penalty recommended by the Agency or fails to timely respond to the notice, the Commissioner of Health or his designee by order shall either assess that penalty or order that a hearing be held on the findings and recommendations in the Agency's report. If the Commissioner or his designee assesses the penalty recommended by the report, the Agency shall give written notice to the person charged of the decision and the person charged shall pay the penalty.*

(h) *If the person charged requests or the Commissioner or his designee orders a hearing, the Commissioner shall call a hearing and give notice of the hearing. The hearing shall be held by a hearing examiner designated by the Commissioner. The hearing examiner shall make findings of fact and promptly issue to the Commissioner a written decision as to the occurrence of the violation and recommendation as to the amount of the proposed penalty if a penalty is warranted. Based on the findings of fact and recommendations of the hearing examiner, the Commissioner by order either may find that a violation has occurred and may assess a civil penalty or may find that no violation has occurred. All proceedings under this subsection are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(i) *The Commissioner shall give notice of his decision to the person charged, and if the Commissioner finds that a violation has occurred and has assessed a civil penalty, the Commissioner shall give written notice to the person charged of his findings, of the amount of the penalty, and of the person's right to judicial review of the Commissioner's order.*

(j) *Within the 30-day period immediately following the day on which the Commissioner's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person charged with the penalty shall:*

(1) *pay the penalty in full; or*

(2) if the person seeks judicial review of either the fact of the violation or the amount of the penalty or of both the fact of the violation and the amount of the penalty:

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

(B) instead of payment into an escrow account, post with the Commissioner a supersedeas bond in a form approved by the Commissioner for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(k) Failure to forward the money to or to post the bond with the Commissioner within the time provided by Subsection (j) of this section results in a waiver of all legal rights to judicial review. Also, if the person charged fails to forward the money or post the bond within the time provided by Subsection (g) or (j) of this section, the Commissioner may forward the matter to the attorney general for enforcement.

(l) Judicial review of the order or decision of the Commissioner assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(m) If the penalty is reduced or not assessed, the Commissioner shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the Commissioner under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the Commissioner under Subsection (j) of this section and ending on the date that the penalty is remitted.

(n) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 7. Chapter 72, Acts of the 57th Legislature, Regular Session, 1961 (Article 4590f, Vernon's Texas Civil Statutes), is amended by adding Section 19 to read as follows:

Sec. 19. IMPORTATION OF LOW-LEVEL RADIOACTIVE WASTE FOR PROCESSING. (a) The Agency by rule may prohibit a person who is licensed as a processor of radioactive waste under this Act from accepting for processing low-level radioactive waste generated outside this state.

(b) A rule adopted under Subsection (a) of this section may not take effect sooner than 24 months before the opening date of a low-level radioactive waste disposal site authorized under the Texas Low-Level Radioactive Waste Disposal Authority Act (Article 4590f-1, Vernon's Texas Civil Statutes) and expires on the date that the disposal site opens.

ARTICLE 11

SECTION 1. Sections 2, 3, 4, 5, 6, and 7, Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. DEFINITIONS. In [When used in] this Act: [;]

(1) "Board" [~~"board"~~] means the Texas [Occupational Safety] Board of Health. [~~created herein;~~]

(2) "Engineer" [~~"engineer"~~] means the State Safety Engineer. [;]

(3) "Director" [~~"director"~~] means the director [Director] of the Division of Occupational Safety of the Texas [State] Department of Health. [;]

(4) "Division" [~~"division"~~] means the Division of Occupational Safety of the Texas [State] Department of Health. [;]

(5) "Employer" means an individual [~~"employer"~~ includes every person], firm, corporation, partnership, stock association, agent, manager, representative, [or] foreman, or any other person who has [having] control or custody of any employment, place of employment, or [any] employee. The term does not include a carrier [; except carriers] regulated by the Interstate Commerce Commission, except that the term does include railroads. [;]

(6) "Employee" [~~"employee"~~] means an individual [a person] who works for an employer for wages, compensation, or other things of value. The term does [; but shall] not include an individual [any person] employed to perform [in the] domestic services [of another] in a private residence. [;]

(7) "Safe" [~~"safe"~~ and "~~safety"~~] as applied to employment or places of employment, means [mean such] freedom to employees from occupational injury as the nature of the employment reasonably permits. [;]

(8) "Safeguard" means [~~"safety device"~~ and "~~safeguard"~~ shall be given a broad interpretation so as to include] any practicable method of mitigating or preventing occupational injury. [and]

(9) "Place [~~place~~] of employment" means every place where, either temporarily or permanently, any trade, industry, or business is carried on, or where any *employee* [~~person~~] is directly or indirectly employed by another for direct or indirect gain or profit [~~; but not including domestic service performed in a private residence~~]. *The term does not include a private residence where domestic service is performed.*

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

(11) "Commissioner" means the Commissioner of Health.

Sec. 3. DUTIES OF EMPLOYERS. [~~(a)~~] Every employer shall furnish and maintain employment and a place of employment which shall be reasonably safe and healthful for employees. Every employer shall install, maintain, and use such methods, processes, devices, and safeguards, including methods of sanitation and hygiene, as are reasonably necessary to protect the life, health, and safety of such employees, and shall do every other thing reasonably necessary to render safe such employment and place of employment.

[(b) Every employer shall comply with every rule lawfully made by the board in accordance with the provisions of this Act; provided, however, any employer or group of employers in the same or similar industry, trade, or business may from time to time be exempt by the board from application of any rule or rules in accordance with his safety classification as determined by the board pursuant to Section 7(a) of this Act.

[(c) However, no rule or standard promulgated under this Act shall, or shall be deemed to, establish legal standards of conduct or legal duties, the violation of which standards or duties would constitute negligence or gross negligence in any civil proceeding.]

Sec. 4. OCCUPATIONAL SAFETY *DIVISION* [~~BOARD~~]. (a) For the purpose of administering the provisions of this Act there is [~~hereby~~] created within the *department* [~~State Department of Health~~] a Division of Occupational Safety to be administered by [~~an Occupational Safety Board consisting of three members, one to be the Commissioner of Labor Statistics, one to be the Commissioner of Health, and the third to be the public member who shall also serve as chairman of~~] the board.

(b) *The Division of Occupational Safety shall:*

(1) *consult with employers regarding compliance with federal occupational safety laws and rules;*

(2) *collect information and data relating to occupational safety as required by federal laws, rules, or agreements; and*

(3) *perform other duties as required by the board.*

(c) *The board may enter into contracts with the federal government to perform occupational safety projects and may apply for funds from the federal government through any federal program relating to occupational safety. The board may adopt rules to implement this Act. [The public member shall be appointed by the governor to serve for a term of two years, or until his successor is appointed and qualified. Vacancies in the position of public member shall be filled for an unexpired term by appointment by the governor in the same manner as the original appointment. The terms on the board of the Commissioner of Labor Statistics and the Commissioner of Health shall be coextensive with their tenure as such Commissioners, respectively.]*

[(b) The members of the board created hereby shall receive no salary but the public member shall be allowed the sum of \$25 for each day or part thereof actually spent in the discharge of his official duties, including time spent in traveling to and from the place of meeting or other authorized business of the board, and all members of the board shall be reimbursed for their reasonable and necessary traveling and other expenses while in performance of official duty, to be evidenced by vouchers approved by the engineer. The engineer is hereby authorized and directed to provide such board with such technical, clerical, and other assistance as shall be necessary to permit said board to perform its duties as provided in this Act.

[(c) After due notice of meetings, a majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board. No vacancy shall impair the right of the remaining member or members of the board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Occupational Safety Board, Department of Health, State of Texas." Any order, rule or proceeding of said board when duly attested by any member of the board shall be admissible as evidence of the act of said board in any court of this state.

[(d) The Occupational Safety Board is subject to the Texas Sunset Act, and unless continued in existence as provided by that Act the board is abolished, and this Act expires effective September 1, 1985.]

Sec. 5. SAFETY ENGINEER. (a) The commissioner [board] shall employ a State Safety Engineer who shall be the director of the Division of Occupational Safety.

(b) ~~The engineer shall hold an earned [; under the control of the board, and who shall have the following qualifications:~~

~~[(1) he shall have a] degree in engineering from an accredited college or university or [shall] be a registered professional engineer and [; in addition,] shall have not less than three years' experience [been engaged] in safety engineering [with at least three years' experience] or~~

~~[(2) he shall hold an earned [have a college] degree in another academic discipline [other than that specified in (1) hereof] and [; in addition, shall] have been engaged in safety engineering for [with] at least five years. [years' experience; or] In [(3) in] lieu of a college degree as specified by this subsection, the engineer [in (1) and (2) hereof, he] shall have [been engaged in safety engineering for a period of] not less than 10 years' experience in safety engineering [years].~~

(c) ~~[(b)]~~ The engineer shall administer the operation of the division [; under control of the board]. The engineer [He] shall employ and supervise such personnel as may be necessary for the proper conduct of the operation of the division. The engineer [He] shall devote full time to the [his] duties as engineer and may not accept additional employment from any other source.

~~[(e)]~~ The engineer shall make annual reports to the board and to the Governor of the State of Texas at the close of each fiscal year. The reports shall contain the following information to be obtained from the records: (i) accident frequency rates; (ii) accident severity rates; (iii) time loss from industrial accidents; (iv) location and cause of industrial accidents; and (v) all of such information shall be reported by industrial and occupational classification.

~~[(d)]~~ The engineer shall cause to be inspected any plant or facility when he has reason to believe that the plant or facility has not complied with the rules, standards and regulations established by the board. No plant or facility shall be subject to this paragraph when it is entitled to credit on its workmen's compensation insurance rate.]

Sec. 6. CONFIDENTIAL INFORMATION. No information relating to secret processes or methods of manufacture or products shall be disclosed at any public hearing or otherwise, and all such information shall be kept strictly confidential by the engineer, the board, and all employees thereof. Wilful disclosure or conspiracy to disclose confidential information disclosed under this section constitutes an offense against the state. The engineer, the board, or any employee thereof, who, having knowledge of confidential information, wilfully discloses or conspires to disclose such information is guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed \$1,000 and forfeiture of that person's [his] appointment as engineer, member of the board, or employee of the board.

Sec. 7. CLASSIFICATION, CONSULTATIVE AND EDUCATIONAL POWERS.

(a) For purposes of establishing a safety classification for employers, the board is authorized, empowered, and directed to secure medical and compensation costs data regularly compiled by the State Board of Insurance in carrying out its rate-making duties and functions with respect to the employers' liability and workers' [workmen's] compensation insurance law, to obtain from the commissioner of the Texas Department of Labor and Standards [Commissioner of Labor Statistics] such statistical details as are collected by that department [him] and to collect and compile information relating to employers' accident frequency rate, existence and implementation of private safety programs, man-hour losses due to injuries, and other facts reflecting accident experience and, based upon all such factors to separate employers into such classifications as the board deems appropriate in order to carry out the purposes of this Act.

(b) The board is authorized and empowered, through any member, the engineer or any agent or employee in the division authorized by it for such purpose to endeavor to eliminate any impediment to occupational or industrial safety called to its attention by an affected employer. In [; and to otherwise effectuate the purposes of this Act, by means of conference, conciliation, and persuasion, in] carrying out such endeavor it is authorized and empowered to advise and consult with any employer directly involved and with the representative of that employer, if any [representatives of employers and employees and public officials].

(c) The board may [is empowered to] issue [or cause to be issued such] publications and [such] reports of study and research as in its judgment [will] tend to promote occupational and industrial safety and minimize or eliminate any impediment to safety called to its attention, and to otherwise effectuate the purposes and policies of this Act.

SECTION 2. Sections 8, 9, 10, 11, 12, and 13, Chapter 201, Acts of the 60th Legislature, Regular Session, 1967 (Article 5182a, Vernon's Texas Civil Statutes), are repealed.

ARTICLE 12

SECTION 1. Chapter 73, Human Resources Code, is amended to read as follows:

CHAPTER 73. INTERAGENCY COUNCIL ON EARLY CHILDHOOD INTERVENTION SERVICES

Sec. 73.001. **DEFINITIONS.** In this chapter:

(1) "Council" means the Interagency Council on Early Childhood Intervention Services.

(2) "Developmentally delayed child" means a child who is determined by an interdisciplinary team to exhibit [exhibits]:

(A) a significant delay, beyond acceptable variations in normal development, in one or more of the following areas:

- (i) cognitive;
- (ii) gross or fine motor;
- (iii) language or speech;
- (iv) social or emotional;
- (v) self-help skills; or

(B) an organic defect or a condition that is very likely to result in a delay in one or more of those capabilities or skills.

Sec. 73.002. **INTERAGENCY COUNCIL.** (a) The council is composed of one lay member who is the parent of a developmentally delayed child and one representative each from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency. The governor with the advice and consent of the senate shall appoint the lay member, and the commissioner of each agency shall appoint that agency's representative. *The agency representative should be a person in the agency with administrative responsibility for the supervision of early childhood intervention support staff or related services.*

(b) A member appointed by an agency serves for a term of two years or until the person terminates employment with the agency, whichever occurs first. The member appointed by the governor serves for a term of two years expiring February 1 of every odd-numbered year.

(c) The members of the council shall annually elect one member to serve as *chairperson* [chairman].

(d) The council shall meet at least quarterly and shall adopt rules for the conduct of its meetings.

(e) Any action taken by the council must be approved by a majority vote of the members present.

(f) *The council shall establish a policy for carrying out its duties under this chapter.*

(g) *The council shall direct the Texas Department of Health to allocate funds appropriated to the Texas Department of Health under this chapter to each agency that assumes implementation responsibilities.*

(h) *The council shall develop a method for programs funded under this chapter to respond to individual complaints regarding services provided by the program.*

Sec. 73.003. **STATE PLAN.** (a) The council shall develop and implement a state plan for early childhood intervention services to ensure that:

(1) the provisions of this chapter are properly implemented by the agencies affected;

(2) child and family needs are assessed statewide and all available resources are coordinated to meet those needs;

(3) manpower needs are assessed statewide and strategies are developed to meet those needs;

(4) incentives are offered for private sources to maintain present commitments and to assist in developing new programs; and

(5) a procedure for review of individual complaints about services provided under this chapter is implemented.

(b) The council shall make written recommendations for the carrying out of its duties under this chapter. If the council considers a recommendation that will affect an agency not represented on the council, the council shall seek the advice and assistance of the agency before taking action on the recommendation. The council's recommendations shall be implemented by the agencies affected by the recommendations.

Sec. 73.004. **ADVISORY COMMITTEE.** (a) The council shall establish an advisory committee composed of parents, professionals, and advocacy groups. The council shall appoint as many members as it considers necessary to assist the council in the performance of its duties.

(b) The committee shall meet and serve under the rules of the council, but the committee shall elect its own *chairperson* [chairman]. The committee may be divided into regional committees to assist the council in community-level program planning and implementation.

Sec. 73.005. DUTIES. (a) The council with the advice of the committee shall address contemporary issues affecting intervention services in the state including:

- (1) successful intervention strategies;
- (2) personnel preparation and continuing education;
- (3) screening services;
- (4) day or respite care services;
- (5) public awareness; and
- (6) contemporary research.

(b) The council with the advice of the committee shall advise the legislature on legislation that is needed to develop further and to maintain a statewide system of quality intervention services for all developmentally delayed children under three years of age. The council may develop and submit legislation to the legislature or comment on pending legislation that affects this population.

Sec. 73.006. REIMBURSEMENT AND STAFF SUPPORT. (a) *Agency representatives on the council are entitled to reimbursement for expenses incurred in the performance of their council duties by the appointing agencies in accordance with the travel provisions for state employees in the General Appropriations Act. The lay member and advisory committee members are entitled to reimbursement from the council* [~~Council and committee members are entitled to reimbursement~~] for actual and necessary expenses incurred in the performance of council [their] duties. [~~The agencies represented on the council shall equally bear the cost of reimbursement.~~]

(b) The agencies represented on the council shall provide staff support to the council. The agencies may provide staff support to the committee.

(c) *The council shall select an early childhood intervention administrator and shall direct the Texas Department of Health to employ that person.*

Sec. 73.007. PUBLIC AWARENESS AND TRAINING. [~~(a) The council shall develop [Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Resources, and the Central Education Agency shall jointly develop] and implement:~~

(1) a general public awareness strategy focusing on the importance of prenatal care and early detection of developmental delay and the availability of state resources to meet the needs of developmentally delayed children under six years of age; and

(2) a statewide plan for conducting regional training sessions for public and private service providers who have routine contact with children under six years of age that focuses on methods for early detection of developmental delay.

[~~(b) The Texas Department of Health shall allocate funds appropriated to it under this chapter to other agencies that assume implementation responsibilities.~~]

Sec. 73.008. EARLY IDENTIFICATION STRATEGY. (a) *The council [Texas Department of Health] shall develop and implement a statewide strategy for the early identification of developmentally delayed children under six years of age, utilizing information from other agencies serving handicapped children.*

(b) The strategy must include plans to:

(1) incorporate, strengthen, and expand similar existing local efforts;

(2) incorporate and coordinate screening services currently provided through a public agency; and

(3) establish a liaison with primary referral sources, including hospitals, physicians, public health facilities, and day-care facilities, to encourage referrals of developmentally delayed children.

Sec. 73.009. REFERRAL FOR SERVICES. (a) *The council shall establish policies to provide direction to the Texas Department of Health in performing the services described by this section. A child under six years of age may be referred to the Texas Department of Health for services described by this section if the child is:*

(1) identified as developmentally delayed;

(2) suspected of being developmentally delayed; or

(3) considered at risk of developmental delay because of certain biological or environmental factors.

(b) For each child referred, the *Texas Department of Health* [~~department~~] shall:

(1) seek appropriate medical or developmental screening or evaluation and if such screening services or evaluation services are not available, the *Texas Department of Health* [~~department~~] shall provide those services either directly or by contract; and

(2) refer the child to a public or private program that can meet the child's needs.

(c) Services under this section shall be provided in a manner that minimizes intrusion into family privacy.

Sec. 73.010. **ELIGIBILITY FOR SERVICES.** (a) A developmentally delayed child is eligible for services under *this chapter* [Sections 73.011, 73.012, 73.013, and 73.016 of this code] if the child:

(1) is under three years of age; ~~or~~

(2) has not reached the age of eligibility for entry into the comprehensive special education program for handicapped children under Section 21.501, ~~[16.104 of the Texas Education Code; or~~

(3) *is under three years of age and is an eligible child authorized under Section 11.052(a) and Section 11.10(a), Education Code* [~~as amended~~].

(b) *The Texas Department of Health may charge fees for services provided under this chapter.*

Sec. 73.011. **PARENT COUNSELING AND CASE MANAGEMENT.** (a) *The council shall establish policies to provide direction to the Texas Department of Health concerning the services described by this section.* For an eligible developmentally delayed child, the Texas Department of Health shall provide parent counseling and case management services designed to:

(1) assist in the development of positive attitudes and coping skills;

(2) provide objective information about alternatives for securing direct services for the child;

(3) actively involve the case manager in procuring needed services on the parent's behalf;

(4) actively involve the case manager in responding to complaints about services procured through this process; and

(5) facilitate communication among providers serving the child, including the primary physician.

(b) The services shall be provided before a child is placed in an appropriate program. If the child is placed in a program that meets the standards established by Section 73.019 of this code, that program shall assume responsibility for providing parent counseling and case management services following placement. If the child is not placed in such a program, the *Texas Department of Health* [department] shall continue to provide those services.

Sec. 73.012. **MONITORING.** (a) *The council shall develop policies to provide direction to the Texas Department of Health in implementing a system to ensure that* [Texas Department of Health shall monitor] the overall progress of an eligible developmentally delayed child who receives services under this chapter *is monitored* until the child enters the public school system, including the monitoring of the parental counseling and case management services.

(b) Periodic reevaluations shall be obtained as the *Texas Department of Health* [department] considers necessary. If an original placement no longer meets the child's needs, the *Texas Department of Health* [department] shall provide additional referrals.

Sec. 73.013. **INTERVENTION SERVICES.** (a) *The council shall develop policies to provide direction to the Texas Department of Health in providing* [shall provide] intervention services to an eligible developmentally delayed child if the *Texas Department of Health* [department] is not able to place the child in a program that meets the standards established by Section 73.019 of this code.

(b) Intervention services must include:

(1) training, counseling, and case management services for the child's parents;

(2) [individualized] instruction or treatment *based on an individualized plan* in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(3) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, and transportation.

(c) The Texas Department of Health may either directly provide the services needed to comply with the requirements of this section or contract for the provision of the services.

Sec. 73.014. **REPORT.** *The agencies represented on the council and the lay member* [Texas Department of Health] shall report to the council any needs *that are identified for the provision of early childhood intervention services* [identified in areas where a program that meets the standards established by Section 73.010 of this code is not available].

Sec. 73.015. **NEW PROGRAM STRATEGY.** The council shall develop a strategy for establishing new programs to meet needs identified by the *agencies represented on the council and the lay member* [Texas Department of Health] in accordance with Section 73.014 of this code.

Sec. 73.016. **GRANT REQUEST FOR [NEW] PROGRAM.** A public or private service provider may apply for funds to provide a program of intervention services for eligible developmentally delayed children in an area of identified need by submitting a grant request to

the council [~~Central Education Agency or the Texas Department of Mental Health and Mental Retardation~~]. The council shall adopt guidelines for the submission and processing of grant requests [~~determining which agency shall receive a request; but each agency shall process any request received~~].

Sec. 73.017. APPROVAL CRITERIA. [~~(a) The agency receiving a request for funding for a new program shall transmit the request to the council for approval.~~

[~~(b)~~] The council shall review the requests for funding a program on a competitive basis giving consideration to the following:

- (1) the extent to which the program would meet identified needs;
- (2) the cost of initiating a program, if applicable;
- (3) whether other funding sources are available;
- (4) the proposed cost to the parents for the services; and
- (5) the assurance of quality services.

Sec. 73.018. PROGRAM APPROVAL. (a) For each grant approved by the council, the council shall direct the Texas Department of Health to allocate appropriated funds for the program to the service provider in the amount specified by the council.

(b) The council [~~Texas Department of Health~~] shall require the service provider to execute a contract with the *Texas Department of Health* [~~department~~] specifying the program standards and council [~~agency~~] guidelines that the provider has agreed to meet.

(c) The contract must specify the [~~minimum and maximum~~] number of eligible developmentally delayed children to be served. [~~The program must serve at least the minimum number and may not be required to serve more than the maximum number specified.~~] If the number of eligible children applying for admission to an approved program exceeds the [~~maximum~~] number specified, the service provider may apply for supplemental funding if resources are available.

(d) The service provider may charge a fee for intervention services, based on the parent's ability to pay, to be used to offset the cost of providing or securing the services. If a fee is charged, a separate charge shall be made for each type of service. A determination of the parent's ability to pay for services must include a consideration of the availability of financial assistance or other benefits for which the child may be eligible.

Sec. 73.019. PROGRAM STANDARDS. Before a grant request for a new program may be approved, a service provider must agree to meet the following program standards:

(1) the program must be maintained within the guidelines established by the council [~~agency~~];

(2) the provider must ensure that for each child served an individualized developmental plan is developed and is based on a comprehensive developmental evaluation performed by an interdisciplinary team with parent participation and periodic review and reevaluation;

(3) the provider must provide services to meet the unique needs of each child as indicated by the child's individualized developmental plan;

(4) the provider must demonstrate a capability to obtain or provide an array of services that must include:

(A) training, counseling, case management services, and home visits for the parents of each child served;

(B) [~~individualized~~] instruction or treatment based on an individualized plan in the following areas of development: cognitive, gross or fine motor, language or speech, social or emotional, and self-help skills; and

(C) related services, including occupational therapy, physical therapy, speech and language therapy, adaptive equipment, transportation, and other therapies as needed or prescribed;

(5) the provider must maintain a plan for in-service personnel training;

(6) the provider must cooperate with the Texas Department of Health's monitoring and case management efforts; [~~and~~]

(7) the provider must cooperate with the periodic evaluation efforts of the council; and

(8) the provider must develop an approved method to respond to individual complaints regarding services provided by a program funded under this chapter in accordance with rules adopted by the council [~~agency~~].

Sec. 73.020. COUNCIL [~~AGENCY~~] GUIDELINES. (a) The council [~~agency that receives a grant request for a new program~~] shall develop specific program guidelines in the following areas:

- (1) instructional or treatment options;
- (2) frequency and duration of service;
- (3) staff-child ratios;

(4) staff composition and qualifications; and

(5) other program aspects designed to ensure the provision of quality services.

(b) *The provisions of this chapter do not affect the existing authority of a state agency to provide services to a child who meets the eligibility criteria provided by this chapter. The council [agency] may modify the standards established by Section 73.019 of this code if the council [agency] considers the modifications necessary for a particular program.*

Sec. 73.021. PROGRAM MONITORING [EVALUATION]. (a) *Under guidelines adopted by the council, the agency representatives or their designees [Each agency] shall periodically evaluate each program [operating under the agency's guidelines] to determine whether the provider is meeting the conditions of the contract. The agency representatives shall notify the council of the results of the evaluations.*

(b) *If the council [an agency] determines that a program is not meeting a requirement that was agreed on as a condition for funding, the council [agency] shall notify the Texas Department of Health to withhold further funding for the program. If the Texas Department of Health discovers gross mismanagement of a program, the department may withhold further funding for the program without obtaining the council's prior approval.*

SECTION 2. Section 11.092, Education Code, is repealed.

SECTION 3. Section 1, Article 5, Chapter 67, Acts of the 59th Legislature, Regular Session, 1965 (Article 5547-205, Vernon's Texas Civil Statutes), is repealed.

ARTICLE 13

SECTION 1. Section 5, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. The Licensing Agency, with the advice of the Hospital Licensing Advisory Council, shall adopt, amend, promulgate, and enforce such rules, regulations, and minimum standards as may be designed to further the purposes of this Act. Provided, however, that the rules, regulations, or minimum standards so adopted, amended, promulgated, or enforced shall be limited to safety, fire prevention, and sanitary provisions of hospitals as defined in this Act. Provided, however, that any rules, regulations, or standards set shall first be *adopted [approved] by the Texas [State] Board of Health in accordance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) [; and after they have been so approved, shall be approved also by the Attorney General as to their legality; and then filed with the Secretary of State, and no such rule or regulation shall be effective until it has been filed with the Secretary of State].*

The Commissioner of Health shall appoint, with the advice and consent of the *Texas [State]* Board of Health, a person to serve in the capacity of Hospital Licensing Director. The duties of such Hospital Licensing Director shall be the administration of this Act and he shall be directly responsible to the Licensing Agency. Any person so appointed as Hospital Licensing Director must possess the following qualifications: He shall have had at least five (5) years experience and/or training in the field of hospital administration, be of good moral character, and a resident of the State of Texas for a period of not less than three (3) years.

SECTION 2. The Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) is amended by adding Section 7A to read as follows:

Sec. 7A. HOSPITAL CONSTRUCTION PLAN APPROVAL. (a) *The Texas Board of Health shall adopt a fee schedule by rule for hospital plan reviews which is based on the estimated construction costs. If an estimated construction cost cannot be established, the estimated cost shall be based on \$105 per square foot. If a hospital undertakes a series of small projects, that require approval under this section, the estimated construction cost shall be accumulated over a 12-month period from the date of submitting the plans to the Licensing Agency for review. The fee schedule adopted shall not exceed the following:*

| <i>Cost of Construction</i> | <i>Fee</i> |
|--|--------------|
| <i>(1) Less than \$150,000</i> | <i>\$50</i> |
| <i>(2) \$ 150,001 - \$ 600,000</i> | <i>150</i> |
| <i>(3) \$ 600,001 - \$ 2,000,000</i> | <i>350</i> |
| <i>(4) \$ 2,000,001 - \$ 5,000,000</i> | <i>500</i> |
| <i>(5) \$ 5,000,001 - \$10,000,000</i> | <i>750</i> |
| <i>(6) \$10,000,001 - and over</i> | <i>1,000</i> |

(b) *The Texas Board of Health shall adopt a fee schedule by rule for field surveys of construction plans reviewed under this section which shall be no less than \$100 and no more than \$300 for each survey conducted.*

SECTION 3. Section 15, Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes), is repealed.

SECTION 4. Section 4(b), Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The Texas Department of Human Resources, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, and the Texas Commission on Alcoholism shall *execute a memorandum of understanding that establishes* [~~establish~~] procedures to eliminate or reduce duplication of functions in certifying or licensing hospitals, nursing homes, or other facilities under their jurisdiction for payments under the requirements of the Medical Assistance Program (Chapter 32, Human Resources Code) and federal laws and regulations relating to Titles XVIII and XIX of the Social Security Act. *Each agency by rule shall adopt the memorandum of understanding.* The procedures established under this section shall provide for use by the affected agencies of information collected by those agencies in making inspections for certification purposes and in investigating complaints regarding matters that would affect the certification of a nursing home or other facilities under their jurisdiction.

SECTION 5. Section 3.04, Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.04. **APPLICATION PROCEDURES; RULES; FEES.** (a) Applications for examination for personnel certification must be made to the department on a form and under rules prescribed by the board. A nonrefundable fee determined by the board shall accompany the application as follows:

(1) for examination for certification or recertification of a paramedic emergency medical technician or specially skilled emergency medical technician, a fee not to exceed an accumulated amount of \$7.50 a year; and

(2) for examination for certification or recertification of a basic emergency medical technician or emergency care attendant, a fee not to exceed an accumulated amount of \$5 a year.

(b) *Not later than the 30th day after the day on which an examination for certification or recertification is administered under this Act, the department shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the department shall notify examinees of the results of the examination not later than the 14th day after the day on which the department receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the department shall notify the examinee of the reason for the delay before the 90th day.*

(c) *If requested in writing by a person who fails the examination for certification or recertification administered under this Act, the department shall furnish the person with an analysis of the person's performance on the examination.*

(d) Emergency medical services personnel who meet the minimum standards for personnel certification adopted under Section 3.02 of this Act shall be issued a certificate by the department that is valid for a period of four years from the date of issuance.

(e) [~~e~~] Emergency medical services providers must submit an application for vehicle registration in accordance with procedures prescribed by the board. An emergency medical services volunteer provider must submit with the application a letter of sponsorship from a governmental entity. A nonrefundable fee determined by the board shall accompany the application and may not exceed \$25 for each emergency medical services vehicle or a maximum of \$500 for a fleet of emergency services vehicles. On inspection by the department, emergency medical services vehicles that meet the minimum standards adopted under Section 3.02 of this Act shall be issued a registration by the department that is valid for two years.

(f) [~~f~~] Inspections required under Subs on (e) [~~e~~] of this section may be delegated by the department to the commissioners court of a county or the governing body of a municipality at their request and in accordance with criteria and procedures adopted by the board. The commissioners court or governing body shall collect and retain the fee for vehicles it inspects.

(g) [~~g~~] Applications for approval of courses and of training programs must be made to the department on a form and under rules prescribed by the board. Training programs and courses that meet the minimum standards adopted under Section 3.02 of this Act must be approved by the department.

(h) [~~h~~] Application for certification of program instructors, examiners, and course coordinators must be made to the department on a form and under rules prescribed by the board. Program instructors, examiners, and course coordinators who meet the minimum standards adopted under Section 3.02 of this Act shall be issued a certificate that is valid for one year.

(i) [~~i~~] The board shall exempt from the payment of fees under this section all individuals who actively participate in the operations of an emergency medical services volunteer provider.

SECTION 6. The Emergency Medical Services Act (Article 4447o, Vernon's Texas Civil Statutes) is amended by adding Section 3.19 to read as follows:

Sec. 3.19. HOSPITAL-OPERATED EMERGENCY MEDICAL SERVICES PROVIDER. A hospital that owns, operates, or serves as an emergency medical services provider and that is transporting a person who is unconscious or unable to communicate because of an injury, accident, or illness and who is suffering from what reasonably appears to be a life-threatening injury or illness shall transport that person to the hospital that can provide appropriate emergency care nearest to the location at which the person was picked up.

SECTION 7. Section 5, Chapter 300, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. CERTIFICATES OF REGISTRATION; ELIGIBILITY FOR REGISTRATION. (a) The Board, upon application on the form prescribed by it, and upon the payment of a fee of Ten Dollars (\$10.00), shall issue a certificate of registration as a professional sanitarian to any person who has the qualifications stipulated under the provisions of this Act, and who submits evidence by passing a written examination prescribed by the Board satisfactory to the Board that the applicant is qualified under the provisions of this Act. In evaluating the evidence submitted to it, the Board shall carefully consider the applicant's knowledge and understanding of the principles of sanitation, the physical, biological, and social sciences [; provided that:

~~[(a) Any person, who, within six (6) months after the effective date of this Act, submits under oath evidence satisfactory to the Board that he has been a resident of the State of Texas for at least one (1) year immediately preceding the date of application, and that he was employed in the field of sanitation for a period of one (1) year prior to the effective date of this Act may be registered as a professional sanitarian].~~

(b) Any person [; other than those covered under paragraph (a);] who [after the effective date of this Act] applies for registration shall have had not less than one (1) year of full time experience in the field of sanitation and shall have completed training in the basic sciences and/or public health to the extent deemed necessary by the Board in order to effectively serve as a registered sanitarian. The educational requirements set forth by the Board shall not be at variance with the definition for Sanitarian set forth by the Position Classification Act of 1961. Other qualifications may be established by the Board in accordance with the rules and regulations adopted under this Act. Persons employed in the field of sanitation who meet all qualifications for registration as a professional sanitarian, except the qualifications of experience, shall, upon the approval by the Board and after payment of a fee of Five Dollars (\$5.00) and by passing a written examination prescribed by the Board, be granted a certificate of Sanitarian in Training. This certificate shall remain in effect unless revoked by the Board for a period not to exceed one (1) year after date of issue.

(c) *Not later than the 30th day after the day on which a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify examinees of the results of the examination not later than the 14th day after the day on which the Board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the Board shall notify the examinee of the reason for the delay before the 90th day.*

(d) *If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination.*

SECTION 8. Section 9, Chapter 300, Acts of the 59th Legislature, Regular Session, 1965 (Article 4477-3, Vernon's Texas Civil Statutes), is repealed.

SECTION 9. Chapter 498, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512d, Vernon's Texas Civil Statutes), is amended by adding Section 10A to read as follows:

Sec. 10A. EXAMINATION RESULTS. (a) *Not later than the 30th day after the day on which a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify examinees of the results of the examination not later than the 14th day after the day on which the board receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.*

(b) *If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.*

SECTION 10. Section 11, Chapter 498, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4512d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. LICENSE RENEWAL. (a) A license issued pursuant to this Act expires one year from the date of issuance.

(b) A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee.

(c) If a person's license has been expired for not longer than 90 days, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(d) If a person's license has been expired for longer than 90 days but less than two years, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(e) If a person's license has been expired for two years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in Texas, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

(f) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address [~~licenses shall be renewed according to procedures established by the board and payment of the renewal fee as set in Section 7 of this Act~~].

SECTION 11. Sections 2, 3, 4, 5, 7, 8, 11, and 26, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2. It is hereby found, determined, and declared that health-related equipment, as defined in this Act, in many portions of this state is presently obsolete, inadequate, or insufficient; that the cost of providing such health-related equipment within this state has in many cases become excessive; and that the present and prospective health, safety, and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded methods of providing such health-related equipment. *It is further found, determined, and declared that participating health-care providers, as herein defined, have responsibilities to their employees to make pension fund contributions, as herein defined, and that the present and prospective health, safety, and general welfare of this state require as a public purpose the promotion and development of new methods of funding such pension fund contributions.* It is the purpose of this Act to establish the Texas Hospital Equipment Financing Council, the board of trustees of which shall be appointed by the governor of the state with the advice and consent of the senate [~~comprised of the members of the hospital advisory council, as created under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes), or shall be appointed by the hospital advisory council,~~] as hereinafter provided, and to enable the financing council and the participating health-care providers, as herein defined, to provide at a reasonable cost health-related equipment, as herein defined, and pension fund contributions, as herein defined, which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state. It is therefore determined and declared as a matter of public policy that the establishment of the financing council, as herein defined, the issuance of revenue bonds and notes by the financing council, and the exercise of the other powers of the financing council, all as herein provided, are in the public interest and in furtherance of an important public purpose. The necessity in the public interest of the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

Sec. 3. When used in this Act, unless the context requires a different definition, the following terms shall mean as follows:

(1) "Act" means the Texas Hospital Equipment Financing Act.

(2) "Board" means the board of trustees of the financing council, as herein defined.

(3) "Bonds" means revenue bonds, notes, interim certificates, bond anticipation notes, or other evidences of indebtedness of the financing council, as herein defined, issued pursuant to this Act, including refunding bonds.

(4) "Cost" as applied to health-related equipment, as herein defined, means and includes any and all costs of or related or incidental to such equipment and, without limiting the generality of the foregoing, shall include the following:

(A) the cost of the acquisition, repair, reconditioning, restoration, modification, refinancing, or installation of any such health-related equipment;

(B) the cost of any property interest in such health-related equipment including an option to purchase or a leasehold interest;

(C) the cost of architectural, engineering, legal, and related services; the cost of the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue; and all other expenses necessary or incident to planning, providing, or determining the feasibility and practicability of such health-related equipment;

(D) the cost of financing charges and interest prior to acquisition and installation of such health-related equipment and for a maximum of two years after such acquisition and installation and start-up costs related to such health-related equipment and for a maximum of two years after such acquisition and installation;

(E) any and all costs paid or incurred in connection with the financing of such health-related equipment, including out-of-pocket expenses, the cost of financing, legal, accounting, financial advisory, and consulting fees, expenses, and disbursements; the cost of any policy of insurance; the cost of printing, engraving, and reproduction services; and the cost of the initial or acceptance fee of any trustee or paying agent;

(F) all direct or indirect costs of the financing council, as herein defined, and all direct or indirect costs, if any, of the hospital advisory council, as herein defined, incurred in connection with providing such health-related equipment, including without limitation reasonable sums to reimburse such financing council and, if necessary, the hospital advisory council for time spent by its agents or employees with respect to providing such health-related equipment and the financing and refinancing thereof; and

(G) any and all costs paid or incurred for the administration of any program for the purchase or lease of or the making of loans for health-related equipment, as herein defined, by the financing council; any program for the sale or lease of such health-related equipment to any participating health-care provider, as herein defined; and any program for loans to such participating health-care providers or to any entity which will provide loans to any participating health-care provider in either case to enable such providers to purchase such health-related equipment.

(5) "Financing council" means the Texas Hospital Equipment Financing Council created and existing under the provisions of this Act as a public agency, body politic, ~~[benefit corporation]~~ and constituted authority for the purposes set forth in this Act.

(6) "Health facility" means and includes any public or nonprofit health-care facility which is utilized in providing medical care, medical research, or the training or teaching of health-care personnel, any one or all, within this state and, without limiting the generality of the foregoing, shall include a ~~[public or private]~~ hospital, kidney disease treatment facility, radiation therapy facility, and alcoholism and drug treatment facility, so long as such health-care facility shall be licensed by the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, or the Texas Commission on Alcoholism or any successor or successors to such entities, and health facility shall also include any facility or building related to any health-care facility such as a pharmacy, laboratory, laundry facility, and food service and preparation facility.

(7) "Health-related equipment" means and includes any equipment which will improve medical care, research, training, or teaching, any one or all, in this state.

(8) ~~["Hospital advisory council" means the Texas Hospital Advisory Council, as established under the Texas Hospital Survey and Construction Act, as amended (Article 4437d, Vernon's Texas Civil Statutes):~~

~~[(9)]~~ "Participating health-care provider" means a public or private ~~[- profit or]~~ nonprofit corporation, association, foundation, trust, cooperative, agency, body politic, or similar person or organization authorized by the laws of this state to provide or operate a health facility, as herein defined, and which, pursuant to the provisions of this Act, contracts with or borrows from the financing council, as herein defined, or any entity which will provide loans for the financing or refinancing of the lease or other acquisition of health-related equipment, as herein defined, as provided in this Act.

(9) ~~[(10)]~~ "State" means the State of Texas.

(10) ~~[(11)]~~ "Trustee" means any member of the board, as herein defined. The use of a singular term herein shall also include the plural of such term, and the use of a plural term herein shall also include the singular of such term, and words of the masculine, feminine, or neuter gender shall include other genders unless the context clearly requires a different connotation.

(11) "Cost" also means the cost to fund pension fund contributions.

(12) "Pension fund contributions" means contributions required to be made by participating health-care providers, which contributions are subject to the Employee Retirement Income Security Act of 1974, or by governmental participating health-care providers, which contributions are not subject to the Employee Retirement Income Security Act of 1974.

Sec. 4. There is hereby created a ~~[nonmember, nonstock]~~ public agency ~~[benefit corporation]~~ to be known as the Texas Hospital Equipment Financing Council with the powers

herein set forth for the purpose of providing at a reasonable cost health-related equipment which the financing council determines will improve the adequacy, cost, and accessibility of health care within this state, which purpose is hereby declared to be a public purpose of this state. The exercise by the financing council of all powers and duties conferred by this Act shall constitute and be deemed and held to be an essential public purpose of the state, acting by and through the financing council, in promoting the general health, welfare, and prosperity of the state and all of its citizens. ~~The [Neither the] state [nor the hospital advisory council] shall not be authorized to lend its credit or grant or loan any public money or thing of value in aid of the financing council.~~

Sec. 5. (a) The board of the financing council shall consist of 12 members, entitled trustees.

(b) ~~The members of the board of the financing council shall be appointed by the governor with the advice and consent of the senate; provided each of the members of the board of the financing council serving as such on the date of enactment of this provision shall continue his or her term until the earlier of his or her resignation or the termination of such term under the law in effect at the time of his or her appointment and thereafter until the governor of the state appoints a replacement trustee pursuant to the provisions hereof. [The members of the hospital advisory council shall serve, ex officio, as trustees. Each such member shall serve as a trustee during the entire time such person is a member unless such member shall decline to serve by so notifying the hospital advisory council in writing in which event the hospital advisory council by majority vote shall appoint a person to serve as a trustee in lieu of such member.]~~

(c) ~~Each [If all or any of the trustees are appointed by the hospital advisory council, each] trustee so appointed shall hold office for a term expiring on September 1 [July 17] of an [each] odd-numbered year, with the terms of four trustees expiring in each odd-numbered year. Each trustee so appointed shall hold office until a successor is appointed and has qualified by executing the surety bond required by this Act of each trustee. Appointments to the board of the financing council [hospital advisory council] shall be made with due regard for the race, creed, sex, religion, and national origin of the appointees and the geographical distribution of the members of the board of the financing council [hospital advisory council].~~

(d) Each trustee shall be eligible for reappointment.

(e) Any vacancy in the office of a trustee [~~appointed by the hospital advisory council~~] shall be filled by the governor with the advice and consent of the senate [~~majority vote by the hospital advisory council~~]. Any such vacancy, except for a vacancy resulting from the expiration of the term of such trustee, shall be filled for the unexpired term only.

(f) To be eligible to serve as a trustee [~~appointed by the hospital advisory council~~], a person shall be a qualified voter of the state. [~~Members and employees of the hospital advisory council are eligible to serve as trustees.~~] No officer, director, or employee of a participating health-care provider shall be eligible to serve as a trustee. Any trustee [~~appointed by the hospital advisory council~~] having any pecuniary interest in any participating health-care provider shall resign from the board prior to the authorization of any bonds for the benefit of such participating health-care provider, and such vacancy shall be filled as otherwise provided in this Act.

Sec. 7. The financing council shall have all the rights and powers necessary or convenient to accomplish the purposes of the financing council as set forth in this Act, including without limitation the powers:

(1) to provide or cause to be provided by a participating health-care provider by acquisition, lease, fabrication, repair, reconditioning, or installation one or more items of health-related equipment to be located within a health facility in this state;

(2) to lease as lessor any item of health-related equipment for such rentals and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(3) to sell for installment payments or otherwise, to option or contract for sale, and to convey all or any part of any item of health-related equipment for such price and upon such terms and conditions as the financing council may deem advisable and as are not in conflict with the provisions of this Act;

(4) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its bonds in accordance with the provisions of this Act, and secure any of its bonds or obligations by mortgage or pledge of all or any of its property and income;

(5) to make secured or unsecured loans for the purpose of providing temporary or permanent financing or refinancing of all or any part of the cost of any health-related equipment, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of an item of health-related equipment, and to charge and collect interest

on such loans for such loan payments and upon such terms and conditions as the board may deem advisable and as are not in conflict with provisions of this Act, and such loans may be made to a participating health-care provider or to any bank, savings and loan association, or other entity which will directly or indirectly provide such financing or refinancing:

(6) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold property as security for the payment of funds so loaned or invested;

(7) to purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with health-related equipment, or any interest therein, wherever situated, as the purposes of the financing council shall require;

(8) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(9) to sue and be sued and plead and be impleaded in its own name;

(10) to contract for services with engineers, attorneys, accountants, and health-care and financial experts and such other advisors, consultants, and agents as may be necessary in its judgment and to fix their compensation;

(11) to select its depository or depositories, subject only to the provisions of this Act and any covenants with respect to the bonds issued pursuant to this Act;

(12) to procure and pay premiums on insurance of any type whatsoever in amounts and from insurers as the financing council deems necessary or advisable;

(13) to appoint agents of the financing council for such period of time as the financing council may determine and define their duties;

(14) to have a ~~corporate~~ seal which may be altered at its pleasure and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced on instruments of any nature required or authorized to be executed by its proper officers;

(15) to make and alter bylaws, not inconsistent with the laws of this state, for the administration and regulation of the affairs of the financing council; and

(16) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the financing council is organized. Provided, however, that the financing council shall not be authorized to incur financial obligations under this Act unless payable solely from the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part directly or indirectly health-related equipment, revenues derived from the operation or ownership of health-related equipment, or any other revenues, including insurance proceeds, as may be provided by a participating health-care provider, any one or more; provided further, however, that nothing in this Act shall be interpreted to bestow upon the financing council the power of taxation, the power of eminent domain, the police power, or any equivalent sovereign power of this state or the hospital advisory council. Nothing in this section grants any authority to officers or trustees of the financing council for the exercise of any of the foregoing powers, inconsistent with limitations on any of the same which may be expressly set forth in this Act or in the bylaws or in any other laws of this state. Authority of officers and trustees to act beyond the scope of the purpose or purposes of the financing council is not granted by any provision of this section.

Sec. 8. The financing council is ~~not~~ an "agency" as defined in the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), and is ~~not~~ subject to the provisions of such Act. The financing council is ~~not~~ a public agency and ~~political subdivision or~~ body politic of the state. *The financing council is, however, prohibited from using any money of the state and, therefore, [is prohibited from using any money of the state or the hospital advisory council; and, therefore,]* shall not be subject to public bidding requirements of the state.

Sec. 11. All expenses of the financing council incurred in carrying out the provisions of this Act shall be payable solely from funds provided under the authority of this Act, and no liability under this Act shall be incurred by the financing council beyond the extent to which money shall have been provided under this Act by the sale of bonds or by participating health-care providers; except that, for the purposes of meeting the necessary expenses of initial organization and operation of the financing council for the period commencing with the organization of the financing council and continuing until such a date as the financing council derives money from funds provided to it under the authority of this Act, the financing council is empowered to borrow such money as the financing council may require. Such money borrowed by the financing council shall subsequently be charged to and apportioned among participating health-care providers. ~~[No expenses of the financing council shall be paid by the hospital advisory council; and the hospital advisory council and each member shall incur no liability under this Act. The hospital advisory council shall not lend money to the financing council.]~~

Sec. 26. (a) ~~No [The financing council shall be a nonprofit public benefit corporation, and no] part of the [its] net earnings of the financing council remaining after its bonds and its expenses have been paid shall inure to the benefit of any person other than the state.~~

(b) The legislature may in its sole discretion and at any time alter the structure, organization, programs, or activities of the financing council, subject only to any limitation provided by the constitution and the laws of the state and of the United States relating to the impairment of contracts entered into by the financing council. *The books and records of the financing council are subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).* ~~[Representatives of the hospital advisory council shall have access at any time to all books and records of the financing council.]~~

(c) Whenever all bonds and obligations of the financing council have been paid and discharged or adequate provision has been made therefor the legislature may dissolve the financing council.

(d) Whenever dissolution of the financing council occurs the title to all funds and properties then owned by the financing council shall automatically vest in the state without any further conveyance, transfer, or act of any kind whatsoever.

(e) The dissolution of the financing council shall not take away or impair any remedy available to or against the financing council or its trustees or officers for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within three years after the date of such dissolution. Any such action or proceeding by or against the financing council may be prosecuted or defended by the financing council in its ~~[corporate]~~ name. The trustees and officers shall have the power to take such ~~[corporate or other]~~ action that shall be appropriate to protect such remedy, right, or claim.

SECTION 12. Section 6(c), Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The chairman, vice-chairman, secretary, and, if elected, the treasurer and any assistant secretaries of the board shall be elected at the first meeting of the board after all trustees have been appointed and qualified for office by executing the surety bond required by this Act of each trustee. Thereafter, officers of the board shall be elected at the first meeting of the board on or following *September 1 [July 17]* of each odd-numbered year, or at any time necessary to fill a vacancy.

SECTION 13. Section 15(a), Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The financing council's bonds issued under the provisions of this Act shall not constitute obligations of ~~[the hospital advisory council]~~ the Texas Department of Health, the state, or any political subdivision or agency thereof *(other than the financing council)* or a pledge of the faith and credit of any of them. The issuance of bonds under the provisions of this Act shall not directly or indirectly or contingently obligate the state or any political subdivision or agency thereof to levy any form of taxation therefor or to make any appropriation for their payment. All bonds issued by the financing council pursuant to the provisions of this Act are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or of any trust indenture or mortgage or deed of trust executed as security therefor.

SECTION 14. Section 9, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), is amended to read as follows:

Section 9. PROVISION OF HEALTH-RELATED EQUIPMENT FOR OPERATION BY HEALTH-CARE PROVIDERS IN HEALTH FACILITIES; POWERS OF FINANCING COUNCIL. In addition to the other powers and duties of the financing council, the financing council is specifically authorized to initiate a program of providing health-related equipment to be operated by participating health-care providers in health facilities located within the state *or to fund pension fund contributions for participating health-care providers.* In this regard, the financing council shall be authorized to exercise the following powers:

- (1) to establish financial eligibility standards for participating health-care providers;
- (2) to obtain or aid in obtaining from any department, agency, or instrumentality of the United States or the state or any private company any insurance or guarantee as to, or of, or for the payment or repayment of loan payments, rent payments on any lease or principal, redemption premium, or interest, or any part thereof, on any bonds;
- (3) to enter into any agreement, contract, or other instrument with respect to any insurance and to accept payment in the event of damage to or destruction of any health-related equipment;
- (4) to enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, or letter of credit, to accept payment in such manner and form as provided therein in

the event of default by a participating health-care provider or other entity to which a loan has been made, and to assign any such insurance or guarantee as security for bonds issued by the financing council;

(5) to procure letters of credit from any national or state banking association or other entity authorized to issue a letter of credit to secure the payment of any bonds issued by the financing council or to secure the payment of any loan, lease, or purchase payment owed by a participating health-care provider to the financing council, including the power to pay the cost of obtaining such letter of credit;

(6) to enter into an agreement with any entity securing the payment of bonds issued pursuant to this Act, authorizing said entity to approve the participating health-care providers that can receive reimbursement for or finance or refinance health-related equipment, *or funds to fund pension fund contributions* with proceeds from the bonds secured by said entity and to approve any banks, savings and loan associations, or other entities to which the financing council may loan its funds to finance or refinance directly or indirectly the cost of health-related equipment, *or funds to fund pension fund contributions* for participating health-care providers; and

(7) to loan to any participating health-care provider or a bank or savings and loan association or other entity under an installment purchase contract or loan agreement money to reimburse, finance, or refinance directly or indirectly the cost of specific items of health-related equipment, *or funds to fund pension fund contributions* for a participating health-care provider and to take back a secured or unsecured promissory note evidencing such loan upon such terms and conditions as the financing council may approve.

SECTION 15. Subsections (a), (c), (e), and (f), Section 12, Texas Hospital Equipment Financing Act (Article 4437e-3, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The financing council is hereby authorized to issue, sell, and deliver its bonds in accordance with the terms of this Act for the purpose of paying all or any part of the cost of health-related equipment, *or funds to fund pension fund contributions* and to make either directly or indirectly through banks, savings and loan associations, or other entities loans to participating health-care providers as provided elsewhere in this Act.

(c) The principal of and redemption premium, if any, and interest on such bonds shall be payable solely from and may be secured by a pledge of all or any part of the proceeds of bonds, revenues derived from the lease or sale of health-related equipment or realized from a loan made by the financing council to finance or refinance in whole or in part health-related equipment, *funds to fund pension fund contributions*, revenues derived from operating health-related equipment, including insurance proceeds, or any other revenues as may be provided by a participating health-care provider, or a bank, savings and loan association, or other entity to which a loan is made, any one or more.

(e) The proceeds of the bonds of each issue shall be used solely for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of health-related equipment, *funds to fund pension fund contributions* and, at the option of the financing council, for the deposit to a reserve fund or reserve funds for the bonds. Such proceeds shall be disbursed in such manner and under such restrictions, if any, as may be determined by the financing council. The financing council shall be paid, out of money from the proceeds of the sale and delivery of its bonds issued in accordance with this Act, an amount of money equal to all of the financing council's out-of-pocket expenses and costs in connection with the issuance, sale, and delivery of such bonds, including without limitation all financing, legal, financial advisory, printing, and other expenses and costs in issuing such bonds, plus an amount of money equal to the compensation paid to the employees, if any, of the financing council for the time such employees have spent on activities relating to the issuance, sale, and delivery of such bonds.

(f) Any bond resolution or related trust agreement, trust indenture, indenture of mortgage, or deed of trust may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to: (1) pledging or assigning the revenues generated by health-related equipment or pledging or assigning the mortgage, lease, or other security given or to be given by participating health-care providers (whether or not identified at the time of issuance of such bonds) with respect to which such bonds are to be issued or other specified revenues of the financing council; (2) the rentals, fees, and other amounts to be charged, the schedule of principal payments, and the sums to be raised in each year thereby and the use, investment, and disposition of such sums; (3) setting aside the reserves or sinking funds and the regulation, investment, and disposition thereof; (4) limitations on the use of health-related equipment, *funds to fund pension fund contributions* financed or to be financed by the proceeds of the sale of such bonds; (5) limitations on the purpose to which or the investments in which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the terms upon which additional bonds may rank on a parity with or be subordinate or superior to

other bonds; (7) the refunding of outstanding bonds; (8) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amounts of bonds the holders of which must consent thereto, the manner in which such consent may be given, and restrictions on the individual rights of action by bondholders; (9) omissions which shall constitute a default in the duties of the financing council to holders of its bonds and providing the rights and remedies of such holders in the event of default; and (10) any other matters relating to the bonds which the financing council deems desirable. In addition to the foregoing, bonds of the financing council may be secured by a pooling of leases, of loan agreements, or of mortgages or other securities (whether or not such leases, loan agreements, or mortgages or other securities exist at the time of sale and delivery of such bonds or are agreed to by the financing council or granted to the financing council thereafter) whereby the financing council may assign its rights as lessor and pledge rents under two or more leases of health-related equipment with two or more participating health-care providers as lessees or assign its rights as lender and pledge loan payments under two or more loan agreements relating to two or more items of health-related equipment with two or more participating health-care providers as borrowers or assign its rights as mortgagee and pledge mortgages from two or more participating health-care providers, banks, savings and loan associations, or other entities, upon such terms as may be provided for in bond resolutions or other instruments under which such bonds are issued.

ARTICLE 14

SECTION 1. DEFINITIONS. In this article:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Resident" means a person who is physically present and living voluntarily in the state and whose stay is not temporary.

SECTION 2. DENTAL HEALTH PROGRAMS. (a) The department, with approval of the board, may establish dental health programs to provide:

- (1) dental treatment services to indigent residents under 18 years of age;
- (2) dental disease prevention services for residents, including the provision of grants to communities to purchase equipment and supplies and provide training for the fluoridation of the community's public water supply; and
- (3) dental education services.

(b) The dental treatment program must use or improve existing dental treatment delivery systems before developing new systems and must use private sector dental treatment services to the maximum extent possible.

SECTION 3. IMPLEMENTATION. The board shall:

- (1) adopt rules it considers necessary to define the dental and financial standards for eligibility and the scope of services available under the dental treatment program;
- (2) adopt substantive and procedural rules for the selection of communities and other entities to participate in the dental disease prevention program; and
- (3) adopt any other rules necessary to implement this article.

SECTION 4. CONTRACTS. The department may enter into contracts or agreements it considers necessary to implement this article. The contracts may provide for payment by the state, within the limits of funds available, for supplies, equipment, and services and may be negotiated with other departments, agencies, boards, educational institutions, individuals, and governmental entities.

SECTION 5. FUNDS. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of programs established under this article.

SECTION 6. COOPERATION WITH FEDERAL GOVERNMENT. The department may make agreements, arrangements, or plans to cooperate with the federal government in carrying out the purposes of this article or any federal statute, rule, or regulation pertaining to dental health.

SECTION 7. FEES. Program participants may be charged a fee for the services of any of the programs of dental health according to the rules adopted by the board.

SECTION 8. MODIFICATION, SUSPENSION, OR TERMINATION OF SERVICES. (a) The department, after notice to the persons affected and an opportunity for a fair hearing, for good cause may modify, suspend, or terminate services to a person who is receiving services from the department.

(b) The criteria for departmental action authorized under this section shall be contained in rules adopted by the board.

ARTICLE 15

SECTION 1. DEFINITIONS. In this article:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Heart disease or defect" means an abnormality or disease of the heart or major blood vessel near the heart.

SECTION 2. CHILDREN'S OUTREACH HEART PROGRAM. The department, with approval of the board, may establish a children's outreach heart program to provide:

- (1) prediagnostic cardiac screening and follow-up evaluation services to persons under 21 years of age who are from low-income families and who may have a heart disease or defect; and
- (2) training to local physicians and public health nurses in heart disease or defect screening and diagnostic procedures.

SECTION 3. IMPLEMENTATION. The board shall adopt rules it considers necessary to define the medical and financial standards for eligibility and the scope of the program.

SECTION 4. CONTRACTS. The department may enter into contracts or agreements it considers necessary to facilitate the provision of services under this article, including contracts with other departments, agencies, boards, educational institutions, individuals, county governments, municipal governments, states, and the United States.

SECTION 5. FUNDS. The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purposes of the program.

SECTION 6. FEES. Recipients of services or training provided by the program may be charged a fee for services or training according to rules adopted by the board.

ARTICLE 16

SECTION 1. SHORT TITLE. This article may be cited as the Texas Ambulatory Surgical Center Licensing Act.

SECTION 2. DEFINITIONS. In this article:

- (1) "Ambulatory surgical center" means a facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.
- (2) "Board" means the Texas Board of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Person" means any individual, firm, partnership, corporation, or association.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ambulatory surgical center.

(b) The board shall set minimum standards for:

- (1) the construction and design of an ambulatory surgical center, including plumbing, heating, lighting, ventilation, and other design standards that are necessary to ensure the health and safety of patients;
- (2) the qualifications of the professional staff and other personnel at an ambulatory surgical center;
- (3) the equipment essential to the health and welfare of the patients;
- (4) sanitary and hygienic conditions within the ambulatory surgical center and its surroundings; and
- (5) a quality assurance program for patient care.

(c) Standards set under this section may not exceed the minimum standards for certification under Title XVIII of the Social Security Act, as added July 30, 1965 (Pub. L. No. 89-97).

(d) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this article.

(e) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state laws.

SECTION 4. LICENSE REQUIREMENT; EXEMPTIONS. (a) A person may not establish or operate an ambulatory surgical center in this state without a license issued under this article.

(b) The following facilities are not required to be licensed under this article:

- (1) an office or clinic of a licensed physician, dentist, or podiatrist;
- (2) a licensed nursing home; or
- (3) a licensed hospital.

SECTION 5. AMBULATORY SURGICAL CENTER LICENSE; FEES; INSPECTION. (a) An applicant for an ambulatory surgical center license must submit an application to the department on a form prescribed by the department. The application must contain evidence that there are one or more physicians, dentists, or podiatrists on the staff of the ambulatory surgical center who are currently licensed by the appropriate state licensing board.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue a license if on inspection and investigation it finds that the applicant and center meet the requirements of this article and the standards set under this article.

(d) All ambulatory surgical centers licensed by the department that have been certified under Title XVIII of the Social Security Act may not be subject to additional licensing inspections under this article so long as the certification is maintained. Those facilities are only required to annually remit any license fees and submit the results or inspection results report from the certification body in order to be issued a license by the department.

(e) A license issued under this article is not transferable or assignable. A separate license is needed for each separate facility.

SECTION 6. DISPOSITION OF FUNDS. The ambulatory surgical center licensing fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the ambulatory surgical center licensing fund and may be appropriated to the department only to administer and enforce this article.

SECTION 7. INSPECTIONS. The department may inspect an ambulatory surgical center at reasonable times as necessary to assure compliance with this article.

SECTION 8. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 9. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of an ambulatory surgical center, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an institution without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court shall grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general shall institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the ambulatory surgical center is located or in Travis County.

SECTION 10. PENALTIES. (a) A person who establishes or operates an ambulatory surgical center without a license issued under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who violates this article or who fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than \$100 nor more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

ARTICLE 17

SECTION 1. SHORT TITLE. This article may be cited as the Texas Birthing Center Licensing Act.

SECTION 2. DEFINITIONS. In this article:

- (1) "Birthing center" means a facility, place, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy. The term does not include a hospital or the residence of the woman giving birth.
- (2) "Board" means the Texas Board of Health.
- (3) "Department" means the Texas Department of Health.
- (4) "Person" means any individual, firm, partnership, corporation, or association.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article. The rules shall establish different levels of licenses to operate a birthing center and shall include requirements for the issuance, renewal, denial, suspension, and revocation of each level of license.

(b) The board shall set minimum standards for each level of license that pertain to:

- (1) qualifications for professional personnel;
 - (2) qualifications for nonprofessional personnel;
 - (3) treatment and services provided by a birthing center and the coordination of treatment and services;
 - (4) supervision of professional and nonprofessional personnel;
 - (5) organizational structure of the birthing center, lines of authority, and delegation of responsibility;
 - (6) clinical records kept by the birthing center; and
 - (7) other aspects of birthing centers necessary to protect the public.
- (c) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this article.

(d) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other state laws.

SECTION 4. LICENSE REQUIREMENT; EXEMPTIONS. (a) A person may not establish or operate a birthing center in this state without the appropriate license issued under this article.

(b) The following facilities are not required to be licensed under this article:

- (1) a licensed ambulatory surgical center;
- (2) a licensed nursing home; or
- (3) a licensed hospital.

SECTION 5. BIRTHING CENTER LICENSE; FEES; INSPECTION. (a) An applicant for a birthing center license must submit an application to the department on a form prescribed by the department. The application must contain evidence that the composition of the center's staff meets the guidelines adopted by the board under this article for the level of license for which the applicant is applying.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue the appropriate license if on inspection and investigation it finds that the applicant and center meet the requirements of this article and the standards set under this article.

(d) A license issued under this article is not transferable or assignable. A separate license is needed for each separate facility.

SECTION 6. DISPOSITION OF FUNDS. The birthing center licensing fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the birthing center licensing fund and may be appropriated to the department only to administer and enforce this article.

SECTION 7. INSPECTIONS. The department may inspect a birthing center at reasonable times as necessary to assure compliance with this article.

SECTION 8. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 9. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of a birthing center, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an institution without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court shall grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general shall institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the birthing center is located or in Travis County.

SECTION 10. PENALTIES. (a) A person who establishes or operates a birthing center without a license issued under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who violates this article or who fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than \$100 nor more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

ARTICLE 18

SECTION 1. DEFINITIONS. In this article:

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

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

(3) "Hospital" means a general or special hospital licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes).

SECTION 2. DATA SYSTEM. (a) The department shall establish a uniform reporting and collection system for hospital financial, utilization, and patient discharge data.

(b) The board shall adopt necessary rules consistent with this article to govern the reporting and collection of data.

SECTION 3. AGGREGATE HOSPITAL FINANCIAL AND UTILIZATION DATA. (a) Each hospital shall submit to the department financial and utilization data for that hospital, including data relating to that hospital's:

(1) total gross revenue, including:

(A) Medicare gross revenue;

(B) Medicaid gross revenue;

(C) other revenue from state programs;

(D) revenue from local government programs;

(E) local tax support;

(F) charitable contributions;

(G) other third party payments;

(H) gross inpatient revenue; and

(I) gross outpatient revenue;

(2) total deductions from gross revenue, including:

(A) charity care;

(B) bad debt;

(C) contractual allowance; and

(D) any other deductions;

(3) total admissions, including:

(A) Medicare admissions;

(B) Medicaid admissions;

(C) admissions under a local government program;

(D) charity care admissions; and

(E) any other type of admission;

(4) total discharges;

(5) total patient days;

- (6) average length of stay;
 - (7) total outpatient visits;
 - (8) total assets;
 - (9) total liabilities;
 - (10) total cost of reimbursed and unreimbursed care for indigent patients; and
 - (11) total cost of reimbursed and unreimbursed medical education.
- (b) The data must be based on the hospital's latest audited financial records.
- (c) The data must be submitted in the form and at the time established by the department.

SECTION 4. HOSPITAL DISCHARGE ABSTRACT RECORDS. (a) If appropriate data is not available from existing credible sources the department may establish a sampling method to collect hospital discharge abstract records relating to specific inpatient discharges from hospitals. *The hospital discharge abstract records requested by the department must contain the data required by the department, including:*

- (1) *patient demographic data;*
 - (2) admission data, including the source and type of the data;
 - (3) discharge data;
 - (4) diagnoses and procedures;
 - (5) total charges and the components of the charges; and
 - (6) payor sources.
- (b) The data must be submitted in the form and at the time established by the department.

SECTION 5. USE OF DATA. (a) The department shall use the data collected under this article to publish an annual report regarding:

- (1) the amount of charity care, bad debt, and other uncompensated care hospitals provide;
- (2) the use of hospital services by indigent patients; and
- (3) the impact of indigent care services on hospitals.

(b) The department shall also use the hospital discharge data collected under this article to publish periodic reports on the use of hospital services.

SECTION 6. VERIFICATION OF DATA. (a) Before the department may publish a report as prescribed by Section 5 of this article or otherwise make data available to the public, the department shall provide to each hospital a copy of the preliminary report or otherwise provide the hospital an opportunity to verify the data relating to that hospital.

(b) If a hospital does not submit corrected data before the 31st day after the day on which the hospital received the preliminary report or other data, the department shall presume that the data is correct.

SECTION 7. CONFIDENTIALITY. (a) Any data reported or submitted to the department under this article that relates to a specific patient or any financial data that relates to a provider or facility is confidential. Before the department may disclose such data under this article, the department must remove any information that would identify a specific patient, provider or facility.

(b) Disclosure, distribution, or sale of confidential information obtained under this article or other violation of this section is prohibited. Any person who violates this section shall be guilty of a Class B misdemeanor.

SECTION 8. ADVISORY COMMITTEE. (a) The board shall appoint a hospital data advisory committee to assist in the development of reporting requirements and in the interpretation and evaluation of the data received under this article.

(b) The advisory committee must include representatives from:

- (1) the hospital industry;
- (2) private business;
- (3) the insurance industry;
- (4) state agencies such as the Texas Health and Human Services Coordinating Council, the Texas Department of Human Resources, and the Employees Retirement System of Texas;
- (5) consumer organizations; and
- (6) the Statewide Health Coordinating Council.

ARTICLE 19

SECTION 1. SHORT TITLE. This article may be cited as the Occupational Disease Reporting Act.

SECTION 2. DEFINITIONS. In this article:

- (1) "Board" means the Texas Board of Health.
- (2) "Commissioner" means the commissioner of health.
- (3) "Department" means the Texas Department of Health.
- (4) "Occupational diseases" means those diseases and abnormal health conditions that are caused by or are related to conditions in the workplace.
- (5) "Reportable disease" means a disease or condition for which the board requires a report.

SECTION 3. REPORTABLE DISEASE; DUTIES OF BOARD. (a) Asbestosis, silicosis, and elevated blood lead levels in adults are occupational diseases that are reportable to the department.

(b) The board may adopt rules that require other occupational diseases to be reported under this article. *Before the board requires other occupational diseases to be reported, the board must find that the disease:*

- (1) *has a well-understood etiology;*
- (2) *results predominantly from occupational conditions; and*
- (3) *is preventable.*

(c) The board shall maintain and revise, as necessary, the list of reportable occupational diseases.

(d) The board shall adopt rules necessary to administer and implement this article.

SECTION 4. DUTIES OF DEPARTMENT. (a) The department may enter into contracts or agreements with persons as necessary to implement this article. The contracts or agreements may provide for payment by the state for materials, equipment, and services.

(b) *The department may seek, receive, and expend any funds received through appropriations, grants, donations, or contributions from public or private sources for the purpose of identifying, reporting, or preventing those occupational diseases that have been determined by the board to be injurious or to be a threat to the public health, subject to any limitations or conditions prescribed by the legislature.*

(c) Subject to the confidentiality requirements of this article, the department shall evaluate the reports of occupational diseases to establish the nature and magnitude of the hazards associated with those diseases, to prevent the occurrence of those hazards, and to establish any trends involved.

(d) The department may make inspections and investigations as authorized by this article and other law.

SECTION 5. REPORTING REQUIREMENTS. (a) The following persons shall report cases or suspected cases of occupational diseases to the department:

- (1) a physician who diagnoses or treats a reportable disease; and
 - (2) a person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopical, cultural, serological, or other evidence suggestive of a reportable disease.
- (b) The department may contact a physician attending a person with a case or a suspected case of an occupational disease. From information received from laboratory notifications, the department may not, without the attending physician's consent, contact a person from whom a specimen was obtained if the notification indicates that the person has an attending physician.

(c) The board shall prescribe the form and method of reporting. The board may require the reports to contain any information necessary to achieve the purposes of this article, including the name, address, age, sex, race, occupation, employer, and attending physician of the person.

SECTION 6. CONFIDENTIALITY. (a) All information and records relating to reportable diseases are strictly confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made under the following circumstances:

- (1) *release is made of information for statistical purposes so that no person can be identified;*
- (2) *release is made of information with the consent of all persons identified in the information released; or*
- (3) *release is made of information to medical personnel in a medical emergency to the extent necessary to protect the health or life of the named party.*

(b) The board shall adopt rules establishing procedures to ensure that all information and records maintained by the department under this article are kept confidential and protected from release to unauthorized persons.

SECTION 7. INVESTIGATIONS. (a) The department shall investigate the causes of occupational diseases and methods of prevention.

(b) The commissioner or his designee may enter at reasonable times and inspect within reasonable limits a public place or building, including a public conveyance, in his duty to prevent

an occupational disease. In this section, "public place or building" means all or any portion of an area, a structure, or a conveyance, regardless of ownership, that is not used for private residential purposes.

(c) Persons authorized to conduct investigations under this section may take samples or specimens of materials present on the premises, including samples or specimens of soil, water, air, unprocessed or processed foodstuffs, manufactured items of clothing, and household goods. If samples or specimens are taken, a corresponding sample shall be offered to the person in control of the premises for independent analysis. Persons securing the required samples and specimens may reimburse or offer to reimburse the owner for the materials taken, but the reimbursement may not exceed the actual monetary loss sustained by the owner.

ARTICLE 20

SECTION 1. SHORT TITLE. This article may be cited as the Texas Abortion Facility Reporting and Licensing Act.

SECTION 2. DEFINITIONS. For the purposes of this article:

- (1) "Facility" means a place where abortions are performed.
- (2) "Abortion" means any act or procedure performed after pregnancy has been medically verified with the intent to cause the termination of a pregnancy other than for the purpose of either the birth of a live fetus or removing a dead fetus, and shall not include birth control devices or oral contraceptives.
- (3) "Board" means the Texas Board of Health.
- (4) "Department" means the Texas Department of Health.
- (5) "Person" means any individual, firm, partnership, corporation, or association.
- (6) "Patient" means a female on whom an abortion is performed, but shall in no event be construed to include a fetus.

SECTION 3. DUTIES OF THE BOARD. (a) The board shall adopt rules necessary to implement this article, including requirements for the issuance, renewal, denial, suspension, and revocation of a license, to operate a facility based on the minimum standards set out below.

(b) The board shall set minimum standards to protect the health and safety of the patient. An abortion shall be performed only by a physician as defined by the provisions of the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes). These standards shall be no more stringent than Medicare certification standards for:

- (1) qualifications for professional personnel;
- (2) qualifications for nonprofessional personnel;
- (3) medical treatment and medical services provided by a facility and the coordination of treatment and services;
- (4) supervision of professional and nonprofessional personnel;
- (5) sanitary and hygienic conditions within the facility;
- (6) the equipment essential to the health and welfare of the patients; and
- (7) clinical records kept by the facility.

(c) The board shall set all fees imposed by this article in amounts reasonable and necessary to defray the costs of administering this article.

(d) Subsection (b) of this section does not authorize the board to establish the qualifications of licensed practitioners or permit the board to authorize persons to provide health care services who are not authorized to provide those services under other laws of this state.

SECTION 4. REPORTING REQUIREMENTS. (a) Each facility must submit an annual report to the department on each abortion that is performed at the facility on a form provided by the department. The report shall not identify by any means the physician performing the abortion or the patient on whom the abortion was performed. The report shall include the following information:

- (1) whether or not the facility at which the abortion is performed is licensed under this article;
- (2) patient's year of birth, race, marital status, and state and county of residence;
- (3) type of abortion procedure;
- (4) the date the abortion was performed;
- (5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;
- (6) the period of gestation based on the best medical judgment of the attending physician at the time of the procedure;
- (7) the date, if known, of the patient's last menstrual cycle;
- (8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient.

(b) All information and records held by the department under the provisions of this article shall be strictly confidential and not considered open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes). Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(1) release is made for statistical purposes only, so that no person, patient or facility may be identified; or

(2) release is made with the consent of each person, patient and facility identified in the information released; or

(3) release is made to medical personnel, appropriate state agencies, or county and district courts to enforce the provisions of this article.

(c) A violation of this section is punishable as a Class A misdemeanor.

SECTION 5. LICENSE REQUIREMENT. A person may not establish or operate a facility in this state without the appropriate license issued under this article.

SECTION 6. FACILITY LICENSE: FEES; INSPECTION. (a) An applicant for a facility license must submit an application to the department on a form prescribed by the department. The application must contain evidence that there are one or more physicians on the staff of the facility who are currently licensed by the Texas State Board of Medical Examiners.

(b) Each application must be accompanied by a nonrefundable license fee in an amount set by the board. The license fee shall be paid annually on renewal of the license.

(c) The department shall issue the appropriate license if on inspection and investigation it finds that the applicant and facility meet the requirements of this article and the standards set under this article.

(d) As a condition for the renewal of the license, an annual report must be submitted to the department which includes the report called for in Section 4.

(e) A license issued under this article is not transferrable or assignable. A separate license is needed for each separate facility.

(f) Nothing in this article shall be construed to require a facility licensed under the Texas Hospital Licensing Law (Article 4437f, Vernon's Texas Civil Statutes) or the office of a physician licensed under the Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes) to obtain a license under this article, unless such office is utilized primarily for the purpose of performing abortions.

SECTION 7. DISPOSITION OF FUNDS. The facility licensing fund is established as a special fund in the state treasury. All fees collected under this article shall be deposited to the credit of the facility licensing fund and shall be appropriated to the department only to administer and enforce this article.

SECTION 8. INSPECTIONS. The department may inspect a facility at reasonable times as necessary to assure compliance with this article.

SECTION 9. DENIAL, REVOCATION, OR SUSPENSION OF LICENSE. (a) The department may deny, revoke, or suspend a license for a violation of this article or rule adopted under this article.

(b) The procedures by which the department denies, revokes, or suspends a license and the procedures by which the departmental action is appealed are governed by department rules for a contested case hearing and by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 10. INJUNCTION. (a) If the department finds that a violation of the standards or licensing requirements prescribed by this article creates an immediate threat to the health and safety of the patients of a facility, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(b) If a person violates the licensing requirements or the standards prescribed by this article, the department may petition the district court for an injunction to prohibit the person from continuing the violations or to restrain or prevent the establishment or operation of a facility without a license issued under this article.

(c) On application for injunctive relief and a finding that a person is violating the licensing requirements or standards prescribed by this article, the district court may grant any injunctive relief warranted by the facts.

(d) At the request of the department, the attorney general may institute and conduct the suits authorized in this section.

(e) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

SECTION 11. PENALTIES. (a) A person who establishes or operates a facility required to be licensed under this article and which is not licensed under this article commits an offense. An offense under this article is a Class C misdemeanor. Each day of a continuing violation constitutes a separate offense.

(b) A person who knowingly violates this article or who knowingly fails to comply with a rule or regulation authorized by this article is subject to a civil penalty of not less than \$100 nor more than \$500 for each violation if the department determines the violation threatens the health and safety of a patient. Each day of a continuing violation constitutes a separate ground of recovery.

SECTION 12. Nothing in this article shall remove the responsibility or limit the ability of a physician to perform an abortion in an unlicensed facility if, at the commencement of the abortion, the physician reasonably believed that the abortion was necessary to prevent the death of the patient on whom the abortion was performed or to prevent serious impairment of the patient's physical or mental condition.

ARTICLE 21

SECTION 1. Section 1.04(c), Article 4414b, Revised Statutes, as amended by Section 3, Article 1, of this Act, applies only to appointments made on the expiration of the terms of those members serving on the Texas Board of Health on the effective date of this Act.

SECTION 2. The memorandum of understanding required by Section 4(b), Chapter 387, Acts of the 65th Legislature, Regular Session, 1977 (Article 4437h, Vernon's Texas Civil Statutes), as amended by Section 4, Article 13, of this Act, must be executed and adopted not later than September 1, 1986.

SECTION 3. If any of the following bills is enacted by the 69th Legislature at its regular session in 1985 and becomes law, the provisions of that Act prevail over the provisions of this Act to the extent of any conflict:

- (1) S.B. No. 894;
- (2) S.B. No. 959;
- (3) H.B. No. 1732;
- (4) H.B. No. 2005; and
- (5) S.B. No. 1052.

SECTION 4. The change in law made by this Act does not affect a person's liability for civil penalties if, before the effective date of this Act, the person commenced the development of a project in violation of the Texas Health Planning and Development Act (Article 4418h, Vernon's Texas Civil Statutes) as the Act existed at the time of development, and the former law is continued in effect for the purpose of recovering those penalties.

SECTION 5. The governor shall appoint the members of the Statewide Health Coordinating Council on September 1, 1985, for staggered two-year terms. The initial term for 11 members shall expire on September 1, 1986.

SECTION 6. This Act takes effect September 1, 1985, except that:

- (1) Sections 4 and 10, Texas Ambulatory Surgical Center Licensing Act, as adopted by Article 16 of this Act, take effect January 1, 1986; and
- (2) Sections 4 and 10, Texas Birthing Center Licensing Act, as adopted by Article 17 of this Act, take effect January 1, 1986.

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 22, 1985, by the following vote: Yeas 148, Nays 0, 2 present, not voting; House refused to concur in Senate amendments to H.B. No. 2091 on May 27, 1985, and requested the appointment of a conference committee to consider the differences between the two houses; House adopted the conference committee report on H.B. No. 2091 on May 27, 1985, by the following vote: Yeas 123, Nays 24, 1 present, not voting; passed by the Senate, with amendments, on May 26, 1985, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; Senate adopted the conference committee report on H.B. No. 2091 on May 27, 1985, by a viva-voce vote.

Approved: June 15, 1985

Effective: September 1, 1985, but see Article 21, Section 6.