

CHAPTER 269

H.B. No. 752

AN ACT

relating to the adoption of a nonsubstantive revision of the statutes relating to labor and employment, including conforming amendments, repeals, and penalties.

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

SECTION 1. ADOPTION OF CODE. The Labor Code is adopted to read as follows:

LABOR CODE

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CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in the law codified as Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the law encompassed by this code more accessible and understandable, by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible. (New.)

Sec. 1.002. CONSTRUCTION OF CODE. Chapter 311, Government Code (Code Construction Act), applies to the construction of each provision in this code except as otherwise expressly provided by this code. (New.)

Sec. 1.003. INTERNAL REFERENCES. In this code:

(1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and

(2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of this code in which the reference appears. (New.)

Sec. 1.004. REFERENCE IN LAW TO STATUTE REVISED BY CODE. A reference in a law to a statute or a part of a statute revised by this code is considered to be a reference to the part of this code that revises that statute or part of the statute. (New.)



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## CHAPTER 21. EMPLOYMENT DISCRIMINATION

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. PURPOSES. The general purposes of this chapter are to:

- (1) provide for the execution of the policies of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Section 2000e et seq.);
- (2) identify an authority that meets the criteria under 42 U.S.C. Section 2000e-5(e) and 29 U.S.C. Section 633;
- (3) secure for persons in this state, including persons with disabilities, freedom from discrimination in certain employment transactions, in order to protect their personal dignity;
- (4) make available to the state the full productive capacities of persons in this state;
- (5) avoid domestic strife and unrest in this state;
- (6) preserve the public safety, health, and general welfare; and
- (7) promote the interests, rights, and privileges of persons in this state. (V.A.C.S. Art. 5221k, Sec. 1.02.)

Sec. 21.002. DEFINITIONS. In this chapter:

- (1) "Bona fide occupational qualification" means a qualification:
  - (A) reasonably related to the satisfactory performance of the duties of a job; and
  - (B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.
- (2) "Commission" means the Commission on Human Rights.
- (3) "Commissioner" means a member of the commission.
- (4) "Disability" means a mental or physical impairment, or a record of a mental or physical impairment, that substantially limits at least one major life activity. The term does not include:
  - (A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or
  - (B) a currently communicable disease or infection, including acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.
- (5) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state. The term does not include an individual elected by the qualified voters to public office in this state or a political subdivision of this state or an individual chosen by such a public officer to be:
  - (A) on the officer's personal staff;
  - (B) an appointee on the policy-making level; or
  - (C) an immediate adviser for the exercise of the constitutional or legal powers of public office.
- (6) "Employer" means:
  - (A) a person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year;
  - (B) an agent of a person described by Paragraph (A); or
  - (C) a county, municipality, state agency, or state instrumentality, including a public institution of education, regardless of the number of employees.

(7) "Employment agency" means a person or an agent of the person who regularly undertakes, with or without compensation, to procure:

(A) employees for an employer; or

(B) the opportunity for employees to work for an employer.

(8) "Labor organization" means a labor organization engaged in an industry affecting commerce. The term includes:

(A) an organization, an agency, or an employee representation committee, group, association, or plan engaged in an industry affecting commerce in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(9) "Local commission" means a commission on human relations created by one or more political subdivisions.

(10) "Political subdivision" means a county or municipality.

(11) "Respondent" means the person charged in a complaint filed under this chapter. (V.A.C.S. Art. 5221k, Secs. 2.01(1), (2), (3), (4), (6), (7), (8), (9), (10); 6.01(a) (part).)

Sec. 21.003. GENERAL POWERS AND DUTIES OF COMMISSION. (a) The commission may:

(1) promote the creation of local commissions on human rights by cooperating or contracting with any person, including agencies of the federal government and of other states;

(2) receive, investigate, conciliate, and rule on complaints alleging violations of this chapter;

(3) file civil actions to carry out the purposes of this chapter;

(4) request and, if necessary, compel by subpoena:

(A) the attendance of necessary witnesses for examination under oath; and

(B) the production, for inspection and copying, of records, documents, and other evidence relevant to the investigation of alleged violations of this chapter;

(5) furnish technical assistance requested by a person subject to this chapter to further compliance with this chapter or with a rule or order issued under this chapter;

(6) recommend in its annual report legislation or other action to carry out the purposes and policies of this chapter; and

(7) adopt procedural rules to carry out the purposes and policies of this chapter.

(b) The commission by rule may authorize a commissioner or one of its staff to exercise the powers stated in Subsection (a)(4) on behalf of the commission.

(c) The commission biennially shall develop an inventory of equal employment opportunity policies and programs adopted and implemented by the various state agencies.

(d) The commission at least annually shall make a comprehensive written report to the governor and to the legislature.

(e) The commission shall conduct a study of the policies and programs of a selected state agency if the commission is directed to conduct the study by legislative resolution or by executive order of the governor. (V.A.C.S. Art. 5221k, Secs. 3.02(a) (part), (d).)

Sec. 21.004. CRIMINAL OFFENSE OF INTERFERENCE; PENALTY. (a) A person commits an offense if the person wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this chapter.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 5221k, Sec. 9.02.)

Sec. 21.005. EFFECT ON OTHER STATE OR FEDERAL LAWS. This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws. (V.A.C.S. Art. 5221k, Sec. 10.01.)

Sec. 21.006. CONFORMITY WITH FEDERAL STATUTES. If a provision of this chapter is held by the Equal Employment Opportunity Commission to disqualify the commission as a deferral agency or for the receipt of federal funds, the commission shall administer this chapter to qualify for deferral status or the receipt of those funds until the legislature meets in its next session and has an opportunity to amend this chapter. (V.A.C.S. Art. 5221k, Sec. 10.05.)

[Sections 21.007–21.050 reserved for expansion]

## SUBCHAPTER B. UNLAWFUL EMPLOYMENT PRACTICES

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee. (V.A.C.S. Art. 5221k, Sec. 5.01.)

Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An employment agency commits an unlawful employment practice if the employment agency:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, or age; or

(2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, or age. (V.A.C.S. Art. 5221k, Sec. 5.02.)

Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the labor organization:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would:

(A) deprive or tend to deprive an individual of any employment opportunity;

(B) limit an employment opportunity or adversely affect in any other manner the status of an employee or of an applicant for employment; or

(C) cause or attempt to cause an employer to violate this subchapter. (V.A.C.S. Art. 5221k, Sec. 5.03.)

Sec. 21.054. ADMISSION OR PARTICIPATION IN TRAINING PROGRAM. (a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, or age in admission to or participation in the program.

(b) The prohibition against discrimination because of age in this section applies only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age. (V.A.C.S. Art. 5221k, Sec. 5.04.)

Sec. 21.055. RETALIATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

- (1) opposes a discriminatory practice;
- (2) makes or files a charge;
- (3) files a complaint; or
- (4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing. (V.A.C.S. Art. 5221k, Sec. 5.05(a) (part).)

Sec. 21.056. AIDING OR ABETTING DISCRIMINATION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites, or coerces a person to engage in a discriminatory practice. (V.A.C.S. Art. 5221k, Sec. 5.05(a) (part).)

Sec. 21.057. INTERFERENCE WITH COMMISSION. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully interferes with the performance of a duty or the exercise of a power under this chapter or Chapter 461, Government Code, by the commission, the commission's staff, or the commission's representative. (V.A.C.S. Art. 5221k, Sec. 5.05(a) (part).)

Sec. 21.058. PREVENTION OF COMPLIANCE. An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency wilfully obstructs or prevents a person from complying with this chapter or a rule adopted or order issued under this chapter. (V.A.C.S. Art. 5221k, Sec. 5.05(a) (part).)

Sec. 21.059. DISCRIMINATORY NOTICE OR ADVERTISEMENT. (a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

- (1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and
- (2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

(b) This section does not apply if disability, religion, sex, national origin, or age is a bona fide occupational qualification. (V.A.C.S. Art. 5221k, Sec. 5.05(b).)

Sec. 21.060. VIOLATION OF CONCILIATION AGREEMENT. A party to a conciliation agreement made under this chapter commits an unlawful employment practice if the party violates the terms of the conciliation agreement. (V.A.C.S. Art. 5221k, Sec. 9.01.)

Sec. 21.061. INSUFFICIENT EVIDENCE OF UNLAWFUL PRACTICE. In the absence of other evidence of an unlawful employment practice, evidence of the employment of one person in place of another is not sufficient to establish an unlawful employment practice. (V.A.C.S. Art. 5221k, Sec. 5.07(b).)

[Sections 21.062–21.100 reserved for expansion]

## SUBCHAPTER C. APPLICATION; EXCEPTIONS

Sec. 21.101. AGE DISCRIMINATION LIMITED TO INDIVIDUALS OF CERTAIN AGE. Except as provided by Section 21.054, the provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older. (V.A.C.S. Art. 5221k, Sec. 1.04(a) (part).)

Sec. 21.102. BONA FIDE EMPLOYEE BENEFIT PLAN; PRODUCTION MEASUREMENT SYSTEM. (a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

(1) a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or

(2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

Sec. 21.103. **COMPULSORY RETIREMENT PERMITTED FOR CERTAIN EMPLOYEES.** This chapter does not prohibit the compulsory retirement of an employee who is:

(1) at least 65 years of age;

(2) employed in a bona fide executive or high policy-making position for the two years preceding retirement; and

(3) entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan or a combination of plans of the employee's employer that equals, in the aggregate, at least \$27,000. (V.A.C.S. Art. 5221k, Sec. 1.04(a) (part).)

Sec. 21.104. **AGE REQUIREMENT FOR PEACE OFFICERS OR FIRE FIGHTERS.** An employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

Sec. 21.105. **DISCRIMINATION BASED ON DISABILITY.** A provision in this subchapter or Subchapter B referring to discrimination because of disability or on the basis of disability applies only to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job. (V.A.C.S. Art. 5221k, Sec. 1.04(b).)

Sec. 21.106. **SEX DISCRIMINATION.** (a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.

(b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work. (V.A.C.S. Art. 5221k, Sec. 1.04(c) (part).)

Sec. 21.107. **EFFECT ON ABORTION BENEFITS.** This chapter does not:

(1) require an employer to pay for health insurance benefits for abortion unless the life of the mother would be endangered if the fetus were carried to term;

(2) preclude an employer from providing abortion benefits; or

(3) affect a bargaining agreement relating to abortion. (V.A.C.S. Art. 5221k, Sec. 1.04(c) (part).)

Sec. 21.108. **DISCRIMINATION BASED ON RELIGION.** A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business. (V.A.C.S. Art. 5221k, Sec. 2.01(14).)

Sec. 21.109. **EMPLOYMENT BY RELIGIOUS ORGANIZATION.** (a) A religious corporation, association, society, or educational institution or an educational organization operated, supervised, or controlled in whole or in substantial part by a religious corporation, association, or society does not commit an unlawful employment practice by limiting employment or giving a preference to members of the same religion.

(b) Subchapter B does not apply to the employment of an individual of a particular religion by a religious corporation, association, or society to perform work connected with the

performance of religious activities by the corporation, association, or society. (V.A.C.S. Art. 5221k, Secs. 5.06 (part), 5.07(a) (part).)

Sec. 21.110. **DISCRIMINATION BASED ON NATIONAL ORIGIN.** A provision in this chapter referring to discrimination because of national origin or on the basis of national origin includes discrimination because of or on the basis of the national origin of an ancestor. (V.A.C.S. Art. 5221k, Sec. 2.01(11).)

Sec. 21.111. **PERSON EMPLOYED OUT OF STATE.** This chapter does not apply to an employer with respect to the employment of a person outside this state. (V.A.C.S. Art. 5221k, Sec. 5.10.)

Sec. 21.112. **EMPLOYEES AT DIFFERENT LOCATIONS.** An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, or age. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

Sec. 21.113. **IMBALANCE PLAN NOT REQUIRED.** This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, or age because of an imbalance between:

(1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, or age:

(A) employed by an employer;

(B) referred or classified for employment by an employment agency or labor organization;

(C) admitted to membership or classified by a labor organization; or

(D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and

(2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, or age in:

(A) a community, this state, a region, or other area; or

(B) the available work force in a community, this state, a region, or other area. (V.A.C.S. Art. 5221k, Sec. 5.09.)

Sec. 21.114. **PLAN TO END DISCRIMINATORY SCHOOL PRACTICES.** A public school official does not commit an unlawful employment practice by adopting or implementing a plan reasonably designed to end discriminatory school practices. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

Sec. 21.115. **BUSINESS NECESSITY.** An employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

(1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and

(2) is justified by business necessity. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

Sec. 21.116. **RELIANCE ON COMMISSION INTERPRETATION OR OPINION.** (a) A person is not liable for an unlawful employment practice performed in good faith and in conformity with and in reliance on a written interpretation or opinion of the commission.

(b) In a proceeding alleging an unlawful employment practice, the respondent has the burden of pleading and proving the defense provided by this section. (V.A.C.S. Art. 5221k, Sec. 5.08.)

Sec. 21.117. **EMPLOYMENT OF FAMILY MEMBER.** Subchapter B does not apply to the employment of an individual by the individual's parent, spouse, or child. (V.A.C.S. Art. 5221k, Sec. 5.06 (part).)

Sec. 21.118. **STATEWIDE HOMETOWN PLAN.** Subchapter B does not apply to a labor union, firm, association, or individual participating on September 23, 1983, in a statewide



hometown plan approved by the United States Department of Labor. (V.A.C.S. Art. 5221k, Sec. 5.06 (part).)

Sec. 21.119. **BONA FIDE OCCUPATIONAL QUALIFICATION.** If disability, religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise, performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

- (1) an employer hiring and employing an employee;
- (2) an employment agency classifying or referring an individual for employment;
- (3) a labor organization classifying its members or classifying or referring an individual for employment; or
- (4) an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program. (V.A.C.S. Art. 5221k, Sec. 5.07(a) (part).)

[Sections 21.120–21.150 reserved for expansion]

#### SUBCHAPTER D. LOCAL ENFORCEMENT

Sec. 21.151. **ENFORCEMENT BY ORDINANCE.** A political subdivision may adopt and enforce an order or ordinance that prohibits a practice that is unlawful under this chapter, another state law, or federal law. (V.A.C.S. Art. 5221k, Sec. 4.01.)

Sec. 21.152. **CREATION OF LOCAL COMMISSION.** (a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:

- (1) promote the purposes of this chapter; and
  - (2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, or age.
- (b) The political subdivision creating a local commission may appropriate funds for the expenses of the local commission. (V.A.C.S. Art. 5221k, Sec. 4.02.)

Sec. 21.153. **GENERAL POWERS AND DUTIES OF LOCAL COMMISSION.** (a) A local commission may:

- (1) employ an executive director and other employees and agents and set their compensation;
  - (2) cooperate or contract with a person, including an agency of the federal government or of another state or municipality; and
  - (3) accept a public grant or private gift, bequest, or other payment.
- (b) A local commission shall prepare at least annually a report and furnish a copy of the report to the Commission on Human Rights. (V.A.C.S. Art. 5221k, Sec. 4.03 (part).)

Sec. 21.154. **INVESTIGATORY AND CONCILIATORY POWERS OF LOCAL COMMISSION.** (a) If the federal government or the Commission on Human Rights refers a complaint alleging a violation of this chapter to a local commission or defers jurisdiction over the subject matter of the complaint to a local commission, the local commission may receive, investigate, conciliate, or rule on the complaint and may file a civil action to carry out the purposes of this chapter.

(b) The local commission may request, and as necessary, compel by subpoena:

- (1) the attendance of a witness for examination under oath; or
- (2) the production for inspection or copying of a record, document, or other evidence relevant to the investigation of an alleged violation of this chapter. (V.A.C.S. Art. 5221k, Sec. 4.03 (part).)

Sec. 21.155. **REFERRAL TO LOCAL COMMISSION AND ACTION ON COMPLAINTS.** (a) The Commission on Human Rights shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin,

or age that is filed with that commission to a local commission with the necessary investigatory and conciliatory powers if:

- (1) the complaint has been referred to the Commission on Human Rights by the federal government; or
  - (2) jurisdiction over the subject matter of the complaint has been deferred to the Commission on Human Rights by the federal government.
- (b) The local commission shall take appropriate action to remedy the practice alleged as discriminatory in the referred complaint.
- (c) If the local commission does not act on the complaint within 60 days or a longer time that is reasonable, the Commission on Human Rights shall reassume responsibility for the complaint and take appropriate action on the complaint. (V.A.C.S. Art. 5221k, Secs. 4.04(a), (b).)

Sec. 21.156. REFERRAL BY LOCAL COMMISSION TO STATE COMMISSION. A local commission may refer a matter under its jurisdiction to the Commission on Human Rights. (V.A.C.S. Art. 5221k, Sec. 4.04(c).)

[Sections 21.157–21.200 reserved for expansion]

#### SUBCHAPTER E. ADMINISTRATIVE REVIEW

Sec. 21.201. FILING OF COMPLAINT; FORM AND CONTENT; SERVICE. (a) A person claiming to be aggrieved by an unlawful employment practice or the person's agent may file a complaint with the commission.

(b) The complaint must be in writing and made under oath.

(c) The complaint must state:

(1) that an unlawful employment practice has been committed;

(2) the facts on which the complaint is based, including the date, place, and circumstances of the alleged unlawful employment practice; and

(3) facts sufficient to enable the commission to identify the respondent.

(d) The executive director or the executive director's designee shall serve the respondent with a copy of the complaint not later than the 10th day after the date the complaint is filed. (V.A.C.S. Art. 5221k, Sec. 6.01(a) (part).)

Sec. 21.202. STATUTE OF LIMITATIONS. (a) A complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred.

(b) The commission shall dismiss an untimely complaint. (V.A.C.S. Art. 5221k, Sec. 6.01(a) (part).)

Sec. 21.203. INVITATION FOR VOLUNTARY RESOLUTION. The executive director or the executive director's designee shall invite the complainant and respondent to attempt voluntarily to resolve the dispute before initiation and completion of an investigation. (V.A.C.S. Art. 5221k, Sec. 6.01(a) (part).)

Sec. 21.204. INVESTIGATION BY COMMISSION. (a) The executive director or a staff member of the commission designated by the executive director shall investigate a complaint and determine if there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in the complaint.

(b) If the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission, the executive director or the executive director's designee shall promptly investigate the allegations stated in the complaint. (V.A.C.S. Art. 5221k, Sec. 6.01(a) (part).)

Sec. 21.205. LACK OF REASONABLE CAUSE; DISMISSAL OF COMPLAINT. (a) If after investigation the executive director or the executive director's designee determines that reasonable cause does not exist to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive

director's designee shall issue a written determination, incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

(b) The executive director or the executive director's designee shall serve a copy of the determination on the complainant, the respondent, and other agencies as required by law. (V.A.C.S. Art. 5221k, Sec. 6.01(b).)

**Sec. 21.206. DETERMINATION OF REASONABLE CAUSE; REVIEW BY PANEL.**

(a) If after investigation the executive director or the executive director's designee determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice as alleged in a complaint, the executive director or the executive director's designee shall review with a panel of three commissioners the evidence in the record.

(b) If after the review at least two of the three commissioners determine that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice, the executive director shall:

(1) issue a written determination incorporating the executive director's finding that the evidence supports the complaint; and

(2) serve a copy of the determination on the complainant, the respondent, and other agencies as required by law. (V.A.C.S. Art. 5221k, Sec. 6.01(c) (part).)

**Sec. 21.207. RESOLUTION BY INFORMAL METHODS.** (a) If a determination of reasonable cause is made under Section 21.206, the commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

(b) Without the written consent of the complainant and respondent, the commission, its executive director, or its other officers or employees may not disclose to the public information about the efforts in a particular case to resolve an alleged discriminatory practice by conference, conciliation, or persuasion, regardless of whether there is a determination of reasonable cause. (V.A.C.S. Art. 5221k, Sec. 6.01(c) (part).)

**Sec. 21.208. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT.** If the commission dismisses a complaint filed under Section 21.201 or does not resolve the complaint before the 181st day after the date the complaint was filed, the commission shall inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

**Sec. 21.209. DISCRIMINATION BASED ON DISABILITY; DEFENSE OF UNDUE HARDSHIP; ORDER.** (a) A showing of undue hardship by a respondent is a defense to a complaint of discrimination based on disability made by an employee or applicant.

(b) For a complaint based on disability, the commission's order must consider the reasonableness of the cost of necessary work place accommodation and the availability of alternatives or other appropriate relief. (V.A.C.S. Art. 5221k, Sec. 6.01(d).)

**Sec. 21.210. TEMPORARY INJUNCTIVE RELIEF.** (a) If the commission concludes from a preliminary investigation of an unlawful employment practice alleged in a complaint that prompt judicial action is necessary to carry out the purpose of this chapter, the commission shall file a petition seeking appropriate temporary relief against the respondent pending final determination of a proceeding under this chapter.

(b) The petition shall be filed in a district court in a county in which:

(1) the alleged unlawful employment practice that is the subject of the complaint occurred; or

(2) the respondent resides.

(c) A court may not issue temporary injunctive relief unless the commission shows:

(1) a substantial likelihood of success on the merits; and

(2) irreparable harm to the complainant in the absence of the preliminary relief pending final determination on the merits. (V.A.C.S. Art. 5221k, Sec. 6.01(e).)

**Sec. 21.211. ELECTION OF REMEDIES.** A person who has initiated an action in a court of competent jurisdiction or who has an action pending before an administrative agency under other law or an order or ordinance of a political subdivision of this state based on an

act that would be an unlawful employment practice under this chapter may not file a complaint under this subchapter for the same grievance. (V.A.C.S. Art. 5221k, Sec. 6.01(f).)

[Sections 21.212–21.250 reserved for expansion]

#### SUBCHAPTER F. JUDICIAL ENFORCEMENT

Sec. 21.251. CIVIL ACTION BY COMMISSION. (a) The commission may bring a civil action against a respondent if:

(1) the commission determines that there is reasonable cause to believe that the respondent engaged in an unlawful employment practice;

(2) the commission's efforts to resolve the discriminatory practice to the satisfaction of the complainant and respondent through conciliation have been unsuccessful; and

(3) a majority of the commissioners determines that the civil action may achieve the purposes of this chapter.

(b) The complainant may intervene in a civil action brought by the commission. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

Sec. 21.252. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) A complainant who receives notice under Section 21.208 that the complaint is not dismissed or resolved is entitled to request from the commission a written notice of the complainant's right to file a civil action.

(b) The complainant must request the notice in writing.

(c) The executive director may issue the notice.

(d) Failure to issue the notice of a complainant's right to file a civil action does not affect the complainant's right under this subchapter to bring a civil action against the respondent. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part), (i).)

Sec. 21.253. EXPEDITED NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL ACTION. (a) On receipt of a written request by a complainant, the commission shall issue before the 181st day after the date the complaint was filed a notice of the right to file a civil action if:

(1) the complainant alleges an unlawful employment practice based on the complainant's status as an individual with a life-threatening illness, as confirmed in writing by a physician licensed to practice medicine in this state; or

(2) the executive director certifies that administrative processing of the complaint cannot be completed before the 181st day after the date the complaint was filed.

(b) The commission shall issue the expedited notice by certified mail not later than the fifth business day after the date the commission receives the written request. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

Sec. 21.254. CIVIL ACTION BY COMPLAINANT. Within 60 days after the date a notice of the right to file a civil action is received, the complainant may bring a civil action against the respondent. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

Sec. 21.255. COMMISSION'S INTERVENTION IN CIVIL ACTION BY COMPLAINANT. After receipt of a timely application, a court may permit the commission to intervene in a civil action filed under Section 21.254 if:

(1) the commission certifies that the case is of general public importance; and

(2) before commencement of the action the commission issued a determination of reasonable cause to believe that this chapter was violated. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

Sec. 21.256. STATUTE OF LIMITATIONS. A civil action may not be brought under this subchapter later than the first anniversary of the date the complaint relating to the action is filed. (V.A.C.S. Art. 5221k, Sec. 7.01(a) (part).)

Sec. 21.257. **ASSIGNMENT TO EARLY HEARING.** The court shall set an action brought under this subchapter for hearing at the earliest practicable date to expedite the action. (V.A.C.S. Art. 5221k, Sec. 7.01(b).)

Sec. 21.258. **INJUNCTION; EQUITABLE RELIEF.** (a) On finding that a respondent engaged in an unlawful employment practice as alleged in a complaint, a court may:

(1) prohibit by injunction the respondent from engaging in an unlawful employment practice; and

(2) order additional equitable relief as may be appropriate.

(b) Additional equitable relief may include:

(1) hiring or reinstating with or without back pay;

(2) upgrading an employee with or without pay;

(3) admitting to or restoring union membership;

(4) admitting to or participating in a guidance program, apprenticeship, or on-the-job training or other training or retraining program, using objective job-related criteria in admitting an individual to a program;

(5) reporting on the manner of compliance with the terms of a final order issued under this chapter; and

(6) paying court costs.

(c) Liability under a back pay award may not accrue for a date more than two years before the date a complaint is filed with the commission. Interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable. (V.A.C.S. Art. 5221k, Secs. 7.01(c), (d).)

Sec. 21.259. **ATTORNEY'S FEES; COSTS.** (a) In a proceeding under this chapter, a court may allow the prevailing party, other than the commission, a reasonable attorney's fee as part of the costs.

(b) The state, a state agency, or a political subdivision is liable for costs, including attorney's fees, to the same extent as a private person. (V.A.C.S. Art. 5221k, Sec. 7.01(e).)

Sec. 21.260. **RELIEF FOR DISABLED EMPLOYEE OR APPLICANT.** If the affected employee or applicant for employment has a disability, a court shall consider the undue hardship defense, including the reasonableness of the cost of necessary workplace accommodation and the availability of alternatives or other appropriate relief. (V.A.C.S. Art. 5221k, Sec. 7.01(f).)

Sec. 21.261. **COMPELLED COMPLIANCE.** If an employer, employment agency, or labor organization fails to comply with a court order issued under this subchapter, a party to the action or the commission, on the written request of a person aggrieved by the failure, may commence proceedings to compel compliance with the order. (V.A.C.S. Art. 5221k, Sec. 7.01(g).)

Sec. 21.262. **TRIAL DE NOVO.** (a) A judicial proceeding under this chapter is by trial de novo.

(b) A commission finding, recommendation, determination, or other action is not binding on a court. (V.A.C.S. Art. 5221k, Sec. 7.01(h).)

[Sections 21.263–21.300 reserved for expansion]

## SUBCHAPTER G. RECORDS

Sec. 21.301. **RECORDKEEPING; REPORTS.** A person under investigation in connection with a charge filed under this chapter, and who is subject to this chapter shall:

(1) make and keep records relevant to the determination of whether unlawful employment practices have been or are being committed;

(2) preserve the records for the period required by commission rule or court order; and

(3) make reports from the records as prescribed by commission rule or court order as reasonable, necessary, or appropriate for the enforcement of this chapter or a rule or order issued under this chapter. (V.A.C.S. Art. 5221k, Sec. 8.01(a).)

Sec. 21.302. RECORDS; TRAINING PROGRAM. The commission by rule shall require that a person subject to this chapter who controls an apprenticeship, on-the-job training, or other training or retraining program:

(1) keep all records reasonably necessary to carry out the purposes of this chapter, including a list of applicants for participation in the program and a record of the chronological order in which applications for the program were received; and

(2) furnish to the commission on request a detailed description of the manner in which individuals are selected to participate in the program. (V.A.C.S. Art. 5221k, Sec. 8.01(b).)

Sec. 21.303. CONFORMITY TO FEDERAL LAW. A report or record required by the commission under this subchapter must conform to a similar record or report required under 42 U.S.C. Section 2000e-8(c). (V.A.C.S. Art. 5221k, Sec. 8.01(c).)

Sec. 21.304. CONFIDENTIALITY OF RECORDS. An officer or employee of the commission may not disclose to the public information obtained by the commission under Section 21.204 except as necessary to the conduct of a proceeding under this chapter. (V.A.C.S. Art. 5221k, Sec. 8.02(a) (part).)

Sec. 21.305. ACCESS TO COMMISSION RECORDS. (a) The commission shall adopt rules allowing a party to a complaint filed under Section 21.201 reasonable access to commission records relating to the complaint.

(b) Unless the complaint is resolved through a voluntary settlement or conciliation, on the written request of a party the executive director shall allow the party access to the commission records:

(1) after the final action of the commission; or

(2) if a civil action relating to the complaint is filed in federal court alleging a violation of federal law. (V.A.C.S. Art. 5221k, Sec. 8.02(a) (part).)

Sec. 21.306. SUBPOENA OF RECORD OR REPORT. (a) If a person fails to permit access, examination, photographing, or copying or fails to make, keep, or preserve a record or make a report in accordance with this subchapter, the commission may issue a subpoena requiring compliance.

(b) On a failure to comply with a subpoena of the commission, the commission shall apply for an order directing compliance to the district court of the county in which the person is found, resides, or transacts business. (V.A.C.S. Art. 5221k, Sec. 8.02(b).)

[Chapters 22-50 reserved for expansion]

## SUBTITLE B. RESTRICTIONS ON LABOR

### CHAPTER 51. EMPLOYMENT OF CHILDREN

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. PURPOSE

Sec. 51.002. DEFINITIONS

Sec. 51.003. GENERAL EXEMPTIONS

[Sections 51.004-51.010 reserved for expansion]

#### SUBCHAPTER B. RESTRICTIONS ON EMPLOYMENT

Sec. 51.011. MINIMUM AGE

Sec. 51.012. PERFORMER EXEMPTION

Sec. 51.013. HOURS OF EMPLOYMENT; HARDSHIP EXEMPTION

Sec. 51.014. HAZARDOUS OCCUPATIONS

[Sections 51.015-51.020 reserved for expansion]

## SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

- Sec. 51.021. INSPECTION; COLLECTION OF INFORMATION  
 Sec. 51.022. CERTIFICATE OF AGE  
 Sec. 51.023. RULEMAKING

[Sections 51.024–51.030 reserved for expansion]

## SUBCHAPTER D. PENALTY AND DEFENSE

- Sec. 51.031. OFFENSE; PENALTY  
 Sec. 51.032. DEFENSE TO PROSECUTION

## CHAPTER 51. EMPLOYMENT OF CHILDREN

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. PURPOSE. The purpose of this chapter is to ensure that a child is not employed in an occupation or manner that is detrimental to the child's safety, health, or well-being. (V.A.C.S. Art. 5181.1, Sec. 1.)

Sec. 51.002. DEFINITIONS. In this chapter:

(1) "Child" means an individual under 18 years of age.

(2) "Commission" means the Texas Employment Commission. (V.A.C.S. Art. 5181.1, Secs. 2(1), (2).)

Sec. 51.003. GENERAL EXEMPTIONS. (a) This chapter does not apply to employment of a child:

(1) employed in a:

(A) nonhazardous occupation;

(B) under the direct supervision of the child's parent or an adult having custody of the child; and

(C) in a business or enterprise owned or operated by the parent or custodian;

(2) engaged in delivery of newspapers to the consumer;

(3) participating in a school-supervised and school-administered work-study program approved by the commission;

(4) employed in agriculture during a period when the child is not legally required to be attending school;

(5) employed through a rehabilitation program supervised by a county judge; or

(6) engaged in nonhazardous casual employment that will not endanger the safety, health, or well-being of the child and to which the parent or adult having custody of the child has consented.

(b) In this section, "employment in agriculture" means engaged in producing crops or livestock and includes:

(1) cultivating and tilling the soil;

(2) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity;

(3) dairying; and

(4) raising livestock, bees, fur-bearing animals, or poultry.

(c) For the purposes of Subsection (a)(6), the commission by rule may define nonhazardous casual employment that the commission determines is dangerous to the safety, health, or well-being of a child. (V.A.C.S. Art. 5181.1, Sec. 11.)

[Sections 51.004–51.010 reserved for expansion]

### SUBCHAPTER B. RESTRICTIONS ON EMPLOYMENT

Sec. 51.011. **MINIMUM AGE.** Except as provided by this chapter, a person commits an offense if the person employs a child under 14 years of age. (V.A.C.S. Art. 5181.1, Sec. 3.)

Sec. 51.012. **PERFORMER EXEMPTION.** The commission by rule may authorize the employment of children under 14 years of age as performers in a motion picture or a theatrical, radio, or television production. (V.A.C.S. Art. 5181.1, Sec. 10.)

Sec. 51.013. **HOURS OF EMPLOYMENT; HARDSHIP EXEMPTION.** (a) A person commits an offense if the person permits a child who is 14 or 15 years of age and who is employed by the person to work more than:

- (1) eight hours in one day; or
- (2) 48 hours in one week.

(b) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is enrolled in a term of a public or private school to work:

- (1) between the hours of 10 p.m. and 5 a.m. on a day that is followed by a school day; or
- (2) between the hours of midnight and 5 a.m. on a day that is not followed by a school day.

(c) A person commits an offense if the person permits a child who is 14 or 15 years of age, is employed by the person, and is not enrolled in summer school to work between the hours of midnight and 5 a.m. on any day during the time that school is recessed for the summer.

(d) The commission may adopt rules for determining whether hardships exist. If, on the application of a child, the commission determines that a hardship exists for that child, this section does not apply to that child. (V.A.C.S. Art. 5181.1, Secs. 5, 6.)

Sec. 51.014. **HAZARDOUS OCCUPATIONS.** (a) The commission by rule shall declare an occupation to be hazardous if:

- (1) the occupation has been declared to be hazardous by an agency of the federal government; and
- (2) the commission determines that the occupation is particularly hazardous for the employment of children.

(b) The commission by rule may restrict the employment of children 14 years of age or older in hazardous occupations.

(c) A person commits an offense if the person employs a child in violation of a rule adopted under this section. (V.A.C.S. Art. 5181.1, Sec. 8.)

[Sections 51.015–51.020 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 51.021. **INSPECTION; COLLECTION OF INFORMATION.** (a) The commission, or a person designated by the commission, may, during working hours:

- (1) inspect a place where there is good reason to believe that a child is employed; and
- (2) collect information concerning the employment of a child who works at that place.

(b) A person commits an offense if the person knowingly or intentionally hinders an inspection or the collection of information authorized by this section. (V.A.C.S. Art. 5181.1, Sec. 7.)

Sec. 51.022. **CERTIFICATE OF AGE.** (a) A child who is at least 14 years of age may apply to the commission for a certificate of age that states the date of birth of the child.

(b) The application must include documentary proof of age as required by the commission.

(c) After approval by the commission of the proof of age, the commission shall issue to the child a certificate of age. (V.A.C.S. Art. 5181.1, Secs. 9(a), (b), (c).)



Sec. 51.023. RULEMAKING. The commission may adopt rules necessary to promote the purpose of this chapter but may not adopt a rule permitting the employment of a child under 14 years of age unless expressly authorized by this chapter. (V.A.C.S. Art. 5181.1, Sec. 4.)

[Sections 51.024–51.030 reserved for expansion]

SUBCHAPTER D. PENALTY AND DEFENSE

Sec. 51.031. OFFENSE; PENALTY. An offense under this chapter is a Class C misdemeanor. (V.A.C.S. Art 5181.1, Sec. 12.)

Sec. 51.032. DEFENSE TO PROSECUTION. It is a defense to prosecution of a person employing a child who does not meet the minimum age requirement for a type of employment that the person relied in good faith on an apparently valid certificate of age presented by the child that showed the child to meet the age requirement for that type of employment. (V.A.C.S. Art. 5181.1, Sec. 9(d).)

CHAPTER 52. MISCELLANEOUS RESTRICTIONS

SUBCHAPTER A. RESTRICTIONS ON CERTAIN  
CONSECUTIVE PERIODS OF EMPLOYMENT

Sec. 52.001. RETAIL EMPLOYER

Sec. 52.002. EMPLOYER FORMERLY SUBJECT TO SATURDAY/SUNDAY CLOSING  
LAW

Sec. 52.003. OFFENSE; PENALTY; DEFENSE

[Sections 52.004–52.010 reserved for expansion]

SUBCHAPTER B. RESTRICTION ON WORK BY FOREIGN CREW

Sec. 52.011. PROHIBITION OF CERTAIN WORK BY FOREIGN CREW; PENALTY

[Sections 52.012–52.020 reserved for expansion]

SUBCHAPTER C. RESTRICTIONS ON LENGTH OF HOES

Sec. 52.021. MINIMUM LENGTH OF HOE HANDLES

Sec. 52.022. OFFENSE; PENALTY

[Sections 52.023–52.030 reserved for expansion]

SUBCHAPTER D. RESTRICTIONS ON BLACKLISTING

Sec. 52.031. BLACKLISTING OFFENSE; PENALTY

[Sections 52.032–52.040 reserved for expansion]

SUBCHAPTER E. RESTRICTIONS ON COERCION OF EMPLOYEE TRADE

Sec. 52.041. COERCION OF EMPLOYEE TRADE; PENALTY

[Sections 52.042–52.050 reserved for expansion]

SUBCHAPTER F. RESTRICTIONS ON PENALIZING EMPLOYEE  
FOR COMPLIANCE WITH SUBPOENA

Sec. 52.051. PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA

CHAPTER 52. MISCELLANEOUS RESTRICTIONS

SUBCHAPTER A. RESTRICTIONS ON CERTAIN  
CONSECUTIVE PERIODS OF EMPLOYMENT

Sec. 52.001. RETAIL EMPLOYER. (a) A person who is an employer may not require an employee to work seven consecutive days in an establishment, the business of which is selling merchandise at retail.

(b) The person may not deny an employee at least one period of 24 consecutive hours of time off for rest or worship in each seven-day period. The time off must be in addition to the regular periods of rest allowed during each day worked.

(c) The person shall accommodate the religious beliefs and practices of an employee unless the employer can demonstrate that to do so would constitute an undue hardship on the conduct of the employer's business. In addition, the person may not require an employee to work during a period that the employee requests to be off to attend one regular worship service a week of the employee's religion.

(d) This section does not apply to employment of a part-time employee whose total work hours for one employer during a calendar week do not exceed 30 hours. (V.A.C.S. Art. 5165.4, Sec. 1.)

Sec. 52.002. EMPLOYER FORMERLY SUBJECT TO SATURDAY/SUNDAY CLOSING LAW. An employer whose establishment was closed on Saturday or Sunday to comply with Chapter 15, Acts of the 57th Legislature, 1st Called Session, 1961 (Article 9001, Vernon's Texas Civil Statutes), before that Act was repealed effective September 1, 1985, may not require an employee who has been continuously employed by that employer since August 31, 1985, to work on whichever of those days the establishment was closed. (V.A.C.S. Art. 5165.4, Sec. 2.)

Sec. 52.003. OFFENSE; PENALTY; DEFENSE. (a) A person commits an offense if the person violates this subchapter.

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

(c) It is an affirmative defense to prosecution under this section that the employee volunteered for work on the seventh consecutive day and that the employee signed a written statement stating that the employee volunteered. The statement must also contain a provision, signed by the employer or the employer's agent, that the employer did not require the work. (V.A.C.S. Art. 5165.4, Secs. 3, 4.)

[Sections 52.004–52.010 reserved for expansion]

SUBCHAPTER B. RESTRICTION ON WORK BY FOREIGN CREW

Sec. 52.011. PROHIBITION OF CERTAIN WORK BY FOREIGN CREW; PENALTY.

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

- (1) is an officer or member of a crew of a foreign seagoing vessel; and
- (2) works on a wharf or levee of a port beyond the end of the vessel's tackle.

(b) An offense under this section is punishable by:

- (1) a fine of not less than \$10 and not more than \$100;
- (2) confinement in jail for a term of not less than 10 days and not more than 30 days; or
- (3) both the fine and confinement. (V.A.C.S. Art. 9005.)

[Sections 52.012–52.020 reserved for expansion]

## SUBCHAPTER C. RESTRICTIONS ON LENGTH OF HOES

Sec. 52.021. MINIMUM LENGTH OF HOE HANDLES. (a) An employer of agricultural laborers may not require an employee to use a hoe that has a handle shorter than four feet while performing agricultural labor in a commercial farming operation.

(b) This section does not apply to an employer engaged in the operation of a greenhouse or nursery. (V.A.C.S. Art. 5221j, Secs. 1, 2.)

Sec. 52.022. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 52.021.

(b) An offense under this section is a Class C misdemeanor. (V.A.C.S. Art. 5221j, Sec. 3.)

[Sections 52.023–52.030 reserved for expansion]

## SUBCHAPTER D. RESTRICTIONS ON BLACKLISTING

Sec. 52.031. BLACKLISTING OFFENSE; PENALTY. (a) In this section, "blacklist" means to place on a book or list or publish the name of an employee of an individual, firm, company, or corporation who was discharged or who voluntarily left that employment, intending to prevent the employee from engaging in or securing employment of any kind with any other person, in either a public or a private capacity.

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

- (1) blacklists or causes to be blacklisted an employee; or
- (2) conspires or contrives by correspondence or any other manner to prevent an employee discharged by a corporation, company, or individual from procuring employment.

(c) An offense under this section is punishable by:

- (1) a fine of not less than \$50 or more than \$250;
- (2) imprisonment in jail for not less than 30 days or more than 90 days; or
- (3) both the fine and imprisonment.

(d) This section may not be held to prohibit a corporation, company, or individual from giving, on application from a discharged employee or a person desiring to employ the employee, a written truthful statement of the reason for the discharge. The written statement may not be used as the cause for a civil or criminal action for libel against the person who furnishes the statement. (V.A.C.S. Arts. 5196c, 5196d, 5196e, 5196f.)

[Sections 52.032–52.040 reserved for expansion]

## SUBCHAPTER E. RESTRICTIONS ON COERCION OF EMPLOYEE TRADE

Sec. 52.041. COERCION OF EMPLOYEE TRADE; PENALTY. (a) A person, firm, or corporation commits an offense if the person, firm, or corporation requires or attempts to require by coercion an employee to:

- (1) deal with a person, association, corporation, or company; or
- (2) purchase an article of food, clothing, or other merchandise at a place or store.

(b) A person, firm, or corporation commits an offense if the person, firm, or corporation excludes from work, punishes, or blacklists an employee for failure to:

- (1) deal with the person, firm, or corporation; or
- (2) purchase an article of food, clothing, or other merchandise at a place or store.

(c) An offense under this section is punishable by a fine of not less than \$50 or more than \$200. (V.A.C.S. Art. 5196g.)

[Sections 52.042–52.050 reserved for expansion]

SUBCHAPTER F. RESTRICTIONS ON PENALIZING EMPLOYEE  
FOR COMPLIANCE WITH SUBPOENA

Sec. 52.051. PENALIZING EMPLOYEE FOR COMPLIANCE WITH SUBPOENA.

(a) An employer may not discharge, discipline, or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding.

(b) If the subpoena to which a violation of Subsection (a) applies is issued by a court, the employer violating Subsection (a) may be found in contempt by the court issuing the subpoena.

(c) If the subpoena to which a violation of Subsection (a) applies is issued by a legislative committee or a state agency, the employer violating Subsection (a) is subject to the authority of the committee or agency to impose a monetary penalty, not to exceed \$500, on a person who violates an order of the committee or agency.

(d) An employee discharged in violation of this section is entitled to return to the same employment that the employee had at the time the employee was subpoenaed if the employee, as soon as practical after release from compliance with the subpoena, gives the employer actual notice that the employee intends to return.

(e) An employee injured because of the violation of this section by an employer may recover:

(1) damages in an amount that does not exceed six months' compensation at the rate at which the employee was compensated when the subpoena was issued; and

(2) reasonable attorney's fees.

(f) It is a defense to an action by an employee under this section for reemployment that reemployment is impossible or unreasonable because of a change in the employer's circumstances while the employee complied with the subpoena. (V.A.C.S. Art. 5207c.)

[Chapters 53–60 reserved for expansion]

SUBTITLE C. WAGES

CHAPTER 61. PAYMENT OF WAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS

Sec. 61.002. COMMISSION POWERS

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[Sections 61.004–61.010 reserved for expansion]

SUBCHAPTER B. PAYMENT OF WAGES

Sec. 61.011. PAYDAYS

Sec. 61.012. DESIGNATION OF PAYDAYS; NOTICE

Sec. 61.013. PAYMENT OTHER THAN ON PAYDAY

Sec. 61.014. PAYMENT AFTER TERMINATION OF EMPLOYMENT

Sec. 61.015. PAYMENT OF COMMISSIONS AND BONUSES

Sec. 61.016. FORM OF PAYMENT

Sec. 61.017. DELIVERY OF PAYMENT

Sec. 61.018. DEDUCTION FROM WAGES

Sec. 61.019. FAILURE TO PAY WAGES; CRIMINAL PENALTY

Sec. 61.020. FAILURE TO PAY WAGES; ATTORNEY GENERAL ACTION

[Sections 61.021–61.030 reserved for expansion]

SUBCHAPTER C. SECURITY FOR WAGE PAYMENTS

- Sec. 61.031. BOND
- Sec. 61.032. SUIT TO ENFORCE BOND REQUIREMENT
- Sec. 61.033. FAILURE OF SURETY COMPANY TO PAY VERIFIED CLAIM FOR WAGES; CIVIL PENALTY

[Sections 61.034–61.050 reserved for expansion]

SUBCHAPTER D. WAGE CLAIMS

- Sec. 61.051. FILING WAGE CLAIM
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- Sec. 61.054. REQUEST FOR HEARING ON PRELIMINARY ORDER
- Sec. 61.055. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED
- Sec. 61.056. PAYMENT REQUIRED IF HEARING NOT REQUESTED
- Sec. 61.057. NOTICE; TIME FOR HEARING
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- Sec. 61.059. COMMISSION CONSIDERATION OF PRELIMINARY WAGE DETERMINATION ORDER
- Sec. 61.060. ORDER AFTER HEARING
- Sec. 61.061. NOTICE AND FINALITY OF ORDER
- Sec. 61.062. JUDICIAL REVIEW
- Sec. 61.063. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW; WAIVER
- Sec. 61.064. PAYMENT TO EMPLOYEE
- Sec. 61.065. DEPOSIT OF PENALTY
- Sec. 61.066. ATTORNEY GENERAL ACTION; ENFORCEMENT OF ORDER

[Sections 61.067–61.080 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE LIEN

- Sec. 61.081. CREATION AND ATTACHMENT OF LIEN
- Sec. 61.082. ENFORCEMENT OF LIEN
- Sec. 61.083. FILING; FEE
- Sec. 61.084. RELEASE OF LIEN

CHAPTER 61. PAYMENT OF WAGES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Employment Commission or its designee.
- (2) "Day" means a calendar day.
- (3) "Employee" means an individual who is employed by an employer for compensation. The term does not include:
  - (A) a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Article 5996h, Revised Statutes; or
  - (B) an independent contractor.
- (4) "Employer" means a person that employs one or more employees.
- (5) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a contract of hire, whether written or oral or express or implied. The term does not include any service performed by an individual for wages if it

is shown that the individual is free from control or direction in the performance of the service, both under any contract of service and in fact.

(6) "Mail" means to deposit for mailing with the United States Postal Service.

(7) "Wages" means compensation owed by an employer for:

(A) labor or services rendered by an employee, whether computed on a time, task, piece, commission, or other basis; and

(B) vacation pay, holiday pay, sick leave pay, parental leave pay, or severance pay owed to an employee under a written agreement with the employer or under a written policy of the employer. (V.A.C.S. Art. 5155, Sec. 1 (part).)

Sec. 61.002. COMMISSION POWERS. (a) The commission may adopt rules as necessary to implement this chapter.

(b) The commission may administer oaths as necessary to implement this chapter. (V.A.C.S. Art. 5155, Sec. 7.)

Sec. 61.003. GOVERNMENTAL ENTITIES EXCLUDED. This chapter does not apply to the United States, this state, or a political subdivision of this state. (V.A.C.S. Art. 5155, Sec. 1 (part).)

[Sections 61.004–61.010 reserved for expansion]

#### SUBCHAPTER B. PAYMENT OF WAGES

Sec. 61.011. PAYDAYS. (a) An employer shall pay wages to each employee who is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) at least once a month.

(b) An employer shall pay wages to an employee other than an employee covered by Subsection (a) at least twice a month.

(c) If wages are paid twice a month, each pay period must consist as nearly as possible of an equal number of days. (V.A.C.S. Art. 5155, Sec. 2(a).)

Sec. 61.012. DESIGNATION OF PAYDAYS; NOTICE. (a) An employer shall designate paydays in accordance with Section 61.011.

(b) If an employer fails to designate paydays, the employer's paydays are the first and 15th day of each month.

(c) An employer shall post, in conspicuous places in the workplace, notices indicating the paydays. (V.A.C.S. Art. 5155, Sec. 4.)

Sec. 61.013. PAYMENT OTHER THAN ON PAYDAY. An employer shall pay an employee who is not paid on a payday for any reason, including the employee's absence on a payday, on another regular business day on the employee's request. (V.A.C.S. Art. 5155, Sec. 2(c).)

Sec. 61.014. PAYMENT AFTER TERMINATION OF EMPLOYMENT. (a) An employer shall pay in full an employee who is discharged from employment not later than the sixth day after the date the employee is discharged.

(b) An employer shall pay in full an employee who leaves employment other than by discharge not later than the next regularly scheduled payday. (V.A.C.S. Art. 5155, Secs. 2(d), (e).)

Sec. 61.015. PAYMENT OF COMMISSIONS AND BONUSSES. (a) Wages paid on commission and bonuses are due according to the terms of:

(1) an agreement between the employee and employer; or

(2) an applicable collective bargaining agreement.

(b) An employer shall pay wages paid on commission and bonuses to an employee in a timely manner as required for the payment of other wages under this chapter. (V.A.C.S. Art. 5155, Sec. 2(b).)

Sec. 61.016. FORM OF PAYMENT. (a) An employer shall pay wages to an employee:

(1) in United States currency;

(2) by a written instrument issued by the employer that is negotiable on demand at full face value for United States currency; or

(3) by the electronic transfer of funds.

(b) An employee may agree in writing to receive part or all of the wages in kind or in another form.

(c) Payment by a written instrument that is not negotiable or for which payment is refused for any reason attributable to the employer does not constitute payment of wages for the purposes of this chapter. (V.A.C.S. Art. 5155, Sec. 2(f).)

Sec. 61.017. DELIVERY OF PAYMENT. An employer shall pay wages by:

(1) delivering them to the employee at the employee's regular place of employment during regular employment hours;

(2) delivering them to the employee at a time and place agreed on by the employer and employee;

(3) sending them to the employee by registered mail, to be received by the employee not later than payday;

(4) delivering them in a manner similar to a manner specified by Subdivision (1), (2), or (3) to a person designated by the employee in writing; or

(5) delivering them to the employee by any reasonable means authorized by the employee in writing. (V.A.C.S. Art. 5155, Sec. 2(g).)

Sec. 61.018. DEDUCTION FROM WAGES. An employer may not withhold or divert any part of an employee's wages unless the employer:

(1) is ordered to do so by a court of competent jurisdiction;

(2) is authorized to do so by state or federal law; or

(3) has written authorization from the employee to deduct part of the wages for a lawful purpose. (V.A.C.S. Art. 5155, Sec. 3.)

Sec. 61.019. FAILURE TO PAY WAGES; CRIMINAL PENALTY. (a) An employer commits an offense if:

(1) at the time of hiring an employee, the employer intends to avoid payment of wages owed to the employee; and

(2) the employer fails after demand to pay those wages.

(b) An offense under this section is a felony of the third degree. (V.A.C.S. Art. 5155, Sec. 5A.)

Sec. 61.020. FAILURE TO PAY WAGES; ATTORNEY GENERAL ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this chapter. (V.A.C.S. Art. 5155, Sec. 5(k).)

[Sections 61.021–61.030 reserved for expansion]

### SUBCHAPTER C. SECURITY FOR WAGE PAYMENTS

Sec. 61.031. BOND. (a) The commission may require an employer to deposit a bond if:

(1) the employer is convicted of two violations of this chapter; or

(2) a final order of the commission against an employer for nonpayment of wages remains unsatisfied after the 10th day after the date on which the time to appeal from that final order has expired and an appeal is not pending.

(b) The bond must be:

(1) in an amount approved and considered by the commission as adequate under the circumstances;

(2) payable to the state;

(3) conditioned that the employer, for a period not to exceed 36 months, pay the employees in accordance with this chapter; and

(4) conditioned that the employer pay any sum recovered against the employer under this chapter. (V.A.C.S. Art. 5155, Sec. 2.1(a).)

Sec. 61.032. **SUIT TO ENFORCE BOND REQUIREMENT.** (a) If an employer fails to deposit a bond required under Section 61.031 before the 11th day after the date on which demand is made for the bond, the attorney general may bring a suit in the name of the state against the employer to furnish the bond or to cease doing business until the employer furnishes the bond.

(b) If the court finds just cause for requiring the bond and that the bond is reasonably necessary and proper to secure prompt payment of the wages of the employees of the employer and the employer's compliance with this chapter, the court may enjoin the employer from doing business until the requirement is met. The injunction may also apply to any other person concerned with or in any way participating in the failure to pay wages resulting in the conviction or in a final order of the commission. The court may make any other order appropriate and necessary to compel compliance with the requirement.

(c) In an action under this section, the employer has the burden of proving that the bond is unnecessary or that the amount demanded by the commission is excessive. (V.A.C.S. Art. 5155, Sec. 2.1(b).)

Sec. 61.033. **FAILURE OF SURETY COMPANY TO PAY VERIFIED CLAIM FOR WAGES; CIVIL PENALTY.** (a) A surety company that issues a bond to secure the payment of wages under this chapter and that wilfully fails to pay a verified claim for wages found to be due and payable is subject to a civil penalty in the amount of \$1,000 for each failure to pay each employee.

(b) A subsequent violation is subject to a civil penalty in the amount of \$1,000 for each failure to pay each employee plus 25 percent of the amount unlawfully withheld.

(c) The attorney general shall recover a penalty imposed by this section in an action brought in the name of the state. (V.A.C.S. Art. 5155, Secs. 2.2(a), (b) (part).)

[Sections 61.034–61.050 reserved for expansion]

#### SUBCHAPTER D. WAGE CLAIMS

Sec. 61.051. **FILING WAGE CLAIM.** (a) An employee who is not paid wages as prescribed by this chapter may file a wage claim with the commission in accordance with this subchapter.

(b) A wage claim must be in writing on a form prescribed by the commission and must be verified by the employee.

(c) A wage claim must be filed not later than the 180th day after the date the wages claimed became due for payment.

(d) The employee may file the wage claim:

(1) in person at an office of the commission; or

(2) by mailing the claim to an address designated by the commission. (V.A.C.S. Art. 5155, Sec. 5(a).)

Sec. 61.052. **PRELIMINARY WAGE DETERMINATION ORDER.** (a) The commission shall analyze each wage claim filed under Section 61.051 and, if the claim alleges facts actionable under this chapter, shall investigate the claim and issue a preliminary wage determination order:

(1) dismissing the wage claim; or

(2) ordering payment of wages determined to be due and unpaid.

(b) If an administrative penalty is imposed under Section 61.053, the preliminary wage determination order must include an order for payment of the penalty.

(c) The commission shall mail notice of the preliminary wage determination order to each party at that party's last known address, as reflected by commission records. (V.A.C.S. Art. 5155, Sec. 5(b).)



Sec. 61.053. **BAD FAITH; ADMINISTRATIVE PENALTY.** (a) If the commission determines that an employer acted in bad faith in not paying wages as required by this chapter, the commission, in addition to ordering the payment of the wages, may assess an administrative penalty against the employer.

(b) If the commission determines an employee acted in bad faith in bringing a wage claim, the commission may assess an administrative penalty against the employee.

(c) An administrative penalty assessed under this section may not exceed the lesser of:

- (1) the amount of the wages in question or claimed; or
- (2) \$1,000.

(d) In determining the amount of an administrative penalty assessed under this section, the commission shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation; and
- (4) any other appropriate matter, including mitigating circumstances. (V.A.C.S. Art. 5155, Sec. 5(c).)

Sec. 61.054. **REQUEST FOR HEARING ON PRELIMINARY ORDER.** (a) Either party may request a hearing to contest a preliminary wage determination order.

(b) The request for hearing must be made in writing not later than the 21st day after the date the commission mails the notice of the preliminary wage determination order. (V.A.C.S. Art. 5155, Sec. 5(d) (part).)

Sec. 61.055. **PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED.** If neither party requests a hearing to contest a preliminary wage determination order within the period prescribed by Section 61.054, the order becomes the final order of the commission for all purposes, and neither party is entitled to judicial review of the order under this subchapter. (V.A.C.S. Art. 5155, Sec. 5(d) (part).)

Sec. 61.056. **PAYMENT REQUIRED IF HEARING NOT REQUESTED.** (a) An employer that does not request a hearing within the period prescribed by Section 61.054 to contest a preliminary wage determination order shall pay the amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order.

(b) Payment to the commission constitutes payment to the employee for all purposes. (V.A.C.S. Art. 5155, Sec. 5(e).)

Sec. 61.057. **NOTICE; TIME FOR HEARING.** (a) A notice regarding an administrative hearing conducted under this subchapter must be mailed by the commission not later than the 21st day after the date a request for the hearing is received by the commission.

(b) As soon as practicable, but not later than the 45th day after the date a notice is mailed under Subsection (a), the commission shall conduct the hearing. (V.A.C.S. Art. 5155, Sec. 5(f) (part).)

Sec. 61.058. **HEARING PROCEDURES.** (a) A hearing conducted under this subchapter is subject to the rules and hearings procedures used by the commission in the determination of a claim for unemployment compensation benefits.

(b) The hearing is not subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 5155, Sec. 5(f) (part).)

Sec. 61.059. **COMMISSION CONSIDERATION OF PRELIMINARY WAGE DETERMINATION ORDER.** The commission may modify, affirm, or rescind a preliminary wage determination order. (V.A.C.S. Art. 5155, Sec. 5(f) (part).)

Sec. 61.060. **ORDER AFTER HEARING.** After a hearing, the commission shall enter a written order for the payment of wages that the commission determines to be due or for the payment of any penalty the commission assesses. (V.A.C.S. Art. 5155, Sec. 5(g) (part).)

Sec. 61.061. **NOTICE AND FINALITY OF ORDER.** (a) The commission shall mail to each party to the appeal notice of:

- (1) the decision;
- (2) the amount of wages subject to the order;
- (3) the amount of any penalty assessed; and
- (4) the parties' right to judicial review of the order.

(b) The notice shall be mailed to a party's last known address, as shown by commission records.

(c) The order becomes final 14 days after the date on which it is mailed unless before that date:

- (1) a party to the appeal files a written motion for rehearing; or
- (2) the commission reopens the hearing. (V.A.C.S. Art. 5155, Sec. 5(g) (part).)

Sec. 61.062. JUDICIAL REVIEW. (a) A party who has exhausted the party's administrative remedies under this chapter may bring a suit to appeal the order.

(b) The suit must be filed not later than the 60th day after the date the final order is mailed.

(c) The commission and any other party to the proceeding before the commission must be made defendants in the suit.

(d) The suit must be brought in the county of the claimant's residence. If the claimant is not a resident of this state, the suit must be brought in the county in this state in which the employer has its principal place of business.

(e) An appeal under this subchapter is by trial de novo with the substantial evidence rule being the standard of review in the manner as applied to an appeal from a final decision under Subtitle A, Title 4. (V.A.C.S. Art. 5155, Sec. 5(g) (part).)

Sec. 61.063. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW; WAIVER. (a) Not later than the 60th day after the date a commission order becomes final, the party required to pay wages or a penalty shall:

- (1) pay the amount to the commission; or
- (2) if the party files a petition for judicial review in a court of competent jurisdiction contesting the final order, send the amount to the commission for deposit in an interest-bearing escrow account.

(b) Unless the party files an affidavit of inability to pay with the clerk of the court within the period specified in Subsection (a), failure to send the amount within that period constitutes a waiver of the right to judicial review.

(c) If after judicial review it is determined that some or all of the wages are not owed or the penalty is reduced or is not assessed, the commission shall remit the appropriate amount to the party assessed the wage payment or penalty, plus the interest accrued on the escrowed amount. Interest under this section shall be paid for the period beginning on the date the assessed amount is paid to the commission and ending on the date the amount is remitted to the party. (V.A.C.S. Art. 5155, Secs. 5(h), (i).)

Sec. 61.064. PAYMENT TO EMPLOYEE. Not later than the 30th day after the date on which a claim is finally adjudicated or otherwise resolved, the commission shall pay to the claimant wages collected under this subchapter and any interest earned on those wages. (V.A.C.S. Art. 5155, Sec. 5(l) (part).)

Sec. 61.065. DEPOSIT OF PENALTY. The commission shall deposit a penalty collected under this subchapter in the unemployment compensation special administration fund established under Subchapter E, Chapter 203. (V.A.C.S. Art. 5155, Sec. 5(l) (part).)

Sec. 61.066. ATTORNEY GENERAL ACTION; ENFORCEMENT OF ORDER. (a) The attorney general may bring a suit in a district court in Travis County to enforce a final order from which an appeal under this chapter has not been taken.

(b) In a suit brought under Subsection (a), on the request of the attorney general the court may order payment of attorney's fees, including investigation costs and other costs of court. (V.A.C.S. Art. 5155, Sec. 5(j).)

[Sections 61.067–61.080 reserved for expansion]

SUBCHAPTER E. ADMINISTRATIVE LIEN

Sec. 61.081. CREATION AND ATTACHMENT OF LIEN. (a) A final order of the commission against an employer indebted to the state for penalties or wages, unless timely appealed to a court, is a lien on all the property belonging to the employer.

(b) The lien for an unpaid debt attaches at the time the order of the commission becomes final. (V.A.C.S. Art. 5155, Sec. 6(a) (part).)

Sec. 61.082. ENFORCEMENT OF LIEN. (a) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien established under this subchapter.

(b) In administering and enforcing the lien, the commission has the duties imposed and the powers conferred on the comptroller for the enforcement of other liens under Subchapters A and B, Chapter 113, Tax Code. (V.A.C.S. Art. 5155, Sec. 6(a) (part).)

Sec. 61.083. FILING; FEE. (a) A lien under this subchapter may be recorded in the book entitled "State Tax Liens" kept by the county clerk as provided by Section 113.004, Tax Code.

(b) The commission shall pay the county clerk of the county in which a notice of the lien has been filed the usual fee for filing and recording similar instruments. The fee shall be paid by warrant drawn by the comptroller. The fee is an amount due to the commission from the employer. (V.A.C.S. Art. 5155, Secs. 6(a) (part), (b) (part).)

Sec. 61.084. RELEASE OF LIEN. (a) A lien under this subchapter may be released in the manner provided by Subchapter A, Chapter 113, Tax Code, for a state tax lien.

(b) If the liability secured by the lien is fully paid, the commission shall mail a release of lien to the employer.

(c) The employer is responsible for filing a release of lien with the appropriate county clerk and paying the county clerk's fee for recording the release. (V.A.C.S. Art. 5155, Secs. 6(a) (part), (b) (part).)

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CHAPTER 62. MINIMUM WAGE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. SHORT TITLE. This chapter may be cited as the Texas Minimum Wage Act. (V.A.C.S. Art. 5159d, Sec. 2.)

Sec. 62.002. DEFINITIONS. In this chapter, unless the context requires a different definition:

(1) "Agricultural piece rate worker" means a person:

(A) who is employed as a hand harvest laborer in agriculture; and

(B) whose pay is computed on a piece rate in an operation for which the pay has been and is customarily and generally recognized as having been computed on a piece rate in the region of employment.

(2) "Agriculture" includes:

- (A) farming in all its branches;
- (B) cultivating and tilling the soil;
- (C) dairying;
- (D) producing, cultivating, growing, and harvesting an agricultural or horticultural commodity, including a commodity defined as an agricultural commodity by Section 15(g), Agricultural Marketing Act (12 U.S.C. Section 1141j(g));
- (E) raising livestock, bees, fur-bearing animals, or poultry; and
- (F) any practice performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including:
  - (i) forestry or lumber operations;
  - (ii) preparation for market; and
  - (iii) delivery to storage, market, or a carrier for transportation to market.

(3) "Commission" means the Texas Employment Commission.

(4) "Employ" includes to permit to work.

(5) "Employee" includes any individual employed by an employer.

(6) "Employer" includes a person acting directly or indirectly in the interest of an employer in relation to an employee.

(7) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. (V.A.C.S. Art. 5159d, Secs. 3(a), (b), (c), (d), (f), (g); New.)

Sec. 62.003. EARNINGS STATEMENT. (a) At the end of each pay period, an employer shall give each employee a written earnings statement covering the pay period.

(b) An earnings statement must be signed by the employer or the employer's agent and must show:

- (1) the name of the employee;
- (2) the rate of pay;
- (3) the total amount of pay earned by the employee during the pay period;
- (4) any deduction made from the employee's pay and the purpose of the deduction;
- (5) the amount of pay after all deductions are made;
- (6) the total number of:
  - (A) hours worked by the employee if the employee's pay is computed by the hour; or
  - (B) units produced by the employee during the pay period if the employee's pay is computed on a piece rate; and
- (7) the words "medical certificate," if the employee is paid a wage lower than the applicable minimum wage under Section 62.055.

(c) An earnings statement may be in any form determined by the employer. The information required by Subsection (b) may be stated on a check voucher or bank draft given to an employee for the employee's wages.

(d) In this section, "pay period" means the period that an employee works for which salary or wages are regularly paid under the employee's employment agreement. (V.A.C.S. Art. 5159d, Secs. 3(k); 9(c) (part); 11(a), (c).)

Sec. 62.004. PROVISION OF INFORMATION. The commission shall provide information to the public about this chapter to ensure that both employers and employees in this state are fully aware of:

- (1) their respective rights and responsibilities;
- (2) the specified exemptions; and
- (3) the penalties and liabilities that may be incurred for a violation of this chapter. (V.A.C.S. Art. 5159d, Sec. 15.)

Sec. 62.005. COLLECTIVE BARGAINING NOT IMPAIRED. This chapter does not interfere with or in any way diminish the right of employees to bargain collectively with their employer through representatives chosen by the employees to establish wages that exceed the applicable minimum wage under this chapter. (V.A.C.S. Art. 5159d, Sec. 14.)

[Sections 62.006–62.050 reserved for expansion]

#### SUBCHAPTER B. MINIMUM WAGE

Sec. 62.051. MINIMUM WAGE. An employer shall pay to each employee not less than \$3.35 an hour, except as provided by Sections 62.055 and 62.057. (V.A.C.S. Art. 5159d, Secs. 5(a), 6.)

Sec. 62.052. TIPPED EMPLOYEES. (a) In determining the wage of a tipped employee, the amount paid the employee by the employer is considered to be increased because of tips by an amount determined by the employer but that does not exceed 50 percent of the applicable minimum wage rate.

(b) In this section, “tipped employee” means an employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips. (V.A.C.S. Art. 5159d, Secs. 3(e), 5(b).)

Sec. 62.053. COST OF MEALS OR LODGING. In computing the wage paid to an employee, an employer may include the reasonable cost to the employer of furnishing meals, lodging, or both to the employee if:

(1) meals or lodging customarily are furnished by the employer to employees; and

(2) the cost of the meals and lodging are separately stated and identified in the earnings statement furnished to the employee under Section 62.003. (V.A.C.S. Art. 5159d, Sec. 5(c).)

Sec. 62.054. CERTAIN EMPLOYEES SUBJECT TO CALL. An employer may not be required to pay an employee who lives on the premises of a business and who is assigned certain working hours plus additional hours when the employee is subject to call for more than the number of hours the employee actually works or is on duty because of assigned working hours. (V.A.C.S. Art. 5159d, Sec. 5(d).)

Sec. 62.055. SPECIAL WAGE FOR CERTAIN EMPLOYEES. (a) A person may be employed at a wage less than the applicable minimum wage under this chapter but not less than 60 percent of the minimum wage if:

(1) the person’s earning or productive capacity is impaired by age, physical or mental deficiency, or injury; or

(2) the person is over 65 years of age.

(b) Subsection (a) does not apply to a person employed as an agricultural piece rate worker. (V.A.C.S. Art. 5159d, Sec. 9(a) (part).)

Sec. 62.056. MEDICAL CERTIFICATE. (a) An employer who employs a person described by Section 62.055(a)(1) at a wage lower than the applicable minimum wage under Section 62.051 is liable under Subchapter E unless before employing the person the employer obtains a medical certificate meeting the requirements of Subsection (b).

(b) The medical certificate must be signed by a physician licensed to practice medicine by the Texas State Board of Medical Examiners and must certify that because of age, physical or mental deficiency, or injury the productive or earning capacity of the person seeking employment is materially impaired.

(c) The employer shall retain the medical certificate during the period of the person’s employment and for two years after the employment ends. (V.A.C.S. Art. 5159d, Secs. 9(b) (part), (c) (part).)

Sec. 62.057. PATIENTS AND CLIENTS OF TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION. (a) A person may be compensated for services rendered to the Texas Department of Mental Health and Mental Retardation or a department facility at a percentage of the base wage adopted under this section if:

(1) the person is a patient or client of a department facility;

(2) the person's productive capacity is impaired;

(3) the person:

(A) assists in the operation of the facility as part of the person's therapy; or

(B) receives occupational training in a sheltered workshop or other program operated by the department; and

(4) the facility or department derives an economic benefit from the person's services.

(b) The percentage of the base wage paid to a person under Subsection (a) must correspond to the percentage of the person's productive capacity compared with the capacity of an employee who performs the same or similar tasks and who is not similarly impaired.

(c) The department shall adopt rules to determine the base wage and the percentage of productive capacity of the patients and clients and other rules necessary to implement this section.

(d) Services rendered and payment provided under this section may not be construed as creating an employer-employee relationship between the department and the patient or client engaged in occupational training or therapeutic or rehabilitative services. (V.A.C.S. Art. 5159d, Sec. 10a (part).)

[Sections 62.058–62.100 reserved for expansion]

### SUBCHAPTER C. AGRICULTURAL PIECE RATE WORKERS

Sec. 62.101. DEFINITION. In this subchapter, "commissioner" means the commissioner of agriculture. (V.A.C.S. Art. 5159d, Sec. 3(j).)

Sec. 62.102. MINIMUM WAGE FOR AGRICULTURAL PIECE RATE WORKERS.

(a) A person employed as an agricultural piece rate worker to harvest a commodity for which a piece rate has been established by the commissioner under this subchapter is entitled to receive not less than the minimum hourly wage established under Section 62.051.

(b) Section 62.051 applies to an employer employing a hand harvest laborer to harvest a commodity for which a piece rate has not been established.

(c) An employer may not pay an agricultural piece rate worker at a piece rate less than the rate determined by the commissioner under Section 62.103. (V.A.C.S. Art. 5159d, Secs. 7(a), (b) (part), (d) (part).)

Sec. 62.103. PIECE RATE DETERMINED BY COMMISSIONER. (a) The commissioner shall determine a piece rate for each agricultural commodity that is commercially produced in substantial quantity in this state.

(b) For each agricultural commodity, the piece rate must be equivalent to the minimum hourly wage for other agricultural workers, as provided by Section 62.051, so that when payment by unit of production is applied to a worker of average ability and diligence in harvesting the commodity, the worker receives an amount equal to the minimum hourly wage for other agricultural workers.

(c) If an agricultural piece rate worker harvests more than the number of units of a particular commodity that would provide the established minimum wage, the worker shall be paid for the total number of units of production that the worker harvests. (V.A.C.S. Art. 5159d, Sec. 7(b) (part).)

Sec. 62.104. COLLECTION OF INFORMATION. (a) The commissioner shall collect sufficient information about the actual productivity of hand harvesters of agricultural commodities in this state to reasonably determine a piece rate for each commodity.

(b) The commissioner shall retain all information used for determining a piece rate while the piece rate is in effect.

(c) All information used for determining a piece rate shall be available for public inspection. (V.A.C.S. Art. 5159d, Secs. 7(c) (part), (e).)

Sec. 62.105. COMPUTATION OF PIECE RATE. (a) From the information collected under Section 62.104, the average hourly productivity of hand harvest laborers for each

agricultural commodity commercially produced in substantial quantity in this state shall be computed and expressed in:

- (1) units of the commodity; or
- (2) units of weight or measure customarily used in regard to the commodity.

(b) The piece rate established by the commissioner for a commodity must equal the minimum wage for agricultural workers under Section 62.051 divided by the average hourly production of hand harvesters of the commodity, rounded to the nearest cent. (V.A.C.S. Art. 5159d, Sec. 7(c) (part).)

Sec. 62.106. HEARINGS. (a) Before issuing an order establishing a piece rate, the commissioner or a person designated by the commissioner shall hold a public hearing at which the proposed rate and the information from which the rate is determined shall be presented.

(b) Agricultural employers and employees or their representatives shall be given a reasonable opportunity to be heard and to protest the establishment of a proposed rate.

(c) After a hearing, the commissioner may modify a proposed rate before finally establishing the rate. (V.A.C.S. Art. 5159d, Sec. 7(f) (part).)

Sec. 62.107. ORDER ESTABLISHING PIECE RATE. (a) An order of the commissioner establishing or modifying a piece rate may not take effect before the 31st day after the date the order is issued.

(b) Each order establishing a piece rate shall be kept on file in the commissioner's office in Austin, Texas.

(c) The commissioner shall furnish a copy of each order establishing a piece rate to the Texas Employment Commission. (V.A.C.S. Art. 5159d, Secs. 7(g) (part), (h) (part).)

Sec. 62.108. RULES. The commissioner may adopt rules necessary for the proper administration of this subchapter, including procedures for giving notice of and conducting hearings. (V.A.C.S. Art. 5159d, Sec. 7(l).)

Sec. 62.109. APPEAL OF COMMISSIONER'S DECISION. (a) Unless set aside by a judgment of a court of competent jurisdiction, the commissioner's decision establishing a piece rate is final and binding on all parties subject to this chapter.

(b) If a piece rate for a commodity is set aside by final judgment of a court of competent jurisdiction, the minimum hourly wage provided by Section 62.051 applies to harvesting the commodity until a valid piece rate is established. (V.A.C.S. Art. 5159d, Sec. 7(f) (part).)

Sec. 62.110. CHANGE IN PIECE RATE. A new piece rate may be established for a commodity in the manner provided for the establishment of an initial piece rate at any time the information available to the commissioner indicates a substantial change in condition. (V.A.C.S. Art. 5159d, Sec. 7(i) (part).)

Sec. 62.111. ANNUAL REVIEW OF PIECE RATES. The commissioner shall review each piece rate at least annually and shall determine if a new piece rate is needed. (V.A.C.S. Art. 5159d, Sec. 7(i) (part).)

Sec. 62.112. PIECE RATE FOR CERTAIN COMMODITIES PROHIBITED. (a) A piece rate may not be established for harvesting of a commodity if, in the commissioner's judgment:

- (1) sufficient information is not available for determining the average hourly productivity of hand harvesters of the commodity; or
- (2) the commodity is not commercially produced in this state in sufficient quantity to justify establishing a piece rate.

(b) The commissioner's decision not to establish a piece rate for a particular commodity does not preclude the subsequent establishment of a piece rate for the commodity when, in the commissioner's judgment:

- (1) sufficient information is available; and
- (2) the quantity of production of the commodity justifies establishing a piece rate. (V.A.C.S. Art. 5159d, Sec. 7(d) (part).)



Sec. 62.113. APPLICATION TO DIRECT EMPLOYMENT AND CONTRACT LABOR. This subchapter applies to:

- (1) a person directly employed by an owner, operator, or manager of a farm; and
- (2) a person whose services to perform agricultural labor are furnished to an employer by someone other than the laborer. (V.A.C.S. Art. 5159d, Secs. 3(h), 7(j).)

Sec. 62.114. SUSPENSION OF PIECE RATE. The commissioner by order may suspend a piece rate in a specified area for not more than 30 days in an emergency caused by:

- (1) a flood, hurricane, or other natural disaster; or
- (2) any occurrence that may result in the excessive loss of agricultural products. (V.A.C.S. Art. 5159d, Sec. 7(k).)

[Sections 62.115–62.150 reserved for expansion]

#### SUBCHAPTER D. EXEMPTIONS

Sec. 62.151. PERSON COVERED BY FEDERAL ACT. This chapter does not apply to a person covered by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.). (V.A.C.S. Art. 5159d, Sec. 4(a).)

Sec. 62.152. EMPLOYMENT BY RELIGIOUS, EDUCATIONAL, CHARITABLE, OR NONPROFIT ORGANIZATION. An employer is exempt from this chapter with respect to the employment of a person who is:

(1) a member of a religious order while the person is performing a service for or at the direction of the order;

(2) a duly ordained, commissioned, or licensed minister, priest, rabbi, sexton, or Christian Science reader while the person is performing services in that capacity for a church, synagogue, or religious organization;

(3) engaged in the activities of a religious, educational, charitable, or nonprofit organization in which:

(A) the employer-employee relationship does not in fact exist; or

(B) the services are rendered to the organization gratuitously;

(4) employed by the Boy Scouts of America, the Girl Scouts of America, or a local organization affiliated with those organizations;

(5) employed by a camp of a religious, educational, charitable, or nonprofit organization; or

(6) employed with the person's spouse by a nonprofit educational institution to serve as the parents of a child:

(A) who is an orphan;

(B) one of whose natural parents is deceased; or

(C) who is enrolled in and resides in residential facilities of the institution, if the employee and the employee's spouse:

(i) reside in residential facilities of the institution; and

(ii) receive, without cost, board and lodging from the institution. (V.A.C.S. Art. 5159d, Secs. 4(b) (part), (d).)

Sec. 62.153. EMPLOYMENT OF CERTAIN PROFESSIONALS, SALESPERSONS, AND PUBLIC OFFICIALS. An employer is exempt from this chapter with respect to the employment of a person:

(1) employed in a bona fide executive, administrative, or professional capacity;

(2) employed as an outside salesperson or collector and paid a commission; or

(3) who performs services for a political subdivision as an elected official or as a member of a legislative body. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.154. DOMESTIC EMPLOYMENT. An employer is exempt from this chapter with respect to the employment of a person who:

- (1) performs domestic services in or about a private home, including a person who performs the duties of baby-sitting in or out of the employer's home; or
- (2) lives in or about a private home and furnishes personal care for a resident of the home. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.155. EMPLOYMENT OF CERTAIN YOUTHS AND STUDENTS. An employer is exempt from this chapter with respect to the employment of a person who:

- (1) is less than 18 years of age and is not a high school graduate or a graduate of a vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate;
- (2) is less than 20 years of age and is a student regularly enrolled in a high school, college, university, or vocational training program, other than a person who is employed in agriculture and whose pay is computed on a piece rate; or
- (3) has a disability and who is:
  - (A) not more than 21 years of age;
  - (B) a client of vocational rehabilitation; and
  - (C) participating in a cooperative school-work program. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.156. EMPLOYMENT OF INMATES. An employer is exempt from this chapter with respect to the employment of a person who performs services while imprisoned in the institutional division of the Texas Department of Criminal Justice or while confined in a local jail. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.157. EMPLOYMENT OF CERTAIN FAMILY MEMBERS. An employer is exempt from this chapter with respect to employment of the employer's brother, sister, brother-in-law, sister-in-law, child, spouse, parent, son-in-law, daughter-in-law, ward, or person in loco parentis to the employee. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.158. CERTAIN AMUSEMENT AND RECREATIONAL ESTABLISHMENTS. An employer is exempt from this chapter with respect to employment in an amusement or recreational establishment that:

- (1) does not operate for more than seven months in a calendar year; or
- (2) had average receipts for any six months of the preceding calendar year of not more than 33½ percent of its average receipts for the other six months of the year. (V.A.C.S. Art. 5159d, Sec. 4(b) (part).)

Sec. 62.159. CERTAIN EMPLOYERS NOT CONTRIBUTING TO UNEMPLOYMENT COMPENSATION FUND; CERTIFICATE. (a) An employer that is liable for payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, is exempt from this chapter, except with respect to employment of a person in agriculture.

(b) The commission shall furnish a certificate stating whether a specified employer is liable for the payment of contributions to the unemployment compensation fund under Subtitle A, Title 4, to a person making a written request for a certificate. The commission may require payment of a fee not to exceed \$5 for the issuance of the certificate.

(c) A certificate issued under this section is admissible in evidence in an action brought by an employee under Subchapter E. In the absence of evidence to the contrary:

- (1) it is presumed that the facts stated in the certificate are true; and
- (2) the certificate is conclusive as to whether the named employer is exempt from this chapter under this section. (V.A.C.S. Art. 5159d, Sec. 4(c) (part).)

Sec. 62.160. AGRICULTURAL EXEMPTIONS. (a) An employer is exempt from this chapter with respect to employment of a person in dairy farming.

(b) Sections 62.051–62.054 and Subchapter C do not apply to an agricultural employer with respect to an employee engaged in the production of livestock.

(c) In this section, "production of livestock" includes:

(1) any livestock operation, without regard to size or type of location, in which the land produces forage or feedstuffs, including naturally or artificially revegetated forage or feedstuffs;

(2) breeding, feeding, watering, containing, maintaining, and caring for livestock;

(3) production of livestock in feedlots; and

(4) all other activities necessary or useful to the raising of livestock. (V.A.C.S. Art. 5159d, Secs. 3(l), 4(b) (part), 8.)

Sec. 62.161. SHELTERED WORKSHOPS. A nonprofit charitable organization that is engaged in evaluating, training, and employment services for clients with disabilities and that complies with federal regulations covering those activities is considered to have complied with this chapter. (V.A.C.S. Art. 5159d, Sec. 10.)

[Sections 62.162–62.200 reserved for expansion]

### SUBCHAPTER E. CIVIL PENALTY

Sec. 62.201. CIVIL PENALTY. An employer who violates Section 62.051, 62.052, 62.053, 62.054, 62.055, or 62.056 or Subchapter C is liable to an affected employee in the amount of the unpaid wages plus an additional equal amount as liquidated damages. (V.A.C.S. Art. 5159d, Sec. 13(a).)

Sec. 62.202. LIMITATIONS. An action to recover a liability imposed by this subchapter must be brought not later than the second anniversary of the date on which the unpaid wages are due and payable. (V.A.C.S. Art. 5159d, Sec. 13(e).)

Sec. 62.203. PLAINTIFFS. (a) An action to recover a liability under this subchapter may be brought by an employee for that employee and other similarly affected employees.

(b) An employee may not be a plaintiff to an action brought under this subchapter unless:

(1) the employee consents in writing; and

(2) the consent is filed in the court in which the action is brought. (V.A.C.S. Art. 5159d, Sec. 13(b) (part).)

Sec. 62.204. REQUIRED FINDINGS. At the trial of an action brought under this subchapter, the plaintiff recovers if the jury or the court finds from a preponderance of the evidence that:

(1) the plaintiff is or has been employed by the defendant at any time during the two years preceding the institution of the action;

(2) the original petition filed by or on behalf of the plaintiff is verified; and

(3) the defendant failed to pay the plaintiff the minimum wage under this chapter. (V.A.C.S. Art. 5159d, Sec. 13(c).)

Sec. 62.205. ATTORNEY'S FEES; COSTS. In addition to a judgment awarded to the plaintiff, the court shall allow reasonable attorney's fees and costs of the action to be paid by the defendant. (V.A.C.S. Art. 5159d, Sec. 13(d).)

[Chapters 63–80 reserved for expansion]

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- Sec. 101.251. DEFINITIONS
- Sec. 101.252. LIABILITY OF LABOR ORGANIZATION

### CHAPTER 101. LABOR ORGANIZATIONS

#### SUBCHAPTER A. RIGHTS OF WORKING PERSONS

Sec. 101.001. RIGHT TO ORGANIZE. All persons engaged in any kind of labor may associate and form trade unions and other organizations to protect themselves in their personal labor in their respective employment. (V.A.C.S. Art. 5152.)

Sec. 101.002. RIGHT TO INFLUENCE ANOTHER REGARDING EMPLOYMENT.  
(a) A person by peaceful and lawful means may induce or attempt to induce another to:

- (1) enter or refuse to enter a particular employment;
- (2) quit a particular employment in which the other person is then engaged

(b) A member of a trade union or other organization may not enter the premises of another without the consent of the owner of the premises.

(c) This section does not apply to an association formed, an act taken, or an agreement made:

(1) to limit the production, transportation, use, or consumption of labor's products; or

(2) that creates a trust or conspiracy in restraint of trade under the laws of this state.

(d) Subsection (c) does not interfere with the terms of a private contract between an employer and an employee with regard to the time of service or other stipulations.

(e) Subsection (c) may not be construed as repealing or affecting a statute on trusts, conspiracies against trade, pools, or monopolies. (V.A.C.S. Arts. 5153, 5154.)

Sec. 101.003. **RIGHT TO BARGAIN.** A person's inherent right to work and to bargain freely with the person's employer, individually or collectively, for terms of the person's employment may not be denied or infringed by law or by any organization. (V.A.C.S. Art. 5207a, Sec. 1.)

Sec. 101.004. **CONTRACT FOR WITHHOLDING UNION DUES FROM EMPLOYEE'S COMPENSATION VOID WITHOUT EMPLOYEE'S CONSENT.** A contract that permits or requires the retention of part of an employee's compensation to pay dues or assessments on the employee's part to a labor union is void unless the employee delivers to the employer the employee's written consent to the retention of those sums. (V.A.C.S. Art. 5154e (part).)

[Sections 101.005–101.050 reserved for expansion]

#### SUBCHAPTER B. RIGHT TO WORK

Sec. 101.051. **DEFINITION.** In this subchapter, "labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union. (V.A.C.S. Art. 5207a, Sec. 4.)

Sec. 101.052. **DENIAL OF EMPLOYMENT BASED ON LABOR UNION MEMBERSHIP PROHIBITED.** A person may not be denied employment based on membership or nonmembership in a labor union. (V.A.C.S. Art. 5207a, Sec. 2.)

Sec. 101.053. **CONTRACT REQUIRING OR PROHIBITING LABOR UNION MEMBERSHIP VOID.** A contract is void if it requires that, to work for an employer, employees or applicants for employment:

(1) must be or may not be members of a labor union; or

(2) must remain or may not remain members of a labor union. (V.A.C.S. Art. 5207a, Sec. 3 (part).)

[Sections 101.054–101.100 reserved for expansion]

#### SUBCHAPTER C. REGULATION OF LABOR UNIONS

Sec. 101.101. **DEFINITIONS.** In this subchapter:

(1) "Enforcement officer" means the attorney general, district attorney, or county attorney.

(2) "Labor organizer" means a person who for a financial consideration solicits membership in a labor union or members for a labor union.

(3) "Labor union" means an incorporated or unincorporated association, group, union, lodge, local, branch, or subordinate organization of a union of working persons organized and existing to protect those persons and to improve their working conditions, wages, or employment relationships, but does not include an organization not commonly regarded as a labor union. (V.A.C.S. Art. 5154a, Sec. 2 (part).)

Sec. 101.102. **LEGISLATIVE FINDINGS; POLICY.** (a) The legislature finds that because the activities of labor unions affect the economic conditions of the country and the state by entering into almost all business and industrial enterprises, labor unions affect the public interest and are charged with a public use.

(b) Workers must be protected without regard to whether they are unionized. The right to work is the right to live.

(c) The policy of this state, in the exercise of its sovereign constitutional police power, is to regulate the activities and affairs of labor unions and officers, agents, organizers, and representatives of labor unions, as provided by this subchapter. (V.A.C.S. Art. 5154a, Sec. 1.)

Sec. 101.103. LIBERAL CONSTRUCTION. (a) This subchapter shall be liberally construed to:

(1) achieve the purposes provided by Section 101.102; and

(2) protect the rights of working persons to work and to organize for their mutual benefit in connection with their work.

(b) This subchapter may not be construed to deny the free rights of assembling, bargaining, and petitioning, orally or in writing, regarding a matter affecting labor or employment. (V.A.C.S. Art. 5154a, Sec. 14.)

Sec. 101.104. METHOD OF ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. (a) An officer, agent, organizer, or representative of a labor union must be elected by secret ballot and by majority vote of the members present and participating, except as provided by Subsections (b) and (c) and Section 101.108.

(b) A labor union may require more than a majority vote for the election of an officer, agent, organizer, or representative.

(c) A labor union may take a vote of the entire membership for an officer, agent, organizer, or representative by mailed ballots. (V.A.C.S. Art. 5154a, Sec. 4 (part).)

Sec. 101.105. ANNUAL ELECTION OF OFFICERS, AGENTS, ORGANIZERS, AND REPRESENTATIVES. An election for labor union officers, agents, organizers, and representatives must be held at least once each year, except as provided by Section 101.108. (V.A.C.S. Art. 5154a, Sec. 4 (part).)

Sec. 101.106. NOTICE OF ELECTION. Except as provided by Section 101.108, a labor union shall give members at least seven days' notice of an election under Section 101.105. The notice must be given in the manner most convenient to the union by:

(1) written or printed notice mailed to the member's last known address;

(2) posting notice in a place public to the membership; or

(3) announcement at a regular stated meeting of the union. (V.A.C.S. Art. 5154a, Sec. 4 (part).)

Sec. 101.107. RESULTS OF ELECTION. The results of an election held under Section 101.105 shall be determined and declared by the president and the secretary at the time in the presence of the members or delegates participating, except as provided by Section 101.108. (V.A.C.S. Art. 5154a, Sec. 4 (part).)

Sec. 101.108. CERTAIN UNIONS EXCEPTED. Sections 101.104–101.107 do not apply to a union that:

(1) under its constitution, bylaws, or other organization rules, held its elections for officers and representatives every three years or every four years, for the four years ending August 10, 1943; and

(2) charged members an initiation fee of \$10 or less, for the 10 years ending August 10, 1943. (V.A.C.S. Art. 5154a, Sec. 4 (part).)

Sec. 101.109. CERTAIN PERSONS PROHIBITED FROM HOLDING OFFICE. (a) A person may not serve as a labor union officer or as a labor organizer if the person:

(1) is an alien; or

(2) has been convicted of a felony.

(b) Subsection (a) does not apply to a person who has been convicted of a felony and whose rights of citizenship have been fully restored. (V.A.C.S. Art. 5154a, Sec. 4a.)

Sec. 101.110. LABOR ORGANIZERS; ORGANIZER'S CARD. (a) A labor organizer operating in this state must apply in writing for an organizer's card before soliciting members for the organizer's organization.

(b) An application for an organizer's card must:

- (1) be filed with the secretary of state by mail or in person;
- (2) state the applicant's full name and labor union affiliations, if any;
- (3) describe the applicant's credentials;
- (4) be accompanied by a copy of the applicant's credentials; and
- (5) be signed by the applicant.

(c) On the filing of an application for an organizer's card, the secretary of state shall issue the applicant a card containing:

- (1) the applicant's name;
- (2) the applicant's union affiliation;
- (3) a space for the applicant's signature;
- (4) the designation "labor organizer"; and
- (5) the secretary of state's signature, dated and attested by the secretary's seal of office.

(d) A labor organizer shall:

(1) carry the card issued under Subsection (c) whenever the organizer is soliciting members; and

(2) exhibit the card on request of a person being solicited for membership. (V.A.C.S. Art. 5154a, Sec. 5.)

**Sec. 101.111. FEE FOR PRIVILEGE TO WORK PROHIBITED.** (a) A labor union, a labor organizer, or an officer, member, agent, or representative of a labor union may not collect, receive, or demand, directly or indirectly, a fee as a work permit or as a condition for the privilege to work from a person who is not a member of the union.

(b) Subsection (a) does not prevent the collection of an initiation fee as provided by Section 101.113. (V.A.C.S. Art. 5154a, Secs. 8 (part), 8a.)

**Sec. 101.112. EXCESSIVE FEES PROHIBITED.** (a) A labor union or an officer, agent, or member of a labor union may not charge or receive initiation fees, dues, fines, or other assessments to create a fund that exceeds the reasonable requirements of the union in carrying out its lawful purposes or activities, if the fees, dues, fines, or other assessments create an undue hardship on an applicant for initiation to the union or on union members.

(b) Subsection (a) may not be construed to prevent dues or other assessments:

(1) for a purpose that is beneficial to union members according to established practice, including the maintenance or investment of funds for those beneficial purposes;

(2) if the members who contribute share in or may reasonably expect to share in the benefits, for:

- (A) old age benefits;
- (B) death and burial benefits;
- (C) hospitalization, unemployment, health and accident, retirement, or other forms of mutual insurance;
- (D) legislative representation;
- (E) a grievance committee;
- (F) gifts, floral offerings, or other charitable purposes; or
- (G) any other legitimate purpose; or

(3) for placement in a fund to be used by the union in paying its members while they are on strike, if:

- (A) initiation fees are not placed in the fund; and
- (B) the fund remains under the members' control.

(c) This section shall be liberally construed to prevent excessive initiation fees. (V.A.C.S. Art. 5154a, Sec. 7.)

**Sec. 101.113. ADVANCE FEES.** (a) On payment in full by an applicant for labor union membership of all initiation fees or dues regularly assessed by the union, the union shall:

- (1) elect the applicant to membership; or
- (2) immediately return in full the money paid by the applicant.

(b) On election of an applicant to labor union membership, advance fees paid by the applicant may be used by the union for the purposes for which the fees were advanced.

(c) A labor union or an officer, agent, or member of a labor union shall collect all fees in good faith. A labor union may not elect a person to membership merely to obtain the person's initiation fee.

(d) A labor union may not collect an initiation fee from a member and then discharge or suspend the member, or cause the member's employer to discharge the member, without reasonable and just cause.

(e) A labor union that violates Subsection (d) is subject to the civil penalty provided by Section 101.121. (V.A.C.S. Art. 5154a, Sec. 8 (part).)

**Sec. 101.114. FEE RECEIPT REQUIRED.** A labor organizer or an officer, agent, or member of a labor union may not collect a fee, dues, or other sum in connection with membership in a labor union from a person without giving the person at that time a receipt that:

- (1) is signed by the labor organizer, officer, agent, or member; and
- (2) states that the sum of money received is to be:
  - (A) delivered to the labor union; and
  - (B) held intact until the person has been elected and has become a bona fide voting member of the union. (V.A.C.S. Art. 5154a, Sec. 8 (part).)

**Sec. 101.115. CONSTRUCTION OF FEE RESTRICTIONS.** Sections 101.111, 101.113, and 101.114 may not be construed as preventing any type of bargaining agreement or limiting the bargaining power of a labor union. (V.A.C.S. Art. 5154a, Sec. 8 (part).)

**Sec. 101.116. MEMBER IN ARMED FORCES.** A union member who, because of service with the United States armed forces, has been unable to pay any dues or assessment levied by a union to which the member belonged may not be required to make the back payments as a condition to reinstatement in good standing as a member. (V.A.C.S. Art. 5154a, Sec. 10a.)

**Sec. 101.117. REASONABLE TIME FOR DECISION ON MEMBERSHIP REQUIRED.** A labor union may not refuse to give a person desiring membership in the union a reasonable time after obtaining the promise of employment in which to decide whether to join the union as a condition of employment. (V.A.C.S. Art. 5154a, Sec. 10 (part).)

**Sec. 101.118. EXPULSION OF MEMBER.** (a) A labor union may not expel a union member without:

- (1) good cause; and
- (2) a fair and public hearing by and within the organization, after due notice and an opportunity to be heard on the specific charges alleged.

(b) On the petition of a member expelled from a labor organization, a court of competent jurisdiction shall order the reinstatement of the member if the member was expelled without good cause. (V.A.C.S. Art. 5154a, Sec. 10 (part).)

**Sec. 101.119. RECORDS.** (a) Each labor union in this state shall keep accurate books of accounts that:

- (1) itemize each receipt from any source;
- (2) itemize each expenditure for any purpose; and
- (3) state the source of each receipt and the purpose of each expenditure.

(b) A member of a labor union is entitled to inspect the books, records, and accounts of the union at any reasonable time.



(c) The attorney general, or, subject to the attorney general's approval, a district attorney or county attorney, is entitled to inspect on demand the books, records, and accounts of a labor union at any reasonable time.

(d) The books, records, and accounts of a labor union are open to grand juries and judicial and quasi-judicial inquiries in legal proceedings. (V.A.C.S. Art. 5154a, Sec. 9.)

Sec. 101.120. **REPORTS.** A labor union required to file reports with the United States Secretary of Labor under Section 201, Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. Section 431) or a successor statute shall file a copy of each report with the secretary of state not later than the 30th day after the date the report was filed with the secretary of labor. (V.A.C.S. Art. 5154a, Sec. 3.)

Sec. 101.121. **CIVIL PENALTY.** A labor union that violates a provision of this subchapter is liable for a civil penalty not to exceed \$1,000 for each violation. The civil penalty may be recovered in the name of the state, acting through an enforcement officer, in a court of competent jurisdiction. (V.A.C.S. Art. 5154a, Sec. 11 (part).)

Sec. 101.122. **ENFORCEMENT BY CIVIL PROCESS.** (a) A district court has jurisdiction, on the application of the state acting through an enforcement officer, to issue a restraining order, a temporary or permanent injunction, or any other writ or process appropriate to enforce this subchapter.

(b) A proceeding under Subsection (a) shall be instituted, prosecuted, and tried in the same manner as another civil case of a similar nature in the district court. (V.A.C.S. Art. 5154a, Sec. 12.)

Sec. 101.123. **OFFENSE; PENALTY.** (a) A labor union officer or a labor organizer commits an offense if the person violates a provision of this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$500;
- (2) confinement in the county jail for not more than 60 days; or
- (3) both the fine and confinement. (V.A.C.S. Art. 5154a, Sec. 11 (part).)

Sec. 101.124. **ENFORCEMENT OFFICERS.** The attorney general, and each district attorney and county attorney, within the attorney's respective jurisdiction, shall:

- (1) prosecute all criminal proceedings under this subchapter; and
- (2) institute and maintain all civil proceedings under this subchapter. (V.A.C.S. Art. 5154a, Sec. 13.)

[Sections 101.125–101.150 reserved for expansion]

#### SUBCHAPTER D. PICKETING

Sec. 101.151. **DEFINITION.** In this subchapter, "picketing" includes the stationing of a person for an organization to:

- (1) induce anyone not to enter the premises being picketed;
- (2) observe the premises being picketed to ascertain who enters or patronizes the premises; or
- (3) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises. (V.A.C.S. Art. 5154d, Sec. 1 (part).)

Sec. 101.152. **MASS PICKETING PROHIBITED.** (a) A person may not engage in any form of picketing activity in which a picket constitutes any character of obstacle to the free ingress to and egress from an entrance to any premises, either by obstructing the free ingress and egress with the person's body or by placing a vehicle or other physical obstruction.

(b) In this section, "picket" includes a person:

- (1) stationed by or acting for an organization to:
  - (A) induce anyone not to enter the premises being picketed; or

(B) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(2) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises. (V.A.C.S. Art. 5154d, Sec. 1 (part).)

Sec. 101.153. USE OF INSULTING, THREATENING, OR OBSCENE LANGUAGE PROHIBITED. A person may not, by use of insulting, threatening, or obscene language, interfere with or intimidate or seek to interfere with or intimidate another:

(1) in the exercise of the other person's lawful right to work or to enter on the performance of a lawful vocation; or

(2) from freely entering or leaving any premises. (V.A.C.S. Art. 5154d, Sec. 2.)

Sec. 101.154. PICKETING INTENDED TO SECURE BREACH OF LABOR AGREEMENT PROHIBITED. A person may not engage in picketing the purpose of which, directly or indirectly, is to secure the disregard or breach of a valid existing labor agreement arrived at between an employer and the representatives:

(1) designated by the employees for the purpose of collective bargaining; or

(2) certified as the bargaining unit under the National Labor Relations Act (29 U.S.C. Section 151 et seq.). (V.A.C.S. Art. 5154d, Sec. 4.)

Sec. 101.155. DECLARATION OR PUBLICATION OF CONTINUATION OF ENJOINED PICKETING PROHIBITED. A person may not declare or publicize the continued existence of actual or constructive picketing at a point or directed against a premises after a court of competent jurisdiction has enjoined the continuation of that picketing at that point or premises. (V.A.C.S. Art. 5154d, Sec. 4a.)

Sec. 101.156. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 101.152, 101.153, 101.154, or 101.155. Each separate act of violation constitutes a separate offense.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine of not less than \$25 nor more than \$500;

(2) confinement in jail for not more than 90 days; or

(3) both the fine and confinement. (V.A.C.S. Art. 5154d, Sec. 5.)

[Sections 101.157–101.200 reserved for expansion]

#### SUBCHAPTER E. SECONDARY PICKETING

Sec. 101.201. SECONDARY PICKETING PROHIBITED. (a) A person may not establish, call, participate in, or aid picketing at or near the premises of an employer with whom a labor dispute does not exist.

(b) In this section:

(1) "Employee" includes any person working for another for hire in this state, but does not include an independent contractor.

(2) "Employer" means any person who engages the services of an employee.

(3) "Labor dispute" means a controversy concerning wages, hours, or conditions of employment between an employer and employees. A controversy is not a labor dispute if the employees do not have a real and substantial economic interest in the work performed for the employer.

(4) "Picket" includes a person:

(A) stationed by or acting in behalf of an organization to:

(i) induce anyone not to enter the premises being picketed;

(ii) apprise the public by signs or other means of the existence of a labor dispute at or near the premises being picketed; or

(iii) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(B) who follows employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises. (V.A.C.S. Art. 5154f, Secs. 1 (part), 2 (part).)

Sec. 101.202. OFFENSE; PENALTY. (a) A person commits an offense if the person violates any provision of this subchapter.

(b) An offense under this section is a misdemeanor punishable by:

- (1) a fine of not more than \$500;
- (2) confinement in the county jail for not more than six months; or
- (3) both the fine and confinement. (V.A.C.S. Art. 5154f, Sec. 3.)

Sec. 101.203. CIVIL LIABILITY. (a) A person who violates any provision of this subchapter is liable to a person damaged by the violation for the damages resulting from the violation.

(b) A person damaged by a violation of this subchapter may maintain an action to redress the damage and may obtain injunctive relief.

(c) An association or labor union that represents or purports to represent a person who violates any provision of this subchapter is jointly and severally liable with the person for the damages resulting from the violation.

(d) In this section, "labor union" means any incorporated or unincorporated association, group, union, national or local, branch, or subordinate organization of a union of working persons organized and existing in part to protect those persons and to improve their working conditions, wages, or employment relationships and includes the local, state, national, and international affiliates of those organizations. (V.A.C.S. Art. 5154f, Secs. 2 (part), 4.)

Sec. 101.204. ENFORCEMENT. The state, acting through the attorney general or a district attorney or county attorney, may institute a suit in district court to enjoin a person from violating this subchapter. (V.A.C.S. Art. 5154f, Sec. 5.)

Sec. 101.205. VENUE. Venue for a suit or cause of action arising under this subchapter is in:

- (1) the county in which the violation is alleged to have occurred;
- (2) the county in which the defendant resides; or
- (3) if there are two or more defendants, a county in which any defendant resides. (V.A.C.S. Art. 5154f, Sec. 6.)

[Sections 101.206–101.250 reserved for expansion]

## SUBCHAPTER F. LIABILITY OF LABOR ORGANIZATION FOR DAMAGES

Sec. 101.251. DEFINITIONS. In this subchapter:

(1) "Labor organization" means any organization in which employees participate and that exists in whole or in part to deal with one or more employers concerning grievances, labor disputes, wages, hours of employment, or working conditions.

(2) "Picketing" includes the stationing of a person for an organization to:

- (A) induce anyone not to enter the premises being picketed;
- (B) apprise the public by signs or other means of the existence of a dispute;
- (C) observe the premises being picketed to ascertain who enters or patronizes the premises; or

(D) follow employees or patrons of the premises being picketed to or from those premises to observe them or to attempt to dissuade them from entering or patronizing the premises. (V.A.C.S. Art. 5154b, Sec. 2.)

Sec. 101.252. LIABILITY OF LABOR ORGANIZATION. A labor organization whose members picket or strike against a person is liable for damages for a loss resulting to the

person because of the picketing or strike if a court of competent jurisdiction holds that the picketing or strike is a breach of contract. (V.A.C.S. Art. 5154b, Sec. 1.)

**CHAPTER 102. LABOR ARBITRATION**

**SUBCHAPTER A. GENERAL PROVISIONS**

- Sec. 102.001. DEFINITION
- Sec. 102.002. DISPUTE RESOLUTION THROUGH ARBITRATION

[Sections 102.003–102.010 reserved for expansion]

**SUBCHAPTER B. SELECTION OF BOARD AND OFFICERS**

- Sec. 102.011. NUMBER OF BOARD MEMBERS
- Sec. 102.012. EMPLOYER REPRESENTATION ON BOARD
- Sec. 102.013. EMPLOYEE REPRESENTATION ON BOARD
- Sec. 102.014. CHAIRMAN
- Sec. 102.015. BOARD SECRETARY
- Sec. 102.016. ARBITRATOR'S CONSENT TO ACT

[Sections 102.017–102.020 reserved for expansion]

**SUBCHAPTER C. POWERS AND DUTIES OF BOARD AND OFFICERS**

- Sec. 102.021. POWERS AND DUTIES OF BOARD
- Sec. 102.022. CHAIRMAN'S DUTIES
- Sec. 102.023. ISSUANCE OF SUBPOENAS

[Sections 102.024–102.030 reserved for expansion]

**SUBCHAPTER D. PARTY CONDUCT**

- Sec. 102.031. EMPLOYEE TERMINATION RESTRICTED
- Sec. 102.032. PROHIBITIONS AGAINST STRIKES OR BOYCOTTS

[Sections 102.033–102.040 reserved for expansion]

**SUBCHAPTER E. FILINGS WITH BOARD; HEARINGS**

- Sec. 102.041. WRITTEN SUBMISSION OF DISPUTE OR GRIEVANCE
- Sec. 102.042. HEARING; NOTICE

[Sections 102.043–102.050 reserved for expansion]

**SUBCHAPTER F. COURT FILINGS AND ORDERS**

- Sec. 102.051. ARBITRATION PETITION
- Sec. 102.052. COURT ORDER REQUIRED
- Sec. 102.053. FILING OF PETITION AND ORDER

[Sections 102.054–102.060 reserved for expansion]

**SUBCHAPTER G. EXPENSES AND FEES**

- Sec. 102.061. SURETY BOND
- Sec. 102.062. BOARD MEMBER EXPENSES

- Sec. 102.063. REIMBURSEMENT OF WITNESS
- Sec. 102.064. FEES

[Sections 102.065–102.070 reserved for expansion]

**SUBCHAPTER H. AWARD AND APPEALS**

- Sec. 102.071. TERMINATION OF BOARD'S POWER
- Sec. 102.072. ADDITIONAL DISPUTE OR GRIEVANCE
- Sec. 102.073. COPIES OF AWARD; ISSUANCE
- Sec. 102.074. JUDGMENT ON AWARD; EFFECTIVE DATE; EXCEPTION
- Sec. 102.075. APPEALS

**CHAPTER 102. LABOR ARBITRATION**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 102.001. DEFINITION. In this chapter, "board" means an arbitration board appointed under this chapter. (New.)

Sec. 102.002. DISPUTE RESOLUTION THROUGH ARBITRATION. (a) An employer and employees may submit a dispute or grievance resulting from the employer's and employees' work relationship to a board for a hearing and determination.

(b) An arbitration may not be conducted under this chapter without the consent of all parties involved in the dispute or grievance. (V.A.C.S. Art. 239 (part).)

[Sections 102.003–102.010 reserved for expansion]

**SUBCHAPTER B. SELECTION OF BOARD AND OFFICERS**

Sec. 102.011. NUMBER OF BOARD MEMBERS. A board established under this chapter must be composed of five members. (V.A.C.S. Art. 239 (part).)

Sec. 102.012. EMPLOYER REPRESENTATION ON BOARD. The employer may designate two arbitrators to serve on the board. (V.A.C.S. Art. 239 (part).)

Sec. 102.013. EMPLOYEE REPRESENTATION ON BOARD. (a) In a dispute or grievance in which the affected employees are members in good standing of a labor organization:

(1) if the organization is represented by a delegate in a central body, the central body may designate two arbitrators to serve on the board; and

(2) if the organization is not represented by a delegate in a central body, the organization may designate two arbitrators to serve on the board.

(b) In a dispute or grievance in which all of the affected employees are not represented by a labor organization, the labor organization in concurrent action with a majority of those employees not represented by a labor organization may designate two arbitrators to serve on the board.

(c) In a dispute or grievance that concerns two or more classes or grades of employees who belong to different labor organizations, the labor organizations in concurrent action may designate two arbitrators to serve on the board.

(d) If the employees concerned in the dispute or grievance are not members of a labor organization, those employees shall call a meeting to elect by majority vote two arbitrators to serve on the board. (V.A.C.S. Arts. 239 (part), 241.)

Sec. 102.014. CHAIRMAN. (a) The four arbitrators selected under Sections 102.012 and 102.013 shall designate a fifth arbitrator who serves as the chairman of the board.

(b) If an agreement as to a fifth arbitrator cannot be reached under Subsection (a), on notice of any arbitrator a district judge of the district that has jurisdiction over the dispute or

grievance shall appoint the fifth arbitrator, who serves as the chairman of the board. (V.A.C.S. Art. 239 (part).)

Sec. 102.015. **BOARD SECRETARY.** The board shall select one member to act as secretary for the board. (V.A.C.S. Art. 243 (part).)

Sec. 102.016. **ARBITRATOR'S CONSENT TO ACT.** (a) An arbitrator selected under this chapter must:

(1) sign a form consenting to serve as an arbitrator; and

(2) take and sign an oath administered by an officer authorized to administer oaths to faithfully and impartially discharge the duties of an arbitrator.

(b) A written copy of the consent form and oath shall be filed with the district clerk for the county in which the arbitration is conducted. (V.A.C.S. Art. 243 (part).)

[Sections 102.017–102.020 reserved for expansion]

### **SUBCHAPTER C. POWERS AND DUTIES OF BOARD AND OFFICERS**

Sec. 102.021. **POWERS AND DUTIES OF BOARD.** (a) A board may adopt and enforce rules to be followed at board hearings.

(b) The board may set a schedule of sessions and adjournments.

(c) The board shall hear and examine witnesses who are brought before the board and consider other proof given that is relevant to the matter in dispute. (V.A.C.S. Art. 244 (part).)

Sec. 102.022. **CHAIRMAN'S DUTIES.** (a) The chairman of the board may:

(1) administer oaths; and

(2) issue subpoenas for the production of books and papers and the attendance of witnesses.

(b) The chairman of the board may exercise the powers granted under this section to the same extent as a judge of a court of record in this state. (V.A.C.S. Art. 244 (part).)

Sec. 102.023. **ISSUANCE OF SUBPOENAS.** (a) The board's secretary shall sign each subpoena issued under this chapter.

(b) The board may authorize a person of full age to serve a subpoena issued under this chapter. (V.A.C.S. Art. 247 (part).)

[Sections 102.024–102.030 reserved for expansion]

### **SUBCHAPTER D. PARTY CONDUCT**

Sec. 102.031. **EMPLOYEE TERMINATION RESTRICTED.** During the period that the arbitration is pending, an employer or receiver or an agent of the employer may not discharge an employee who is a party to the arbitration except for:

(1) the employee's inefficiency, violation of law, or neglect of duty; or

(2) the employer's need for a work force reduction. (V.A.C.S. Art. 246 (part).)

Sec. 102.032. **PROHIBITIONS AGAINST STRIKES OR BOYCOTTS.** (a) During the period that arbitration is pending, a labor organization that represents employees who are parties to the arbitration may not order or aid employees in a strike or boycott against the employer or receiver.

(b) Employees who are parties to the arbitration may not engage in or aid a strike or boycott of the employer or receiver. (V.A.C.S. Art. 246 (part).)

[Sections 102.033–102.040 reserved for expansion]

## SUBCHAPTER E. FILINGS WITH BOARD; HEARINGS

Sec. 102.041. WRITTEN SUBMISSION OF DISPUTE OR GRIEVANCE. (a) The question to be decided by the board must be submitted to the board in writing, signed by:

- (1) the employer or receiver; and
  - (2) the labor organization representing the employees or the employee or any employee or employees to be affected by the arbitration who do not belong to a labor organization.
- (b) The submission must stipulate that:
- (1) pending the arbitration, the status existing before the dispute, grievance, or strike may not be changed;
  - (2) the arbitration award shall be filed with the district clerk for the county in which the arbitration is conducted;
  - (3) the arbitration award is final and may not be set aside except for an error in law that is apparent on the record;
  - (4) the parties will faithfully execute the arbitration award;
  - (5) the arbitration award may be enforced in a court of equity;
  - (6) an employee dissatisfied with the arbitration award may not end employment because of that dissatisfaction without giving the employer 30 days' written notice of the intention to end employment;
  - (7) the award continues in effect until the first anniversary of the initial date of its implementation; and
  - (8) a new arbitration of the same subject matter between the same parties may not be entered into during the one year period provided for in Subdivision (7). (V.A.C.S. Art. 242.)

Sec. 102.042. HEARING; NOTICE. (a) The board shall conduct a hearing not later than the 10th day after the agreement to arbitrate is filed.

(b) Each party to the dispute is entitled to receive notice of the time and place of the hearing. (V.A.C.S. Art. 243 (part).)

[Sections 102.043–102.050 reserved for expansion]

## SUBCHAPTER F. COURT FILINGS AND ORDERS

Sec. 102.051. ARBITRATION PETITION. A board may submit a written petition signed by a majority of the board to a district judge in the county in which the dispute or grievance arose. The petition must:

- (1) show that the board was selected according to the procedures set forth in this chapter;
- (2) state the nature of the dispute or grievance that is the subject matter of the arbitration; and
- (3) request the judge to issue an order establishing and approving the board. (V.A.C.S. Art. 240 (part).)

Sec. 102.052. COURT ORDER REQUIRED. On receipt of a petition filed under Section 102.051, the judge shall issue an order establishing an arbitration board. The order shall refer the matter in dispute to the board for a hearing and determination of the matter in dispute. (V.A.C.S. Art. 240 (part).)

Sec. 102.053. FILING OF PETITION AND ORDER. The petition and the subsequent order or a copy of the petition and order shall be filed with the district clerk in the county in which the arbitration is conducted. (V.A.C.S. Art. 240 (part).)

[Sections 102.054–102.060 reserved for expansion]

SUBCHAPTER G. EXPENSES AND FEES

Sec. 102.061. SURETY BOND. Before a board considers a dispute or grievance, each party shall file a bond in an amount set by the board and conditioned on the payment of all expenses connected with the arbitration procedure. The bond must have two or more good and sufficient sureties. (V.A.C.S. Art. 247 (part).)

Sec. 102.062. BOARD MEMBER EXPENSES. A member of the board is entitled to receive:

- (1) three dollars a day for each day of actual service on the board not to exceed \$30; and
- (2) five cents a mile for each mile traveled to and from the place where the board is in session. (V.A.C.S. Art. 247 (part).)

Sec. 102.063. REIMBURSEMENT OF WITNESS. A witness called by the board is entitled to receive:

- (1) 50 cents a day for each day's attendance; and
- (2) five cents a mile for each mile traveled by the shortest route to and from a board hearing where the witness' attendance is required. (V.A.C.S. Art. 247 (part).)

Sec. 102.064. FEES. (a) The board may charge fees and mileage paid under Sections 102.062 and 102.063 against either or both parties.

(b) Fees and mileage charged against a party under this section shall be included in the award. (V.A.C.S. Art. 247 (part).)

[Sections 102.065–102.070 reserved for expansion]

SUBCHAPTER H. AWARD AND APPEALS

Sec. 102.071. TERMINATION OF BOARD'S POWER. Except as provided by Section 102.072, a board's power ends on the determination of the grievance or dispute by the board. (V.A.C.S. Art. 245 (part).)

Sec. 102.072. ADDITIONAL DISPUTE OR GRIEVANCE. (a) If, at the time a board renders its determination, a similar grievance or dispute exists between the same class of persons for which a board may be created, those persons may submit the dispute or grievance to the board.

(b) The board has the same power to act and determine a dispute or grievance submitted under this section as the board would have if it had been created to determine that dispute or grievance. (V.A.C.S. Art. 245 (part).)

Sec. 102.073. COPIES OF AWARD; ISSUANCE. (a) The board shall issue three copies of the arbitration award.

(b) The board shall:

- (1) file one copy of the award with the district clerk;
- (2) issue one copy of the award to the employer or receiver; and
- (3) issue one copy of the award to the employees or the employees' representative. (V.A.C.S. Art. 248 (part).)

Sec. 102.074. JUDGMENT ON AWARD; EFFECTIVE DATE; EXCEPTION. (a) Judgment shall be entered on an award made under this chapter and the award takes effect, unless a timely exception is filed, on the 11th day after the date it is filed with the district clerk under Section 102.073.

(b) A party may file an exception to an award for a matter of law apparent on the record. The exception must be filed with the court not later than the 10th day after the date on which the award is filed with the district clerk under Section 102.073.

(c) If an exception is filed, judgment shall be entered on the award and the award takes effect on the 11th day after the date of the decision of the district court on the exception or on



appeal from the district court's decision under Section 102.075. (V.A.C.S. Arts. 248 (part), 249 (part).)

Sec. 102.075. APPEALS. (a) Either party to an arbitration case decided by a district court may file an appeal of the district court's decision not later than the 10th day after the date on which the judgment is entered.

(b) The decision of the court of appeals under this section is final. The clerk of the court of appeals shall certify the decision and the district court shall enter the judgment.

(c) If the court of appeals sustains the exception, it shall set aside the award, but the parties may agree on a judgment to be entered disposing of the dispute. A judgment on an agreement entered into under this subsection has the same force and effect of law as a judgment entered on an award by a board of arbitration. (V.A.C.S. Art. 249 (part).)

[Chapters 103-200 reserved for expansion]

TITLE 4. EMPLOYMENT SERVICES AND UNEMPLOYMENT

SUBTITLE A. TEXAS UNEMPLOYMENT COMPENSATION ACT

CHAPTER 201. UNEMPLOYMENT COMPENSATION  
ACT—GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

- Sec. 201.001. SHORT TITLE
- Sec. 201.002. APPLICATION OF SUNSET ACT

[Sections 201.003-201.010 reserved for expansion]

SUBCHAPTER B. GENERAL DEFINITIONS

- Sec. 201.011. GENERAL DEFINITIONS
- Sec. 201.012. DEFINITION OF MISCONDUCT

[Sections 201.013-201.020 reserved for expansion]

SUBCHAPTER C. DEFINITION OF EMPLOYER

- Sec. 201.021. GENERAL DEFINITION OF EMPLOYER
- Sec. 201.022. EFFECT OF BUSINESS ACQUISITION
- Sec. 201.023. TAX-EXEMPT NONPROFIT ORGANIZATION
- Sec. 201.024. ELECTION TO BE EMPLOYER
- Sec. 201.025. EMPLOYER UNDER FEDERAL LAW
- Sec. 201.026. STATE; POLITICAL SUBDIVISION
- Sec. 201.027. EMPLOYER OF DOMESTIC SERVICE WORKER
- Sec. 201.028. EMPLOYER OF FARM AND RANCH LABORER

[Sections 201.029-201.040 reserved for expansion]

SUBCHAPTER D. DEFINITION OF EMPLOYMENT

- Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT
- Sec. 201.042. SERVICE OF DRIVER OR SALESMAN
- Sec. 201.043. LOCATION OF SERVICE
- Sec. 201.044. SERVICE UNDER RECIPROCAL AGREEMENT
- Sec. 201.045. SERVICE ON VESSEL OR AIRCRAFT
- Sec. 201.046. EMPLOYMENT TO ASSIST EMPLOYEE OR AGENT
- Sec. 201.047. FARM AND RANCH LABOR AS EMPLOYMENT

[Sections 201.048–201.060 reserved for expansion]

SUBCHAPTER E. EXCEPTIONS TO EMPLOYMENT

- Sec. 201.061. SERVICE ELIGIBLE UNDER ACT OF CONGRESS
- Sec. 201.062. SERVICE UNDER ARRANGEMENT WITH AGENCY
- Sec. 201.063. CERTAIN GOVERNMENT SERVICE
- Sec. 201.064. DOMESTIC SERVICE
- Sec. 201.065. SERVICE BY RELATIVE
- Sec. 201.066. RELIGIOUS SERVICE
- Sec. 201.067. REHABILITATIVE SERVICE; WORK RELIEF
- Sec. 201.068. SERVICE IN HOSPITAL
- Sec. 201.069. SERVICE OF STUDENT
- Sec. 201.070. SERVICE AS PRODUCT DEMONSTRATOR; SALESMAN
- Sec. 201.071. SERVICE AS INSURANCE AGENT
- Sec. 201.072. SERVICE AS REAL ESTATE BROKER
- Sec. 201.073. DELIVERY SERVICE; NEWSPAPER DELIVERY SERVICE
- Sec. 201.074. SERVICE BY INMATE
- Sec. 201.075. SERVICE ON FISHING VESSEL
- Sec. 201.076. INCLUDED AND EXCLUDED SERVICE IN PAY PERIOD

[Sections 201.077–201.080 reserved for expansion]

SUBCHAPTER F. DEFINITION OF WAGES

- Sec. 201.081. GENERAL DEFINITION OF WAGES
- Sec. 201.082. EXCEPTIONS TO WAGES

[Sections 201.083–201.090 reserved for expansion]

SUBCHAPTER G. TOTAL AND PARTIAL UNEMPLOYMENT

- Sec. 201.091. TOTAL AND PARTIAL UNEMPLOYMENT

[Sections 201.092–201.100 reserved for expansion]

SUBCHAPTER H. CONFORMITY WITH FEDERAL STATUTES

- Sec. 201.101. CONFORMITY WITH FEDERAL STATUTES

CHAPTER 201. UNEMPLOYMENT COMPENSATION  
ACT—GENERAL PROVISIONS

SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 201.001. SHORT TITLE. This subtitle may be cited as the Texas Unemployment Compensation Act. (V.A.C.S. Art. 5221b–22b.)

Sec. 201.002. APPLICATION OF SUNSET ACT. The Texas Employment Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 1999. (V.A.C.S. Art. 5221b–8(i).)

[Sections 201.003–201.010 reserved for expansion]

## SUBCHAPTER B. GENERAL DEFINITIONS

Sec. 201.011. GENERAL DEFINITIONS. In this subtitle:

- (1) "Base period" means:
  - (A) the four consecutive completed calendar quarters, prescribed by the commission, in the five consecutive completed calendar quarters preceding the first day of an individual's benefit year; or
  - (B) for an individual precluded because of a medically verifiable injury or illness from working during a major part of a calendar quarter of the period that would otherwise be the individual's base period under Paragraph (A), the first four calendar quarters of the five consecutive calendar quarters preceding the calendar quarter in which the illness began or the injury occurred if the individual files an initial claim for benefits not later than 24 months after the date on which the individual's injury or illness began or occurred.
- (2) "Benefit" means the money payable under this subtitle to an individual because of the individual's unemployment.
- (3) "Benefit amount" means benefits an individual is entitled to receive for one benefit period of total unemployment.
- (4) "Benefit period" means the seven consecutive calendar days ending at midnight on Saturday and is the period for which entitlement to benefits is determined.
- (5) "Benefit year" means the 52 consecutive calendar weeks beginning with the week for which an individual files a valid initial claim for benefits.
- (6) "Calendar quarter" means a period of three consecutive calendar months ending on:
  - (A) March 31, June 30, September 30, or December 31; or
  - (B) the dates prescribed by rule of the commission.
- (7) "Chargeback" means the benefits charged to an employer's account under Section 204.021.
- (8) "Commission" means the Texas Employment Commission.
- (9) "Compensation fund" means the unemployment compensation fund.
- (10) "Contribution" means a tax payment under this subtitle to the compensation fund.
- (11) "Employing unit" means a person who, after January 1, 1936, has employed an individual to perform services for the person in this state.
- (12) "Employment office" means a free public employment office operated by this state or maintained as a part of a state-controlled system of public employment offices. The term includes a branch office.
- (13) "Initial claim" means a notice filed under Section 208.001(a) to establish a benefit year by an individual who does not have a benefit year in effect at the time the notice was filed.
- (14) "Institution of higher education" means:
  - (A) a college or university in this state; or
  - (B) a public or other nonprofit educational institution that:
    - (i) admits as regular students only individuals with a certificate of graduation or equivalent credentials;
    - (ii) is legally authorized to provide an educational program beyond high school; and
    - (iii) provides an educational program:
      - (a) for which the institution awards a bachelor's or higher degree;
      - (b) that is acceptable for full credit toward a bachelor's or higher degree; or
      - (c) that trains a student for the gainful practice of a recognized occupation.
- (15) "Reimbursement" means a payment made in accordance with Chapter 205.

(16) "Reimbursing employer" means an employer making payments in accordance with Chapter 205.

(17) "State" means a state of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands.

(18) "Taxed employer" means an employer who pays a contribution under this subtitle.

(19) "United States" includes, in a geographic context, each state.

(20) "Valid claim" means a claim filed by an unemployed individual who has received the wages necessary to qualify for benefits.

(21) "Week" means seven consecutive calendar days as prescribed by the commission. (V.A.C.S. Arts. 5221b-5(c)(2)(A) (part); 5221b-5a(a) (part); 5221b-17(a), (b), (c), (d), (e) (part), (g)(3)(F), (h), (i), (k), (m), (o), (p).)

Sec. 201.012. DEFINITION OF MISCONDUCT. (a) "Misconduct" means mismanagement of a position of employment by action or inaction, neglect that jeopardizes the life or property of another, intentional wrongdoing or malfeasance, intentional violation of a law, or violation of a policy or rule adopted to ensure the orderly work and the safety of employees.

(b) The term "misconduct" does not include an act in response to an unconscionable act of an employer or superior. (V.A.C.S. Art. 5221b-17(q).)

[Sections 201.013-201.020 reserved for expansion]

### SUBCHAPTER C. DEFINITION OF EMPLOYER

Sec. 201.021. GENERAL DEFINITION OF EMPLOYER. (a) In this subtitle, "employer" means an employing unit that:

(1) paid wages of \$1,500 or more during a calendar quarter in the current or preceding calendar year; or

(2) employed at least one individual in employment for a portion of at least one day during 20 or more different calendar weeks of the current or preceding calendar year.

(b) The definition provided by this section does not apply to an employing unit covered by Section 201.023 or to farm and ranch labor covered by Section 201.028.

(c) An individual who performs a service in this state for an employing unit that maintains two or more separate establishments in this state is employed by a single employing unit for purposes of this subtitle. (V.A.C.S. Arts. 5221b-17(e) (part), (f)(1).)

Sec. 201.022. EFFECT OF BUSINESS ACQUISITION. In this subtitle, "employer" also means an individual or employing unit that acquires the organization, trade, or business of another, or substantially all of the assets thereof, of another that was an employer subject to this subtitle at the time of the acquisition. (V.A.C.S. Art. 5221b-17(f)(2).)

Sec. 201.023. TAX-EXEMPT NONPROFIT ORGANIZATION. In this subtitle, "employer" also means an employing unit that:

(1) is a nonprofit organization under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(2) is exempt from income tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)); and

(3) employed at least four individuals in employment for a portion of at least one day during 20 or more different calendar weeks during the current year or during the preceding calendar year. (V.A.C.S. Art. 5221b-17(f)(3).)

Sec. 201.024. ELECTION TO BE EMPLOYER. In this subtitle, "employer" also means an employing unit that has elected to become an employer under Section 205.001, 205.002, 206.002, or 206.003. (V.A.C.S. Art. 5221b-17(f)(4).)

Sec. 201.025. EMPLOYER UNDER FEDERAL LAW. In this subtitle, "employer" also means:

(1) an employing unit that is liable for the payment of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) for the current calendar year; or

(2) an employing unit that the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) requires to be an employer under this subtitle as a condition for approval of this subtitle for full tax credit against the tax imposed by the Federal Unemployment Tax Act. (V.A.C.S. Arts. 5221b-17(f)(5), (7).)

Sec. 201.026. STATE; POLITICAL SUBDIVISION. In this subtitle, "employer" also means a state, a political subdivision of a state, or an instrumentality of a state or political subdivision of a state that is wholly owned by one or more states or political subdivisions of one or more states. (V.A.C.S. Art. 5221b-17(f)(6).)

Sec. 201.027. EMPLOYER OF DOMESTIC SERVICE WORKER. (a) In this subtitle, "employer" also means an employing unit that paid cash wages of \$1,000 or more during a calendar quarter in the current or preceding calendar year for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(b) An employer under this section is not an employer for wages paid for a service other than domestic service unless the employer is treated as an employer for that service under another provision of this subtitle. (V.A.C.S. Art. 5221b-17(f)(9).)

Sec. 201.028. EMPLOYER OF FARM AND RANCH LABORER. (a) In this subtitle, "employer" also means an employing unit that paid wages for, or employed individuals in, farm and ranch labor in accordance with this section, Section 201.047, or Section 204.009.

(b) In this section, an employer shall not be treated as an employer for wages paid for a service other than service performed by:

- (1) a seasonal worker employed on a truck farm, orchard, or vineyard;
- (2) a farm and ranch laborer who is a migrant worker; or
- (3) a seasonal worker who:

(A) works for a farmer, ranch operator, or labor agent who employs migrant workers; and

(B) does the same work at the same time and location as the migrant workers.

(c) Subsection (b) does not apply if the employer is an employer with respect to farm and ranch labor performed under Section 201.047(a)(4). (V.A.C.S. Art. 5221b-17(f)(8)(E) (part).)

[Sections 201.029-201.040 reserved for expansion]

#### SUBCHAPTER D. DEFINITION OF EMPLOYMENT

Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT. In this subtitle, "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact. (V.A.C.S. Art. 5221b-17(g)(1) (part).)

Sec. 201.042. SERVICE OF DRIVER OR SALESMAN. In this subtitle, "employment" includes service:

(1) as an agent-driver or commission-driver who delivers a meat product, vegetable product, fruit product, bakery product, laundry, dry cleaning, or beverage except milk, if:

(A) the service is performed for remuneration;

(B) the employment contract provides that the individual personally performs substantially all of the service;

(C) the individual performing the service does not have a substantial investment in a facility used in the performance of the service, other than in a facility for transportation; and

(D) the service is part of a continuing relationship with the principal and is not a single transaction; or

(2) of a traveling or city salesman, except as provided in Section 201.070, an agent-driver, or a commission-driver, who, on a full-time basis, obtains for the individual's principal,

except for sideline sales activities for another person, orders from a wholesaler, retailer, contractor, or operator of a hotel, restaurant, or similar establishment for merchandise for resale or supplies for use in the business's operation if:

(A) the employment contract provides that the individual personally performs substantially all of the service;

(B) the individual does not have a substantial investment in a facility used in the performance of the service, except a facility for transportation; and

(C) the service is part of a continuing relationship with the principal and is not a single transaction. (V.A.C.S. Art. 5221b-17(g)(1) (part).)

Sec. 201.043. LOCATION OF SERVICE. (a) In this subtitle, "employment" includes service performed in this state or in and outside this state if:

(1) the service is localized in this state; or

(2) the service is not localized in any state and some of the service is performed in this state and:

(A) the base of operations is in this state, or there is no base of operations, but the service is directed or controlled from this state; or

(B) the base of operations or place from which service is directed or controlled is not in a state in which a part of the service is performed, and the residence of the person who performs the service is in this state.

(b) In this subtitle, "employment" includes service performed anywhere in the United States, including service performed entirely outside this state, if:

(1) the service is not localized in a state;

(2) the service is performed by an individual who is one of a class of employees who are required to travel outside this state in performance of their duties; and

(3) the individual's base of operations is in this state or, if there is no base of operations, the individual's service is directed or controlled from this state.

(c) In this subtitle, "employment" includes service performed entirely outside this state that is not included as employment under Subsection (b) or Section 201.045 and for which contributions are not required and paid under an unemployment compensation law of another state if:

(1) the individual performing the service is a resident of this state; and

(2) the commission approves the election of the employing unit for which the individual performs the service that the entire service of the individual is employment under this subtitle.

(d) In this subtitle, "employment" includes service performed after 1971 outside the United States by a citizen of the United States as an employee of an American employer, if:

(1) the service was not performed in a contiguous country with which the United States has an agreement relating to unemployment compensation;

(2) the service is not considered employment under Subsection (b) or (c) or Section 201.044 or 201.045 or the parallel provisions of another state's law; and

(3) the employer:

(A) has its principal place of business in the United States in this state;

(B) does not have a place of business in the United States and is:

(i) an individual who is a resident of this state;

(ii) a corporation that is organized under the laws of this state; or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state;

(C) has elected coverage in this state; or

(D) has failed to elect coverage in any state and the individual has filed a claim for benefits based on the service under the laws of this state.

(e) In this section, "American employer" means:

- (1) an individual who is a resident of the United States;
- (2) a partnership, if two-thirds or more of the partners are residents of the United States;
- (3) a trust, if all of the trustees are residents of the United States; or
- (4) a corporation organized under the laws of the United States or of a state.

(f) For the purposes of Subsection (b), service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. In this section, a service that is "incidental" includes a service that is temporary or that consists of isolated transactions.

(g) If this state is the state of jurisdiction for services covered as employment under Subsection (d), the employer shall so notify its employees. (V.A.C.S. Arts. 5221b-17(g)(2), (3)(A), (D), (E), (G), (4).)

Sec. 201.044. SERVICE UNDER RECIPROCAL AGREEMENT. In this subtitle, "employment" includes service that is performed by an individual and that is covered by a reciprocal agreement under this subtitle between the commission and the agency that administers another state's or a federal unemployment compensation law if:

(1) under the agreement all service performed by the individual for an employing unit is considered to be performed entirely in this state; and

(2) the commission approves an election of the employing unit for whom the service is performed under which the entire service of the individual is considered employment subject to this subtitle during the period covered by the election. (V.A.C.S. Art. 5221b-17(g)(3)(B).)

Sec. 201.045. SERVICE ON VESSEL OR AIRCRAFT. In this subtitle, "employment" includes service performed on or in connection with an American vessel or aircraft if:

(1) the service is employment under Section 3306(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3306(c)); and

(2) the operating office from which the vessel or aircraft is ordinarily and regularly directed and controlled is in this state. (V.A.C.S. Art. 5221b-17(g)(3)(C).)

Sec. 201.046. EMPLOYMENT TO ASSIST EMPLOYEE OR AGENT. (a) An individual employed to perform or to assist in performing the work of an employee or agent of an employing unit is employed by that employing unit for purposes of this subtitle if the employing unit has actual or constructive knowledge of the work.

(b) Subsection (a) applies without regard to whether the individual is hired or paid directly by the employing unit or by the employee or agent. (V.A.C.S. Art. 5221b-17(e) (part).)

Sec. 201.047. FARM AND RANCH LABOR AS EMPLOYMENT. (a) Farm and ranch labor is employment for the purposes of this subtitle if the labor:

- (1) is performed by a seasonal worker employed on a truck farm, orchard, or vineyard;
- (2) is performed by a migrant worker;
- (3) is performed by a seasonal worker who:

(A) is working for a farmer, ranch operator, or labor agent who employs a migrant worker; and

(B) is doing the same work at the same time and location as the migrant worker;

- (4) performed after 1986 and the laborer is employed by an employing unit that:

(A) pays wages in cash of \$6,250 or more for the labor during a calendar quarter in the calendar year in which the labor is performed or the calendar year preceding that year; or

(B) employs three or more individuals in farm and ranch labor for a portion of at least one day during at least 20 different calendar weeks of the calendar year in which the labor is performed or the calendar year preceding that year.

(b) Wages paid for services described in Subdivision (a)(1), (2), or (3) are included in determining the wages paid for the purposes of Subdivisions (a)(4) and (5). (V.A.C.S. Arts. 5221b-17(f)(8)(A)(ii), (B), (C), (E) (part).)

[Sections 201.048-201.060 reserved for expansion]

## SUBCHAPTER E. EXCEPTIONS TO EMPLOYMENT

Sec. 201.061. SERVICE ELIGIBLE UNDER ACT OF CONGRESS. In this subtitle, “employment” does not include service for which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress. (V.A.C.S. Art. 5221b-17(g)(5)(A) (part).)

Sec. 201.062. SERVICE UNDER ARRANGEMENT WITH AGENCY. In this subtitle, “employment” does not include service under an arrangement that is between the commission and the agency that administers another state’s or a federal unemployment compensation law and that considers the service for an employing unit during the period covered by the employing unit’s approved election to be performed entirely within the agency’s state or under the federal law. (V.A.C.S. Art. 5221b-17(g)(5)(L).)

Sec. 201.063. CERTAIN GOVERNMENT SERVICE. (a) In this subtitle, “employment” does not include:

(1) service in the employ of a political subdivision or of an instrumentality of a political subdivision that is wholly owned by one or more political subdivisions:

(A) as an elected official;

(B) as a member of a legislative body;

(C) as a member of the judiciary;

(D) as a temporary employee in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in a position that is designated under law as a major nontenured policy-making or advisory position or a policy-making or advisory position that ordinarily does not require more than eight hours of service each week;

(2) service in the employ of a foreign government, including service as a consular or other officer or employee or as a nondiplomatic representative;

(3) service in the employ of an instrumentality wholly owned by a foreign government if:

(A) the service is similar to service performed in a foreign country by an employee of the United States government or an instrumentality of that government; and

(B) the United States secretary of state has certified to the United States secretary of the treasury that the foreign government grants an equivalent exemption for similar services performed in the foreign country by an employee of the United States government or an instrumentality of the United States government; or

(4) service in the employ of the United States government or an instrumentality of the United States exempt under the United States Constitution from the contributions imposed by this subtitle.

(b) To the extent the United States Congress permits a state to require an instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, this subtitle applies to the instrumentality and to the service performed for the instrumentality. (V.A.C.S. Arts. 5221b-17(g)(5)(F), (G), (H), (M) (part).)

Sec. 201.064. DOMESTIC SERVICE. In this subtitle, “employment” does not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as performed for an employer under Section 201.027. (V.A.C.S. Art. 5221b-17(g)(5)(C).)

Sec. 201.065. SERVICE BY RELATIVE. In this subtitle, “employment” does not include:

(1) service of an individual in the employ of the individual’s son, daughter, or spouse; or



(2) service of an individual younger than 21 years of age in the employ of the individual's father or mother. (V.A.C.S. Art. 5221b-17(g)(5)(D).)

Sec. 201.066. RELIGIOUS SERVICE. In this subtitle, "employment" does not include:

(1) service in the employ of:

(A) a church;

(B) a convention or association of churches; or

(C) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or a convention or association of churches;

(2) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the individual's ministry; or

(3) service performed by a member of a religious order as required by the order. (V.A.C.S. Arts. 5221b-17(g)(5)(E), (N).)

Sec. 201.067. REHABILITATIVE SERVICE; WORK RELIEF. In this subtitle, "employment" does not include:

(1) service performed by an individual receiving rehabilitative or paying work in the employ of a facility that is conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency or injury or that provides paying work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market; or

(2) service performed as a part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency, an agency of a state, or a political subdivision of a state by an individual receiving the work relief or work training. (V.A.C.S. Arts. 5221b-17(g)(5)(P), (Q).)

Sec. 201.068. SERVICE IN HOSPITAL. In this subtitle, "employment" does not include:

(1) service as a student nurse who is:

(A) employed by a hospital or a nurses' training school; and

(B) enrolled and regularly attending classes in a nurses' training school chartered or approved under state law;

(2) service as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved under state law; or

(3) service in the employ of a hospital by a patient of the hospital. (V.A.C.S. Arts. 5221b-17(g)(5)(I), (U).)

Sec. 201.069. SERVICE OF STUDENT. In this subtitle, "employment" does not include:

(1) service performed in the employ of a school, college, or university by a student who is enrolled and regularly attending classes at the school, college, or university;

(2) service performed by an individual who is enrolled as a student in a full-time program that combines academic instruction with work experience and that is taken for credit at a nonprofit or public educational institution normally maintaining a regular faculty and curriculum and having a regularly organized body of students in attendance at the place where its educational activities are conducted, if the service is an integral part of the program, and the institution has so certified to the employing unit, except:

(A) service performed in a program established for an employer or a group of employers;

(B) service in an apprenticeship training program; or

(C) service performed by a teaching assistant; or

(3) service by a student in the employ of an organized camp if:

(A) the camp:

(i) did not operate for more than seven months in the current calendar year and did not operate for more than seven months in the preceding calendar year; or

(ii) had average gross receipts for any six months in the preceding calendar year that were not more than 33½ percent of its average gross receipts for the other six months in the preceding calendar year; and

(B) the student performed services for the camp for fewer than 13 calendar weeks in the calendar year and the student:

(i) is enrolled as a full-time student at an educational institution; or

(ii) is between academic terms or years and:

(a) the student was enrolled as a full-time student at an educational institution for the preceding academic term or year; and

(b) there is reasonable assurance that the student will be so enrolled for the next academic term or year: (V.A.C.S. Arts. 5221b-17(g)(5)(S), (T), (X).)

Sec. 201.070. SERVICE AS PRODUCT DEMONSTRATOR; SALESMAN. In this subtitle, "employment" does not include:

(1) service by an individual as a product demonstrator if:

(A) the service is performed under a written contract between the individual performing the service and a person whose principal business is obtaining the service of a demonstrator for a third person for product demonstration purposes; and

(B) in contract and in fact the individual:

(i) is not treated as an employee with respect to that service for federal unemployment tax purposes;

(ii) is compensated for each demonstration or is compensated based on factors that relate to the work performed;

(iii) determines the method of performing the service;

(iv) provides each vehicle used to perform the service;

(v) is responsible for the completion of a specific job and is liable for failure to complete the job;

(vi) may accept or reject a job from a product demonstrator business;

(vii) is free from control by the principal business as to where the individual works;

(viii) controls solely opportunity for profit or loss; and

(ix) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(2) service by an individual as a direct seller if:

(A) the individual is engaged in the business of:

(i) in-person sales of consumer products to a buyer on a buy-sell basis, a deposit-commission basis, or a similar basis for resale in a home or in a place other than, and not affiliated with, a permanent retail establishment; or

(ii) sales of consumer products in a home or in a place other than, and not affiliated with, a permanent retail establishment;

(B) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(C) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(3) service performed by an individual at a trade market for a wholesaler or sales representative of a wholesaler or manufacturer of consumer goods under a written contract, or as a salesman for a wholesaler of consumer goods, if the wholesaler or sales representative maintains a regular or seasonal place of business at a trade market facility in a

municipality with a population of more than 750,000. (V.A.C.S. Arts. 5221b-17(g)(5)(B), (W), (BB).)

Sec. 201.071. SERVICE AS INSURANCE AGENT. In this subtitle, "employment" does not include service as an insurance agent for which the only remuneration for the service is a commission. (V.A.C.S. Arts. 5221b-17(g)(5)(J).)

Sec. 201.072. SERVICE AS REAL ESTATE BROKER. In this subtitle, "employment" does not include:

(1) service performed by an individual as a real estate broker or salesman if:

(A) the individual engages in activity described by the definition of "real estate broker" in Section 2, The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes);

(B) the individual is licensed as a real estate broker or salesman by the Texas Real Estate Commission;

(C) substantially all remuneration for the service, whether in cash or other form of payment, is directly related to sales or other output, including the performance of the service, and not to the number of hours worked; and

(D) the service is performed under a written contract between the individual and the person for whom the service is performed, and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes; or

(2) service performed by an individual as an instructor of a person licensed or seeking a license as a real estate broker or salesman if:

(A) the individual instructs in an educational program or course approved by the Texas Real Estate Commission; and

(B) the service is performed under a written contract between the individual and the person for whom the service is performed and the contract provides that the individual is not treated as an employee with respect to the service for federal tax purposes. (V.A.C.S. Arts. 5221b-17(g)(5)(Y), (Z).)

Sec. 201.073. DELIVERY SERVICE; NEWSPAPER DELIVERY SERVICE. In this subtitle, "employment" does not include:

(1) service performed for compensation by an individual for a private for-profit delivery service that operates only in a commercial zone as defined and prescribed by the Railroad Commission of Texas under Section 1(g), Chapter 314, Acts of the 41st Legislature, Regular Session, 1929 (Article 911b, Vernon's Texas Civil Statutes), if the individual:

(A) may accept or reject a job from the delivery service;

(B) is free from control by the delivery service as to when the individual works;

(C) is compensated for each delivery or is compensated based on factors relating to the work performed, including receipt of a percentage of a rate schedule;

(D) controls solely the opportunity for profit or loss;

(E) pays all expenses and operating costs, including fuel, repairs, supplies, and motor vehicle insurance;

(F) determines the method of performing the service, including selection of routes and order of deliveries;

(G) is responsible for completion of a specific job and is liable for failure to complete the job;

(H) enters into a contract that specifies the relationship of the individual to the delivery service to be that of an independent contractor and not an employee; and

(I) provides the vehicle used to perform the service; or

(2) service by an individual younger than 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any location for subsequent delivery or distribution. (V.A.C.S. Arts. 5221b-17(g)(5)(K), (AA).)

Sec. 201.074. SERVICE BY INMATE. In this subtitle, "employment" does not include service performed by an inmate of a custodial or penal institution that is owned or operated by this state or a political subdivision of this state. (V.A.C.S. Art. 5221b-17(g)(5)(R).)

Sec. 201.075. SERVICE ON FISHING VESSEL. In this subtitle, "employment" does not include service performed on a fishing vessel normally having a crew of fewer than 10 members if:

(1) the crew member's payment is a share of the catch; and

(2) the service is not employment under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.). (V.A.C.S. Art. 5221b-17(g)(5)(V).)

Sec. 201.076. INCLUDED AND EXCLUDED SERVICE IN PAY PERIOD. (a) All of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during one-half or more of the period is employment.

(b) None of the service of an individual performed during a pay period for a person employing the individual is employment if the service performed during more than one-half of the pay period is not employment.

(c) This section does not apply to service performed in a pay period by an individual for a person employing the individual that is service that does not constitute employment under Section 201.061.

(d) In this section, "pay period" means the period, not to exceed 31 consecutive days, for which a person employing an individual ordinarily pays wages to the individual. (V.A.C.S. Art. 5221b-17(g)(6).)

[Sections 201.077-201.080 reserved for expansion]

#### SUBCHAPTER F. DEFINITION OF WAGES

Sec. 201.081. GENERAL DEFINITION OF WAGES. In this subtitle, "wages" means all remuneration for personal services, including:

(1) the cash value of remuneration paid in a medium other than cash; and

(2) a gratuity received by an employee in the course of employment to the extent that the gratuity is considered wages in the computation of taxes under the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.). (V.A.C.S. Art. 5221b-17(n) (part).)

Sec. 201.082. EXCEPTIONS TO WAGES. In this subtitle, "wages" does not include:

(1) that part of the remuneration paid by an employer to an individual for employment during a calendar year that exceeds remuneration to the individual, excluding remuneration under another subdivision of this section, by the employer, of:

(A) \$7,000 for a calendar year before 1988;

(B) \$8,000 for calendar year 1988; or

(C) \$9,000 for a calendar year after calendar year 1988;

(2) a payment, including an amount the employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity, that is made to or for an employee or the employee's dependent under a plan the employer established for employees generally, or a class of employees, including or excluding the employee's dependents, for:

(A) retirement;

(B) sickness or accident disability;

(C) medical or hospitalization expenses in connection with sickness or accident disability; or

(D) expenses related to death;

(3) a payment made to an individual employee for retirement, including an amount an employer pays for insurance or an annuity or pays into a fund for the payment of insurance or an annuity;

(4) a payment for sickness or accident disability, or medical or hospitalization expenses for sickness or accident disability, an employer makes to or for an individual employee after the expiration of six calendar months after the last calendar month the employee worked for the employer;

(5) a payment made to or for an employee or the employee's beneficiary:

(A) from or to a trust defined by Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), that is exempt from tax under Section 501(a), Internal Revenue Code of 1986 (26 U.S.C. Section 501(a)), at the time of payment, unless the payment is made to an employee of the trust as remuneration for service as an employee and not as a beneficiary of the trust;

(B) under or to an annuity plan that, at the time of the payment, is a plan described by Section 403(a), Internal Revenue Code of 1986 (26 U.S.C. Section 403(a)); or

(C) under or to a bond purchase plan that, at the time of the payment, was a qualified bond purchase plan under Section 405(a), Internal Revenue Code of 1954 (former 26 U.S.C. Section 405(a));

(6) a tax an employer pays, without deduction from the remuneration of the employee, that is imposed on the employee under Section 3101, Internal Revenue Code of 1986 (26 U.S.C. Section 3101);

(7) noncash remuneration paid to an employee for service not in the course of the employer's business;

(8) a payment, except vacation or sick pay, made to an employee after the month the employee is 65 years of age, if the employee did not work for the employer in the period for which the payment is made; or

(9) the part of remuneration from a single employer for services in a calendar year that exceeds the amount applicable to the year under Subdivision (1) for which contributions have been paid under a state unemployment law. (V.A.C.S. Art. 5221b-17(n) (part).)

[Sections 201.083-201.090 reserved for expansion]

#### SUBCHAPTER G. TOTAL AND PARTIAL UNEMPLOYMENT

Sec. 201.091. TOTAL AND PARTIAL UNEMPLOYMENT. (a) An individual is totally unemployed in a benefit period during which the individual does not perform services for wages in excess of the greater of:

(1) \$5; or

(2) 25 percent of the benefit amount.

(b) An individual is partially unemployed in a benefit period of less than full-time work if the individual's wages payable for that benefit period are less than the sum of:

(1) the benefit amount the individual would be entitled to receive if the individual was totally unemployed; and

(2) the greater of:

(A) \$5; or

(B) 25 percent of the benefit amount. (V.A.C.S. Arts. 5221b-17(j), (l) (part).)

[Sections 201.092-201.100 reserved for expansion]

#### SUBCHAPTER H. CONFORMITY WITH FEDERAL STATUTES

Sec. 201.101. CONFORMITY WITH FEDERAL STATUTES. If the United States secretary of labor holds that a provision of this subtitle does not conform with a federal statute, the commission may administer this subtitle to conform with the federal statute until the legislature meets in its next session and has an opportunity to amend this subtitle. (V.A.C.S. Art. 5221b-22e.)

CHAPTER 202. TEXAS EMPLOYMENT COMMISSION

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## CHAPTER 202. TEXAS EMPLOYMENT COMMISSION

## SUBCHAPTER A. ORGANIZATION OF COMMISSION

Sec. 202.001. MEMBERSHIP REQUIREMENTS. (a) The Texas Employment Commission is composed of three members:

- (1) one of whom shall be a representative of labor;
- (2) one of whom shall be a representative of employers; and
- (3) one of whom shall be impartial and shall represent the public.

(b) The governor shall appoint the members and make the appointments without regard to the race, creed, sex, religion, or national origin of the appointees. (V.A.C.S. Arts. 5221b-8(a) (part), (b) (part).)

Sec. 202.002. MEMBER RESTRICTIONS. (a) A member of the commission may not engage in any other business, vocation, or employment during the member's term on the commission.

(b) The public member of the commission may not be an officer, employee, or paid consultant of a labor-oriented or employer-oriented trade association while the member serves on the commission. (V.A.C.S. Arts. 5221b-8(a) (part), (b) (part).)

Sec. 202.003. EFFECT OF LOBBYING ACTIVITY. A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the commission or act as the general counsel to the commission while so registered. If the person ceases to engage in lobbying activity and files a notice of termination as prescribed by Section 305.008, Government Code, the person may serve as a member of the commission or act as the general counsel to the commission. (V.A.C.S. Art. 5221b-8(c).)

Sec. 202.004. TERMS; VACANCY. (a) Members of the commission are appointed for staggered six-year terms, with one member's term expiring on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy shall hold office for the remainder of that term. (V.A.C.S. Art. 5221b-8(b) (part).)

Sec. 202.005. CHAIRMAN. The member representing the public is the chairman of the commission. (V.A.C.S. Art. 5221b-8(d).)

Sec. 202.006. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission by impeachment that a member:

- (1) during any 60-day period, is absent from each commission meeting for which the member received at least 48 hours' notice;
- (2) is unable to discharge the member's duties for the remainder of the term for which the member was appointed because of illness or other disability; or
- (3) violates a prohibition established by Section 202.002 or 202.003.

(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for the removal of a member of the commission existed. (V.A.C.S. Art. 5221b-8(h).)

SUBCHAPTER B. COMMISSION ADMINISTRATION

Sec. 202.021. DONATIONS. The commission may accept a donation of services, money, or property from an organization listed in Section 501(c)(3) of the Internal Revenue Code (1986 (26 U.S.C. Section 501(c)(3))) that the commission determines furthers the lawful objectives of the commission. The donation must be accepted in an open meeting by a majority of the voting members of the commission and must be reported in the public record of the commission with the name of the donor and the purpose of the donation. (V.A.C.S. Art. 5221b-9(q).)

Sec. 202.022. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code. (V.A.C.S. Art. 5221b-9(m).)

Sec. 202.023. COMPLAINTS. (a) The commission shall keep an information file about each complaint filed with the commission that relates to a service provided by the commission.

(b) If a written complaint is filed with the commission that relates to a service provided by the commission, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint. (V.A.C.S. Arts. 5221b-9(n), (o).)

Sec. 202.024. OFFICIAL SEAL; USE OF FACSIMILES. (a) The commission has an official seal. A court shall take judicial notice of the seal.

(b) The commission may execute, certify, authenticate, or sign, with a facsimile signature and seal, any instrument authorized under this subtitle to be issued by the commission or by an authorized representative of the commission, including a claim, statement, or audit report relating to the establishment or collection of delinquent contributions or penalties. (V.A.C.S. Arts. 5221b-9(a) (part), (p).)

Sec. 202.025. STATE ADVISORY COUNCIL; LOCAL COUNCILS. (a) The commission may appoint a state advisory council composed of 15 persons representing employers, employees, and the public. Each member of the commission may appoint five persons to the advisory council.

(b) The advisory council shall meet regularly.

(c) As permitted by commission rule, a member of the advisory council is entitled to reimbursement for necessary travel and subsistence expenses and to a per diem allowance for attending meetings of the council, but is not a state employee for any purpose.

(d) The commission shall determine the composition and prescribe the duties of the advisory council.

(e) The advisory council shall prepare an annual report describing the advisory council work during the preceding year and detailing any recommendations.

(f) The commission may appoint and pay local advisory councils and consultants under the same conditions as provided in this section for the state advisory council. (V.A.C.S. Art. 5221b-8(e) (part).)

[Sections 202.026-202.040 reserved for expansion]

SUBCHAPTER C. AGENCY ADMINISTRATOR AND PERSONNEL

Sec. 202.041. AGENCY ADMINISTRATOR; PERSONNEL. (a) The commission shall appoint an agency administrator on the basis of merit to administer the daily operations of the commission and may prescribe any specific qualifications for the position of agency administrator that are necessary to comply with federal law. The position of agency administrator is subject to the merit principles of Chapter 492, Acts of the 69th Legislature, Regular Session, 1985 (Article 6252-11g, Vernon's Texas Civil Statutes).

(b) The agency administrator may:

(1) appoint and prescribe the powers and duties of all officers, accountants, attorneys, experts, and other persons as necessary in the performance of the commission's duties;



(2) delegate authority to a person appointed under this section as the agency administrator considers reasonable and proper for the effective administration of this subtitle; and

(3) bond any person that handles money or signs checks under this subtitle.

(c) The agency administrator or a person designated by the agency administrator shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection. (V.A.C.S. Arts. 5221b-9(a) (part), (e).)

Sec. 202.042. ACCESS TO CERTAIN CRIMINAL HISTORY RECORD INFORMATION; OFFENSE; PENALTY. (a) The commission may request and receive criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to investigate an applicant for employment in a security sensitive position.

(b) The commission shall adopt a uniform method of obtaining criminal history information that requires the commission to submit to the Department of Public Safety or another law enforcement agency either a complete set of fingerprints or the complete name, driver's license number, and social security number of the person being investigated. If the commission does not obtain relevant information from state or local law enforcement agencies in response to a submission under this subsection, the commission may submit either the fingerprints or the required information to the Federal Bureau of Investigation Identification Division.

(c) The commission may request an applicant for a security sensitive position to provide either a complete set of fingerprints or the applicant's complete name, driver's license number, and social security number. The commission may deny employment in a security sensitive position to an applicant who fails to provide the requested fingerprints or information.

(d) All information received by the commission under this section is privileged and confidential and is for the exclusive use of the commission. The information may not be released or otherwise disclosed to any other person except on court order or with the written consent of the person being investigated.

(e) After the commission hires an applicant for a security sensitive position, the commission shall seal the criminal history record information regarding the applicant and shall deliver the information to the custody of the agency administrator or the person designated by the agency administrator, who shall maintain the information as provided by commission rule. The commission shall destroy the criminal history record information of an applicant who is not hired.

(f) The commission shall adopt rules governing the custody and use of information obtained under this section.

(g) The commission may use information obtained under this section only to evaluate an applicant for employment in a security sensitive position. A security sensitive position must be so identified in the job description and in the announcement of the position.

(h) In this section, "security sensitive position" means a position of employment that requires as an incident of the employment:

(1) the performance of duties in:

(A) the automated data processing, controller, or fiscal department; or

(B) a position designated to handle receipts or disbursements of cash in a local or regional office;

(2) access to a computer terminal, if the information available from the terminal is required by law to be confidential;

(3) access to a master key for access to the premises other than during regular working hours; or

(4) the performance of duties considered to be security sensitive by the state auditor or the Inspector General of the United States Department of Labor.

(i) A person commits an offense if the person releases or discloses any information received under this section in violation of Subsection (d). An offense under this subsection is a Class A misdemeanor. (V.A.C.S. Art. 5221b-9e.)

Sec. 202.043. STANDARDS OF CONDUCT INFORMATION. The commission shall provide to its members and employees of the commission, as often as necessary, information regarding their responsibilities under applicable laws relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 5221b-9(f).)

[Sections 202.044–202.060 reserved for expansion]

#### SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 202.061. GENERAL POWERS AND DUTIES. (a) The commission shall administer this subtitle and may adopt rules, make expenditures, require reports, conduct investigations, and take other action it considers necessary or suitable to fulfill that duty.

(b) The commission shall determine its own organization and methods of procedure in accordance with this subtitle. (V.A.C.S. Art. 5221b-9(a) (part).)

Sec. 202.062. FINDINGS. The commission shall make findings and determine issues under this subtitle as necessary to administer this subtitle. (New.)

Sec. 202.063. STATE AND FEDERAL COOPERATION. (a) The commission is designated as the agency of this state for implementation in this state of the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.).

(b) In administering this subtitle the commission shall:

(1) cooperate with the secretary under the Social Security Act (42 U.S.C. Section 301 et seq.) to the fullest extent consistent with this subtitle;

(2) make reports in the form and containing information required by the secretary and comply with provisions the secretary finds necessary to ensure that the reports are correct and verified;

(3) comply with the regulations prescribed by the secretary governing the expenditures of funds allotted and paid to the state under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) to assist in the administration of this subtitle; and

(4) cooperate with any official or agency of the United States having powers or duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) and take all actions necessary to secure to this state the benefits of that Act and necessary to perform the commission's duties under Subchapter F.

(c) The commission may provide reasonable cooperation to each agency of the United States charged with the administration of any unemployment insurance law.

(d) On request, the commission shall furnish to an agency of the United States responsible for the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and shall inform the agency of the recipient's right to further benefits under this subtitle.

(e) In this section, "secretary" means the United States secretary of labor. (V.A.C.S. Arts. 5221b-9(k), 5221b-9a (part), 5221b-10(a) (part).)

Sec. 202.064. INTERPRETER SERVICES; BILINGUAL FORMS. (a) The commission shall provide language interpreters for agency programs through a comprehensive language services program for persons whose primary language is Spanish and may provide language interpreters through the program for agency programs for persons whose primary language is other than Spanish or English.

(b) The language services program must provide services, including translation services, both to employers and to employees or prospective employees.

(c) The commission shall print essential agency forms and instructional information in both English and Spanish. A form shall be written in Spanish only when revised or when new or additional forms are printed or prepared. (V.A.C.S. Art. 5221b-9c.)

Sec. 202.065. ANNUAL REPORT. (a) As soon as practicable after the close of each fiscal year, the commission shall submit to the governor and the legislature a report on the administration and operation of the commission's activities under this subtitle during the preceding fiscal year, including each recommendation of the commission for amendments to this subtitle.

(b) The annual report must include:

- (1) a balance sheet of the money in the compensation fund;
- (2) the annual report prepared by the state advisory council under Section 202.025(e);
- (3) the commission's long-term and short-term objectives; and
- (4) any other information requested by the legislature or the Legislative Budget Board. (V.A.C.S. Arts. 5221b-8(e) (part), 5221b-9(b) (part).)

Sec. 202.066. PUBLICATIONS. (a) The commission shall print:

- (1) the text of this subtitle;
- (2) the commission's rules; and
- (3) the commission's annual report to the governor and the legislature.

(b) The commission shall prepare information describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission.

(c) The commission shall make the information required to be printed or prepared under this section and any other material that the commission determines to be relevant and suitable for distribution available to the public and appropriate state agencies. (V.A.C.S. Art. 5221b-9(d).)

[Sections 202.067-202.070 reserved for expansion]

## SUBCHAPTER E. INVESTIGATIVE AND SUBPOENA POWERS

Sec. 202.071. INVESTIGATIVE AND SUBPOENA POWERS. (a) In discharging duties imposed under this subtitle, an appeal tribunal established under Section 212.101, a member of the commission, or a representative authorized by the commission may:

- (1) administer oaths;
- (2) take depositions;
- (3) certify to official acts; and

(4) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a disputed claim or the administration of this subtitle.

(b) The commission's authority to conduct an investigation, assemble information, or require the submission of documentary or oral testimony is limited to the power necessary to properly administer this subtitle.

(c) Notwithstanding Section 154.004, Local Government Code, or any other law, the commission shall pay the fee of a sheriff or constable who serves a subpoena under this section. The fee shall be paid from the commission's administrative funds, and the comptroller shall issue a warrant for the fee as directed by the commission. (V.A.C.S. Arts. 5221b-9(h), 5221b-21.)

Sec. 202.072. ENFORCEMENT OF SUBPOENA; OFFENSE; PENALTIES. (a) If a person is guilty of contumacy or refuses to obey a subpoena issued by a member of the commission or an authorized representative of the commission, a county or district court, on application by the commission or its authorized representative, may order the person to appear before a member of the commission, the commission, or its authorized representative to produce evidence or give testimony regarding the matter under investigation or in question. Only a court within the jurisdiction where the commission conducts the inquiry or where the person is found, resides, or transacts business may issue the order.

(b) Failure to obey a court order issued under Subsection (a) is punishable as contempt.

(c) A person commits an offense if the person, without just cause, does not obey a subpoena of the commission. An offense under this subsection is punishable by a fine of not less than \$200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense. (V.A.C.S. Art. 5221b-9(i).)

Sec. 202.073. SELF-INCRIMINATION. (a) In any cause or proceeding before the commission, a person is not excused from attending and testifying, from producing books, papers, correspondence, memoranda, and other records, or from obeying a subpoena of the commission, a member of the commission, or a representative of the commission on the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a penalty or forfeiture.

(b) A person may not be prosecuted or subjected to penalty or forfeiture for or because of a transaction or thing for which the person is compelled to testify or produce evidence after having claimed a privilege against self-incrimination except for perjury. (V.A.C.S. Art. 5221b-9(j) (part).)

Sec. 202.074. DEFAMATION. An oral or written statement made to the commission or to an employee of the commission in connection with the discharge of the commission's or the employee's duties under this subtitle may not be the basis for an action for defamation of character. (V.A.C.S. Art. 5221b-9(j) (part).)

[Sections 202.075-202.080 reserved for expansion]

#### SUBCHAPTER F. EMPLOYMENT SERVICE

Sec. 202.081. TEXAS STATE EMPLOYMENT SERVICE. (a) The Texas State Employment Service is a division of the commission.

(b) The commission, through the division, shall establish and maintain free public employment offices as necessary to perform the commission's duties under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.). The number and locations of the public employment offices shall be determined by the commission as necessary for the proper administration of this subtitle. (V.A.C.S. Art. 5221b-10(a) (part).)

Sec. 202.082. EMPLOYMENT SERVICES AGREEMENTS. (a) To establish and maintain public employment offices under this subchapter, the commission may enter into an agreement with any political subdivision of the state or with a private or nonprofit organization and, as a part of the agreement, accept money, services, or quarters as a contribution to the employment service account.

(b) To establish and maintain, or assist in the establishment and maintenance of, public employment offices within a county or other political subdivision of this state, the commissioners court of the county or the governing body of the other political subdivision may enter into agreements with the Texas State Employment Service on terms and conditions agreed to by the commissioners court or other governing body and the Texas State Employment Service. The county or other political subdivision may employ means and appropriate and spend funds as necessary to establish and operate the public employment offices, and may provide, as part of the agreement, payment for:

- (1) the rent of premises;
- (2) services rendered;
- (3) the purchase of equipment; and
- (4) any other purpose considered advisable by the commissioners court or other governing body.

(c) The penalty provisions of this subtitle, including the provisions of Chapters 213 and 214, do not apply to an action or omission under Subsection (b). (V.A.C.S. Arts. 5221a-3, 5221b-10(b) (part).)

[Sections 202.083-202.090 reserved for expansion]

## SUBCHAPTER G. RECORDS

Sec. 202.091. **EMPLOYEE RECORDS OF EMPLOYING UNIT; OFFENSE; PENALTY.** (a) Each employing unit shall keep employment records containing information as prescribed by the commission and as necessary for the proper administration of this subtitle. The records are open to inspection and may be copied by the commission or an authorized representative of the commission at any reasonable time and as often as necessary.

(b) The commission may require from an employing unit sworn or unsworn reports regarding persons employed by the employing unit as necessary for the effective administration of this subtitle.

(c) Employment information thus obtained or otherwise secured may not be published and is not open to public inspection, other than to a public employee in the performance of public duties, except as the commission considers necessary for the proper administration of this subtitle.

(d) A person commits an offense if the person is an employee or member of the commission who violates any provision of this section. An offense under this subsection is punishable by a fine of not less than \$20 nor more than \$200, confinement in jail for not more than 90 days, or both fine and confinement. (V.A.C.S. Art. 5221b-9(g).)

Sec. 202.092. **COPIES OF RECORDS.** (a) The commission may furnish a photostatic or certified copy of a record in its possession to a person entitled to receive a copy of the record on application by the person.

(b) The commission shall charge a reasonable fee in an amount set by the commission for a copy of a record furnished under this section. (V.A.C.S. Art. 5221b-11(b).)

Sec. 202.093. **ACCESS TO RECORDS BY RAILROAD RETIREMENT BOARD.** (a) The commission may make state records relating to the administration of this subtitle available to the Railroad Retirement Board.

(b) The commission may furnish the Railroad Retirement Board with copies of the records requested by the board at the board's expense. (V.A.C.S. Art. 5221b-9a (part).)

Sec. 202.094. **DESTRUCTION OF RECORDS.** The commission may destroy any of its records under safeguards that protect the confidential nature of the records if the commission:

(1) determines that the records no longer serve a legal, administrative, or other useful purpose; or

(2) has made an authentic reproduction of the records to be destroyed. (V.A.C.S. Art. 5221b-9b.)

## CHAPTER 203. FINANCING AND FUNDS

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- Sec. 203.101. LIMIT ON APPLICATION FOR ADVANCE
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- Sec. 203.104. TRANSFER FROM ADVANCE INTEREST TRUST FUND TO COMPENSATION FUND
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- Sec. 203.151. ADMINISTRATION FUND
- Sec. 203.152. USE OF ADMINISTRATION FUND
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- Sec. 203.201. SPECIAL ADMINISTRATION FUND
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### CHAPTER 203. FINANCING AND FUNDS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 203.001. DEFINITIONS. In this chapter:

- (1) “Administration fund” means the unemployment compensation administration fund created under Section 203.151.
- (2) “Federal trust fund” means the unemployment trust fund created under Section 904, Social Security Act (42 U.S.C. Section 1104).
- (3) “Special administration fund” means the unemployment compensation special administration fund created under Section 203.201.
- (4) “Treasurer” means the state treasurer. (New.)

Sec. 203.002. DUTIES OF TREASURER AND COMPTROLLER. (a) The treasurer is treasurer and custodian of the compensation fund and the special administration fund and shall administer the funds in accordance with the directions of the commission.

(b) The comptroller shall issue warrants on the compensation fund in accordance with rules adopted by the commission.

(c) The comptroller shall issue warrants on the special administration fund in accordance with the directions of the commission. (V.A.C.S. Arts. 5221b-7(b) (part), 5221b-22a(a) (part).)

Sec. 203.003. **TREASURER'S BOND LIABILITY.** The treasurer is liable on the treasurer's official bond for the faithful performance of the treasurer's duties under this subtitle in connection with the compensation fund, the administration fund, and the special administration fund. This liability is in addition to liability on any separate bond that the treasurer may give. (V.A.C.S. Arts. 5221b-7(b) (part), 5221b-11(a) (part), 5221b-22a(c) (part).)

Sec. 203.004. **DEPOSIT OF FUNDS; EXCEPTION.** All money paid to the commission under this subtitle:

(1) shall be deposited in the treasury unless:

(A) a state or federal law prohibits deposit in the treasury; or

(B) the deposit would result in the loss of any federal funds; and

(2) may be used only for the administration of this subtitle. (V.A.C.S. Art. 5221b-9(l).)

Sec. 203.005. **APPLICATION OF OTHER LAW.** Money in the compensation fund, the administration fund, and the special administration fund shall be deposited, administered, and disbursed in the same manner and under the same requirements as provided by law for other special funds in the state treasury. (V.A.C.S. Arts. 5221b-7(b) (part), 5221b-11(a) (part), 5221b-22a(c) (part).)

[Sections 203.006-203.020 reserved for expansion]

## SUBCHAPTER B. UNEMPLOYMENT COMPENSATION FUND

Sec. 203.021. **UNEMPLOYMENT COMPENSATION FUND; SEPARATE ACCOUNTS.** (a) The unemployment compensation fund is a special fund.

(b) The compensation fund consists of:

(1) contributions collected under this subtitle;

(2) interest earned on money in the compensation fund;

(3) property or securities acquired through the use of money in the compensation fund;

(4) earnings of property or securities described by Subdivision (3);

(5) amounts recovered for losses sustained by the compensation fund; and

(6) other money received for the compensation fund from any other source.

(c) Money in the compensation fund shall be mingled and undivided.

(d) The treasurer shall maintain in the compensation fund:

(1) a clearing account;

(2) a federal trust fund account; and

(3) a benefit account. (V.A.C.S. Arts. 5221b-7(a) (part), (b) (part).)

Sec. 203.022. **COMPOSITION AND USE OF CLEARING ACCOUNT.** (a) On receipt of any money payable to the compensation fund, the commission shall forward the money to the treasurer, who shall immediately deposit it in the clearing account.

(b) Except as provided by Section 203.026, money in the clearing account, after it has cleared, shall be immediately deposited with the United States secretary of the treasury to the credit of this state's account in the federal trust fund. This section prevails over any conflicting state statute relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state. (V.A.C.S. Art. 5221b-7(b) (part).)

Sec. 203.023. **REQUISITIONS FROM FEDERAL TRUST FUND; BENEFIT ACCOUNT.** (a) The commission periodically shall requisition from the federal trust fund amounts the commission considers necessary for the payment of benefits and refunds for a

reasonable period. The commission may not requisition an amount exceeding the balance of this state's account in the federal trust fund.

(b) The benefit account is composed of money requisitioned from this state's account in the federal trust fund.

(c) On receipt of money requisitioned from the federal trust fund, the treasurer shall deposit it in the benefit account. (V.A.C.S. Arts. 5221b-7(b) (part), (c) (part).)

**Sec. 203.024. DEPOSITS.** (a) Except as otherwise provided by this subchapter, the treasurer, under the direction of the commission, may deposit money credited to the clearing and benefit accounts in a bank or public depository in which general funds of this state may be deposited.

(b) A public deposit insurance charge or premium may not be paid out of the compensation fund. (V.A.C.S. Art. 5221b-7(b) (part).)

**Sec. 203.025. USE OF REQUISITIONED MONEY.** (a) The commission shall direct the administration of the compensation fund exclusively for the purposes of this subtitle.

(b) Money requisitioned from this state's account in the federal trust fund may be used only for the payment of benefits or for refunds as provided by Sections 203.023, 203.026, 203.027, and 203.203 and by Subchapter B, Chapter 210, and Subchapter E, Chapter 213, except that money credited to this state's account as provided by Section 903, Social Security Act (42 U.S.C. Section 1103), may be requisitioned and used by the commission only to the extent and under the conditions prescribed by that section. (V.A.C.S. Arts. 5221b-7(a) (part), (c) (part).)

**Sec. 203.026. ACCOUNTS FROM WHICH BENEFITS AND REFUNDS ARE PAID.** (a) The comptroller may issue a warrant for a benefit only from the benefit account.

(b) As directed by the commission, the comptroller may issue a warrant for a refund as provided by Subchapter E, Chapter 213, from the benefit account or the clearing account.

(c) An expenditure from the benefit account or a refund from the clearing account is not subject to a law that requires itemization or other formal release by a state officer of money in the officer's custody.

(d) A warrant issued for the payment of a benefit or a refund must bear the signatures of:

(1) the treasurer; and

(2) a member of the commission or the commission's authorized agent for that purpose. (V.A.C.S. Arts. 5221b-7(b) (part), (c) (part).)

**Sec. 203.027. UNEXPENDED BALANCE OF BENEFIT ACCOUNT.** Money requisitioned from the federal trust fund that remains unclaimed or unpaid in the benefit account after the end of the period for which the money was requisitioned shall be, in the commission's discretion:

(1) deducted from an estimate for the succeeding periods and used to pay benefits and refunds in those periods; or

(2) redeposited in the federal trust fund as provided by Section 203.022. (V.A.C.S. Art. 5221b-7(c) (part).)

**Sec. 203.028. SOLVENCY OF COMPENSATION FUND; RESERVE.** (a) If the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the compensation fund, it shall inform the governor and legislature of its belief and when the change will become necessary and shall make recommendations for the necessary change.

(b) The commission, if possible, shall maintain in the compensation fund a reserve against the liability to pay benefits in future years in excess of current contributions. The commission shall create the reserve according to accepted actuarial principles using statistics of employment, business activity, and other relevant factors for the longest possible period. (V.A.C.S. Art. 5221b-9(b) (part).)

**Sec. 203.029. REFUND OF CONTRIBUTIONS TO FEDERAL INSTRUMENTALITY.** If this state is not certified for any year by the United States secretary of labor as required under Section 3304(c), Internal Revenue Code of 1986 (26 U.S.C. Section 3304(c)), the commission shall refund from the compensation fund a payment required of an instrumentali-



ty of the federal government for that year in the same manner and within the same period as provided by Subchapter E, Chapter 213, for contributions erroneously collected. (V.A.C.S. Art. 5221b-17(g)(5)(M) (part).)

Sec. 203.030. REIMBURSEMENT FROM OR TO COMPENSATION FUND UNDER RECIPROCAL ARRANGEMENT. (a) The commission may reimburse a state or federal agency from the compensation fund or receive a reimbursement from a state or federal agency for the compensation fund under an arrangement under Section 211.003.

(b) A reimbursement paid from the compensation fund under this section is a benefit for the purposes of this subtitle. (V.A.C.S. Art. 5221b-15a(c).)

Sec. 203.031. NONLIABILITY OF STATE. Benefits are due and payable only to the extent money is available for that purpose in the compensation fund. Neither this state nor the commission is liable for any amount in excess of the amount in that fund. (V.A.C.S. Art. 5221b-16 (part).)

Sec. 203.032. MANAGEMENT OF COMPENSATION FUND ON DISCONTINUANCE OF FEDERAL TRUST FUND. (a) To the extent that a provision of this subchapter relates to the federal trust fund, the provision is operative only as long as:

(1) the federal trust fund exists; and

(2) the United States secretary of the treasury maintains for this state a separate book account of all funds deposited in the federal trust fund by this state for benefit purposes, with this state's proportionate share of the earnings of the federal trust fund, from which no other state is permitted to make withdrawals.

(b) If the federal trust fund ceases to exist or the secretary of the treasury ceases to maintain a separate book account for this state in the federal trust fund, all money, property, or securities in the federal trust fund that belong to the compensation fund shall be transferred to the treasurer. The treasurer shall hold, invest, transfer, deposit, and release the money, property, or securities in a manner approved by the commission in accordance with this subtitle.

(c) Money held by the treasurer under Subsection (b) shall be invested in readily marketable bonds or other interest-bearing obligations of the United States of America. The money shall be invested in such a manner that the assets of the compensation fund are readily convertible at all times into cash as needed for the payment of benefits.

(d) The treasurer may dispose of securities or other property belonging to the compensation fund only under the direction of the commission. (V.A.C.S. Art. 5221b-7(e).)

[Sections 203.033-203.100 reserved for expansion]

### SUBCHAPTER C. ADVANCES FROM FEDERAL TRUST FUND

Sec. 203.101. LIMIT ON APPLICATION FOR ADVANCE. In any application for an advance from the federal trust fund (Section 1201, Social Security Act (42 U.S.C. Section 1321)), the governor shall limit the amount of the application to an amount that, when added to previous advances, does not exceed the amount for which principal and interest may be paid from taxes on employers. (V.A.C.S. Art. 5221b-7c(b).)

Sec. 203.102. ADVANCE INTEREST TRUST FUND. (a) The advance interest trust fund is a trust fund in the custody of the treasurer.

(b) The governor may use money in the advance interest trust fund without legislative appropriation to:

(1) pay interest incurred on advances from the federal trust fund; and

(2) repay temporary transfers of surplus cash that may be made between the advance interest trust fund and other funds. (V.A.C.S. Art. 5221b-7c(a) (part).)

Sec. 203.103. TRANSFER OF INCOME FROM ADVANCE INTEREST TRUST FUND TO SPECIAL ADMINISTRATION FUND. The treasurer and the comptroller shall transfer all income earned after September 1, 1988, from investment of the advance interest

trust fund to the special administration fund for the administration of Chapters 51, 61, and 62. (V.A.C.S. Art. 5221b-7c(a) (part).)

Sec. 203.104. TRANSFER FROM ADVANCE INTEREST TRUST FUND TO COMPENSATION FUND. The governor may authorize the commission to transfer money from the advance interest trust fund to the compensation fund if the governor:

(1) on the advice of the commission, determines that funds in the compensation fund will be depleted at the time payment on an advance from the federal trust fund is due and that depletion of the funds will cause the loss of some portion of the credit received by employers against their federal unemployment tax rate; or

(2) determines that payment of interest on a federal loan may be avoided by keeping the balance of the compensation fund positive. (V.A.C.S. Art. 5221b-7c(a) (part).)

Sec. 203.105. ADDITIONAL TAX. (a) In addition to other taxes, a separate tax is imposed on each employer eligible for an experience tax rate if after January 1 of a year:

(1) an interest payment on an advance from the federal trust fund will be due; and

(2) the estimated amount necessary to make the interest payment will not be available otherwise.

(b) The commission shall set the rate of an additional tax under this section in an amount sufficient to ensure timely payment of interest, but not exceeding two-tenths of one percent. The rate applies to the same wage base to which the employer's unemployment tax applies for that year.

(c) An additional tax under this section is due on the date set by the commission and is subject to the same penalty for late payment as the unemployment tax.

(d) Revenue from an additional tax under this section shall be deposited to the credit of the advance interest trust fund. (V.A.C.S. Art. 5221b-7c(d).)

[Sections 203.106-203.150 reserved for expansion]

#### SUBCHAPTER D. ADMINISTRATION FUND

Sec. 203.151. ADMINISTRATION FUND. (a) The unemployment compensation administration fund is a special fund in the state treasury.

(b) The administration fund consists of money:

(1) appropriated to the administration fund by this state;

(2) received from the United States or any federal agency for the administration of this subtitle;

(3) collected by the commission as fees for furnishing photostatic or certified copies of commission records;

(4) collected by the commission as fees for conducting audits under the authority granted by this subtitle;

(5) received from any federal agency or any agency of another state as compensation for services or facilities supplied to the agency;

(6) received under any surety bond or insurance policy or from other sources:

(A) for losses sustained by the administration fund; or

(B) by reason of damage to equipment or supplies purchased with money in the administration fund;

(7) received as proceeds from the sale or disposition of equipment or supplies that are no longer necessary for the proper administration of this subtitle, if the equipment or supplies were purchased with money in the administration fund; and

(8) received from any other source for the administration of this subtitle. (V.A.C.S. Art. 5221b-11(a) (part).)

Sec. 203.152. **USE OF ADMINISTRATION FUND.** (a) Money credited to the administration fund may be used by the commission as provided by this subtitle and may not be transferred to any other fund.

(b) Money in the administration fund received from the federal government or a federal agency may be spent only for the purposes and in the amounts found necessary by the United States secretary of labor or that secretary's successor for the proper and efficient administration of this subtitle. (V.A.C.S. Art. 5221b-11(a) (part).)

Sec. 203.153. **EMPLOYMENT SERVICE FINANCING.** Money received by the state under the Wagner-Peyser Act (29 U.S.C. Section 49 et seq.) shall be deposited to the credit of the employment service account of the administration fund. The money in the account may be used by the commission as provided by Subchapter F of Chapter 202 and the Wagner-Peyser Act. (V.A.C.S. Art. 5221b-10(b) (part).)

Sec. 203.154. **REIMBURSEMENT OF ADMINISTRATION FUND.** (a) If the United States secretary of labor or that secretary's successor finds that money received from the secretary or the secretary's successor under Title III of the Social Security Act (42 U.S.C. Section 501 et seq.) or any other federal money granted to the commission for the administration of this subtitle has been lost or spent for a purpose other than, or in an amount in excess of, that found necessary for the proper administration of this subtitle by the secretary or the secretary's successor, the money shall be replaced by money appropriated for that purpose from the general funds of this state to the administration fund for expenditure as provided by Section 203.152.

(b) On receipt of notice that the secretary or the secretary's successor has made a determination described in Subsection (a), the commission shall promptly report the amount needed for reimbursement to the governor. The governor, at the earliest opportunity, shall submit to the legislature a request for the appropriation of that amount. (V.A.C.S. Art. 5221b-11(c).)

[Sections 203.155-203.200 reserved for expansion]

#### SUBCHAPTER E. SPECIAL ADMINISTRATION FUND

Sec. 203.201. **SPECIAL ADMINISTRATION FUND.** (a) The unemployment compensation special administration fund is a special fund.

(b) The special administration fund consists of:

- (1) all interest and penalties collected under this subtitle;
- (2) any amounts received under any surety bond for losses sustained by the special administration fund; and
- (3) money transferred under Section 203.103. (V.A.C.S. Arts. 5221b-12(c)(1) (part), (2) (part); 5221b-22a(a) (part), (c) (part).)

Sec. 203.202. **USE OF SPECIAL ADMINISTRATION FUND.** (a) Money in the special administration fund may be spent in accordance with this subtitle and may be used:

- (1) to pay the cost of reimbursing the benefit account in the compensation fund for benefits paid to former employees of this state that are based on service for this state, and the cost of construction and purchase of buildings and land necessary for that administration;
- (2) in the administration of Chapters 51, 61, and 62 as provided by Section 203.103;
- (3) for payment of interest on advances from the federal trust fund;
- (4) as a revolving fund to cover expenditures that are necessary and proper under this subtitle and for which federal funds have been requested but not received, subject to the charging of the expenditures against the federal funds when received; and
- (5) to refund a penalty as provided by Section 203.203.

(b) Money in the special administration fund may not be spent in any manner that would permit its substitution for, or a corresponding reduction in, federal funds that would, in the

absence of that money, be available to finance expenditures for the administration of this subtitle.

(c) The commission by a resolution entered in its minutes may authorize to be charged against the special administration fund any expenditure the commission considers proper in the interest of good administration of this subtitle if the resolution states that no other funds are available for the expenditure. (V.A.C.S. Arts. 5221b-7c(c), 5221b-22a(a) (part).)

Sec. 203.203. REFUND OF PENALTIES. A refund under Subchapter E, Chapter 213, of a penalty that has been erroneously collected and deposited to the credit of the special administration fund shall be made, without interest, from the special administration fund. (V.A.C.S. Arts. 5221b-7(b) (part), 5221b-22a(c) (part).)

**CHAPTER 204. CONTRIBUTIONS**

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**CHAPTER 204. CONTRIBUTIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 204.001. DEFINITION. In this chapter, “manual” means the Standard Industrial Classification Manual published by the United States Office of Management and Budget. (V.A.C.S. Art. 5221b–5(c)(1) (part).)

Sec. 204.002. CONTRIBUTION REQUIRED. (a) An employer shall pay a contribution on wages for employment paid during a calendar year or the portion of the calendar year in which the employer is subject to this subtitle.

(b) The contribution shall be paid to the commission in accordance with rules adopted by the commission. (V.A.C.S. Art. 5221b–5(a) (part).)

Sec. 204.003. CONTRIBUTION NOT DEDUCTED FROM WAGES. An employer may not deduct any part of a contribution from the wages of an individual in the employer’s employ. (V.A.C.S. Art. 5221b–5(a) (part).)

Sec. 204.004. ASSIGNMENT TO MAJOR GROUP. The commission shall assign each employer to a major group in accordance with the definitions contained in the manual. (V.A.C.S. Art. 5221b–5(c)(1) (part).)

Sec. 204.005. ESTABLISHMENT OF MAJOR GROUP CONTRIBUTION RATE. (a) For each calendar year, the commission shall establish by industry an average contribution rate for each major group.

(b) The commission shall determine the year’s contribution rate for an industry by averaging the contribution rates paid by employers in that industry during the preceding year

ending on September 30, as shown by the employment records maintained by the commission. (V.A.C.S. Art. 5221b-5(c)(1) (part).)

Sec. 204.006. **INITIAL CONTRIBUTION RATE.** (a) A person's contribution rate for the calendar year in which the person becomes an employer is the greater of:

- (1) the rate established for that year for the major group to which the employer is assigned under Section 204.004; or
- (2) two and seven-tenths percent.

(b) A rate established under Subsection (a) applies to the employer until the date the experience rate computed under Section 204.041 takes effect for the employer. (V.A.C.S. Art. 5221b-5(c)(1) (part).)

Sec. 204.007. **SPECIAL RATE—COTTON GINNING EMPLOYER.** (a) An employer identified by the commission as classified in the manual as Number 0724, cotton ginning, may elect to pay a contribution at a total fixed rate of five and four-tenths percent instead of paying a contribution computed on:

- (1) the general tax rate applicable to that employer, with the deficit tax rate and replenishment tax rate; or
- (2) any other tax rate applicable to that employer under this subtitle.

(b) An employer must notify the commission of an election under this section in writing not later than December 31 preceding the year for which the election is made. (V.A.C.S. Art. 5221b-5(c)(9).)

Sec. 204.008. **TIME BENEFITS ARE PAID.** For the purpose of this chapter, benefits are paid at the time the claim for the benefits is certified by the commission to the comptroller for payment. (V.A.C.S. Art. 5221b-5(c)(3).)

Sec. 204.009. **APPLICATION TO LABOR AGENT.** (a) A labor agent who furnishes a farm and ranch laborer is liable for the payment of a tax under this subtitle as if the labor agent were the employer of the laborer, without regard to any factor used to determine an employer-employee relationship, including the right of control.

(b) If a labor agent does not pay the tax in accordance with this subtitle, a person who contracts with the labor agent for the services of a farm and ranch laborer is jointly and severally liable with the labor agent for payment of the tax under this subtitle as an employer.

(c) A labor agent shall notify each person with whom the labor agent contracts whether the labor agent pays the tax under this subtitle.

(d) A labor agent who pays the tax shall present evidence of payment to each person with whom the labor agent contracts.

(e) In this section, "labor agent" means a person who is a farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.). (V.A.C.S. Art. 5221b-17(f)(8)(D) (part).)

[Sections 204.010-204.020 reserved for expansion]

## **SUBCHAPTER B. CHARGEBACKS**

Sec. 204.021. **CHARGEBACKS.** (a) The amount of benefits paid to a claimant for a benefit year shall be charged to the accounts of each of the claimant's employers during the claimant's base period. The chargebacks of an employer for a calendar quarter are the benefits paid to all of the employer's employees or former employees during that quarter.

(b) The chargeback of benefits of a claimant who has two or more employers during the claimant's base period is allocated among those employers according to the proportion of the total of the claimant's benefit wage credits paid during the base period by each employer. (V.A.C.S. Art. 5221b-5(c)(2)(A) (part).)

Sec. 204.022. **EXCLUSIONS FROM CHARGEBACKS.** (a) Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an

employer if the employee's last separation from the employer's employment before the employee's benefit year:

- (1) was required by a federal statute;
- (2) was required by a statute of this state or an ordinance of a municipality of this state;
- (3) would have disqualified the employee under Section 207.044, 207.045, or 207.053 if the employment had been the employee's last work;
- (4) imposes a disqualification under Section 207.044, 207.045, or 207.053;
- (5) was caused by a medically verifiable illness of the employee or the employee's minor child;
- (6) was based on a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), if the employee would have been entitled to unemployment assistance benefits under Section 410 of that act (42 U.S.C. Section 5177) had the employee not received state unemployment compensation benefits;
- (7) was caused by a natural disaster, fire, flood, or explosion that causes employees to be separated from one employer's employment; or
- (8) resulted from the employee's resigning from partial employment to accept other employment that the employee reasonably believed would increase the employee's weekly wage.

(b) For the purpose of this section, if an employee's last separation from the employment of an employer is a separation for which the employee was determined to have been disqualified under Section 207.048, the employee's last separation from the employment of that employer is considered to be the next later separation from the employment of that employer. (V.A.C.S. Art. 5221b-5(c)(2)(A) (part).)

Sec. 204.023. NOTICE SENT AT TIME BENEFITS PAID. The commission shall mail to an employer a notice of the employer's maximum potential chargebacks when benefits are first paid if:

- (1) notice of an initial claim has not already been mailed to the employer under Section 208.002; and
- (2) the employer's account is potentially chargeable with benefits as a result of the initial claim and payment of benefits. (V.A.C.S. Art. 5221b-5(c)(2)(B) (part).)

Sec. 204.024. PROTEST OF POTENTIAL CHARGEBACKS. To protest a potential chargeback, an employer to whom notice is mailed under Section 204.023 must mail to the commission at Austin a protest not later than the 14th day after the date the notice was mailed or the right to protest the chargeback is waived. The protest must include a statement of the facts supporting the grounds of the protest. (V.A.C.S. Art. 5221b-5(c)(2)(B) (part).)

Sec. 204.025. DECISION AND ADMINISTRATIVE REVIEW OF PROTEST. (a) An examiner promptly shall decide the issues involved in a timely protest filed under Section 204.024 and shall mail a notice of the decision to the protesting employer.

(b) The examiner's decision becomes final 14 days from the date the examiner mails the notice unless before that date the employer mails to the commission at Austin a written appeal from the examiner's decision.

(c) Administrative review under this section must be in accordance with the rules of the commission. (V.A.C.S. Art. 5221b-5(c)(2)(B) (part).)

Sec. 204.026. JUDICIAL REVIEW OF PROTEST. (a) An employer may appeal an administrative determination made under Section 204.025 after the employer has exhausted the employer's administrative remedies, not including a motion for rehearing, before the commission. An appeal must be filed within the time prescribed by Sections 212.153 and 212.201 for commission decisions on benefits.

(b) An appeal to a court relating to a chargeback has the same venue and jurisdiction as a suit to collect contributions and penalties under this subtitle. (V.A.C.S. Art. 5221b-5(c)(2)(B) (part).)

Sec. 204.027. NOTICE, PROTEST, AND APPEAL—NOTICE SENT AT TIME OF CLAIM. (a) If notice of the claim was sent to an employer under Section 208.002, the commission shall mail the employer a notice of the amount of the employer's potential chargeback resulting from the claim.

(b) The employer may protest a clerical or machine error relating to the amount of the chargeback not later than the 14th day after the date the notice was mailed.

(c) The commission shall mail a decision on the protest to the employer.

(d) An employer may appeal the decision on the protest not later than the 14th day after the date notice of the decision is mailed to the employer. (V.A.C.S. Art. 5221b-5(c)(2)(B) (part).)

[Sections 204.028-204.040 reserved for expansion]

SUBCHAPTER C. GENERAL TAX RATE FOR  
 EXPERIENCE-RATED EMPLOYERS

Sec. 204.041. TAX ON EXPERIENCE-RATED EMPLOYERS. (a) Each employer whose account has been chargeable with benefits throughout four or more consecutive calendar quarters shall pay contributions at the rate prescribed by the table in Section 204.042 or a table extended under Section 204.043.

(b) Except as provided by Subsection (c), a change in the rate applicable to an employer takes effect on January 1.

(c) The rate for an employer who becomes subject to contributions under Subsection (a) for the first time at the close of a calendar quarter takes effect on the first day of the next calendar quarter and continues in effect until the January 1 of the next calendar year. (V.A.C.S. Arts. 5221b-5(c)(1) (part), (6)(A) (part), (d) (part).)

Sec. 204.042. TAX RATE TABLE.

If the replenishment ratio is	and the employer's benefit ratio does not exceed:									
	0.00	0.10	0.20	0.30	0.40	0.50	0.60	0.70	0.80	0.90
1.00	0.00	0.08	0.16	0.25	0.33	0.41	0.50	0.58	0.66	0.75
1.20	0.00	0.08	0.16	0.24	0.33	0.41	0.49	0.57	0.66	0.74
1.21	0.00	0.08	0.16	0.24	0.32	0.40	0.49	0.57	0.65	0.73
1.22	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.65	0.73
1.23	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.24	0.00	0.08	0.16	0.24	0.32	0.40	0.48	0.56	0.64	0.72
1.25	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.63	0.71
1.26	0.00	0.07	0.15	0.23	0.31	0.39	0.47	0.55	0.62	0.70
1.27	0.00	0.07	0.15	0.23	0.31	0.39	0.46	0.54	0.62	0.70
1.28	0.00	0.07	0.15	0.23	0.31	0.38	0.46	0.54	0.62	0.69
1.29	0.00	0.07	0.15	0.23	0.30	0.38	0.46	0.53	0.61	0.69
1.30	0.00	0.07	0.15	0.22	0.30	0.38	0.45	0.53	0.61	0.68
1.31	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.68
1.32	0.00	0.07	0.15	0.22	0.30	0.37	0.45	0.53	0.60	0.67
1.33	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.52	0.59	0.67
1.34	0.00	0.07	0.14	0.22	0.29	0.37	0.44	0.51	0.59	0.66
1.35	0.00	0.07	0.14	0.22	0.29	0.36	0.44	0.51	0.58	0.66
1.36	0.00	0.07	0.14	0.21	0.29	0.36	0.43	0.51	0.58	0.65
1.37	0.00	0.07	0.14	0.21	0.28	0.36	0.43	0.50	0.57	0.65
1.38	0.00	0.07	0.14	0.21	0.28	0.35	0.43	0.50	0.57	0.64
1.39	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.50	0.57	0.64
1.40	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.41	0.00	0.07	0.14	0.21	0.28	0.35	0.42	0.49	0.56	0.63
1.42	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.43	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62



If the replenishment ratio is

and the employer's benefit ratio does not exceed:

1.44	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.45	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.48	0.55	0.62
1.46	0.00	0.06	0.13	0.20	0.27	0.34	0.41	0.47	0.54	0.62
1.47	0.00	0.06	0.13	0.20	0.27	0.34	0.40	0.47	0.54	0.61
1.48	0.00	0.06	0.13	0.20	0.27	0.33	0.40	0.47	0.54	0.60
1.49	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.50	0.00	0.06	0.13	0.20	0.26	0.33	0.40	0.46	0.53	0.60
1.51	0.00	0.06	0.13	0.19	0.26	0.33	0.39	0.46	0.52	0.59
1.52	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.46	0.52	0.59
1.53	0.00	0.06	0.13	0.19	0.26	0.32	0.39	0.45	0.52	0.58
1.54	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.55	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.45	0.51	0.58
1.56	0.00	0.06	0.12	0.19	0.25	0.32	0.38	0.44	0.51	0.57
1.57	0.00	0.06	0.12	0.19	0.25	0.31	0.38	0.44	0.50	0.57
1.58	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.59	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.44	0.50	0.56
1.60	0.00	0.06	0.12	0.18	0.25	0.31	0.37	0.43	0.50	0.56

the employer's tax rate is:

0.00%	0.1%	0.2%	0.3%	0.4%	0.5%	0.6%	0.7%	0.8%	0.9%
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(V.A.C.S. Art. 5221b-5(c)(6)(A) (part).)

Sec. 204.043. EXTENSION OF TAX RATE TABLE UP TO SIX PERCENT. (a) The commission shall extend the table in Section 204.042 by providing additional replenishment ratios, benefit ratios, and tax rates up to six percent.

(b) In extending the table in Section 204.042, the commission shall use the same mathematical principles used in constructing the table. (V.A.C.S. Art. 5221b-5(c)(6)(A) (part).)

Sec. 204.044. BENEFIT RATIO. (a) The benefit ratio for an employer is equal to the total amounts of the employer's chargebacks for the 36 consecutive months preceding the tax rate computation date divided by the total of the employer's taxable wages for the same months.

(b) The benefit ratio of an employer whose account has been chargeable with benefits for less than 36 consecutive months but throughout each month of at least four calendar quarters is equal to the total amount of the employer's chargebacks for those months preceding the tax rate computation date divided by the total of the employer's taxable wages for those months.

(c) In computing the benefit ratio, only taxable wages on which contributions have been paid to the commission not later than the last day of the month in which the computation date occurs may be used.

(d) The benefit ratio is expressed as a percentage. (V.A.C.S. Art. 5221b-5(c)(4).)

Sec. 204.045. REPLENISHMENT RATIO. (a) The replenishment ratio for a calendar year is computed by:

(1) dividing the numerator described in Subsection (b) by the denominator described in Subsection (c); and

(2) rounding the result to the nearest hundredth.

(b) The numerator is equal to the amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts, plus one-half of the amount of benefits paid during that period that are not effectively charged to employers' accounts. In computing the amount of the benefits charged or paid, the commission shall not include the amount of:

(1) a canceled benefit warrant;

(2) that part of a benefit that has been overpaid and been repaid; or

(3) benefits paid that are repayable from a reimbursing employer, the federal government, or another governmental entity.

(c) The denominator is the total amount of benefits paid during the 12 months ending September 30 of the preceding year that are effectively charged to employers' accounts.

(d) The commission shall compute the replenishment ratio for each calendar year before the date the first contribution payment with respect to wages for employment paid in that year is due. Once computed for the year, the replenishment ratio may not be adjusted. (V.A.C.S. Art. 5221b-5(c)(5) (part).)

Sec. 204.046. EFFECTIVELY CHARGED BENEFITS. (a) A benefit is not effectively charged if it is:

- (1) not charged to an employer's account;
- (2) charged to an employer's account after the employer has reached maximum liability because of the maximum tax rate; or
- (3) charged to an employer's account but considered not collectible.

(b) A benefit not described in Subsection (a) is effectively charged. (V.A.C.S. Art. 5221b-5(c)(5) (part).)

Sec. 204.047. TAX RATE COMPUTATION DATE FOR EXPERIENCE TAX RATE. (a) The computation date for the tax rate for the contribution under Section 204.041 is October 1 of the year preceding the calendar year in which the rate takes effect, except as provided by Subsection (b).

(b) The computation date for the tax rate for the contribution under Section 204.041(a) for an employer who becomes subject to that tax rate for the first time is the date on which the rate takes effect under Section 204.041(c). (V.A.C.S. Art. 5221b-5(d) (part).)

[Sections 204.048–204.060 reserved for expansion]

#### SUBCHAPTER D. ADJUSTMENTS TO TAX RATE FOR EXPERIENCE-RATED EMPLOYERS

Sec. 204.061. CEILING AND FLOOR OF COMPENSATION FUND. In computing the tax rates under this subchapter:

- (1) the ceiling of the compensation fund is two percent of the total taxable wages for the four calendar quarters ending the preceding June 30; and
- (2) the floor of the compensation fund is equal to the greater of:
  - (A) \$400 million; or
  - (B) one percent of the total taxable wages for the four calendar quarters ending the preceding June 30. (V.A.C.S. Arts. 5221b-5(c)(6)(B) (part), (D) (part).)

Sec. 204.062. REPLENISHMENT TAX. (a) In addition to the general tax computed under Subchapter C, an employer entitled to an experience rate shall pay a replenishment tax at the rate computed by:

- (1) dividing the numerator described by Subsection (b) by the denominator described by Subsection (c);
- (2) dividing that result by 100 to obtain a percentage; and
- (3) rounding that result to the nearest hundredth.

(b) The numerator is an amount equal to one-half of the amount of benefits paid by all employers during the 12 months ending the preceding September 30 that are not effectively charged.

(c) The denominator is an amount equal to the taxable wages paid by all employers during the four quarters ending the preceding June 30. (V.A.C.S. Art. 5221b-5(c)(8).)

Sec. 204.063. DEFICIT TAX. (a) If the amount of money in the compensation fund on a tax rate computation date is less than the floor of the compensation fund, a deficit tax rate is added for the next calendar year to the general tax rate for each employer entitled to an experience rate for that year.

(b) The deficit tax rate for a calendar year is the lesser of:

- (1) the rate computed by multiplying the deficit ratio, as computed under Section 204.064, by the sum of the employer's general tax rate, the replenishment tax rate, and the deficit tax rate for the previous calendar year; or

(2) two percent. (V.A.C.S. Art. 5221b-5(c)(6)(B) (part).)

Sec. 204.064. DEFICIT RATIO. (a) The deficit ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the balance of the compensation fund, considering any federal advance or other liability of the fund, from the floor of the compensation fund.

(c) The denominator is the amount of contributions due under the general tax rate and the replenishment rate for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date. (V.A.C.S. Art. 5221b-5(c)(6)(C).)

Sec. 204.065. CREDIT. (a) If the amount in the compensation fund on a tax rate computation date is more than the ceiling of the compensation fund, an employer entitled to an experience rate on the computation date is entitled to a credit to be applied beginning with contributions for the first quarter of the following year.

(b) The amount of the credit is computed by multiplying the surplus ratio computed under Section 204.066 by the employer's contributions due for the four calendar quarters ending the preceding September 30.

(c) An employer may not apply a credit against delinquent contributions. A credit may not be applied until the employer has paid any delinquent contributions. (V.A.C.S. Arts. 5221b-5(c)(6)(D) (part), (F).)

Sec. 204.066. SURPLUS RATIO. (a) The surplus ratio is computed by:

(1) dividing the numerator computed under Subsection (b) by the denominator described by Subsection (c); and

(2) rounding that result to the nearest hundredth.

(b) The numerator is computed by subtracting the ceiling of the compensation fund from the balance of the compensation fund.

(c) The denominator is the amount of contributions due for the four calendar quarters ending the preceding September 30 from employers entitled to an experience rate on the tax rate computation date. (V.A.C.S. Art. 5221b-5(c)(6)(E).)

[Sections 204.067-204.080 reserved for expansion]

## SUBCHAPTER E. ACQUISITION OF EXPERIENCE-RATED EMPLOYER

Sec. 204.081. DEFINITION. In this subchapter, "compensation experience" includes the period that benefit wage credits or benefits have been chargeable and any other factor under Subchapter A, B, C, or D necessary to the computation of experience rating under those subchapters. (V.A.C.S. Art. 5221b-5(c)(7)(E).)

Sec. 204.082. EFFECTIVE DATE OF ACQUISITION. For purposes of this subchapter, an acquisition is effective on the first day of the calendar quarter in which the acquisition occurs. (V.A.C.S. Art. 5221b-5(c)(7)(F).)

Sec. 204.083. ACQUISITION OF ALL OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS. An employing unit that acquires all of the organization, trade, or business of an employer and that continues operation of the organization, trade, or business acquires the compensation experience of the predecessor employer if on the date of the acquisition, a shareholder, officer, or other owner of a legal or equitable interest in the predecessor employer, or the spouse or a person within the first degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes, of the shareholder, officer, or other owner:

(1) is a shareholder, officer, or other owner of a legal or equitable interest in the successor employing unit; or

(2) holds an option to purchase a legal or equitable interest in the successor employing unit. (V.A.C.S. Arts. 5221b-5(c)(7)(A)(i), (iii).)

Sec. 204.084. ACQUISITION OF PART OF EXPERIENCE-RATED ORGANIZATION, TRADE, OR BUSINESS: APPROVAL OF TRANSFER OF COMPENSATION EXPERIENCE. (a) If an employing unit acquires a part of the organization, trade, or business of an employer, the successor employing unit and the predecessor employer may jointly make a written application to the commission to transfer the compensation experience of the predecessor employer that is attributable to the part of the organization, trade, or business acquired to the successor employing unit.

(b) If the acquisition results from the death of the predecessor employer, the requirement that the predecessor employer join in the application for transfer of the compensation experience does not apply.

(c) The commission shall approve an application if:

(1) immediately after the acquisition the successor employing unit continues operation of substantially the same part of the organization, trade, or business acquired;

(2) the predecessor employer waives in writing all rights to an experience rating computed on the compensation experience attributable to the part of the organization, trade, or business acquired by the successor employing unit, unless the acquisition results from the death of the predecessor employer;

(3) a definitely identifiable and segregable part of the predecessor employer's compensation experience is attributable to the part of the organization, trade, or business acquired; and

(4) for a successor employing unit that is not an employer at the time of the acquisition, the successor employing unit elects to become an employer on the date of the acquisition or otherwise becomes an employer during the year in which the acquisition occurs. (V.A.C.S. Arts. 5221b-5(c)(7)(B), (D).)

Sec. 204.085. CONTRIBUTION RATE FOR SUCCESSOR EMPLOYER. (a) A successor employing unit that is subject to Section 204.083 or 204.084 and is an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the end of the calendar year in which the acquisition occurred at the rate applicable to the successor employing unit on the date of the acquisition.

(b) A successor employing unit that is subject to Section 204.083 or 204.084 and is not an experience-rated employer on the date of the acquisition shall pay contributions from the date of the acquisition until the next tax rate computation date at the highest rate applicable at the time of the acquisition to any predecessor employer who is a party to the acquisition. (V.A.C.S. Arts. 5221b-5(c)(7)(A)(ii), (C).)

Sec. 204.086. COLLECTION OF CONTRIBUTION, PENALTY, OR INTEREST FROM SUCCESSOR EMPLOYER. (a) An individual or employing unit that acquires the organization, trade, or business or substantially all of the assets of an organization, trade, or business of an employer who, at the time of the acquisition, is indebted to the commission for a contribution, a penalty, or interest, is liable to the commission for prompt payment of the contribution, penalty, or interest.

(b) If not paid, the commission may bring suit for the collection of a contribution, a penalty, or interest as though the contribution, penalty, or interest had been incurred by the successor employer. (V.A.C.S. Art. 5221b-12(o).)

[Sections 204.087-204.100 reserved for expansion]

#### SUBCHAPTER F. SPECIAL CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS

Sec. 204.101. CONTRIBUTION FROM GOVERNMENTAL EMPLOYER. A governmental employer shall pay a contribution in accordance with this subchapter and rules adopted by the commission on wages paid for employment during each year or portion of the year in which the governmental employer is subject to this subtitle. (V.A.C.S. Arts. 5221b-5b(a), (b)(1) (part).)

Sec. 204.102. CONTRIBUTION NOT DEDUCTION FROM WAGES. A contribution paid by a governmental employer may not be deducted from the wages of individuals in the employer's employ. (V.A.C.S. Art. 5221b-5b(b)(1) (part).)

Sec. 204.103. RATE OF CONTRIBUTIONS FOR GOVERNMENTAL EMPLOYERS. (a) The rate of the contribution required under Section 204.101 for each calendar year is equal to the greater of:

(1) one-tenth of one percent; or

(2) the percentage, adjusted to the next higher one-tenth of one percent, computed by dividing the numerator described by Subsection (b) by the denominator described by Subsection (c).

(b) The numerator is the amount of all benefits paid during the preceding calendar year based on wage credits earned from employers that pay contributions under this subchapter, not including benefit payments that are reimbursable from any other source. If the amount of benefits paid during the period used for determining the rate is greater than the contributions paid by the same employers for the same period, the amount of the benefits paid in excess of the amount of contributions collected shall be added to the numerator in determining the contribution rate. If the amount of benefits paid for the period used for determining the rate is less than the contributions paid by the same employers for the same period, that amount shall be deducted from the numerator in computing the rate.

(c) The denominator is the amount of the total wages paid during the preceding calendar year by all employers that pay contributions under this subchapter. (V.A.C.S. Art. 5221b-5b(b)(2) (part).)

Sec. 204.104. ACCOUNTING FOR GOVERNMENTAL EMPLOYERS. The commission shall account separately for benefits paid and contributions collected under this subchapter, and these benefits and contributions may not be used in determining contribution rates under Subchapters A, B, C, and D. (V.A.C.S. Art. 5221b-5b(e) (part).)

Sec. 204.105. PAST DUE CONTRIBUTIONS. (a) A governmental employer that fails to pay a contribution due under this subchapter on the date it is due as prescribed by the commission is subject to the same penalties as provided for other employers under Section 213.021.

(b) The provisions for collecting delinquent contributions under Chapter 213 apply to a governmental employer.

(c) The commission shall notify the comptroller in writing of the name of each governmental employer that is delinquent in payment of contributions under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer. (V.A.C.S. Arts. 5221b-5b(b)(3), (c)(1), (2) (part).)

Sec. 204.106. REPORTS AND RECORDS. (a) A governmental employer shall keep records and file reports with the commission relating to individuals in its employ as required by rules adopted by the commission.

(b) A governmental employer that does not keep the records or file the reports when due is subject to the same penalties provided for other employers under Sections 213.022, 213.023, 213.024, and 213.056. (V.A.C.S. Art. 5221b-5b(d).)

## CHAPTER 205. REIMBURSEMENTS

### SUBCHAPTER A. ELECTION TO BECOME REIMBURSING EMPLOYER

Sec. 205.001. REIMBURSEMENTS OR CONTRIBUTIONS BY GOVERNMENTAL ENTITY

Sec. 205.002. ELECTION BY NONPROFIT ORGANIZATION

Sec. 205.003. COMMISSION TERMINATION OF ELECTION

[Sections 205.004-205.010 reserved for expansion]

SUBCHAPTER B. GENERAL PROVISIONS

- Sec. 205.011. APPLICABILITY OF SUBTITLE; WAIVER BY REIMBURSING EMPLOYER
- Sec. 205.012. PAYMENT OF REIMBURSEMENT
- Sec. 205.013. BILLING; AMOUNT OF REIMBURSEMENTS
- Sec. 205.014. PROPORTIONATE ALLOCATION OF BENEFIT COSTS—MORE THAN ONE EMPLOYER AND AT LEAST ONE REIMBURSING EMPLOYER
- Sec. 205.015. CONTINUED LIABILITY FOR REIMBURSEMENT
- Sec. 205.016. COLLECTION OF DELINQUENT REIMBURSEMENT; EFFECT OF FAILURE TO SUBMIT CERTAIN REPORTS
- Sec. 205.017. DELINQUENT GOVERNMENTAL EMPLOYERS
- Sec. 205.018. PAYMENT OF BENEFITS FROM COMPENSATION FUND; NO EFFECT ON REPLENISHMENT RATIO

[Sections 205.019–205.020 reserved for expansion]

SUBCHAPTER C. GROUP ACCOUNT

- Sec. 205.021. APPROVAL OF GROUP ACCOUNT; EFFECTIVE DATE
- Sec. 205.022. DURATION AND TERMINATION OF GROUP ACCOUNT
- Sec. 205.023. GROUP MEMBER'S REIMBURSEMENT AMOUNT
- Sec. 205.024. REPORTS AND RECORDS
- Sec. 205.025. COMMISSION RULES

[Sections 205.026–205.030 reserved for expansion]

SUBCHAPTER D. BONDS AND OTHER SAFEGUARDS

- Sec. 205.031. BOND
- Sec. 205.032. ADDITIONAL SAFEGUARDS

[Sections 205.033–205.040 reserved for expansion]

SUBCHAPTER E. STATE ELECTIONS

- Sec. 205.041. STATE ELECTION TO BE REIMBURSING EMPLOYER
- Sec. 205.042. COVERAGE OF STATE EMPLOYEES WORKING OUTSIDE STATE

CHAPTER 205. REIMBURSEMENTS

SUBCHAPTER A. ELECTION TO BECOME REIMBURSING EMPLOYER

Sec. 205.001. REIMBURSEMENTS OR CONTRIBUTIONS BY GOVERNMENTAL ENTITY. (a) A state, a political subdivision of a state, or an instrumentality of a state or a political subdivision of a state may elect to pay reimbursements for benefits instead of contributions.

(b) The election must be made not later than the 45th day after the date on which notice that an employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) An election is effective for at least two calendar years and may be terminated after the minimum period by filing with the commission not later than December 1 a written request for termination. The termination is effective January 1 of the following year. (V.A.C.S. Arts. 5221b-6(b)(2), (3), (4).)

Sec. 205.002. ELECTION BY NONPROFIT ORGANIZATION. (a) A nonprofit organization that is described by Section 201.023 or a group of those organizations subject to this subtitle may elect to pay reimbursements for benefits instead of contributions.

(b) An election under this section must be made not later than the 45th day after the date on which notice that the employer is subject to this subtitle is mailed to the employer.

(c) The election is effective January 1 of the year in which the employer becomes subject to this subtitle.

(d) The election is effective for at least two calendar years and may not be terminated before the expiration of that period, except as provided in Sections 205.003 and 205.031.

(e) An election may be withdrawn by written application by the employer filed with the commission not later than December 1 before the year for which the employer wishes to change the employer's method of payment. The method of payment may be changed again if a timely application is filed after a minimum of two calendar years.

(f) An election to pay reimbursements terminates at any time coverage terminates under this subtitle. An employer whose election terminates because of termination of coverage, on again becoming an employer subject to this subtitle, may reelect to pay reimbursements. (V.A.C.S. Art. 5221b-6(b)(1).)

Sec. 205.003. COMMISSION TERMINATION OF ELECTION. (a) The commission may terminate an employer's election to make reimbursements if the employer is delinquent in making reimbursements under this chapter.

(b) A termination under this section takes effect at the beginning of the next tax year and remains in effect for that tax year and the following tax year. (V.A.C.S. Art. 5221b-5a(i).)

[Sections 205.004-205.010 reserved for expansion]

## SUBCHAPTER B. GENERAL PROVISIONS

Sec. 205.011. APPLICABILITY OF SUBTITLE; WAIVER BY REIMBURSING EMPLOYER. (a) A reimbursing employer is entitled to the rights and privileges and subject to the duties and responsibilities of all provisions of this subtitle other than the following provisions of Chapter 204, which do not apply to a reimbursing employer:

- (1) Sections 204.001-204.008;
- (2) Subchapters B, C, and D of Chapter 204; and
- (3) Sections 204.081-204.085.

(b) An election to become a reimbursing employer is a waiver of the rights afforded under Chapter 204 that do not apply to a reimbursing employer. (V.A.C.S. Art. 5221b-5a(f)).

Sec. 205.012. PAYMENT OF REIMBURSEMENT. A reimbursing employer shall pay a reimbursement to the commission in accordance with this chapter and rules adopted by the commission. (V.A.C.S. Arts. 5221b-5a(a) (part), (b) (part).)

Sec. 205.013. BILLING; AMOUNT OF REIMBURSEMENTS. (a) A reimbursing employer shall pay to the commission an amount equal to the regular benefits plus, except as provided by Subsection (c), one-half of the extended benefits paid during that quarter that are attributable to service in the employ of the employer.

(b) At the end of each calendar quarter the commission shall bill each reimbursing employer for the amount described under Subsection (a).

(c) A state, a political subdivision of a state, or any instrumentality of any one or more states or political subdivisions of a state that is wholly owned by one or more states or political subdivisions of a state that is a reimbursing employer shall pay 100 percent of the extended benefits paid on benefit wage credits earned from that employer. (V.A.C.S. Arts. 5221b-5a(b) (part), (c) (part), (m).)

Sec. 205.014. PROPORTIONATE ALLOCATION OF BENEFIT COSTS—MORE THAN ONE EMPLOYER AND AT LEAST ONE REIMBURSING EMPLOYER. If benefits to an individual are computed on benefit wage credits earned from more than one employer, at least one of whom is a reimbursing employer, the amount payable to the compensation fund by each reimbursing employer is the amount that bears the same ratio to the total benefits paid to the individual as the total base period benefit wage credits for the

individual from that employer bears to the total base period benefit wage credits for the individual from all employers. (V.A.C.S. Art. 5221b-5a(c) (part).)

Sec. 205.015. CONTINUED LIABILITY FOR REIMBURSEMENT. An employer who has elected reimbursement under Section 205.001 or 205.002 shall pay reimbursements for benefits that are attributable to service in the employ of the employer during the period of the election, even if the employer is no longer a reimbursing employer when the benefits are paid. (V.A.C.S. Art. 5221b-5a(g).)

Sec. 205.016. COLLECTION OF DELINQUENT REIMBURSEMENT; EFFECT OF FAILURE TO SUBMIT CERTAIN REPORTS. A reimbursing employer who fails to pay a reimbursement on the date on which the reimbursement is due, or who fails to submit records and reports, as prescribed by the commission, is subject to the following in the same manner as an employer who does not pay a contribution when due:

- (1) Sections 213.004, 213.005, 213.006, 213.008, and 213.009;
- (2) Subchapters B, C, D, and E of Chapter 213, other than Section 213.058; and
- (3) Section 204.086. (V.A.C.S. Art. 5221b-5a(e).)

Sec. 205.017. DELINQUENT GOVERNMENTAL EMPLOYERS. The commission shall notify the comptroller in writing of the name of a governmental employer that is delinquent in payment of reimbursements under this subtitle and the amount of the delinquency. On receipt of the notice, the comptroller shall pay the amount of the delinquency to the commission from any funds that otherwise would be due from the state to the delinquent governmental employer. (V.A.C.S. Art. 5221b-5b(c)(2) (part).)

Sec. 205.018. PAYMENT OF BENEFITS FROM COMPENSATION FUND; NO EFFECT ON REPLENISHMENT RATIO. Benefits computed on wages earned from a reimbursing employer and reimbursements for the benefits may not be used in computing the replenishment ratio under Section 204.045. (V.A.C.S. Art. 5221b-5a(l).)

[Sections 205.019–205.020 reserved for expansion]

### SUBCHAPTER C. GROUP ACCOUNT

Sec. 205.021. APPROVAL OF GROUP ACCOUNT; EFFECTIVE DATE. (a) On approval of an application submitted by two or more reimbursing employers, the commission shall establish a group account for the employers to share the cost of benefits that are attributable to service in the employ of the employers.

(b) The application must identify and authorize a group representative to act as the group's agent for the purpose of this subchapter.

(c) The group account takes effect at the beginning of the calendar quarter in which the commission received the application. The commission shall notify the group's representative of the effective date of the account. (V.A.C.S. Art. 5221b-5a(h) (part).)

Sec. 205.022. DURATION AND TERMINATION OF GROUP ACCOUNT. (a) A group account must remain in effect for not less than two years.

(b) After two years, the account may be terminated at the discretion of the commission or on application by the group. The termination is effective January 1 of the next year. (V.A.C.S. Art. 5221b-5a(h) (part).)

Sec. 205.023. GROUP MEMBER'S REIMBURSEMENT AMOUNT. On establishment of a group account, each member of the group is liable for reimbursements for each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter attributable to service in the employ of all members of the group as the total wages paid for service in employment in the quarter by the member bears to the total wages paid in the quarter by all members of the group. (V.A.C.S. Art. 5221b-5a(h) (part).)

Sec. 205.024. REPORTS AND RECORDS. Each member of a group shall keep accurate employment records and submit reports as required by the commission relating to persons employed by the member. (V.A.C.S. Art. 5221b-5a(h) (part).)

Sec. 205.025. COMMISSION RULES. The commission shall as necessary adopt rules on:



- (1) an application for the establishment, maintenance, and termination of a group account authorized by this subchapter;
- (2) the type of records to be kept and reports to be submitted by a group of employers;
- (3) the addition of a new member to a group;
- (4) the withdrawal of an active member from a group; and
- (5) the determination of the amount of reimbursements payable under this subchapter by members of a group and the time and manner of those payments. (V.A.C.S. Art. 5221b-5a(h) (part).)

[Sections 205.026-205.030 reserved for expansion]

#### SUBCHAPTER D. BONDS AND OTHER SAFEGUARDS

Sec. 205.031. BOND. (a) The commission may require a reimbursing employer or group of reimbursing employers to execute and file with the commission a surety bond approved by the commission.

(b) The amount of the bond shall be determined in accordance with rules adopted by the commission.

(c) The commission may require adjustments to a filed bond as it considers appropriate.

(d) If a reimbursing employer covered by a bond fails to pay the full amount of reimbursements when due, together with any applicable interest and penalties required under this subtitle, the surety is liable on the bond, to the extent of the bond, as though the surety were the employer.

(e) If a reimbursing employer fails to execute and file bond when directed to do so by the commission, the commission may terminate the employer's election to make reimbursements effective at the beginning of the next tax year. The termination remains effective for that tax year and the following tax year. (V.A.C.S. Art. 5221b-5a(j).)

Sec. 205.032. ADDITIONAL SAFEGUARDS. The commission may provide additional safeguards as necessary to ensure that a reimbursing employer pays the reimbursements required under Subchapters B and C. (V.A.C.S. Art. 5221b-5a(k).)

[Sections 205.033-205.040 reserved for expansion]

#### SUBCHAPTER E. STATE ELECTIONS

Sec. 205.041. STATE ELECTION TO BE REIMBURSING EMPLOYER. (a) This state is a reimbursing employer subject to this subtitle for all services performed in the employ of:

- (1) this state;
- (2) a branch or department of this state; or
- (3) an instrumentality of this state that is not otherwise an employer.

(b) All services performed in the employ of this state, a branch or department of this state, or an instrumentality of this state are employment.

(c) Subsection (a) does not apply to a political subdivision of this state.

(d) The commission shall provide to each state agency an annual statement showing the benefits paid by the commission during the year that are attributable to that agency. (V.A.C.S. Art. 5221b-22d.)

Sec. 205.042. COVERAGE OF STATE EMPLOYEES WORKING OUTSIDE STATE. If the commission is unable to execute a reciprocal agreement under Chapter 211 to cover an employee of this state who works outside this state, the employing agency shall become a reimbursing employer if permitted by the law of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, the agency may pay the required contribution for that employee from funds available for that purpose. (V.A.C.S. Art. 5221b-22dd.)

CHAPTER 206. UNEMPLOYMENT INSURANCE COVERAGE

- Sec. 206.001. YEARLY COVERAGE
- Sec. 206.002. ELECTION OF COVERAGE AS EMPLOYER
- Sec. 206.003. ELECTION OF COVERAGE REGARDING SERVICES NOT CONSTITUTING EMPLOYMENT
- Sec. 206.004. TERMINATION OF COVERAGE
- Sec. 206.005. PREVIOUS RIGHTS LOST BY CESSATION OF COVERAGE

CHAPTER 206. UNEMPLOYMENT INSURANCE COVERAGE

Sec. 206.001. YEARLY COVERAGE. An employing unit that is or becomes an employer in a calendar year is subject to this subtitle during that entire calendar year. (V.A.C.S. Art. 5221b-6(a).)

Sec. 206.002. ELECTION OF COVERAGE AS EMPLOYER. (a) An employing unit that is not otherwise subject to this subtitle may elect coverage as an employer for not less than two calendar years.

(b) Subsection (a) does not apply to an employing unit to which Section 205.001 or 205.002 applies.

(c) On written approval by the commission of an election under Subsection (a), the employing unit making the election becomes an employer to the same extent as all other employers beginning on the date stated in the approval. (V.A.C.S. Art. 5221b-6(b)(5).)

Sec. 206.003. ELECTION OF COVERAGE REGARDING SERVICES NOT CONSTITUTING EMPLOYMENT. (a) An employing unit may elect for not less than two calendar years that all services that do not constitute employment and that are performed by individuals in its employ in one or more distinct establishments or places of business are to be considered employment for all purposes of this subtitle.

(b) An election under Subsection (a) must be in writing and be filed with the commission.

(c) On written approval by the commission of an election under Subsection (a), the services constitute employment during the period elected, beginning on the date stated in the approval. (V.A.C.S. Art. 5221b-6(b)(6).)

Sec. 206.004. TERMINATION OF COVERAGE. (a) An employing unit may cease to be an employer only on January 1 of a year and only if the commission finds that:

(1) the employing unit was not an employer during the preceding year; or

(2) the employing unit has not had any individuals in employment during the preceding three calendar years.

(b) The commission may not make a finding under Subsection (a)(1) unless the employing unit files an application for termination of coverage with the commission on or after January 1 but before April 1 of the year for which termination is requested. The commission may make a finding under Subsection (a)(2) without an application having been filed. (V.A.C.S. Arts. 5221b-6(c)(1), (2).)

Sec. 206.005. PREVIOUS RIGHTS LOST BY CESSATION OF COVERAGE. When an employing unit that ceased to be an employer subsequently becomes an employer, the employing unit is considered to be a new employer without regard to the rights that employing unit acquired when previously an employer. (V.A.C.S. Art. 5221b-6(d).)

CHAPTER 207. BENEFITS

SUBCHAPTER A. PAYMENT OF BENEFITS

- Sec. 207.001. PAYMENT OF BENEFITS
- Sec. 207.002. BENEFITS FOR TOTAL UNEMPLOYMENT
- Sec. 207.003. BENEFITS FOR PARTIAL UNEMPLOYMENT
- Sec. 207.004. BENEFIT WAGE CREDITS
- Sec. 207.005. MAXIMUM AMOUNT OF BENEFITS

- Sec. 207.006. ADJUSTMENT OF BENEFITS
- Sec. 207.007. FEES LIMITATION; LEGAL REPRESENTATION; CRIMINAL OFFENSE; PENALTY
- Sec. 207.008. SUITABLE WORK

[Sections 207.009–207.020 reserved for expansion]

SUBCHAPTER B. BENEFIT ELIGIBILITY

- Sec. 207.021. BENEFIT ELIGIBILITY CONDITIONS
- Sec. 207.022. COMMISSION-APPROVED TRAINING
- Sec. 207.023. TRAINING UNDER THE TRADE ACT OF 1974
- Sec. 207.024. CLAIM FILED OR RESIDENCE IN ANOTHER STATE OR COUNTRY
- Sec. 207.025. PREGNANCY OR TERMINATION OF PREGNANCY

[Sections 207.026–207.040 reserved for expansion]

SUBCHAPTER C. EXCEPTIONS TO AND DISQUALIFICATION FOR BENEFITS

- Sec. 207.041. SERVICES IN EDUCATIONAL INSTITUTIONS
- Sec. 207.042. ATHLETES
- Sec. 207.043. ALIENS
- Sec. 207.044. DISCHARGE FOR MISCONDUCT
- Sec. 207.045. VOLUNTARILY LEAVING WORK
- Sec. 207.046. INVOLUNTARY SEPARATION
- Sec. 207.047. FAILURE TO APPLY FOR, ACCEPT, OR RETURN TO WORK
- Sec. 207.048. LABOR DISPUTES
- Sec. 207.049. RECEIPT OF REMUNERATION
- Sec. 207.050. RECEIPT OF PENSION OR ANNUITY
- Sec. 207.051. SALE OF BUSINESS
- Sec. 207.052. LEAVING WORK TO ATTEND EDUCATIONAL INSTITUTION
- Sec. 207.053. REFUSAL TO TREAT COMMUNICABLE DISEASE

[Sections 207.054–207.070 reserved for expansion]

SUBCHAPTER D. PROTECTION OF BENEFIT RIGHTS

- Sec. 207.071. WAIVER, RELEASE, OR COMMUTATION AGREEMENT INVALID
- Sec. 207.072. ACCEPTANCE OR REQUIREMENT OF WAIVER PROHIBITED
- Sec. 207.073. PROHIBITED DEDUCTION FROM WAGES
- Sec. 207.074. CRIMINAL OFFENSE; PENALTY
- Sec. 207.075. ASSIGNMENT OF BENEFITS PROHIBITED; BENEFIT EXEMPTIONS
- Sec. 207.076. EQUAL TREATMENT

[Sections 207.077–207.090 reserved for expansion]

SUBCHAPTER E. CHILD SUPPORT OBLIGATIONS

- Sec. 207.091. DEFINITIONS
- Sec. 207.092. DISCLOSURE OF CHILD SUPPORT OBLIGATIONS
- Sec. 207.093. WITHHOLDING OF CHILD SUPPORT BY COMMISSION
- Sec. 207.094. FEDERAL LAW REQUIREMENT

CHAPTER 207. BENEFITS

SUBCHAPTER A. PAYMENT OF BENEFITS

Sec. 207.001. **PAYMENT OF BENEFITS.** Benefits are paid through the commission in accordance with rules adopted by the commission and are due and payable under this subtitle only to the extent provided by this subtitle. (V.A.C.S. Arts. 5221b-1(a), 5221b-16 (part).)

Sec. 207.002. **BENEFITS FOR TOTAL UNEMPLOYMENT.** (a) An eligible individual who is totally unemployed in a benefit period is entitled to benefits for the benefit period at the rate of  $\frac{1}{2}$  of the wages received by the individual from employment by employers during that quarter in the individual's base period in which wages were highest. The rate of benefits paid under this section may not be more than \$84 or less than \$15 for each benefit period.

(b) For each complete increment of \$10 by which the annual average of the manufacturing production workers' average weekly wage in this state exceeds the 1976 average weekly wage for those workers, as determined by the commission and published in its report, "The Average Weekly Wage," the maximum benefit amount established in Subsection (a) is increased by \$7 and the minimum benefit amount established in Subsection (a) is increased by \$1.

(c) The commission shall compute the maximum benefit amount for a claim filed on or after October 1, 1989, without consideration of any increase in the average weekly wage for manufacturing workers in this state for the years 1986 and 1987.

(d) An increase in maximum and minimum benefit amounts under this section takes effect on October 1 following publication of "The Average Weekly Wage" report.

(e) The maximum benefit amount payable to an individual for a benefit period under this section on the effective date of a valid claim is the maximum benefit amount payable to that individual until the individual establishes a new benefit year.

(f) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply. (V.A.C.S. Arts. 5221b-1(b) (part), (b-1) (part), (e) (part).)

Sec. 207.003. **BENEFITS FOR PARTIAL UNEMPLOYMENT.** (a) An eligible individual who is partially unemployed in a benefit period is entitled to partial benefits for that benefit period.

(b) The amount of a partial benefit is computed by:

(1) adding the individual's benefit amount and the greater of \$5 or 25 percent of the benefit amount; and

(2) subtracting the amount of the wages earned by the individual during the benefit period from the amount computed under Subdivision (1).

(c) In this section, "wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply. (V.A.C.S. Arts. 5221b-1(c) (part), (e) (part).)

Sec. 207.004. **BENEFIT WAGE CREDITS.** (a) The commission shall credit an individual's wages received for employment from an employer during the individual's base period as the individual's benefit wage credits.

(b) Wages used to qualify an individual for regular benefits under this subtitle or under any other unemployment compensation law may not be used again to qualify the individual for regular benefits.

(c) If an employer fails to report, when requested by the commission, wages that were paid to an individual during a base period, the commission may determine the amount of benefit wage credits for the individual for the base period from the best information obtained by the commission.

(d) In this section:

(1) "Benefit wage credits" means those wages used to determine an individual's right to benefits.

(2) "Wages" has the meaning assigned in Subchapter F, Chapter 201, except that the limitation of wages provided in Section 201.082(1) does not apply. (V.A.C.S. Arts. 5221b-1(d) (part), (e).)

Sec. 207.005. **MAXIMUM AMOUNT OF BENEFITS.** The maximum amount of benefits payable to an eligible individual during a benefit year may not exceed the lesser of:

- (1) 26 times the individual's benefit amount; or
- (2) 27 percent of the individual's benefit wage credits. (V.A.C.S. Art. 5221b-1(d) (part).)

Sec. 207.006. **ADJUSTMENT OF BENEFITS.** If a benefit rate or benefit payable computed under this chapter is not a multiple of \$1, the benefit rate or benefit payable is increased to the next multiple of \$1. (V.A.C.S. Arts. 5221b-1(b) (part), (c) (part), (d) (part); 5221b-3(e) (part), (h) (part).)

Sec. 207.007. **FEES LIMITATION; LEGAL REPRESENTATION; CRIMINAL OFFENSE; PENALTY.** (a) An individual claiming benefits under this subtitle may not be charged a fee in a proceeding under this subtitle by:

- (1) the commission or a representative of the commission; or
- (2) a court or an officer of a court.

(b) An individual claiming benefits in a proceeding before the commission or a court may be represented by counsel or another authorized agent. Counsel or an agent representing an individual under this subtitle may not charge or receive a fee for these services greater than an amount approved by the commission.

(c) A person who violates this section commits an offense. An offense under this section is punishable by:

- (1) a fine of not less than \$50 and not more than \$500;
- (2) imprisonment for not more than six months; or
- (3) both a fine and imprisonment. (V.A.C.S. Art. 5221b-13(b).)

Sec. 207.008. **SUITABLE WORK.** (a) In determining whether work is suitable for an individual, the commission shall consider:

- (1) the degree of risk involved to the individual's health, safety, and morals at the place of performance of the work;
- (2) the individual's physical fitness and previous training;
- (3) the individual's experience and previous earnings;
- (4) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- (5) the distance of the work from the individual's residence.

(b) Notwithstanding any other provision of this subtitle, work is not suitable and benefits may not be denied under this subtitle to an otherwise eligible individual for refusal to accept new work if:

- (1) the position offered is vacant directly because of a strike, lockout, or other labor dispute;
- (2) the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or
- (3) as a condition of being employed, the individual is required to join a company union or to resign from or refrain from joining a bona fide labor organization. (V.A.C.S. Arts. 5221b-3(c)(1), (2).)

[Sections 207.009-207.020 reserved for expansion]

## SUBCHAPTER B. BENEFIT ELIGIBILITY

Sec. 207.021. **BENEFIT ELIGIBILITY CONDITIONS.** (a) Except as provided by Chapter 215, an unemployed individual is eligible to receive benefits for a benefit period if the individual:

(1) has registered for work at an employment office and has continued to report to the employment office as required by rules adopted by the commission;

(2) has made a claim for benefits under Section 208.001;

(3) is able to work;

(4) is available for work;

(5) for the individual's base period, has benefit wage credits:

(A) in at least two calendar quarters; and

(B) in an amount not less than 37 times the individual's benefit amount;

(6) after the beginning date of the individual's most recent prior benefit year, if applicable, earned wages in an amount equal to not less than six times the individual's benefit amount; and

(7) has been totally or partially unemployed for a waiting period of at least seven consecutive days.

(b) A week may not be counted as a waiting period week for the purposes of this section:

(1) unless the individual has registered for work at an employment office in accordance with Subsection (a)(1);

(2) unless it is after the filing of an initial claim;

(3) unless the individual reports at an office of the commission and certifies that the individual has met the waiting period requirements;

(4) if benefits have been paid or are payable with respect to the week;

(5) if the individual does not meet the eligibility requirements of Subsections (a)(3) and (a)(4); and

(6) if the individual has been disqualified for benefits for the seven-day period under Section 207.044, 207.045, 207.047, or 207.048.

(c) Notwithstanding any other provision of this section, an individual who has been paid benefits in the individual's current benefit year equal to or exceeding three times the individual's benefit amount is eligible to receive benefits on the individual's waiting period claim in accordance with this subtitle. (V.A.C.S. Art. 5221b-2.)

Sec. 207.022. COMMISSION-APPROVED TRAINING. (a) An individual may not be denied benefits because the individual is in training with the approval of the commission.

(b) An individual may not be denied benefits for a benefit period in which the individual is in training with the approval of the commission because of the provisions of Section 207.021 relating to the individual's:

(1) availability for work;

(2) active search for work; or

(3) refusal to apply for or refusal to accept suitable work.

(c) Approval of training must be obtained as required by rules adopted by the commission. (V.A.C.S. Art. 5221b-2a(a).)

Sec. 207.023. TRAINING UNDER THE TRADE ACT OF 1974. (a) This section applies only to training approved under Section 236(a)(1) of the Trade Act of 1974 (19 U.S.C. Section 2296(a)(1)).

(b) An otherwise eligible individual may not be denied benefits for a week:

(1) that the individual was in training;

(2) that the individual left work to enter training if the work the individual left was not suitable employment; or

(3) because of the application to the week in training of a provision of this subtitle or a federal unemployment compensation law relating to the individual's:

(A) availability for work;

(B) active search for work; or

(C) refusal to accept work.

(c) For the purposes of Subsection (b), "suitable employment" means work for an individual that:

(1) is of a skill level substantially equal to or higher than that of the individual's past adversely affected employment, as that term is used by the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.); and

(2) pays wages that are not less than 80 percent of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.). (V.A.C.S. Art. 5221b-2a(d).)

Sec. 207.024. CLAIM FILED OR RESIDENCE IN ANOTHER STATE OR COUNTRY. An individual's benefits may not be denied or reduced solely because at the time the individual filed the claim for unemployment compensation the individual:

(1) files a claim in another state or a contiguous country with which the United States has an agreement with respect to unemployment compensation; or

(2) resides in another state or contiguous country with which the United States has an agreement with respect to unemployment compensation. (V.A.C.S. Art. 5221b-2a(b).)

Sec. 207.025. PREGNANCY OR TERMINATION OF PREGNANCY. Benefits may not be denied to an individual solely because of pregnancy or termination of pregnancy. (V.A.C.S. Art. 5221b-2a(c).)

[Sections 207.026-207.040 reserved for expansion]

#### SUBCHAPTER C. EXCEPTIONS TO AND DISQUALIFICATION FOR BENEFITS

Sec. 207.041. SERVICES IN EDUCATIONAL INSTITUTIONS. (a) Benefits are not payable to an individual based on services performed in an instructional, research, or principal administrative capacity for an educational institution for a week beginning during the period between two successive academic years or terms or under an agreement providing for a similar period between two regular but not successive terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a contract or reasonable assurance that the individual will perform services in that capacity for any educational institution in the second of the academic years or terms.

(b) Benefits are not payable to an individual based on services performed for an educational institution in a capacity other than a capacity described by Subsection (a) for a week that begins during a period between two successive academic years or terms if:

(1) the individual performed the services in the first of the academic years or terms; and

(2) there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms.

(c) Notwithstanding Subsection (b), if benefits are denied to an individual for any week under Subsection (b) and the individual is not offered an opportunity to perform services for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week that:

(1) the individual filed a timely claim for benefits; and

(2) the benefits were denied solely because of Subsection (b).

(d) Benefits are not payable to an individual based on services performed for an educational institution for a week that begins during an established and customary vacation period or holiday recess if:

(1) the individual performed the services in the period immediately before the vacation period or holiday recess; and

(2) there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(e) Benefits are not payable as provided under this section to an individual based on services performed in an educational institution if the individual performed the services while employed by an educational service agency. For the purposes of this subsection, "educational

service agency” means a governmental agency or other governmental entity that is established and operated exclusively to provide services to one or more educational institutions. (V.A.C.S. Art. 5221b-1(f) (part).)

Sec. 207.042. **ATHLETES.** Benefits are not payable to an individual based on services substantially all of which consist of participating in a sport or athletic event or training or preparing to participate in a sport or athletic event for a week that begins during the period between two successive sport seasons or similar periods if:

- (1) the individual performed the services in the first of the seasons or periods; and
- (2) there is a reasonable assurance that the individual will perform the services in the later of the seasons or periods. (V.A.C.S. Art. 5221b-1(g).)

Sec. 207.043. **ALIENS.** (a) Benefits are not payable based on services performed by an alien unless the alien:

- (1) is an individual who was lawfully admitted for permanent residence at the time the services were performed;
- (2) was lawfully present for purposes of performing the services; or
- (3) was permanently residing in the United States under color of law at the time the services were performed, including being lawfully present in the United States as a result of the application of Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. Section 1182(d)(5)).

(b) Information required of an individual applying for benefits to determine whether benefits are payable to the individual because of the individual’s alien status shall be uniformly required from all applicants for benefits.

(c) A determination that benefits are not payable to an individual whose application for the benefits would otherwise be approved except for the individual’s alien status must be made from a preponderance of the evidence.

(d) A modification of Section 3304(a)(14) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(14)) that specifies other conditions or another effective date for the denial of benefits based on services performed by aliens that must be implemented under state law as a condition for a full tax credit against the tax imposed by the Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.) is applicable under this section. (V.A.C.S. Art. 5221b-1(h).)

Sec. 207.044. **DISCHARGE FOR MISCONDUCT.** (a) An individual is disqualified for benefits if the individual was discharged for misconduct connected with the individual’s last work.

(b) Disqualification under this section continues until the individual has returned to employment and:

- (1) worked for six weeks; or
- (2) earned wages equal to six times the individual’s benefit amount. (V.A.C.S. Art. 5221b-3(b).)

Sec. 207.045. **VOLUNTARILY LEAVING WORK.** (a) An individual is disqualified for benefits if the individual left the individual’s last work voluntarily without good cause connected with the individual’s work.

(b) Except as provided by Subsection (c), a disqualification for benefits under this section continues until the individual has returned to employment and:

- (1) worked for six weeks; or
- (2) earned wages equal to six times the individual’s benefit amount.

(c) Disqualification for benefits under this section for an individual who left work to move with the individual’s spouse from the area where the individual worked continues for not less than six benefit periods and not more than 25 benefit periods following the filing of a valid claim as determined by the commission according to the circumstances of the case.

(d) Notwithstanding any other provision of this section, an individual who is available to work may not be disqualified for benefits because the individual left work because of:

- (1) a medically verified illness of the individual or the individual’s minor child;



- (2) injury;
- (3) disability; or
- (4) pregnancy.

(e) For the purposes of Subsection (d), a medically verified illness of a minor child prevents disqualification only if reasonable alternative care was not available to the child and the employer refused to allow the individual a reasonable amount of time off during the illness.

(f) Military personnel who do not reenlist have not left work voluntarily without good cause connected with work.

(g) An individual who is partially unemployed and who resigns that employment to accept other employment that the individual reasonably believes will increase the individual's weekly wage is not disqualified for benefits under this section. (V.A.C.S. Art. 5221b-3(a).)

Sec. 207.046. INVOLUNTARY SEPARATION. An individual is not disqualified for benefits under this subchapter if the work-related reason for the individual's separation from employment was urgent, compelling, and necessary so as to make the separation involuntary. (V.A.C.S. Art. 5221b-3(i).)

Sec. 207.047. FAILURE TO APPLY FOR, ACCEPT, OR RETURN TO WORK. (a) An individual is disqualified for benefits if during the individual's current benefit year, the individual failed, without good cause, to:

- (1) apply for available, suitable work when directed to do so by the commission;
- (2) accept suitable work offered to the individual; or
- (3) return to the individual's customary self-employment, if any, when directed to do so by the commission.

(b) Disqualification for benefits under this section continues until the individual has returned to employment and:

- (1) worked for six weeks; or
- (2) earned wages equal to six times the individual's benefit amount. (V.A.C.S. Art. 5221b-3(c) (part).)

Sec. 207.048. LABOR DISPUTES. (a) An individual is disqualified for benefits for a benefit period in which the individual's total or partial unemployment is caused by:

- (1) the individual's stoppage of work because of a labor dispute at the factory, establishment, or other premises where the individual is or was last employed; or
- (2) a labor dispute at another place that:

(A) is owned or operated by the same employing unit that owns or operates the premises where the individual is or was last employed; and

(B) supplies material or services necessary to the continued and usual operation of the premises where the individual is or was last employed.

(b) Disqualification for benefits under this section does not apply to an individual who shows to the satisfaction of the commission that the individual:

(1) is not participating in, financing, or directly interested in the labor dispute; and

(2) does not belong to a grade or class of workers any members of which were employed at the premises of the labor dispute immediately before the beginning of the labor dispute and any of whom are participating in, financing, or directly interested in the dispute.

(c) For the purposes of Subsection (b)(1), failure or refusal to cross a picket line or refusal for any reason during the continuance of the labor dispute to accept and perform an individual's available and customary work at the factory, establishment, or other premises where the individual is or was last employed constitutes participation and interest in the labor dispute.

(d) An individual may not be disqualified for benefits under Subsection (b)(2) if the individual shows that the individual:

- (1) is not, and at the time of the labor dispute, was not:

(A) a member of a labor organization that is the same as, represented by, or directly affiliated, acting in concert, or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; or

(B) acting in concert or in sympathy with the labor organization involved in the labor dispute at the premises of the labor dispute; and

(2) has made an unconditional offer to return to work at the premises where the individual is or was last employed.

(e) If separate branches of work that are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each department is a separate factory, establishment, or other premises.

(f) For the purposes of this section, "premises" includes a vessel. (V.A.C.S. Art. 5221b-3(d).)

Sec. 207.049. RECEIPT OF REMUNERATION. (a) An individual is disqualified for benefits for a benefit period for which the individual is receiving or has received remuneration in the form of:

(1) wages in lieu of notice;

(2) compensation under a state worker's compensation law or a similar law of the United States for:

(A) temporary partial disability;

(B) temporary total disability; or

(C) total and permanent disability; or

(3) old age benefits or similar payments under:

(A) Subchapter II of the Social Security Act (42 U.S.C. Section 401 et seq.); or

(B) any other federal law or the law of any state.

(b) If the remuneration received by an individual under Subsection (a)(3) is less than the benefits that the individual would otherwise be eligible to receive, the individual shall receive benefits for the benefit period that are reduced by the amount of the remuneration, adjusted as provided by Section 207.006. (V.A.C.S. Art. 5221b-3(e) (part).)

Sec. 207.050. RECEIPT OF PENSION OR ANNUITY. (a) An individual is disqualified for benefits for a benefit period for which the individual is receiving or has received a governmental or other pension, retirement or retired pay, an annuity, or any other similar periodic payment based on the previous work of the individual and reasonably attributable to the benefit period.

(b) Notwithstanding Subsection (a), if the remuneration received by an individual is less than the benefits that the individual would otherwise be eligible to receive, the individual is entitled to receive benefits for the benefit period that are reduced by the amount of the remuneration, adjusted as provided by Section 207.006.

(c) This section is enacted because Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) requires that this provision be enacted in state law as of January 1, 1978, as a condition for full tax credit against the tax imposed by that Act. If Section 3304(a)(15) of the Federal Unemployment Tax Act (26 U.S.C. Section 3304(a)(15)) is amended to modify these federal requirements, the modified requirements are applicable under this section to the extent required for full tax credit rather than this section. (V.A.C.S. Art. 5221b-3(h) (part).)

Sec. 207.051. SALE OF BUSINESS. (a) An individual is disqualified for benefits after the sale of:

(1) a corporation and the individual is:

(A) an officer of the corporation;

(B) a majority or controlling shareholder in the corporation; and

(C) involved in the sale of the corporation;

(2) a limited or general partnership and the individual is a limited or general partner who is involved in the sale of the partnership; or

(3) a sole proprietorship and the individual is the proprietor who sells the business.

(b) The disqualification under this section is effective for the benefit periods occurring during the period beginning on the date of the sale of the business and ending on the date the individual is employed and eligible for benefits computed on benefit wage credits received through the new employment. (V.A.C.S. Art. 5221b-3(f).)

Sec. 207.052. LEAVING WORK TO ATTEND EDUCATIONAL INSTITUTION. (a) An individual is disqualified for benefits for a period of unemployment for which the individual left the individual's most recent work to attend an established educational institution.

(b) This section does not apply to a period in which the individual is in training with the approval of the commission under Section 207.022. (V.A.C.S. Art. 5221b-3(g).)

Sec. 207.053. REFUSAL TO TREAT COMMUNICABLE DISEASE. (a) An individual is disqualified for benefits if the individual:

(1) left the individual's last work voluntarily rather than provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease; or

(2) was discharged from the individual's last work because the individual refused to provide services included within the course and scope of the individual's employment to an individual infected with a communicable disease.

(b) An individual is not disqualified under this section unless the person for whom the individual last worked made available to the individual the facilities, equipment, training, and supplies necessary to permit the individual to take reasonable precautions to preclude the infection of the individual with the communicable disease.

(c) Disqualification for benefits under this section continues until the individual has returned to employment and:

(1) worked for six weeks; or

(2) earned wages equal to six times the individual's weekly benefit amount. (V.A.C.S. Arts. 5221b-3(j), (k).)

[Sections 207.054-207.070 reserved for expansion]

#### SUBCHAPTER D. PROTECTION OF BENEFIT RIGHTS

Sec. 207.071. WAIVER, RELEASE, OR COMMUTATION AGREEMENT INVALID.

(a) Except for an employer's waiver under Chapter 204 and Section 205.011, an agreement by an individual to waive, release, or commute the individual's right to benefits or any other rights under this subtitle is not valid.

(b) An agreement by an individual employed by an employer to pay all or a portion of a contribution or reimbursement required to be paid by the employer under this subtitle is not valid. (V.A.C.S. Art. 5221b-13(a) (part).)

Sec. 207.072. ACCEPTANCE OR REQUIREMENT OF WAIVER PROHIBITED. An employer may not require or accept a waiver of a right of an individual employed by the employer under this subtitle. (V.A.C.S. Art. 5221b-13(a) (part).)

Sec. 207.073. PROHIBITED DEDUCTION FROM WAGES. An employer may not, directly or indirectly, make, require, or accept a deduction from wages to finance a contribution or reimbursement required to be paid by the employer under this subtitle. (V.A.C.S. Art. 5221b-13(a) (part).)

Sec. 207.074. CRIMINAL OFFENSE; PENALTY. An employer, or officer or agent of an employer, commits an offense if the person violates Section 207.072 or 207.073. An offense under this section is punishable by:

(1) a fine of not less than \$100 and not more than \$1,000;

(2) imprisonment for not more than six months; or

(3) both a fine and imprisonment. (V.A.C.S. Art. 5221b-13(a) (part).)

Sec. 207.075. ASSIGNMENT OF BENEFITS PROHIBITED; BENEFIT EXEMPTIONS. (a) An assignment, pledge, or encumbrance of a right to benefits is not valid.

(b) A right to benefits is exempt from levy, execution, attachment, or any other remedy for debt collection.

(c) Benefits received by an individual are exempt from debt collection if the benefits are not mingled with other funds of the individual except for debts incurred for necessities furnished to the individual or the individual's spouse or dependents during the time that the individual was unemployed.

(d) A waiver of an exemption provided by this section is not valid.

(e) Subchapter E prevails over this section to the extent of any conflict. (V.A.C.S. Art. 5221b-13(c).)

Sec. 207.076. EQUAL TREATMENT. Benefits based on services for all employers in employment are payable in the same amount, on the same terms, and subject to the same conditions, except to the extent that Section 207.041 is applicable. (V.A.C.S. Art. 5221b-1(f) (part).)

[Sections 207.077-207.090 reserved for expansion]

#### SUBCHAPTER E. CHILD SUPPORT OBLIGATIONS

Sec. 207.091. DEFINITIONS. In this subchapter:

(1) "Benefit" includes amounts payable by the commission under an agreement entered under federal law that provides for compensation, assistance, or allowances with respect to unemployment.

(2) "Child support obligation" includes only an obligation that is enforced under a plan described by Section 454 of the Social Security Act (42 U.S.C. Section 654) that has been approved by the secretary of health and human services under Subtitle IV, Part D, Social Security Act (42 U.S.C. Section 651 et seq.).

(3) "State or local child support enforcement agency" means an agency of the state or a political subdivision of the state operating under a plan described by Subdivision (2). (V.A.C.S. Arts. 5221b-13(d)(5), (7), (8).)

Sec. 207.092. DISCLOSURE OF CHILD SUPPORT OBLIGATIONS. (a) An individual at the time of filing a new claim for benefits shall disclose whether the individual owes a child support obligation.

(b) If the individual discloses a child support obligation and the individual is determined to be eligible for benefits, the commission shall notify the state or local child support enforcement agency enforcing the child support obligation that the individual has been determined to be eligible for benefits. (V.A.C.S. Art. 5221b-13(d)(1).)

Sec. 207.093. WITHHOLDING OF CHILD SUPPORT BY COMMISSION. (a) The commission shall withhold from the benefits payable to an individual that owes a child support obligation an amount equal to:

(1) any amount required to be withheld under legal process properly served on the commission;

(2) if Subdivision (1) does not apply, the amount determined under an agreement submitted to the commission under Section 454(20)(B)(i) of the Social Security Act (42 U.S.C. Section 654) by the state or local child support enforcement agency; or

(3) if neither Subdivision (1) or (2) applies, the amount the individual specifies to the commission to be withheld.

(b) The commission shall pay the amount withheld under Subsection (a) to the appropriate state or local child support enforcement agency. The amount withheld shall be treated for all purposes as if it were benefits paid to the individual and paid by the individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligation.

(c) This section applies only if appropriate arrangements have been made for reimbursement to the commission by a state or local child support enforcement agency for the administrative costs incurred by the commission under this subchapter that are attributable to the enforcement of child support obligations by the state or local child support enforcement agency.

(d) In this section, "legal process" has the meaning assigned by Section 462(e) of the Social Security Act (42 U.S.C. Section 662). (V.A.C.S. Arts. 5221b-13(d)(2), (3), (4), (6).)

Sec. 207.094. FEDERAL LAW REQUIREMENT. (a) This subchapter and Section 207.075(e) are enacted because Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) requires the enactment of these provisions into state law as a condition for federal funding of administration of the state unemployment compensation laws.

(b) If Section 303(e) of the Social Security Act (42 U.S.C. Section 503(e)) is repealed, this subchapter and Section 207.075(e) are repealed. (V.A.C.S. Art. 5221b-13(d) (part).)

## CHAPTER 208. BENEFIT CLAIMS

### SUBCHAPTER A. FILING OF CLAIM

Sec. 208.001. FILING; INFORMATION NOTICES

Sec. 208.002. NOTICE OF INITIAL CLAIM

Sec. 208.003. NOTICE TO GOVERNMENTAL EMPLOYER

Sec. 208.004. NOTIFICATION OF ADVERSE FACTS AFFECTING CLAIM; WAIVER

[Sections 208.005-208.020 reserved for expansion]

### SUBCHAPTER B. CLAIM DETERMINATION

Sec. 208.021. INITIAL CLAIM DETERMINATION

Sec. 208.022. NOTICE OF INITIAL CLAIM DETERMINATION

Sec. 208.023. REQUEST FOR REDETERMINATION OR APPEAL BY CLAIMANT

## CHAPTER 208. BENEFIT CLAIMS

### SUBCHAPTER A. FILING OF CLAIM

Sec. 208.001. FILING; INFORMATION NOTICES. (a) An unemployed individual who does not have a current benefit year may file an initial claim in accordance with rules adopted by the commission.

(b) The commission shall supply, without cost to each employer, printed notices that provide general information about filing a claim for unemployment benefits. Each employer shall post and maintain the notices in places accessible to the individuals in the employ of the employer. (V.A.C.S. Arts. 5221b-4(a), (b) (part).)

Sec. 208.002. NOTICE OF INITIAL CLAIM. (a) The commission shall mail a notice of the filing of an initial claim to the person for whom the claimant last worked before the effective date of the initial claim. If the person for whom the claimant last worked has more than one branch or division operating at different locations, the commission shall mail the notice to the branch or division at which the claimant last worked.

(b) Mailing of a notice under this section to the correct address of the person, branch, or division for which the claimant last worked constitutes notice of the claim to the person. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 208.003. NOTICE TO GOVERNMENTAL EMPLOYER. (a) A governmental employer may designate in writing to the commission an address for mail service.

(b) If a governmental employer designates a mailing address under Subsection (a), mailing of notice of claims, determinations, or other decisions to that address constitutes notice to the governmental employer. (V.A.C.S. Art. 5221b-4(b) (part).)

**Sec. 208.004. NOTIFICATION OF ADVERSE FACTS AFFECTING CLAIM; WAIVER.** (a) A person to whom notice is mailed under Section 208.002 shall notify the commission promptly of any facts known to the person that may:

- (1) adversely affect the claimant's right to benefits; or
- (2) affect a charge to the person's account.

(b) A person who does not mail or otherwise deliver that notification to the commission within 12 days after the date notice of a claim was mailed to the person by the commission waives all rights in connection with the claim, including rights the person may have under Subchapter B, Chapter 204, other than rights relating to a clerical or machine error as to the amount of the person's chargeback or maximum potential chargeback in connection with the claim for benefits. (V.A.C.S. Art. 5221b-4(b) (part).)

[Sections 208.005–208.020 reserved for expansion]

### **SUBCHAPTER B. CLAIM DETERMINATION**

**Sec. 208.021. INITIAL CLAIM DETERMINATION.** (a) The commission shall determine whether an initial claim is valid.

(b) For each valid initial claim, the commission shall determine:

- (1) the claimant's benefit year;
- (2) the benefit amount for total unemployment; and
- (3) the duration of benefits. (V.A.C.S. Art. 5221b-4(b) (part).)

**Sec. 208.022. NOTICE OF INITIAL CLAIM DETERMINATION.** The commission shall mail a notice of the determination of an initial claim to the claimant's last known address as shown by the commission's records. (V.A.C.S. Art. 5221b-4(b) (part).)

**Sec. 208.023. REQUEST FOR REDETERMINATION OR APPEAL BY CLAIMANT.** A claimant may request a redetermination of or may appeal the commission's determination of the validity of an initial claim in the manner provided by Chapter 212. The claimant must make the request not later than the 14th day after the date the commission mailed notice of the determination to the claimant as provided by Section 208.022. (V.A.C.S. Art. 5221b-4(b) (part).)

## **CHAPTER 209. EXTENDED BENEFITS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 209.001. DEFINITIONS**

**Sec. 209.002. APPLICATION OF PROVISIONS RELATING TO REGULAR BENEFITS**

**Sec. 209.003. FINDINGS**

[Sections 209.004–209.020 reserved for expansion]

### **SUBCHAPTER B. DETERMINATION OF EXTENDED BENEFIT PERIOD**

**Sec. 209.021. BEGINNING AND ENDING DATES FOR EXTENDED BENEFIT PERIOD**

**Sec. 209.022. STATE "ON" AND "OFF" INDICATOR WEEKS**

**Sec. 209.023. RATE OF INSURED UNEMPLOYMENT**

**Sec. 209.024. PUBLIC ANNOUNCEMENT OF EXTENDED BENEFIT PERIOD**

[Sections 209.025–209.040 reserved for expansion]

### **SUBCHAPTER C. ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS**

**Sec. 209.041. ELIGIBILITY FOR EXTENDED BENEFITS**

- Sec. 209.042. EXHAUSTION OF REGULAR BENEFITS
- Sec. 209.043. REQUIREMENT TO SEEK WORK
- Sec. 209.044. REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK
- Sec. 209.045. EMPLOYMENT SERVICE REFERRALS TO SUITABLE WORK
- Sec. 209.046. EXCEPTIONS TO REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK
- Sec. 209.047. SUITABLE WORK
- Sec. 209.048. DURATION OF INELIGIBILITY; WORK REQUIREMENTS
- Sec. 209.049. INELIGIBILITY DUE TO DISQUALIFICATION
- Sec. 209.050. INTERSTATE CLAIM

[Sections 209.051-209.060 reserved for expansion]

#### SUBCHAPTER D. AMOUNT OF EXTENDED BENEFITS

- Sec. 209.061. WEEKLY EXTENDED BENEFIT AMOUNT
- Sec. 209.062. MAXIMUM TOTAL EXTENDED BENEFIT AMOUNT
- Sec. 209.063. EFFECT OF TRADE READJUSTMENT ALLOWANCES

[Sections 209.064-209.080 reserved for expansion]

#### SUBCHAPTER E. FINANCING OF EXTENDED BENEFITS

- Sec. 209.081. UNEMPLOYMENT COMPENSATION FUND
- Sec. 209.082. CHARGES TO REIMBURSING EMPLOYER
- Sec. 209.083. CHARGES TO TAXED EMPLOYER
- Sec. 209.084. CHARGES TO GOVERNMENTAL EMPLOYER
- Sec. 209.085. NOTICE TO TAXED BASE PERIOD EMPLOYER

### CHAPTER 209. EXTENDED BENEFITS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 209.001. DEFINITIONS. In this chapter:

(1) "Eligibility period" means the period consisting of the benefit periods in an individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within the extended benefit period, any subsequent benefit periods that begin in the extended benefit period.

(2) "Extended benefit" means a benefit payable to an individual under this chapter for a benefit period of unemployment in the individual's eligibility period, including a benefit payable to a federal civilian employee or to an ex-servicemember under 5 U.S.C. Chapter 85.

(3) "Regular benefit" means a benefit, other than an extended benefit, payable to an individual under this subtitle or another state unemployment compensation law, including a benefit payable to a federal civilian employee or an ex-servicemember under 5 U.S.C. Chapter 85.

(4) "Secretary" means the United States secretary of labor.

(5) "State unemployment compensation law" means the unemployment compensation law of a state if the law is approved by the secretary under Section 3304 of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304). (New; V.A.C.S. Arts. 5221b-4a(a)(5), (6), (7), (9).)

Sec. 209.002. APPLICATION OF PROVISIONS RELATING TO REGULAR BENEFITS. A provision of this subtitle or a commission rule applicable to a claim for or the payment of regular benefits applies to a claim for or the payment of extended benefits unless the result of the application of the provision or rule is inconsistent with this chapter. (V.A.C.S. Art. 5221b-4a(b).)

Sec. 209.003. FINDINGS. (a) The commission shall make findings as necessary to determine an extended benefit period, compute the rate of insured unemployment, and determine the eligibility or ineligibility or disqualification of an individual for extended benefits.

(b) A finding of an extended benefit period and a computation of the rate of insured unemployment shall be made in accordance with the rules of the secretary. (V.A.C.S. Arts. 5221b-4a(a)(2) (part), (3) (part), (c) (part), (f)(2), (h)(1) (part).)

[Sections 209.004–209.020 reserved for expansion]

## SUBCHAPTER B. DETERMINATION OF EXTENDED BENEFIT PERIOD

Sec. 209.021. BEGINNING AND ENDING DATES FOR EXTENDED BENEFIT PERIOD. (a) Except as provided by Subsection (b), an extended benefit period begins with the third week after a week with a state “on” indicator.

(b) An extended benefit period may not begin before the 14th week after the end of a previous extended benefit period in effect for this state.

(c) An extended benefit period ends with the later of:

- (1) the third week after the first week with a state “off” indicator; or
- (2) the 13th consecutive week of the period. (V.A.C.S. Art. 5221b-4a(a)(1).)

Sec. 209.022. STATE “ON” AND “OFF” INDICATOR WEEKS. (a) Except for a week to which Subsection (b) applies, a week is a state “on” indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks:

(1) is five percent or more; and

(2) equalled or exceeded 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(b) If the determination that the week is a state “on” indicator week would begin an extended benefit period, the week is a state “on” indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is six percent or more.

(c) Except for a week to which Subsection (d) applies, a week is a state “off” indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than:

(1) five percent; or

(2) 120 percent of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years.

(d) If the determination that a week is a state “off” indicator week would end an extended benefit period, the week is a state “off” indicator week if the rate of insured unemployment for the period consisting of that week and the preceding 12 weeks is less than six percent.

(e) Notwithstanding Subsection (d), any week that would otherwise be a state “on” indicator week under Subsection (a) may not be a state “off” indicator week.

(f) The rate of insured unemployment as used in this section is not to be seasonally adjusted. (V.A.C.S. Arts. 5221b-4a(a)(2) (part), (3) (part).)

Sec. 209.023. RATE OF INSURED UNEMPLOYMENT. For the purpose of Section 209.022, the rate of insured unemployment is computed by:

(1) dividing:

(A) the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commission from the commission’s reports to the secretary; by

(B) the average monthly employment covered under this subtitle for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period; and



(2) multiplying the quotient by 100 to determine a percentage rate. (V.A.C.S. Art. 5221b-4a(a)(4).)

Sec. 209.024. PUBLIC ANNOUNCEMENT OF EXTENDED BENEFIT PERIOD. The commission shall publicly announce, in accordance with commission rule, the beginning of each extended benefit period and the termination of each extended benefit period. (V.A.C.S. Art. 5221b-4a(f)(1).)

[Sections 209.025-209.040 reserved for expansion]

### SUBCHAPTER C. ELIGIBILITY REQUIREMENTS FOR EXTENDED BENEFITS

Sec. 209.041. ELIGIBILITY FOR EXTENDED BENEFITS. An individual is eligible to receive extended benefits for a benefit period of unemployment in the individual's eligibility period if, with respect to the benefit period, the individual:

(1) has exhausted all regular benefits; and

(2) satisfies the requirements of this subtitle for the receipt of regular benefits that are applicable to an individual claiming extended benefits, including not being disqualified for the receipt of benefits. (V.A.C.S. Art. 5221b-4a(c) (part).)

Sec. 209.042. EXHAUSTION OF REGULAR BENEFITS. (a) An individual has exhausted regular benefits with respect to a benefit period of unemployment in the individual's eligibility period if the individual:

(1) before that period:

(A) has received all of the regular benefits available to the individual in the individual's current benefit year that includes the benefit period; or

(B) had a benefit year expire and does not have benefit wage credits sufficient to establish a new benefit year that would include the benefit period;

(2) is not entitled to unemployment benefits or allowances under the Railroad Unemployment Insurance Act (45 U.S.C. Section 351 et seq.) or other federal law as specified in regulations issued by the secretary; and

(3) has not received unemployment benefits under the unemployment compensation law of Canada and is not seeking those benefits, or has sought those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law.

(b) For the purposes of Subsection (a)(1)(A), an individual is considered to have received all of the regular benefits available to the individual even if, as a result of a pending appeal with respect to benefit wage credits not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits. (V.A.C.S. Art. 5221b-4a(a)(8).)

Sec. 209.043. REQUIREMENT TO SEEK WORK. (a) An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to actively seek work.

(b) For purposes of Subsection (a), an individual is actively seeking work during a benefit period if the individual:

(1) engages in a systematic and sustained effort to obtain work during the benefit period; and

(2) furnishes tangible evidence of that effort. (V.A.C.S. Arts. 5221b-4a(h)(1) (part), (5).)

Sec. 209.044. REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual is ineligible for payment of extended benefits for a benefit period in the individual's eligibility period if during that period the individual failed to:

(1) accept an offer of suitable work; or

(2) apply for suitable work to which the individual was referred by the commission. (V.A.C.S. Art. 5221b-4a(h)(1) (part).)

Sec. 209.045. EMPLOYMENT SERVICE REFERRALS TO SUITABLE WORK. The employment service shall refer a claimant entitled to extended benefits to suitable work that meets the standards prescribed in Sections 209.046, 209.047(a), and 209.047(b). (V.A.C.S. Art. 5221b-4a(h)(6).)

Sec. 209.046. EXCEPTIONS TO REQUIREMENT TO ACCEPT OR APPLY FOR SUITABLE WORK. An individual may not be denied extended benefits for failure to accept a job offer of suitable work or apply for suitable work if:

(1) the work was not offered to the individual in writing and was not listed with the employment service; or

(2) failure to accept or apply for the work would not result in a denial of benefits under the applicable suitable work requirements for a regular benefit claimant in Section 207.008, to the extent that the standards of suitability in that section are not inconsistent with Section 209.047. (V.A.C.S. Art. 5221b-4a(h)(3) (part).)

Sec. 209.047. SUITABLE WORK. (a) For the purposes of this subchapter, and subject to Subsections (b) and (c), suitable work for an individual is work:

(1) within the individual's capabilities;

(2) for which the gross average weekly remuneration payable exceeds the sum of:

(A) the individual's weekly extended benefit amount computed under Section 209.061; and

(B) the amount, if any, of supplemental unemployment compensation benefits, as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(17)(D)), payable to the individual for that week; and

(3) that pays wages not less than the greater of:

(A) the minimum wage under Section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 206(a)(1)), without regard to any exemption; or

(B) the applicable state or local minimum wage.

(b) If an individual furnishes satisfactory evidence to the commission that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether work is suitable for that individual shall be made in accordance with the provisions of Section 207.008 applicable to suitable work for a claimant for regular benefits, without regard to the standards of suitability in Section 209.046 and this section.

(c) Work that does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1986 (26 U.S.C. Section 3304(a)(5)) is not suitable work for an individual. (V.A.C.S. Arts. 5221b-4a(h)(3) (part), (4).)

Sec. 209.048. DURATION OF INELIGIBILITY; WORK REQUIREMENTS. An individual ineligible for extended benefits under Section 209.043 or 209.044 is ineligible for benefits for a period:

(1) beginning with the first day of the week following the week in which the individual is ineligible under those sections; and

(2) ending when the individual has been employed in each of four subsequent weeks, consecutive or nonconsecutive, and has earned remuneration in an amount not less than four times the weekly extended benefit amount. (V.A.C.S. Art. 5221b-4a(h)(2).)

Sec. 209.049. INELIGIBILITY DUE TO DISQUALIFICATION. (a) Except as provided by Subsection (b), an individual is ineligible to receive extended benefits for a benefit period in the individual's eligibility period if the individual has been disqualified for regular or extended benefits under this subtitle because the individual:

(1) voluntarily left work;

(2) was discharged for misconduct; or

(3) failed to accept an offer of or apply for suitable work.

(b) Subsection (a) does not apply if the disqualification is terminated in accordance with specific conditions established under this subtitle requiring the individual to perform service for remuneration after the date of the disqualification. (V.A.C.S. Art. 5221b-4a(h)(7).)

Sec. 209.050. INTERSTATE CLAIM. (a) An individual is ineligible for extended benefits payable for a benefit period under an interstate claim filed in any state under an interstate benefit payment plan if an extended benefit period is not in effect for the benefit period in that state.

(b) Subsection (a) does not apply to the first two benefit periods for which extended benefits are payable under an interstate claim filed under an interstate benefit payment plan, regardless of whether an extended benefit period is in effect for the state, to the individual from the extended benefit account established for the individual with respect to the benefit year. (V.A.C.S. Art. 5221b-4a(j).)

[Sections 209.051-209.060 reserved for expansion]

#### SUBCHAPTER D. AMOUNT OF EXTENDED BENEFITS

Sec. 209.061. WEEKLY EXTENDED BENEFIT AMOUNT. The weekly extended benefit amount payable to an individual for a benefit period of total unemployment in the individual's eligibility period is equal to the weekly benefit amount payable to the individual during the individual's applicable benefit year. (V.A.C.S. Art. 5221b-4a(d).)

Sec. 209.062. MAXIMUM TOTAL EXTENDED BENEFIT AMOUNT. The total extended benefit amount payable to an eligible individual for the individual's eligibility period is 50 percent of the total amount of regular benefits that were payable to the individual under this subtitle in the individual's applicable benefit year. (V.A.C.S. Art. 5221b-4a(e).)

Sec. 209.063. EFFECT OF TRADE READJUSTMENT ALLOWANCES. (a) Notwithstanding any other provision of this subtitle, the remaining balance of extended benefits that an individual would otherwise be entitled to receive in an extended benefit period for benefit periods beginning after the end of a benefit year is reduced as provided by Subsections (b) and (c) if:

- (1) the benefit year of the individual ends within an extended benefit period; and
- (2) the individual receives trade readjustment allowances under the Trade Act of 1974 (19 U.S.C. Section 2101 et seq.) within that benefit year.

(b) The balance is reduced by an amount equal to the product of:

(1) the number of benefit periods for which the individual received trade readjustment allowances within that benefit year; and

(2) the individual's weekly benefit amount for extended benefits.

(c) The balance may not be reduced to less than zero. (V.A.C.S. Art. 5221b-4a(i).)

[Sections 209.064-209.080 reserved for expansion]

#### SUBCHAPTER E. FINANCING OF EXTENDED BENEFITS

Sec. 209.081. UNEMPLOYMENT COMPENSATION FUND. (a) Extended benefits shall be paid from the compensation fund.

(b) Payments made by the federal government for its share of extended benefits shall be deposited in the compensation fund. (V.A.C.S. Arts. 5221b-4a(g)(1), (2).)

Sec. 209.082. CHARGES TO REIMBURSING EMPLOYER. Fifty percent of the extended benefit payments based on benefit wage credits from a reimbursing employer shall be charged to the employer's account and reimbursed by the employer in the same manner as a regular benefit payment. Those payments may not be used in determining the replenishment ratio in Section 204.045. (V.A.C.S. Art. 5221b-4a(g)(3).)

Sec. 209.083. CHARGES TO TAXED EMPLOYER. (a) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer are chargebacks and must be used in determining the employer's benefit ratio unless regular benefits paid to the individual were determined not to be charged back against the employer's account.

(b) Fifty percent of extended benefit payments based on benefit wage credits from a taxed employer, regardless of whether charged to an employer, shall be used in the numerator of

the replenishment ratio in Section 204.045(b). Chargebacks resulting from the payment of extended benefits shall be used in the denominator of the replenishment ratio in Section 204.045. (V.A.C.S. Art. 5221b-4a(g)(4).)

**Sec. 209.084. CHARGES TO GOVERNMENTAL EMPLOYER.** The total amount of extended benefit payments shall be charged to the employer if the payments are based on benefit wage credits earned from:

- (1) a state;
- (2) any political subdivision of a state; or
- (3) any instrumentality of any one or more states or political subdivisions that is wholly owned by one or more states or political subdivisions. (V.A.C.S. Art. 5221b-4a(g)(6) (part).)

**Sec. 209.085. NOTICE TO TAXED BASE PERIOD EMPLOYER.** (a) The notice to a taxed base period employer of a claim for benefits under Section 204.023 or 204.027 must state that if the claim results in the payment of extended benefits, the maximum potential chargeback may be increased by as much as 25 percent. Further notice to the employer of the potential chargeback is not required when the extended benefits are paid.

(b) A taxed employer subject to Section 209.084 is entitled to receive notice that its maximum potential chargeback may be increased by as much as 50 percent rather than 25 percent as provided for other employers. (V.A.C.S. Arts. 5221b-4a(g)(5), (6) (part).)

## **CHAPTER 210. BACK PAY AWARDS; LOST OR MISPLACED WARRANTS**

### **SUBCHAPTER A. BACK PAY AWARDS**

- Sec. 210.001. NOTICE OF BACK PAY AWARD REDUCTION**  
**Sec. 210.002. REIMBURSEMENT BY EMPLOYER FOR REDUCTION OF BACK PAY AWARD**  
**Sec. 210.003. EMPLOYEE'S LIABILITY; SOLE LIABILITY OF EMPLOYER**

[Sections 210.004-210.010 reserved for expansion]

### **SUBCHAPTER B. LOST OR MISPLACED WARRANTS**

- Sec. 210.011. DUPLICATE FOR LOST OR MISPLACED WARRANT**  
**Sec. 210.012. CANCELLATION OF WARRANT**  
**Sec. 210.013. DEADLINE FOR ISSUANCE OF DUPLICATE WARRANT**

## **CHAPTER 210. BACK PAY AWARDS; LOST OR MISPLACED WARRANTS**

### **SUBCHAPTER A. BACK PAY AWARDS**

**Sec. 210.001. NOTICE OF BACK PAY AWARD REDUCTION.** If a back pay award to a claimant is reduced because of the receipt of unemployment compensation benefits by the claimant, the employer against whom the back pay award was made shall notify the commission of the back pay award in writing not later than the 12th day after the date on which the employer learns about the reduction. (V.A.C.S. Art. 5221b-5c(a).)

**Sec. 210.002. REIMBURSEMENT BY EMPLOYER FOR REDUCTION OF BACK PAY AWARD.** (a) Subject to Subsection (b), an employer who is assessed a back pay award that is reduced because of the receipt of unemployment compensation benefits by the claimant shall reimburse the compensation fund for benefits paid from the compensation fund in an amount equal to the amount of the reduction in the back pay award.

(b) An employer is not liable under this section to pay more than the amount that the commission determines the claimant was overpaid unemployment compensation benefits because of the back pay award.

(c) An employer shall reimburse the compensation fund as provided by rules adopted by the commission.

(d) The commission shall credit the payment of reimbursement by an employer against the overpayment of benefits. (V.A.C.S. Arts. 5221b-5c(b), (c) (part).)

Sec. 210.003. EMPLOYEE'S LIABILITY; SOLE LIABILITY OF EMPLOYER. A claimant is not liable for an overpayment of benefits that results from a back pay award and for which the employer against whom the award is made is required under Section 210.002 to reimburse the compensation fund, and the employer's liability is the only liability because of the overpayment. This section prevails over any conflicting provision of this subtitle. (V.A.C.S. Art. 5221b-5c(c) (part).)

[Sections 210.004-210.010 reserved for expansion]

SUBCHAPTER B. LOST OR MISPLACED WARRANTS

Sec. 210.011. DUPLICATE FOR LOST OR MISPLACED WARRANT. (a) The comptroller may issue to a claimant a duplicate warrant for a warrant issued in payment of benefits under this subtitle if:

- (1) the claimant entitled to receive the warrant loses or for any reason fails to receive the warrant; and
- (2) there is satisfactory proof of the loss or failure to receive the warrant.

(b) The duplicate warrant shall be issued as provided by Section 403.054, Government Code. (V.A.C.S. Art. 5221b-7(d) (part).)

Sec. 210.012. CANCELLATION OF WARRANT. If a claimant fails or refuses to present a warrant issued for benefits before the first anniversary of the date on which the warrant was issued, the warrant is canceled, and the treasurer may not pay the warrant. (V.A.C.S. Art. 5221b-7(d) (part).)

Sec. 210.013. DEADLINE FOR ISSUANCE OF DUPLICATE WARRANT. A duplicate warrant may not be issued under this chapter after the first anniversary of the date of the original warrant. (V.A.C.S. Art. 5221b-7(d) (part).)

CHAPTER 211. RECIPROCAL ARRANGEMENTS

Sec. 211.001. LOCATION OF SERVICE FOR UNEMPLOYMENT INSURANCE PURPOSES

Sec. 211.002. LOCATION OF SERVICE OF STATE EMPLOYEES

Sec. 211.003. COMBINATION OF WAGES AND EMPLOYMENT

Sec. 211.004. OFFSET FOR OVERPAYMENT OF UNEMPLOYMENT BENEFITS

Sec. 211.005. INTERSTATE OR FOREIGN COMMERCE

Sec. 211.006. RECIPROCAL TREATMENT BY FEDERAL AGENCY

CHAPTER 211. RECIPROCAL ARRANGEMENTS

Sec. 211.001. LOCATION OF SERVICE FOR UNEMPLOYMENT INSURANCE PURPOSES. The commission may enter into arrangements with an appropriate agency of another state or a federal agency under which an individual performing services in this and one or more other states for an employing unit is considered to be engaged in employment entirely in:

- (1) this state;
- (2) one of the other states in which the individual performs some of the services;
- (3) the state of the individual's residence; or
- (4) the state in which the employing unit maintains a place of business. (V.A.C.S. Art. 5221b-15a(a).)

Sec. 211.002. LOCATION OF SERVICE OF STATE EMPLOYEES. (a) The commission may enter into a reciprocal arrangement with the appropriate agency of another state under which a state employee who performs services in the state that is not the employing state is considered to be engaged in employment performed entirely in the employing state.

(b) The commission shall enter the arrangement on request of an agency of this state that has an employee performing a service in another state. (V.A.C.S. Art. 5221b-15a(e).)

Sec. 211.003. COMBINATION OF WAGES AND EMPLOYMENT. The commission shall participate in an arrangement for the payment of benefits determined by combining an individual's wages and employment covered under this subtitle and the wages and employment covered under the unemployment compensation laws of another state or the United States, or both, if the arrangement is approved by the United States secretary of labor in consultation with the state unemployment compensation agencies as reasonably calculated to ensure the prompt and full payment of benefits. The arrangement must provide for:

(1) applying the base period of one unemployment compensation law to a claim that combines an individual's wages and employment covered under two or more unemployment compensation laws; and

(2) avoiding the duplicate use of wages and employment because of the combination. (V.A.C.S. Art. 5221b-15a(b).)

Sec. 211.004. OFFSET FOR OVERPAYMENT OF UNEMPLOYMENT BENEFITS.

(a) Notwithstanding any other provision of this subtitle, the commission may enter into a reciprocal arrangement with an appropriate state or federal agency, or both, that provides:

(1) an overpayment of benefits under this subtitle is recovered by offset from unemployment benefits otherwise payable under the unemployment compensation law of another state or of the United States; and

(2) an overpayment of unemployment benefits under the unemployment compensation law of the other state or the United States are recovered by offset from benefits payable under this subtitle.

(b) A procedure for notice and opportunity for a hearing that applies to the recovery of an overpayment of unemployment benefits paid under this subtitle applies to an offset of those benefits under this section.

(c) In this section, "unemployment benefits" means unemployment compensation benefits, trade adjustment allowances, and other unemployment assistance. (V.A.C.S. Art. 5221b-15a(f).)

Sec. 211.005. INTERSTATE OR FOREIGN COMMERCE. The commission may enter into a reciprocal arrangement with the appropriate agency of another state or federal agency, or both, under which service on a vessel or aircraft engaged in interstate or foreign commerce for a single employer is considered to be performed in this state or in another state, regardless of where the service is performed. (V.A.C.S. Art. 5221b-15a(d).)

Sec. 211.006. RECIPROCAL TREATMENT BY FEDERAL AGENCY. (a) The commission may enter into an agreement with the proper agency under an Act of Congress establishing an unemployment compensation system to provide reciprocal treatment to an individual:

(1) who has acquired a right to unemployment compensation under the Act of Congress after acquiring a potential right to benefits under this subtitle; or

(2) who has acquired a right to benefits under this subtitle after acquiring a potential right to unemployment compensation under the Act of Congress.

(b) An agreement under this section takes effect 10 days after the date on which the agreement is published in the manner provided for a rule. (V.A.C.S. Art. 5221b-17(g)(5)(A) (part).)

## CHAPTER 212. DISPUTE RESOLUTION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 212.001. PROCEDURES

Sec. 212.002. RECORD

Sec. 212.003. WITNESS FEES

Sec. 212.004. PAYMENT OF BENEFITS PENDING APPEAL

Sec. 212.005. CHARGEBACK ON REVERSAL OF DETERMINATION OR DECISION  
ALLOWING BENEFITS PROHIBITED

Sec. 212.006. RECOVERY OF BENEFITS PAID

[Sections 212.007-212.050 reserved for expansion]

SUBCHAPTER B. EXAMINERS

- Sec. 212.051. DETERMINATION BY EXAMINER ON NOTIFICATION
- Sec. 212.052. DETERMINATION BY EXAMINER ON EXAMINER'S OWN MOTION
- Sec. 212.053. DETERMINATION FINAL; APPEAL
- Sec. 212.054. REDETERMINATION BY EXAMINER

[Sections 212.055-212.100 reserved for expansion]

SUBCHAPTER C. APPEAL TRIBUNALS

- Sec. 212.101. ESTABLISHMENT OF APPEAL TRIBUNALS
- Sec. 212.102. ACTION BY APPEAL TRIBUNAL
- Sec. 212.103. NOTICE OF APPEAL TRIBUNAL ACTION
- Sec. 212.104. DECISION CONSIDERED FINAL COMMISSION DECISION
- Sec. 212.105. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE APPEAL TRIBUNAL

[Sections 212.106-212.150 reserved for expansion]

SUBCHAPTER D. COMMISSION REVIEW

- Sec. 212.151. REVIEW OF APPEAL TRIBUNAL DECISION
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- Sec. 212.210. APPEAL BOND NOT REQUIRED

CHAPTER 212. DISPUTE RESOLUTION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 212.001. PROCEDURES. The manner in which disputed claims are presented, the reports on disputed claims required from claimants, employers, or other persons, and the conduct of hearings and appeals must be in accordance with rules adopted by the commission for determining the rights of parties to disputed claims. (V.A.C.S. Art. 5221b-4(f) (part).)

Sec. 212.002. RECORD. (a) A complete record shall be kept of proceedings in connection with a disputed claim.

(b) Testimony at any hearing on a disputed claim shall be recorded. (V.A.C.S. Art. 5221b-4(f) (part).)

Sec. 212.003. WITNESS FEES. (a) A witness subpoenaed under this chapter is entitled to a fee at a rate set by the commission.

(b) The witness fee is an expense of administering this subtitle. (V.A.C.S. Art. 5221b-4(g).)

Sec. 212.004. PAYMENT OF BENEFITS PENDING APPEAL. (a) Except as otherwise provided by this section, benefits shall be paid in accordance with a final determination.

(b) Benefits shall be paid promptly in accordance with:

- (1) a determination or redetermination of an examiner;
- (2) a decision of an appeal tribunal;
- (3) a decision of the commission; or
- (4) a decision of a reviewing court.

(c) Subsection (b) applies without regard to:

- (1) any provision of this subtitle under which benefits may be paid or denied; or
- (2) the pendency of:
  - (A) a period to:
    - (i) apply for reconsideration;
    - (ii) file an appeal; or
    - (iii) petition for judicial review;
  - (B) an application for reconsideration;
  - (C) an appeal; or
  - (D) a petition for judicial review.

(d) Benefits paid under a determination, redetermination, or decision continue until the determination, redetermination, or decision is modified or reversed by a subsequent redetermination or decision, and shall be paid or denied in accordance with the modifying or reversing redetermination or decision. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 212.005. CHARGEBACK ON REVERSAL OF DETERMINATION OR DECISION ALLOWING BENEFITS PROHIBITED. A chargeback may not be made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 212.006. RECOVERY OF BENEFITS PAID. (a) Benefits paid to a claimant that are not in accordance with the final determination or decision shall be:

- (1) refunded by the claimant to the commission; or
- (2) in the discretion of the commission, deducted from future benefits payable to the claimant under this subtitle.

(b) Benefits paid that are not in accordance with the final determination or decision are also collectible in the manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions. (V.A.C.S. Art. 5221b-4(b) (part).)

[Sections 212.007-212.050 reserved for expansion]

## SUBCHAPTER B. EXAMINERS

Sec. 212.051. DETERMINATION BY EXAMINER ON NOTIFICATION. (a) If the person for which a claimant last worked files a notification with the commission as provided by Section 208.004, an examiner shall determine:

- (1) whether the claimant is disqualified from receiving benefits under Sections 207.044-207.053;
- (2) the resolution of any other issue affecting the claimant's right to receive benefits that arises under any other provision of this subtitle; and
- (3) whether, if benefits are to be paid to the claimant, a chargeback is to be made to the person's account.



(b) The examiner shall mail a copy of the determination to the claimant and:

- (1) the person for which the claimant last worked;
- (2) the branch or division for which the claimant last worked; or
- (3) the address for mail service designated by a governmental employer. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 212.052. DETERMINATION BY EXAMINER ON EXAMINER'S OWN MOTION.

(a) If a notification as provided by Section 208.004 from the person for which a claimant last worked is not filed, and information on the claim or other information secured raises an issue affecting the claimant's right to benefits under this subtitle, an examiner shall determine whether the claimant is to receive benefits.

(b) The examiner shall mail a copy of the determination to the claimant at the claimant's last known address. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 212.053. DETERMINATION FINAL; APPEAL. An examiner's determination is final for all purposes unless:

- (1) the claimant or the person or branch for which the claimant last worked and to whom the copy of the determination is mailed files an appeal from the determination not later than the 14th calendar day after the date on which the copy of the determination is mailed to the last known address of the claimant, person, or branch as shown by commission records;
- (2) an examiner files an appeal from the determination within the period specified in Subdivision (1); or
- (3) an examiner makes a redetermination as provided by Section 212.054. (V.A.C.S. Art. 5221b-4(b) (part).)

Sec. 212.054. REDETERMINATION BY EXAMINER. (a) If an examiner discovers an error in connection with a determination or discovers additional information not previously available, the examiner, within the period specified in Section 212.053(1), may reconsider and redetermine the determination.

(b) An examiner's redetermination replaces the original determination and becomes final unless the claimant or the person for which the claimant last worked files an appeal from the redetermination not later than the 14th calendar day after the date on which a copy of the redetermination is mailed to the claimant's or person's last known address as shown by commission records. (V.A.C.S. Art. 5221b-4(b) (part).)

[Sections 212.055-212.100 reserved for expansion]

SUBCHAPTER C. APPEAL TRIBUNALS

Sec. 212.101. ESTABLISHMENT OF APPEAL TRIBUNALS. (a) The commission shall establish one or more impartial appeal tribunals to hear and decide disputed claims if the establishment of those appeal tribunals is necessary to ensure prompt disposal of cases on appeal.

(b) An appeal tribunal is composed of a salaried examiner. (V.A.C.S. Art. 5221b-4(d).)

Sec. 212.102. ACTION BY APPEAL TRIBUNAL. Unless the appeal is withdrawn, an appeal tribunal shall affirm or modify the determination of the examiner after giving the parties reasonable opportunity for fair hearing. (V.A.C.S. Art. 5221b-4(c) (part).)

Sec. 212.103. NOTICE OF APPEAL TRIBUNAL ACTION. The parties to an appeal shall be notified of the appeal tribunal's decision and the reasons for the decision. (V.A.C.S. Art. 5221b-4(c) (part).)

Sec. 212.104. DECISION CONSIDERED FINAL COMMISSION DECISION. The decision of an appeal tribunal is the final decision of the commission unless further appeal is initiated as provided by Section 212.151 not later than the 14th day after the date the decision is mailed. (V.A.C.S. Art. 5221b-4(c) (part).)

Sec. 212.105. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE APPEAL TRIBUNAL. (a) The commission may remove to itself or transfer to another appeal tribunal the proceedings on a claim pending before an appeal tribunal.

(b) A quorum of the commission shall hear a proceeding removed to the commission under Subsection (a).

(c) The commission promptly shall mail to the parties before it a copy of its findings and decision. (V.A.C.S. Art. 5221b-4(e) (part).)

[Sections 212.106–212.150 reserved for expansion]

#### **SUBCHAPTER D. COMMISSION REVIEW**

**Sec. 212.151. REVIEW OF APPEAL TRIBUNAL DECISION.** The commission may:

(1) on its own motion:

(A) affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in the case; or

(B) direct the taking of additional evidence; or

(2) permit any of the parties to the decision to initiate a further appeal before the commission. (V.A.C.S. Art. 5221b-4(e) (part).)

**Sec. 212.152. NOTICE OF COMMISSION ACTION.** The commission promptly shall mail to the parties before it a copy of its findings and decision. (V.A.C.S. Art. 5221b-4(e) (part).)

**Sec. 212.153. FINALITY OF COMMISSION DECISION.** A decision of the commission becomes final 14 days after the date the decision is mailed unless before that date:

(1) the commission by order reopens the appeal; or

(2) a party to the appeal files a written motion for rehearing. (V.A.C.S. Art. 5221b-4(h) (part).)

[Sections 212.154–212.200 reserved for expansion]

#### **SUBCHAPTER E. JUDICIAL REVIEW OF COMMISSION DECISION**

**Sec. 212.201. COMMENCEMENT OF JUDICIAL REVIEW; DEFENDANTS.** (a) A party aggrieved by a final decision of the commission may obtain judicial review of the decision by bringing an action in a court of competent jurisdiction for review of the decision against the commission on or after the date on which the decision is final, and not later than the 14th day after that date.

(b) Each other party to the proceeding before the commission must be made a defendant in an action under this subchapter. (V.A.C.S. Art. 5221b-4(i) (part).)

**Sec. 212.202. STANDARD OF JUDICIAL REVIEW; EXCEPTIONS NOT NECESSARY.** (a) Judicial review under this subchapter is by trial de novo.

(b) It is not necessary in a judicial proceeding under this subchapter to enter exceptions to the rulings of the commission. (V.A.C.S. Art. 5221b-4(i) (part).)

**Sec. 212.203. EXHAUSTION OF REMEDIES.** (a) A party claiming to be aggrieved by a final decision of the commission may not obtain judicial review of the decision unless the party has exhausted the party's remedies before the commission as provided by this subtitle.

(b) The exhaustion of those remedies does not include a motion for rehearing. (V.A.C.S. Art. 5221b-4(h) (part).)

**Sec. 212.204. FILING OF ACTION.** An action under this subchapter must be filed:

(1) in the county of the claimant's residence; or

(2) if the claimant is not a resident of this state, in:

(A) Travis County;

(B) the county in this state in which the claimant's last employer has its principal place of business; or

(C) the county of the claimant's last residence in this state. (V.A.C.S. Art. 5221b-4(i) (part).)

Sec. 212.205. PETITION; SUPERSEDEAS. (a) A petition in an action under this subchapter must state the grounds on which review is sought.

(b) A petition for judicial review does not act as a supersedeas. (V.A.C.S. Art. 5221b-4(i) (part).)

Sec. 212.206. COMMISSION CONSIDERED PARTY TO JUDICIAL REVIEW; NOTICE OF PETITION. (a) The commission is considered a party to any judicial action involving a final decision of the commission.

(b) A petition to bring an action under this subchapter must be served on:

- (1) a member of the commission; or
- (2) a person designated by the commission.

(c) As many copies of the petition as there are defendants must be left with the party served under Subsection (b). The commission immediately shall mail one copy of the petition to each defendant.

(d) Service in compliance with this section constitutes completed service on all defendants. (V.A.C.S. Arts. 5221b-4(h) (part), (i) (part).)

Sec. 212.207. REPRESENTATION OF COMMISSION. The commission may be represented in any judicial action involving a final decision of the commission by any qualified attorney who:

- (1) is a regular salaried employee of the commission; and
- (2) has been appointed for that purpose by the attorney general. (V.A.C.S. Art. 5221b-4(h) (part).)

Sec. 212.208. PRECEDENCE OVER OTHER CIVIL ACTIONS. An action under this subchapter shall be given precedence over all other civil cases except cases arising under the workers' compensation laws of this state. (V.A.C.S. Art. 5221b-4(i) (part).)

Sec. 212.209. ENTRY OF COMMISSION ORDER ON FINAL DETERMINATION OF JUDICIAL PROCEEDING. The commission shall enter an order in accordance with the final determination of an action under this subchapter. (V.A.C.S. Art. 5221b-4(i) (part).)

Sec. 212.210. APPEAL BOND NOT REQUIRED. An appeal bond is not required in an appeal from a decision of a trial court in an action under this subchapter. (V.A.C.S. Art. 5221b-4(i) (part).)

CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT COMPENSATION ACT

SUBCHAPTER A. GENERAL ENFORCEMENT PROVISIONS

- Sec. 213.001. REPRESENTATION IN COURT
- Sec. 213.002. PROSECUTION OF CRIMINAL ACTIONS
- Sec. 213.003. ADMISSIBILITY OF CERTIFIED COPY OF COMMISSION RECORD
- Sec. 213.004. ADMISSIBILITY OF REPORT OR AUDIT; PRIMA FACIE EVIDENCE
- Sec. 213.005. COSTS ADJUDGED AGAINST STATE OR COMMISSION
- Sec. 213.006. PRIORITY OF CLAIM FOR CONTRIBUTION
- Sec. 213.007. COLLATERAL ESTOPPEL DOCTRINE INAPPLICABLE
- Sec. 213.008. ELECTION OF COLLECTION REMEDIES
- Sec. 213.009. COMMISSION ENFORCEMENT OF OUT-OF-STATE JUDGMENT

[Sections 213.010-213.020 reserved for expansion]

SUBCHAPTER B. EMPLOYER PENALTIES AND INTEREST

- Sec. 213.021. PENALTY FOR PAST DUE CONTRIBUTION
- Sec. 213.022. PENALTY FOR FAILURE TO FILE REPORT

- Sec. 213.023. PENALTY FOR OTHER VIOLATION
- Sec. 213.024. PENALTY FOR CONTINUING VIOLATION
- Sec. 213.025. INTEREST ON JUDGMENT FOR PAST DUE CONTRIBUTION

[Sections 213.026–213.030 reserved for expansion]

SUBCHAPTER C. COLLECTION OF CONTRIBUTION  
BY CIVIL SUIT OR NOTICE OF ASSESSMENT

- Sec. 213.031. COLLECTION REQUIRED; METHODS
- Sec. 213.032. SERVICE OF NOTICE OF ASSESSMENT; CONTENTS AS PRIMA FACIE EVIDENCE; JUDICIAL REVIEW; EFFECT
- Sec. 213.033. LIMITATIONS
- Sec. 213.034. STATEMENT AS EVIDENCE IN CIVIL ACTION; DENIAL
- Sec. 213.035. COSTS
- Sec. 213.036. ABSTRACT OF JUDGMENT; FEE; RELEASE

[Sections 213.037–213.050 reserved for expansion]

SUBCHAPTER D. OTHER ENFORCEMENT REMEDIES AGAINST EMPLOYER

- Sec. 213.051. FORFEITURE OF RIGHT TO EMPLOY INDIVIDUALS IN THIS STATE; BOND
- Sec. 213.052. INJUNCTION RESTRAINING CERTAIN VIOLATIONS
- Sec. 213.053. VIOLATION OF INJUNCTION; RECEIVER
- Sec. 213.054. OFFSET AGAINST STATE WARRANT
- Sec. 213.055. AUDIT OF EMPLOYER
- Sec. 213.056. ESTIMATED TAXABLE WAGES IF REPORT NOT FILED
- Sec. 213.057. TAX LIEN
- Sec. 213.058. ADDITIONAL TAX LIEN ENFORCED BY COMMISSION

[Sections 213.059–213.070 reserved for expansion]

SUBCHAPTER E. ADJUSTMENT OR REFUND  
FOR EMPLOYER'S OVERPAYMENT

- Sec. 213.071. CREDIT OR REFUND OF OVERPAYMENT
- Sec. 213.072. APPLICATION
- Sec. 213.073. APPEAL OF COMMISSION DETERMINATION
- Sec. 213.074. INTEREST NOT ALLOWED
- Sec. 213.075. ADJUSTMENT OR REFUND ON COMMISSION INITIATIVE

CHAPTER 213. ENFORCEMENT OF TEXAS UNEMPLOYMENT  
COMPENSATION ACT

SUBCHAPTER A. GENERAL ENFORCEMENT PROVISIONS

Sec. 213.001. REPRESENTATION IN COURT. (a) The attorney general shall designate an assistant attorney general to represent the commission and the state in a civil action to enforce this subtitle and to perform legal duties as the commission requires.

(b) The assistant attorney general shall institute in the name of the state and the attorney general any civil action requested by the commission.

(c) The commission shall pay the assistant attorney general for a service performed by the assistant attorney general solely for the commission.

(d) A qualified attorney who is regularly employed by the commission may assist the assistant attorney general. (V.A.C.S. Art. 5221b–15(a).)

Sec. 213.002. PROSECUTION OF CRIMINAL ACTIONS. The prosecuting attorney for a county in which a criminal violation of this subtitle or a rule adopted under this subtitle is alleged to have occurred shall prosecute the criminal action. (V.A.C.S. Art. 5221b-15(b).)

Sec. 213.003. ADMISSIBILITY OF CERTIFIED COPY OF COMMISSION RECORD. In a civil or criminal proceeding brought under this subtitle, a certified copy of a document from commission records is admissible in evidence instead of the original document. (V.A.C.S. Art. 5221b-15(c).)

Sec. 213.004. ADMISSIBILITY OF REPORT OR AUDIT; PRIMA FACIE EVIDENCE. (a) In a judicial proceeding in which the establishment or collection of a contribution, penalty, or interest is sought because an employer does not pay a contribution, a penalty, or interest within the time and in the manner required by this subtitle or by a rule adopted under this subtitle, the following are admissible:

(1) a report filed in an office of the commission by the employer or the employer's representative that shows the amount of wages paid by the employer or the employer's representative for which a contribution, a penalty, or interest has not been paid;

(2) a copy of a report described in Subdivision (1) that is certified by a member of the commission or by an employee designated for that purpose by the commission; and

(3) an audit made by the commission or its representative from the books of the employer that is signed and sworn to by the representative as being made from the records of the employer.

(b) A report or audit admissible under this section is prima facie evidence of the truth of its contents. The incorrectness of the report or audit may be shown. (V.A.C.S. Art. 5221b-12(d).)

Sec. 213.005. COSTS ADJUDGED AGAINST STATE OR COMMISSION. The commission shall pay from the administration fund established under Subchapter D, Chapter 203, costs adjudged against the state or the commission in a suit instituted on behalf or at the request of the commission under this chapter or Section 204.086. (V.A.C.S. Art. 5221b-12(h) (part).)

Sec. 213.006. PRIORITY OF CLAIM FOR CONTRIBUTION. If an employer's assets are distributed under a court order issued under the laws of this state, including a receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, a contribution due at the time of distribution or that becomes due after the distribution has the same priority as other tax claims under the laws of this state. (V.A.C.S. Art. 5221b-12(i).)

Sec. 213.007. COLLATERAL ESTOPPEL DOCTRINE INAPPLICABLE. A finding of fact, conclusion of law, judgment, or final order made regarding a claim for benefits under this subtitle is not binding and may not be used as evidence in an action or proceeding, other than an action or proceeding brought under this subtitle, even if the action or proceeding is between the same or related parties or involves the same facts. (V.A.C.S. Art. 5221b-9(r).)

Sec. 213.008. ELECTION OF COLLECTION REMEDIES. An action taken under this chapter is not an election by the commission to pursue a particular remedy or action under this chapter to the exclusion of another remedy or action under this subtitle or under another law of this state. (V.A.C.S. Art. 5221b-12(c)(4) (part).)

Sec. 213.009. COMMISSION ENFORCEMENT OF OUT-OF-STATE JUDGMENT. (a) A qualified attorney who is a regular salaried employee of the commission may represent an employment security agency of another state in a proceeding in a court in this state to collect a contribution, a penalty, interest, or a court cost for which liability has been incurred by an employing unit under an unemployment compensation law or unemployment insurance law of the other state, if:

(1) the liability has been reduced to judgment in a court of record in the state of the requesting agency; and

(2) the unemployment compensation law or unemployment insurance law of the requesting state provides for a similar action on behalf of the commission by the requesting state agency.

(b) The venue for a proceeding under this section is the same as the venue for an action to collect an overdue contribution, penalty, or interest due under this subtitle. (V.A.C.S. Art. 5221b-12(m).)

[Sections 213.010-213.020 reserved for expansion]

## SUBCHAPTER B. EMPLOYER PENALTIES AND INTEREST

Sec. 213.021. PENALTY FOR PAST DUE CONTRIBUTION. (a) An employer who does not pay a contribution on or before the date prescribed by the commission shall pay to the state a penalty equal to one and one-half percent of the contribution for each month or portion of a month that the contribution and penalty are not paid in full. The total penalty applied may not exceed 37½ percent of the amount of contribution due at the due date.

(b) The penalty does not apply to an employer who:

(1) failed to pay a contribution because of the bona fide belief that all or some of its employees were covered under the unemployment insurance law of another state; and

(2) paid when due a contribution on all the wages of those employees under that law. (V.A.C.S. Art. 5221b-12(a) (part).)

Sec. 213.022. PENALTY FOR FAILURE TO FILE REPORT. An employer who does not file a report of wages paid or contributions due as required by this subtitle or commission rule shall pay to the commission a penalty in the amount equal to:

(1) \$15, if the completed report is filed not later than the 15th day after the report's due date;

(2) \$30 plus one-twentieth of one percent of wages that the employer failed to report, if the completed report is filed after the 15th day after the report's due date but during the first month after the report's due date;

(3) the sum of the amount computed under Subdivision (2) and the amount equal to \$30 plus one-tenth of one percent of wages that the employer failed to report, if the completed report is filed during the second month after the report's due date; or

(4) the sum of the amount computed under Subdivision (3) and the amount equal to \$30 plus one-fifth of one percent of wages that the employer failed to report, if the completed report is filed during the third month after the report's due date. (V.A.C.S. Art. 5221b-12(c)(1) (part).)

Sec. 213.023. PENALTY FOR OTHER VIOLATION. An employing unit shall pay a penalty of \$30 if a civil penalty is not otherwise provided by this subtitle and the employing unit:

(1) does not keep records required under this subtitle or commission rule;

(2) makes a false report to the commission; or

(3) violates this subtitle or a commission rule adopted under this subtitle. (V.A.C.S. Art. 5221b-12(c)(2) (part).)

Sec. 213.024. PENALTY FOR CONTINUING VIOLATION. (a) In addition to the penalty imposed under Section 213.023, an employing unit shall pay a penalty of \$30 for each consecutive day that a violation of this subtitle or of a rule adopted under this subtitle continues after notice is given as provided by Subsection (b).

(b) The penalty is imposed and becomes cumulative on the 10th day after the date written notice is given or mailed to the employing unit by the commission or its authorized representative. (V.A.C.S. Art. 5221b-12(c)(2) (part).)

Sec. 213.025. INTEREST ON JUDGMENT FOR PAST DUE CONTRIBUTION. For a judgment that grants recovery of the amount of a contribution and the amount of a penalty computed at the maximum rate permitted under Section 213.021(a), the part of the judgment for the amount of the contribution earns interest at the rate of one percent for each month or part of a month it remains unpaid. (V.A.C.S. Art. 5221b-12(a) (part).)

[Sections 213.026–213.030 reserved for expansion]

**SUBCHAPTER C. COLLECTION OF CONTRIBUTION  
BY CIVIL SUIT OR NOTICE OF ASSESSMENT**

**Sec. 213.031. COLLECTION REQUIRED; METHODS.** If after notice an employer does not pay a contribution or a penalty or interest on a contribution, the commission shall collect the amount due by:

(1) bringing a civil action in the name of the state and the attorney general in a district court in Travis County; or

(2) serving a notice of assessment on the defaulting employer, stating the amount of the contribution, penalty, and interest outstanding. (V.A.C.S. Art. 5221b–12(b) (part).)

**Sec. 213.032. SERVICE OF NOTICE OF ASSESSMENT; CONTENTS AS PRIMA FACIE EVIDENCE; JUDICIAL REVIEW; EFFECT.** (a) A notice of assessment shall be served in the manner provided by law for service of process on a defendant in a civil action in district court.

(b) A notice of assessment is prima facie evidence of the truth of contents of the notice. The incorrectness of the notice may be shown.

(c) An employer aggrieved by the determination of the commission as stated in a notice of assessment may file a petition for judicial review of the assessment with a Travis County district court not later than the 30th day after the date on which the notice of assessment is served. A copy of the petition must be served on a member of the commission or on a person designated by the commission in the manner provided by law for service of process on a defendant in a civil action in a district court.

(d) If an employer does not seek judicial review under Subsection (c), a commission assessment is final for all purposes.

(e) An assessment that is not contested by the employer or that is upheld after judicial review has the effect of a final judgment of a district court and shall be recorded, enforced, and renewed in the same manner. (V.A.C.S. Art. 5221b–12(b) (part).)

**Sec. 213.033. LIMITATIONS.** (a) The commission may not begin a civil action in court or make an assessment under this subchapter to collect a contribution or penalty from an employer after the third anniversary after the due date of the contribution.

(b) In the case of a wilful attempt to evade the provisions of this subtitle or a commission rule adopted under this subtitle, the action or assessment may be begun or made at any time. (V.A.C.S. Art. 5221b–12(b) (part).)

**Sec. 213.034. STATEMENT AS EVIDENCE IN CIVIL ACTION; DENIAL.** (a) If a civil action filed under this subchapter is supported by a statement, report, or audit issued by the commission and the commission certifies that the contribution, penalty, and interest shown to be due by the statement, report, or audit are delinquent and that all offsets, payments, and credits have been allowed, the statement, report, or audit is prima facie evidence of the truth of its contents unless before an announcement of ready for trial the defendant files an affidavit that:

(1) denies that all or part of the contribution, penalty, or interest is due; and

(2) states the details relating to any part of the contribution, penalty, or interest claimed not due.

(b) If the defendant files an affidavit described by Subsection (a) on the day of the trial, the court at the request of the plaintiff shall postpone the cause for a reasonable time.

(c) A defendant who does not file an affidavit in accordance with this section may not deny the claim for the contribution, penalty, or interest or an item of the claim. (V.A.C.S. Art. 5221b–12(e).)

**Sec. 213.035. COSTS.** Unless the employer prevails in a civil action brought under this subchapter or the notice of assessment is reversed by a reviewing court, the employer shall pay all costs of either action. (V.A.C.S. Art. 5221b–12(b) (part).)

Sec. 213.036. ABSTRACT OF JUDGMENT; FEE; RELEASE. (a) The commission shall pay the fee for filing and recording an abstract of a judgment against an employer for a contribution, a penalty, or interest by warrant drawn by the comptroller to the county clerk of each county in which the abstract is recorded.

(b) When the liability secured by the lien is paid, the commission shall mail a release of the lien to the employer. The employer is responsible for filing the release with the appropriate county clerk and for paying the county clerk's fee for recording the release. (V.A.C.S. Art. 5221b-12(n).)

[Sections 213.037-213.050 reserved for expansion]

#### SUBCHAPTER D. OTHER ENFORCEMENT REMEDIES AGAINST EMPLOYER

Sec. 213.051. FORFEITURE OF RIGHT TO EMPLOY INDIVIDUALS IN THIS STATE; BOND. (a) After a judgment is entered against an employer for a contribution, a penalty, or interest or an assessment against an employer under this chapter is final and execution returned unsatisfied, an employer liable for the unpaid judgment may not employ an individual in this state until the employer furnishes a surety bond.

(b) The amount of the bond may not exceed twice the amount due at the time the bond is furnished plus contributions estimated by the commission to become due from the employer during the succeeding calendar year. The bond must be conditioned on payment of the contribution, penalty, interest, and court costs due from the employer not later than January 30 of the succeeding calendar year. The bond must be approved by the commission.

(c) If the employer does not furnish the bond or pay the contribution, penalty, and interest due, the commission may apply to the court that entered the judgment for an injunction to prohibit the employer from employing a person in this state without first furnishing a bond as required by this section. After reasonable notice of not less than 10 days by the court, the court may grant a temporary injunction. The temporary injunction may be made permanent on final hearing and remains in effect until the requirements of this chapter are satisfied. (V.A.C.S. Art. 5221b-12(b) (part).)

Sec. 213.052. INJUNCTION RESTRAINING CERTAIN VIOLATIONS. (a) If an individual or employing unit appears to be violating or threatening to violate this subtitle or any rule or order of the commission adopted under this subtitle relating to the collection of a contribution, a penalty, or interest or to the filing of a report relating to employment, the commission shall bring suit against the individual or employing unit to restrain the violation. The court may grant a temporary or permanent, prohibitory or mandatory injunction, including a temporary restraining order, as warranted by the facts.

(b) A suit under this section must be brought through the attorney general in the name of the state in a court of competent jurisdiction in Travis County. (V.A.C.S. Art. 5221b-12(k) (part).)

Sec. 213.053. VIOLATION OF INJUNCTION; RECEIVER. (a) If an individual or an employing unit violates an injunction granted under this subtitle, the court on its own motion or the commission's motion in the name of the state, after notice and hearing, may appoint a receiver. The receiver may exercise the powers that, in the judgment of the court, are necessary to provide compliance with the injunction, including taking charge of the property of the individual or employing unit.

(b) The power to appoint a receiver under this section is in addition to the power to punish for contempt. (V.A.C.S. Art. 5221b-12(k) (part).)

Sec. 213.054. OFFSET AGAINST STATE WARRANT. Any contribution, penalty, interest, or court cost owed by an employer under a final court judgment under this subtitle is a debt owed by the employer to the state under Section 403.055, Government Code, only for withholding of a warrant for:

- (1) the refund of taxes, fees, assessments, or other deposits required under the law of this state; or
- (2) compensation for goods and services, other than a warrant for:



(A) payment for services performed as an elected or appointed employee of this state;  
or

(B) reimbursement of expenses incurred in the performance of employment as an elected or appointed employee of this state. (V.A.C.S. Art. 5221b-12(l).)

Sec. 213.055. **AUDIT OF EMPLOYER.** (a) The commission may employ an auditor or other person to determine the amount of a contribution due and prepare a report due from an employer who does not properly pay a contribution or make a report as required by this subtitle or a rule adopted under this subtitle.

(b) An employer who has not paid the correct amount or made a correct report shall pay, as an additional penalty, the reasonable expenses incurred in the investigation under Subsection (a). The commission may collect this penalty in accordance with this chapter.

(c) This section does not prevent the commission from using other available funds as necessary for the purpose of auditing an employer or preparing or assisting in preparing a report of an employer. (V.A.C.S. Art. 5221b-12(g).)

Sec. 213.056. **ESTIMATED TAXABLE WAGES IF REPORT NOT FILED.** (a) If an employer does not make a report to the commission that is required by this subtitle or by commission rule, the commission may estimate the taxable wages paid by the employer during the period to have been covered by the report. In making this estimate, the commission may use any available source of information.

(b) The commission may collect contributions and penalties using an estimate made under this section as if the estimated wages had been properly reported by the employer. (V.A.C.S. Art. 5221b-12(c)(3).)

Sec. 213.057. **TAX LIEN.** (a) The amount due from an employing unit under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time the contribution, penalty, interest, or other charge becomes overdue.

(c) The lien may be recorded in a "State Tax Liens" book kept by a county clerk under Section 113.004, Tax Code.

(d) The lien may be released in the manner provided for other state tax liens under Chapter 113, Tax Code.

(e) The commission shall pay by warrant drawn by the comptroller to the county clerk of the county in which the notice of lien is filed the fee for filing and recording similar instruments. The fee shall be added to the amount due from the employer.

(f) When the liability secured by the lien is fully paid, the commission shall mail to the employer a release of the lien. The employer is responsible for filing the release with the appropriate county clerk and to pay the county clerk's fee for recording the release. (V.A.C.S. Art. 5221b-12(f).)

Sec. 213.058. **ADDITIONAL TAX LIEN ENFORCED BY COMMISSION.** (a) The amount due from an employing unit to the commission under this subtitle is secured by a lien on property belonging to the employing unit or to any individual indebted for the sum.

(b) The lien attaches at the time a contribution, a penalty, interest, or another charge becomes overdue.

(c) Subchapters A and B, Chapter 113, Tax Code, govern the enforcement of a lien under this section. In administering and enforcing a lien created under this section, the commission has the powers and duties imposed and conferred on the comptroller for the enforcement of other liens under those subchapters.

(d) A lien under this section is cumulative of the lien created under Section 213.057. (V.A.C.S. Art. 5221b-12A.)

**SUBCHAPTER E. ADJUSTMENT OR REFUND  
FOR EMPLOYER'S OVERPAYMENT**

Sec. 213.071. CREDIT OR REFUND OF OVERPAYMENT. (a) The commission shall allow the employing unit on application under Section 213.072 to adjust its contribution payments then due for a contribution or penalty erroneously collected from the employer.

(b) If an adjustment cannot be made under Subsection (a), the commission shall refund the amount erroneously collected.

(c) The commission may not approve an application for adjustment or refund if making the adjustment or refund would require removing or disregarding benefit wages that became benefit wage credits or that were charged as benefit wages more than three years before the date on which the application was filed. For the purpose of this subsection, removing or disregarding benefit wages does not include transferring compensation experience described in Subchapter E, Chapter 204. (V.A.C.S. Art. 5221b-12(j)(1) (part).)

Sec. 213.072. APPLICATION. (a) An employing unit that pays the commission a contribution or penalty that is allegedly due and that later is determined not due, in whole or in part, may apply to the commission for:

- (1) an adjustment for a contribution payment then due; or
- (2) a refund of the overpaid amount if an adjustment cannot be made.

(b) An application for adjustment or refund must be filed before the third anniversary of the date on which the contribution or penalty was allegedly due. (V.A.C.S. Art. 5221b-12(j)(1) (part).)

Sec. 213.073. APPEAL OF COMMISSION DETERMINATION. (a) If the commission denies a timely application made under this subchapter, the employing unit may bring an action in a court of competent jurisdiction in Travis County against the commission for review of the commission's refusal to allow an adjustment or a refund.

(b) An action under this section must be filed before the first anniversary of the date on which notice of the denial was mailed to the employing unit.

(c) Trial of an action filed under this section is by trial de novo.

(d) The employing unit may not bring an action for the refund under any other law. (V.A.C.S. Art. 5221b-12(j)(2) (part).)

Sec. 213.074. INTEREST NOT ALLOWED. Interest is not allowed on an adjustment or refund made under this subchapter or a recovery made in a court action filed under this subchapter. (V.A.C.S. Arts. 5221b-12(j)(1) (part), (2) (part).)

Sec. 213.075. ADJUSTMENT OR REFUND ON COMMISSION INITIATIVE. The commission may make an adjustment or refund on its own initiative under this subchapter within the period prescribed by this subchapter. (V.A.C.S. Art. 5221b-12(j)(1) (part).)

**CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS**

- Sec. 214.001. FRAUDULENTLY OBTAINING BENEFITS OR OTHER PAYMENT
- Sec. 214.002. LIABILITY FOR IMPROPERLY OBTAINING BENEFITS
- Sec. 214.003. FORFEITURE OR CANCELLATION OF BENEFITS PAID AND REMAINING BENEFITS
- Sec. 214.004. FRAUDULENTLY AVOIDING CONTRIBUTION OR PAYMENT OF BENEFITS
- Sec. 214.005. FAILURE OR REFUSAL TO MAKE CONTRIBUTION OR OTHER PAYMENT
- Sec. 214.006. OFFENSES REGARDING REPORTS AND RECORDS
- Sec. 214.007. GENERAL OFFENSE

## CHAPTER 214. OFFENSES, PENALTIES, AND SANCTIONS

## Sec. 214.001. FRAUDULENTLY OBTAINING BENEFITS OR OTHER PAYMENT.

(a) A person commits an offense if, to obtain or increase a benefit or other payment, either for the person or another person, under this subtitle, the unemployment compensation law of another state, or any act or program of the United States that is administered by the commission, the person:

- (1) makes a false statement or representation, knowing it to be false; or
- (2) knowingly fails to disclose a material fact.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5221b-14(a).)

Sec. 214.002. LIABILITY FOR IMPROPERLY OBTAINING BENEFITS. (a) A person who has received improper benefits is liable for the amount of the improper benefits. The commission may recover improper benefits by:

(1) deducting the amount of the improper benefits from any future benefits payable to the person; or

(2) collecting the amount of the improper benefits for the compensation fund in the same manner provided by Sections 213.031, 213.032, 213.033, 213.035, and 213.051 for the collection of past due contributions.

(b) In this section, "improper benefit" means the benefit obtained by a person:

(1) because of the nondisclosure or misrepresentation by the person or by another of a material fact, without regard to whether the nondisclosure or misrepresentation was known or fraudulent; and

(2) while:

(A) any condition imposed by this subtitle for the person's qualifying for the benefit was not fulfilled in the person's case; or

(B) the person was disqualified from receiving benefits. (V.A.C.S. Art. 5221b-14(d).)

Sec. 214.003. FORFEITURE OR CANCELLATION OF BENEFITS PAID AND REMAINING BENEFITS. (a) If, by wilful nondisclosure or misrepresentation of a material fact, whether the nondisclosure or misrepresentation is made by the person or for the person by another, a person receives a benefit when a condition imposed by this subtitle for the person's qualifying for the benefit is not fulfilled or the person is disqualified from receiving the benefit, the person forfeits the:

(1) benefit received; and

(2) rights to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.

(b) If a person attempts to obtain or increase benefits by a nondisclosure or misrepresentation as provided by Subsection (a), the commission may cancel the person's right to benefits that remain in the benefit year in which the nondisclosure or misrepresentation occurred.

(c) A forfeiture or cancellation under this section is effective only after the person has been afforded an opportunity for a fair hearing before the commission or its duly designated representative. (V.A.C.S. Art. 5221b-14(e).)

Sec. 214.004. FRAUDULENTLY AVOIDING CONTRIBUTION OR PAYMENT OF BENEFITS. (a) A person commits an offense if the person makes a false representation, knowing it to be false, or knowingly fails to disclose a material fact, to:

(1) prevent or reduce the payment of benefits to an individual entitled to the benefits;

(2) avoid becoming or remaining subject to this subtitle; or

(3) avoid or reduce any contribution or other payment required from an employing unit under this subtitle.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5221b-14(b)(part).)

Sec. 214.005. **FAILURE OR REFUSAL TO MAKE CONTRIBUTION OR OTHER PAYMENT.** (a) A person commits an offense if the person wilfully fails or refuses to make a contribution or other payment required from an employing unit under this subtitle.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5221b-14(b) (part).)

Sec. 214.006. **OFFENSES REGARDING REPORTS AND RECORDS.** (a) A person commits an offense if the person wilfully fails or refuses to:

(1) furnish a report required under this subtitle; or

(2) produce or permit the inspection or copying of records as required under this subtitle.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5221b-14(b) (part).)

Sec. 214.007. **GENERAL OFFENSE.** (a) A person commits an offense if the person wilfully violates a provision of this subtitle or a rule adopted under this subtitle:

(1) the violation of which is made unlawful or the observance of which is required under this subtitle; and

(2) for which a penalty is not otherwise provided by this subtitle or any other applicable statute.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Art. 5221b-14(c).)

## **CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 215.001. **DEFINITIONS**

Sec. 215.002. **SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM**

[Sections 215.003-215.020 reserved for expansion]

### **SUBCHAPTER B. SHARED WORK PLAN**

Sec. 215.021. **APPROVAL REQUIRED FOR EMPLOYER PLAN**

Sec. 215.022. **REQUIREMENTS OF SHARED WORK PLAN**

Sec. 215.023. **APPROVAL OR DENIAL OF SHARED WORK PLAN; NOTICE**

Sec. 215.024. **EFFECTIVE DATE OF SHARED WORK PLAN; EXPIRATION OR TERMINATION**

Sec. 215.025. **MODIFICATION OF SHARED WORK PLAN**

Sec. 215.026. **PARTICIPATING EMPLOYER'S REPORT ON PLAN OPERATION**

[Sections 215.027-215.040 reserved for expansion]

### **SUBCHAPTER C. SHARED WORK BENEFITS**

Sec. 215.041. **EMPLOYEE'S ELIGIBILITY FOR SHARED WORK BENEFITS**

Sec. 215.042. **SHARED WORK BENEFITS FORMULA**

Sec. 215.043. **LIMITATIONS ON BENEFITS**

Sec. 215.044. **EXTENDED BENEFITS**

## **CHAPTER 215. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 215.001. **DEFINITIONS.** In this chapter:

(1) "Affected unit" means a unit of two or more employees, including a department or shift, designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, or any other similar employee benefit provided by an employer.

(3) "Normal weekly hours of work" means the number of hours in a week that an employee ordinarily works for a participating employer or 40 hours, whichever is less.

(4) "Participating employee" means an employee who works a reduced number of hours under an approved shared work plan.

(5) "Participating employer" means an employer who has a shared work plan in effect.

(6) "Shared work benefit" means an unemployment compensation benefit that is payable to a participating employee.

(7) "Shared work plan" means a plan for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(8) "Shared work program" means the shared work unemployment compensation program. (New; V.A.C.S. Arts. 5221b-22f(a)(1)-(8).)

Sec. 215.002. SHARED WORK UNEMPLOYMENT COMPENSATION PROGRAM.

(a) The commission, under a voluntary shared work unemployment compensation program designed to reduce unemployment and stabilize the work force, shall allow participating employees shared work benefits.

(b) The commission may adopt rules and establish procedures necessary to administer the shared work program. (V.A.C.S. Arts. 5221b-22f(a)(9), (b).)

[Sections 215.003-215.020 reserved for expansion]

#### SUBCHAPTER B. SHARED WORK PLAN

Sec. 215.021. APPROVAL REQUIRED FOR EMPLOYER PLAN. (a) Before an employer may participate in the shared work program, the commission must approve the employer's shared work plan. The plan must be submitted in writing to the commission.

(b) If an employee who participates in a shared work plan is covered by a collective bargaining agreement, the collective bargaining agent must approve the plan in writing. (V.A.C.S. Arts. 5221b-22f(c) (part), (e).)

Sec. 215.022. REQUIREMENTS OF SHARED WORK PLAN. (a) The commission may approve a shared work plan if:

(1) the plan:

(A) applies to and identifies a specific affected unit;

(B) identifies the employees in the affected unit by name and social security number;

(C) reduces the normal weekly hours of work for an employee in the affected unit by at least 10 percent but not more than 40 percent;

(D) applies to at least 10 percent of the employees in the affected unit; and

(E) describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

(2) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would:

(A) affect at least 10 percent of the employees in the affected unit; and

(B) result in an equivalent reduction in work hours; and

(3) the employer agrees to furnish the commission reports relating to the operation of the plan as requested by the commission.

(b) A shared work plan may not be implemented to subsidize a seasonal employer during the off-season or to subsidize an employer who traditionally has used part-time employees. (V.A.C.S. Arts. 5221b-22f(c) (part), (d), (f).)

**Sec. 215.023. APPROVAL OR DENIAL OF SHARED WORK PLAN; NOTICE.** (a) The commission shall approve or deny a shared work plan in writing not later than the 30th day after the date the commission receives the plan.

(b) If the commission denies the plan, the commission shall give the employer the reasons for denial. (V.A.C.S. Art. 5221b-22f(g).)

**Sec. 215.024. EFFECTIVE DATE OF SHARED WORK PLAN; EXPIRATION OR TERMINATION.** (a) A shared work plan takes effect on the date the commission approves the plan.

(b) A shared work plan expires on the last day of the 12th calendar month beginning after the effective date of the plan.

(c) The commission may terminate a shared work plan for good cause if the plan is not being executed according to the terms and intent of the shared work program. (V.A.C.S. Arts. 5221b-22f(h), (p).)

**Sec. 215.025. MODIFICATION OF SHARED WORK PLAN.** (a) An employer may modify a shared work plan to meet changed conditions if the modification conforms to the basic provisions of the plan as approved by the commission.

(b) Before implementing a proposed change, the employer must report the change in writing to the commission.

(c) The commission shall reevaluate a plan that is proposed to be substantially modified.

(d) If a proposed plan modification is substantial, the commission may approve the modified plan according to the requirements of Sections 215.022(a)(1) and (2) or shall deny the modification subject to Section 215.023.

(e) Approval of a modified plan does not affect the plan's original expiration date. (V.A.C.S. Art. 5221b-22f(i).)

**Sec. 215.026. PARTICIPATING EMPLOYER'S REPORT ON PLAN OPERATION.** A participating employer shall:

(1) monitor and evaluate the operation of its established shared work plan as requested by the commission; and

(2) report the findings to the commission. (V.A.C.S. Art. 5221b-22f(c) (part).)

[Sections 215.027-215.040 reserved for expansion]

### **SUBCHAPTER C. SHARED WORK BENEFITS**

**Sec. 215.041. EMPLOYEE'S ELIGIBILITY FOR SHARED WORK BENEFITS.** (a) Notwithstanding any other provision of this subtitle, an individual is unemployed for the purposes of this subtitle in a week in which the individual works under an approved shared work plan in effect for that week for less than the individual's normal weekly hours of work.

(b) An individual is eligible to receive shared work benefits for a week in which:

(1) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before that week and is in effect for that week;

(2) the individual is able to work and is available for additional hours of work or for full-time work with the participating employer; and

(3) the individual's normal weekly hours of work have been reduced by at least 10 percent but not more than 40 percent, with a corresponding reduction in wages.

(c) The commission may not deny shared work benefits for a week to an otherwise eligible individual because of a provision of this subtitle that relates to:

(1) availability for work;

(2) active search for work; or

(3) refusal to apply for or to accept work with an employer other than the participating employer. (V.A.C.S. Arts. 5221b-22f(j), (k).)

Sec. 215.042. SHARED WORK BENEFITS FORMULA. (a) The commission shall pay an individual who is eligible for shared work benefits a weekly shared work benefit in an amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's wages under the employer's shared work plan.

(b) The commission shall round to the next highest dollar a shared work benefit that is not a multiple of one dollar. (V.A.C.S. Art. 5221b-22f(l).)

Sec. 215.043. LIMITATIONS ON BENEFITS. (a) An individual is not entitled to receive shared work benefits and regular unemployment compensation benefits that exceed the maximum total benefits payable to the individual in a benefit year as provided by Section 207.005.

(b) An individual who receives shared work benefits is not entitled to receive benefits for partial unemployment under Section 207.003 for any week in which the individual works as a participating employee.

(c) The commission may not pay an individual shared work benefits for a week in which the individual performs paid work for the participating employer that exceeds the reduced hours established under a shared work plan. (V.A.C.S. Arts. 5221b-22f(m), (n).)

Sec. 215.044. EXTENDED BENEFITS. An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an individual who has exhausted regular benefits under Section 209.042 and is entitled to receive extended benefits under Chapter 209 if the individual is otherwise eligible under that chapter. (V.A.C.S. Art. 5221b-22f(o).)

CHAPTER 216. COMMUNITIES IN SCHOOLS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 216.001. DEFINITIONS

Sec. 216.002. STATEWIDE OPERATION OF PROGRAM

[Sections 216.003-216.010 reserved for expansion]

SUBCHAPTER B. OPERATION OF PROGRAM

Sec. 216.011. STATE COORDINATOR

Sec. 216.012. DUTIES OF STATE COORDINATOR

Sec. 216.013. AGENCY COOPERATION; MEMORANDUM OF UNDERSTANDING

[Sections 216.014-216.020 reserved for expansion]

SUBCHAPTER C. PARTICIPATION IN PROGRAM BY CERTAIN SCHOOLS

Sec. 216.021. DESIGNATION OF PARTICIPATING SCHOOLS

Sec. 216.022. PARTICIPATION IN PROGRAM

[Sections 216.023-216.030 reserved for expansion]

SUBCHAPTER D. PROGRAM FUNDING

Sec. 216.031. DONATIONS TO PROGRAM

CHAPTER 216. COMMUNITIES IN SCHOOLS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 216.001. DEFINITIONS. In this chapter:

- (1) "Agency" means the Central Education Agency.
- (2) "Communities in Schools program" means an exemplary youth dropout prevention program. (New.)

Sec. 216.002. STATEWIDE OPERATION OF PROGRAM. It is the intent of the legislature that the Communities in Schools program operate throughout this state. (V.A.C.S. Art. 5221b-9d(g).)

[Sections 216.003-216.010 reserved for expansion]

SUBCHAPTER B. OPERATION OF PROGRAM

Sec. 216.011. STATE COORDINATOR. The administrator of the commission shall appoint a state coordinator for the Communities in Schools program. (V.A.C.S. Art. 5221b-9d(a) (part).)

Sec. 216.012. DUTIES OF STATE COORDINATOR. The state coordinator shall:

- (1) coordinate the efforts of social service organizations and agencies and of public school personnel to provide services to students who are at risk of dropping out of school or engaging in delinquent conduct;
- (2) set standards for the Communities in Schools program;
- (3) obtain information from each participating school district to determine necessary program changes;
- (4) promote and market the program in communities in which the program is not established;
- (5) help communities that want to participate in the program establish a local funding base; and
- (6) train a program director for each participating community. (V.A.C.S. Arts. 5221b-9d(a) (part), (b).)

Sec. 216.013. AGENCY COOPERATION; MEMORANDUM OF UNDERSTANDING. (a) The agency and the commission shall work together to maximize the effectiveness of the Communities in Schools program.

(b) The agency and the commission shall develop and mutually agree to a memorandum of understanding to clearly define the responsibilities of each agency under this chapter. The memorandum must address:

- (1) the role of the commission in encouraging local business to participate in local Communities in Schools programs;
  - (2) the role of the agency in obtaining information from participating school districts;
  - (3) the use of federal or state funds available to the agency or the commission for programs of this nature; and
  - (4) other areas identified by the agency and the commission that require clarification.
- (c) The agency and the commission shall adopt rules to implement the memorandum and shall update the memorandum and rules annually. (V.A.C.S. Arts. 5221b-9d(c), (d).)

[Sections 216.014-216.020 reserved for expansion]

SUBCHAPTER C. PARTICIPATION IN PROGRAM BY CERTAIN SCHOOLS

Sec. 216.021. DESIGNATION OF PARTICIPATING SCHOOLS. (a) The state coordinator, in cooperation with the program directors in the counties in which a Communities in



Schools program was established on September 1, 1991, shall designate not more than 32 elementary schools and 76 secondary schools in those counties to participate in the program.

(b) The state coordinator, in cooperation with the program directors in four additional counties designated by the state coordinator, shall designate additional elementary and secondary schools to participate in the Communities in Schools program.

(c) The designation of secondary schools to participate in the Communities in Schools program must be distributed among high schools and junior high or middle schools. (V.A.C.S. Art. 5221b-9d(f).)

Sec. 216.022. PARTICIPATION IN PROGRAM. An elementary or secondary school designated under Section 216.021 shall participate in the Communities in Schools program if the number of students enrolled in the school who are at risk of dropping out of school is equal to at least 10 percent of the number of students in average daily attendance at the school, as determined by the agency. (V.A.C.S. Art. 5221b-9d(e) (part).)

[Sections 216.023-216.030 reserved for expansion]

#### SUBCHAPTER D. PROGRAM FUNDING

Sec. 216.031. DONATIONS TO PROGRAM. (a) The commission may accept a donation of services or money or other property that the commission determines furthers the lawful objectives of the commission in connection with the Communities in Schools program.

(b) Donations must be accepted in an open meeting by a majority of the voting members of the commission. The donation, with the name of the donor and the purpose of the donation, must be reported in the public records of the commission. (V.A.C.S. Art. 5221b-9d(h).)

#### CHAPTER 217. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Sec. 217.001. DEFINITIONS

Sec. 217.002. PROJECT RIO

Sec. 217.003. ADMINISTRATION

Sec. 217.004. MEMORANDUM OF UNDERSTANDING—ADOPTION

Sec. 217.005. MEMORANDUM OF UNDERSTANDING—CONTENTS

Sec. 217.006. PROJECT DIRECTOR

#### CHAPTER 217. PROJECT RIO (REINTEGRATION OF OFFENDERS)

Sec. 217.001. DEFINITIONS. In this chapter:

(1) "Department" means the Texas Department of Criminal Justice.

(2) "Institutional division" means the institutional division of the department.

(3) "Project RIO" means the project for reintegration of offenders. (New; V.A.C.S. Art. 5221b-9ee(a).)

Sec. 217.002. PROJECT RIO. The project for reintegration of offenders is a statewide employment referral program designed to reintegrate into the labor force persons formerly confined in the institutional division. (V.A.C.S. Art. 5221b-9ee(b) (part).)

Sec. 217.003. ADMINISTRATION. The department and the commission shall cooperate to maximize the effectiveness of Project RIO. For that purpose, the commission shall administer the project. (V.A.C.S. Art. 5221b-9ee(b) (part).)

Sec. 217.004. MEMORANDUM OF UNDERSTANDING—ADOPTION. (a) The department and the commission shall adopt a memorandum of understanding that establishes the respective responsibilities of each agency and of the divisions within the department.

(b) The commission shall coordinate the development of the memorandum of understanding. The department shall adopt rules as necessary to implement the memorandum and may amend the memorandum and those rules as necessary. (V.A.C.S. Arts. 5221b-9ee(b) (part), (c).)

Sec. 217.005. MEMORANDUM OF UNDERSTANDING—CONTENTS. (a) The memorandum of understanding must establish the role of:

(1) the institutional division in ascertaining and encouraging an inmate's chances for employment by:

(A) providing vocational and educational assessment for the person while incarcerated in the division;

(B) developing a skills enhancement program for the person while incarcerated, in cooperation with other governmental, educational, and private entities, using available public or private financial resources authorized by statute; and

(C) referring the person on release to the project through the person's parole officer;

(2) the community justice assistance division and the pardons and paroles division of the department in:

(A) encouraging and referring persons to the project; and

(B) ensuring that those persons participate in the project and avail themselves of its services; and

(3) the commission in developing and maintaining a statewide network for finding positions of employment that require the skills possessed by project participants and in helping those participants to secure employment.

(b) The memorandum also must establish the methods by which the commission shall coordinate its efforts under this chapter with the operations of service providers operating under Chapter 301 (Texas Job-Training Partnership Act). (V.A.C.S. Art. 5221b-9ee(b) (part).)

Sec. 217.006. PROJECT DIRECTOR. (a) The administrator of the commission shall designate the director of Project RIO to coordinate the efforts of the affected state agencies and expedite the delivery of services to participants in the project, including prospective employers.

(b) The project director shall:

(1) propose, for adoption by the commission, standards and guidelines for the operation of the project;

(2) obtain information from appropriate state agencies and offices affiliated with the project to determine any necessary changes in the project;

(3) disseminate information statewide about the project; and

(4) train commission staff to assist in the operation of affiliated services. (V.A.C.S. Arts. 5221b-9ee(d), (e).)

[Chapters 218-300 reserved for expansion]

## SUBTITLE B. ADDITIONAL EMPLOYMENT SERVICES

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- Sec. 301.050. REVIEW AND COMMENT BY LEGISLATURE
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- Sec. 301.053. PROGRAMS FOR STUDENT DROPOUTS

### CHAPTER 301. JOB TRAINING PARTNERSHIP ACT

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. SHORT TITLE. This chapter may be cited as the Texas Job Training Partnership Act. (V.A.C.S. Art. 4413(52), Sec. 1.)

Sec. 301.002. PURPOSE. The purpose of this chapter is to facilitate the development and implementation of effective state and local systems for managing job training, employment, and related programs in this state, as authorized by the federal act. (V.A.C.S. Art. 4413(52), Sec. 2(a).)

Sec. 301.003. STATE POLICY. It is the policy of this state that:

(1) all available resources from federal, state, and local governments, business, labor, and community-based organizations are coordinated to develop and promote a balanced, equitable, and cost-beneficial employment and training system;

(2) the governor and the legislature consult in implementing the federal act and this chapter; and

(3) to reduce dependency on public assistance, the programs created under this chapter emphasize service to AFDC recipients. (V.A.C.S. Art. 4413(52), Sec. 2(b).)

Sec. 301.004. STATE GOALS. (a) It is a goal of this state to assist its citizens to obtain gainful employment and to reduce dependency on public assistance and unemployment compensation by:

(1) preparing young people and unskilled adults who are economically disadvantaged for entry into the work force;

(2) assisting citizens faced with serious barriers to employment, including age, disability, lack of education, and locality, to overcome those barriers;

(3) taking an affirmative role in ensuring the maximum use of available resources in planning, implementing, and facilitating this chapter through a partnership of individuals from the various diverse communities of the state, including representatives of business communities, local and state government, ethnic communities, education communities, and the various cultural and socioeconomic communities, in participation in decision-making and policy-making activities associated with programs created under this chapter; and

(4) retraining individuals whose current skills are no longer in demand in the labor market or who have been laid off from full-time employment, and who must upgrade their work skills to return to the work force.

(b) It is a goal of this state to develop a well-trained, productive work force to meet the needs of a changing economy by:

(1) coordinating existing labor market information to maximize its utility for planning and operating programs;

(2) providing enhanced employment and training capabilities that are specially designed to meet the needs of business and industry, including industries that use advanced technology;

(3) linking employment and training services with economic development efforts; and

(4) coordinating planning and delivery of job training, employment, and related programs provided by separate state agencies to improve the efficiency and effectiveness of those programs. (V.A.C.S. Art. 4413(52), Sec. 3.)

Sec. 301.005. DEFINITIONS. (a) In this chapter:

(1) "Committee" means the monitoring committee established under Section 301.026.

(2) "Department" means the Texas Department of Commerce.

(3) "Federal act" means the federal Job Training Partnership Act (29 U.S.C. Section 1501 et seq.).

(4) "Grant recipient" means an entity that contracts for and receives funds from the governor.

(5) "Labor market area" means an economically integrated geographical area within which individuals may reside and find employment within a reasonable distance.

(6) "Service delivery area" means a geographic area designated as a service delivery area under Section 301.041.

(7) "State council" means the State Job Training Coordinating Council.

(b) The definitions provided by Section 4 of the federal act apply to this chapter, except that "governor" means the governor of this state. (New; V.A.C.S. Art. 4413(52), Secs. 4 (part), 8(b) (part).)

[Sections 301.006–301.020 reserved for expansion]

## SUBCHAPTER B. STATE ADMINISTRATION

Sec. 301.021. GENERAL DUTIES OF GOVERNOR'S OFFICE AND STAFF. (a) The governor or the governor's delegated agency is responsible for the planning, monitoring, implementing, and evaluating of job training, employment, and related programs as provided for by the federal act.

(b) A job training and employment staff is in the governor's office. The staff has responsibility for policy development, program planning, monitoring, and evaluation of the programs under this chapter in coordination with existing state agencies as provided under the federal act. The staff shall:

(1) assist the state council as directed by the governor; and

(2) perform other functions relating to the job training, employment, and related programs as assigned by the governor. (V.A.C.S. Art. 4413(52), Secs. 5(a), 8(c) (part).)

Sec. 301.022. GENERAL DUTIES OF DEPARTMENT. The department has primary responsibility for implementation and management of the job training program. The

department shall perform other functions relating to the job training program as assigned by the governor. (V.A.C.S. Art. 4413(52), Sec. 5(b).)

Sec. 301.023. COMPOSITION OF STATE JOB TRAINING COORDINATING COUNCIL; MEETINGS. (a) The governor shall appoint the members of the State Job Training Coordinating Council in accordance with the federal act. The state council may not have more than 40 members, including the presiding officer.

(b) The state council shall meet at least once quarterly. (V.A.C.S. Art. 4413(52), Sec. 8(b) (part).)

Sec. 301.024. DUTIES OF STATE COUNCIL. The state council shall:

- (1) develop and recommend statewide goals and program objectives;
- (2) identify needs for training and employment services;
- (3) review operations of local programs and state agencies providing job training, employment, and related programs identified in the federal act;
- (4) establish standards for coordinating program planning and operations;
- (5) evaluate the results of state and local training and employment services;
- (6) develop and recommend to the governor the state's coordination and special services plan;
- (7) perform the functions assigned to the state job training coordinating council for the job opportunities and basic skills program under Title IV of the Social Security Act (42 U.S.C. Section 681 et seq.);
- (8) perform the functions of the advisory council required under the Wagner-Peyser Act (29 U.S.C. Section 49), as implemented under Subtitle A (Texas Unemployment Compensation Act);
- (9) assist each private industry council in developing programs to serve AFDC recipients;
- (10) develop conflict-of-interest guidelines relating to the participation of a member of a private industry council in a contract with the service delivery area administered by that private industry council; and
- (11) perform functions relating to job training, employment, and related programs as required by the federal act or as assigned by the governor. (V.A.C.S. Art. 4413(52), Sec. 8(b) (part).)

Sec. 301.025. SUBMISSION OF AGENCY INFORMATION TO STATE COUNCIL. A state agency providing an employment, job training, or related program shall:

- (1) provide to the state council information for planning, reviewing program operations, and evaluating program results as required by the governor; and
- (2) submit the agency's plans to the state council. (V.A.C.S. Art. 4413(52), Sec. 8(d).)

Sec. 301.026. MONITORING COMMITTEE; SUBMISSION OF AGENCY INFORMATION. (a) A joint committee appointed by the speaker of the house of representatives and the lieutenant governor shall monitor the progress of the implementation of this chapter. The committee shall recommend:

- (1) any necessary legislative action or remedies for the next regular session of the legislature; and
- (2) congressional remedies.

(b) To monitor implementation of this chapter as required by Subsection (a), the committee may oversee each employment, job training, and related program conducted by a state agency. Each state agency that conducts such a program shall cooperate fully with the committee and shall submit information and reports to the committee as requested by the committee. (V.A.C.S. Art. 4413(52), Sec. 6.)

Sec. 301.027. SUBMISSION OF AUDIT INFORMATION TO COMMITTEE. (a) To obtain information necessary to monitor the progress of the implementation of this chapter, the committee is entitled to receive the results of audits that relate to state and local job

training plans. The committee may prescribe the form in which the results are reported to the committee.

(b) The state auditor shall submit to the committee the results of a financial audit, effectiveness audit, or compliance audit conducted under Section 321.013, Government Code, that relate to the operation of an employment, job training, or related program administered by a state agency.

(c) The private industry council and appropriate chief elected official of each service delivery area shall submit to the state auditor, in the manner directed by the state auditor, the results of an audit conducted under audit procedures established under Section 301.052(b) that relates to the operation of the service delivery area's program of job training, employment, or related services. The state auditor shall compile a summary of audit results from the information received from each service delivery area and shall submit the summary in writing to the committee. (V.A.C.S. Art. 4413(52), Sec. 6A.)

Sec. 301.028. **RULES.** The governor may adopt rules to implement this chapter and the federal act. (V.A.C.S. Art. 4413(52), Sec. 10.)

[Sections 301.029–301.040 reserved for expansion]

### **SUBCHAPTER C. PROGRAM DELIVERY SYSTEM— STATE AND LOCAL RESPONSIBILITIES**

Sec. 301.041. **DESIGNATION OF SERVICE DELIVERY AREAS.** The governor shall designate service delivery areas according to the procedures established by the federal act so that:

- (1) each service delivery area is composed of one or more units of local government within which programs can be efficiently and effectively provided;
- (2) each service delivery area meets the federal act requirements for the establishment of a service delivery area;
- (3) the number of service delivery areas, to the extent feasible, is kept to a minimum for administrative efficiency; and
- (4) the size of each service delivery area entitles the area to receive an allocation of funds sufficient to plan and operate an effective local program, as determined by the governor. (V.A.C.S. Art. 4413(52), Secs. 4 (part), 7(a).)

Sec. 301.042. **CERTIFICATION OF PRIVATE INDUSTRY COUNCILS.** The governor shall certify a private industry council in each service delivery area when the governor determines that the appointment procedures and composition of the membership of the private industry council are consistent with the requirements of the federal act. (V.A.C.S. Art. 4413(52), Sec. 7(b).)

Sec. 301.043. **STANDARDS FOR LOCAL ADMINISTRATIVE ENTITY.** The governor shall prescribe standards for the selection of a local entity to administer programs authorized under the federal act to ensure that the entity can:

- (1) develop plans and provide for efficient and effective programs;
- (2) provide accurate management information when required; and
- (3) properly disburse, account for, and control all fund expenditures. (V.A.C.S. Art. 4413(52), Sec. 7(c).)

Sec. 301.044. **COMPOSITION OF PRIVATE INDUSTRY COUNCILS.** (a) The appropriate chief elected officials in each service delivery area shall select the members and the initial size of the private industry council for the area in accordance with procedures specified in the federal act.

(b) Each private industry council must include a representative of the local Texas Department of Human Services region. (V.A.C.S. Art. 4413(52), Sec. 7(d).)

Sec. 301.045. **AGREEMENT FOR LOCAL PROCEDURES.** The appropriate chief elected officials in a service delivery area shall enter into an agreement with the private industry council of the area to determine procedures for:

(1) the selection of the grant recipient, the planning entity, and the administrative entity for the service delivery area; and

(2) the development of the local job training plan. (V.A.C.S. Art. 4413(52), Sec. 7(e).)

Sec. 301.046. PREPARATION AND SUBMISSION OF LOCAL PLANS. The appropriate chief elected officials in each service delivery area and the private industry council of the area shall, in accordance with their agreement:

(1) prepare a plan that provides a comprehensive program of job training, employment, and related services in response to the needs of the eligible persons within the service delivery area;

(2) submit the plan before the 120th day before the beginning date of the plan to the committee, each house of the legislature, and other entities as prescribed by the federal act; and

(3) develop jointly with the Texas State Employment Service those components of the state plan required under the Wagner-Peyser Act (29 U.S.C. Section 49g) that are applicable to that service delivery area. (V.A.C.S. Art. 4413(52), Sec. 9(a) (part).)

Sec. 301.047. APPROVAL OF LOCAL PLAN. The governor shall approve or disapprove a final local job training plan or modification according to the standards established by the federal act. (V.A.C.S. Art. 4413(52), Sec. 8(c) (part).)

Sec. 301.048. LOCAL IMPLEMENTATION; SERVICE DELIVERY AREA COORDINATION. (a) The appropriate chief elected officials in each service delivery area and the private industry council for the area shall:

(1) allocate available resources to its program of job training, employment, and related services;

(2) develop procedures and standards for the selection of eligible participants and their eligibility determination; and

(3) select service providers with a demonstrated capability to provide effective services and achieve performance goals.

(b) If a single labor market area contains more than one service delivery area, the appropriate chief elected officials and the private industry council for each of the applicable service delivery areas shall coordinate their activities as required by the federal act. (V.A.C.S. Art. 4413(52), Secs. 9(b), (c).)

Sec. 301.049. GOVERNOR'S COORDINATION AND SPECIAL SERVICES PLAN AND ACTIVITIES. (a) The governor or the governor's delegated agency shall:

(1) prepare a statement of goals and objectives for job training and placement programs;

(2) provide specifications for the design, development, and operation of a statewide uniform labor market information system to facilitate the timely availability of employment and training information throughout the state;

(3) develop and provide to service delivery areas information on a state and local basis regarding economic, industrial, and labor market conditions;

(4) plan, provide for the operation of, and evaluate special model or demonstration programs, including programs receiving financial assistance from private sources;

(5) make available to service delivery areas, with or without reimbursement and on request, appropriate information and technical assistance to assist in developing and implementing plans and programs; and

(6) provide preservice and in-service training to improve the professional capability of managers and technical staff of state agencies, local administrative entities, private industry councils, and contractors involved in planning and operating programs.

(b) The governor shall submit a coordination and special services plan to the United States secretary of labor in accordance with the federal act. (V.A.C.S. Art. 4413(52), Sec. 8(c) (part).)

Sec. 301.050. REVIEW AND COMMENT BY LEGISLATURE. (a) The legislature may review and comment on the job training plan submitted from each service delivery area.

(b) The governor shall submit the governor's coordination and special services plan to the lieutenant governor and the speaker of the house of representatives not later than February 1 of each odd-numbered year. The lieutenant governor and speaker shall refer the plan to the appropriate senate and house committees for review and comment. (V.A.C.S. Art. 4413(52), Sec. 8(a).)

Sec. 301.051. PERFORMANCE STANDARD VARIATIONS. The governor shall prescribe, within parameters established by the secretary, variations in the performance standards for programs under the federal act. The variations must recognize the economic, geographic, and demographic differences in the various regions of the state. (V.A.C.S. Art. 4413(52), Sec. 8(c) (part).)

Sec. 301.052. PROGRAM RECORDKEEPING, ACCOUNTABILITY, AND AUDITS. (a) The governor or the governor's delegated agency shall:

(1) establish and maintain a computerized statewide management information system to collect and maintain the financial, participant, and program information necessary to ensure monthly program accountability;

(2) develop and formally issue procedures to ensure consistency of definitions, formats, recordkeeping, information gathering, and reporting, including procedures concerning:

(A) planning and contracting;

(B) labor market information;

(C) financial management;

(D) participant tracking;

(E) monitoring;

(F) evaluations;

(G) audits;

(H) complaints and grievance procedures;

(I) personnel standards, including equal opportunity compliance; and

(J) property management;

(3) at least once annually, monitor or provide for the monitoring of each grant recipient and contractor to ensure compliance; and

(4) at least once every two years, provide for an independent audit of each recipient of funds authorized under the federal act.

(b) The appropriate chief elected officials in each service delivery area and the private industry council of the area shall, in accordance with their agreement:

(1) prepare and submit an annual report to the governor in accordance with the federal act;

(2) establish procedures for providing oversight of all programs conducted under the local job training plan;

(3) maintain records and a management information system designed to facilitate uniform compilation and analysis of programmatic and financial information for the service delivery area, consistent with federal and state requirements; and

(4) establish fiscal, audit, and debt-collection procedures to ensure the proper disbursement, use, and accounting of all funds provided under the federal act. (V.A.C.S. Art. 4413(52), Secs. 8(c) (part), 9(a) (part).)

Sec. 301.053. PROGRAMS FOR STUDENT DROPOUTS. (a) To provide educational services to student dropouts, the department may contract with public community and junior colleges and private, nonprofit organizations that conduct model or exemplary youth programs that meet the unique educational needs of student dropouts. In entering into a contract, the department must follow the same procedure as a state agency contracting with a private consultant under Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes).



(b) A contract entered into under this section must be structured to encourage partnerships among public school districts, public community and junior colleges, private industry councils, and the private, nonprofit organizations.

(c) A program provided under a contract entered into under this section must provide services that attempt to:

- (1) return student dropouts to the public school system;
- (2) prepare student dropouts to complete the requirements for a general equivalency or adult proficiency level diploma; and
- (3) prepare student dropouts to obtain permanent employment.

(d) A program provided under a contract entered into under this section must provide a curriculum that is flexible and innovative and that provides training in basic skills.

(e) An organization providing a program under this section shall document its overall strategy and success rate in educating student dropouts and provide this information to each school district in the area the organization serves. The organization shall request information from each of the school districts regarding the referral process, curriculum, and instructional resources of the program.

(f) The primary standard to be used in determining the success rate of a program under this section is the rate at which student dropouts in the program:

- (1) return to public school;
- (2) acquire a general equivalency or adult proficiency level diploma;
- (3) obtain permanent employment; and
- (4) are not being arrested or prosecuted for a crime. (V.A.C.S. Art. 4413(52), Sec. 9A.)

#### CHAPTER 302. EMPLOYMENT COUNSELING FOR DISPLACED HOMEMAKERS

Sec. 302.001. DEFINITIONS

Sec. 302.002. JOB COUNSELING PROGRAM

Sec. 302.003. PERSONNEL; OFFICE

Sec. 302.004. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS

#### CHAPTER 302. EMPLOYMENT COUNSELING FOR DISPLACED HOMEMAKERS

Sec. 302.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Employment Commission.
- (2) "Displaced homemaker" means a person who:
  - (A) has worked without pay as a homemaker for the person's family;
  - (B) is not gainfully employed;
  - (C) has had, or would have, difficulty in obtaining employment; and
  - (D) has depended on:
    - (i) the income of a family member for financial support and has lost that income; or
    - (ii) government assistance as the parent of dependent children and is no longer eligible for that assistance. (V.A.C.S. Art. 5221g, Sec. 2.)

Sec. 302.002. JOB COUNSELING PROGRAM. (a) The commission, through a special assistance job counseling program, shall:

- (1) provide counseling for displaced homemakers;
  - (2) assist displaced homemakers in obtaining training and education; and
  - (3) place displaced homemakers in suitable employment.
- (b) The counseling must:
- (1) consider and build on the skills and experiences of the homemaker; and

(2) prepare the person, through employment counseling, to reenter the paid work force and develop and improve job skills.

(c) The commission shall design the program specifically for persons reentering the paid work force after a number of years as homemakers to enable them to assume or resume a valuable role in the paid work force commensurate with the homemakers' talents and abilities.

(d) The commission may not charge a fee for participation in the program by a displaced homemaker. (V.A.C.S. Art. 5221g, Secs. 1 (part), 3.)

Sec. 302.003. PERSONNEL; OFFICE. The commission shall use its personnel, services, facilities, and equipment to operate the job counseling program. (V.A.C.S. Art. 5221g, Sec. 4.)

Sec. 302.004. COOPERATION BY STATE AGENCIES AND POLITICAL SUBDIVISIONS. State agencies and political subdivisions of the state shall cooperate with the commission in obtaining suitable employment for displaced homemakers counseled by the commission. (V.A.C.S. Art. 5221g, Sec. 5.)

[Chapters 303–400 reserved for expansion]

## TITLE 5. WORKERS' COMPENSATION

### SUBTITLE A. TEXAS WORKERS' COMPENSATION ACT

#### CHAPTER 401. GENERAL PROVISIONS

##### SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 401.001. SHORT TITLE

Sec. 401.002. APPLICATION OF SUNSET ACT

[Sections 401.003–401.010 reserved for expansion]

##### SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS

Sec. 401.012. DEFINITION OF EMPLOYEE

Sec. 401.013. DEFINITION OF INTOXICATION

[Sections 401.014–401.020 reserved for expansion]

##### SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 401.021. APPLICATION OF OTHER ACTS

Sec. 401.022. DISCRIMINATION PROHIBITED

Sec. 401.023. INTEREST OR DISCOUNT RATE

#### CHAPTER 401. GENERAL PROVISIONS

##### SUBCHAPTER A. SHORT TITLE; APPLICATION OF SUNSET ACT

Sec. 401.001. SHORT TITLE. This subtitle may be cited as the Texas Workers' Compensation Act. (V.A.C.S. Art. 8308–1.01.)

Sec. 401.002. APPLICATION OF SUNSET ACT. The Texas Workers' Compensation Commission and the Texas Workers' Compensation Research Center are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 1995, and the research center and the legislative oversight committee are abolished September 1, 1995. (V.A.C.S. Art. 8308–1.02(b).)

[Sections 401.003–401.010 reserved for expansion]

## SUBCHAPTER B. DEFINITIONS

Sec. 401.011. GENERAL DEFINITIONS. In this subtitle:

(1) "Adjuster" means a person licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07–4, Vernon's Texas Insurance Code).

(2) "Administrative violation" means a violation of this subtitle or a rule adopted under this subtitle that is subject to penalties and sanctions as provided by this subtitle.

(3) "Agreement" means the resolution by the parties to a dispute under this subtitle of one or more issues regarding an injury, death, coverage, compensability, or compensation. The term does not include a settlement.

(4) "Alien" means a person who is not a citizen of the United States.

(5) "Benefit" means a medical benefit, an income benefit, a death benefit, or a burial benefit based on a compensable injury.

(6) "Certified self-insurer" means a private employer granted a certificate of authority to self-insure, as authorized by this subtitle, for the payment of compensation.

(7) "Child" means a son or daughter. The term includes an adopted child or a stepchild who is a dependent of the employee.

(8) "Commission" means the Texas Workers' Compensation Commission.

(9) "Commute" means to pay in a lump sum.

(10) "Compensable injury" means an injury that arises out of and in the course and scope of employment for which compensation is payable under this subtitle.

(11) "Compensation" means payment of a benefit.

(12) "Course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

(A) transportation to and from the place of employment unless:

(i) the transportation is furnished as a part of the contract of employment or is paid for by the employer; .

(ii) the means of the transportation are under the control of the employer; or

(iii) the employee is directed in the employee's employment to proceed from one place to another place; or

(B) travel by the employee in the furtherance of the affairs or business of the employer if the travel is also in furtherance of personal or private affairs of the employee unless:

(i) the travel to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the travel; and

(ii) the travel would not have been made had there been no affairs or business of the employer to be furthered by the travel.

(13) "Death benefit" means a payment made under this subtitle to a legal beneficiary because of the death of an employee.

(14) "Dependent" means an individual who receives a regular or recurring economic benefit that contributes substantially to the individual's welfare and livelihood if the individual is eligible for distribution of benefits under Chapter 408.

(15) "Designated doctor" means a doctor appointed by mutual agreement of the parties or by the commission to recommend a resolution of a dispute as to the medical condition of an injured employee.

(16) "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

(17) "Doctor" means a doctor of medicine, osteopathic medicine, optometry, dentistry, podiatry, or chiropractic who is licensed and authorized to practice.

(18) "Employer" means, unless otherwise specified, a person who makes a contract of hire, employs one or more employees, and has workers' compensation insurance coverage. The term includes a governmental entity that self-insures, either individually or collectively.

(19) "Health care" includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

(A) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;

(B) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;

(C) psychological services prescribed by a doctor;

(D) the services of a hospital or other health care facility;

(E) a prescription drug, medicine, or other remedy; and

(F) a medical or surgical supply, appliance, brace, artificial member, or prosthesis, including training in the use of the appliance, brace, member, or prosthesis.

(20) "Health care facility" means a hospital, emergency clinic, outpatient clinic, or other facility providing health care.

(21) "Health care practitioner" means:

(A) an individual who is licensed to provide or render and provides or renders health care; or

(B) a nonlicensed individual who provides or renders health care under the direction or supervision of a doctor.

(22) "Health care provider" means a health care facility or health care practitioner.

(23) "Impairment" means any anatomic or functional abnormality or loss existing after maximum medical improvement that results from a compensable injury and is reasonably presumed to be permanent.

(24) "Impairment rating" means the percentage of permanent impairment of the whole body resulting from a compensable injury.

(25) "Income benefit" means a payment made to an employee for a compensable injury. The term does not include a medical benefit, death benefit, or burial benefit.

(26) "Injury" means damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm. The term includes an occupational disease.

(27) "Insurance carrier" means:

(A) an insurance company;

(B) a certified self-insurer for workers' compensation insurance; or

(C) a governmental entity that self-insures, either individually or collectively.

(28) "Insurance company" means a person authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(29) "Legal beneficiary" means a person entitled to receive a death benefit under this subtitle.

(30) "Maximum medical improvement" means the earlier of:

(A) the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated; or

(B) the expiration of 104 weeks from the date on which income benefits begin to accrue.

(31) "Medical benefit" means payment for health care reasonably required by the nature of a compensable injury and intended to:

(A) cure or relieve the effects naturally resulting from the compensable injury, including reasonable expenses incurred by the employee for necessary treatment to cure and relieve the employee from the effects of an occupational disease before and after the employee knew or should have known the nature of the disability and its relationship to the employment;

(B) promote recovery; or

(C) enhance the ability of the employee to return to or retain employment.

(32) "Objective" means independently verifiable or confirmable results that are based on recognized laboratory or diagnostic tests, or signs confirmable by physical examination.

(33) "Objective clinical or laboratory finding" means a medical finding of impairment resulting from a compensable injury, based on competent objective medical evidence, that is independently confirmable by a doctor, including a designated doctor, without reliance on the subjective symptoms perceived by the employee.

(34) "Occupational disease" means a disease arising out of and in the course of employment that causes damage or harm to the physical structure of the body, including a repetitive trauma injury. The term includes a disease or infection that naturally results from the work-related disease. The term does not include an ordinary disease of life to which the general public is exposed outside of employment, unless that disease is an incident to a compensable injury or occupational disease.

(35) "Penalty" means a fine established by this subtitle.

(36) "Repetitive trauma injury" means damage or harm to the physical structure of the body occurring as the result of repetitious, physically traumatic activities that occur over time and arise out of and in the course and scope of employment.

(37) "Representative" means a person, including an attorney, authorized by the commission to assist or represent an employee, a person claiming a death benefit, or an insurance carrier in a matter arising under this subtitle that relates to the payment of compensation.

(38) "Research center" means the Texas Workers' Compensation Research Center established under Chapter 404.

(39) "Sanction" means a penalty or other punitive action or remedy imposed by the commission on an insurance carrier, representative, employee, employer, or health care provider for an act or omission in violation of this subtitle or a rule or order of the commission.

(40) "Settlement" means a final resolution of all the issues in a workers' compensation claim that are permitted to be resolved under the terms of this subtitle.

(41) "Subjective" means perceivable only by an employee and not independently verifiable or confirmable by recognized laboratory or diagnostic tests or signs observable by physical examination.

(42) "Treating doctor" means the doctor who is primarily responsible for the employee's health care for an injury.

(43) "Wages" includes all forms of remuneration payable for a given period to an employee for personal services. The term includes the market value of board, lodging, laundry, fuel, and any other advantage that can be estimated in money that the employee receives from the employer as part of the employee's remuneration.

(44) "Workers' compensation insurance coverage" means:

(A) an approved insurance policy to secure the payment of compensation;

(B) coverage to secure the payment of compensation through self-insurance as provided by this subtitle; or

(C) coverage provided by a governmental entity to secure the payment of compensation. (V.A.C.S. Arts. 8308-1.03(1-16, 17 (part), 19-29, 31-37, 39-43, 45-48).)

Sec. 401.012. DEFINITION OF EMPLOYEE. (a) In this subtitle, “employee” means each person in the service of another under a contract of hire, whether express or implied, or oral or written.

(b) The term “employee” includes:

(1) an employee employed in the usual course and scope of the employer’s business who is directed by the employer temporarily to perform services outside the usual course and scope of the employer’s business; and

(2) a person, other than an independent contractor or the employee of an independent contractor, who is engaged in construction, remodeling, or repair work for the employer at the premises of the employer.

(c) The term “employee” does not include:

(1) a master of or a seaman on a vessel engaged in interstate or foreign commerce; or

(2) a person whose employment is not in the usual course and scope of the employer’s business.

(d) A person who is an employee for the purposes of this subtitle and engaged in work that otherwise may be legally performed is an employee despite:

(1) a license, permit, or certificate violation arising under state law or municipal ordinance; or

(2) a violation of a law regulating wages, hours, or work on Sunday.

(e) This section may not be construed to relieve from fine or imprisonment any individual, firm, or corporation employing or performing work or a service prohibited by a statute of this state or a municipal ordinance. (V.A.C.S. Art. 8308–1.03(18).)

Sec. 401.013. DEFINITION OF INTOXICATION. (a) In this subtitle, “intoxication” means the state of:

(1) having an alcohol concentration as defined by Article 67011–1, Revised Statutes, of 0.10 or more; or

(2) not having the normal use of mental or physical faculties resulting from the voluntary introduction into the body of:

(A) an alcoholic beverage, as defined by Section 1.04, Alcoholic Beverage Code;

(B) a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety Code;

(C) a dangerous drug, as defined by Section 483.001, Health and Safety Code;

(D) an abusable glue or aerosol paint, as defined by Section 485.001, Health and Safety Code; or

(E) any similar substance, the use of which is regulated under state law.

(b) The term “intoxication” does not include the loss of normal use of mental or physical faculties resulting from the introduction into the body of a substance:

(1) taken under and in accordance with a prescription written for the employee by the employee’s doctor; or

(2) listed under Subsection (a) by inhalation or absorption incidental to the employee’s work. (V.A.C.S. Art. 8308–1.03(30).)

[Sections 401.014–401.020 reserved for expansion]

### SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Sec. 401.021. APPLICATION OF OTHER ACTS. Except as otherwise provided by this subtitle:

(1) a proceeding, hearing, judicial review, or enforcement of a commission order, decision, or rule is governed by Sections 1 through 12, other than Sections 4(a)(3) and 4(b), and by Sections 13, 14, 14a, 15, 17, 19, and 19A, Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon’s Texas Civil Statutes);

(2) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), applies to a proceeding under this subtitle, other than:

- (A) a benefit review conference;
  - (B) a contested case hearing;
  - (C) an appeals panel proceeding;
  - (D) arbitration; or
  - (E) another proceeding involving a determination on a workers' compensation claim;
- and

(3) the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), applies to a record of the commission or the research center. (V.A.C.S. Art. 8308-1.02(a).)

Sec. 401.022. DISCRIMINATION PROHIBITED. (a) This subtitle may not be applied to discriminate because of race, sex, national origin, or religion.

(b) This section does not prohibit consideration of an anatomical difference in application of the impairment guidelines under Chapter 408 in rating an injury or a disease such as, but not limited to, breast cancer or an inguinal hernia. If an impairment rating assigns different values to the same injury for males and females, the higher value shall be applied. (V.A.C.S. Art. 8308-1.021.)

Sec. 401.023. INTEREST OR DISCOUNT RATE. (a) Interest or a discount under this subtitle shall be computed at the rate provided by this section.

(b) The commission shall compute and publish the interest and discount rate quarterly, using the auction rate quoted on a discount basis for the 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the date nearest to the 15th day preceding the first day of the calendar quarter for which the rate is to be effective. For this purpose, calendar quarters begin January 1, April 1, July 1, and October 1. (V.A.C.S. Art. 8308-1.04.)

CHAPTER 402. TEXAS WORKERS' COMPENSATION COMMISSION

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CHAPTER 402. TEXAS WORKERS' COMPENSATION COMMISSION

SUBCHAPTER A. ORGANIZATION

Sec. 402.001. MEMBERSHIP REQUIREMENTS. (a) The Texas Workers' Compensation Commission is composed of six members appointed by the governor with the advice and consent of the senate.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Section 401.011(16) does not apply to the use of the term "disability" in this subsection.

(c) Three members of the commission must be employers of labor and three members of the commission must be wage earners.

(d) In making appointments to the commission, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider:



- (1) the geographic location of a prospective appointee's domicile;
- (2) the prospective appointee's experience as an employer or wage earner;
- (3) the number of employees employed by a prospective member who would represent employers; and
- (4) the type of work performed by a prospective member who would represent wage earners.

(e) The governor shall consider the factors listed in Subsection (d) in appointing a member to fill a vacancy on the commission.

(f) In making an appointment to the commission, the governor shall consider recommendations made by groups that represent employers or wage earners. (V.A.C.S. Arts. 8308-2.01(b), (c), (d); New.)

Sec. 402.002. **TERMS; VACANCY.** (a) Members of the commission hold office for staggered six-year terms, with the terms of one member representing employers and one member representing wage earners expiring on February 1 of each odd-numbered year.

(b) If a vacancy occurs during a term, the governor shall fill the vacancy for the unexpired term. The replacement must be from the group represented by the member being replaced. (V.A.C.S. Arts. 8308-2.02(a), (c).)

Sec. 402.003. **EFFECT OF LOBBYING ACTIVITY.** A member of the commission may not be a lobbyist required to be registered under Chapter 305, Government Code, if the primary purpose of the person's employment is to influence the passage of legislation. (V.A.C.S. Art. 8308-2.01(f).)

Sec. 402.004. **VOTING REQUIREMENTS.** (a) The commission may take action only by a majority vote of its membership.

(b) Decisions regarding the employment of an executive director require the affirmative vote of at least two commissioners representing employers and two commissioners representing wage earners. (V.A.C.S. Art. 8308-2.04.)

Sec. 402.005. **REMOVAL OF COMMISSION MEMBERS.** (a) It is a ground for removal from the commission that a member:

- (1) does not have at the time of appointment the qualifications required for appointment to the commission;
- (2) does not maintain during service on the commission the qualifications required for appointment to the commission;
- (3) cannot discharge because of illness or incapacity the member's duties for a substantial part of the term for which the member is appointed; or
- (4) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission knows that a potential ground for removal exists, the executive director shall notify the chairman of the commission of the ground. The chairman shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 8308-2.05.)

Sec. 402.006. **PROHIBITED GIFTS; ADMINISTRATIVE VIOLATION.** (a) A member or employee of the commission may not accept a gift, gratuity, or entertainment from a person having an interest in a matter or proceeding pending before the commission.

(b) A violation of Subsection (a) is a Class A administrative violation and constitutes a ground for removal from office or termination of employment. (V.A.C.S. Art. 8308-2.01(g).)

Sec. 402.007. **MEETINGS.** The commission shall meet at least once in each calendar quarter and may meet at other times at the call of the chairman or as provided by the rules of the commission. (V.A.C.S. Art. 8308-2.07.)

Sec. 402.008. **CHAIRMAN.** (a) The commission shall elect one of its members to serve as chairman for a two-year term expiring February 1 of each odd-numbered year.

(b) The chairman may vote on all matters before the commission. (V.A.C.S. Arts. 8308-2.03(a) (part), (b).)

Sec. 402.009. LEAVE OF ABSENCE. (a) An employer may not terminate the employment of an employee who is appointed as a member of the commission because of the exercise by the employee of duties required as a commission member.

(b) A member of the commission is entitled to a leave of absence from employment for the time required to perform commission duties. During the leave of absence, the member may not be subjected to loss of time, vacation time, or other benefits of employment, other than salary. (V.A.C.S. Art. 8308-2.08.)

Sec. 402.010. CIVIL LIABILITY OF MEMBER. A member of the commission is not liable in a civil action for an act performed in good faith in the execution of duties as a commission member. (V.A.C.S. Art. 8308-2.01(e).)

Sec. 402.011. REIMBURSEMENT. (a) A member of the commission is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member of the commission. Reimbursement under this subsection may not exceed a limit established in the General Appropriations Act.

(b) A member is entitled to reimbursement for actual lost wages, if any, due to attendance at commission meetings. Reimbursement under this subsection may not exceed \$100 a day and \$12,000 a year. (V.A.C.S. Art. 8308-2.06.)

[Sections 402.012-402.020 reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATION

Sec. 402.021. COMMISSION DIVISIONS. (a) The commission shall have:

- (1) a division of workers' health and safety;
- (2) a division of medical review;
- (3) a division of compliance and practices;
- (4) a division of hearings; and
- (5) a division of risk management.

(b) In addition to the divisions listed by Subsection (a), the executive director, with the approval of the commission, may establish divisions within the commission for effective administration and performance of commission functions. The executive director may allocate and reallocate functions among the divisions.

(c) The executive director shall appoint the directors of the divisions of the commission. The directors serve at the pleasure of the executive director. (V.A.C.S. Art. 8308-2.12.)

Sec. 402.022. PUBLIC INTEREST INFORMATION. (a) The executive director shall prepare information of public interest describing the functions of the commission and the procedures by which complaints are filed with and resolved by the commission.

(b) The executive director shall make the information available to the public and appropriate state agencies. (V.A.C.S. Art. 8308-2.13(a).)

Sec. 402.023. COMPLAINT INFORMATION. (a) The executive director shall keep an information file about each written complaint filed with the commission that is unrelated to a specific workers' compensation claim.

(b) The commission shall notify the parties to a complaint that is unrelated to a specific workers' compensation claim of the status of the complaint at least quarterly until final disposition of the complaint unless notice would jeopardize an undercover investigation. (V.A.C.S. Art. 8308-2.13(b).)

Sec. 402.024. PUBLIC PARTICIPATION. (a) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on issues under the general jurisdiction of the commission.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to workers' compensation proceedings.

(c) Section 401.011(16) does not apply to the use of "disability" in Subsection (b). (V.A.C.S. Arts. 8308-2.13(c), (d); New.)

Sec. 402.025. AUDIT. The financial transactions of the commission are subject to audit by the state auditor in accordance with Chapter 321, Government Code. (V.A.C.S. Art. 8308-2.27.)

[Sections 402.026-402.040 reserved for expansion]

### SUBCHAPTER C. EXECUTIVE DIRECTOR AND PERSONNEL

Sec. 402.041. EXECUTIVE DIRECTOR. (a) The executive director is the executive officer and administrative head of the commission. The executive director exercises all rights, powers, and duties imposed or conferred by law on the commission, except for rulemaking and other rights, powers, and duties specifically reserved under this subtitle to members of the commission.

(b) The executive director shall hire personnel as necessary to administer this subtitle.

(c) The executive director serves at the pleasure of the commission. (V.A.C.S. Art. 8308-2.10.)

Sec. 402.042. GENERAL POWERS AND DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director shall conduct the day-to-day operations of the commission in accordance with policies established by the commission and otherwise implement commission policy.

(b) The executive director may:

- (1) investigate misconduct;
- (2) hold hearings;
- (3) issue subpoenas to compel the attendance of witnesses and the production of documents;
- (4) administer oaths;
- (5) take testimony directly or by deposition or interrogatory;
- (6) assess and enforce penalties established under this subtitle;
- (7) enter appropriate orders as authorized by this subtitle;
- (8) correct clerical errors in the entry of orders;
- (9) institute an action in the commission's name to enjoin the violation of this subtitle;
- (10) initiate an action under Section 410.254 to intervene in a judicial proceeding;
- (11) prescribe the form, manner, and procedure for transmission of information to the commission; and
- (12) delegate all powers and duties as necessary.

(c) The executive director is the agent for service of process on out-of-state employers. (V.A.C.S. Arts. 8308-2.11(a), (b), (c), (d), (e), (f), (h).)

Sec. 402.043. ADMINISTRATIVE ASSISTANTS. The executive director shall employ and supervise:

- (1) one person representing wage earners permanently assigned to act as administrative assistant to the members of the commission who represent wage earners; and
- (2) one person representing employers permanently assigned to act as administrative assistant to the members of the commission who represent employers. (V.A.C.S. Art. 8308-2.091.)

Sec. 402.044. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS. (a) The executive director shall develop an intra-agency career ladder program. The program

shall require intra-agency postings of all nonentry level positions concurrently with any public posting.

(b) The executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection. (V.A.C.S. Arts. 8308-2.11(i), (j).)

Sec. 402.045. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT. (a) The executive director shall prepare and maintain a written policy statement approved by the commission to ensure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

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

(2) a comprehensive analysis that meets federal and state guidelines of the commission's work force;

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

(4) reasonable methods to address those areas of significant underuse appropriately.

(b) A policy statement prepared under this section must:

(1) cover an annual period;

(2) be updated at least annually; and

(3) be filed with the governor's office.

(c) The governor's office shall deliver a biennial report to the legislature based on the information received under this section. The report may be made separately or as part of other biennial reports made to the legislature. (V.A.C.S. Arts. 8308-2.11(k), (l), (m).)

[Sections 402.046-402.060 reserved for expansion]

#### SUBCHAPTER D. GENERAL POWERS AND DUTIES OF COMMISSION

Sec. 402.061. ADOPTION OF RULES. The commission shall adopt rules as necessary for the implementation and enforcement of this subtitle. (V.A.C.S. Art. 8308-2.09(a).)

Sec. 402.062. ACCEPTANCE OF GIFTS, GRANTS, AND DONATIONS. The commission may accept gifts, grants, or donations as provided by rules adopted by the commission. (V.A.C.S. Art. 8308-2.09(d).)

Sec. 402.063. APPOINTMENT OF EXECUTIVE DIRECTOR. The commission shall appoint the executive director of the commission. (V.A.C.S. Art. 8308-2.09(g).)

Sec. 402.064. FEES. In addition to fees established by this subtitle, the commission shall set reasonable fees for services provided to persons requesting services from the commission, including services provided under Subchapter E. (V.A.C.S. Arts. 8308-2.09(h), 8308-2.39.)

Sec. 402.065. EMPLOYMENT OF COUNSEL. The commission may employ counsel to represent the commission in any legal action the commission is authorized to initiate. (V.A.C.S. Art. 8308-2.09(i).)

Sec. 402.066. RECOMMENDATIONS TO LEGISLATURE. (a) The commission shall consider and recommend to the legislature changes to this subtitle.

(b) The commission shall forward the recommended changes to the legislature not later than December 1 of each even-numbered year. (V.A.C.S. Art. 8308-2.09(j).)

Sec. 402.067. ADVISORY COMMITTEES. The commission may appoint advisory committees as it considers necessary. (V.A.C.S. Art. 8308-2.09(k).)

Sec. 402.068. DELEGATION OF RIGHTS AND DUTIES PROHIBITED. Except as provided by Section 402.065, the commission may not delegate rights and duties imposed on it by this subchapter. (V.A.C.S. Art. 8308-2.09(l).)

Sec. 402.069. **QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.** The commission shall provide to its members and employees, as often as necessary, information regarding their:

- (1) qualifications for office or employment under this subtitle; and
- (2) responsibilities under applicable law relating to standards of conduct for state officers or employees. (V.A.C.S. Art. 8308-2.09(b).)

Sec. 402.070. **ANNUAL REPORT.** (a) The commission 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 commission during the preceding fiscal year.

(b) The report required under this section must be in the form and reported in the time provided by the General Appropriations Act. (V.A.C.S. Art. 8308-2.09(c).)

Sec. 402.071. **REPRESENTATIVES.** (a) The commission shall establish qualifications for a representative and shall adopt rules establishing procedures for authorization of representatives.

(b) A representative may receive a fee for providing representation under this subtitle only if the representative is:

- (1) an adjuster representing an insurance carrier; or
- (2) licensed to practice law. (V.A.C.S. Art. 8308-2.09(e).)

Sec. 402.072. **SANCTIONS.** Only the commission may impose:

- (1) a sanction that deprives a person of the right to practice before the commission or of the right to receive remuneration under this subtitle for a period exceeding 30 days; or
- (2) another sanction suspending for more than 30 days or revoking a license, certification, or permit required for practice in the field of workers' compensation. (V.A.C.S. Art. 8308-2.09(f).)

[Sections 402.073-402.080 reserved for expansion]

## SUBCHAPTER E. RECORDS AND EMPLOYEE INFORMATION

Sec. 402.081. **COMMISSION RECORDS.** (a) The executive director is the custodian of the commission's records and shall perform the duties of a custodian required by law, including providing copies and the certification of records.

(b) The executive director may destroy a record maintained by the commission pertaining to an injury after the 50th anniversary of the date of the injury to which the record refers unless benefits are being paid on the claim on that date.

(c) A record maintained by the commission may be preserved in any format permitted by Chapter 441, Government Code, and rules adopted by the Texas State Library and Archives Commission under that chapter. (V.A.C.S. Art. 8308-2.11(g).)

Sec. 402.082. **INJURY INFORMATION MAINTAINED BY COMMISSION.** The commission shall maintain information on every compensable injury as to the:

- (1) race, ethnicity, and sex of the claimant;
- (2) classification of the injury;
- (3) amount of wages earned by the claimant before the injury; and
- (4) amount of compensation received by the claimant. (V.A.C.S. Art. 8308-2.13(e).)

Sec. 402.083. **CONFIDENTIALITY OF INJURY INFORMATION.** (a) Information in or derived from a claim file regarding an employee is confidential and may not be disclosed by the commission except as provided by this subtitle.

(b) Information concerning an employee who has been finally adjudicated of wrongfully obtaining payment under Section 415.008 of this code or Section 32.51, Penal Code, is not confidential. (V.A.C.S. Arts. 8308-2.31(a), (b).)

Sec. 402.084. RECORD CHECK; RELEASE OF INFORMATION. (a) The commission shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

- (A) open or pending before the commission;
- (B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the commission for this purpose and provides all required information.

(b) Information on a claim may be released as provided by Subsection (a) to:

- (1) the employee or the employee's legal beneficiary;
- (2) the employee's or the legal beneficiary's representative;
- (3) the employer at the time of injury;
- (4) the insurance carrier;

(5) the Texas Certified Self-Insurer Guaranty Association established under Subchapter G, Chapter 407, if that association has assumed the obligations of an impaired employer;

(6) the Texas Property and Casualty Insurance Guaranty Association, if that association has assumed the obligations of an impaired insurance company; or

(7) a third-party litigant in a lawsuit in which the cause of action arises from the incident that gave rise to the injury.

(c) The requirements of Subsection (a)(1) do not apply to a request from a third-party litigant described by Subsection (b)(7). (V.A.C.S. Arts. 8308-2.31(c), (d).)

Sec. 402.085. EXCEPTIONS TO CONFIDENTIALITY. (a) The commission shall release information on a claim to:

- (1) the Texas Department of Insurance for any statutory or regulatory purpose;
- (2) a legislative committee for legislative purposes;

(3) a state or federal elected official requested in writing to provide assistance by a constituent who qualifies to obtain injury information under Section 402.084(b), if the request for assistance is provided to the commission; and

(4) the research center for research purposes.

(b) The commission may release information on a claim to a governmental agency, political subdivision, or regulatory body to use to:

- (1) investigate an allegation of a criminal offense or licensing or regulatory violation;
- (2) provide:
  - (A) unemployment compensation benefits;
  - (B) crime victims compensation benefits;
  - (C) vocational rehabilitation services; or
  - (D) health care benefits;

(3) investigate occupational safety or health violations; or

(4) verify income on an application for benefits under an income-based state or federal assistance program. (V.A.C.S. Art. 8308-2.32.)

Sec. 402.086. TRANSFER OF CONFIDENTIALITY. (a) Information relating to a claim that is confidential under this subtitle remains confidential when released to any person, except when used in court for the purposes of an appeal.

(b) This section does not prohibit an employer from releasing information about a former employee to another employer with whom the employee has applied for employment, if that information was lawfully acquired by the employer releasing the information. (V.A.C.S. Art. 8308-2.36.)

Sec. 402.087. INFORMATION AVAILABLE TO PROSPECTIVE EMPLOYERS. (a) A prospective employer who has workers' compensation insurance coverage and who complies with this subchapter is entitled to obtain information on the prior injuries of an applicant for employment if the employer obtains written authorization from the applicant before making the request.

(b) The employer must make the request by telephone or file the request in writing not later than the 14th day after the date on which the application for employment is made.

(c) The request must include the applicant's name, address, and social security number.

(d) If the request is made in writing, the authorization must be filed simultaneously. If the request is made by telephone, the employer must file the authorization not later than the 10th day after the date on which the request is made. (V.A.C.S. Art. 8308-2.33.)

Sec. 402.088. REPORT OF PRIOR INJURY. (a) On receipt of a valid request made under and complying with Section 402.087, the commission shall review its records.

(b) If the commission finds that the applicant has made two or more general injury claims in the preceding five years, the commission shall release the date and description of each injury to the employer.

(c) The information may be released in writing or by telephone.

(d) If the employer requests information on three or more applicants at the same time, the commission may refuse to release information until it receives the written authorization from each applicant.

(e) In this section, "general injury" means an injury other than an injury limited to one or more of the following:

- (1) an injury to a digit, limb, or member;
- (2) an inguinal hernia; or
- (3) vision or hearing loss. (V.A.C.S. Art. 8308-2.34.)

Sec. 402.089. FAILURE TO FILE AUTHORIZATION; ADMINISTRATIVE VIOLATION. (a) An employer who receives information by telephone from the commission under Section 402.088 and who fails to file the necessary authorization in accordance with Section 402.087 commits a Class C administrative violation.

(b) Each failure to file an authorization is a separate violation. (V.A.C.S. Art. 8308-2.35.)

Sec. 402.090. STATISTICAL INFORMATION. The commission, the research center, or any other governmental agency may prepare and release statistical information if the identity of an employee is not explicitly or implicitly disclosed. (V.A.C.S. Art. 8308-2.38.)

Sec. 402.091. FAILURE TO MAINTAIN CONFIDENTIALITY; OFFENSE; PENALTY. (a) A person commits an offense if the person knowingly, intentionally, or recklessly publishes, discloses, or distributes information that is confidential under this subchapter to a person not authorized to receive the information directly from the commission.

(b) A person commits an offense if the person knowingly, intentionally, or recklessly receives information that is confidential under this subchapter and that the person is not authorized to receive.

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

(d) An offense under this section may be prosecuted in a court in:

- (1) Travis County; or
- (2) the county where the information was unlawfully received, published, disclosed, or distributed.

(e) A district court in Travis County has jurisdiction to enjoin the use, publication, disclosure, or distribution of confidential information under this section. (V.A.C.S. Art. 8308-2.37.)

## CHAPTER 403. COMMISSION FINANCING

### Sec. 403.001. COMMISSION FUNDS

- Sec. 403.002. MAINTENANCE TAXES
- Sec. 403.003. RATE OF ASSESSMENT
- Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS
- Sec. 403.005. TAX RATE SURPLUS OR DEFICIT
- Sec. 403.006. SUBSEQUENT INJURY FUND
- Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND

CHAPTER 403. COMMISSION FINANCING

Sec. 403.001. COMMISSION FUNDS. (a) Except as provided by Sections 403.006 and 403.007 or as otherwise provided by law, money collected under this subtitle, including administrative penalties and advance deposits for purchase of services, shall be deposited in the general revenue fund of the state treasury to the credit of the commission.

(b) The money may be spent as authorized by legislative appropriation on warrants issued by the comptroller under requisitions made by the commission. (V.A.C.S. Art. 8308-2.21.)

Sec. 403.002. MAINTENANCE TAXES. (a) Each insurance carrier, other than a governmental entity, shall pay an annual maintenance tax to pay the costs of administering this subtitle.

(b) The assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums.

(c) A workers' compensation insurance company is taxed at the rate established under Section 403.003. The tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Article 5.68, Insurance Code.

(d) Each certified self-insurer shall pay a fee and maintenance taxes as provided by Subchapter F, Chapter 407. (V.A.C.S. Arts. 8308-2.22(a), (b).)

Sec. 403.003. RATE OF ASSESSMENT. (a) The commission shall set and certify to the Texas Department of Insurance the rate of maintenance tax assessment not later than October 31 of each year, taking into account:

- (1) any expenditure projected as necessary for the commission to administer this subtitle during the fiscal year for which the rate of assessment is set;
- (2) projected employee benefits paid from general revenues;
- (3) a surplus or deficit produced by the tax in the preceding year; and
- (4) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, gifts, and penalties recovered under this subtitle.

(b) In setting the rate of assessment, the commission may not consider revenue or expenditures related to:

- (1) the division of risk management;
- (2) the research center; or
- (3) any other revenue or expenditure excluded from consideration by law. (V.A.C.S. Art. 8308-2.23.)

Sec. 403.004. COLLECTION OF TAX AFTER WITHDRAWAL FROM BUSINESS. The insurance commissioner or the executive director of the commission immediately shall proceed to collect taxes due under this chapter from an insurance carrier that withdraws from business in this state, using legal process as necessary. (V.A.C.S. Art. 8308-2.24.)

Sec. 403.005. TAX RATE SURPLUS OR DEFICIT. (a) If the tax rate set by the commission for a year does not produce sufficient revenue to make all expenditures authorized by legislative appropriation, the deficit shall be paid from the general revenue fund.

(b) If the tax rate set by the commission for a year produces revenue that exceeds the amount required to make all expenditures authorized by the legislature, the excess shall be deposited in the general revenue fund to the credit of the commission. (V.A.C.S. Art. 8308-2.25.)



Sec. 403.006. SUBSEQUENT INJURY FUND. (a) The subsequent injury fund is a special fund in the state treasury.

(b) The subsequent injury fund is liable for the payment of compensation as provided by Section 408.162.

(c) The executive director shall appoint an administrator for the subsequent injury fund. (V.A.C.S. Art. 8308-2.14.)

Sec. 403.007. FUNDING OF SUBSEQUENT INJURY FUND. (a) If a compensable death occurs and no legal beneficiary survives or a claim for death benefits is not timely made, the insurance carrier shall pay to the commission for deposit to the credit of the subsequent injury fund an amount equal to 364 weeks of the death benefits otherwise payable.

(b) The insurance carrier may elect or the commission may order that death benefits payable to the fund be commuted on written approval of the executive director. The commutation may be discounted for present payment at the rate established in Section 401.023, compounded annually.

(c) If a claim for death benefits is not filed with the commission by a legal beneficiary on or before the first anniversary of the date of the death of the employee, it is presumed, for purposes of this section only, that no legal beneficiary survived the deceased employee. The presumption does not apply against a minor beneficiary or an incompetent beneficiary for whom a guardian has not been appointed.

(d) If the insurance carrier makes payment to the subsequent injury fund and it is later determined by a final award of the commission or the final judgment of a court of competent jurisdiction that a legal beneficiary is entitled to the death benefits, the commission shall order the fund to reimburse the insurance carrier for the amount overpaid to the fund. (V.A.C.S. Art. 8308-2.26.)

#### CHAPTER 404. TEXAS WORKERS' COMPENSATION RESEARCH CENTER

Sec. 404.001. DEFINITIONS

Sec. 404.002. RESEARCH CENTER; GENERAL POWERS AND DUTIES

Sec. 404.003. RESEARCH CENTER FUNDING; MAINTENANCE TAX

Sec. 404.004. BOARD OF DIRECTORS

Sec. 404.005. TERMS; VACANCY

Sec. 404.006. CHAIRMAN; MEETINGS

Sec. 404.007. GENERAL POWERS AND DUTIES OF BOARD

Sec. 404.008. EXECUTIVE DIRECTOR; APPROPRIATIONS REQUEST

Sec. 404.009. RESEARCH AGENDA

Sec. 404.010. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY

#### CHAPTER 404. TEXAS WORKERS' COMPENSATION RESEARCH CENTER

Sec. 404.001. DEFINITIONS. In this chapter:

(1) "Board" means the board of directors of the Texas Workers' Compensation Research Center.

(2) "Executive director" means the executive director of the research center. (New.)

Sec. 404.002. RESEARCH CENTER; GENERAL POWERS AND DUTIES. (a) The Texas Workers' Compensation Research Center is an advisory body to the commission. The research center shall be constituted and operated in a manner that ensures that its research, findings, and conclusions are factual, fair, and unbiased.

(b) The research center shall conduct professional studies and research related to:

- (1) the delivery of benefits;
- (2) litigation and controversy related to workers' compensation;
- (3) insurance rates and rate-making procedures;
- (4) rehabilitation and reemployment of injured workers;

- (5) workplace health and safety issues;
- (6) the quality and cost of medical benefits; and
- (7) other matters relevant to the cost, quality, and operational effectiveness of the workers' compensation system.

(c) In addition to the studies and research conducted under Subsection (b), the research center shall conduct studies and research related to drugs in the workplace, giving priority to drug abuse in public and private establishments in which drug abuse could result in serious consequences to the public. The studies and research must include a survey designed to identify future needs and current efforts of employers to counteract drug abuse and its effects in the workplace. (V.A.C.S. Art. 8308-11.01.)

Sec. 404.003. RESEARCH CENTER FUNDING; MAINTENANCE TAX. (a) The research center is funded through the assessment of a maintenance tax collected annually from all insurance carriers except governmental entities.

(b) The commission shall set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations. The tax rate for insurance companies may not exceed one-tenth of one percent of the correctly reported gross workers' compensation insurance premiums. The tax rate for certified self-insurers may not exceed one-tenth of one percent of the total tax base of all certified self-insurers, as computed under Section 407.103(b).

(c) The tax imposed under Subsection (a) is in addition to all other taxes imposed on those insurance carriers for workers' compensation purposes.

(d) The tax on insurance companies shall be collected and paid in the same manner and at the same time as the maintenance tax established for the support of the Texas Department of Insurance under Article 5.68, Insurance Code. The tax on certified self-insurers shall be collected and paid in the same manner and at the same time as the self-insurer maintenance tax collected under Section 407.104.

(e) Amounts received under this section shall be deposited in the state treasury to the credit of a special fund to be used for the operation of the research center. (V.A.C.S. Arts. 8308-11.09(a), (b), (c), 8308a.)

Sec. 404.004. BOARD OF DIRECTORS. (a) The research center is governed by a board of directors, composed of:

- (1) a member of the commission, chosen by the commission, from the members who are wage earners;
- (2) a member of the commission, chosen by the commission, from the members who are employers of labor;
- (3) the public counsel of the office of public insurance counsel; and
- (4) six members of the public, two of whom are appointed by the speaker of the house of representatives, two of whom are appointed by the lieutenant governor, and two of whom are appointed by the governor.

(b) The public members of the board shall be appointed without regard to the race, color, disability, sex, religion, age, or national origin of the appointee. Appointments are not subject to senate confirmation.

(c) A member of the board is not liable for any act performed in good faith in the execution of duties as a board member.

(d) A member of the board may not receive remuneration for service on the board but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a board member, subject to any limit in the General Appropriations Act.

(e) Section 401.011(16) does not apply to the use of the term "disability" in Subsection (b). (V.A.C.S. Arts. 8308-11.02, 8308-11.06; New.)

Sec. 404.005. TERMS; VACANCY. (a) Public members of the board serve for staggered four-year terms, with the terms of three appointed members expiring February 1 of each odd-numbered year.

(b) A board member who also serves on the commission or as the public counsel of the office of public insurance counsel serves a term as determined by the appointing state agency.

(c) If a vacancy occurs during a term, the appointing officer or agency shall appoint a replacement who meets the qualifications of the vacated office for the unexpired term. (V.A.C.S. Art. 8308-11.04.)

Sec. 404.006. CHAIRMAN; MEETINGS. (a) The board shall elect an appointed member to serve as chairman for a two-year term. The term of the chairman expires on February 1 of each even-numbered year. The chairman may vote on all matters before the board.

(b) The board shall meet at least once in each calendar quarter and may meet at other times at the call of the chairman or as provided by board rules. (V.A.C.S. Arts. 8308-11.05, 8308-11.07.)

Sec. 404.007. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall:

(1) approve the research agenda and operating budget of the research center;

(2) report annually in writing to the governor and the legislature on the activities conducted by the research center; and

(3) adopt rules for the operations of the board and the research center.

(b) Through an appropriate use of research staff and research contracted with educational institutions or other public or private research institutions and workers' compensation experts, the board shall ensure:

(1) the quality of research products; and

(2) economy in the use of funds.

(c) The board shall publish and disseminate its studies to interested persons and may determine charges for the publications as necessary to achieve optimal dissemination.

(d) The board may:

(1) delegate powers to the executive director as it considers appropriate;

(2) contract with other persons, including institutions of higher education, for conducting studies for the research center;

(3) contract with the commission for a fiscal, personnel, or other support function; and

(4) appoint expert advisory committees to help:

(A) prepare the research agenda;

(B) develop requests for research proposals;

(C) evaluate research proposals;

(D) technically review research products; and

(E) achieve other purposes appropriate to the purposes of the research center.

(e) The board may take action by majority vote when a quorum is present. (V.A.C.S. Arts. 8308-11.03(a) (part), (b), (c), (d), (e).)

Sec. 404.008. EXECUTIVE DIRECTOR; APPROPRIATIONS REQUEST. (a) The board shall employ an executive director, who shall administer the research center in accordance with board policies.

(b) The executive director shall hire staff as necessary to accomplish the objectives of the research center.

(c) The executive director shall prepare a request for legislative appropriations for the operations of the research center. If the request is approved by the board, the board shall submit the request to the commission. The commission shall include the request in the commission's legislative appropriations request. (V.A.C.S. Arts. 8308-11.08(a), (b), 8308-11.09(d).)

Sec. 404.009. RESEARCH AGENDA. (a) The executive director annually shall prepare a research agenda for board review and approval.

(b) The board shall publish annually in the Texas Register a proposed research agenda and shall distribute the proposed agenda to educational institutions in this state that have a demonstrated research capacity.

(c) The board shall accept public comments on the proposed agenda and shall conduct a public hearing on the agenda if a hearing is requested by interested persons. (V.A.C.S. Arts. 8308–11.03(a) (part), 8308–11.08(c).)

Sec. 404.010. COORDINATION WITH OTHER STATE AGENCIES; CONFIDENTIALITY. (a) As required to fulfill the objectives of the research center, the research center is entitled to access to the files and records of:

- (1) the commission;
- (2) the Texas Employment Commission;
- (3) the Texas Department of Insurance;
- (4) the Texas Department of Human Services; and
- (5) other state agencies.

(b) A state agency shall assist and cooperate in providing the information to the research center.

(c) Information that is confidential under state law is accessible to the research center under rules of confidentiality and remains confidential. (V.A.C.S. Art. 8308–11.10.)

#### CHAPTER 405. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 405.001. DEFINITION

Sec. 405.002. COMPOSITION OF COMMITTEE

Sec. 405.003. COMMITTEE POWERS AND DUTIES

Sec. 405.004. REPORT

Sec. 405.005. VOCATIONAL REHABILITATION PILOT PROGRAM

Sec. 405.006. TEXAS LEGISLATIVE COUNCIL ASSISTANCE

#### CHAPTER 405. LEGISLATIVE OVERSIGHT COMMITTEE

Sec. 405.001. DEFINITION. In this chapter, “committee” means the Legislative Oversight Committee. (New.)

Sec. 405.002. COMPOSITION OF COMMITTEE. The Legislative Oversight Committee is composed of:

- (1) three members of the senate, appointed by the lieutenant governor; and
- (2) three members of the house of representatives, appointed by the speaker of the house of representatives. (V.A.C.S. Art. 8308–2.51(a).)

Sec. 405.003. COMMITTEE POWERS AND DUTIES. (a) The committee shall:

- (1) meet quarterly with the commission;
- (2) receive information about rules adopted by the commission or proposed for adoption by the commission; and
- (3) review specific recommendations for legislation proposed by the commission.

(b) The committee shall monitor the cost of income benefits under this subtitle, with emphasis on the availability and cost of supplemental income benefits.

(c) The committee may request reports and other information from the commission relating to the operation of the commission. (V.A.C.S. Arts. 8308–2.51(b), (c), (d), (e).)

Sec. 405.004. REPORT. (a) The committee shall report to the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each even-numbered year.

(b) The report must include:

- (1) identification of any problems in the workers’ compensation system, with recommendations for commission and legislative action;
- (2) an evaluation of the research conducted by the research center;

(3) the status of the effectiveness of the workers' compensation system to provide adequate, equitable, and timely benefits to injured workers at a reasonable cost to employers, with recommendations for any additional necessary research; and

(4) recommendations for legislative action. (V.A.C.S. Arts. 8308-2.51(f), (g).)

Sec. 405.005. VOCATIONAL REHABILITATION PILOT PROGRAM. If the study conducted by the research center under Section 404.002(b) relating to the rehabilitation and reemployment of injured workers finds vocational rehabilitation to be feasible and effective, the committee shall draft legislation creating a vocational rehabilitation pilot program to provide vocational rehabilitation as a benefit under this subtitle. (V.A.C.S. Art. 8308-2.51(h).)

Sec. 405.006. TEXAS LEGISLATIVE COUNCIL ASSISTANCE. The Texas Legislative Council shall assign at least one staff person to assist the committee and shall provide other support as necessary. (V.A.C.S. Art. 8308-2.51(i).)

## CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

### SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

- Sec. 406.001. DEFINITION
- Sec. 406.002. COVERAGE GENERALLY ELECTIVE
- Sec. 406.003. METHODS OF OBTAINING COVERAGE
- Sec. 406.004. EMPLOYER NOTICE TO COMMISSION; ADMINISTRATIVE VIOLATION
- Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION
- Sec. 406.006. INSURANCE COMPANY NOTICE; ADMINISTRATIVE VIOLATION
- Sec. 406.007. TERMINATION OF COVERAGE BY EMPLOYER; NOTICE
- Sec. 406.008. CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE
- Sec. 406.009. COOPERATION WITH INSURANCE DEPARTMENT
- Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION
- Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION
- Sec. 406.012. ENFORCEMENT OF SUBCHAPTER

[Sections 406.013-406.030 reserved for expansion]

### SUBCHAPTER B. COVERAGE REQUIREMENTS

- Sec. 406.031. LIABILITY FOR COMPENSATION
- Sec. 406.032. EXCEPTIONS
- Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF
- Sec. 406.034. EMPLOYEE ELECTION
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[Sections 406.036-406.050 reserved for expansion]

### SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

- Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE
- Sec. 406.052. EFFECT OF OTHER INSURANCE COVERAGE
- Sec. 406.053. ALL STATES COVERAGE

[Sections 406.054-406.070 reserved for expansion]

### SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

- Sec. 406.071. EXTRATERRITORIAL COVERAGE
- Sec. 406.072. PRINCIPAL LOCATION

- Sec. 406.073. AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION
- Sec. 406.074. INTERJURISDICTIONAL AGREEMENTS
- Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION

[Sections 406.076–406.090 reserved for expansion]

SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

- Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE
- Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES
- Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES
- Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION
- Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES
- Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS

[Sections 406.097–406.120 reserved for expansion]

SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

- Sec. 406.121. DEFINITIONS
- Sec. 406.122. STATUS AS EMPLOYEE
- Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION
- Sec. 406.124. CAUSE OF ACTION
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- Sec. 406.126. EXEMPTION
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SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

- Sec. 406.141. DEFINITIONS
- Sec. 406.142. APPLICATION
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[Sections 406.147–406.160 reserved for expansion]

SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

- Sec. 406.161. DEFINITIONS
- Sec. 406.162. SCOPE
- Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY
- Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS
- Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS

## CHAPTER 406. WORKERS' COMPENSATION INSURANCE COVERAGE

## SUBCHAPTER A. COVERAGE ELECTION; SECURITY PROCEDURES

Sec. 406.001. DEFINITION. In this subchapter, "employer" means a person who employs one or more employees. (V.A.C.S. Art. 8308-3.21.)

Sec. 406.002. COVERAGE GENERALLY ELECTIVE. (a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage.

(b) An employer who elects to obtain coverage is subject to this subtitle. (V.A.C.S. Art. 8308-3.23(a) (part).)

Sec. 406.003. METHODS OF OBTAINING COVERAGE. An employer may obtain workers' compensation insurance coverage through a licensed insurance company or through self-insurance as provided by this subtitle. (V.A.C.S. Art. 8308-3.23(a) (part).)

Sec. 406.004. EMPLOYER NOTICE TO COMMISSION; ADMINISTRATIVE VIOLATION. (a) An employer who does not obtain workers' compensation insurance coverage shall notify the commission in writing, in the time and as prescribed by commission rule, that the employer elects not to obtain coverage.

(b) The commission shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the commission about the employer's business.

(c) The commission may contract with the Texas Employment Commission or the comptroller for assistance in collecting the notification required under this section. Those agencies shall cooperate with the commission in enforcing this section.

(d) The employer notification filing required under this section shall be filed with the Texas Department of Insurance in accordance with Section 406.009.

(e) An employer commits a violation if the employer fails to comply with this section. A violation under this subsection is a Class D administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-3.22.)

Sec. 406.005. EMPLOYER NOTICE TO EMPLOYEES; ADMINISTRATIVE VIOLATION. (a) An employer shall notify each employee as provided by this section whether or not the employer has workers' compensation insurance coverage.

(b) The employer shall notify a new employee of the existence or absence of workers' compensation insurance coverage at the time the employee is hired.

(c) Each employer shall post a notice of whether the employer has workers' compensation insurance coverage at conspicuous locations at the employer's place of business as necessary to provide reasonable notice to the employees. The commission may adopt rules relating to the form and content of the notice. The employer shall revise the notice when the information contained in the notice is changed.

(d) An employer who obtains workers' compensation insurance coverage or whose coverage is terminated or canceled shall notify each employee that the coverage has been obtained, terminated, or canceled not later than the 15th day after the date on which the coverage, or the termination or cancellation of the coverage, takes effect.

(e) An employer commits a violation if the employer fails to comply with this section. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-3.24.)

Sec. 406.006. INSURANCE COMPANY NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance company from which an employer has obtained workers' compensation insurance coverage shall file notice of the coverage with the commission not later than the 10th day after the date on which the coverage takes effect. Coverage takes effect on the date on which a binder is issued or at a later date and time agreed to by the parties.

(b) The notice required under this section shall be filed with the Texas Department of Insurance in accordance with Section 406.009.

(c) An insurance company commits a violation if the company fails to file notice with the commission as provided by this section. A violation under this subsection is a Class C administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-3.25.)

Sec. 406.007. **TERMINATION OF COVERAGE BY EMPLOYER; NOTICE.** (a) An employer who terminates workers' compensation insurance coverage obtained under this subtitle shall file a written notice with the commission by certified mail not later than the 10th day after the date on which the employer notified the insurance carrier to terminate the coverage. The notice must include a statement certifying the date that notice was provided or will be provided to affected employees under Section 406.005.

(b) The notice required under this section shall be filed with the Texas Department of Insurance in accordance with Section 406.009.

(c) Termination of coverage takes effect on the later of:

- (1) the 30th day after the date of filing of notice with the commission under Subsection (a); or
- (2) the cancellation date of the policy.

(d) The coverage shall be extended until the date on which the termination of coverage takes effect, and the employer is obligated for premiums due for that period. (V.A.C.S. Art. 8308-3.26.)

Sec. 406.008. **CANCELLATION OR NONRENEWAL OF COVERAGE BY INSURANCE COMPANY; NOTICE.** (a) An insurance company that cancels a policy of workers' compensation insurance or that does not renew the policy by the anniversary date of the policy shall deliver notice of the cancellation or nonrenewal by certified mail or in person to the employer and the commission not later than:

- (1) the 30th day before the date on which the cancellation or nonrenewal takes effect; or
- (2) the 10th day before the date on which the cancellation or nonrenewal takes effect if the insurance company cancels or does not renew because of:

- (A) fraud in obtaining coverage;
- (B) misrepresentation of the amount of payroll for purposes of premium calculation;
- (C) failure to pay a premium when due;
- (D) an increase in the hazard for which the employer seeks coverage that results from an act or omission of the employer and that would produce an increase in the rate, including an increase because of a failure to comply with:
  - (i) reasonable recommendations for loss control; or
  - (ii) recommendations designed to reduce a hazard under the employer's control within a reasonable period; or

(E) a determination made by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interest of subscribers, creditors, or the general public.

(b) The notice required under this section shall be filed with the Texas Department of Insurance in accordance with Section 406.009.

(c) Failure of the insurance company to give notice as required by this section extends the policy until the date on which the required notice is provided to the employer and the commission. (V.A.C.S. Art. 8308-3.28.)

Sec. 406.009. **COOPERATION WITH INSURANCE DEPARTMENT.** (a) The Texas Department of Insurance shall collect and maintain the information required to be provided under this subchapter and shall provide the information in the time and manner prescribed by the commission.

(b) The Texas Department of Insurance shall monitor compliance with the requirements of this subchapter and shall notify the commission of possible violations in the time and manner prescribed by the commission.

(c) The State Board of Insurance may adopt rules as necessary to enforce this subchapter. (V.A.C.S. Art. 8308-3.27(a).)



Sec. 406.010. CLAIMS SERVICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall provide claims service:

- (1) through offices of the insurance carrier located in this state; or
- (2) by other resident representatives with full power to act for the insurance carrier.

(b) Each insurance carrier shall designate persons to provide claims service in sufficient numbers and at appropriate locations to reasonably service policies written by the carrier.

(c) The commission by rule shall further specify the requirements of this section.

(d) A person commits a violation if the person violates a rule adopted under this section. A violation under this subsection is a Class C administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-3.29.)

Sec. 406.011. AUSTIN REPRESENTATIVE; ADMINISTRATIVE VIOLATION. (a) The commission by rule may require an insurance carrier to designate a representative in Austin to act as the insurance carrier's agent before the commission in Austin. Notice to the designated agent constitutes notice to the insurance carrier.

(b) A person commits a violation if the person violates a rule adopted under this section. A violation under this subsection is a Class C administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-3.30.)

Sec. 406.012. ENFORCEMENT OF SUBCHAPTER. The commission shall enforce the administrative penalties established under this subchapter in accordance with Chapter 415. (V.A.C.S. Art. 8308-3.27(b).)

[Sections 406.013-406.030 reserved for expansion]

## SUBCHAPTER B. COVERAGE REQUIREMENTS

Sec. 406.031. LIABILITY FOR COMPENSATION. (a) An insurance carrier is liable for compensation for an employee's injury without regard to fault or negligence if:

- (1) at the time of injury, the employee is subject to this subtitle; and
- (2) the injury arises out of and in the course and scope of employment.

(b) If an injury is an occupational disease, the employer in whose employ the employee was last injuriously exposed to the hazards of the disease is considered to be the employer of the employee under this subtitle. (V.A.C.S. Art. 8308-3.01.)

Sec. 406.032. EXCEPTIONS. An insurance carrier is not liable for compensation if:

(1) the injury:

(A) occurred while the employee was in a state of intoxication;

(B) was caused by the employee's wilful attempt to injure himself or to unlawfully injure another person;

(C) arose out of an act of a third person intended to injure the employee because of a personal reason and not directed at the employee as an employee or because of the employment;

(D) arose out of voluntary participation in an off-duty recreational, social, or athletic activity that did not constitute part of the employee's work-related duties, unless the activity is a reasonable expectancy of or is expressly or impliedly required by the employment; or

(E) arose out of an act of God, unless the employment exposes the employee to a greater risk of injury from an act of God than ordinarily applies to the general public; or

(2) the employee's horseplay was a producing cause of the injury. (V.A.C.S. Art. 8308-3.02.)

Sec. 406.033. COMMON-LAW DEFENSES; BURDEN OF PROOF. (a) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

- (1) the employee was guilty of contributory negligence;

(2) the employee assumed the risk of injury or death; or

(3) the injury or death was caused by the negligence of a fellow employee.

(b) This section does not reinstate or otherwise affect the availability of defenses at common law, including the defenses described by Subsection (a).

(c) The employer may defend the action on the ground that the injury was caused:

(1) by an act of the employee intended to bring about the injury; or

(2) while the employee was in a state of intoxication.

(d) In an action described by Subsection (a) against an employer who does not have workers' compensation insurance coverage, the plaintiff must prove negligence of the employer or of an agent or servant of the employer acting within the general scope of the agent's or servant's employment. (V.A.C.S. Arts. 8308-3.03, 8308-3.04.)

Sec. 406.034. EMPLOYEE ELECTION. (a) Except as otherwise provided by law, unless the employee gives notice as provided by Subsection (b), an employee of an employer waives the employee's right of action at common law or under a statute of this state to recover damages for personal injuries or death sustained in the course and scope of the employment.

(b) An employee who desires to retain the common-law right of action to recover damages for personal injuries or death shall notify the employer in writing that the employee waives coverage under this subtitle and retains all rights of action under common law. The employee must notify the employer not later than the fifth day after the date on which the employee:

(1) begins the employment; or

(2) receives written notice from the employer that the employer has obtained workers' compensation insurance coverage if the employer is not a covered employer at the time of the employment but later obtains the coverage.

(c) An employer may not require an employee to retain common-law rights under this section as a condition of employment.

(d) An employee who elects to retain the right of action or a legal beneficiary of that employee may bring a cause of action for damages for injuries sustained in the course and scope of the employment under common law or under a statute of this state. Notwithstanding Section 406.033, the cause of action is subject to all defenses available under common law and the statutes of this state. (V.A.C.S. Art. 8308-3.08.)

Sec. 406.035. WAIVER OF COMPENSATION PROHIBITED. Except as provided by this subtitle, an agreement by an employee to waive the employee's right to compensation is void. (V.A.C.S. Art. 8308-3.09.)

[Sections 406.036-406.050 reserved for expansion]

### SUBCHAPTER C. COVERAGE THROUGH COMMERCIAL INSURANCE

Sec. 406.051. SECURITY BY COMMERCIAL INSURANCE. (a) An insurance company may contract to secure an employer's liability and obligations and to pay compensation by issuing a workers' compensation insurance policy under this subchapter.

(b) The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance.

(c) The employer may not transfer:

(1) the obligation to accept a report of injury under Section 409.001;

(2) the obligation to maintain records of injuries under Section 409.006;

(3) the obligation to report injuries to the commission under Section 409.005;

(4) liability for a violation of Section 415.006 or 415.008 or of Chapter 451; or

(5) the obligation to comply with a commission order. (V.A.C.S. Art. 8308-3.41.)

Sec. 406.052. **EFFECT OF OTHER INSURANCE COVERAGE.** (a) A contract entered into to indemnify an employer from loss or damage resulting from an injury sustained by an employee that is compensable under this subtitle is void unless the contract also covers liability for payment of compensation under this subtitle.

(b) This section does not prohibit an employer who is not required to have workers' compensation insurance coverage and who has elected not to obtain workers' compensation insurance coverage from obtaining insurance coverage on the employer's employees if the insurance is not represented to any person as providing workers' compensation insurance coverage authorized under this subtitle. (V.A.C.S. Art. 8308-3.42.)

Sec. 406.053. **ALL STATES COVERAGE.** The Texas Department of Insurance shall coordinate with the appropriate agencies of other states to:

- (1) share information regarding an employer who obtains all states coverage; and
- (2) ensure that the department has knowledge of an employer who obtains all states coverage in another state but fails to file notice with the department. (V.A.C.S. Art. 8308-3.43.)

[Sections 406.054-406.070 reserved for expansion]

#### SUBCHAPTER D. EXTRATERRITORIAL COVERAGE

Sec. 406.071. **EXTRATERRITORIAL COVERAGE.** (a) An employee who is injured while working in another jurisdiction or the employee's legal beneficiary is entitled to all rights and remedies under this subtitle if:

- (1) the injury would be compensable if it had occurred in this state; and
- (2) the employee has significant contacts with this state or the employment is principally located in this state.

(b) An employee has significant contacts with this state if the employee was hired or recruited in this state and the employee:

- (1) was injured not later than one year after the date of hire; or
- (2) has worked in this state for at least 10 working days during the 12 months preceding the date of injury. (V.A.C.S. Arts. 8308-3.14, 8308-3.15.)

Sec. 406.072. **PRINCIPAL LOCATION.** The principal location of a person's employment is where:

- (1) the employer has a place of business at or from which the employee regularly works; or
- (2) the employee resides and spends a substantial part of the employee's working time. (V.A.C.S. Art. 8308-3.16.)

Sec. 406.073. **AGREEMENT ON PRINCIPAL LOCATION; ADMINISTRATIVE VIOLATION.** (a) An employee whose work requires regular travel between this state and at least one other jurisdiction may agree in writing with the employer on the principal location of the employment.

(b) The employer shall file the agreement with the executive director on request.

(c) A person commits a violation if the person violates Subsection (b). A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-3.17.)

Sec. 406.074. **INTERJURISDICTIONAL AGREEMENTS.** (a) The executive director may enter into an agreement with an appropriate agency of another jurisdiction with respect to:

- (1) conflicts of jurisdiction;
- (2) assumption of jurisdiction in a case in which the contract of employment arises in one state and the injury is incurred in another;
- (3) procedures for proceeding against a foreign employer who fails to comply with this subtitle; and

(4) procedures for the appropriate agency to use to proceed against an employer of this state who fails to comply with the workers' compensation laws of the other jurisdiction.

(b) An executed agreement that has been adopted as a rule by the commission binds all subject employees and employees.

(c) In this section, "appropriate agency" means an agency of another jurisdiction that administers the workers' compensation laws of that jurisdiction. (V.A.C.S. Art. 8308-3.18.)

Sec. 406.075. EFFECT OF COMPENSATION PAID IN OTHER JURISDICTION. (a) An injured employee who elects to pursue the employee's remedy under the workers' compensation laws of another jurisdiction and who recovers benefits under those laws may not recover under this subtitle.

(b) The amount of benefits accepted under the laws of the other jurisdiction without an election under Subsection (a) shall be credited against the benefits that the employee would have received had the claim been made under this subtitle. (V.A.C.S. Art. 8308-3.19.)

[Sections 406.076-406.090 reserved for expansion]

#### SUBCHAPTER E. APPLICATION OF COVERAGE TO CERTAIN EMPLOYEES

Sec. 406.091. EXEMPT EMPLOYEES; VOLUNTARY COVERAGE. (a) The following employees are not subject to this subtitle:

- (1) a person employed as a domestic worker or a casual worker engaged in employment incidental to a personal residence;
- (2) a person covered by a method of compensation established under federal law; or
- (3) except as provided by Subchapter H, a farm or ranch employee.

(b) An employer may elect to obtain workers' compensation insurance coverage for an employee or classification of employees exempted from coverage under Subsection (a)(1) or (a)(3). Obtaining that coverage constitutes acceptance by the employer of the rights and responsibilities imposed under this subtitle as of the effective date of the coverage for as long as the coverage remains in effect.

(c) An employer who does not obtain coverage for exempt employees is not deprived of the common-law defenses described by Section 406.033, but this section does not reinstate or otherwise affect the availability of those or other defenses at common law. (V.A.C.S. Arts. 8308-3.10, 8308-3.11.)

Sec. 406.092. ALIEN EMPLOYEES AND BENEFICIARIES. (a) A resident or non-resident alien employee or legal beneficiary is entitled to compensation under this subtitle.

(b) A nonresident alien employee or legal beneficiary, at the election of the employee or legal beneficiary, may be represented officially by a consular officer of the country of which the employee or legal beneficiary is a citizen. That officer may receive benefit payments for distribution to the employee or legal beneficiary. The receipt of the payments constitutes full discharge of the insurance carrier's liability for those payments. (V.A.C.S. Art. 8308-3.12.)

Sec. 406.093. LEGALLY INCOMPETENT EMPLOYEES. (a) The guardian of an injured employee who is a minor or is otherwise legally incompetent may exercise on the employee's behalf the rights and privileges granted to the employee under this subtitle.

(b) The commission by rule shall adopt procedures relating to the method of payment of benefits to legally incompetent employees. (V.A.C.S. Art. 8308-3.13.)

Sec. 406.094. CERTAIN PERSONS LICENSED BY TEXAS REAL ESTATE COMMISSION. (a) An employer who elects to provide workers' compensation insurance coverage may include in the coverage a real estate salesman or broker who is:

- (1) licensed under The Real Estate License Act (Article 6573a, Vernon's Texas Civil Statutes); and
- (2) compensated solely by commissions.

(b) If coverage is elected by the employer, the insurance policy must specifically name the salesman or broker. The coverage continues while the policy is in effect and the named salesman or broker is endorsed on the policy. (V.A.C.S. Art. 8308-3.055.)

Sec. 406.095. CERTAIN PROFESSIONAL ATHLETES. (a) A professional athlete employed under a contract for hire or a collective bargaining agreement who is entitled to benefits for medical care and weekly benefits that are equal to or greater than the benefits provided under this subtitle may not receive benefits under this subtitle and the equivalent benefits under the contract or collective bargaining agreement. An athlete covered by such a contract or agreement who sustains an injury in the course and scope of the athlete's employment shall elect to receive either the benefits available under this subtitle or the benefits under the contract or agreement.

(b) The commission by rule shall establish the procedures and requirements for an election under this section.

(c) In this section, "professional athlete" means a person employed as a professional athlete by a franchise of:

- (1) the National Football League;
- (2) the National Basketball Association;
- (3) the American League of Professional Baseball Clubs; or
- (4) the National League of Professional Baseball Clubs. (V.A.C.S. Art.8308-3.075.)

Sec. 406.096. REQUIRED COVERAGE FOR CERTAIN BUILDING OR CONSTRUCTION CONTRACTORS. (a) A governmental entity that enters into a building or construction contract shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for each employee of the contractor employed on the public project.

(b) Each subcontractor on the public project shall provide such a certificate relating to coverage of the subcontractor's employees to the general contractor, who shall provide the subcontractor's certificate to the governmental entity.

(c) A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.

(d) The employment of a maintenance employee by an employer who is not engaging in building or construction as the employer's primary business does not constitute engaging in building or construction.

(e) In this section:

(1) "Building or construction" includes:

- (A) erecting or preparing to erect a structure, including a building, bridge, roadway, public utility facility, or related appurtenance;
- (B) remodeling, extending, repairing, or demolishing a structure; or
- (C) otherwise improving real property or an appurtenance to real property through similar activities.

(2) "Governmental entity" means this state or a political subdivision of this state. The term includes a municipality. (V.A.C.S. Arts. 8308-3.23(c), (d).)

[Sections 406.097-406.120 reserved for expansion]

## SUBCHAPTER F. COVERAGE OF CERTAIN INDEPENDENT CONTRACTORS

Sec. 406.121. DEFINITIONS. In this subchapter:

(1) "General contractor" means a person who undertakes to procure the performance of work or a service, either separately or through the use of subcontractors. The term includes a "principal contractor," "original contractor," "prime contractor," or other analogous term. The term does not include a motor carrier that provides a transportation service through the use of an owner operator.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:

- (A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;

(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and

(D) possesses the skills required for the specific work or service

(3) "Motor carrier" means a person who operates a motor vehicle over a public highway in this state to provide a transportation service or who contracts to provide that service.

(4) "Owner operator" means a person who provides transportation services under contract for a motor carrier. An owner operator is an independent contractor.

(5) "Subcontractor" means a person who contracts with a general contractor to perform all or part of the work or services that the general contractor has undertaken to perform.

(6) "Transportation service" means providing a motor vehicle, with a driver under contract, to transport passengers or property. (V.A.C.S. Art. 8308-3.05(a).)

Sec. 406.122. STATUS AS EMPLOYEE. (a) For purposes of workers' compensation insurance coverage, a person who performs work or provides a service for a general contractor or motor carrier who is an employer under this subtitle is an employee of that general contractor or motor carrier, unless the person is:

(1) operating as an independent contractor; or

(2) hired to perform the work or provide the service as an employee of a person operating as an independent contractor.

(b) A subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the subcontractor:

(1) is operating as an independent contractor; and

(2) has entered into a written agreement with the general contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

(c) An owner operator and the owner operator's employees are not employees of a motor carrier for the purposes of this subtitle if the owner operator has entered into a written agreement with the motor carrier that evidences a relationship in which the owner operator assumes the responsibilities of an employer for the performance of work. (V.A.C.S. Arts. 8308-3.05(b), (c), (d).)

Sec. 406.123. ELECTION TO PROVIDE COVERAGE; ADMINISTRATIVE VIOLATION. (a) A general contractor and a subcontractor may enter into a written agreement under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.

(b) If a general contractor has workers' compensation insurance to protect the general contractor's employees and if, in the course and scope of the general contractor's business, the general contractor enters into a contract with a subcontractor who does not have employees, the general contractor shall be treated as the employer of the subcontractor for the purposes of this subtitle and may enter into an agreement for the deduction of premiums paid in accordance with Subsection (d).

(c) A motor carrier and an owner operator may enter into a written agreement under which the motor carrier provides workers' compensation insurance coverage to the owner operator and the employees of the owner operator.

(d) If a general contractor or a motor carrier elects to provide coverage under Subsection (a) or (c), then, notwithstanding Section 415.006, the actual premiums, based on payroll, that are paid or incurred by the general contractor or motor carrier for the coverage may be deducted from the contract price or other amount owed to the subcontractor or owner operator by the general contractor or motor carrier.

(e) An agreement under this section makes the general contractor the employer of the subcontractor and the subcontractor's employees only for purposes of the workers' compensation laws of this state.

(f) A general contractor shall file a copy of an agreement entered into under this section with the general contractor's workers' compensation insurance carrier not later than the 10th day after the date on which the contract is executed. If the general contractor is a certified self-insurer, the copy must be filed with the division of self-insurance regulation.

(g) A general contractor who enters into an agreement with a subcontractor under this section commits a violation if the contractor fails to file a copy of the agreement as required by Subsection (f). A violation under this subsection is a Class B administrative violation. (V.A.C.S. Arts. 8308-3.05(e), (f), (g), (l).)

Sec. 406.124. CAUSE OF ACTION. If a person who has workers' compensation insurance coverage subcontracts all or part of the work to be performed by the person to a subcontractor with the intent to avoid liability as an employer under this subtitle, an employee of the subcontractor who sustains a compensable injury in the course and scope of the employment shall be treated as an employee of the person for purposes of workers' compensation and shall have a separate right of action against the subcontractor. The right of action against the subcontractor does not affect the employee's right to compensation under this subtitle. (V.A.C.S. Art. 8308-3.05(h).)

Sec. 406.125. RESTRICTION OF UNSAFE WORK PRACTICES UNAFFECTED. This subchapter does not prevent a general contractor from directing a subcontractor or the employees of a subcontractor to stop or change an unsafe work practice. (V.A.C.S. Art. 8308-3.05(i).)

Sec. 406.126. EXEMPTION. This subchapter does not apply to farm or ranch employees. (V.A.C.S. Art. 8308-3.05(k).)

Sec. 406.127. EFFECT OF CERTAIN CONTRACTS OF HIRE. An insurance company may not demand an insurance premium from an employer for coverage of an independent contractor or an employee of an independent contractor if the independent contractor is under a contract of hire with the employer. (V.A.C.S. Art. 8308-3.05(j).)

[Sections 406.128-406.140 reserved for expansion]

## SUBCHAPTER G. COVERAGE OF CERTAIN BUILDING AND CONSTRUCTION WORKERS

Sec. 406.141. DEFINITIONS. In this subchapter:

(1) "Hiring contractor" means a general contractor or subcontractor who, in the course of regular business, subcontracts all or part of the work to be performed to other persons.

(2) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job and not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as desired and may determine the pay of each helper; and

(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors. (V.A.C.S. Art. 8308-3.06(b).)

Sec. 406.142. APPLICATION. This subchapter applies only to contractors and workers preparing to construct, constructing, altering, repairing, extending, or demolishing:

(1) a residential structure;

(2) a commercial structure that does not exceed three stories in height or 20,000 square feet in area; or

(3) an appurtenance to a structure described by Subdivision (1) or (2). (V.A.C.S. Art. 8308-3.06(a).)

Sec. 406.143. PROVISION OF WORKERS' COMPENSATION INSURANCE; INDEPENDENT CONTRACTOR WITHOUT EMPLOYEES. (a) Unless the independent contractor and hiring contractor enter into an agreement under Section 406.144, the independent contractor is responsible for any workers' compensation insurance coverage provided to an

employee of the independent contractor, and the independent contractor's employees are not entitled to workers' compensation insurance coverage from the hiring contractor.

(b) An independent contractor without employees shall be treated in the same manner as an independent contractor with employees and is not entitled to coverage under the hiring contractor's workers' compensation insurance policy unless the independent contractor and hiring contractor enter into an agreement under Section 406.144. (V.A.C.S. Arts. 8308-3.06(c) (part), (e) (part).)

Sec. 406.144. ELECTION TO PROVIDE COVERAGE; AGREEMENT. (a) Except as provided by this section, a hiring contractor is not responsible for providing workers' compensation insurance coverage for an independent contractor or the independent contractor's employee, helper, or subcontractor. An independent contractor and a hiring contractor may enter into a written agreement under which the independent contractor agrees that the hiring contractor may withhold the cost of workers' compensation insurance coverage from the contract price and that, for the purpose of providing workers' compensation insurance coverage, the hiring contractor is the employer of the independent contractor and the independent contractor's employees.

(b) A hiring contractor and independent contractor may enter into an agreement under Subsection (a) even if the independent contractor does not have an employee.

(c) An agreement under this section shall be filed with the commission either by personal delivery or by registered or certified mail and is considered filed on receipt by the commission.

(d) The hiring contractor shall send a copy of an agreement under this section to the hiring contractor's workers' compensation insurance carrier on filing of the agreement with the commission.

(e) An agreement under this section makes the hiring contractor the employer of the independent contractor and the independent contractor's employees only for the purposes of the workers' compensation laws of this state.

(f) The deduction of the cost of the workers' compensation insurance coverage from the independent contractor's contract price is permitted notwithstanding Section 415.006. (V.A.C.S. Arts. 8308-3.06(c) (part), (d).)

Sec. 406.145. JOINT AGREEMENT. (a) A hiring contractor and an independent subcontractor may make a joint agreement declaring that the subcontractor is an independent contractor as defined in Section 406.141(2) and that the subcontractor is not the employee of the hiring contractor. If the joint agreement is signed by both the hiring contractor and the subcontractor and filed with the commission, the subcontractor, as a matter of law, is an independent contractor and not an employee, and is not entitled to workers' compensation insurance coverage through the hiring contractor unless an agreement is entered into under Section 406.144 to provide workers' compensation insurance coverage. The commission shall prescribe forms for the joint agreement.

(b) A joint agreement shall be delivered to the commission by personal delivery or registered or certified mail and is considered filed on receipt by the commission.

(c) The hiring contractor shall send a copy of a joint agreement signed under this section to the hiring contractor's workers' compensation insurance carrier on filing of the joint agreement with the commission.

(d) The commission shall maintain a system for accepting and maintaining the joint agreements.

(e) A joint agreement signed under this section applies to each hiring agreement between the hiring contractor and the independent contractor until the first anniversary of its filing date, unless a subsequent hiring agreement expressly states that the joint agreement does not apply.

(f) If a subsequent hiring agreement is made to which the joint agreement does not apply, the hiring contractor and independent contractor shall notify the commission and the hiring contractor's workers' compensation insurance carrier in writing.

(g) If a hiring contractor and an independent contractor have filed a joint agreement under this section, an insurance company may not require the payment of an insurance premium by



a hiring contractor for coverage of an independent contractor or an independent contractor's employee, helper, or subcontractor other than under an agreement entered into in compliance with Section 406.144. (V.A.C.S. Arts. 8308-3.06(e) (part), (f), (h).)

Sec. 406.146. **WRONGFUL INDUCEMENT PROHIBITED.** (a) A hiring contractor may not:

(1) wrongfully induce an employee to enter into a joint agreement under Section 406.145 stating that the employee is an independent contractor; or

(2) exert controls over an independent contractor or an employee of an independent contractor sufficient to make that person an employee under common-law tests.

(b) A hiring contractor does not exert employer-like controls over an independent contractor or an independent contractor's employee solely because of:

(1) controlling the hours of labor, if that control is exercised only to:

(A) establish the deadline for the completion of the work called for by the contract;

(B) schedule work to occur in a logical sequence and to avoid delays or interference with the work of other contractors; or

(C) schedule work to avoid disturbing neighbors during night or early morning hours or at other times when the independent contractor's activities would unreasonably disturb activities in the neighborhood; or

(2) stopping or directing work solely to prevent or correct an unsafe work practice or condition or to control work to ensure that the end product is in compliance with the contracted for result. (V.A.C.S. Art. 8308-3.06(g).)

[Sections 406.147-406.160 reserved for expansion]

## SUBCHAPTER H. COVERAGE OF FARM AND RANCH EMPLOYEES

Sec. 406.161. **DEFINITIONS.** In this subchapter:

(1) "Agricultural labor" means the planting, cultivating, or harvesting of an agricultural or horticultural commodity in its unmanufactured state.

(2) "Family" means persons related within the third degree by consanguinity or affinity.

(3) "Labor agent" means a person who:

(A) is a farm labor contractor for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 1801 et seq.); or

(B) otherwise recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers who work for the benefit of a third party.

(4) "Migrant worker" means an individual who is:

(A) employed in agricultural labor of a seasonal or temporary nature; and

(B) required to be absent overnight from the worker's permanent place of residence.

(5) "Seasonal worker" means an individual who is:

(A) employed in agricultural or ranch labor of a seasonal or temporary nature; and

(B) not required to be absent overnight from the worker's permanent place of residence.

(6) "Truck farm" means a farm on which fruits, garden vegetables for human consumption, potatoes, sugar beets, or vegetable seeds are produced for market. The term includes a farm primarily devoted to one of those crops that also has incidental acreage of other crops. (V.A.C.S. Art. 8308-3.07(i) (part).)

Sec. 406.162. **SCOPE.** (a) This subtitle applies to an action to recover damages for personal injuries or death sustained by a farm or ranch employee who is:

(1) a migrant worker;

(2) a seasonal worker:

(A) employed on a truck farm, orchard, or vineyard;

(B) employed by a person with a gross annual payroll for the preceding year in an amount not less than the greater of the required payroll for the year preceding that year, adjusted for inflation, or \$25,000; or

(C) working for a farmer, ranch operator, or labor agent who employs a migrant worker and doing the same work at the same time and location as the migrant worker; or

(3) an employee, other than a migrant or seasonal worker:

(A) for years before 1991, employed by a person with a gross annual payroll for the preceding year of at least \$50,000; and

(B) for 1991 and subsequent years, employed by a person:

(i) with a gross annual payroll in an amount required for coverage of seasonal workers under Subdivision (2)(B); or

(ii) who employs three or more farm or ranch employees other than migrant or seasonal workers.

(b) The comptroller shall prepare a consumer price index for this state and shall certify the applicable index factor to the commission before October 1 of each year. The commission shall adjust the gross annual payroll requirement under Subsection (a)(2)(B) accordingly.

(c) For the purposes of this section, the gross annual payroll of a person includes any amount paid by the person to a labor agent for the agent's services and for the services of migrant or seasonal workers but does not include wages paid to:

(1) the person or a member of the person's family, if the person is a sole proprietor;

(2) a partner in a partnership or a member of the partner's family; or

(3) a shareholder of a corporation in which all shareholders are family members or a member of the shareholder's family.

(d) This subchapter does not affect the application or interpretation of this subtitle as it relates to persons engaged in activities determined before January 1, 1985, not to be farm or ranch labor. (V.A.C.S. Arts. 8308-3.07(a), (b), (c), (d), (j).)

**Sec. 406.163. LIABILITY OF LABOR AGENT; JOINT AND SEVERAL LIABILITY.**

(a) A labor agent who furnishes a migrant or seasonal worker is liable under this subtitle as if the labor agent were the employer of the worker, without regard to the right of control or other factors used to determine an employer-employee relationship.

(b) If the labor agent does not have workers' compensation insurance coverage, the person with whom the labor agent contracts for the services of the migrant or seasonal worker is jointly and severally liable with the labor agent in an action to recover damages for personal injuries or death suffered by the migrant or seasonal worker as provided by this subtitle, and, for that purpose, the migrant or seasonal worker is considered the employee of the person with whom the labor agent contracts and that person may obtain workers' compensation insurance coverage for that worker as provided by this subtitle. If a migrant or seasonal worker is covered by workers' compensation insurance coverage, the person with whom the labor agent contracts is not liable in a separate action for injury or death except to the extent provided by this subtitle.

(c) A labor agent shall notify each person with whom the agent contracts of whether the agent has workers' compensation insurance coverage. If the agent does have workers' compensation insurance coverage, the agent shall present evidence of the coverage to each person with whom the agent contracts. (V.A.C.S. Arts. 8308-3.07(e), (f), (g).)

**Sec. 406.164. ELECTIVE COVERAGE OF EMPLOYER AND FAMILY MEMBERS.**

(a) A person who purchases a workers' compensation insurance policy covering farm or ranch employees may cover the person, a partner, a corporate officer, or a family member in that policy. The insurance policy must specifically name the individual to be covered.

(b) The elective coverage continues while the policy is in effect and the named individual is endorsed on the policy.

(c) A member of an employer's family is exempt from coverage under the policy unless an election for that coverage is made under this section. (V.A.C.S. Art. 8308-3.07(h).)

Sec. 406.165. NOT APPLICABLE TO INDEPENDENT CONTRACTORS. (a) A farm or ranch employee who performs work or provides a service for a farm or ranch employer subject to this subchapter is an employee of that employer unless the employee is hired to perform the work or provide the service as an employee of an independent contractor.

(b) In this section, "independent contractor" means a person, other than a labor agent, who contracts with a farm or ranch employer to perform work or provide a service for the benefit of the employer and who ordinarily:

(1) acts as the employer of the employee by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;

(2) is free to determine the manner in which the work or service is performed, including the hours of labor or the method of payment;

(3) is required to furnish necessary tools, supplies, or materials to perform the work or service; and

(4) possesses skills required for the specific work or service. (V.A.C.S. Art. 8308-3.07(k).)

## CHAPTER 407. SELF-INSURANCE REGULATION

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[Sections 407.002-407.020 reserved for expansion]

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CHAPTER 407. SELF-INSURANCE REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 407.001. DEFINITIONS. In this chapter:

- (1) "Association" means the Texas Certified Self-Insurer Guaranty Association.
- (2) "Director" means the director of the division of self-insurance regulation.
- (3) "Impaired employer" means a certified self-insurer:
  - (A) who has suspended payment of compensation as determined by the commission;
  - (B) who has filed for relief under bankruptcy laws;
  - (C) against whom bankruptcy proceedings have been filed; or
  - (D) for whom a receiver has been appointed by a court of this state.
- (4) "Incurred liabilities for compensation" means the amount equal to the sum of:
  - (A) the estimated amount of the liabilities for outstanding workers' compensation claims, including claims incurred but not yet reported; and
  - (B) the estimated amount necessary to provide for the administration of those claims, including legal costs.

(5) "Qualified claims servicing contractor" means a person who provides claims service for a certified self-insurer, who is a separate business entity from the affected certified self-insurer, and who is:

(A) an insurance company authorized by the Texas Department of Insurance to write workers' compensation insurance;

(B) a subsidiary of an insurance company that provides claims service under contract;  
or

(C) a third-party administrator that has on its staff an individual licensed under Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code). (V.A.C.S. Art. 8308-3.51.)

[Sections 407.002-407.020 reserved for expansion]

### SUBCHAPTER B. DIVISION OF SELF-INSURANCE REGULATION

Sec. 407.021. DIVISION. The division of self-insurance regulation is a division of the commission. (V.A.C.S. Art. 8308-3.53(a).)

Sec. 407.022. DIRECTOR. (a) The executive director of the commission shall appoint the director of the division.

(b) The director shall exercise all the rights, powers, and duties imposed or conferred on the commission by this chapter, other than by Section 407.023. (V.A.C.S. Arts. 8308-3.53(b), 8308-3.54.)

Sec. 407.023. EXCLUSIVE POWERS AND DUTIES OF COMMISSION. (a) The commission, by majority vote, shall:

(1) approve or deny a recommendation by the director concerning the issuance or revocation of a certificate of authority to self-insure; and

(2) certify that a certified self-insurer has suspended payment of compensation or has otherwise become an impaired employer.

(b) The commission may not delegate the powers and duties imposed by this section. (V.A.C.S. Art. 8308-3.52.)

Sec. 407.024. CLAIM OR SUIT. (a) A claim or suit brought by a claimant or a certified self-insurer shall be styled "in re: [name of employee] and [name of certified self-insurer]."

(b) The director is the agent for service of process for a claim or suit brought by a workers' compensation claimant against the qualified claims servicing contractor of a certified self-insurer. (V.A.C.S. Art. 8308-3.66.)

[Sections 407.025-407.040 reserved for expansion]

### SUBCHAPTER C. CERTIFICATE OF AUTHORITY TO SELF-INSURE

Sec. 407.041. APPLICATION. (a) An employer who desires to self-insure under this chapter must submit an application to the commission for a certificate of authority to self-insure.

(b) The application must be:

(1) submitted on a form adopted by the commission; and

(2) accompanied by a nonrefundable \$1,000 application fee.

(c) Not later than the 60th day after the date on which the application is received, the director shall recommend approval or denial of the application to the commission.

(d) During the pendency of the approval or denial of the application, the applicant may not operate as a self-insurer under this chapter. (V.A.C.S. Arts. 8308-3.55(a) (part), (b) (part), 8308-3.59(c).)

Sec. 407.042. ISSUANCE OF CERTIFICATE. With the approval of the Texas Certified Self-Insurer Guaranty Association, and by majority vote, the commission shall issue a

certificate of authority to self-insure to an applicant who meets the certification requirements under this chapter and pays the required fee. (V.A.C.S. Arts. 8308-3.55(b) (part), 8308-3.56(m).)

Sec. 407.043. PROCEDURES ON DENIAL OF APPLICATION. (a) If the commission determines that an applicant for a certificate of authority to self-insure does not meet the certification requirements, the commission shall notify the applicant in writing of its determination, stating the specific reasons for the denial and the conditions to be met before approval may be granted.

(b) The applicant is entitled to a reasonable period, as determined by the commission, to meet the conditions for approval before the application is considered rejected for purposes of appeal. (V.A.C.S. Arts. 8308-3.59(a), (b).)

Sec. 407.044. TERM OF CERTIFICATE; RENEWAL. (a) A certificate of authority to self-insure is valid for one year after the date of issuance and may be renewed under procedures prescribed by the commission.

(b) The director may stagger the renewal dates of certificates of authority to self-insure to facilitate the work load of the division. (V.A.C.S. Art. 8308-3.55(b) (part).)

Sec. 407.045. WITHDRAWAL FROM SELF-INSURANCE. (a) A certified self-insurer may withdraw from self-insurance at any time with the approval of the commission. The commission shall approve the withdrawal if the certified self-insurer shows to the satisfaction of the commission that the certified self-insurer has established an adequate program to pay all incurred losses, including unreported losses, that arise out of accidents or occupational diseases first distinctly manifested during the period of operation as a certified self-insurer.

(b) A certified self-insurer who withdraws from self-insurance shall surrender to the commission the certificate of authority to self-insure. (V.A.C.S. Art. 8308-3.65(a).)

Sec. 407.046. REVOCATION OF CERTIFICATE OF AUTHORITY. (a) The commission by majority vote may revoke the certificate of authority to self-insure of a certified self-insurer who fails to comply with requirements or conditions established by this chapter or a rule adopted by the commission under this chapter.

(b) If the commission believes that a ground exists to revoke a certificate of authority to self-insure, the commission shall hold a hearing to determine if the certificate should be revoked. The hearing shall be conducted in the manner provided for a contested case hearing under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) The commission shall notify the certified self-insurer of the hearing and the grounds not later than the 30th day before the scheduled hearing date.

(d) If the certified self-insurer fails to show cause why the certificate should not be revoked, the commission immediately shall revoke the certificate. (V.A.C.S. Arts. 8308-3.68(a), (b).)

Sec. 407.047. EFFECT OF REVOCATION. (a) A certified self-insurer whose certificate of authority to self-insure is revoked is not relieved of the obligation for compensation to an employee for an accidental injury or occupational disease that occurred during the period of self-insurance.

(b) The security required under Sections 407.064 and 407.065 shall be maintained with the commission or under the commission's control until each claim for workers' compensation benefits is paid, is settled, or lapses under this subtitle. (V.A.C.S. Art. 8308-3.68(c).)

[Sections 407.048-407.060 reserved for expansion]

#### SUBCHAPTER D. REQUIREMENTS FOR CERTIFICATE OF AUTHORITY

Sec. 407.061. GENERAL REQUIREMENTS. (a) To be eligible for a certificate of authority to self-insure, an applicant for an initial or renewal certificate must present evidence satisfactory to the commission and the association of sufficient financial strength and liquidity, under standards adopted by the commission, to ensure that all workers' compensation obligations incurred by the applicant under this chapter are met promptly.

(b) The applicant must:

(1) be a business entity, or one of the consolidated subsidiaries of the entity, that is required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and furnish financial information prepared in accordance with the requirements for those business entities; or

(2) annually furnish audited financial statements comparable in form and manner of preparation to those filed by a business entity required to register under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.).

(c) The applicant must present a plan for claims administration that is acceptable to the commission and that designates a qualified claims servicing contractor.

(d) The applicant must demonstrate the existence of an effective safety program for each location in the state at which it conducts business.

(e) The applicant must provide to the commission a copy of each contract entered into with a person that provides claims services, underwriting services, or accident prevention services if the provider of those services is not an employee of the applicant. The contract must be acceptable to the commission and must be submitted in a standard form adopted by the commission, if the commission adopts such a form.

(f) The commission shall adopt rules for the requirements for the financial statements required by Subsection (b)(2). (V.A.C.S. Arts. 8308-3.56(a) (part), (b), (c), (d), (e).)

Sec. 407.062. FINANCIAL STRENGTH AND LIQUIDITY REQUIREMENTS. In assessing the financial strength and liquidity of an applicant, the commission shall consider:

- (1) the applicant's organizational structure and management background;
- (2) the applicant's profit and loss history;
- (3) the applicant's compensation loss history;
- (4) the source and reliability of the financial information submitted by the applicant;
- (5) the number of employees affected by self-insurance;
- (6) the applicant's access to excess insurance markets;
- (7) financial ratios, indexes, or other financial measures that the commission finds appropriate; and

(8) any other information considered appropriate by the commission. (V.A.C.S. Art. 8308-3.56(a) (part).)

Sec. 407.063. PREMIUM REQUIREMENTS. (a) In addition to meeting the other certification requirements imposed under this chapter, an applicant for an initial certificate of authority to self-insure must present evidence satisfactory to the commission of a total unmodified workers' compensation insurance premium in this state in the calendar year of application of at least \$500,000.

(b) Instead of the state premium required under this section, the applicant may present evidence of a total unmodified national workers' compensation insurance premium of at least \$10 million.

(c) Notwithstanding Subsection (a), if the application is filed before January 1, 1994, an applicant who presents evidence of a total unmodified insurance premium in this state must present evidence of a premium of at least \$750,000. This subsection expires December 31, 1994. (V.A.C.S. Art. 8308-3.57.)

Sec. 407.064. GENERAL SECURITY REQUIREMENTS. (a) Each applicant shall provide security for incurred liabilities for compensation through a deposit with the director, in a combination and from institutions approved by the director, of the following security:

- (1) cash or negotiable securities of the United States or of this state;
- (2) a surety bond that names the director as payee; or
- (3) an irrevocable letter of credit that names the director as payee.

(b) If an applicant who has provided a letter of credit as all or part of the security required under this section desires to cancel the existing letter of credit and substitute a different letter of credit or another form of security, the applicant shall notify the commission in

writing not later than the 60th day before the effective date of the cancellation of the original letter of credit.

(c) An estimate of the applicant's incurred liabilities for compensation must be signed and sworn to by an accredited casualty actuary and submitted with the application.

(d) The sum of the deposited securities must be at least equal to the greater of:

(1) \$300,000; or

(2) 125 percent of the applicant's incurred liabilities for compensation.

(e) If an applicant is granted a certificate of authority to self-insure, any interest or other income that accrues from cash or negotiable securities deposited by the applicant as security under this section while the cash or securities are on deposit with the director shall be paid to the applicant quarterly. (V.A.C.S. Arts. 8308-3.56(f), (g), (h), (i), (l).)

Sec. 407.065. SPECIFIC SECURITY REQUIREMENTS. (a) A security deposit must include within its coverage all amounts covered by terminated surety bonds or terminated excess insurance policies.

(b) A surety bond, irrevocable letter of credit, or document indicating issuance of an irrevocable letter of credit must be in a form approved by the director and must be issued by an institution acceptable to the director. The instrument may be released only according to its terms but may not be released by the deposit of additional security.

(c) The certified self-insurer shall deposit the security with the state treasurer on behalf of the director. The state treasurer may accept securities for deposit or withdrawal only on the written order of the director.

(d) On receipt by the director of a request to renew, submit, or increase or decrease a security deposit, a perfected security interest is created in the certified self-insurer's assets in favor of the director to the extent of any then unsecured portion of the self-insurer's incurred liabilities for compensation. That perfected security interest transfers to cash or securities deposited by the self-insurer with the director after the date of the request and may be released only on:

(1) the acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for compensation; or

(2) the return of cash or securities by the director.

(e) The certified self-insurer loses all right to, title to, interest in, and control of the assets or obligations submitted or deposited as security. The director may liquidate the deposit and apply it to the certified self-insurer's incurred liabilities for compensation either directly or through the association.

(f) If the director determines that a security deposit is not immediately available for the payment of compensation, the director shall determine the appropriate method of payment and claims administration, which may include payment by the surety that issued the bond or by the issuer of an irrevocable letter of credit, and administration by a surety, an adjusting agency, the association, or through any combination of those entities approved by the director. (V.A.C.S. Arts. 8308-3.58(a), (b), (c), (d), (e), (i).)

Sec. 407.066. EFFECT OF DISPUTE. (a) The director, after notice to the concerned parties and an opportunity for a hearing, shall resolve a dispute concerning the deposit, renewal, termination, release, or return of all or part of the security, liability arising out of the submission or failure to submit security, or the adequacy of the security or reasonableness of the administrative costs, including legal fees, that arises among:

(1) a surety;

(2) an issuer of an agreement of assumption and guarantee of workers' compensation liabilities;

(3) an issuer of a letter of credit;

(4) a custodian of the security deposit;

(5) a certified self-insurer; or

(6) the association.



(b) A party aggrieved by a decision of the director is entitled to judicial review. Venue for an appeal is in Travis County.

(c) Payment of claims from the security deposit or by the association may not be stayed pending the resolution of a dispute under this section unless the court issues a determination staying the payment of claims. (V.A.C.S. Arts. 8308-3.58(f), (g), (h).)

Sec. 407.067. **EXCESS INSURANCE; REINSURANCE; ADMINISTRATIVE VIOLATION.** (a) Each applicant shall obtain excess insurance or reinsurance to cover liability for losses not paid by the self-insurer in an amount not less than the amount required by the director.

(b) The director shall require excess insurance or reinsurance in at least the amount of \$5 million per occurrence.

(c) A certified self-insurer shall notify the director not later than the 10th day after the date on which the certified self-insurer has notice of the cancellation or termination of excess insurance or reinsurance coverage required under this section.

(d) A person commits a violation if the person violates Subsection (c). A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Arts. 8308-3.56(j), 8308-3.69.)

Sec. 407.068. **GUARANTEE BY PARENT ORGANIZATION.** If an applicant for a certificate of authority to self-insure is a subsidiary, the parent organization of the applicant must guarantee the obligations imposed by this chapter. (V.A.C.S. Art. 8308-3.56(k).)

[Sections 407.069-407.080 reserved for expansion]

#### SUBCHAPTER E. POWERS AND DUTIES OF CERTIFIED SELF-INSURER

Sec. 407.081. **ANNUAL REPORT.** (a) Each certified self-insurer shall file an annual report with the commission. The commission shall prescribe the form of the report and shall furnish blank forms for the preparation of the report to each certified self-insurer.

(b) The report must:

(1) include payroll information, in the form prescribed by this chapter and the commission;

(2) state the number of injuries sustained in the three preceding calendar years; and

(3) indicate separately the amount paid during each year for income benefits, medical benefits, death benefits, burial benefits, and other proper expenses related to worker injuries.

(c) Each certified self-insurer shall file with the commission as part of the annual report annual independent financial statements that reflect the financial condition of the self-insurer. The commission shall make a financial statement filed under this subsection available for public review.

(d) The commission may require that the report include additional financial and statistical information.

(e) The certified self-insurer shall present evidence in the report of sufficient financial ability to meet all obligations under this chapter.

(f) The report must include an estimate of future liability for compensation. The estimate must be signed and sworn to by a certified casualty actuary every third year, or more frequently if required by the commission.

(g) If the commission considers it necessary, it may order a certified self-insurer whose financial condition or claims record warrants closer supervision to report as provided by this section more often than annually. (V.A.C.S. Art. 8308-3.60.)

Sec. 407.082. **EXAMINATION OF RECORDS; ADMINISTRATIVE VIOLATION.** (a) Each certified self-insurer shall maintain the books, records, and payroll information necessary to compile the annual report required under Section 407.081 and any other information reasonably required by the commission.

(b) The certified self-insurer may maintain the books, records, and payroll information in locations outside this state.

(c) The material maintained by the certified self-insurer shall be open to examination by an authorized agent or representative of the commission at reasonable times to ascertain the correctness of the information.

(d) The examination may be conducted at any location, including the commission's Austin offices, or, at the certified self-insurer's option, in the offices of the certified self-insurer. The certified self-insurer shall pay the reasonable expenses, including travel expenses, of an inspector who conducts an inspection at its offices.

(e) An unreasonable refusal on the part of a certified self-insurer to make available for inspection the books, records, payroll information, or other required information constitutes grounds for the revocation of the certificate of authority to self-insure and is a Class A administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-3.61.)

Sec. 407.083. PAYMENT OF INSURANCE AGENT'S COMMISSION. This chapter does not prohibit a certified self-insurer from paying a commission to an insurance agent licensed in this state. (V.A.C.S. Art. 8308-3.67.)

[Sections 407.084-407.100 reserved for expansion]

#### SUBCHAPTER F. FINANCING OF SELF-INSURANCE PROGRAM

Sec. 407.101. FUND. (a) The workers' compensation self-insurance fund is a fund in the state treasury. The fund may be used only for the regulation of certified self-insurers.

(b) The commission shall deposit the application fee for a certificate of authority to self-insure in the state treasury to the credit of the workers' compensation self-insurance fund.

(c) Any amount remaining in the fund at the end of a fiscal year shall be used to reduce the regulatory fee assessed under Section 407.102 in the succeeding fiscal year. (V.A.C.S. Arts. 8308-3.55(a) (part), 8308-3.62(b) (part).)

Sec. 407.102. REGULATORY FEE. (a) Each certified self-insurer shall pay an annual fee to cover the administrative costs incurred by the commission in implementing this chapter.

(b) The commission shall base the fee on the total amount of income benefit payments made in the preceding calendar year. The commission shall assess each certified self-insurer a pro rata share based on the ratio that the total amount of income benefit payments made by that certified self-insurer bears to the total amount of income benefit payments made by all certified self-insurers. (V.A.C.S. Art. 8308-3.62(a).)

Sec. 407.103. SELF-INSURER MAINTENANCE TAX; EFFECT ON GENERAL MAINTENANCE TAX. (a) Each certified self-insurer shall pay a self-insurer maintenance tax for the administration of the commission. Not more than two percent of the total tax base of all certified self-insurers, as computed under Subsection (b), may be assessed for a maintenance tax under this section.

(b) To determine the tax base of a certified self-insurer for purposes of this chapter, each certified self-insurer shall report its payroll by individual workers' compensation risk code classifications in its application for certification and in its annual reports to the commission. The commission shall compute the estimated manual premium for the certified self-insurer using the workers' compensation insurance rates established by the State Board of Insurance. The commission shall compute the certified self-insurer's tax base by multiplying the estimated manual premium by 0.75.

(c) The tax liability of a certified self-insurer under this section is the tax base computed under Subsection (b) multiplied by the rate assessed workers' compensation insurance companies under Sections 403.002 and 403.003.

(d) In setting the rate of maintenance tax assessment for insurance companies, the commission may not consider revenue or expenditures related to the division. (V.A.C.S. Arts. 8308-3.53(c), 8308-3.63.)

Sec. 407.104. **COLLECTION OF TAXES AND FEES; ADMINISTRATIVE VIOLATION.** (a) The regulatory fee imposed by Section 407.102 and the taxes imposed by Section 407.103 are due on the 60th day after the issuance of a certificate of authority to self-insure and on the 60th day after each annual renewal date.

(b) The commission shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. The taxes and fees shall be remitted to the commission.

(c) The regulatory fee imposed under Section 407.102 shall be deposited in the state treasury to the credit of the workers' compensation self-insurance fund. The self-insurer maintenance tax shall be deposited in the state treasury to the credit of the commission.

(d) A certified self-insurer commits a violation if the self-insurer does not pay the taxes and fee imposed under Sections 407.102 and 407.103 in a timely manner. A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

(e) If the certificate of authority to self-insure of a certified self-insurer is terminated, the insurance commissioner or the executive director of the commission shall proceed immediately to collect taxes due under this subtitle, using legal process as necessary. (V.A.C.S. Arts. 8308-3.62(b) (part), 8308-3.64, 8308-3.65(b).)

[Sections 407.105-407.120 reserved for expansion]

#### SUBCHAPTER G. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

Sec. 407.121. **GUARANTY ASSOCIATION.** (a) The Texas Certified Self-Insurer Guaranty Association provides for the payment of workers' compensation insurance benefits for the injured employees of an impaired employer.

(b) Each employer who desires to become a certified self-insurer must be a member of the association. (V.A.C.S. Art. 8308-3.70(a) (part).)

Sec. 407.122. **BOARD OF DIRECTORS.** (a) The members of the association shall elect a board of directors.

(b) The board of directors is composed of the following voting members:

- (1) two certified self-insurers;
- (2) one commission member representing wage earners;
- (3) one commission member representing employers;
- (4) the executive director of the commission; and
- (5) the public counsel of the office of public insurance counsel.

(c) The director serves as a nonvoting member of the board of directors. (V.A.C.S. Art. 8308-3.70(a) (part).)

Sec. 407.123. **BOARD RULES.** (a) The board of directors may adopt rules for the operation of the association.

(b) Rules adopted by the board are subject to the approval of the commission. (V.A.C.S. Art. 8308-3.70(a) (part).)

Sec. 407.124. **IMPAIRED EMPLOYER; ASSESSMENTS.** (a) On determination by the commission that a certified self-insurer has become an impaired employer, the director shall secure release of the security deposit required by this chapter and shall promptly estimate:

- (1) the amount of additional funds needed to supplement the security deposit;
- (2) the available assets of the impaired employer for the purpose of making payment of all incurred liabilities for compensation; and
- (3) the funds maintained by the association for the emergency payment of compensation liabilities.

(b) The director shall advise the board of directors of the association of the estimate of necessary additional funds, and the board shall promptly assess each certified self-insurer to

collect the required funds. An assessment against a certified self-insurer shall be made in proportion to the ratio that the total paid income benefit payment for the preceding reported calendar year for that self-insurer bears to the total paid income benefit payment by all certified self-insurers, except impaired employers, in this state in that calendar year.

(c) A certified self-insurer designated as an impaired employer is exempt from assessments beginning on the date of the designation until the commission determines that the employer is no longer impaired. (V.A.C.S. Arts. 8308-3.70(d), (e).)

Sec. 407.125. PAYMENT OF ASSESSMENTS. Each certified self-insurer shall pay the amount of its assessment to the association not later than the 30th day after the date on which the division notifies the self-insurer of the assessment. A delinquent assessment may be collected on behalf of the association through suit. Venue is in Travis County. (V.A.C.S. Art. 8308-3.70(f).)

Sec. 407.126. TRUST FUND; FEE. (a) Each member of the association shall be assessed a fee, based on total amount of income benefits payments made in this state for the preceding reported calendar year, to create, over a period of five years beginning January 1, 1993, a Texas certified self-insurer guaranty trust fund of at least \$1 million for the emergency payment of the compensation liabilities of an impaired employer. The fund may not exceed \$2 million.

(b) The assessment for the first year after an employer is issued a certificate of authority to self-insure shall be based on the income benefit payments paid by the employer's insurance carrier on the employer's policy in the year before the certificate was issued.

(c) The board of directors shall administer the trust fund in accordance with rules adopted by the commission. (V.A.C.S. Art. 8308-3.70(b).)

Sec. 407.127. PAYMENT OF BENEFITS THROUGH ASSOCIATION. (a) If the commission determines that the payment of benefits and claims administration shall be made through the association, the association assumes the workers' compensation obligations of the impaired employer and shall begin the payment of the obligations for which it is liable not later than the 30th day after the date of notification by the director.

(b) The association shall make payments to claimants whose entitlement to benefits can be ascertained by the association. (V.A.C.S. Art. 8308-3.70(c) (part).)

Sec. 407.128. POSSESSION OF SECURITY BY ASSOCIATION. On the assumption of obligations by the association under the director's determination, the association is entitled to immediate possession of any deposited security, and the custodian, surety, or issuer of an irrevocable letter of credit shall deliver the security to the association with any accrued interest. (V.A.C.S. Art. 8308-3.70(c) (part).)

Sec. 407.129. RELEASE OF CLAIM INFORMATION TO ASSOCIATION. Information on a workers' compensation claim may be released to the association as provided by Section 402.084(a), if the association has assumed the obligations of an impaired employer. (V.A.C.S. Art. 8308-3.70(l).)

Sec. 407.130. ASSOCIATION AS PARTY IN INTEREST. (a) The association is a party in interest, in a proceeding involving a workers' compensation claim against an impaired employer whose compensation obligations have been paid or assumed by the association.

(b) The association has the same rights and defenses as the impaired employer, including the right to:

- (1) appear, defend, or appeal a claim;
- (2) receive notice of, investigate, adjust, compromise, settle, or pay a claim; and
- (3) investigate, handle, or deny a claim. (V.A.C.S. Art. 8308-3.70(k).)

Sec. 407.131. PREFERENCE. The benefit payments made by the association or the surety under this chapter are entitled to the same preference over other debts of the impaired employer or the impaired employer's estate as provided by law to benefit payments owed by the employer or employer's estate to the person entitled to the benefits. (V.A.C.S. Art. 8308-3.70(h).)

Sec. 407.132. SPECIAL FUND. Funds advanced by the association under this subchapter do not become assets of the impaired employer but are a special fund advanced to the

director, trustee in bankruptcy, receiver, or other lawful conservator only for the payment of compensation liabilities, including the costs of claims administration and legal costs. (V.A.C.S. Art. 8308-3.70(g).)

Sec. 407.133. SUSPENSION OR REVOCATION OF CERTIFICATE FOR FAILURE TO PAY ASSESSMENT. (a) The commission, after notice and hearing and by majority vote, may suspend or revoke the certificate of authority to self-insure of a certified self-insurer who fails to pay an assessment. The association promptly shall report such a failure to the director.

(b) A certified self-insurer whose certificate of authority to self-insure is revoked or surrendered remains liable for any unpaid assessments made against an impaired employer who becomes an impaired employer before the date of the revocation or surrender.

(c) Notwithstanding Section 407.127, the association is not liable for the payment of any penalties assessed for any act or omission on the part of any person other than the association. (V.A.C.S. Arts. 8308-3.70(i), (j).)

## CHAPTER 408. WORKERS' COMPENSATION BENEFITS

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**CHAPTER 408. WORKERS' COMPENSATION BENEFITS**

**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 408.001. EXCLUSIVE REMEDY; EXEMPLARY DAMAGES. (a) Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee.

(b) This section does not prohibit the recovery of exemplary damages by the surviving spouse or heirs of the body of a deceased employee whose death was caused by an intentional act or omission of the employer or by the employer's gross negligence.

(c) In this section, "gross negligence" has the meaning assigned by Section 41.001, Civil Practice and Remedies Code. (V.A.C.S. Art. 8308–4.01.)

Sec. 408.002. SURVIVAL OF CAUSE OF ACTION. A right of action survives in a case based on a compensable injury that results in the employee's death. (V.A.C.S. Art. 8308–4.03.)

Sec. 408.003. REIMBURSABLE EMPLOYER PAYMENTS. (a) After an injury, an employer may:

- (1) initiate benefit payments, including medical benefits; or
- (2) on the written request or agreement of the employee, supplement income benefits paid by the insurance carrier by an amount that does not exceed the amount computed by subtracting the amount of the income benefit payments from the employee's net preinjury wages.

(b) If an injury is found to be compensable and an insurance carrier initiates compensation, the insurance carrier shall reimburse the employer for the amount of benefits paid by the employer to which the employee was entitled under this subtitle. Payments that are not reimbursed or reimbursable under this section may be reimbursed under Section 408.127.

(c) The employer shall notify the commission and the insurance carrier on forms prescribed by the commission of the initiation of and amount of payments made under this section.

(d) Employer payments made under this section:

- (1) may not be construed as an admission of compensability; and
- (2) do not affect the payment of benefits from another source.

(e) If an employer does not notify the commission of the injury in compliance with Section 409.005, the employer waives the right to reimbursement under this section. (V.A.C.S. Arts. 8308-4.06(a), (b), (c), (d), (f).)

Sec. 408.004. REQUIRED MEDICAL EXAMINATIONS; ADMINISTRATIVE VIOLATION. (a) The commission may require an employee to submit to medical examinations to resolve any question about:

- (1) the appropriateness of the health care received by the employee;
- (2) the impairment caused by the compensable injury;
- (3) the attainment of maximum medical improvement; or
- (4) similar issues.

(b) The commission may require an employee to submit to a medical examination at the request of the insurance carrier, but only after the insurance carrier has attempted and failed to receive the permission and concurrence of the employee for the examination. The insurance carrier is entitled to the examination only once in a 180-day period. A subsequent examination must be performed by the same doctor unless otherwise approved by the commission.

(c) The insurance carrier shall pay for:

- (1) an examination required under Subsection (a) or (b); and
- (2) the reasonable expense incident to the employee in submitting to the examination.

(d) An injured employee is entitled to have a doctor of the employee's choice present at an examination required by the commission at the request of an insurance carrier. The insurance carrier shall pay a fee set by the commission to the doctor selected by the employee.

(e) If the report of a doctor selected by an insurance carrier indicates that the employee can return to work immediately, the commission shall schedule a benefit review conference on the next available docket. The insurance carrier may not suspend medical or income benefit payments pending the benefit review conference.

(f) An employee who, without good cause, fails or refuses to appear at the time scheduled for an examination under Subsection (a) or (b) commits a violation. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-4.16.)

Sec. 408.005. SETTLEMENTS AND AGREEMENTS. (a) A settlement may not provide for payment of benefits in a lump sum except as provided by Section 408.128.

(b) An employee's right to medical benefits as provided by Section 408.021 may not be limited or terminated.

(c) A settlement or agreement resolving an issue of impairment:

- (1) may not be made before the employee reaches maximum medical improvement; and



(2) must adopt an impairment rating using the impairment rating guidelines described by Section 408.124.

(d) A settlement must be signed by the director of the division of hearings and all parties to the dispute.

(e) The director of the division of hearings shall approve a settlement if the director is satisfied that:

- (1) the settlement accurately reflects the agreement between the parties;
- (2) the settlement reflects adherence to all appropriate provisions of law and the policies of the commission; and
- (3) under the law and facts, the settlement is in the best interest of the claimant.

(f) A settlement that is not approved or rejected before the 16th day after the date the settlement is submitted to the director of the division of hearings is considered to be approved by the director on that date.

(g) A settlement takes effect on the date it is approved by the director of the division of hearings.

(h) A party to a settlement may withdraw acceptance of the settlement at any time before its effective date. (V.A.C.S. Art. 8308-4.33.)

Sec. 408.006. MENTAL TRAUMA INJURIES. (a) It is the express intent of the legislature that nothing in this subtitle shall be construed to limit or expand recovery in cases of mental trauma injuries.

(b) A mental or emotional injury that arises principally from a legitimate personnel action, including a transfer, promotion, demotion, or termination, is not a compensable injury under this subtitle. (V.A.C.S. Art. 8308-4.02.)

Sec. 408.007. DATE OF INJURY FOR OCCUPATIONAL DISEASE. For purposes of this subtitle, the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. (V.A.C.S. Art. 8308-4.14.)

Sec. 408.008. COMPENSABILITY OF HEART ATTACKS. A heart attack is a compensable injury under this subtitle only if:

- (1) the attack can be identified as:
  - (A) occurring at a definite time and place; and
  - (B) caused by a specific event occurring in the course and scope of the employee's employment;
- (2) the preponderance of the medical evidence regarding the attack indicates that the employee's work rather than the natural progression of a preexisting heart condition or disease was a substantial contributing factor of the attack; and
- (3) the attack was not triggered solely by emotional or mental stress factors, unless it was precipitated by a sudden stimulus. (V.A.C.S. Art. 8308-4.15.)

[Sections 408.009-408.020 reserved for expansion]

## SUBCHAPTER B. MEDICAL BENEFITS

Sec. 408.021. ENTITLEMENT TO MEDICAL BENEFITS. (a) An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

(b) Medical benefits are payable from the date of the compensable injury.

(c) Except in an emergency, all health care must be approved or recommended by the employee's treating doctor.

(d) An insurance carrier's liability for medical benefits may not be limited or terminated by agreement or settlement. (V.A.C.S. Art. 8308-4.61.)

Sec. 408.022. SELECTION OF DOCTOR. (a) Except in an emergency, the commission shall require an employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commission. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed. The employee is entitled to the employee's initial choice of a doctor from the commission's list.

(b) If an employee is dissatisfied with the initial choice of a doctor from the commission's list, the employee may notify the commission and request authority to select an alternate doctor. The notification must be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

(c) The commission shall prescribe criteria to be used by the commission in granting the employee authority to select an alternate doctor. The criteria may include:

(1) whether treatment by the current doctor is medically inappropriate;

(2) the professional reputation of the doctor;

(3) whether the employee is receiving appropriate medical care to reach maximum medical improvement; and

(4) whether a conflict exists between the employee and the doctor to the extent that the doctor-patient relationship is jeopardized or impaired.

(d) A change of doctor may not be made to secure a new impairment rating or medical report.

(e) For purposes of this section, the following is not a selection of an alternate doctor:

(1) a referral made by the doctor chosen by the employee if the referral is medically reasonable and necessary;

(2) the receipt of services ancillary to surgery;

(3) the obtaining of a second or subsequent opinion only on the appropriateness of the diagnosis or treatment;

(4) the selection of a doctor because the original doctor:

(A) dies;

(B) retires; or

(C) becomes unavailable or unable to provide medical care to the employee; or

(5) a change of doctors required because of a change of residence by the employee. (V.A.C.S. Arts. 8308-1.03(17) (part), 8308-4.63(b), (c), (d), (e), 8308-4.64.)

Sec. 408.023. LIST OF APPROVED DOCTORS. (a) Each doctor licensed in this state on January 1, 1993, is on the commission's list of approved doctors unless subsequently deleted and not reinstated. The name of a doctor shall be placed on the list of approved doctors when that doctor becomes licensed in this state. A doctor not licensed in this state but licensed in another state or jurisdiction who treats employees may apply to the commission to be included on the list.

(b) The commission shall establish criteria for deleting a doctor from the list of approved doctors. The criteria may include anything the commission considers relevant, including:

(1) sanctions of the doctor by the commission for violations of Chapter 415;

(2) sanctions by the Medicare or Medicaid program for:

(A) substandard medical care;

(B) overcharging; or

(C) overutilization of medical services;

(3) evidence from the commission's medical records that the doctor's charges, fees, diagnoses, or treatments are substantially different from those the commission finds to be fair and reasonable; and

(4) suspension of the doctor's license by the appropriate licensing authority.

(c) The commission shall establish procedures for a doctor to apply for reinstatement to the list. (V.A.C.S. Arts. 8308-4.63(f), (g), (h).)

Sec. 408.024. **NONCOMPLIANCE WITH SELECTION REQUIREMENTS.** Except as otherwise provided, and after notice and an opportunity for hearing, the commission may relieve an insurance carrier of liability for health care that is furnished by a health care provider or another person selected in a manner inconsistent with the requirements of this subchapter. (V.A.C.S. Art. 8308-4.65.)

Sec. 408.025. **REPORTS AND RECORDS REQUIRED FROM HEALTH CARE PROVIDERS.** (a) The commission by rule shall adopt requirements for reports and records that are required to be filed with the commission or provided to the injured employee, the employee's attorney, or the insurance carrier by a health care provider.

(b) The commission by rule shall adopt requirements for reports and records that are to be made available by a health care provider to another health care provider to prevent unnecessary duplication of tests and examinations.

(c) The treating doctor is responsible for maintaining efficient utilization of health care.

(d) On the request of an injured employee, the employee's attorney, or the insurance carrier, a health care facility shall furnish records relating to treatment or hospitalization for which compensation is being sought. The commission may regulate the charge for furnishing a report or record, but the charge may not be less than the fair and reasonable charge for furnishing the report or record. A health care facility may disclose to the insurance carrier of an affected employer records relating to the diagnosis or treatment of the injured employee without the authorization of the injured employee to determine the amount of payment or the entitlement to payment. (V.A.C.S. Art. 8308-4.66.)

Sec. 408.026. **SPINAL SURGERY SECOND OPINION.** (a) Except in a medical emergency, an insurance carrier is liable for medical costs related to spinal surgery only if:

(1) before surgery, the employee obtains from a doctor approved by the insurance carrier or the commission a second opinion that concurs with the treating doctor's recommendation;

(2) the insurance carrier waives the right to an examination or fails to request an examination before the 15th day after the date of the notification that surgery is recommended; or

(3) the commission determines that extenuating circumstances exist and orders payment for surgery.

(b) The commission shall adopt rules necessary to ensure that an examination required under this section is performed without undue delay. (V.A.C.S. Art. 8308-4.67.)

Sec. 408.027. **PAYMENT OF HEALTH CARE PROVIDER.** (a) An insurance carrier shall pay the fee charged for a service rendered by a health care provider not later than the 45th day after the date the insurance carrier receives the charge unless the amount of the payment or the entitlement to payment is disputed.

(b) If an insurance carrier disputes the amount charged by a health care provider and requests an audit of the services rendered, the insurance carrier shall pay 50 percent of the amount charged by the health care provider not later than the 45th day after the date the insurance carrier receives the statement of charge.

(c) If an insurance carrier denies liability or the health care provider's entitlement to payment and an accident or health insurance company provides benefits to the employee for medical or other health care services, the right to recover that amount may be assigned by the employee to the accident or health insurance company.

(d) If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the commission, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as provided by Section 413.031(d). (V.A.C.S. Art. 8308-4.68.)

Sec. 408.028. PHARMACEUTICAL SERVICES. (a) A health care practitioner providing care to an employee under this subchapter shall prescribe for the employee any necessary prescription drugs in accordance with applicable state law.

(b) An insurance carrier may not require an employee to use pharmaceutical services designated by the carrier. (V.A.C.S. Art. 8308-4.69.)

[Sections 408.029-408.040 reserved for expansion]

### SUBCHAPTER C. COMPUTATION OF AVERAGE WEEKLY WAGE

Sec. 408.041. AVERAGE WEEKLY WAGE. (a) Except as otherwise provided by this subtitle, the average weekly wage of an employee who has worked for the employer for at least the 13 consecutive weeks immediately preceding an injury is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13.

(b) The average weekly wage of an employee whose wage at the time of injury has not been fixed or cannot be determined or who has worked for the employer for less than the 13 weeks immediately preceding the injury equals:

- (1) the usual wage that the employer pays a similar employee for similar services; or
- (2) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for remuneration.

(c) If Subsection (a) or (b) cannot reasonably be applied because the employee's employment has been irregular or because the employee has lost time from work during the 13-week period immediately preceding the injury because of illness, weather, or another cause beyond the control of the employee, the commission may determine the employee's average weekly wage by any method that the commission considers fair, just, and reasonable to all parties and consistent with the methods established under this section. (V.A.C.S. Arts. 8308-4.10(a), (b), (g).)

Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE. (a) The average weekly wage of a part-time employee who limits the employee's work to less than full-time hours or a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time workweek at the same rate of pay; or

(B) if the employee has worked for the employer for less than 13 weeks immediately preceding the date of the injury, the average weekly wage is equal to:

(i) the weekly wage that the employer pays a similar employee for similar services in full-time employment; or

(ii) if a similar employee does not exist, the usual wage paid in that vicinity for the same or similar services provided for compensation in full-time employment.

(c) In this section, "part-time employee" means an employee who, at the time of the injury, was working less than the full-time hours or full-time workweek of similar employees in the same employment, whether for the same or a different employer. (V.A.C.S. Art. 8308-4.10(c).)

Sec. 408.043. AVERAGE WEEKLY WAGE FOR SEASONAL EMPLOYEE. (a) For determining the amount of temporary income benefits of a seasonal employee, the average

weekly wage of the employee is computed as provided by Section 408.041 and is adjusted as often as necessary to reflect the wages the employee could reasonably have expected to earn during the period that temporary income benefits are paid.

(b) For determining the amount of impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits of a seasonal employee, the average weekly wage of the employee is computed by dividing the amount of total wages earned by the employee during the 12 months immediately preceding the date of the injury by 50.

(c) If, for good reason, the commission determines that computing the average weekly wage for a seasonal employee as provided by this section is impractical, the commission shall compute the average weekly wage as of the time of the injury in a manner that is fair and just to both parties.

(d) In this section, "seasonal employee" means an employee who, as a regular course of the employee's conduct, engages in seasonal or cyclical employment that does not continue throughout the entire year. (V.A.C.S. Art. 8308-4.10(d).)

Sec. 408.044. AVERAGE WEEKLY WAGE FOR MINOR, APPRENTICE, TRAINEE, OR STUDENT. (a) For computing impairment income benefits, supplemental income benefits, lifetime income benefits, or death benefits, the average weekly wage of an employee shall be adjusted to reflect the level of expected wages during the period that the benefits are payable if:

- (1) the employee is a minor, apprentice, trainee, or student at the time of the injury;
- (2) the employee's employment or earnings at the time of the injury are limited primarily because of apprenticeship, continuing formal training, or education intended to enhance the employee's future wages; and
- (3) the employee's wages would reasonably be expected to change because of a change of employment during that period.

(b) An adjustment under Subsection (a) may not consider expected wage levels for a period occurring after the third anniversary of the date of the injury. (V.A.C.S. Art. 8308-4.10(e).)

Sec. 408.045. NONPECUNIARY WAGES. The commission may not include nonpecuniary wages in computing an employee's average weekly wage during a period in which the employer continues to provide the nonpecuniary wages. (V.A.C.S. Art. 8308-4.10(i).)

Sec. 408.046. SIMILAR EMPLOYEES, SERVICES, OR EMPLOYMENT. For purposes of this subchapter and Subchapter D, the determination as to whether employees, services, or employment are the same or similar must include consideration of:

- (1) the training and experience of the employees;
- (2) the nature of the work; and
- (3) the number of hours normally worked. (V.A.C.S. Art. 8308-4.10(h).)

Sec. 408.047. STATE AVERAGE WEEKLY WAGE. The state average weekly wage equals the annual average of the average weekly wage of manufacturing production workers in this state, as determined by the Texas Employment Commission. (V.A.C.S. Art. 8308-4.11(b).)

[Sections 408.048-408.060 reserved for expansion]

#### SUBCHAPTER D. COMPUTATION OF BENEFITS

Sec. 408.061. MAXIMUM WEEKLY BENEFIT. (a) A weekly temporary income benefit may not exceed 100 percent of the state average weekly wage under Section 408.047 rounded to the nearest whole dollar.

(b) A weekly impairment income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(c) A weekly supplemental income benefit may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.

(d) A weekly death benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(e) A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.

(f) The commission shall compute the maximum weekly income benefits for each state fiscal year not later than September 1 of each year.

(g) The maximum weekly income benefit in effect on the date of injury is applicable for the entire time that the benefit is payable. (V.A.C.S. Arts. 8308-4.11(a), (c), (d).)

Sec. 408.062. MINIMUM WEEKLY INCOME BENEFIT. (a) The minimum weekly income benefit is 15 percent of the state average weekly wage as determined under Section 408.047, rounded to the nearest whole dollar.

(b) The commission shall compute the minimum weekly income benefit for each state fiscal year not later than September 1 of each year.

(c) The minimum weekly income benefit in effect on the date of injury is applicable for the entire time that income benefits are payable. (V.A.C.S. Art. 8308-4.12.)

Sec. 408.063. WAGE PRESUMPTIONS; ADMINISTRATIVE VIOLATION. (a) To expedite the payment of income benefits, the commission may by rule establish reasonable presumptions relating to the wages earned by an employee, including the presumption that an employee's last paycheck accurately reflects the employee's usual wage.

(b) Not later than the 30th day after the date the employer receives notice of an injury to the employee, the employer shall file a wage statement showing the amount of all wages paid to the employee.

(c) An employer who fails to file a wage statement in accordance with Subsection (b) commits a violation. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-4.10(f).)

Sec. 408.064. INTEREST ON ACCRUED BENEFITS. (a) An order to pay income or death benefits accrued but unpaid must include interest on the amount of compensation due at the rate provided by Section 401.023.

(b) Accrued but unpaid compensation and interest shall be paid in a lump sum. (V.A.C.S. Art. 8308-4.13.)

[Sections 408.065-408.080 reserved for expansion]

## SUBCHAPTER E. INCOME BENEFITS IN GENERAL

Sec. 408.081. INCOME BENEFITS. (a) An employee is entitled to income benefits as provided in this chapter.

(b) Except as otherwise provided by this subtitle, income benefits shall be paid weekly as and when they accrue without order from the commission.

(c) An employee's entitlement to income benefits under this chapter terminates on the death of the employee. An interest in future income benefits does not survive after the employee's death. (V.A.C.S. Art. 8308-4.21.)

Sec. 408.082. ACCRUAL OF RIGHT TO INCOME BENEFITS. (a) Income benefits may not be paid under this subtitle for an injury that does not result in disability for at least one week.

(b) If the disability continues for longer than one week, weekly income benefits begin to accrue on the eighth day after the date of the injury. If the disability does not begin at once after the injury occurs or within eight days of the occurrence but does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began.

(c) If the disability continues for four weeks or longer after the date it begins, compensation shall be computed from the date the disability begins.

(d) This section does not preclude the recovery of medical benefits as provided by Subchapter B. (V.A.C.S. Art. 8308-4.22.)

Sec. 408.083. TERMINATION OF RIGHT TO TEMPORARY INCOME, IMPAIRMENT INCOME, AND SUPPLEMENTAL INCOME BENEFITS. An employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income

benefits terminates on the expiration of 401 weeks after the date of injury. (V.A.C.S. Art. 8308-4.29.)

Sec. 408.084. CONTRIBUTING INJURY. (a) At the request of the insurance carrier, the commission may order that impairment income benefits and supplemental income benefits be reduced in a proportion equal to the proportion of a documented impairment that resulted from earlier compensable injuries.

(b) The commission shall consider the cumulative impact of the compensable injuries on the employee's overall impairment in determining a reduction under this section.

(c) If the combination of the compensable injuries results in an injury compensable under Section 408.161, the benefits for that injury shall be paid as provided by Section 408.162. (V.A.C.S. Art. 8308-4.30.)

Sec. 408.085. ADVANCE OF BENEFITS FOR HARDSHIP. (a) If there is a likelihood that income benefits will be paid, the commission may grant an employee suffering financial hardship advances as provided by this subtitle against the amount of income benefits to which the employee may be entitled. An advance may be ordered before or after the employee attains maximum medical improvement. An insurance carrier shall pay the advance ordered.

(b) An employee must apply to the commission for an advance on a form prescribed by the commission. The application must describe the hardship that is the grounds for the advance.

(c) An advance under this section may not exceed an amount equal to four times the maximum weekly benefit for temporary income benefits as computed in Section 408.061. The commission may not grant more than three advances to a particular employee based on the same injury.

(d) The commission may not grant an advance to an employee who is receiving, on the date of the application under Subsection (b), at least 90 percent of the employee's net preinjury wages under Section 408.003 or 408.129. (V.A.C.S. Art. 8308-4.32.)

Sec. 408.086. COMMISSION DETERMINATION OF EXTENDED UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) During the period that impairment income benefits or supplemental income benefits are being paid to an employee, the commission shall determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment.

(b) To make this determination, the commission may require periodic reports from the employee and the insurance carrier and, at the insurance carrier's expense, may require physical or other examinations, vocational assessments, or other tests or diagnoses necessary to perform its duty under this section and Subchapter H. (V.A.C.S. Art. 8308-4.28(h).)

[Sections 408.087-408.100 reserved for expansion]

## SUBCHAPTER F. TEMPORARY INCOME BENEFITS

Sec. 408.101. TEMPORARY INCOME BENEFITS. (a) An employee is entitled to temporary income benefits if the employee has a disability and has not attained maximum medical improvement.

(b) On the initiation of compensation as provided by Section 409.021, the insurance carrier shall pay temporary income benefits as provided by this subchapter. (V.A.C.S. Art. 8308-4.23(a) (part).)

Sec. 408.102. DURATION OF TEMPORARY INCOME BENEFITS. (a) Temporary income benefits continue until the employee reaches maximum medical improvement.

(b) The commission by rule shall establish a presumption that maximum medical improvement has been reached based on a lack of medical improvement in the employee's condition. (V.A.C.S. Arts. 8308-4.23(b), (g).)

Sec. 408.103. AMOUNT OF TEMPORARY INCOME BENEFITS. (a) Subject to Sections 408.061 and 408.062, the amount of a temporary income benefit is equal to:

(1) 70 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage; or

(2) for the first 26 weeks, 75 percent of the amount computed by subtracting the employee's weekly earnings after the injury from the employee's average weekly wage if the employee earns less than \$8.50 an hour.

(b) A temporary income benefit under Subsection (a)(2) may not exceed the employee's actual earnings for the previous year. It is presumed that the employee's actual earnings for the previous year are equal to:

(1) the sum of the employee's wages as reported in the most recent four quarterly wage reports to the Texas Employment Commission divided by 52;

(2) the employee's wages in the single quarter of the most recent four quarters in which the employee's earnings were highest, divided by 13, if the commission finds that the employee's most recent four quarters' earnings reported in the Texas Employment Commission wage reports are not representative of the employee's usual earnings; or

(3) the amount the commission determines from other credible evidence to be the actual earnings for the previous year if the Texas Employment Commission does not have a wage report reflecting at least one quarter's earnings because the employee worked outside the state during the previous year.

(c) A presumption under Subsection (b) may be rebutted by other credible evidence of the employee's actual earnings.

(d) The Texas Employment Commission shall provide information required under this section in the manner most efficient for transferring the information.

(e) For purposes of Subsection (a), if an employee is offered a bona fide position of employment that the employee is reasonably capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly earnings after the injury are equal to the weekly wage for the position offered to the employee. (V.A.C.S. Arts. 8308-4.23(c), (d), (e), (f).)

[Sections 408.104-408.120 reserved for expansion]

#### SUBCHAPTER G. IMPAIRMENT INCOME BENEFITS

Sec. 408.121. IMPAIRMENT INCOME BENEFITS. (a) An employee's entitlement to impairment income benefits begins on the day after the date the employee reaches maximum medical improvement and ends on the earlier of:

(1) the date of expiration of a period computed at the rate of three weeks for each percentage point of impairment; or

(2) the date of the employee's death.

(b) The insurance carrier shall begin to pay impairment income benefits not later than the fifth day after the date on which the insurance carrier receives the doctor's report certifying maximum medical improvement. Impairment income benefits shall be paid for a period based on the impairment rating, unless that rating is disputed under Subsection (c).

(c) If the insurance carrier disputes the impairment rating used under Subsection (a), the carrier shall pay the employee impairment income benefits for a period based on the carrier's reasonable assessment of the correct rating. (V.A.C.S. Arts. 8308-4.26(c), (e), (f).)

Sec. 408.122. ELIGIBILITY FOR IMPAIRMENT INCOME BENEFITS. (a) A claimant may not recover impairment income benefits unless evidence of impairment based on an objective clinical or laboratory finding exists. If the finding of impairment is made by a doctor chosen by the claimant and the finding is contested, a designated doctor or a doctor selected by the insurance carrier must be able to confirm the objective clinical or laboratory finding on which the finding of impairment is based.

(b) If a dispute exists as to whether the employee has reached maximum medical improvement, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties. If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission. The designated doctor shall report to the commission. The report of the designated doctor has presumptive weight, and the commission shall base



its determination of whether the employee has reached maximum medical improvement on the report unless the great weight of the other medical evidence is to the contrary. (V.A.C.S. Art. 8308-4.25.)

Sec. 408.123. **CERTIFICATION OF MAXIMUM MEDICAL IMPROVEMENT; EVALUATION OF IMPAIRMENT RATING.** (a) After an employee has been certified by a doctor as having reached maximum medical improvement, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating using the impairment rating guidelines described by Section 408.124. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation shall be submitted to the treating doctor, and the treating doctor shall indicate agreement or disagreement with the certification and evaluation.

(b) A certifying doctor shall issue a written report certifying that maximum medical improvement has been reached, stating the employee's impairment rating, and providing any other information required by the commission to:

- (1) the commission;
- (2) the employee; and
- (3) the insurance carrier.

(c) If an employee is not certified as having reached maximum medical improvement before the expiration of 102 weeks after the date income benefits begin to accrue, the commission shall notify the treating doctor of the requirements of this subchapter. (V.A.C.S. Art. 8308-4.26(d).)

Sec. 408.124. **IMPAIRMENT RATING GUIDELINES.** (a) An award of an impairment income benefit, whether by the commission or a court, shall be made on an impairment rating determined using the impairment rating guidelines described in this section.

(b) The commission shall use for determining the existence and degree of an employee's impairment "Guides to the Evaluation of Permanent Impairment," third edition, second printing, dated February 1989, published by the American Medical Association. (V.A.C.S. Arts. 8308-4.24, 8308-4.26(a).)

Sec. 408.125. **DISPUTE AS TO IMPAIRMENT RATING.** (a) If an impairment rating is disputed, the commission shall direct the employee to be examined by a designated doctor chosen by mutual agreement of the parties.

(b) If the parties are unable to agree on a designated doctor, the commission shall direct the employee to be examined by a designated doctor chosen by the commission.

(c) The designated doctor shall report in writing to the commission.

(d) If the designated doctor is chosen by the parties, the commission shall adopt the impairment rating made by the designated doctor.

(e) If the designated doctor is chosen by the commission, the report of the designated doctor shall have presumptive weight, and the commission shall base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. If the great weight of the medical evidence contradicts the impairment rating contained in the report of the designated doctor chosen by the commission, the commission shall adopt the impairment rating of one of the other doctors. (V.A.C.S. Art. 8308-4.26(g).)

Sec. 408.126. **AMOUNT OF IMPAIRMENT INCOME BENEFITS.** Subject to Sections 408.061 and 408.062, an impairment income benefit is equal to 70 percent of the employee's average weekly wage. (V.A.C.S. Art. 8308-4.26(b).)

Sec. 408.127. **REDUCTION OF IMPAIRMENT INCOME BENEFITS.** (a) An insurance carrier shall reduce impairment income benefits to an employee by an amount equal to employer payments made under Section 408.003 that are not reimbursed or reimbursable under that section.

(b) The insurance carrier shall remit the amount of a reduction under this section to the employer who made the payments.

(c) The commission shall adopt rules and forms to ensure the full reporting and the accuracy of reductions and reimbursements made under this section. (V.A.C.S. Art. 8308-4.06(e).)

Sec. 408.128. COMMUTATION OF IMPAIRMENT INCOME BENEFITS. (a) An employee may elect to commute the remainder of the impairment income benefits to which the employee is entitled if the employee has returned to work for at least three months, earning at least 80 percent of the employee's average weekly wage.

(b) An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury. (V.A.C.S. Art. 8308-4.27.)

Sec. 408.129. ACCELERATION OF IMPAIRMENT INCOME BENEFITS. (a) On approval by the commission of a written request received from an employee, an insurance carrier shall accelerate the payment of impairment income benefits to the employee. The accelerated payment may not exceed a rate of payment equal to that of the employee's net preinjury wage.

(b) The commission shall approve the request and order the acceleration of the benefits if the commission determines that the acceleration is:

- (1) required to relieve hardship; and
- (2) in the overall best interest of the employee.

(c) The duration of the impairment income benefits to which the employee is entitled shall be reduced to offset the increased payments caused by the acceleration taking into consideration the discount for present payment computed at the rate provided under Section 401.023.

(d) The commission may prescribe forms necessary to implement this section. (V.A.C.S. Art. 8308-4.321.)

[Sections 408.130-408.140 reserved for expansion]

#### SUBCHAPTER H. SUPPLEMENTAL INCOME BENEFITS

Sec. 408.141. AWARD OF SUPPLEMENTAL INCOME BENEFITS. An award of a supplemental income benefit, whether by the commission or a court, shall be made in accordance with this subchapter. (V.A.C.S. Art. 8308-4.28(a).)

Sec. 408.142. SUPPLEMENTAL INCOME BENEFITS. (a) An employee is entitled to supplemental income benefits if on the expiration of the impairment income benefit period computed under Section 408.121(a)(1) the employee:

(1) has an impairment rating of 15 percent or more as determined by this subtitle from the compensable injury;

(2) has not returned to work or has returned to work earning less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(3) has not elected to commute a portion of the impairment income benefit under Section 408.128; and

(4) has attempted in good faith to obtain employment commensurate with the employee's ability to work.

(b) If an employee is not entitled to supplemental income benefits at the time of payment of the final impairment income benefit because the employee is earning at least 80 percent of the employee's average weekly wage, the employee may become entitled to supplemental income benefits at any time within one year after the date the impairment income benefit period ends if:

(1) the employee earns wages for at least 90 days that are less than 80 percent of the employee's average weekly wage;

(2) the employee meets the requirements of Subsections (a)(1), (3), and (4); and

(3) the decrease in earnings is a direct result of the employee's impairment from the compensable injury. (V.A.C.S. Arts. 8308-4.28(b), (c).)

Sec. 408.143. EMPLOYEE STATEMENT. (a) After the commission's initial determination of supplemental income benefits, the employee must file a statement with the insurance carrier stating:

(1) that the employee has earned less than 80 percent of the employee's average weekly wage as a direct result of the employee's impairment;

(2) the amount of wages the employee earned in the filing period provided by Subsection (b); and

(3) that the employee has in good faith sought employment commensurate with the employee's ability to work.

(b) The statement required under this section must be filed quarterly on a form and in the manner provided by the commission. The commission may modify the filing period as appropriate to an individual case.

(c) Failure to file a statement under this section relieves the insurance carrier of liability for supplemental income benefits for the period during which a statement is not filed. (V.A.C.S. Art. 8308-4.28(k).)

Sec. 408.144. COMPUTATION OF SUPPLEMENTAL INCOME BENEFITS. (a) Supplemental income benefits are calculated quarterly and paid monthly.

(b) Subject to Section 408.061, the amount of a supplemental income benefit for a week is equal to 80 percent of the amount computed by subtracting the weekly wage the employee earned during the reporting period provided by Section 408.143(b) from 80 percent of the employee's average weekly wage determined under Section 408.041, 408.042, 408.043, or 408.044.

(c) For the purposes of this subchapter, if an employee is offered a bona fide position of employment that the employee is capable of performing, given the physical condition of the employee and the geographic accessibility of the position to the employee, the employee's weekly wages are considered to be equal to the weekly wages for the position offered to the employee. (V.A.C.S. Arts. 8308-4.28(m) (part), (n).)

Sec. 408.145. PAYMENT OF SUPPLEMENTAL INCOME BENEFITS. An insurance carrier shall pay supplemental income benefits beginning not later than the seventh day after the expiration date of the employee's impairment income benefit period and shall continue to pay the benefits in a timely manner. (V.A.C.S. Art. 8308-4.28(l)(1) (part).)

Sec. 408.146. TERMINATION OF SUPPLEMENTAL INCOME BENEFITS; REINITIATION. (a) If an employee earns wages that are at least 80 percent of the employee's average weekly wage for at least 90 days during a time that the employee receives supplemental income benefits, the employee ceases to be entitled to supplemental income benefits for the filing period.

(b) Supplemental income benefits terminated under this section shall be reinitiated when the employee:

(1) satisfies the conditions of Section 408.142(b); and

(2) files the statement required under Section 408.143.

(c) Notwithstanding any other provision of this section, an employee who is not entitled to supplemental income benefits for 12 consecutive months ceases to be entitled to any additional income benefits for the compensable injury. (V.A.C.S. Arts. 8308-4.28(d), (e), (f).)

Sec. 408.147. CONTEST OF SUPPLEMENTAL INCOME BENEFITS BY INSURANCE CARRIER; ATTORNEY'S FEES. (a) An insurance carrier may request a benefit review conference to contest an employee's entitlement to supplemental income benefits or the amount of supplemental income benefits.

(b) If an insurance carrier fails to make a request for a benefit review conference within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's statement, the insurance carrier waives the right to contest entitlement to supplemental income benefits and the amount of supplemental income benefits for that period of supplemental income benefits.

(c) If an insurance carrier disputes a commission determination that an employee is entitled to supplemental income benefits or the amount of supplemental income benefits due and the employee prevails on any disputed issue, the insurance carrier is liable for reasonable and necessary attorney's fees incurred by the employee as a result of the insurance carrier's dispute and for supplemental income benefits accrued but not paid and interest on that

amount, according to Section 408.064. Attorney's fees awarded under this subsection are not subject to Sections 408.221(b) and (e). (V.A.C.S. Arts. 8308-4.28(l)(1) (part), (2).)

Sec. 408.148. **EMPLOYEE DISCHARGE AFTER TERMINATION.** The commission may reinstate supplemental income benefits to an employee who is discharged within 12 months of the date of losing entitlement to supplemental income benefits under Section 408.146(c) if the commission finds that the employee was discharged at that time with the intent to deprive the employee of supplemental income benefits. (V.A.C.S. Art. 8308-4.28(g).)

Sec. 408.149. **STATUS REVIEW; BENEFIT REVIEW CONFERENCE.** (a) Not more than once in each period of 12 calendar months, an employee and an insurance carrier each may request the commission to review the status of the employee and determine whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury.

(b) Either party may request a benefit review conference to contest a determination of the commission at any time, subject only to the limits placed on the insurance carrier by Section 408.147. (V.A.C.S. Art. 8308-4.28(i).)

Sec. 408.150. **VOCATIONAL REHABILITATION.** (a) The commission shall refer an employee to the Texas Rehabilitation Commission with a recommendation for appropriate services if the commission determines that an employee entitled to supplemental income benefits could be materially assisted by vocational rehabilitation or training in returning to employment or returning to employment more nearly approximating the employee's preinjury employment.

(b) An employee who refuses services or refuses to cooperate with services provided under this section loses entitlement to supplementary income benefits. (V.A.C.S. Art. 8308-4.28(j).)

[Sections 408.151-408.160 reserved for expansion]

#### SUBCHAPTER I. LIFETIME INCOME BENEFITS

Sec. 408.161. **LIFETIME INCOME BENEFITS.** (a) Lifetime income benefits are paid until the death of the employee for:

- (1) total and permanent loss of sight in both eyes;
- (2) loss of both feet at or above the ankle;
- (3) loss of both hands at or above the wrist;
- (4) loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- (5) an injury to the spine that results in permanent and complete paralysis of both arms, both legs, or one arm and one leg; or
- (6) an injury to the skull resulting in incurable insanity or imbecility.

(b) For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of that body part.

(c) Subject to Section 408.061, the amount of lifetime income benefits is equal to 75 percent of the employee's average weekly wage. Benefits being paid shall be increased at a rate of three percent a year notwithstanding Section 408.061. (V.A.C.S. Arts. 8308-4.31(a), (b), (c).)

Sec. 408.162. **SUBSEQUENT INJURY FUND BENEFITS.** (a) If a subsequent compensable injury, with the effects of a previous injury, results in a condition for which the injured employee is entitled to lifetime income benefits, the insurance carrier is liable for the payment of benefits for the subsequent injury only to the extent that the subsequent injury would have entitled the employee to benefits had the previous injury not existed.

(b) The subsequent injury fund shall compensate the employee for the remainder of the lifetime income benefits to which the employee is entitled. (V.A.C.S. Art. 8308-4.47.)

[Sections 408.163-408.180 reserved for expansion]

## SUBCHAPTER J. DEATH AND BURIAL BENEFITS

Sec. 408.181. DEATH BENEFITS. (a) An insurance carrier shall pay death benefits to the legal beneficiary if a compensable injury to the employee results in death.

(b) Subject to Section 408.061, the amount of a death benefit is equal to 75 percent of the employee's average weekly wage. (V.A.C.S. Art. 8308-4.41.)

Sec. 408.182. DISTRIBUTION OF DEATH BENEFITS. (a) If there is an eligible child or grandchild and an eligible spouse, half of the death benefits shall be paid to the eligible spouse and half shall be paid in equal shares to the eligible children. If an eligible child has predeceased the employee, death benefits that would have been paid to that child shall be paid in equal shares per stirpes to the children of the deceased child.

(b) If there is an eligible spouse and no eligible child or grandchild, all the death benefits shall be paid to the eligible spouse.

(c) If there is an eligible child or grandchild and no eligible spouse, the death benefits shall be paid to the eligible children or grandchildren.

(d) If there is no eligible spouse, no eligible child, and no eligible grandchild, the death benefits shall be paid in equal shares to surviving dependents of the deceased employee who are parents, stepparents, siblings, or grandparents of the deceased.

(e) If an employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 403.007.

(f) In this section:

(1) "Eligible child" means a child of a deceased employee if the child is:

(A) a minor;

(B) enrolled as a full-time student in an accredited educational institution and is less than 25 years of age; or

(C) a dependent of the deceased employee at the time of the employee's death.

(2) "Eligible grandchild" means a grandchild of a deceased employee who is a dependent of the deceased employee and whose parent is not an eligible child.

(3) "Eligible spouse" means the surviving spouse of a deceased employee unless the spouse abandoned the employee for longer than the year immediately preceding the death without good cause, as determined by the commission. (V.A.C.S. Arts. 8308-4.42(b), (c), (d), (e), (f), (g).)

Sec. 408.183. DURATION OF DEATH BENEFITS. (a) Entitlement to death benefits begins on the day after the date of an employee's death.

(b) An eligible spouse is entitled to receive death benefits for life or until remarriage. On remarriage, the eligible spouse is entitled to receive 104 weeks of death benefits, commuted as provided by commission rule.

(c) A child who is eligible for death benefits because the child is a minor on the date of the employee's death is entitled to receive benefits until the child attains the age of 18.

(d) A child eligible for death benefits under Subsection (c) who at age 18 is enrolled as a full-time student in an accredited educational institution or a child who is eligible for death benefits because on the date of the employee's death the child is enrolled as a full-time student in an accredited educational institution is entitled to receive or to continue to receive, as appropriate, benefits until the earliest of:

(1) the date the child ceases, for a second consecutive semester, to be enrolled as a full-time student in an accredited educational institution;

(2) the date the child attains the age of 25; or

(3) the date the child dies.

(e) A child who is eligible for death benefits because the child is a dependent of the deceased employee on the date of the employee's death is entitled to receive benefits until the earlier of:

- (1) the date the child dies; or
- (2) if the child is dependent:

(A) because the child is an individual with a physical or mental disability, the date the child no longer has the disability; or

(B) because of a reason other than a physical or mental disability, the date of the expiration of 364 weeks of death benefit payments.

- (f) An eligible grandchild is entitled to receive death benefits until the earlier of:

- (1) the date the grandchild dies; or
- (2) if the grandchild is:

(A) a minor at the time of the employee's death, the date the grandchild ceases to be a minor; or

(B) not a minor at the time of the employee's death, the date of the expiration of 364 weeks of death benefit payments.

- (g) Any other person entitled to death benefits is entitled to receive death benefits until the earlier of:

- (1) the date the person dies; or
- (2) the date of the expiration of 364 weeks of death benefit payments.

(h) Section 401.011(16) does not apply to the use of the term "disability" in this section. (V.A.C.S. Art. 8308-4.43; New.)

Sec. 408.184. REDISTRIBUTION OF DEATH BENEFITS. (a) If a legal beneficiary dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries as provided by Sections 408.182 and 408.183.

(b) If a spouse ceases to be eligible because of remarriage, the benefits payable to the remaining legal beneficiaries remain constant for 104 weeks. After the 104th week, the spouse's share of benefits shall be redistributed as provided by Sections 408.182 and 408.183.

(c) If all legal beneficiaries, other than the subsequent injury fund, cease to be eligible and the insurance carrier has not made 364 weeks of full death benefit payments, including the remarriage payment, the insurance carrier shall pay to the subsequent injury fund an amount computed by subtracting the total amount paid from the amount that would be paid for 364 weeks of death benefits. (V.A.C.S. Art. 8308-4.44.)

Sec. 408.185. EFFECT OF BENEFICIARY DISPUTE; ATTORNEY'S FEES. On settlement of a case in which the insurance carrier admits liability for death benefits but a dispute exists as to the proper beneficiary or beneficiaries, the settlement shall be paid in periodic payments as provided by law, with a reasonable attorney's fee not to exceed 25 percent of the settlement, paid periodically, and based on time and expenses. (V.A.C.S. Art. 8308-4.45(b).)

Sec. 408.186. BURIAL BENEFITS. (a) If the death of an employee results from a compensable injury, the insurance carrier shall pay to the person who incurred liability for the costs of burial the lesser of:

- (1) the actual costs incurred for reasonable burial expenses; or
- (2) \$2,500.

(b) If the employee died away from the employee's usual place of employment, the insurance carrier shall pay the reasonable cost of transporting the body, not to exceed the cost of transporting the body to the employee's usual place of employment. (V.A.C.S. Art. 8308-4.46.)

Sec. 408.187. AUTOPSY. (a) If in a claim for death benefits based on an occupational disease an autopsy is necessary to determine the cause of death, the commission may, after opportunity for hearing, order the legal beneficiaries of a deceased employee to permit an autopsy.

(b) A legal beneficiary is entitled to have a representative present at an autopsy ordered under this section.

(c) The commission shall require the insurance carrier to pay the costs of a procedure ordered under this section. (V.A.C.S. Art. 8308-4.48.)

[Sections 408.188-408.200 reserved for expansion]

#### SUBCHAPTER K. PROTECTION OF RIGHTS TO BENEFITS

Sec. 408.201. **BENEFITS EXEMPT FROM LEGAL PROCESS.** Benefits are exempt from:

- (1) garnishment;
- (2) attachment;
- (3) judgment; and
- (4) other actions or claims. (V.A.C.S. Art. 8308-4.07(a).)

Sec. 408.202. **ASSIGNABILITY OF BENEFITS.** Benefits are not assignable, except a legal beneficiary may, with commission approval, assign the right to death benefits. (V.A.C.S. Arts. 8308-4.07(b), (c).)

Sec. 408.203. **ALLOWABLE LIENS.** (a) An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, in the following order of priority:

- (1) an attorney's fee for representing an employee or legal beneficiary in a matter arising under this subtitle;
- (2) court-ordered child support; or
- (3) a subrogation interest established under this subtitle.

(b) A benefit that is subject to a lien for payment of court-ordered child support shall be paid as required by:

- (1) an order withholding income under Section 14.43, Family Code; or
- (2) a writ of income withholding under Section 14.45, Family Code. (V.A.C.S. Art. 8308-4.08.)

[Sections 408.204-408.220 reserved for expansion]

#### SUBCHAPTER L. ATTORNEY'S FEES IN WORKERS' COMPENSATION BENEFIT MATTERS

Sec. 408.221. **ATTORNEY'S FEES PAID TO CLAIMANT'S COUNSEL.** (a) An attorney's fee, including a contingency fee, for representing a claimant before the commission or court under this subtitle must be approved by the commission or court.

(b) Except as otherwise provided, an attorney's fee under this section is based on the attorney's time and expenses according to written evidence presented to the commission or court. Except as provided by Section 408.147(c), the attorney's fee shall be paid from the claimant's recovery.

(c) In approving an attorney's fee under this section, the commission or court shall consider:

- (1) the time and labor required;
- (2) the novelty and difficulty of the questions involved;
- (3) the skill required to perform the legal services properly;
- (4) the fee customarily charged in the locality for similar legal services;
- (5) the amount involved in the controversy;
- (6) the benefits to the claimant that the attorney is responsible for securing; and
- (7) the experience and ability of the attorney performing the services.

(d) The commission by rule or the court may provide for the commutation of an attorney's fee, except that the attorney's fee shall be paid in periodic payments in a claim involving death benefits if the only dispute is as to the proper beneficiary or beneficiaries.

(e) The commission by rule shall provide guidelines for maximum attorney's fees for specific services in accordance with this section.

(f) An attorney's fee may not be allowed in a case involving a fatal injury or lifetime income benefit if the insurance carrier admits liability on all issues and tenders payment of maximum benefits in writing under this subtitle while the claim is pending before the commission.

(g) An attorney's fee shall be paid to the attorney by separate draft.

(h) Except as provided by Section 408.147(c), an attorney's fee may not exceed 25 percent of the claimant's recovery. (V.A.C.S. Art. 8308-4.09.)

Sec. 408.222. ATTORNEY'S FEES PAID TO DEFENSE COUNSEL. (a) The amount of an attorney's fee for defending an insurance carrier in a workers' compensation action brought under this subtitle must be approved by the commission or court and determined by the commission or court to be reasonable and necessary.

(b) In determining whether a fee is reasonable under this section, the commission or court shall consider issues analogous to those listed under Section 408.221(c). The defense counsel shall present written evidence to the commission or court relating to:

- (1) the time spent and expenses incurred in defending the case; and
- (2) other evidence considered necessary by the commission or court in making a determination under this section. (V.A.C.S. Art. 8308-4.091.)

## CHAPTER 409. COMPENSATION PROCEDURES

### SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS

- Sec. 409.001. NOTICE OF INJURY TO EMPLOYER
- Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY
- Sec. 409.003. CLAIM FOR COMPENSATION
- Sec. 409.004. FAILURE TO FILE CLAIM FOR COMPENSATION
- Sec. 409.005. EMPLOYER REPORT OF INJURY; ADMINISTRATIVE VIOLATION
- Sec. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION
- Sec. 409.007. DEATH BENEFIT CLAIMS
- Sec. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED
- Sec. 409.009. SUBCLAIMS
- Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY
- Sec. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS
- Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION

[Sections 409.013-409.020 reserved for expansion]

### SUBCHAPTER B. PAYMENT OF BENEFITS

- Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION
- Sec. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION
- Sec. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION
- Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION

[Sections 409.025-409.040 reserved for expansion]



## SUBCHAPTER C. OMBUDSMAN PROGRAM

- Sec. 409.041. OMBUDSMAN PROGRAM; ADMINISTRATIVE VIOLATION  
 Sec. 409.042. PUBLIC INFORMATION

## CHAPTER 409. COMPENSATION PROCEDURES

## SUBCHAPTER A. INJURY REPORTS, CLAIMS, AND RECORDS

Sec. 409.001. NOTICE OF INJURY TO EMPLOYER. (a) An employee or a person acting on the employee's behalf shall notify the employer of the employee of an injury not later than the 30th day after the date on which:

- (1) the injury occurs; or
- (2) if the injury is an occupational disease, the employee knew or should have known that the injury may be related to the employment.

(b) The notice required under Subsection (a) may be given to:

- (1) the employer; or
- (2) an employee of the employer who holds a supervisory or management position.

(c) If the injury is an occupational disease, for purposes of this section, the employer is the person who employed the employee on the date of last injurious exposure to the hazards of the disease. (V.A.C.S. Arts. 8308-5.01(a), (c), (d).)

Sec. 409.002. FAILURE TO FILE NOTICE OF INJURY. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

- (1) the employer, a person eligible to receive notice under Section 409.001(b), or the employer's insurance carrier has actual knowledge of the employee's injury;
- (2) the commission determines that good cause exists for failure to provide notice in a timely manner; or
- (3) the employer or the employer's insurance carrier does not contest the claim. (V.A.C.S. Art. 8308-5.02.)

Sec. 409.003. CLAIM FOR COMPENSATION. An employee or a person acting on the employee's behalf shall file with the commission a claim for compensation for an injury not later than one year after the date on which:

- (1) the injury occurred; or
- (2) if the injury is an occupational disease, the employee knew or should have known that the disease was related to the employee's employment. (V.A.C.S. Art. 8308-5.01(b).)

Sec. 409.004. FAILURE TO FILE CLAIM FOR COMPENSATION. Failure to file a claim for compensation with the commission as required under Section 409.003 relieves the employer and the employer's insurance carrier of liability under this subtitle unless:

- (1) good cause exists for failure to file a claim in a timely manner; or
- (2) the employer or the employer's insurance carrier does not contest the claim. (V.A.C.S. Art. 8308-5.03.)

Sec. 409.005. EMPLOYER REPORT OF INJURY; ADMINISTRATIVE VIOLATION. (a) An employer shall file a written report with the commission and the employer's insurance carrier if:

- (1) an injury results in the absence of an employee of that employer from work for more than one day; or
- (2) an employee of the employer notifies that employer of an occupational disease under Section 409.001.

(b) The report must be mailed or delivered to the commission and the insurance carrier not later than the eighth day after:

- (1) the employee's absence from work for more than one day due to an injury; or
  - (2) the day on which the employer receives notice under Section 409.001 that the employee has contracted an occupational disease.
- (c) A report required under this section may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the commission or a court in which the facts set out in the report are contradicted by the employer or insurance carrier.
- (d) The commission may adopt rules relating to the information that must be contained in a report required under this section.
- (e) An employer shall file subsequent reports as required by commission rule.
- (f) A person commits a violation if the person fails to comply with this section unless good cause exists. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Arts. 8308-5.05(a), (b) (part), (c), (d), (e).)

Sec. 409.006. RECORD OF INJURIES; ADMINISTRATIVE VIOLATION. (a) An employer shall maintain a record of each employee injury as reported by an employee or otherwise made known to the employer.

- (b) The record shall be available to the commission at reasonable times and under conditions prescribed by the commission.
- (c) The commission may adopt rules relating to the information that must be contained in an employer record under this section.
- (d) Information contained in a record maintained under this section is not an admission by the employer that:
- (1) the injury did in fact occur; or
  - (2) a fact maintained in the record is true.

(e) A person commits a violation if the person fails to comply with this section. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-5.04.)

Sec. 409.007. DEATH BENEFIT CLAIMS. (a) A person must file a claim for death benefits with the commission not later than the first anniversary of the date of the employee's death.

(b) Failure to file in the time required by Subsection (a) bars the claim unless:

- (1) the person is a minor or incompetent; or
- (2) good cause exists for the failure to file a claim under this section.

(c) A separate claim must be filed for each legal beneficiary unless the claim expressly includes or is made on behalf of another person. (V.A.C.S. Art. 8308-5.07.)

Sec. 409.008. FAILURE TO FILE EMPLOYER REPORT OF INJURY; LIMITATIONS TOLLED. If an employer or the employer's insurance carrier has been given notice or has knowledge of an injury to or the death of an employee and the employer or insurance carrier fails, neglects, or refuses to file the report under Section 409.005, the period for filing a claim for compensation under Sections 409.003 and 409.007 does not begin to run against the claim of an injured employee or a legal beneficiary until the day on which the report required under Section 409.005 has been furnished. (V.A.C.S. Art. 8308-5.06.)

Sec. 409.009. SUBCLAIMS. A person may file a written claim with the commission as a subclaimant if the person has:

- (1) provided compensation, including health care provided by a health care insurer, directly or indirectly, to or for an employee or legal beneficiary; and
- (2) sought and been refused reimbursement from the insurance carrier. (V.A.C.S. Arts. 8308-1.03(44), 8308-5.08.)

Sec. 409.010. INFORMATION PROVIDED TO EMPLOYEE OR LEGAL BENEFICIARY. Immediately on receiving notice of an injury or death from any person, the commission shall mail to the employee or legal beneficiary a clear and concise description of:

- (1) the services provided by the commission, including the services of the ombudsman program;

(2) the commission's procedures; and

(3) the person's rights and responsibilities under this subtitle. (V.A.C.S. Art. 8308-5.09.)

Sec. 409.011. INFORMATION PROVIDED TO EMPLOYER; EMPLOYER'S RIGHTS. (a) Immediately on receiving notice of an injury or death from any person, the commission shall mail to the employer a description of:

(1) the services provided by the commission;

(2) the commission's procedures; and

(3) the employer's rights and responsibilities under this subtitle.

(b) The information must include a clear statement of the following rights of the employer:

(1) the right to be present at all administrative proceedings relating to an employee's claim;

(2) the right to present relevant evidence relating to an employee's claim at any proceeding;

(3) the right to report suspected fraud;

(4) the right to contest the compensability of an injury if the insurance carrier accepts liability for the payment of benefits;

(5) the right to receive notice, after making a written request to the insurance carrier, of:

(A) a proposal to settle a claim; or

(B) an administrative or a judicial proceeding relating to the resolution of a claim; and

(6) the right to contest the failure of the insurance carrier to provide accident prevention services under Subchapter E, Chapter 411.

(c) The commission is not required to provide the information to an employer more than once during a calendar year. (V.A.C.S. Art. 8308-5.10.)

Sec. 409.012. VOCATIONAL REHABILITATION INFORMATION. (a) The commission shall analyze each report of injury received from an employer under this chapter to determine whether the injured employee would be assisted by vocational rehabilitation.

(b) If the commission determines that an injured employee would be assisted by vocational rehabilitation, the commission shall notify the injured employee in writing of the services and facilities available through the Texas Rehabilitation Commission and private providers of vocational rehabilitation. The commission shall notify the Texas Rehabilitation Commission and the affected insurance carrier that the injured employee has been identified as one who could be assisted by vocational rehabilitation.

(c) The commission shall cooperate with the Texas Rehabilitation Commission and private providers of vocational rehabilitation in the provision of services and facilities to employees by the Texas Rehabilitation Commission.

(d) A private provider of vocational rehabilitation services may register with the commission. (V.A.C.S. Art. 8308-5.11.)

[Sections 409.013-409.020 reserved for expansion]

## SUBCHAPTER B. PAYMENT OF BENEFITS

Sec. 409.021. INITIATION OF BENEFITS; INSURANCE CARRIER'S REFUSAL; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall initiate compensation under this subtitle promptly. Not later than the seventh day after the date on which an insurance carrier receives written notice of an injury, the insurance carrier shall:

(1) begin the payment of benefits as required by this subtitle; or

(2) notify the commission and the employee in writing of its refusal to pay and advise the employee of:

(A) the right to request a benefit review conference; and

(B) the means to obtain additional information from the commission.

(b) An insurance carrier shall notify the commission in writing of the initiation of income or death benefit payments in the manner prescribed by commission rules.

(c) If an insurance carrier does not contest the compensability of an injury on or before the 60th day after the date on which the insurance carrier is notified of the injury, the insurance carrier waives its right to contest compensability. The initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period.

(d) An insurance carrier may reopen the issue of the compensability of an injury if there is a finding of evidence that could not reasonably have been discovered earlier.

(e) An insurance carrier commits a violation if the insurance carrier does not initiate payments or file a notice of refusal as required by this section. A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Arts. 8308-5.21(a) (part), (b).)

Sec. 409.022. REFUSAL TO PAY BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier's notice of refusal to pay benefits under Section 409.021 must specify the grounds for the refusal.

(b) The grounds for the refusal specified in the notice constitute the only basis for the insurance carrier's defense on the issue of compensability in a subsequent proceeding, unless the defense is based on newly discovered evidence that could not reasonably have been discovered at an earlier date.

(c) An insurance carrier commits a violation if the insurance carrier does not have reasonable grounds for a refusal to pay benefits, as determined by the commission. A violation under this subsection is a Class B administrative violation. (V.A.C.S. Art. 8308-5.21(c).)

Sec. 409.023. PAYMENT OF BENEFITS; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall continue to pay benefits promptly as and when the benefits accrue without a final decision, order, or other action of the commission, except as otherwise provided.

(b) Benefits shall be paid solely to the order of the employee or the employee's legal beneficiary.

(c) An insurance carrier commits a violation if the insurance carrier fails to comply with this section. A violation under this subsection is a Class B administrative violation. Each day of noncompliance constitutes a separate violation.

(d) An insurance carrier that commits multiple violations of this section commits a Class A administrative violation and is subject to:

(1) the sanctions provided under Section 415.023; and

(2) revocation of the right to do business under the workers' compensation laws of this state. (V.A.C.S. Art. 8308-5.22.)

Sec. 409.024. TERMINATION OR REDUCTION OF BENEFITS; NOTICE; ADMINISTRATIVE VIOLATION. (a) An insurance carrier shall file with the commission a notice of termination or reduction of benefits, including the reasons for the termination or reduction, not later than the 10th day after the date on which benefits are terminated or reduced.

(b) An insurance carrier commits a violation if the insurance carrier does not have reasonable grounds to terminate or reduce benefits, as determined by the commission. A violation under this subsection is a Class B administrative violation. (V.A.C.S. Art. 8308-5.23.)

[Sections 409.025-409.040 reserved for expansion]

#### SUBCHAPTER C. OMBUDSMAN PROGRAM

Sec. 409.041. OMBUDSMAN PROGRAM; ADMINISTRATIVE VIOLATION. (a) The commission shall maintain an ombudsman program to assist injured workers and persons claiming death benefits in obtaining benefits under this subtitle.

(b) An ombudsman shall:

- (1) meet with or otherwise provide information to injured workers;
- (2) investigate complaints;
- (3) communicate with employers, insurance carriers, and health care providers on behalf of injured workers; and
- (4) assist unrepresented claimants, employers, and other parties to enable those persons to protect their rights in the workers' compensation system.

(c) At least one specially qualified employee in each commission office shall be designated an ombudsman who shall perform the duties under this section as the person's primary responsibility.

(d) Each employer shall notify its employees of the ombudsman program in a manner prescribed by the commission. An employer commits a violation if the employer fails to comply with this subsection. A violation under this subsection is a Class C administrative violation. (V.A.C.S. Art. 8308-5.41.)

Sec. 409.042. PUBLIC INFORMATION. The commission shall widely disseminate information about the ombudsman program. (V.A.C.S. Art. 8308-5.42.)

## CHAPTER 410. ADJUDICATION OF DISPUTES

### SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 410.001. DEFINITIONS
- Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS
- Sec. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT
- Sec. 410.004. DIVISION OF HEARINGS
- Sec. 410.005. VENUE FOR ADMINISTRATIVE PROCEEDINGS
- Sec. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS

[Sections 410.007-410.020 reserved for expansion]

### SUBCHAPTER B. BENEFIT REVIEW CONFERENCE

- Sec. 410.021. PURPOSE
- Sec. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS
- Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE
- Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER PROCEEDINGS ON CERTAIN CLAIMS
- Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE
- Sec. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER
- Sec. 410.027. RULES
- Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION
- Sec. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT
- Sec. 410.030. BINDING EFFECT OF AGREEMENT
- Sec. 410.031. INCOMPLETE RESOLUTION; REPORT
- Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER; REIMBURSEMENT
- Sec. 410.033. MULTIPLE CARRIERS
- Sec. 410.034. FILING OF AGREEMENT AND REPORT

[Sections 410.035-410.100 reserved for expansion]

### SUBCHAPTER C. ARBITRATION

- Sec. 410.101. PURPOSE

- Sec. 410.102. ARBITRATORS; QUALIFICATIONS
- Sec. 410.103. DUTIES OF ARBITRATOR
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- Sec. 410.105. LISTS OF ARBITRATORS
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- Sec. 410.109. SCHEDULING OF ARBITRATION
- Sec. 410.110. CONTINUANCE
- Sec. 410.111. RULES
- Sec. 410.112. EXCHANGE AND FILING OF INFORMATION; ADMINISTRATIVE VIOLATION
- Sec. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION
- Sec. 410.114. TESTIMONY; RECORD
- Sec. 410.115. EVIDENCE
- Sec. 410.116. CLOSING STATEMENTS; BRIEFS
- Sec. 410.117. EX PARTE CONTACTS PROHIBITED
- Sec. 410.118. AWARD
- Sec. 410.119. EFFECT OF AWARD
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[Sections 410.122–410.150 reserved for expansion]

SUBCHAPTER D. CONTESTED CASE HEARING

- Sec. 410.151. CONTESTED CASE HEARING; SCOPE
- Sec. 410.152. HEARING OFFICERS; QUALIFICATIONS
- Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT
- Sec. 410.154. SCHEDULING OF HEARING
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- Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION
- Sec. 410.157. RULES
- Sec. 410.158. DISCOVERY
- Sec. 410.159. STANDARD INTERROGATORIES
- Sec. 410.160. EXCHANGE OF INFORMATION
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- Sec. 410.163. POWERS AND DUTIES OF HEARING OFFICER
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[Sections 410.170–410.200 reserved for expansion]

SUBCHAPTER E. APPEALS PANEL

- Sec. 410.201. APPEALS JUDGES; QUALIFICATIONS
- Sec. 410.202. REQUEST FOR APPEAL; RESPONSE
- Sec. 410.203. POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND
- Sec. 410.204. DECISION
- Sec. 410.205. EFFECT OF DECISION; REIMBURSEMENT FOR OVERPAYMENT

- Sec. 410.206. CLERICAL ERROR
- Sec. 410.207. CONTINUATION OF COMMISSION JURISDICTION
- Sec. 410.208. JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION

[Sections 410.209–410.250 reserved for expansion]

SUBCHAPTER F. JUDICIAL REVIEW—GENERAL PROVISIONS

- Sec. 410.251. EXHAUSTION OF REMEDIES
- Sec. 410.252. TIME FOR FILING PETITION; VENUE
- Sec. 410.253. SERVICE
- Sec. 410.254. COMMISSION INTERVENTION
- Sec. 410.255. JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS
- Sec. 410.256. COURT APPROVAL OF SETTLEMENT

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SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS

- Sec. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS
- Sec. 410.302. LIMITATION OF ISSUES
- Sec. 410.303. BURDEN OF PROOF
- Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION
- Sec. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE
- Sec. 410.306. EVIDENCE
- Sec. 410.307. SUBSTANTIAL CHANGE OF CONDITION
- Sec. 410.308. CERTIFIED COPY OF NOTICE SECURING COMPENSATION

CHAPTER 410. ADJUDICATION OF DISPUTES

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 410.001. DEFINITIONS. In this chapter:
  - (1) "Director" means the director of the division.
  - (2) "Division" means the division of hearings. (New.)
- Sec. 410.002. LAW GOVERNING LIABILITY PROCEEDINGS. A proceeding before the commission to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter. (V.A.C.S. Art. 8308–6.01(b).)
- Sec. 410.003. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. Except as otherwise provided by this chapter, the Administrative Procedure and Texas Register Act (Article 6252–13a, Vernon's Texas Civil Statutes) does not apply to a proceeding under this chapter. (V.A.C.S. Art. 8308–6.01(a).)
- Sec. 410.004. DIVISION OF HEARINGS. The division shall conduct benefit review conferences, contested case hearings, arbitration, and appeals within the commission related to workers' compensation claims. (V.A.C.S. Art. 8308–6.02(a).)
- Sec. 410.005. VENUE FOR ADMINISTRATIVE PROCEEDINGS. (a) Unless the commission determines that good cause exists for the selection of a different location, a benefit review conference or a contested case hearing may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.
  - (b) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration may not be conducted at a site more than 75 miles from the claimant's residence at the time of the injury.

(c) All appeals panel proceedings shall be conducted in Travis County. (V.A.C.S. Art. 8308-6.03.)

Sec. 410.006. REPRESENTATION AT ADMINISTRATIVE PROCEEDINGS. (a) A claimant may be represented at a benefit review conference, a contested case hearing, or arbitration by an attorney or may be assisted by an individual of the claimant's choice who does not work for an attorney or receive a fee. An employee of an attorney may represent a claimant if that employee:

- (1) is a relative of the claimant; and
- (2) does not receive a fee.

(b) An insurance carrier may be represented by an attorney or adjuster. (V.A.C.S. Art. 8308-6.04.)

[Sections 410.007-410.020 reserved for expansion]

### SUBCHAPTER B. BENEFIT REVIEW CONFERENCE

Sec. 410.021. PURPOSE. A benefit review conference is a nonadversarial, informal dispute resolution proceeding designed to:

- (1) explain, orally and in writing, the rights of the respective parties to a workers' compensation claim and the procedures necessary to protect those rights;
- (2) discuss the facts of the claim, review available information in order to evaluate the claim, and delineate the disputed issues; and
- (3) mediate and resolve disputed issues by agreement of the parties in accordance with this subtitle and the policies of the commission. (V.A.C.S. Art. 8308-6.11.)

Sec. 410.022. BENEFIT REVIEW OFFICERS; QUALIFICATIONS. (a) A benefit review officer shall conduct a benefit review conference.

(b) A benefit review officer must:

- (1) be an employee of the commission; and
- (2) be trained in the principles and procedures of dispute mediation.

(c) The commission shall institute and maintain an education and training program for benefit review officers and shall consult or contract with the Federal Mediation and Conciliation Service or other appropriate organizations for this purpose. (V.A.C.S. Art. 8308-6.02(b).)

Sec. 410.023. REQUEST FOR BENEFIT REVIEW CONFERENCE. On receipt of a request from a party or on its own motion, the commission may direct the parties to a disputed workers' compensation claim to meet in a benefit review conference to attempt to reach agreement on disputed issues involved in the claim. (V.A.C.S. Art. 8308-6.12(a).)

Sec. 410.024. BENEFIT REVIEW CONFERENCE AS PREREQUISITE TO FURTHER PROCEEDINGS ON CERTAIN CLAIMS. (a) Except as otherwise provided by law or commission rule, the parties to a disputed compensation claim are not entitled to a contested case hearing or arbitration on the claim unless a benefit review conference is conducted as provided by this subchapter.

(b) The commission by rule shall adopt guidelines relating to claims that do not require a benefit review conference and may proceed directly to a contested case hearing or arbitration. (V.A.C.S. Art. 8308-6.12(c).)

Sec. 410.025. SCHEDULING OF BENEFIT REVIEW CONFERENCE; NOTICE. (a) The commission by rule shall prescribe the time within which a benefit review conference must be scheduled.

(b) At the time a benefit review conference is scheduled, the commission shall schedule a contested case hearing to be held not later than the 60th day after the date of the benefit review conference if the disputed issues are not resolved at the benefit review conference.

(c) The commission shall send written notice of the benefit review conference to the parties to the claim and the employer.



(d) The commission by rule shall provide for expedited proceedings in cases in which compensability or liability for essential medical treatment is in dispute. (V.A.C.S. Arts. 8308-6.12(b), (d), (e) (part).)

Sec. 410.026. POWERS AND DUTIES OF BENEFIT REVIEW OFFICER. (a) A benefit review officer shall:

(1) mediate disputes between the parties and assist in the adjustment of the claim consistent with this subtitle and the policies of the commission;

(2) thoroughly inform all parties of their rights and responsibilities under this subtitle, especially in a case in which the employee is not represented by an attorney or other representative; and

(3) ensure that all documents and information relating to the employee's wages, medical condition, and any other information pertinent to the resolution of disputed issues are contained in the claim file at the conference, especially in a case in which the employee is not represented by an attorney or other representative.

(b) A benefit review officer may reschedule a benefit review conference if the benefit review officer determines that any available information pertinent to the resolution of disputed issues is not produced at the benefit review conference.

(c) A benefit review officer may not take testimony but may direct questions to an employee, an employer, or a representative of an insurance carrier to supplement or clarify information in a claim file.

(d) A benefit review officer may not make a formal record. (V.A.C.S. Art. 8308-6.13.)

Sec. 410.027. RULES. (a) The commission shall adopt rules for conducting benefit review conferences.

(b) A benefit review conference is not subject to common law or statutory rules of evidence or procedure. (V.A.C.S. Art. 8308-6.14.)

Sec. 410.028. FAILURE TO ATTEND; ADMINISTRATIVE VIOLATION. (a) A scheduled benefit review conference shall be conducted even though a party fails to attend unless the benefit review officer determines that good cause exists to reschedule the conference.

(b) A party commits a violation if the party fails to attend a benefit review conference without good cause as determined by the benefit review officer. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-6.12(e) (part).)

Sec. 410.029. RESOLUTION AT BENEFIT REVIEW CONFERENCE; WRITTEN AGREEMENT. (a) A dispute may be resolved either in whole or in part at a benefit review conference.

(b) If the conference results in the resolution of some disputed issues by agreement or in a settlement, the benefit review officer shall reduce the agreement or the settlement to writing. The benefit review officer and each party or the designated representative of the party shall sign the agreement or settlement.

(c) A settlement takes effect on the date it is approved by the director in accordance with Section 408.005. (V.A.C.S. Art. 8308-6.15(a).)

Sec. 410.030. BINDING EFFECT OF AGREEMENT. (a) An agreement signed in accordance with Section 410.029 is binding on the insurance carrier through the conclusion of all matters relating to the claim, unless the commission or a court, on a finding of fraud, newly discovered evidence, or other good and sufficient cause, relieves the insurance carrier of the effect of the agreement.

(b) The agreement is binding on the claimant, if represented by an attorney, to the same extent as on the insurance carrier. If the claimant is not represented by an attorney, the agreement is binding on the claimant through the conclusion of all matters relating to the claim while the claim is pending before the commission, unless the commission for good cause relieves the claimant of the effect of the agreement. (V.A.C.S. Arts. 8308-6.15(b), (c).)

Sec. 410.031. INCOMPLETE RESOLUTION; REPORT. (a) If a dispute is not entirely resolved at a benefit review conference, the benefit review officer shall prepare a written report that details each issue that is not settled at the conference.

(b) The report must also include:

- (1) a statement of each resolved issue;
- (2) a statement of each issue raised but not resolved;
- (3) a statement of the position of the parties regarding each unresolved issue;
- (4) the officer's recommendation regarding each unresolved issue;
- (5) the officer's recommendations regarding the payment or denial of benefits;
- (6) a statement of any interlocutory orders entered under Sections 410.032 and 410.033(a); and
- (7) a statement of the procedures required to request a contested case hearing or arbitration and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings. (V.A.C.S. Art. 8308-6.15(d).)

Sec. 410.032. PAYMENT OF BENEFITS UNDER INTERLOCUTORY ORDER; RE-IMBURSEMENT. (a) If a benefit review officer recommends that benefits be paid or not paid, the benefit review officer may issue an interlocutory order to pay or not pay the benefits.

(b) The subsequent injury fund shall reimburse an insurance carrier for any overpayments of benefits made under an order entered under this section if that order is reversed or modified at a contested case hearing or at arbitration. The commission shall adopt rules to provide for a periodic reimbursement schedule, providing for reimbursement at least annually. (V.A.C.S. Art. 8308-6.15(e).)

Sec. 410.033. MULTIPLE CARRIERS. (a) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the benefit review officer may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability. The proportionate share is computed by dividing the compensation due by the number of insurance carriers involved.

(b) On final determination of liability, an insurance carrier determined to be not liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable. (V.A.C.S. Arts. 8308-6.15(f), (g).)

Sec. 410.034. FILING OF AGREEMENT AND REPORT. (a) The benefit review officer shall file the signed agreement and the report with the director.

(b) The commission by rule shall prescribe the times within which the agreement and report must be filed.

(c) The director shall furnish a copy of the file-stamped report to:

- (1) the claimant;
- (2) the employer; and
- (3) the insurance carrier. (V.A.C.S. Art. 8308-6.15(h).)

[Sections 410.035-410.100 reserved for expansion]

### SUBCHAPTER C. ARBITRATION

Sec. 410.101. PURPOSE. The purpose of arbitration is to:

- (1) enter into formal, binding stipulations on issues on which the parties agree;
- (2) resolve issues on which the parties disagree; and
- (3) render a final award with respect to all issues in dispute. (V.A.C.S. Art. 8308-6.22.)

Sec. 410.102. ARBITRATORS; QUALIFICATIONS. (a) An arbitrator must be an employee of the commission, except that the commission may contract with qualified arbitrators on a determination of special need.

(b) An arbitrator must:

- (1) be a member of the National Academy of Arbitrators;

(2) be on an approved list of the American Arbitration Association or Federal Mediation and Conciliation Service; or

(3) meet qualifications established by the commission by rule and be approved by an affirmative vote of at least two commission members representing employers of labor and at least two commission members representing wage earners.

(c) The commission shall require that each arbitrator have appropriate training in the workers' compensation laws of this state. The commission shall establish procedures to carry out this subsection. (V.A.C.S. Arts. 8308-6.02(d) (part), (e).)

Sec. 410.103. DUTIES OF ARBITRATOR. An arbitrator shall:

(1) protect the interests of all parties;

(2) ensure that all relevant evidence has been disclosed to the arbitrator and to all parties; and

(3) render an award consistent with this subtitle and the policies of the commission. (V.A.C.S. Art. 8308-6.24(f).)

Sec. 410.104. ELECTION OF ARBITRATION; EFFECT. (a) If issues remain unresolved after a benefit review conference, the parties, by agreement, may elect to engage in arbitration in the manner provided by this subchapter. Arbitration may be used only to resolve disputed benefit issues and is an alternative to a contested case hearing. A contested case hearing scheduled under Section 410.025(b) is canceled by an election under this subchapter.

(b) To elect arbitration, the parties must file the election with the commission not later than the 20th day after the last day of the benefit review conference. The commission shall prescribe a form for that purpose.

(c) An election to engage in arbitration under this subchapter is irrevocable and binding on all parties for the resolution of all disputes arising out of the claims that are under the jurisdiction of the commission.

(d) An agreement to elect arbitration binds the parties to the provisions of Chapter 408 relating to benefits, and any award, agreement, or settlement after arbitration is elected must comply with that chapter. (V.A.C.S. Arts. 8308-6.21, 8308-6.25.)

Sec. 410.105. LISTS OF ARBITRATORS. (a) The commission shall establish regional lists of arbitrators who meet the qualifications prescribed under Sections 410.102(a) and (b). Each regional list shall be initially prepared in a random name order, and subsequent additions to a list shall be added chronologically.

(b) The commission shall review the lists of arbitrators annually and determine if each arbitrator is fair and impartial and makes awards that are consistent with and in accordance with this subtitle and the rules of the commission. The commission shall remove an arbitrator if after review the arbitrator does not receive an affirmative vote of at least two commission members representing employers of labor and at least two commission members representing wage earners.

(c) The commission's lists are confidential and are not subject to disclosure under the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The lists may not be revealed by any commission employee to any person who is not a commission employee. The lists are exempt from discovery in civil litigation unless the party seeking the discovery establishes reasonable cause to believe that a violation of the requirements of this section or Section 410.106, 410.107, 410.108, or 410.109(b) occurred and that the violation is relevant to the issues in dispute. (V.A.C.S. Arts. 8308-6.02(d) (part), (f); 8308-6.23(a) (part), (d).)

Sec. 410.106. SELECTION OF ARBITRATOR. The commission shall assign the arbitrator for a particular case by selecting the next name after the previous case's selection in consecutive order. The commission may not change the order of names once the order is established under this subchapter, except that once each arbitrator on the list has been assigned to a case, the names shall be randomly reordered. (V.A.C.S. Art. 8308-6.23(a) (part).)

Sec. 410.107. ASSIGNMENT OF ARBITRATOR. (a) The commission shall assign an arbitrator to a pending case not later than the 30th day after the date on which the election for arbitration is filed with the commission.

(b) When an arbitrator has been assigned to a case under Subsection (a), the parties shall be notified immediately. (V.A.C.S. Arts. 8308-6.23(a) (part), (b) (part).)

Sec. 410.108. REJECTION OF ARBITRATOR. (a) Each party is entitled, in its sole discretion, to one rejection of the arbitrator in each case. If a party rejects the arbitrator, the commission shall assign another arbitrator as provided by Section 410.106.

(b) A rejection must be made not later than the third day after the date of notification of the arbitrator's assignment.

(c) When all parties have exercised their right of rejection or if no rejection is registered, the assignment is final. (V.A.C.S. Art. 8308-6.23(b) (part).)

Sec. 410.109. SCHEDULING OF ARBITRATION. (a) The arbitrator shall schedule arbitration to be held not later than the 30th day after the date of the arbitrator's assignment and shall notify the parties and the commission of the scheduled date.

(b) If an arbitrator is unable to schedule arbitration in accordance with Subsection (a), the commission shall appoint the next arbitrator on the applicable list. Each party is entitled to reject the arbitrator appointed under this subsection in the manner provided under Section 410.108. (V.A.C.S. Arts. 8308-6.23(c), 8308-6.24(a).)

Sec. 410.110. CONTINUANCE. (a) A request by a party for a continuance of the arbitration to another date must be directed to the director. The director may grant a continuance only if the director determines, giving due regard to the availability of the arbitrator, that good cause for the continuance exists.

(b) If the director grants a continuance under this section, the rescheduled date may not be later than the 30th day after the original date of the arbitration.

(c) Without regard to whether good cause exists, the director may not grant more than one continuance to each party. (V.A.C.S. Art. 8308-6.24(b).)

Sec. 410.111. RULES. The commission shall adopt rules for arbitration consistent with generally recognized arbitration principles and procedures. (V.A.C.S. Art. 8308-6.24(c).)

Sec. 410.112. EXCHANGE AND FILING OF INFORMATION; ADMINISTRATIVE VIOLATION. (a) Not later than the seventh day before the first day of arbitration, the parties shall exchange and file with the arbitrator:

(1) all medical reports and other documentary evidence not previously exchanged or filed that are pertinent to the resolution of the claim; and

(2) information relating to their proposed resolution of the disputed issues.

(b) A party commits a violation if the party, without good cause as determined by the arbitrator, fails to comply with Subsection (a). A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-6.24(e).)

Sec. 410.113. DUTIES OF PARTIES AT ARBITRATION; ATTENDANCE; ADMINISTRATIVE VIOLATION. (a) Each party shall attend the arbitration prepared to set forth in detail its position on unresolved issues and the issues on which it is prepared to stipulate.

(b) A party commits a violation if the party does not attend the arbitration unless the arbitrator determines that the party had good cause not to attend. A violation under this subsection is a Class D administrative violation. (V.A.C.S. Art. 8308-6.24(d).)

Sec. 410.114. TESTIMONY; RECORD. (a) The arbitrator may require witnesses to testify under oath and shall require testimony under oath if requested by a party.

(b) The commission shall make an electronic recording of the proceeding.

(c) An official stenographic record is not required, but any party may at the party's expense make a stenographic record of the proceeding. (V.A.C.S. Art. 8308-6.24(g).)

Sec. 410.115. EVIDENCE. (a) The parties may offer evidence as they desire and shall produce additional evidence as the arbitrator considers necessary to an understanding and determination of the dispute.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not required. (V.A.C.S. Art. 8308-6.24(h) (part).)

Sec. 410.116. CLOSING STATEMENTS; BRIEFS. The parties may present closing statements as they desire, but the record may not remain open for written briefs unless requested by the arbitrator. (V.A.C.S. Art. 8308-6.24(h) (part).)

Sec. 410.117. EX PARTE CONTACTS PROHIBITED. A party and an arbitrator may not communicate outside the arbitration unless the communication is in writing with copies provided to all parties or relates to procedural matters. (V.A.C.S. Art. 8308-6.24(i).)

Sec. 410.118. AWARD. (a) The arbitrator shall enter the arbitrator's award not later than the seventh day after the last day of arbitration.

(b) The arbitrator shall base the award on the facts established at arbitration, including stipulations of the parties, and on the law as properly applied to those facts.

(c) The award must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a statement of the arbitrator's decision on the contested issues and the parties' stipulations on uncontested issues.

(d) The arbitrator shall file a copy of the award as part of the permanent claim file at the commission and shall notify the parties in writing of the decision. (V.A.C.S. Arts. 8308-6.26(a), (b), (c).)

Sec. 410.119. EFFECT OF AWARD. (a) An arbitrator's award is final and binding on all parties. Except as provided by Section 410.121, there is no right to appeal.

(b) An arbitrator's award is a final order of the commission. (V.A.C.S. Arts. 8308-6.26(d), (e).)

Sec. 410.120. CLERICAL ERROR. For the purpose of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award. (V.A.C.S. Art. 8308-6.27.)

Sec. 410.121. COURT VACATING AWARD. (a) On application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that:

(1) the award was procured by corruption, fraud, or misrepresentation;

(2) the decision of the arbitrator was arbitrary and capricious; or

(3) the award was outside the jurisdiction of the commission.

(b) If an award is vacated, the case shall be remanded to the commission for another arbitration proceeding.

(c) A suit to vacate an award must be filed not later than the 30th day after:

(1) the date of the award; or

(2) the date the appealing party knew or should have known of a basis for suit under this section, but in no event later than 12 months after an order denying compensation or after the expiration of the income or death benefit period.

(d) Venue for a suit to vacate an award is in the county in which the arbitration was conducted.

(e) In a suit to vacate an arbitrator's award, only the court may make determinations, including findings of fact or conclusions of law. (V.A.C.S. Art. 8308-6.28.)

[Sections 410.122-410.150 reserved for expansion]

SUBCHAPTER D. CONTESTED CASE HEARING

Sec. 410.151. CONTESTED CASE HEARING; SCOPE. (a) If arbitration is not elected under Section 410.104, a party to a claim for which a benefit review conference is held or a party eligible to proceed directly to a contested case hearing as provided by Section 410.024 is entitled to a contested case hearing.

(b) An issue that was not raised at a benefit review conference or that was resolved at a benefit review conference may not be considered unless:

(1) the parties consent; or

(2) if the issue was not raised, the commission determines that good cause existed for not raising the issue at the conference. (V.A.C.S. Art. 8308-6.31(a).)

**Sec. 410.152. HEARING OFFICERS; QUALIFICATIONS.** (a) A hearing officer shall conduct a contested case hearing.

(b) A hearing officer must be licensed to practice law in this state. (V.A.C.S. Art. 8308-6.02(c).)

**Sec. 410.153. APPLICATION OF ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT.** The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to a contested case hearing to the extent that the commission finds appropriate, except that Sections 15 through 23 of that Act do not apply. (V.A.C.S. Art. 8308-6.32.)

**Sec. 410.154. SCHEDULING OF HEARING.** The commission shall schedule a contested case hearing in accordance with Section 410.024 or 410.025(b). (V.A.C.S. Art. 8308-6.31(b).)

**Sec. 410.155. CONTINUANCE.** (a) A written request by a party for a continuance of a contested case hearing to another date must be directed to the commission.

(b) The commission may grant a continuance only if the commission determines that there is good cause for the continuance. (V.A.C.S. Art. 8308-6.31(c).)

**Sec. 410.156. ATTENDANCE REQUIRED; ADMINISTRATIVE VIOLATION.** (a) Each party shall attend a contested case hearing.

(b) A party commits a violation if the party, without good cause as determined by the hearing officer, does not attend a contested case hearing. A violation under this subsection is a Class C administrative violation. (V.A.C.S. Art. 8308-6.34(f).)

**Sec. 410.157. RULES.** The commission shall adopt rules governing procedures under which contested case hearings are conducted. (V.A.C.S. Art. 8308-6.31(d).)

**Sec. 410.158. DISCOVERY.** (a) Except as provided by Section 410.162, discovery is limited to:

(1) depositions on written questions to any health care provider;

(2) depositions of other witnesses as permitted by the hearing officer for good cause shown; and

(3) interrogatories as prescribed by the commission.

(b) Discovery under Subsection (a) may not seek information that may readily be derived from documentary evidence described in Section 410.160. Answers to discovery under Subsection (a) need not duplicate information that may readily be derived from documentary evidence described in Section 410.160. (V.A.C.S. Arts. 8308-6.33(a), (c).)

**Sec. 410.159. STANDARD INTERROGATORIES.** (a) The commission by rule shall prescribe standard form sets of interrogatories to elicit information from claimants and insurance carriers.

(b) Standard interrogatories shall be answered by each party and served on the opposing party within the time prescribed by commission rule, unless the parties agree otherwise. (V.A.C.S. Art. 8308-6.33(b).)

**Sec. 410.160. EXCHANGE OF INFORMATION.** Within the time prescribed by commission rule, the parties shall exchange:

(1) all medical reports and reports of expert witnesses who will be called to testify at the hearing;

(2) all medical records;

(3) any witness statements;

(4) the identity and location of any witness known to the parties to have knowledge of relevant facts; and

(5) all photographs or other documents that a party intends to offer into evidence at the hearing. (V.A.C.S. Art. 8308-6.33(d).)

Sec. 410.161. **FAILURE TO DISCLOSE INFORMATION.** A party who fails to disclose information known to the party or documents that are in the party's possession, custody, or control at the time disclosure is required by Sections 410.158-410.160 may not introduce the evidence at any subsequent proceeding before the commission or in court on the claim unless good cause is shown for not having disclosed the information or documents under those sections. (V.A.C.S. Art. 8308-6.33(e).)

Sec. 410.162. **ADDITIONAL DISCOVERY.** For good cause shown, a party may obtain permission from the hearing officer to conduct additional discovery as necessary. (V.A.C.S. Art. 8308-6.33(f).)

Sec. 410.163. **POWERS AND DUTIES OF HEARING OFFICER.** (a) At a contested case hearing the hearing officer shall:

- (1) swear witnesses;
- (2) receive testimony;
- (3) allow examination and cross-examination of witnesses;
- (4) accept documents and other tangible evidence; and
- (5) allow the presentation of evidence by affidavit.

(b) A hearing officer shall ensure the preservation of the rights of the parties and the full development of facts required for the determinations to be made. A hearing officer may permit the use of summary procedures, if appropriate, including witness statements, summaries, and similar measures to expedite the proceedings. (V.A.C.S. Arts. 8308-6.34(a), (b).)

Sec. 410.164. **RECORD.** (a) The proceedings of a contested case hearing shall be recorded electronically. A party may request a transcript of the proceeding and shall pay the reasonable cost of the transcription.

(b) A party may request that the proceedings of the contested case hearing be recorded by a court reporter. The party making the request shall bear the cost. (V.A.C.S. Arts. 8308-6.34(c), (d).)

Sec. 410.165. **EVIDENCE.** (a) The hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. Conformity to legal rules of evidence is not necessary.

(b) A hearing officer may accept a written statement signed by a witness and shall accept all written reports signed by a health care provider. (V.A.C.S. Art. 8308-6.34(e) (part).)

Sec. 410.166. **STIPULATIONS.** A written stipulation or agreement of the parties that is filed in the record or an oral stipulation or agreement of the parties that is preserved in the record is final and binding. (V.A.C.S. Art. 8308-6.34(e) (part).)

Sec. 410.167. **EX PARTE CONTACTS PROHIBITED.** A party and a hearing officer may not communicate outside the contested case hearing unless the communication is in writing with copies provided to all parties or relates to procedural matters. (V.A.C.S. Art. 8308-6.34(i).)

Sec. 410.168. **DECISION.** (a) The hearing officer shall issue a written decision that includes:

- (1) findings of fact and conclusions of law;
- (2) a determination of whether benefits are due; and
- (3) an award of benefits due.

(b) On a form that the commission by rule prescribes, the hearing officer shall issue a separate written decision regarding attorney's fees and any matter related to attorney's fees. The decision regarding attorney's fees and the form may not be made known to a jury in a judicial review of an award, including an appeal.

(c) The commission by rule shall prescribe the times within which the hearing officer must file the decisions with the division.

(d) The division shall send a copy of the decision to each party. (V.A.C.S. Art. 8308-6.34(g).)

Sec. 410.169. **EFFECT OF DECISION.** A decision of a hearing officer regarding benefits is final in the absence of a timely appeal by a party and is binding during the pendency of an appeal to the appeals panel. (V.A.C.S. Art. 8308-6.34(h).)

[Sections 410.170-410.200 reserved for expansion]

### **SUBCHAPTER E. APPEALS PANEL**

Sec. 410.201. **APPEALS JUDGES; QUALIFICATIONS.** (a) Appeals judges, in panels of three, shall conduct administrative appeals proceedings.

(b) An appeals judge must be licensed to practice law in this state.

(c) An appeals judge may not conduct a benefit review conference or a contested case hearing. (V.A.C.S. Art. 8308-6.02(g).)

Sec. 410.202. **REQUEST FOR APPEAL; RESPONSE.** (a) To appeal the decision of a hearing officer, a party shall file a written request for appeal with the appeals panel not later than the 15th day after the date on which the decision of the hearing officer is received from the division and shall on the same date serve a copy of the request for appeal on the other party.

(b) The respondent shall file a written response with the appeals panel not later than the 15th day after the date on which the copy of the request for appeal is served and shall on the same date serve a copy of the response on the appellant.

(c) A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought. (V.A.C.S. Art. 8308-6.41.)

Sec. 410.203. **POWERS AND DUTIES OF APPEALS PANEL; PRIORITY OF HEARING ON REMAND.** (a) An appeals panel shall consider:

- (1) the record developed at the contested case hearing; and
- (2) the written request for appeal and response filed with the appeals panel.

(b) An appeals panel may:

- (1) affirm the decision of the hearing officer;
- (2) reverse that decision and render a new decision; or
- (3) reverse that decision and remand the case to the hearing officer for further consideration and development of evidence.

(c) An appeals panel may not remand a case under Subsection (b)(3) more than once.

(d) A hearing on remand shall be accelerated and the commission shall adopt rules to give priority to the hearing over other proceedings. (V.A.C.S. Arts. 8308-6.42(a), (b).)

Sec. 410.204. **DECISION.** (a) An appeals panel shall issue a decision that determines each issue on which review was requested. The decision must be in writing and shall be issued not later than the 30th day after the date on which the written response to the request for appeal is filed. The appeals panel shall file a copy of the decision with the director.

(b) A copy of the decision of the appeals panel shall be sent to each party not later than the seventh day after the date the decision is filed with the commission.

(c) If an appeals panel does not issue its decision in accordance with this section, the decision of the hearing officer becomes final and is the final decision of the appeals panel. (V.A.C.S. Art. 8308-6.42(c).)

Sec. 410.205. **EFFECT OF DECISION; REIMBURSEMENT FOR OVERPAYMENT.**

(a) A decision of an appeals panel regarding benefits is final in the absence of a timely appeal for judicial review.

(b) The decision of the appeals panel regarding benefits is binding during the pendency of an appeal under Subchapter F or G.



(c) If the court of last resort in the case finally modifies or reverses an appeals panel decision awarding benefits, the insurance carrier who has paid benefits as required by this section may recover reimbursement of any benefit overpayments from the subsequent injury fund. (V.A.C.S. Arts. 8308-6.42(d), (e).)

Sec. 410.206. **CLERICAL ERROR.** The executive director may revise a decision in a contested case hearing on a finding of clerical error. (V.A.C.S. Art. 8308-6.44.)

Sec. 410.207. **CONTINUATION OF COMMISSION JURISDICTION.** During judicial review of an appeals panel decision on any disputed issue relating to a workers' compensation claim, the commission retains jurisdiction of all other issues related to the claim. (V.A.C.S. Art. 8308-6.43.)

Sec. 410.208. **JUDICIAL ENFORCEMENT OF ORDER OR DECISION; ADMINISTRATIVE VIOLATION.** (a) If an insurance carrier refuses or fails to comply with a final order or decision of the commission, the claimant may bring suit in the county of the claimant's residence or the county in which the injury occurred to enforce the award as a final and binding order of the commission.

(b) In addition to a judgment enforcing the order, the claimant is entitled to a penalty equal to 12 percent of the amount of benefits recovered in the judgment and interest, with reasonable attorney's fees for the prosecution and collection of the claim.

(c) A person commits a violation if the person fails or refuses to comply with a commission order or decision within 20 days after the date the order or decision becomes final. A violation under this subsection is a Class A administrative violation. (V.A.C.S. Art. 8308-6.45.)

[Sections 410.209-410.250 reserved for expansion]

## SUBCHAPTER F. JUDICIAL REVIEW—GENERAL PROVISIONS

Sec. 410.251. **EXHAUSTION OF REMEDIES.** A party that has exhausted its administrative remedies under this subtitle and that is aggrieved by a final decision of the appeals panel may seek judicial review under this subchapter and Subchapter G, if applicable. (V.A.C.S. Art. 8308-6.61(a) (part).)

Sec. 410.252. **TIME FOR FILING PETITION; VENUE.** (a) A party may seek judicial review by filing suit not later than the 40th day after the date on which the decision of the appeals panel was filed with the division.

(b) The party bringing suit to appeal the decision must file a petition with the appropriate court in:

(1) the county where the employee resided at the time of the injury or death, if the employee is deceased; or

(2) in the case of an occupational disease, in the county where the employee resided on the date disability began or any county agreed to by the parties. (V.A.C.S. Arts. 8308-6.61(a) (part), (b), (c).)

Sec. 410.253. **SERVICE.** A copy of the petition shall be simultaneously filed with the court and the commission and served on any opposing party. (V.A.C.S. Art. 8308-6.61(d).)

Sec. 410.254. **COMMISSION INTERVENTION.** On timely motion initiated by the executive director, the commission shall be permitted to intervene in any judicial proceeding under this subchapter or Subchapter G. (V.A.C.S. Art. 8308-6.61(e) )

Sec. 410.255. **JUDICIAL REVIEW OF ISSUES OTHER THAN COMPENSABILITY OR INCOME OR DEATH BENEFITS.** (a) For all issues other than those covered under Section 410.301(a), judicial review shall be conducted in the manner provided for judicial review of a contested case under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Judicial review conducted under this section is governed by the substantial evidence rule. (V.A.C.S. Art. 8308-6.64.)

Sec. 410.256. COURT APPROVAL OF SETTLEMENT. (a) The trial court must approve a settlement made by the parties after judicial review of an award is sought and before the court enters judgment. The court may not approve a settlement except on a finding that:

- (1) the settlement accurately reflects the agreement between the parties;
- (2) the settlement adheres to all appropriate provisions of the law; and
- (3) under the law and facts, the settlement is in the best interest of the claimant.

(b) A settlement may not provide for:

- (1) payment of any benefits in a lump sum except as provided by Section 408.128; or
- (2) the limitation or termination of the claimant's right to medical benefits under Section 408.021.

(c) A settlement or agreement that resolves an issue of impairment may not be made before the claimant reaches maximum medical improvement and must adopt one of the impairment ratings under Subchapter G, Chapter 408.

(d) A party proposing a settlement before judgment is entered by the trial court may petition the court orally or in writing for approval of the settlement. (V.A.C.S. Art. 8308-6.63.)

[Sections 410.257-410.300 reserved for expansion]

#### SUBCHAPTER G. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS

Sec. 410.301. JUDICIAL REVIEW OF ISSUES REGARDING COMPENSABILITY OR INCOME OR DEATH BENEFITS. (a) Judicial review of a final decision of a commission appeals panel regarding compensability or eligibility for or the amount of income or death benefits shall be conducted as provided by this subchapter.

(b) A determination of benefits before a court shall be in accordance with this subtitle. (V.A.C.S. Arts. 8308-6.62(a), (l).)

Sec. 410.302. LIMITATION OF ISSUES. A trial under this subchapter is limited to issues decided by the commission appeals panel and on which judicial review is sought. The pleadings must specifically set forth the determinations of the appeals panel by which the party is aggrieved. (V.A.C.S. Art. 8308-6.62(b).)

Sec. 410.303. BURDEN OF PROOF. The party appealing the decision on an issue described in Section 410.301(a) has the burden of proof by a preponderance of the evidence. (V.A.C.S. Art. 8308-6.62(c) (part).)

Sec. 410.304. CONSIDERATION OF APPEALS PANEL DECISION. (a) In a jury trial, the court, before submitting the case to the jury, shall inform the jury in the court's instructions, charge, or questions to the jury of the commission appeals panel decision on each disputed issue described by Section 410.301(a) that is submitted to the jury.

(b) In a trial to the court without a jury, the court in rendering its judgment on an issue described by Section 410.301(a) shall consider the decision of the commission appeals panel. (V.A.C.S. Art. 8308-6.62(c) (part).)

Sec. 410.305. CONFLICT WITH RULES OF CIVIL PROCEDURE. (a) To the extent that this subchapter conflicts with the Texas Rules of Civil Procedure or any other rules adopted by the supreme court, this subchapter controls.

(b) Notwithstanding Section 22.004, Government Code, or any other law, the supreme court may not adopt rules in conflict with or inconsistent with this subchapter. (V.A.C.S. Art. 8308-6.62(c) (part).)

Sec. 410.306. EVIDENCE. (a) Evidence shall be adduced as in other civil trials.

(b) The commission on payment of a reasonable fee shall make available to the parties a certified copy of the commission's record. All facts and evidence the record contains are admissible to the extent allowed under the Texas Rules of Civil Evidence.

(c) Except as provided by Section 410.307, evidence of extent of impairment shall be limited to that presented to the commission. The court or jury, in its determination of the extent of impairment, shall adopt one of the impairment ratings under Subchapter G, Chapter 408. (V.A.C.S. Art. 8308-6.62(d).)

Sec. 410.307. **SUBSTANTIAL CHANGE OF CONDITION.** (a) Evidence of the extent of impairment is not limited to that presented to the commission if the court, after a hearing, finds that there is a substantial change of condition. The court's finding of a substantial change of condition may be based only on:

- (1) medical evidence from the same doctor or doctors whose testimony or opinion was presented to the commission;
- (2) evidence that has come to the party's knowledge since the contested case hearing;
- (3) evidence that could not have been discovered earlier with due diligence by the party; and
- (4) evidence that would probably produce a different result if it is admitted into evidence at the trial.

(b) If substantial change of condition is disputed, the court shall require the designated doctor in the case to verify the substantial change of condition, if any. The findings of the designated doctor shall be presumed to be correct, and the court shall base its finding on the medical evidence presented by the designated doctor in regard to substantial change of condition unless the preponderance of the other medical evidence is to the contrary.

(c) The substantial change of condition must be confirmable by recognized laboratory or diagnostic tests or signs confirmable by physical examination.

(d) If the court finds a substantial change of condition under this section, new medical evidence of the extent of impairment must be from and is limited to the same doctor or doctors who made impairment ratings before the commission under Section 408.123.

(e) The court's finding of a substantial change of condition may not be made known to the jury.

(f) The court or jury in its determination of the extent of impairment shall adopt one of the impairment ratings made under this section. (V.A.C.S. Arts. 8308-6.62(e), (f), (g), (h), (i), (j).)

Sec. 410.308. **CERTIFIED COPY OF NOTICE SECURING COMPENSATION.** (a) The commission or the Texas Department of Insurance shall furnish any interested party in the claim with a certified copy of the notice of the employer securing compensation with the insurance carrier, filed with the commission.

(b) The certified copy of the notice is admissible in evidence on trial of the claim pending and is prima facie proof of the facts stated in the notice unless the facts are denied under oath by the opposing party. (V.A.C.S. Art. 8308-6.62(k).)

**CHAPTER 411. WORKERS' HEALTH AND SAFETY**

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## CHAPTER 411. WORKERS' HEALTH AND SAFETY

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 411.001. DEFINITIONS. In this chapter:

(1) "Division" means the division of workers' health and safety of the commission.

(2) "Employer" means a person who makes a contract of hire. (New; V.A.C.S. Art. 8308-7.01(a).)

Sec. 411.002. APPLICATION. (a) An employer who obtains workers' compensation insurance coverage is subject to this chapter.

(b) An employer is subject to this chapter if the employer:

(1) is not required to and does not obtain workers' compensation insurance coverage; and

(2) employs five or more employees not exempt from workers' compensation insurance coverage.

(c) Notwithstanding Subsection (b), until January 1, 1994, an employer who is not required to and does not obtain workers' compensation insurance coverage is subject to this chapter if the employer employs:

(1) 150 or more employees not exempt from workers' compensation insurance coverage beginning January 1, 1992; or

(2) 50 or more employees not exempt from workers' compensation insurance coverage beginning January 1, 1993. (V.A.C.S. Arts. 8308-7.01(b), (c), (d).)

Sec. 411.003. IMMUNITY FROM CERTAIN LIABILITY. (a) An insurance company, the agent, servant, or employee of the insurance company, or a safety consultant who performs a safety consultation under Subchapter D or E has no liability for an accident based on an allegation that the accident was caused or could have been prevented by a program, inspection, or other activity or service undertaken by the insurance company for the prevention of accidents in connection with operations of the employer.

(b) The immunity provided by Subsection (a) does not affect the liability of an insurance carrier for compensation or as otherwise provided in this subtitle. (V.A.C.S. Art. 8308-7.06.)

Sec. 411.004. EXCLUSIVE REMEDY. Except as specifically provided by Subchapter F, this chapter does not create an independent cause of action at law or in equity. This chapter provides the sole remedy for violation of this chapter. (V.A.C.S. Art. 8308-7.09.)

[Sections 411.005-411.010 reserved for expansion]

## SUBCHAPTER B. GENERAL POWERS AND DUTIES OF DIVISION

Sec. 411.011. COORDINATION AND ENFORCEMENT OF STATE LAWS AND RULES. The division shall coordinate and enforce the implementation of state laws and rules relating to workers' health and safety issues. (V.A.C.S. Art. 8308-7.02(a).)

Sec. 411.012. COLLECTION AND ANALYSIS OF INFORMATION. (a) The division shall collect and serve as a repository for statistical information on workers' health and safety. The division shall analyze and use that information to:

(1) identify and assign priorities to safety needs; and

(2) better coordinate the safety services provided by public or private organizations, including insurance carriers.

(b) The division shall coordinate or supervise the collection by state or federal entities of information relating to job safety, including information collected for the supplementary data system and the annual survey of the Bureau of Labor Statistics of the United States Department of Labor. (V.A.C.S. Arts. 8308-7.02(b) (part), (c).)

**Sec. 411.013. FEDERAL CONTRACTS AND PROGRAMS.** With the approval of the commission, the division may:

(1) enter into contracts with the federal government to perform occupational safety projects; and

(2) apply for federal funds through any federal program relating to occupational safety. (V.A.C.S. Art. 8308-7.02(d).)

**Sec. 411.014. EDUCATIONAL PROGRAMS; COOPERATION WITH OTHER ENTITIES.** (a) The division shall promote workers' health and safety through educational and other innovative programs developed by the division.

(b) The division shall cooperate with other entities in the development and approval of safety courses, safety plans, and safety programs.

(c) The division shall cooperate with business and industry trade associations, labor organizations, and other entities to develop means and methods of educating employees and employers concerning workplace safety. (V.A.C.S. Arts. 8308-7.02(b) (part), (f), (g).)

**Sec. 411.015. EDUCATIONAL PUBLICATIONS.** (a) The division shall publish or procure and issue educational books, pamphlets, brochures, films, videotapes, and other informational and educational material.

(b) Specific educational material shall be directed to high-risk industries and employments and must specifically address means and methods of avoiding high frequency, but preventable, workers' injuries.

(c) Other educational material shall be directed to business and industry generally and must specifically address means and methods of avoiding common workers' injuries.

(d) The division shall make specific decisions regarding the issues and problems to be addressed by the educational materials after assigning appropriate priorities based on frequency of injuries, degree of hazard, severity of injuries, and similar considerations.

(e) The educational materials provided under this section must include specific references to:

(1) the requirements of state and federal laws and regulations;

(2) recommendations and practices of business, industry, and trade associations; and

(3) if needed, recommended work practices based on recommendations made by the division for the prevention of injury. (V.A.C.S. Art. 8308-7.02(e).)

**Sec. 411.016. PEER REVIEW SAFETY PROGRAM.** The division shall certify safe employers to provide peer review safety programs. (V.A.C.S. Art. 8308-7.02(h).)

**Sec. 411.017. ADVISORY SERVICE TO INSURANCE CARRIERS.** The division shall advise insurance carrier loss control service organizations of safety needs and priorities developed by the division and of:

(1) hazard classifications, specific employers, industries, occupations, or geographic regions to which loss control services should be directed; or

(2) the identity and types of injuries or occupational diseases and means and methods for prevention of those injuries or diseases to which loss control services should be directed. (V.A.C.S. Art. 8308-7.02(i).)

**Sec. 411.018. FEDERAL OSHA COMPLIANCE.** In accordance with Section 7(c), Occupational Safety and Health Act of 1970 (29 U.S.C. Section 656), the division shall:

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

(2) collect information relating to occupational safety as required by federal laws, rules, or agreements. (V.A.C.S. Art. 8308-7.02(j).)

[Sections 411.019–411.030 reserved for expansion]

### SUBCHAPTER C. JOB SAFETY INFORMATION SYSTEM

Sec. 411.031. **JOB SAFETY INFORMATION SYSTEM; COOPERATION WITH OTHER AGENCIES.** (a) The division shall maintain a job safety information system.

(b) The division shall obtain from any state agency, including the Texas Department of Insurance, the Texas Department of Health, and the Texas Employment Commission, data and statistics, including data and statistics compiled for rate-making purposes.

(c) The division shall consult with the Texas Department of Insurance and the Texas Employment Commission in the design of data information and retrieval systems to accomplish the mutual purposes of those agencies and of the division. (V.A.C.S. Art. 8308–7.03(a).)

Sec. 411.032. **EMPLOYER INJURY AND OCCUPATIONAL DISEASE REPORT.** (a) An employer shall file with the commission a report of each:

(1) on-the-job injury that results in the employee's absence from work for more than one day; and

(2) occupational disease of which the employer has knowledge.

(b) The commission shall adopt rules and prescribe the form and manner of reports filed under this section. (V.A.C.S. Art. 8308–7.03(b).)

Sec. 411.033. **JOB SAFETY DATA BASE.** The job safety information system must include a comprehensive data base that incorporates all pertinent information relating to each injury reported under Section 411.032, including:

(1) the age, sex, wage level, occupation, and insurance company payroll classification code of the injured employee;

(2) the nature, source, and severity of the injury;

(3) the reported cause of the injury;

(4) the part of the body affected;

(5) any equipment involved in the injury;

(6) the number of prior workers' compensation claims by the employee;

(7) the prior loss history of the employer;

(8) the standard industrial classification code of the employer;

(9) the classification code of the employer; and

(10) any other information considered useful for statistical analysis. (V.A.C.S. Art. 8308–7.03(c).)

Sec. 411.034. **CONFIDENTIALITY REQUIREMENT.** The identity of an employee in a report filed under Section 411.032 is confidential and may not be disclosed as part of the job safety information system. (V.A.C.S. Art. 8308–7.03(d).)

Sec. 411.035. **USE OF INJURY REPORT.** A report made under Section 411.032 may not be considered to be an admission by or evidence against an employer or an insurance carrier in a proceeding before the commission or a court in which the facts set out in the report are contradicted by the employer or insurance carrier. (V.A.C.S. Art. 8308–5.05(b) (part).)

[Sections 411.036–411.040 reserved for expansion]

### SUBCHAPTER D. EXTRA-HAZARDOUS EMPLOYER PROGRAM

Sec. 411.041. **IDENTIFICATION OF EXTRA-HAZARDOUS EMPLOYER.** (a) The division shall develop a program to identify extra-hazardous employers. The program must include analysis of injury frequency.

(b) An employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry is an extra-hazardous employer. (V.A.C.S. Art. 8308–7.04(a) (part).)

Sec. 411.042. NOTIFICATION TO EXTRA-HAZARDOUS EMPLOYER AND INSURANCE CARRIER. The division shall notify each employer identified as an extra-hazardous employer and the insurance carrier for that employer that the employer has been identified as an extra-hazardous employer. (V.A.C.S. Art. 8308-7.04(a) (part).)

Sec. 411.043. SAFETY CONSULTATION; REPORT; ACCIDENT PREVENTION PLAN. (a) Not later than the 30th day after the date an employer receives notice under Section 411.042, the employer shall obtain a safety consultation from:

- (1) the division;
- (2) the employer's insurance carrier; or
- (3) another professional source approved by the division for that purpose.

(b) The safety consultant shall file a written report with the commission and the employer setting out any hazardous conditions or practices identified by the safety consultation.

(c) The employer and the consultant shall formulate a specific accident prevention plan that addresses the hazards identified by the consultant. The division may monitor the implementation of the accident prevention plan as it considers necessary.

(d) An employer shall comply with the accident prevention plan developed under this section. (V.A.C.S. Arts. 8308-7.04(b), (c), (d) (part).)

Sec. 411.044. ACCIDENT INVESTIGATION. The division may investigate an accident occurring at the worksite of an employer for whom a plan has been formulated under Section 411.043. (V.A.C.S. Art. 8308-7.04(d) (part).)

Sec. 411.045. COMPLIANCE CERTIFICATION. (a) Six months after the formulation of an accident prevention plan under Section 411.043, the division shall conduct a follow-up inspection of the employer's premises. The commission may require the participation of the safety consultant who performed the initial consultation and formulated the safety plan.

(b) If the division determines that the employer has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the division shall so certify. (V.A.C.S. Art. 8308-7.04(e) (part).)

Sec. 411.046. ADMINISTRATIVE VIOLATION. (a) An employer commits an administrative violation if the employer fails or refuses to implement an accident prevention plan or other suitable hazard abatement measures required by this subchapter.

(b) A violation under Subsection (a) is a Class B administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-7.04(e) (part).)

Sec. 411.047. ADDITIONAL SAFETY PLAN. (a) If at the time of the follow-up inspection under Section 411.045 the employer is exceeding the injury frequencies that may reasonably be expected in the employer's business or industry, the division shall continue to monitor the safety conditions at that worksite and may formulate additional safety plans reasonably designed to abate hazards.

(b) The employer shall comply with the additional plans and is subject to additional penalties for failure to implement those plans. (V.A.C.S. Art. 8308-7.04(f).)

Sec. 411.048. COSTS CHARGED TO EMPLOYER. The commission shall charge the employer for reimbursement of the reasonable cost of services provided by the division, including a reasonable allocation of the commission's administrative costs, in formulating and monitoring the implementation of a plan under Section 411.043 or 411.047, investigating an accident under Section 411.044, or in conducting a follow-up inspection under Section 411.045. (V.A.C.S. Art. 8308-7.04(g).)

Sec. 411.049. HEARING. (a) An employer may request a hearing to contest findings made by the commission under this subchapter.

(b) The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and is subject to judicial review as provided by that Act. (V.A.C.S. Art. 8308-7.04(h).)

Sec. 411.050. ADMISSIBILITY OF IDENTIFICATION AS EXTRA-HAZARDOUS EMPLOYER. The identification of an employer as an extra-hazardous employer under this subchapter is not admissible in any judicial proceeding unless:



(1) the commission has determined that the employer is not in compliance with this subchapter; and

(2) that determination has not been reversed or superseded at the time of the event giving rise to the judicial proceeding. (V.A.C.S. Art. 8308-7.04(i).)

[Sections 411.051-411.060 reserved for expansion]

#### SUBCHAPTER E. ACCIDENT PREVENTION SERVICES

Sec. 411.061. ACCIDENT PREVENTION SERVICES; PREREQUISITE FOR LICENSE. (a) As a prerequisite for a license to write workers' compensation insurance in this state, an insurance company must maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations.

(b) To implement a program of accident prevention services, a facility must include:

- (1) surveys;
- (2) recommendations;
- (3) training programs;
- (4) consultations;
- (5) analyses of accident causes;
- (6) industrial hygiene; and
- (7) industrial health services. (V.A.C.S. Art. 8308-7.05(a) (part).)

Sec. 411.062. FIELD SAFETY REPRESENTATIVE; QUALIFICATIONS. A field safety representative must be:

- (1) a college graduate with a bachelor's degree in science or engineering;
- (2) a registered professional engineer;
- (3) a certified safety professional;
- (4) a certified industrial hygienist;
- (5) an individual with 10 years' experience in occupational safety and health; or
- (6) an individual who has completed a certified training program in accident prevention services approved by the division. (V.A.C.S. Art. 8308-7.05(a) (part).)

Sec. 411.063. ACCIDENT PREVENTION PERSONNEL. (a) To provide qualified accident prevention personnel and services, an insurance company may:

- (1) employ qualified personnel;
- (2) retain qualified independent contractors;
- (3) contract with the policyholder to provide the personnel and services; or
- (4) use a combination of the methods provided by this subsection.

(b) A person who provides accident prevention services under this section must have the qualifications required for a field safety representative. (V.A.C.S. Art. 8308-7.05(a) (part).)

Sec. 411.064. INSPECTIONS. The division shall conduct an inspection at least every two years to determine the adequacy of the accident prevention services required by Section 411.061 for each insurance company writing workers' compensation insurance in this state. (V.A.C.S. Art. 8308-7.05(b).)

Sec. 411.065. ANNUAL INFORMATION SUBMITTED BY INSURANCE COMPANY. (a) Each insurance company writing workers' compensation insurance in this state shall submit to the division at least once a year detailed information on the type of accident prevention facilities offered to that insurance company's policyholders.

(b) The information must include:

- (1) the amount of money spent by the insurance company on accident prevention services;

(2) the number and qualifications of field safety representatives employed by the insurance company;

(3) the number of site inspections performed;

(4) accident prevention services for which the insurance company contracts;

(5) a breakdown of the premium size of the risks to which services were provided;

(6) evidence of the effectiveness of and accomplishments in accident prevention; and

(7) any additional information required by the commission. (V.A.C.S. Art. 8308-7.05(d).)

Sec. 411.066. **NOTICE TO POLICYHOLDERS.** Notice that accident prevention services are available to the policyholder from the insurance company must appear in at least 10-point bold type on the front of each workers' compensation insurance policy delivered or issued for delivery in this state. (V.A.C.S. Art. 8308-7.05(c).)

Sec. 411.067. **COMMISSION PERSONNEL.** (a) The commission shall employ the personnel necessary to enforce this subchapter, including at least 10 safety inspectors to perform inspections at a job site and at an insurance company to determine the adequacy of the accident prevention services provided by the insurance company.

(b) A safety inspector must have the qualifications required for a field safety representative by Section 411.062. (V.A.C.S. Art. 8308-7.05(f).)

Sec. 411.068. **ADMINISTRATIVE VIOLATION.** (a) An insurance company commits a violation if the insurance company does not:

(1) maintain or provide the accident prevention services required by this subchapter; or

(2) use the services in a reasonable manner to prevent injury to employees of its policyholders.

(b) A violation under Subsection (a) is a Class B administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-7.05(e).)

[Sections 411.069-411.080 reserved for expansion]

#### SUBCHAPTER F. EMPLOYEE REPORTS OF SAFETY VIOLATIONS

Sec. 411.081. **TELEPHONE HOTLINE.** (a) The division shall maintain a 24-hour toll-free telephone service for reports of violations of occupational health or safety law.

(b) Each employer shall notify its employees of this service in a manner prescribed by the commission. (V.A.C.S. Art. 8308-7.08(a).)

Sec. 411.082. **EMPLOYER RETALIATION PROHIBITED.** An employer may not suspend or terminate the employment of or otherwise discriminate against an employee for using the telephone service to report in good faith an alleged violation of an occupational health or safety law. (V.A.C.S. Art. 8308-7.08(b).)

Sec. 411.083. **JUDICIAL RELIEF FOR EMPLOYER RETALIATION.** (a) An employee whose employment is terminated or suspended in violation of Section 411.082 is entitled to:

(1) reinstatement to the employee's former position;

(2) compensation for wages lost during the period of suspension or termination; and

(3) reinstatement of any fringe benefits or seniority rights lost because of the suspension or termination.

(b) An employee seeking relief under this section must file suit not later than the 90th day after the alleged conduct of the employer occurred or was discovered or discoverable by the employee through reasonable diligence.

(c) An employee who prevails in a suit under this section is entitled to recover court costs and reasonable attorney's fees. (V.A.C.S. Art. 8308-7.08(c).)

[Sections 411.084-411.090 reserved for expansion]

## SUBCHAPTER G. POLICY FOR ELIMINATION OF DRUGS IN THE WORKPLACE

Sec. 411.091. **ADOPTION AND DISTRIBUTION OF DRUG ABUSE POLICY BY EMPLOYER.** (a) Each employer with 15 or more employees who has workers' compensation insurance coverage shall adopt a policy designed to eliminate drug abuse and its effects in the workplace.

(b) The employer shall distribute a written copy of the policy to each employee. (V.A.C.S. Art. 8308-7.10(a).)

Sec. 411.092. **ENFORCEMENT; RULES.** The commission shall enforce Section 411.091 and may adopt rules for that purpose. (V.A.C.S. Art. 8308-7.10(b).)

## CHAPTER 412. DIVISION OF RISK MANAGEMENT

Sec. 412.001. **DEFINITIONS**

Sec. 412.002. **EXEMPTION OF CERTAIN STATE AGENCIES**

Sec. 412.003. **DUTIES OF DIVISION**

Sec. 412.004. **STATE RISK MANAGER**

Sec. 412.005. **ANNUAL REPORT BY STATE AGENCY**

Sec. 412.006. **RULEMAKING AUTHORITY**

Sec. 412.007. **COMMISSION'S REPORT TO LEGISLATURE**

Sec. 412.008. **INTERAGENCY CONTRACTS**

## CHAPTER 412. DIVISION OF RISK MANAGEMENT

Sec. 412.001. **DEFINITIONS.** In this chapter:

(1) "Director" means the director of the division.

(2) "Division" means the division of risk management of the commission.

(3) "State agency" means a board, commission, department, office, or other agency in the executive, judicial, or legislative branch of state government that has five or more employees, was created by the constitution or a statute of this state, and has authority not limited to a specific geographical portion of the state. The term includes an institution of higher education as defined by Section 61.003, Education Code. (New; V.A.C.S. Art. 8308-7.21(a).)

Sec. 412.002. **EXEMPTION OF CERTAIN STATE AGENCIES.** This chapter does not apply to a state agency that had medical malpractice insurance coverage, workers' compensation insurance coverage, or other self-insurance coverage with associated risk management programs before January 1, 1989. (V.A.C.S. Art. 8308-7.21(b).)

Sec. 412.003. **DUTIES OF DIVISION.** (a) The division shall administer guidelines adopted by the commission for a comprehensive risk management program applicable to all state agencies to reduce property and liability losses, including workers' compensation losses.

(b) The division shall assist a state agency that has not implemented an effective risk management program to implement a comprehensive program that meets the division guidelines. (V.A.C.S. Arts. 8308-7.21(f), (g).)

Sec. 412.004. **STATE RISK MANAGER.** (a) The director serves as the state risk manager.

(b) The director shall supervise the development and administration of systems to:

(1) identify the property and liability losses, including workers' compensation losses, of each state agency;

(2) identify the administrative costs of risk management incurred by each state agency;

(3) identify and evaluate the exposure of each state agency to claims for property and liability losses, including workers' compensation; and

(4) reduce the property and liability losses, including workers' compensation, incurred by each state agency. (V.A.C.S. Art. 8308-7.21(c).)

Sec. 412.005. ANNUAL REPORT BY STATE AGENCY. (a) Each state agency shall report to the director for each fiscal year:

- (1) the location, timing, frequency, severity, and aggregate amounts of losses by category of risk, including open and closed claims and final judgments;
- (2) loss information obtained by the workers' compensation division of the attorney general's office in the course of its administration of the workers' compensation program for state agencies;
- (3) detailed information on existing and potential exposures to loss, including property location and values, descriptions of agency operations, and estimates of maximum probable and maximum possible losses by category of risk;
- (4) estimates by category of risk of losses incurred but not reported;
- (5) information the director determines necessary to prepare a Texas Workers' Compensation Unit Statistical Report; and
- (6) additional information that the director determines to be necessary.

(b) The information shall be reported on or before 60 days after the close of each fiscal year. (V.A.C.S. Art. 8308-7.21(d).)

Sec. 412.006. RULEMAKING AUTHORITY. The commission may adopt rules to implement this chapter, including rules relating to reporting requirements for a state agency. (V.A.C.S. Art. 8308-7.21(j).)

Sec. 412.007. COMMISSION'S REPORT TO LEGISLATURE. (a) Based on the recommendations of the director, the commission shall report to each legislature relating to:

- (1) methods to reduce the exposure of state agencies to the risks of property and liability losses, including workers' compensation losses;
- (2) the operation, financing, and management of those risks; and
- (3) the handling of claims brought against the state.

(b) The report must include:

- (1) the frequency, severity, and aggregate amount of open and closed claims in the preceding biennium by category of risk, including final judgments;
- (2) the identification of each state agency that has not complied with the reporting requirements of this chapter; and
- (3) recommendations for the coordination and administration of a comprehensive risk management program to serve all state agencies, including recommendations for any necessary statutory changes. (V.A.C.S. Art. 8308-7.21(e).)

Sec. 412.008. INTERAGENCY CONTRACTS. (a) Each state agency shall enter into an interagency contract with the commission under Chapter 771, Government Code, to pay the costs incurred by the commission in administering this chapter for the benefit of that state agency. Costs payable under the contract include the cost of:

- (1) services of commission employees;
- (2) materials; and
- (3) equipment, including computer hardware and software.

(b) The amount of the costs to be paid by a state agency under the interagency contract is based on:

- (1) the number of employees of the agency compared with the total number of employees of all state agencies to which this chapter applies;
- (2) the dollar value of the agency's property and asset and liability exposure compared to that of all state agencies to which this chapter applies; and
- (3) the number and aggregate cost of claims and losses incurred by the agency compared to those incurred by all state agencies to which this chapter applies. (V.A.C.S. Arts. 8308-7.21(h), (i).)

CHAPTER 413. MEDICAL REVIEW

SUBCHAPTER A. DIVISION OF MEDICAL REVIEW

- Sec. 413.001. DEFINITION
- Sec. 413.002. DIVISION OF MEDICAL REVIEW
- Sec. 413.003. AUTHORITY TO CONTRACT
- Sec. 413.004. COORDINATION WITH PROVIDERS
- Sec. 413.005. MEDICAL ADVISORY COMMITTEE
- Sec. 413.006. ADVISORY COMMITTEES
- Sec. 413.007. INFORMATION MAINTAINED BY DIVISION
- Sec. 413.008. INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION

[Sections 413.009–413.010 reserved for expansion]

SUBCHAPTER B. MEDICAL SERVICES AND FEES

- Sec. 413.011. GUIDELINES AND MEDICAL POLICIES
- Sec. 413.012. MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED
- Sec. 413.013. PROGRAMS
- Sec. 413.014. PREAUTHORIZATION
- Sec. 413.015. PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW
- Sec. 413.016. PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES
- Sec. 413.017. PRESUMPTION OF REASONABLENESS
- Sec. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED
- Sec. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVER-PAYMENT
- Sec. 413.020. COMMISSION CHARGES

[Sections 413.021–413.030 reserved for expansion]

SUBCHAPTER C. DISPUTE RESOLUTION

- Sec. 413.031. MEDICAL DISPUTE RESOLUTION

[Sections 413.032–413.040 reserved for expansion]

SUBCHAPTER D. HEALTH CARE PROVIDERS

- Sec. 413.041. DISCLOSURE
- Sec. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION
- Sec. 413.043. OVERCHARGING PROHIBITED; OFFENSE

[Sections 413.044–413.050 reserved for expansion]

SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES

- Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS
- Sec. 413.052. PRODUCTION OF DOCUMENTS
- Sec. 413.053. STANDARDS OF REPORTING AND BILLING
- Sec. 413.054. IMMUNITY FROM LIABILITY

CHAPTER 413. MEDICAL REVIEW

SUBCHAPTER A. DIVISION OF MEDICAL REVIEW

Sec. 413.001. DEFINITION. In this chapter, "division" means the division of medical review of the commission. (New.)

Sec. 413.002. DIVISION OF MEDICAL REVIEW. (a) The commission shall maintain a division of medical review to ensure compliance with the rules and to implement this chapter under the policies adopted by the commission.

(b) The division shall monitor health care providers, insurance carriers, and workers' compensation claimants who receive medical services to ensure the compliance of those persons with rules adopted by the commission relating to health care, including medical policies and fee guidelines. (V.A.C.S. Arts. 8308-8.01(a) (part), (d).)

Sec. 413.003. AUTHORITY TO CONTRACT. The commission may contract with a private or public entity to perform a duty or function of the division. (V.A.C.S. Art. 8308-8.02(a).)

Sec. 413.004. COORDINATION WITH PROVIDERS. The division shall coordinate its activities with health care providers as necessary to perform its duties under this chapter. The coordination may include:

- (1) conducting educational seminars on commission rules and procedures; or
- (2) providing information to and requesting assistance from professional peer review organizations. (V.A.C.S. Art. 8308-8.03.)

Sec. 413.005. MEDICAL ADVISORY COMMITTEE. (a) The medical advisory committee advises the division in developing and administering the medical policies, fee guidelines, and utilization guidelines established under Section 413.011. The committee shall advise the commission or professional organization in the review and revision of medical policies and fee guidelines required under Section 413.012.

(b) The medical advisory committee is composed of members appointed by the commission as follows:

- (1) a representative of a public health care facility;
- (2) a representative of a private health care facility;
- (3) a doctor of medicine;
- (4) a doctor of osteopathic medicine;
- (5) a chiropractor;
- (6) a dentist;
- (7) a physical therapist;
- (8) a pharmacist;
- (9) a podiatrist;
- (10) an occupational therapist;
- (11) a medical equipment supplier;
- (12) a registered nurse;
- (13) a representative of employers;
- (14) a representative of employees; and
- (15) two representatives of the general public.

(c) Each member of the medical advisory committee must be knowledgeable and qualified regarding work-related injuries and diseases.

(d) The commission shall designate the presiding officer of the medical advisory committee.

(e) The medical advisory committee shall meet at the call of its presiding officer or at the call of a majority of the committee. (V.A.C.S. Arts. 8308-8.23(a), (b), (c), (d); 8308-8.24 (part).)

Sec. 413.006. **ADVISORY COMMITTEES.** The commission may appoint advisory committees in addition to the medical advisory committee as it considers necessary. (V.A.C.S. Art. 8308-8.23(e).)

Sec. 413.007. **INFORMATION MAINTAINED BY DIVISION.** (a) The division shall maintain a statewide data base of medical charges, actual payments, and treatment protocols that may be used by:

- (1) the commission in adopting the medical policies and fee guidelines; and
  - (2) the division in administering the medical policies, fee guidelines, or rules.
- (b) The division shall ensure that the data base:
- (1) contains information necessary to detect practices and patterns in medical charges, actual payments, and treatment protocols; and
  - (2) can be used in a meaningful way to allow the commission to control medical costs as provided by this subtitle.
- (c) The division shall ensure that the data base is available for public access for a reasonable fee established by the commission. The identities of injured workers and beneficiaries may not be disclosed.

(d) The division shall take appropriate action to be aware of and to maintain the most current information on developments in the treatment and cure of injuries and diseases common in workers' compensation cases. (V.A.C.S. Arts. 8308-8.01(b) (part), (c), (h).)

Sec. 413.008. **INFORMATION FROM INSURANCE CARRIERS; ADMINISTRATIVE VIOLATION.** (a) On request from the commission for specific information, an insurance carrier shall provide to the division any information in its possession, custody, or control that reasonably relates to the commission's duties under this subtitle and to health care:

- (1) treatment;
- (2) services;
- (3) fees; and
- (4) charges.

(b) The commission shall keep confidential information that is confidential by law.

(c) An insurance carrier commits a violation if the insurance carrier fails or refuses to comply with a request or violates a rule adopted to implement this section. A violation under this subsection is a Class C administrative violation. Each day of noncompliance constitutes a separate violation. (V.A.C.S. Art. 8308-8.04.)

[Sections 413.009-413.010 reserved for expansion]

## SUBCHAPTER B. MEDICAL SERVICES AND FEES

Sec. 413.011. **GUIDELINES AND MEDICAL POLICIES.** (a) The commission by rule shall establish medical policies and guidelines relating to:

- (1) fees charged or paid for medical services for employees who suffer compensable injuries, including guidelines relating to payment of fees for specific medical treatments or services;
- (2) use of medical services by employees who suffer compensable injuries; and
- (3) fees charged or paid for providing expert testimony relating to an issue arising under this subtitle.

(b) Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.

(c) Medical policies adopted by the commission must be consistent with Sections 413.013, 413.020, 413.052, and 413.053.

(d) The commission by rule shall establish medical policies relating to necessary treatments for injuries. Medical policies shall be designed to ensure the quality of medical care and to achieve effective medical cost control. (V.A.C.S. Arts. 8308–8.01(a) (part), 8308–8.21(a), (b) (part).)

Sec. 413.012. **MEDICAL POLICY AND GUIDELINE UPDATES REQUIRED.** The medical policies and fee guidelines shall be reviewed and revised at least every two years to reflect fair and reasonable fees and to reflect medical treatment or ranges of treatment that are reasonable or necessary at the time the review and revision is conducted. (V.A.C.S. Art. 8308–8.24 (part).)

Sec. 413.013. **PROGRAMS.** The commission by rule shall establish:

(1) a program for prospective, concurrent, and retrospective review and resolution of a dispute regarding health care treatments and services;

(2) a program for the systematic monitoring of the necessity of treatments administered and fees charged and paid for medical treatments or services, including the authorization of prospective, concurrent, or retrospective review under the medical policies of the commission to ensure that the medical policies or guidelines are not exceeded;

(3) a program to detect practices and patterns by insurance carriers in unreasonably denying authorization of payment for medical services requested or performed if authorization is required by the medical policies of the commission; and

(4) a program to increase the intensity of review for compliance with the medical policies or fee guidelines for any health care provider that has established a practice or pattern in charges and treatments inconsistent with the medical policies and fee guidelines. (V.A.C.S. Art. 8308–8.21(b) (part).)

Sec. 413.014. **PREAUTHORIZATION.** (a) The commission by rule shall specify which health care treatments and services require express preauthorization by the insurance carrier. Treatments and services for a medical emergency do not require express preauthorization.

(b) The insurance carrier is not liable for those specified treatments and services unless preauthorization is sought by the claimant or health care provider and either obtained from the insurance carrier or ordered by the commission. (V.A.C.S. Art. 8308–8.28(a).)

Sec. 413.015. **PAYMENT BY INSURANCE CARRIERS; AUDIT AND REVIEW.** (a) Insurance carriers shall make appropriate payment of charges for medical services provided under this subtitle.

(b) The commission shall provide by rule for the review and audit of the payment by insurance carriers of charges for medical services provided under this subtitle to ensure compliance of health care providers and insurance carriers with the medical policies and fee guidelines adopted by the commission.

(c) The rules must require the insurance carrier to pay the expenses of the review and audit. (V.A.C.S. Art. 8308–8.01(b) (part).)

Sec. 413.016. **PAYMENTS IN VIOLATION OF MEDICAL POLICIES AND FEE GUIDELINES.** (a) The division shall order a refund of charges paid to a health care provider in excess of those allowed by the medical policies or fee guidelines. The division shall also refer the health care provider alleged to have violated this subtitle to the division of compliance and practices.

(b) If the division determines that an insurance carrier has paid medical charges that are inconsistent with the medical policies or fee guidelines adopted by the commission, the division shall refer the insurance carrier alleged to have violated this subtitle to the division of compliance and practices. If the insurance carrier reduced a charge of a health care provider that was within the guidelines, the insurance carrier shall be directed to submit the difference to the provider unless the reduction is in accordance with an agreement between the health care provider and the insurance carrier. (V.A.C.S. Arts. 8308–8.01(e), (f).)

Sec. 413.017. **PRESUMPTION OF REASONABLENESS.** The following medical services are presumed reasonable:



(1) medical services consistent with the medical policies and fee guidelines adopted by the commission; and

(2) medical services that are provided subject to prospective, concurrent, or retrospective review as required by the medical policies of the commission and that are authorized by an insurance carrier. (V.A.C.S. Art. 8308-8.25.)

Sec. 413.018. REVIEW OF MEDICAL CARE IF GUIDELINES EXCEEDED. (a) The commission by rule shall provide for the periodic review of medical care provided in claims in which lost-time guidelines or other appropriate guidelines are exceeded.

(b) The division shall review the medical treatment provided in a claim that exceeds the guidelines and may take appropriate action to ensure that necessary and reasonable care is provided. (V.A.C.S. Art. 8308-8.01(g).)

Sec. 413.019. INTEREST EARNED FOR DELAYED PAYMENT, REFUND, OR OVERPAYMENT. (a) Interest on an unpaid fee or charge that is consistent with the fee guidelines accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the health care provider submits the bill to an insurance carrier until the date the bill is paid.

(b) Interest on a refund from a health care provider accrues at the rate provided by Section 401.023 beginning on the 60th day after the date the provider receives notice of alleged overpayment from the insurance carrier until the date the refund is paid. (V.A.C.S. Art. 8308-8.27.)

Sec. 413.020. COMMISSION CHARGES. The commission by rule shall establish procedures to enable the commission to charge:

(1) an insurance carrier a reasonable fee for access to or evaluation of health care treatment, fees, or charges under this subtitle; and

(2) a health care provider who exceeds a fee or utilization guideline established under this subtitle or an insurance carrier who unreasonably disputes charges that are consistent with a fee or utilization guideline established under this subtitle a reasonable fee for review of health care treatment, fees, or charges under this subtitle. (V.A.C.S. Art. 8308-8.21(b) (part).)

[Sections 413.021-413.030 reserved for expansion]

### SUBCHAPTER C. DISPUTE RESOLUTION

Sec. 413.031. MEDICAL DISPUTE RESOLUTION. (a) A party, including a health care provider, is entitled to a review of a medical service provided or for which authorization of payment is sought if a health care provider is:

(1) denied payment or paid a reduced amount for the medical service rendered;

(2) denied authorization for the payment for the service requested or performed if authorization is required by the medical policies of the commission; or

(3) ordered by the division to refund a payment received for a medical service rendered.

(b) A health care provider who submits a charge in excess of the fee guidelines or treatment policies is entitled to a review of the medical service to determine if reasonable medical justification exists for the deviation.

(c) A review of a medical service under this section shall be provided by a health care provider professional review organization if requested by the health care practitioner or if ordered by the commission.

(d) A party to a medical dispute that remains unresolved after a review of the medical service under this section is entitled to a hearing. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 8308-8.26.)

[Sections 413.032-413.040 reserved for expansion]

SUBCHAPTER D. HEALTH CARE PROVIDERS

Sec. 413.041. DISCLOSURE. A health care provider who refers a workers' compensation claimant to another health care provider in which the referring provider has more than a five percent financial interest shall file an annual disclosure statement with the commission as provided by commission rules and shall disclose the interest to the insurance carrier at the time of the referral. The referring provider shall specify the degree of the financial interest and shall provide other information as required by commission rules. (V.A.C.S. Art. 8308-8.41.)

Sec. 413.042. PRIVATE CLAIMS; ADMINISTRATIVE VIOLATION. (a) A health care provider may not pursue a private claim against a workers' compensation claimant for all or part of the cost of a health care service provided to the claimant by the provider unless:

(1) the injury is finally adjudicated not compensable under this subtitle; or

(2) the employee violates Section 408.022 relating to the selection of a doctor and the doctor did not know of the violation at the time the services were rendered.

(b) A health care provider commits a violation if the provider violates Subsection (a). A violation under this subsection is a Class B administrative violation. (V.A.C.S. Art. 8308-8.42.)

Sec. 413.043. OVERCHARGING PROHIBITED; OFFENSE. (a) A health care provider commits an offense if the person knowingly charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) An offense under this section is a Class A misdemeanor. (V.A.C.S. Arts. 8308-10.08(a), (b).)

[Sections 413.044-413.050 reserved for expansion]

SUBCHAPTER E. IMPLEMENTATION OF COMMISSION POWERS AND DUTIES

Sec. 413.051. CONTRACTS WITH REVIEW ORGANIZATIONS AND HEALTH CARE PROVIDERS. (a) The commission may contract with a health care provider professional review organization or other entity to develop, maintain, or review medical policies or fee guidelines or to review compliance with the medical policies or fee guidelines.

(b) For purposes of review or resolution of a dispute as to compliance with the medical policies or fee guidelines, the commission may contract only with a health care provider professional review organization that includes in the review process health care practitioners who are licensed in the category under review and are of the same field or specialty as the category under review.

(c) The commission may contract with a health care provider for medical consultant services, including:

(1) independent medical examinations;

(2) medical case reviews; or

(3) establishment of medical policies and fee guidelines. (V.A.C.S. Arts. 8308-8.02(b), 8308-8.22.)

Sec. 413.052. PRODUCTION OF DOCUMENTS. The commission by rule shall establish procedures to enable the commission to compel the production of documents. (V.A.C.S. Art. 8308-8.21(b) (part).)

Sec. 413.053. STANDARDS OF REPORTING AND BILLING. The commission by rule shall establish standards of reporting and billing governing both form and content. (V.A.C.S. Art. 8308-8.21(b) (part).)

Sec. 413.054. IMMUNITY FROM LIABILITY. (a) A person who performs services for the commission as a designated doctor, an independent medical examiner, a doctor perform-

ing a medical case review, or a member of a peer review panel has the same immunity from liability as a commission member under Section 402.010.

(b) Immunity from liability under this section does not apply to a person providing medical treatment to an injured employee. (V.A.C.S. Art. 8308-8.05.)

#### CHAPTER 414. DIVISION OF COMPLIANCE AND PRACTICES

Sec. 414.001. DEFINITION

Sec. 414.002. MONITORING DUTIES

Sec. 414.003. COMPILATION AND USE OF INFORMATION

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS

Sec. 414.005. INVESTIGATION UNIT

Sec. 414.006. REFERRAL TO OTHER AUTHORITIES

Sec. 414.007. REVIEW OF REFERRALS FROM DIVISION OF MEDICAL REVIEW

#### CHAPTER 414. DIVISION OF COMPLIANCE AND PRACTICES

Sec. 414.001. DEFINITION. In this chapter, "division" means the division of compliance and practices. (New.)

Sec. 414.002. MONITORING DUTIES. (a) The division shall monitor for compliance with commission rules, this subtitle, and other laws relating to workers' compensation the conduct of persons subject to this subtitle, other than persons monitored by the division of medical review. Persons to be monitored include:

- (1) persons claiming benefits under this subtitle;
- (2) employers;
- (3) insurance carriers; and
- (4) attorneys and other representatives of parties.

(b) The division shall monitor conduct described by Sections 415.001, 415.002, and 415.003 and refer persons engaging in that conduct to the division of hearings.

(c) The division shall monitor payments made to health care providers on behalf of workers' compensation claimants who receive medical services to ensure that the payments are made on time as required by Section 408.027. (V.A.C.S. Arts. 8308-9.01, 8308-9.03, 8308-10.07(a) (part).)

Sec. 414.003. COMPILATION AND USE OF INFORMATION. (a) The division shall compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under this chapter that:

- (1) violate this subtitle or commission rules; or
- (2) otherwise adversely affect the workers' compensation system of this state.

(b) The commission shall use the information compiled under this section to impose appropriate penalties and other sanctions under Chapters 415 and 416. (V.A.C.S. Art. 8308-9.04.)

Sec. 414.004. PERFORMANCE REVIEW OF INSURANCE CARRIERS. (a) The division shall review regularly the workers' compensation records of insurance carriers as required to ensure compliance with this subtitle.

(b) Each insurance carrier, the carrier's agents, and those with whom the carrier has contracted to provide, review, or monitor services under this subtitle shall:

- (1) cooperate with the division;
- (2) make available to the division any records or other necessary information; and
- (3) allow the division access to the information at reasonable times at the person's offices.

(c) The insurance carrier, other than a governmental entity, shall pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier. (V.A.C.S. Art. 8308-9.02.)

Sec. 414.005. INVESTIGATION UNIT. The division shall maintain an investigation unit to conduct investigations relating to alleged violations of this subtitle or commission rules, with particular emphasis on violations of Chapters 415 and 416. (V.A.C.S. Art. 8308-9.06(a).)

Sec. 414.006. REFERRAL TO OTHER AUTHORITIES. For further investigation or the institution of appropriate proceedings, the division may refer the persons involved in a case subject to an investigation to:

(1) the division of hearings; or

(2) other appropriate authorities, including licensing agencies, district and county attorneys, or the attorney general. (V.A.C.S. Art. 8308-9.06(b).)

Sec. 414.007. REVIEW OF REFERRALS FROM DIVISION OF MEDICAL REVIEW. The division shall review information and referrals received from the division of medical review concerning alleged violations of this subtitle and, under Sections 414.005 and 414.006 and Chapters 415 and 416, may conduct investigations, make referrals to other authorities, and initiate administrative violation proceedings. (V.A.C.S. Art. 8308-9.05.)

## CHAPTER 415. ADMINISTRATIVE VIOLATIONS

### SUBCHAPTER A. PROHIBITED ACTS

- Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY
- Sec. 415.002. ADMINISTRATIVE VIOLATION BY AN INSURANCE CARRIER
- Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER
- Sec. 415.004. PENALTY SPECIFIED IN OTHER LAW
- Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION
- Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION
- Sec. 415.007. LOANS BY ATTORNEYS PROHIBITED
- Sec. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION
- Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION
- Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION

[Sections 415.011-415.020 reserved for expansion]

### SUBCHAPTER B. PENALTIES

- Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES
- Sec. 415.022. CLASSIFICATION OF ADMINISTRATIVE VIOLATIONS; PENALTIES
- Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION

[Sections 415.024-415.030 reserved for expansion]

### SUBCHAPTER C. PROCEDURES

- Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS
- Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE
- Sec. 415.033. FAILURE TO RESPOND
- Sec. 415.034. HEARING PROCEDURES
- Sec. 415.035. JUDICIAL REVIEW

## CHAPTER 415. ADMINISTRATIVE VIOLATIONS

## SUBCHAPTER A. PROHIBITED ACTS

Sec. 415.001. ADMINISTRATIVE VIOLATION BY REPRESENTATIVE OF EMPLOYEE OR LEGAL BENEFICIARY. A representative of an employee or legal beneficiary commits an administrative violation if the person wilfully or intentionally:

- (1) fails without good cause to attend a dispute resolution proceeding within the commission;
- (2) attends a dispute resolution proceeding within the commission without complete authority or fails to exercise authority to effectuate an agreement or settlement;
- (3) commits an act of barratry under Section 38.12, Penal Code;
- (4) withholds from the employee's or legal beneficiary's weekly benefits or from advances amounts not authorized to be withheld by the commission;
- (5) enters into a settlement or agreement without the knowledge, consent, and signature of the employee or legal beneficiary;
- (6) takes a fee or withholds expenses in excess of the amounts authorized by the commission;
- (7) refuses or fails to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order, or award;
- (8) violates the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas;
- (9) misrepresents the provisions of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;
- (10) violates a commission rule; or
- (11) fails to comply with this subtitle. (V.A.C.S. Art. 8308-10.07(a) (part).)

Sec. 415.002. ADMINISTRATIVE VIOLATION BY AN INSURANCE CARRIER. (a) An insurance carrier or its representative commits an administrative violation if that person wilfully or intentionally:

- (1) misrepresents a provision of this subtitle to an employee, an employer, a health care provider, or a legal beneficiary;
- (2) fails to submit to the commission a settlement or agreement of the parties;
- (3) fails to timely notify the commission of the termination or reduction of benefits and the reason for that action;
- (4) terminates or reduces benefits without substantiating evidence that the action is reasonable and authorized by law;
- (5) instructs an employer not to file a document required to be filed with the commission;
- (6) instructs or encourages an employer to violate a claimant's right to medical benefits under this subtitle;
- (7) fails to tender promptly full death benefits if a legitimate dispute does not exist as to the liability of the insurance carrier;
- (8) allows an employer, other than a self-insured employer, to dictate the methods by which and the terms on which a claim is handled and settled;
- (9) fails to confirm medical benefits coverage to a person or facility providing medical treatment to a claimant if a legitimate dispute does not exist as to the liability of the insurance carrier;
- (10) fails, without good cause, to attend a dispute resolution proceeding within the commission;
- (11) attends a dispute resolution proceeding within the commission without complete authority or fails to exercise authority to effectuate agreement or settlement;

(12) adjusts a workers' compensation claim in a manner contrary to license requirements for an insurance adjuster, including the requirements of Chapter 407, Acts of the 63rd Legislature, Regular Session, 1973 (Article 21.07-4, Vernon's Texas Insurance Code), or the rules of the State Board of Insurance;

(13) fails to process claims promptly in a reasonable and prudent manner;

(14) fails to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier;

(15) misrepresents the reason for not paying benefits or terminating or reducing the payment of benefits;

(16) dates documents to misrepresent the actual date of the initiation of benefits;

(17) makes a notation on a draft or other instrument indicating that the draft or instrument represents a final settlement of a claim if the claim is still open and pending before the commission;

(18) fails or refuses to pay benefits from week to week as and when due directly to the person entitled to the benefits;

(19) fails to pay an order awarding benefits;

(20) controverts a claim if the evidence clearly indicates liability;

(21) unreasonably denies preauthorization required under Section 413.014 or unreasonably disputes the reasonableness and necessity of health care;

(22) violates a commission rule; or

(23) fails to comply with a provision of this subtitle.

(b) An insurance carrier or its representative does not commit an administrative violation under Subsection (a)(8) by allowing an employer to:

(1) freely discuss a claim;

(2) assist in the investigation and evaluation of a claim; or

(3) attend a proceeding of the commission and participate at the proceeding in accordance with this subtitle. (V.A.C.S. Art. 8308-10.07(b).)

Sec. 415.003. ADMINISTRATIVE VIOLATION BY HEALTH CARE PROVIDER. A health care provider commits an administrative violation if the person wilfully or intentionally:

(1) submits a charge for health care that was not furnished;

(2) administers improper, unreasonable, or medically unnecessary treatment or services;

(3) fails or refuses to timely file required reports or records;

(4) makes an unnecessary referral;

(5) fails to disclose an interest as required by Section 413.041;

(6) violates the commission's fee and treatment guidelines;

(7) violates a commission rule; or

(8) fails to comply with a provision of this subtitle. (V.A.C.S. Art. 8308-10.07(c).)

Sec. 415.004. PENALTY SPECIFIED IN OTHER LAW. If an act that is an administrative violation under Section 415.001, 415.002, or 415.003 is expressly made an administrative violation of a particular class or subject to a specified penalty in another section of this subtitle, the administrative penalty assessed under that section, and not under Section 415.001, 415.002, or 415.003, prevails. (New.)

Sec. 415.005. OVERCHARGING BY HEALTH CARE PROVIDERS PROHIBITED; ADMINISTRATIVE VIOLATION. (a) A health care provider commits a violation if the person charges an insurance carrier an amount greater than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges.

(b) A violation under this section is a Class B administrative violation. A health care provider may be liable for an administrative penalty regardless of whether a criminal action is initiated under Section 413.043. (V.A.C.S. Art. 8308-10.08(c).)

**Sec. 415.006. EMPLOYER CHARGEBACKS PROHIBITED; ADMINISTRATIVE VIOLATION.** (a) An employer may not collect from an employee, directly or indirectly, a premium or other fee paid by the employer to obtain workers' compensation insurance coverage, except as provided by Sections 406.123 and 406.144.

(b) An employee or legal beneficiary of an employee has a right of action to recover damages against an employer who violates Subsection (a).

(c) A person commits a violation if the person violates Subsection (a). A violation under this subsection is a Class C administrative violation. (V.A.C.S. Art. 8308-10.02.)

**Sec. 415.007. LOANS BY ATTORNEYS PROHIBITED.** (a) An attorney who represents a claimant before the commission may not lend money to the claimant during the pendency of the workers' compensation claim.

(b) The attorney may assist the claimant in obtaining financial assistance from another source if the attorney is not personally liable for the credit extended to the claimant. (V.A.C.S. Art. 8308-10.03.)

**Sec. 415.008. FRAUDULENTLY OBTAINING OR DENYING BENEFITS; ADMINISTRATIVE VIOLATION.** (a) A person commits a violation if the person, to obtain or deny a payment of a workers' compensation benefit or the provision of a benefit for the person or another, knowingly or intentionally:

- (1) makes a false or misleading statement;
- (2) misrepresents or conceals a material fact;
- (3) fabricates, alters, conceals, or destroys a document; or
- (4) conspires to commit an act described by Subdivision (1), (2), or (3).

(b) A violation under this section is a Class B administrative violation.

(c) A person who has obtained an excess payment in violation of this section is liable for full repayment plus interest computed at the rate prescribed by Section 401.023. If the person is an employee or person claiming death benefits, the repayment may be redeemed from future income or death benefits to which the person is otherwise entitled.

(d) An employer who has committed an act described by Subsection (a) that results in denial of payments is liable for the past benefit payments that would otherwise have been payable by the insurance carrier during the period of denial, plus interest computed at the rate prescribed by Section 401.023. The insurance carrier is not liable for benefit payments during the period of denial.

(e) If an administrative violation proceeding is pending under this section against an employee or person claiming death benefits, the commission may not take final action on the person's benefits. (V.A.C.S. Art. 8308-10.04.)

**Sec. 415.009. FRIVOLOUS ACTIONS; ADMINISTRATIVE VIOLATION.** (a) A person commits a violation if the person knowingly brings, prosecutes, or defends an action for benefits under this subtitle or requests initiation of an administrative violation proceeding that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(b) A violation under Subsection (a) is a Class B administrative violation. (V.A.C.S. Art. 8308-10.05.)

**Sec. 415.010. BREACH OF AGREEMENT; ADMINISTRATIVE VIOLATION.** (a) A party to an agreement approved by the commission commits a violation if the person knowingly breaches a provision of the agreement.

(b) A violation under Subsection (a) is a Class C administrative violation. (V.A.C.S. Art. 8308-10.06.)

[Sections 415.011-415.020 reserved for expansion]

## SUBCHAPTER B. PENALTIES

**Sec. 415.021. ASSESSMENT OF ADMINISTRATIVE PENALTIES.** (a) The commission may assess an administrative penalty against a person who commits an administrative violation.

(b) The commission may assess an administrative penalty not to exceed \$10,000 and may enter a cease and desist order against a person who:

- (1) commits repeated administrative violations;
- (2) allows, as a business practice, the commission of repeated administrative violations;

or

- (3) violates an order or decision of the commission.

(c) In assessing an administrative penalty, the commission shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
- (2) the history and extent of previous administrative violations;
- (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
- (4) the economic benefit resulting from the prohibited act;
- (5) the penalty necessary to deter future violations; and
- (6) other matters that justice may require.

(d) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C. (V.A.C.S. Art. 8308-10.21.)

Sec. 415.022. CLASSIFICATION OF ADMINISTRATIVE VIOLATIONS; PENALTIES. Administrative violations are classified as follows:

- (1) a Class A administrative violation, punishable by an administrative penalty not to exceed \$10,000;
- (2) a Class B administrative violation, punishable by an administrative penalty not to exceed \$5,000;
- (3) a Class C administrative violation, punishable by an administrative penalty not to exceed \$1,000; and
- (4) a Class D administrative violation, punishable by an administrative penalty not to exceed \$500. (V.A.C.S. Art. 8308-10.22.)

Sec. 415.023. COMMISSION OF WRONGFUL ACT AS MATTER OF PRACTICE; ADMINISTRATIVE VIOLATION. (a) A person who commits an administrative violation under Section 415.001, 415.002, or 415.003 as a matter of practice is subject to an applicable rule adopted under Subsection (b) in addition to the penalty assessed for the violation.

(b) The commission may adopt rules providing for:

- (1) a reduction or denial of fees;
- (2) public or private reprimand by the commission;
- (3) suspension from practice before the commission; or
- (4) restriction, suspension, or revocation of the right to receive reimbursement under this subtitle. (V.A.C.S. Art. 8308-10.07(d).)

[Sections 415.024-415.030 reserved for expansion]

## SUBCHAPTER C. PROCEDURES

Sec. 415.031. INITIATION OF ADMINISTRATIVE VIOLATION PROCEEDINGS. Any person may request the initiation of administrative violation proceedings by filing a written allegation with the director of the division of compliance and practices. (V.A.C.S. Art. 8308-10.31.)

Sec. 415.032. NOTICE OF POSSIBLE ADMINISTRATIVE VIOLATION; RESPONSE. (a) If investigation by the division of compliance and practices indicates that an administrative violation has occurred, the division shall notify the person alleged to have committed the violation in writing of:



- (1) the charge;
- (2) the proposed penalty;
- (3) the right to consent to the charge and the penalty; and
- (4) the right to request a hearing.

(b) Not later than the 20th day after the date on which notice is received, the charged party shall:

- (1) remit the amount of the penalty to the commission; or
- (2) submit to the commission a written request for a hearing. (V.A.C.S. Art. 8308-10.32.)

Sec. 415.033. FAILURE TO RESPOND. If, without good cause, a charged party fails to respond as required under Section 415.032, the penalty is due and the commission shall initiate enforcement proceedings. (V.A.C.S. Art. 8308-10.34.)

Sec. 415.034. HEARING PROCEDURES. (a) On request of the charged party or at the discretion of the director of the division of hearings, the division of hearings shall set a hearing. The hearing shall be conducted in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) At the close of the hearing, the hearing officer conducting the hearing shall make findings of fact and conclusions of law and shall issue a written decision. If the hearing officer determines that an administrative violation has occurred, the hearing officer shall include in the decision the amount of the administrative penalty assessed and shall order payment of the penalty.

(c) The findings of fact, the decision, and the order shall be sent immediately to the charged party. (V.A.C.S. Art. 8308-10.33.)

Sec. 415.035. JUDICIAL REVIEW. (a) A decision under Section 415.034 is subject to judicial review in the manner provided for judicial review under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) If an administrative penalty is assessed, the person charged shall:

(1) forward the amount of the penalty to the executive director for deposit in an escrow account; or

(2) post with the executive director a bond for the amount of the penalty, effective until all judicial review of the determination is final.

(c) Failure to comply with Subsection (b) results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(d) If the court determines that the penalty should not have been assessed or reduces the amount of the penalty, the executive director shall:

(1) remit the appropriate amount, plus accrued interest, if the administrative penalty was paid; or

(2) release the bond. (V.A.C.S. Art. 8308-10.35.)

CHAPTER 416. ACTIONS AGAINST INSURANCE  
 CARRIER FOR BREACH OF DUTY

Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED

Sec. 416.002. EXEMPLARY DAMAGES

CHAPTER 416. ACTIONS AGAINST INSURANCE  
 CARRIER FOR BREACH OF DUTY

Sec. 416.001. CERTAIN CAUSES OF ACTION PRECLUDED. An action taken by an insurance carrier under an order of the commission or recommendations of a benefit review officer under Section 410.031, 410.032, or 410.033 may not be the basis of a cause of action against the insurance carrier for a breach of the duty of good faith and fair dealing. (V.A.C.S. Art. 8308-10.41.)

Sec. 416.002. EXEMPLARY DAMAGES. (a) In an action against an insurance carrier for a breach of the duty of good faith and fair dealing, recovery of exemplary damages is limited to the greater of:

- (1) four times the amount of actual damages; or
- (2) \$250,000.

(b) An action against a governmental entity or unit or an employee of a governmental entity or unit for a breach of the duty of good faith and fair dealing is governed by Chapters 101 and 104, Civil Practice and Remedies Code. (V.A.C.S. Art. 8308–10.42.)

#### CHAPTER 417. THIRD-PARTY LIABILITY

Sec. 417.001. THIRD-PARTY LIABILITY

Sec. 417.002. RECOVERY IN THIRD-PARTY ACTION

Sec. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST

Sec. 417.004. EMPLOYER LIABILITY TO THIRD PARTY

#### CHAPTER 417. THIRD-PARTY LIABILITY

Sec. 417.001. THIRD-PARTY LIABILITY. (a) An employee or legal beneficiary may seek damages from a third party who is or becomes liable to pay damages for an injury or death that is compensable under this subtitle and may also pursue a claim for workers' compensation benefits under this subtitle.

(b) If a benefit is claimed by an injured employee or a legal beneficiary of the employee, the insurance carrier is subrogated to the rights of the injured employee and may enforce the liability of the third party in the name of the injured employee or the legal beneficiary. If the recovery is for an amount greater than that paid or assumed by the insurance carrier to the employee or the legal beneficiary, the insurance carrier shall:

- (1) reimburse itself and pay the costs from the amount recovered; and
  - (2) pay the remainder of the amount recovered to the injured employee or the legal beneficiary.
- (c) If a claimant receives benefits from the subsequent injury fund, the commission is:
- (1) considered to be the insurance carrier under this section for purposes of those benefits;
  - (2) subrogated to the rights of the claimant; and
  - (3) entitled to reimbursement in the same manner as the insurance carrier.

(d) The commission shall remit money recovered under this section to the state treasurer for deposit to the credit of the subsequent injury fund. (V.A.C.S. Arts. 8308–4.05(a), (b), (c).)

Sec. 417.002. RECOVERY IN THIRD-PARTY ACTION. (a) The net amount recovered by a claimant in a third-party action shall be used to reimburse the insurance carrier for benefits, including medical benefits, that have been paid for the compensable injury.

(b) Any amount recovered that exceeds the amount of the reimbursement required under Subsection (a) shall be treated as an advance against future benefits, including medical benefits, that the claimant is entitled to receive under this subtitle.

(c) If the advance under Subsection (b) is adequate to cover all future benefits, the insurance carrier is not required to resume the payment of benefits. If the advance is insufficient, the insurance carrier shall resume the payment of benefits when the advance is exhausted. (V.A.C.S. Art. 8308–4.05(f).)

Sec. 417.003. ATTORNEY'S FEE FOR REPRESENTATION OF INSURANCE CARRIER'S INTEREST. (a) An insurance carrier whose interest is not actively represented by an attorney in a third-party action shall pay a fee to an attorney representing the claimant in the amount agreed on between the attorney and the insurance carrier. In the absence of an agreement, the court shall award to the attorney payable out of the insurance carrier's recovery:

(1) a reasonable fee for recovery of the insurance carrier's interest that may not exceed one-third of the insurance carrier's recovery; and

(2) a proportionate share of expenses.

(b) An attorney who represents the claimant and is also to represent the subrogated insurance carrier shall make a full written disclosure to the claimant before employment as an attorney by the insurance carrier. The claimant must acknowledge the disclosure and consent to the representation. A signed copy of the disclosure shall be furnished to all concerned parties and made a part of the commission file. A copy of the disclosure with the claimant's consent shall be filed with the claimant's pleading before a judgment is entered and approved by the court. The claimant's attorney may not receive a fee under this section to which the attorney is otherwise entitled under an agreement with the insurance carrier unless the attorney complies with the requirements of this subsection.

(c) If an attorney actively representing the insurance carrier's interest actively participates in obtaining a recovery, the court shall award and apportion between the claimant's and the insurance carrier's attorneys a fee payable out of the insurance carrier's subrogation recovery. In apportioning the award, the court shall consider the benefit accruing to the insurance carrier as a result of each attorney's service. The total attorney's fees may not exceed one-third of the insurance carrier's recovery.

(d) For purposes of determining the amount of an attorney's fee under this section, only the amount recovered for benefits, including medical benefits, that have been paid by the insurance carrier may be considered. (V.A.C.S. Arts. 8308-4.05(d) (part), (e), (g).)

Sec. 417.004. **EMPLOYER LIABILITY TO THIRD PARTY.** In an action for damages brought by an injured employee, a legal beneficiary, or an insurance carrier against a third party liable to pay damages for the injury or death under this chapter that results in a judgment against the third party or a settlement by the third party, the employer is not liable to the third party for reimbursement or damages based on the judgment or settlement unless the employer executed, before the injury or death occurred, a written agreement with the third party to assume the liability. (V.A.C.S. Art. 8308-4.04.)

[Chapters 418-450 reserved for expansion]

## SUBTITLE B. DISCRIMINATION ISSUES

### CHAPTER 451. DISCRIMINATION PROHIBITED

Sec. 451.001. **DISCRIMINATION AGAINST EMPLOYEES PROHIBITED**

Sec. 451.002. **REMEDIES; BURDEN OF PROOF**

Sec. 451.003. **INJUNCTION**

### CHAPTER 451. DISCRIMINATION PROHIBITED

Sec. 451.001. **DISCRIMINATION AGAINST EMPLOYEES PROHIBITED.** A person may not discharge or in any other manner discriminate against an employee because the employee has:

- (1) filed a workers' compensation claim in good faith;
- (2) hired a lawyer to represent the employee in a claim;
- (3) instituted or caused to be instituted in good faith a proceeding under Subtitle A; or
- (4) testified or is about to testify in a proceeding under Subtitle A. (V.A.C.S. Art. 8307c, Sec. 1.)

Sec. 451.002. **REMEDIES; BURDEN OF PROOF.** (a) A person who violates Section 451.001 is liable for reasonable damages incurred by the employee as a result of the violation.

(b) An employee discharged in violation of Section 451.001 is entitled to reinstatement in the former position of employment.

(c) The burden of proof in a proceeding under this section is on the employee. (V.A.C.S. Art. 8307c, Sec. 2.)

Sec. 451.003. INJUNCTION. A district court may restrain, for cause shown, a violation of Section 451.001. (V.A.C.S. Art. 8307c, Sec. 3.)

[Chapters 452-500 reserved for expansion]

SUBTITLE C. WORKERS' COMPENSATION INSURANCE COVERAGE  
FOR CERTAIN GOVERNMENT EMPLOYEES

CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR  
CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 501.001. DEFINITIONS
- Sec. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS;  
LIMIT ON ACTIONS AND DAMAGES
- Sec. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE

[Sections 501.004-501.020 reserved for expansion]

SUBCHAPTER B. COVERAGE

- Sec. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES
- Sec. 501.022. TEXAS TECH UNIVERSITY EMPLOYEES
- Sec. 501.023. STATE SELF-INSURING
- Sec. 501.024. EXCLUSIONS FROM COVERAGE
- Sec. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES

[Sections 501.026-501.040 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

- Sec. 501.041. WORKERS' COMPENSATION DIVISION; DIRECTOR
- Sec. 501.042. DIRECTOR AS EMPLOYER AND INSURER
- Sec. 501.043. DIRECTOR'S POWERS AND DUTIES
- Sec. 501.044. EFFECT OF SICK LEAVE
- Sec. 501.045. EFFECT OF EMERGENCY LEAVE
- Sec. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES
- Sec. 501.047. REPORTS TO LEGISLATURE
- Sec. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS
- Sec. 501.049. STATE WORKERS' COMPENSATION ACCOUNT
- Sec. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OF-  
FENSE

CHAPTER 501. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
STATE EMPLOYEES, INCLUDING EMPLOYEES UNDER THE DIRECTION OR  
CONTROL OF THE BOARD OF REGENTS OF TEXAS TECH UNIVERSITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Workers' Compensation Commission.
- (2) "Compensable injury" has the meaning assigned to that term under Subtitle A.
- (3) "Director" means the director of the workers' compensation division of the attorney general's office.

(4) "Division" means the workers' compensation division of the attorney general's office.

(5) "Employee" means a person who is:

(A) in the service of the state pursuant to an election, appointment, or express oral or written contract of hire;

(B) paid from state funds but whose duties require that the person work and frequently receive supervision in a political subdivision of the state; or

(C) a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under Article 14.03(c), Code of Criminal Procedure.

(6) "State agency" includes a department, board, commission, or institution of this state. (New; V.A.C.S. Art. 8309g, Secs. 1(1), (3) (part), (4), (5), (6).)

Sec. 501.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

- (1) Chapter 401, other than Section 401.012 defining "employee";
- (2) Chapter 402;
- (3) Chapter 403, other than Sections 403.001-403.005;
- (4) Chapter 405;
- (5) Subchapters B and D through H, Chapter 406, other than Sections 406.071(a), 406.073, and 406.075;
- (6) Chapter 408, other than Sections 408.001(b) and (c);
- (7) Chapters 409 and 410;
- (8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;
- (9) Chapters 412-417; and
- (10) Chapter 451.

(b) For the purposes of Chapter 451, the individual agency shall be considered the employer.

(c) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "insurer" or "employer" means "state," "division," or "director," as applicable.

(d) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the state, a state agency, or an employee of the state beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 8309g, Sec. 15.)

Sec. 501.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) The provisions of this chapter and the rules of the director affecting an employee also apply to the legal beneficiary of a deceased employee.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011. (V.A.C.S. Art. 8309g, Secs. 1(3) (part), 13.)

[Sections 501.004-501.020 reserved for expansion]

## SUBCHAPTER B. COVERAGE

Sec. 501.021. WORKERS' COMPENSATION COVERAGE FOR EMPLOYEES. An employee with a compensable injury is entitled to compensation by the director as provided by this chapter. (V.A.C.S. Art. 8309g, Sec. 11(a).)

Sec. 501.022. TEXAS TECH UNIVERSITY EMPLOYEES. An eligible employee of Texas Tech University, Texas Tech University Research Farm, Texas Tech University School of Medicine at Lubbock, or another agency under the direction and control of the board of regents of Texas Tech University is entitled to participate in the workers' compensation program for state employees provided under this chapter. (V.A.C.S. Art. 8309g-1.)

Sec. 501.023. STATE SELF-INSURING. The state is self-insuring with respect to an employee's compensable injury. (V.A.C.S. Art. 8309g, Sec. 2.)

Sec. 501.024. EXCLUSIONS FROM COVERAGE. The following persons are excluded from coverage as an employee under this chapter:

- (1) a person performing personal services for the state as an independent contractor or volunteer;
- (2) a member of the state military forces as defined by Section 431.001, Government Code;
- (3) a person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance;
- (4) a prisoner or inmate of a prison or correctional institution;
- (5) a client or patient of a state agency;
- (6) a person employed by the Texas Department of Transportation who is covered under Chapter 505;
- (7) a person employed by The University of Texas System who is covered by Chapter 503; and
- (8) a person employed by The Texas A&M University System who is covered by Chapter 502. (V.A.C.S. Art. 8309g, Sec. 1(2).)

Sec. 501.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) An employee who performs services outside the state is entitled to benefits under this chapter even if the person:

- (1) is hired or not hired in this state;
- (2) does not work in this state;
- (3) works both in this state and out of state;
- (4) is injured outside this state; or
- (5) has been outside this state for more than one year.

(b) An employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter. (V.A.C.S. Art. 8309g, Sec. 17.)

[Sections 501.026–501.040 reserved for expansion]

### SUBCHAPTER C. ADMINISTRATION

Sec. 501.041. WORKERS' COMPENSATION DIVISION; DIRECTOR. (a) The attorney general shall maintain a division of workers' compensation to administer this chapter.

(b) The attorney general shall appoint a director to act as chief executive and administrative officer of the division.

(c) The attorney general shall provide the director with office space and sufficient personnel to administer this chapter.

(d) The director shall administer this chapter with money appropriated by the legislature.

(e) With the approval of the attorney general, the director may contract with a company authorized to do business in this state for any or all of the administrative services required by this chapter. A contract awarded under this subsection shall be awarded on the basis of competitive bidding by qualified companies. (V.A.C.S. Art. 8309g, Sec. 3.)

Sec. 501.042. DIRECTOR AS EMPLOYER AND INSURER. (a) In administering and enforcing this chapter, the director shall act in the capacity of employer and insurer.

(b) The director shall act as an adversary before the commission and courts and present the legal defenses and positions of the state as an employer and insurer.

(c) For the purposes of this section, the director is entitled to the legal counsel of the attorney general.

(d) The director is subject to the rules, orders, and decisions of the commission in the same manner as a private employer, insurer, or association. (V.A.C.S. Art. 8309g, Secs. 4, 10.)

Sec. 501.043. DIRECTOR'S POWERS AND DUTIES. (a) The director shall:

(1) adopt procedural rules and prescribe forms necessary for the effective administration of this chapter; and

(2) adopt and enforce reasonable rules for the prevention of accidents and injuries.

(b) The director shall hold hearings on all proposed rules and provide reasonable opportunity for the officers of state agencies to testify at hearings on all proposed rules under this section.

(c) The director shall furnish copies of all rules to the commission and to the administrative heads of all state agencies affected by this chapter. (V.A.C.S. Art. 8309g, Secs. 5, 6 (part), 7.)

Sec. 501.044. EFFECT OF SICK LEAVE. An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee's accrued sick leave. (V.A.C.S. Art. 8309g, Sec. 12(a).)

Sec. 501.045. EFFECT OF EMERGENCY LEAVE. (a) Payments for emergency leave authorized by the administrative head of a state agency in accordance with the General Appropriations Act for an employee receiving income benefits under this chapter may not:

(1) exceed for a month the amount computed by subtracting the amount of income benefits received for the month from the basic monthly wage of the employee; and

(2) be paid for a period longer than six months after the date on which benefits begin.

(b) The administrative head authorizing the emergency leave payments shall review the merits of each case individually.

(c) If payment for emergency leave is authorized, the state agency shall attach a statement of the reasons for the authorization to its duplicate payroll voucher for the first payroll period affected by the leave. (V.A.C.S. Art. 8309g, Sec. 12(b).)

Sec. 501.046. REPORTS OF TERMINATION OR CONTINUATION OF INJURIES. In addition to other reports required by the commission, the director shall file a subsequent report not later than the 10th day after the date of the termination of the injured employee's incapacity. If the employee's incapacity extends beyond 60 days, the director shall file a subsequent report before the 70th day after the date the employee's incapacity began. (V.A.C.S. Art. 8309g, Sec. 8 (part).)

Sec. 501.047. REPORTS TO LEGISLATURE. (a) The director shall report to the legislature at the beginning of each regular session.

(b) The report required under this section shall be dated January 1 of the year in which the regular session is held and must include:

(1) a list of all persons who have received benefits under this chapter, the nature and cause of each injury, and the amounts paid weekly in income benefits and for medical, hospital, and other services;

(2) a summary of administrative expenses;

(3) a statement:

(A) showing the amount of the money appropriated by the preceding legislature that remains unexpended on the date of the report; and

(B) estimating the amount of that balance necessary to administer this chapter for the remainder of that fiscal year; and

(4) an estimate, based on experience factors, of the amount of money that will be required to administer this chapter and pay for the compensation and services provided under this chapter during the next succeeding biennium.

(c) The director shall report to the legislature a state agency that fails to meet its obligation regarding the prevention of accidents and injuries to state employees. (V.A.C.S. Art. 8309g, Secs. 6 (part), 9.)

Sec. 501.048. STATE AGENCY SUMMARY IN BUDGET REQUESTS. Each state agency shall submit in the administrative statement of its biennial budget request a summary containing:

(1) the number of first reports of injury filed by the agency during the preceding biennium;

(2) the amount of workers' compensation indemnity and medical benefits paid to or for employees during the preceding biennium;

(3) the number of on-the-job injuries per 100 of its employees during each year of the preceding biennium; and

(4) a description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the division and others. (V.A.C.S. Art. 8309g, Sec. 6 (part).)

Sec. 501.049. STATE WORKERS' COMPENSATION ACCOUNT. (a) All money recovered by the director from a third party through subrogation shall be deposited into the state workers' compensation account in general revenue.

(b) Funds deposited under this section may be used for the payment of compensation and other benefits to state employees. (V.A.C.S. Art. 8309g, Sec. 18.)

Sec. 501.050. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the commission to a county or district court:

(1) the clerk of the court shall mail to the commission:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed \$250. (V.A.C.S. Art. 8309g, Sec. 14.)

## **CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE TEXAS A&M UNIVERSITY SYSTEM**

### **SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 502.001. DEFINITIONS

Sec. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS;  
LIMIT ON ACTIONS AND DAMAGES

Sec. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE

[Sections 502.004–502.020 reserved for expansion]

### **SUBCHAPTER B. COVERAGE**

Sec. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES

Sec. 502.022. AUTHORITY TO SELF-INSURE

Sec. 502.023. INSURANCE REQUIREMENT

Sec. 502.024. PREEXISTING DISQUALIFYING CONDITION

[Sections 502.025–502.040 reserved for expansion]

### **SUBCHAPTER C. OFFSETS**

Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE



[Sections 502.042–502.060 reserved for expansion]

## SUBCHAPTER D. ADMINISTRATION

- Sec. 502.061. ADMINISTRATION AND RULES  
 Sec. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS  
 Sec. 502.063. CERTIFIED COPIES OF COMMISSION DOCUMENTS  
 Sec. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS  
 Sec. 502.065. REPORTS OF INJURIES  
 Sec. 502.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION  
 Sec. 502.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT  
 Sec. 502.068. POSTPONEMENT OF HEARING  
 Sec. 502.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE  
 Sec. 502.070. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE

## CHAPTER 502. WORKERS' COMPENSATION INSURANCE COVERAGE FOR EMPLOYEES OF THE TEXAS A&amp;M UNIVERSITY SYSTEM

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 502.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Workers' Compensation Commission.
- (2) "Employee" means a person employed in the service of an institution whose name appears on the institution's payroll.
- (3) "Institution" means an institution of higher education or agency under the direction or governance of the board of regents of The Texas A&M University System.
- (4) "System" has the meaning assigned by Section 85.01(1), Education Code. (New; V.A.C.S. Art. 8309b, Secs. 2(a)(1), (2), (3), (4).)

Sec. 502.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

- (1) Chapter 401, other than Section 401.012 defining "employee";
- (2) Chapter 402;
- (3) Chapter 403, other than Sections 403.001–403.005;
- (4) Chapter 405;
- (5) Sections 406.031–406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;
- (6) Chapter 408, other than Sections 408.001(b) and (c);
- (7) Chapters 409 and 410;
- (8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and
- (9) Chapters 412–417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 8309b, Sec. 7.)

Sec. 502.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011. (V.A.C.S. Art. 8309b, Secs. 2(a)(5), (b) (part).)

[Sections 502.004–502.020 reserved for expansion]

### SUBCHAPTER B. COVERAGE

Sec. 502.021. WORKERS' COMPENSATION COVERAGE FOR INSTITUTION EMPLOYEES. (a) The institution shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408. (V.A.C.S. Art. 8309b, Secs. 2(a)(6), 3 (part), 4, 9 (part).)

Sec. 502.022. AUTHORITY TO SELF-INSURE. An institution may self-insure. (V.A.C.S. Art. 8309b, Sec. 3 (part).)

Sec. 502.023. INSURANCE REQUIREMENT. (a) The board of regents of the system may require each employee, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board.

(b) This section does not apply to an employee who is paid on a piece-work basis or on any basis other than by the hour, day, week, month, or year. (V.A.C.S. Art. 8309b, Sec. 3 (part).)

Sec. 502.024. PREEXISTING DISQUALIFYING CONDITION. (a) An institution may certify as an employee a person who indicates a preexisting disqualifying physical condition in a medical history obtained under Section 502.064 or who is found to have a preexisting disqualifying medical condition in a physical examination under Section 502.064 on the condition that the person execute in writing a waiver of coverage under this chapter for the preexisting disqualifying physical condition before becoming an employee of the institution.

(b) A waiver under Subsection (a) is valid and binding on the employee who executes the waiver. Compensation or death benefits may not be paid to the employee or the employee's beneficiaries for an injury or death of the employee that is attributable to the condition for which coverage was waived. (V.A.C.S. Art. 8309b, Sec. 15.)

[Sections 502.025–502.040 reserved for expansion]

### SUBCHAPTER C. OFFSETS

Sec. 502.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An institution may provide that an injured employee may remain on the payroll until the employee's earned annual and sick leave is exhausted.

(b) While an injured employee remains on the payroll under Subsection (a), medical services remain available to the employee, but workers' compensation benefits do not accrue or become payable to the injured employee. (V.A.C.S. Art. 8309b, Sec. 9 (part).)

[Sections 502.042–502.060 reserved for expansion]

### SUBCHAPTER D. ADMINISTRATION

Sec. 502.061. ADMINISTRATION AND RULES. (a) Each institution shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The institution may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries. (V.A.C.S. Art. 8309b, Secs. 3 (part), 10 (part), 13 (part).)

Sec. 502.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law. (V.A.C.S. Art. 8309b, Sec. 19.)

Sec. 502.063. CERTIFIED COPIES OF COMMISSION DOCUMENTS. (a) The commission shall furnish a certified copy of an order, award, decision, or paper on file in the commission's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) An institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to a member or employee of the commission for making a copy under Subsection (a) that exceeds the fee charged for the copy. (V.A.C.S. Art. 8309b, Sec. 16 (part).)

Sec. 502.064. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS; INSTITUTION RECORDS. (a) An institution may obtain and record on a form prescribed by the institution the medical history of a person to be employed by the institution.

(b) The institution may require that an individual may not be certified as an employee of the institution under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician or chiropractor to be physically fit to perform the duties and services to which the individual is to be assigned.

(c) The institution may designate a convenient number of licensed practicing physicians and chiropractors to perform physical examinations under this section.

(d) A physician or chiropractor designated under Subsection (c) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(e) The institution shall maintain all reports and medical histories filed with the institution under this section as part of the institution's permanent records. (V.A.C.S. Art. 8309b, Secs. 13 (part), 14.)

Sec. 502.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the commission under Section 409.005(a), an institution shall file a supplemental report that contains:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) The institution shall file the supplemental report on a form obtained for that purpose:

(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days. (V.A.C.S. Art. 8309b, Sec. 12 (part).)

Sec. 502.066. **REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION.** (a) The commission may require an employee who claims to have been injured to submit to an examination by the commission or a person acting under the commission's authority at a reasonable time and place in this state.

(b) On the request of an employee or the institution, the employee or the institution is entitled to have a physician or chiropractor selected by the employee or the institution, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician or chiropractor selected by the institution. The institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician or chiropractor selected by the employee present to participate in an examination under this subsection.

(e) The institution shall pay the fee set by the commission of a physician or chiropractor selected by the employee under Subsection (b) or (d). (V.A.C.S. Art. 8309b, Sec. 10 (part).)

Sec. 502.067. **REFUSAL TO SUBMIT TO MEDICAL TREATMENT.** (a) The commission may order or direct the institution to reduce or suspend the compensation of an injured employee who:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, chiropractic, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard. (V.A.C.S. Art. 8309b, Sec. 10 (part).)

Sec. 502.068. **POSTPONEMENT OF HEARING.** If an injured employee is receiving benefits under this chapter and the institution is providing hospitalization, medical treatment, or chiropractic care to the employee, the commission may postpone the hearing on the employee's claim. An appeal may not be taken from a commission order under this section. (V.A.C.S. Art. 8309b, Sec. 18 (part).)

Sec. 502.069. **NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.** (a) In each case appealed from the commission to a county or district court:

(1) the clerk of the court shall mail to the commission:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$250. (V.A.C.S. Art. 8309b, Sec. 21.)

Sec. 502.070. **ATTORNEY GENERAL AS LEGAL REPRESENTATIVE.** The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter. (V.A.C.S. Art. 8309b, Sec. 20.)

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE  
FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 503.001. DEFINITIONS
- Sec. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS;  
LIMIT ON ACTIONS AND DAMAGES
- Sec. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE

[Sections 503.004–503.020 reserved for expansion]

SUBCHAPTER B. COVERAGE

- Sec. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTI-  
TUTION EMPLOYEES
- Sec. 503.022. AUTHORITY TO SELF-INSURE
- Sec. 503.023. INSURANCE REQUIREMENT
- Sec. 503.024. WAIVER OF RIGHTS

[Sections 503.025–503.040 reserved for expansion]

SUBCHAPTER C. OFFSETS

- Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE

[Sections 503.042–503.060 reserved for expansion]

SUBCHAPTER D. ADMINISTRATION

- Sec. 503.061. ADMINISTRATION AND RULES
- Sec. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPEN-  
SATION EXPENSES; ACCOUNT; REPORTS
- Sec. 503.063. CERTIFIED COPIES OF COMMISSION DOCUMENTS
- Sec. 503.064. EXAMINING PHYSICIANS
- Sec. 503.065. REPORTS OF INJURIES
- Sec. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO  
SUBMIT TO EXAMINATION
- Sec. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT
- Sec. 503.068. POSTPONEMENT OF HEARING
- Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OF-  
FENSE
- Sec. 503.070. VENUE FOR JUDICIAL REVIEW
- Sec. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE

CHAPTER 503. WORKERS' COMPENSATION INSURANCE COVERAGE  
FOR EMPLOYEES OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 503.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Workers' Compensation Commission.
- (2) "Employee" means a person employed in the service of the system under an appointment or oral or written express contract for hire whose name appears on the system's payroll.
- (3) "Institution" means an institution of higher education or agency under the direction of the board of regents of The University of Texas System.

(4) "System" has the meaning assigned by Section 65.01(1), Education Code. (New; V.A.C.S. Art. 8309d, Secs. 2(a)(1), (2), (3), (4).)

Sec. 503.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitle A apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

- (1) Chapter 401, other than Section 401.012 defining "employee"
- (2) Chapter 402;
- (3) Chapter 403, other than Sections 403.001–403.005;
- (4) Chapter 405;
- (5) Sections 406.031–406.033; Subchapter D, Chapter 406; Sections 406.092 and 406.093;
- (6) Chapter 408, other than Sections 408.001(b) and (c);
- (7) Chapters 409 and 410;
- (8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004; and
- (9) Chapters 412–417.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "the institution."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the system or any institution or employee of the system or institution beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 8309d, Sec. 7.)

Sec. 503.003. LEGAL BENEFICIARY OF DECEASED EMPLOYEE. (a) A reference in this chapter to an injured employee includes the legal beneficiaries of the employee if the injured employee is dead.

(b) In this section, "legal beneficiary" has the meaning assigned to that term under Section 401.011. (V.A.C.S. Art. 8309d, Secs. 2(a)(5), (b) (part).)

[Sections 503.004–503.020 reserved for expansion]

## SUBCHAPTER B. COVERAGE

Sec. 503.021. WORKERS' COMPENSATION COVERAGE FOR SYSTEM AND INSTITUTION EMPLOYEES. (a) The institution shall pay benefits as provided by this chapter to an employee with a compensable injury.

(b) A benefit under this section for an employee who is employed on less than a full workday basis may not exceed 60 percent of the employee's average weekly wage as computed under Section 408.042.

(c) A benefit shall be paid weekly as it accrues directly to the person entitled to it unless the liability is redeemed as provided by this chapter.

(d) In this section, "average weekly wage" has the meaning assigned to that term by Subchapter C, Chapter 408. (V.A.C.S. Art. 8309d, Secs. 2(a)(6), 3 (part), 4, 9 (part).)

Sec. 503.022. AUTHORITY TO SELF-INSURE. An institution may self-insure. (V.A.C.S. Art. 8309d, Sec. 3 (part).)

Sec. 503.023. INSURANCE REQUIREMENT. The board of regents of the system may require each person employed by the system or an institution other than by appointment or express contract for hire, as a condition of employment, to acquire protection under a group life and accident insurance plan approved by the board. (V.A.C.S. Art. 8309d, Sec. 3 (part).)

Sec. 503.024. WAIVER OF RIGHTS. An agreement by an employee to waive the employee's rights under this chapter is valid if made in writing by the employee before becoming an employee. (V.A.C.S. Art. 8309d, Sec. 15.)

[Sections 503.025–503.040 reserved for expansion]

## SUBCHAPTER C. OFFSETS

Sec. 503.041. EXHAUSTION OF ANNUAL AND SICK LEAVE. (a) An institution may provide that an injured employee may remain on the payroll until the employee's earned annual and sick leave is exhausted.

(b) While an injured employee remains on the payroll under Subsection (a), the employee is entitled to medical benefits but income benefits do not accrue. (V.A.C.S. Art. 8309d, Sec. 9 (part).)

[Sections 503.042–503.060 reserved for expansion]

## SUBCHAPTER D. ADMINISTRATION

Sec. 503.061. ADMINISTRATION AND RULES. (a) Each institution shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The institution may:

(1) adopt and publish rules and prescribe and furnish forms necessary for the administration of this chapter; and

(2) adopt and enforce rules necessary for the prevention of accidents and injuries. (V.A.C.S. Art. 8309d, Secs. 3 (part), 10 (part), 13 (part).)

Sec. 503.062. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) An institution may set aside from its available appropriations, other than itemized salary appropriations, an amount not to exceed two percent of the institution's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the institution's records. The balance of the account at any time may not exceed an amount equal to two percent of the institution's annual payroll.

(c) The account must show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law. (V.A.C.S. Art. 8309d, Sec. 19.)

Sec. 503.063. CERTIFIED COPIES OF COMMISSION DOCUMENTS. (a) The commission shall furnish a certified copy of an order, award, decision, or paper on file in the commission's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee is the same as that charged for similar services by the secretary of state's office.

(b) The institution may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to a member or employee of the commission for making a copy under Subsection (a) that exceeds the fee charged for the copy. (V.A.C.S. Art. 8309d, Sec. 16 (part).)

Sec. 503.064. EXAMINING PHYSICIANS. (a) The institution shall designate a convenient number of licensed practicing physicians to perform physical examinations of individuals employed or to be employed by the institution to determine if an individual is physically fit to be classified as an employee.

(b) A physician designated under Subsection (a) who conducts an examination shall file with the institution a complete transcript of the examination. The transcript must be sworn to on a form provided by the institution.

(c) The institution shall maintain all reports under this section as part of the institution's permanent records. (V.A.C.S. Art. 8309d, Sec. 13 (part).)

Sec. 503.065. REPORTS OF INJURIES. (a) In addition to a report of an injury filed with the commission under Section 409.005(a), an institution shall file a supplemental report that contains:

- (1) the name, age, sex, and occupation of the injured employee;
  - (2) the character of work in which the employee was engaged at the time of the injury;
  - (3) the place, date, and hour of the injury; and
  - (4) the nature and cause of the injury.
- (b) The institution shall file the supplemental report on a form obtained for that purpose:
- (1) on the termination of incapacity of the injured employee; or
  - (2) if the incapacity extends beyond 60 days. (V.A.C.S. Art. 8309d, Sec. 12 (part).)

Sec. 503.066. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION. (a) The commission may require an employee who claims to have been injured to submit to an examination by the commission or a person acting under the commission's authority at a reasonable time and place in this state.

(b) On the request of an employee or the institution, the employee or the institution is entitled to have a physician selected by the employee or the institution, as appropriate, present to participate in an examination under Subsection (a) or Section 408.004.

(c) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(d) The institution may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the institution. The institution shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination. The employee is entitled to have a physician selected by the employee present to participate in an examination under this subsection.

(e) The institution shall pay the fee, as set by the commission, of a physician selected by the employee under Subsection (b) or (d). (V.A.C.S. Art. 8309d, Sec. 10 (part).)

Sec. 503.067. REFUSAL TO SUBMIT TO MEDICAL TREATMENT. (a) The commission may order or direct the institution to reduce or suspend the compensation of an injured employee who:

- (1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or
- (2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard. (V.A.C.S. Art. 8309d, Sec. 10 (part).)

Sec. 503.068. POSTPONEMENT OF HEARING. If an injured employee is receiving benefits under this chapter and the institution is providing hospitalization or medical treatment to the employee, the commission may postpone the hearing on the employee's claim. An appeal may not be taken from a commission order under this section. (V.A.C.S. Art. 8309d, Sec. 18 (part).)

Sec. 503.069. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE. (a) In each case appealed from the commission to a county or district court:

- (1) the clerk of the court shall mail to the commission:
  - (A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and
  - (B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and
- (2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).



(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$250. (V.A.C.S. Art. 8309d, Sec. 21.)

Sec. 503.070. VENUE FOR JUDICIAL REVIEW. (a) A party who does not consent to abide by the final decision of the commission shall file notice with the commission as required by Section 410.253 and bring suit in the county in which the injury occurred to set aside the final decision of the commission.

(b) If a suit under this section is filed in a county other than the county in which the injury occurred, the court, on determining that it does not have jurisdiction to render judgment on the merits of the suit, shall transfer the case to a proper court in the county in which the injury occurred.

(c) Notice of the transfer of a suit under Subsection (b) shall be given to the parties. A suit transferred under Subsection (b) shall be considered for all purposes the same as if originally filed in the court to which it is transferred. (V.A.C.S. Art. 8309d, Sec. 17.)

Sec. 503.071. ATTORNEY GENERAL AS LEGAL REPRESENTATIVE. The attorney general is the institution's legal representative and may bring and defend all suits and hearings necessary to carry out the purposes of this chapter. (V.A.C.S. Art. 8309d, Sec. 20.)

CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE  
FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS

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Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES

Sec. 504.018. NOTICE TO COMMISSION AND EMPLOYEES; EFFECT ON COM-  
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[Sections 504.019–504.050 reserved for expansion]

SUBCHAPTER C. BENEFITS AND OFFSETS

Sec. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY

Sec. 504.052. SICK LEAVE BENEFITS

[Sections 504.053–504.070 reserved for expansion]

SUBCHAPTER D. ADMINISTRATION

Sec. 504.071. RULES; FORMS

Sec. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT

Sec. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS

CHAPTER 504. WORKERS' COMPENSATION INSURANCE COVERAGE  
FOR EMPLOYEES OF POLITICAL SUBDIVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 504.001. DEFINITIONS. In this chapter, unless a different meaning is plainly required by the context:

(1) "Commission" means the Texas Workers' Compensation Commission.

(2) "Employee" means:

(A) a person in the service of a political subdivision who has been employed as provided by law; or

(B) a person for whom optional coverage is provided under Section 504.012 or 504.013.

(3) "Political subdivision" means a county, municipality, special district, school district, junior college district, housing authority, community center for mental health and mental retardation services established under Subchapter A, Chapter 534, Health and Safety Code, or any other legally constituted political subdivision of the state. (V.A.C.S. Art. 8309h, Sec. 1 (part).)

Sec. 504.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS; LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1) Chapter 401, other than Section 401.011(18) defining "employer" and Section 401.012 defining "employee";

(2) Chapter 402;

(3) Chapter 403, other than Sections 403.001–403.005;

(4) Chapter 405;

(5) Subchapters B and D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035, 406.091, and 406.096;

(6) Chapter 408, other than Sections 408.001(b) and (c);

(7) Chapters 409–417; and

(8) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, "employer" means "political subdivision."

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against a political subdivision or an employee of a political subdivision beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 8309h, Secs. 3(a), (b), (c), (e).)

Sec. 504.003. ELECTION OF REMEDIES. A person may not bring an action for wrongful discharge under both Chapter 451 and Chapter 832, Acts of the 68th Legislature, Regular Session, 1983 (Article 6252-16a, Vernon's Texas Civil Statutes). (V.A.C.S. Art. 8309h, Sec. 3(d).)

## SUBCHAPTER B. COVERAGE

Sec. 504.011. METHOD OF PROVIDING COVERAGE. A political subdivision shall extend workers' compensation benefits to its employees by:

- (1) becoming a self-insurer;
- (2) providing insurance under a workers' compensation insurance policy; or
- (3) entering into an interlocal agreement with other political subdivisions providing for self-insurance. (V.A.C.S. Art. 8309h, Sec. 2(a).)

Sec. 504.012. OPTIONAL COVERAGES. (a) A political subdivision may cover volunteer fire fighters, police officers, emergency medical personnel, and other volunteers that are specifically named. A person covered under this subsection is entitled to full medical benefits and the minimum compensation payments under the law.

(b) By majority vote of the members of the governing body of a political subdivision, the political subdivision may cover as employees:

- (1) an elected official;
- (2) persons paid for jury service; or
- (3) persons paid for service in the conduct of an election.

(c) A political subdivision may cover a child who is in a program established by the political subdivision to assist children in rendering personal services to a charitable or educational institution under Section 54.041(b), Family Code. (V.A.C.S. Art. 8309h, Sec. 1 (part).)

Sec. 504.013. COVERAGE FOR TRUSTEES AND STAFF OF SELF-INSURANCE FUND. By majority vote of the board of trustees of a self-insurance fund created under this chapter, the fund may cover:

- (1) members of the board of trustees;
- (2) staff of the fund, including persons with whom the fund has contracted to perform staff functions; or
- (3) any other self-insurance fund created under Chapter 791, Government Code. (V.A.C.S. Art. 8309h, Sec. 1 (part).)

Sec. 504.014. EXCLUSIONS. A person is not an employee and is not entitled to compensation under this chapter if the person is:

- (1) in the service of a political subdivision and is paid on a piecework basis or on a basis other than by the hour, day, week, month, or year;
- (2) a patient or client of a political subdivision involved in vocational training; or
- (3) a prisoner incarcerated by a political subdivision. (V.A.C.S. Art. 8309h, Sec. 1 (part).)

Sec. 504.015. MUNICIPAL UTILITIES. (a) This section applies to a municipal utility operated by a board of trustees established under Article 1115, Revised Statutes, or a similar law.

(b) The board of trustees of a utility has the authority of the governing body of the municipality under this chapter to:

- (1) adopt a self-insurance program or take out a policy of workers' compensation insurance; and
- (2) adopt resolutions, give notices, and do all things concerning workers' compensation regarding the utility's employees that the governing body of the municipality would be authorized to do regarding other municipal employees or groups of employees.

(c) Funds set aside or spent for the purpose of workers' compensation insurance are considered operating expenses of the utility. Funds set aside or paid by the board of trustees for self-insurance or for premiums on insurance policies shall be paid out of utility revenues. A provision for self-insurance or an obligation incurred under an insurance policy is not a general liability of the municipality but is payable only out of utility revenues. (V.A.C.S. Art. 8309h, Sec. 2(d).)

Sec. 504.016. JOINT INSURANCE FUND. (a) Two or more political subdivisions may establish a joint insurance fund as provided by this section.

(b) A political subdivision may pay into the fund its proportionate part as due and may contract for the fund, by and through its directors, to make the payments due under this chapter to employees of the political subdivision.

(c) The fund may be operated under the rules and bylaws established by the participating political subdivisions.

(d) A joint insurance fund created under this section may provide to the Texas Department of Insurance loss data in the same manner as an insurance company writing workers' compensation insurance. The State Board of Insurance shall use the loss data as provided by Subchapter D, Chapter 5, Insurance Code.

(e) Except as provided by Subsection (d), a joint insurance fund created under this section is not considered insurance for purposes of any state statute and is not subject to State Board of Insurance rules. (V.A.C.S. Art. 8309h, Sec. 4.)

Sec. 504.017. FEDERAL AND STATE FUNDED TRANSPORTATION ENTITIES. An entity is eligible to participate under Section 504.016; Chapter 1084, Acts of the 70th Legislature, Regular Session, 1987 (Article 715c, Vernon's Texas Civil Statutes); or Chapter 791, Government Code, if the entity provides transportation subsidized in whole or in part by and provided to clients of:

- (1) the Texas Department on Aging;
- (2) the Texas Commission on Alcohol and Drug Abuse;
- (3) the Texas Commission for the Blind;
- (4) the Texas Cancer Council;
- (5) the Texas Commission for the Deaf and Hearing Impaired;
- (6) the Texas Department of Housing and Community Affairs;
- (7) the Texas Department of Human Services;
- (8) the Texas Department of Mental Health and Mental Retardation;
- (9) the Texas Rehabilitation Commission; or
- (10) the Texas Youth Commission. (V.A.C.S. Art. 8309h, Sec. 9.)

Sec. 504.018. NOTICE TO COMMISSION AND EMPLOYEES; EFFECT ON COMMON-LAW OR STATUTORY LIABILITY. (a) A political subdivision shall notify the commission of the method by which its employees will receive benefits, the approximate number of employees covered, and the estimated amount of payroll.

(b) A political subdivision shall notify its employees of the method by which the employees will receive benefits and the effective date of the coverage. Employees of a political subdivision are conclusively considered to have accepted the compensation provisions instead of common-law or statutory liability or cause of action, if any, for injuries received in the course of employment or death resulting from injuries received in the course of employment. (V.A.C.S. Art. 8309h, Secs. 2(b), (c).)

[Sections 504.019-504.050 reserved for expansion]

### SUBCHAPTER C. BENEFITS AND OFFSETS

Sec. 504.051. OFFSET AGAINST PAYMENTS FOR INCAPACITY. (a) Benefits provided under this chapter shall be offset:

- (1) to the extent applicable, by any amount for incapacity received as provided by:
  - (A) Chapter 143, Local Government Code; or
  - (B) any other statute in effect on June 19, 1975, that provides for the payment for incapacity to work because of injury on the job that is also covered by this chapter; and
- (2) by any amount paid under Article III, Section 52e, of the Texas Constitution, as added in 1967.

(b) If benefits are offset, the employer may not withhold the offset portion of the employee's wages until the time that benefits under this chapter are received.

(c) If an employee's wages are offset, the employee and employer shall contribute to the pension fund on the amount of money by which the employee's wages were offset. An employee's pension benefit may not be reduced as a result of the employee's injuries or any compensation received under this chapter unless the reduction results from a pension revision passed by a majority vote of the affected members of a pension system. (V.A.C.S. Art. 8309h, Secs. 5(a) (part), (b).)

Sec. 504.052. SICK LEAVE BENEFITS. (a) The governing body of a political subdivision, by majority vote, may provide that while an employee of the political subdivision is receiving benefits under this chapter, the employee may elect to receive previously accrued sick leave benefits, whether statutory or contractual, in an amount equal to the difference between the benefits under this chapter and the weekly compensation that the employee was receiving before the injury that resulted in the claim.

(b) Sick leave benefits received under Subsection (a) shall be deducted proportionately from the employee's sick leave balance.

(c) This section does not limit the medical benefits to be paid to the employee. A sick leave plan may not require an employee to take sick leave benefits before receiving benefits under this chapter. (V.A.C.S. Art. 8309h, Sec. 5(c) (part).)

[Sections 504.053–504.070 reserved for expansion]

#### SUBCHAPTER D. ADMINISTRATION

Sec. 504.071. RULES; FORMS. A political subdivision may:

(1) adopt and publish rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries. (V.A.C.S. Art. 8309h, Sec. 6.)

Sec. 504.072. APPROPRIATIONS FOR DISBURSEMENTS; ACCOUNT; REPORT. (a) A political subdivision may set aside from available appropriations, other than itemized salary appropriations, an amount sufficient to pay all costs, administrative expenses, benefits, insurance, and attorney's fees authorized by this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the political subdivision's records showing the disbursements authorized by this chapter. A statement of the amount set aside for disbursements from the account shall be included in an annual report made to the political subdivision's governing body and its treasurer. (V.A.C.S. Art. 8309h, Sec. 7.)

Sec. 504.073. REPRESENTATION IN LEGAL PROCEEDINGS. (a) Except as provided by Subsection (b), in a proceeding in connection with workers' compensation benefits provided by a political subdivision as a self-insurer, the political subdivision may be represented by:

- (1) the political subdivision's attorney or that attorney's assistants; or
- (2) outside counsel.

(b) In a proceeding involving workers' compensation for employees of a municipal utility operated by a board of trustees established under Article 1115, Revised Statutes, or a similar law, if the board of trustees is a self-insurer, the municipality shall be represented by the regularly employed attorney or outside counsel of the board of trustees. (V.A.C.S. Art. 8309h, Sec. 8.)

CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITIONS

Sec. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS;  
LIMIT ON ACTIONS AND DAMAGES

[Sections 505.003–505.010 reserved for expansion]

SUBCHAPTER B. COVERAGE

Sec. 505.011. WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EM-  
PLOYEES

Sec. 505.012. AUTHORITY TO SELF-INSURE

Sec. 505.013. INDIVIDUALS EMPLOYED BY SUBCONTRACTORS

[Sections 505.014–505.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATION

Sec. 505.051. ADMINISTRATION; RULES; FORMS

Sec. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPEN-  
SATION EXPENSES; ACCOUNT; REPORTS

Sec. 505.053. CERTIFIED COPIES OF COMMISSION DOCUMENTS

Sec. 505.054. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSI-  
CIANS

Sec. 505.055. REPORTS OF INJURIES

Sec. 505.056. REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO  
SUBMIT TO EXAMINATION

Sec. 505.057. REFUSAL TO SUBMIT TO MEDICAL TREATMENT

Sec. 505.058. POSTPONEMENT OF HEARING

Sec. 505.059. NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OF-  
FENSE

CHAPTER 505. WORKERS' COMPENSATION INSURANCE COVERAGE FOR  
EMPLOYEES OF TEXAS DEPARTMENT OF TRANSPORTATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 505.001. DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Texas Workers' Compensation Commission.

(2) "Department" means the Texas Department of Transportation.

(3) "Employee" means a person in the service of the department under an appointment  
or express contract of hire and whose name appears on the department's payroll.

(4) "Legal beneficiary" has the meaning assigned to that term under Section 401.011.

(b) A reference in this chapter to an employee who has been injured includes the  
employee's legal beneficiary if the injured employee is dead. (V.A.C.S. Art. 6674s, Secs.  
2(a)(1), (2); (4), (5), (b) (part).)

Sec. 505.002. APPLICATION OF GENERAL WORKERS' COMPENSATION LAWS;  
LIMIT ON ACTIONS AND DAMAGES. (a) The following provisions of Subtitles A and B  
apply to and are included in this chapter except to the extent that they are inconsistent with  
this chapter:

(1) Chapter 401, other than Section 401.012, defining "employee";

- (2) Chapter 402;
- (3) Chapter 403, other than Sections 403.001–403.005;
- (4) Chapter 405;
- (5) Subchapters B, D, E, and H, Chapter 406, other than Sections 406.071–406.073, and 406.075;
- (6) Chapter 408, other than Sections 408.001(b) and (c);
- (7) Chapters 409 and 410;
- (8) Subchapters A and G, Chapter 411, other than Sections 411.003 and 411.004;
- (9) Chapters 412–417; and
- (10) Chapter 451.

(b) For the purpose of applying the provisions listed by Subsection (a) to this chapter, “employer” means “department.”

(c) Neither this chapter nor Subtitle A authorizes a cause of action or damages against the department or an employee of the department beyond the actions and damages authorized by Chapter 101, Civil Practice and Remedies Code. (V.A.C.S. Art. 6674s, Sec. 7.)

[Sections 505.003–505.010 reserved for expansion]

#### SUBCHAPTER B. COVERAGE

Sec. 505.011. **WORKERS' COMPENSATION COVERAGE FOR DEPARTMENT EMPLOYEES.** The department shall pay benefits as provided by this chapter to an employee with a compensable injury. (V.A.C.S. Art. 6674s, Secs. 3 (part), 4.)

Sec. 505.012. **AUTHORITY TO SELF-INSURE.** The department may self-insure. (V.A.C.S. Art. 6674s, Sec. 3 (part).)

Sec. 505.013. **INDIVIDUALS EMPLOYED BY SUBCONTRACTORS.** (a) Except as provided by Subsection (b), an individual employed by a subcontractor performing work under contract with the department is not considered an employee for purposes of this chapter.

(b) The department shall treat a person leasing a tractor, a truck, mowing or cutting machinery, or other equipment to the department and using the equipment to perform work under a contract with the department:

(1) as an independent contractor, and the department shall require the person, while performing the contract, to provide life, health and accident, and disability insurance for the person and any individual employed by the person to perform the contract in an amount and with coverage approved by the Texas Department of Insurance as substantially the same as provided for under workers' compensation insurance;

(2) as an employee of the state for workers' compensation purposes, and the department shall require the person to provide workers' compensation insurance for each individual employed by the person to perform the contract, in which case this chapter applies to the person and the individuals employed by the person without regard to the number of individuals employed; or

(3) as an employee of the state for workers' compensation purposes, and each individual employed by that person to perform the contract as an employee of the state for workers' compensation purposes. (V.A.C.S. Art. 6674s, Sec. 12.)

[Sections 505.014–505.050 reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATION

Sec. 505.051. **ADMINISTRATION; RULES; FORMS:** (a) The department shall administer this chapter.

(b) Process and procedure under this chapter shall be as summary as possible.

(c) The department may:

(1) adopt rules and prescribe and furnish forms necessary to effectively administer this chapter; and

(2) adopt and enforce necessary rules for the prevention of accidents and injuries. (V.A.C.S. Art. 6674s, Secs. 3 (part), 10 (part), 14 (part).)

Sec. 505.052. PERCENTAGE OF PAYROLL SET ASIDE FOR WORKERS' COMPENSATION EXPENSES; ACCOUNT; REPORTS. (a) The department may set aside from its available appropriations, other than itemized appropriations, an amount not exceeding three and one-half percent of the department's annual payroll for the payment of administrative expenses, charges, benefits, and awards under this chapter.

(b) The amount set aside under Subsection (a) shall be set up in a separate account in the department's records. The balance of the account at any time may not exceed an amount equal to three and one-half percent of the department's annual payroll.

(c) The account shall show the disbursements authorized by this chapter. A statement of the amount set aside for the account and the disbursements from the account shall be included in the reports made to the governor and the legislature as required by law. (V.A.C.S. Art. 6674s, Sec. 18.)

Sec. 505.053. CERTIFIED COPIES OF COMMISSION DOCUMENTS. (a) The commission shall furnish a certified copy of an order, award, decision, or paper on file in the commission's office to a person entitled to the copy on written request and payment of the fee for the copy. The fee shall be the same as that charged for similar services by the secretary of state's office.

(b) The department may obtain certified copies under this section without charge.

(c) A fee or salary may not be paid to a person in the commission for making the copies that exceeds the fee charged for the copies. (V.A.C.S. Art. 6674s, Sec. 15 (part).)

Sec. 505.054. PREEMPLOYMENT PHYSICAL REQUIRED; EXAMINING PHYSICIANS. (a) An individual may not be certified as an employee of the department under this chapter until the individual:

(1) submits to a physical examination as provided by this section; and

(2) is certified by the examining physician to be physically fit to perform the duties and services to which the individual is to be assigned.

(b) Absence of a physical examination under this section does not bar recovery.

(c) The department shall designate a convenient number of regularly licensed practicing physicians to make physical examinations of individuals employed by or to be employed by the department to determine if the individuals are physically fit to be classified as department employees.

(d) A physician designated under Subsection (c) who conducts an examination shall file with the department a complete transcript of the examination on a form furnished by the department. The department shall maintain all reports under this subsection as part of the department's permanent records. A report under this subsection is admissible in evidence before the commission and in an appeal from a final award or ruling of the commission in which the individual named in the examination is a claimant for compensation under this chapter. A report under this subsection that is admitted is prima facie evidence of the facts stated in the report. (V.A.C.S. Art. 6674s, Secs. 14 (part), 14a.)

Sec. 505.055. REPORTS OF INJURIES. (a) A report of an injury filed with the commission under Section 409.005, in addition to the information required by commission rules, must contain:

(1) the name, age, sex, and occupation of the injured employee;

(2) the character of work in which the employee was engaged at the time of the injury;

(3) the place, date, and hour of the injury; and

(4) the nature and cause of the injury.

(b) In addition to subsequent reports of an injury filed with the commission under Section 409.005(e), the department shall file a subsequent report on a form obtained for that purpose:



(1) on the termination of incapacity of the injured employee; or

(2) if the incapacity extends beyond 60 days. (V.A.C.S. Art. 6674s, Sec. 13 (part).)

Sec. 505.056. **REQUIRED EXAMINATION OF INJURED EMPLOYEE; REFUSAL TO SUBMIT TO EXAMINATION.** (a) The commission may require an employee who claims to have been injured to submit to an examination by the commission or a person acting under the commission's authority at a reasonable time and place in this state.

(b) An employee is not entitled to compensation during or for a period in which the employee refuses to submit to an examination under Subsection (a) or Section 408.004.

(c) The department may have an injured employee examined at a reasonable time and at a place suitable to the employee's condition and convenient and accessible to the employee by a physician selected by the department. The department shall pay for an examination under this subsection and for the employee's reasonable expenses incident to the examination.

(d) On the request of an employee or the department, the employee or the department is entitled to have a physician selected by the employee or the department present to participate in an examination under Subsection (a) or Section 408.004. The employee is entitled to have a physician selected by the employee present to participate in an examination under Subsection (c). The department shall pay the fee set by the commission of a physician selected by the employee under this subsection. (V.A.C.S. Art. 6674s, Sec. 10 (part).)

Sec. 505.057. **REFUSAL TO SUBMIT TO MEDICAL TREATMENT.** (a) The commission may order or direct the department to reduce or suspend the compensation of an injured employee if the employee:

(1) persists in insanitary or injurious practices that tend to imperil or retard the employee's recovery; or

(2) refuses to submit to medical, surgical, or other remedial treatment recognized by the state that is reasonably essential to promote the employee's recovery.

(b) Compensation may not be reduced or suspended under this section without reasonable notice to the employee and an opportunity to be heard. (V.A.C.S. Art. 6674s, Sec. 10 (part).)

Sec. 505.058. **POSTPONEMENT OF HEARING.** If an injured employee is receiving benefits under this chapter and the department is providing hospitalization or medical treatment to the employee, the commission may postpone the hearing of the employee's claim. An appeal may not be taken from a commission order under this section. (V.A.C.S. Art. 6674s, Sec. 17 (part).)

Sec. 505.059. **NOTICE OF APPEAL; NOTICE OF TRIAL COURT JUDGMENT; OFFENSE.** (a) In each case appealed from the commission to a county or district court:

(1) the clerk of the court shall mail to the commission:

(A) not later than the 20th day after the date the case is filed, a notice containing the style, number, and date of filing of the case; and

(B) not later than the 20th day after the date the judgment is rendered, a certified copy of the judgment; and

(2) the attorney preparing the judgment shall file the original and a copy of the judgment with the clerk.

(b) An attorney's failure to comply with Subsection (a)(2) does not excuse the failure of a county or district clerk to comply with Subsection (a)(1)(B).

(c) The duties of a county or district clerk under Subsection (a)(1) are part of the clerk's ex officio duties, and the clerk is not entitled to a fee for the services.

(d) A county or district clerk who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine not to exceed \$250. (V.A.C.S. Art. 6674s, Sec. 19.)

## CHAPTER 506. PAYMENT OF CERTAIN JUDGMENTS

### Sec. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE

CHAPTER 506. PAYMENT OF CERTAIN JUDGMENTS

Sec. 506.001. LATE PAYMENT OF JUDGMENT BY THE STATE. (a) In a workers' compensation case in which a claimant is awarded a judgment against the state or a political subdivision of the state under Chapter 501, 502, 503, 504, or 505, the state or political subdivision shall comply with the judgment not later than the 30th day after the judgment is entered.

(b) If the state or a political subdivision of the state fails or refuses to comply with a judgment as provided under Subsection (a) and the claimant secures a mandamus order against the state or political subdivision to force compliance with the judgment, the claimant is also entitled to an award of:

(1) a penalty of 12 percent of the amount of compensation recovered in the judgment; and

(2) reasonable attorney's fees for prosecution of the mandamus action. (V.A.C.S. Art. 8309i.)

SECTION 2. CONFORMING AMENDMENT. Subtitle E, Title 4, Government Code, is amended to conform to the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), by adding Chapter 461 to read as follows:

CHAPTER 461. COMMISSION ON HUMAN RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS; SUNSET

Sec. 461.001. DEFINITIONS

Sec. 461.002. APPLICATION OF SUNSET ACT

[Sections 461.003–461.050 reserved for expansion]

SUBCHAPTER B. ORGANIZATION AND ADMINISTRATION

Sec. 461.051. MEMBERSHIP

Sec. 461.052. ELIGIBILITY

Sec. 461.053. TERM OF OFFICE

Sec. 461.054. REMOVAL OF MEMBER

Sec. 461.055. REIMBURSEMENT OF EXPENSES

Sec. 461.056. CHAIRMAN

Sec. 461.057. GENERAL ADMINISTRATIVE POWERS

Sec. 461.058. PERSONNEL MATTERS

Sec. 461.059. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

Sec. 461.060. PUBLIC INTEREST INFORMATION AND COMPLAINTS

Sec. 461.061. PLAN FOR REASONABLE ACCESS TO COMMISSION PROGRAMS

Sec. 461.062. ANNUAL REPORT

[Sections 461.063–461.100 reserved for expansion]

SUBCHAPTER C. OFFENSE; PENALTY

Sec. 461.101. CRIMINAL OFFENSE OF INTERFERENCE; PENALTY

CHAPTER 461. COMMISSION ON HUMAN RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS; SUNSET

Sec. 461.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Commission on Human Rights.

(2) "Commissioner" means a member of the commission. (V.A.C.S. Art. 5221k, Secs. 2.01(2), (3).)

Sec. 461.002. *APPLICATION OF SUNSET ACT.* The Commission on Human Rights is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 1999. (V.A.C.S. Art. 5221k, Sec. 3.03.)

[Sections 461.003–461.050 reserved for expansion]

### SUBCHAPTER B. ORGANIZATION AND ADMINISTRATION

Sec. 461.051. *MEMBERSHIP.* (a) The commission consists of six members. One member of the commission shall be a representative of industry, one member shall be a representative of labor, and four members shall be representatives of the public.

(b) The governor shall appoint the commissioners with the advice and consent of the senate. In making the appointments, the governor shall strive to achieve representation on the commission that is diverse with respect to disability, religion, age, economic status, sex, race, and ethnicity. (V.A.C.S. Art. 5221k, Sec. 3.01(a) (part).)

Sec. 461.052. *ELIGIBILITY.* (a) A person is not eligible for appointment as a public member of the commission if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the commission;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the commission; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the commission, other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

(b) A person may not serve as a member of the commission or act as general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission. (V.A.C.S. Art. 5221k, Secs. 3.01(e), (f).)

Sec. 461.053. *TERM OF OFFICE.* The term of office of each commissioner is six years. (V.A.C.S. Art. 5221k, Sec. 3.01(b) (part).)

Sec. 461.054. *REMOVAL OF MEMBER.* (a) It is a ground for removal from the commission if a member:

(1) does not have at the time of appointment the qualifications required by Section 461.051 or 461.052(a);

(2) does not maintain during service on the commission the qualifications required by Section 461.051 or 461.052(a);

(3) violates a prohibition established by Section 461.052(b);

(4) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(5) is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(b) The validity of an act of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director of the commission has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the commission of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists. (V.A.C.S. Art. 5221k, Sec. 3.011.)

Sec. 461.055. *REIMBURSEMENT OF EXPENSES.* A commissioner is entitled to reimbursement of actual and necessary expenses incurred in the performance of official duties. (V.A.C.S. Art. 5221k, Sec. 3.01(d).)

Sec. 461.056. *CHAIRMAN.* The governor shall designate one of the commissioners to serve as the chairman of the commission. (V.A.C.S. Art. 5221k, Sec. 3.01(a) (part).)

Sec. 461.057. *GENERAL ADMINISTRATIVE POWERS.* The commission may:

- (1) maintain an office in the city of Austin;
- (2) meet and exercise its powers at any place in the state;
- (3) by rule establish panels of not less than a quorum to exercise its powers;
- (4) employ an executive director and authorize the employment of other staff members, representatives, or agents;
- (5) set the compensation of the executive director and other staff members, representatives, and agents; and
- (6) accept public grants or private gifts, bequests, or other payments. (V.A.C.S. Art. 5221k, Secs. 3.01(c) (part), 3.02(a)(1), (2), (3), (5).)

Sec. 461.058. *PERSONNEL MATTERS.* (a) The executive director or the person designated by the executive director shall develop an intraagency career ladder program. The program shall require intraagency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the person designated by the executive director shall develop a system of annual performance evaluations. All merit pay for commission employees must be based on the system established under this subsection.

(c) The commission shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(d) The commission shall develop and implement policies that clearly define the responsibilities of the commission and the staff of the commission. (V.A.C.S. Art. 5221k, Secs. 3.04(a), (b), (c), (g).)

Sec. 461.059. *EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT.* (a) The executive director or the person designated by the executive director shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement required under this section must include:

- (1) personnel policies, including policies related to recruitment, evaluation, selection, appointment, training, and promotion of personnel;
- (2) a comprehensive analysis of the commission work force that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underutilization in the commission work force of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of significant underutilization.

(c) A policy statement under this section must cover an annual period, be updated not less than annually, and be filed with the governor's office.

(d) The governor's office shall make a biennial report to the legislature from the information received under this section. The report may be made separately or as a part of other biennial reports made to the legislature. (V.A.C.S. Art. 5221k, Secs. 3.04(d), (e), (f).)

Sec. 461.060. *PUBLIC INTEREST INFORMATION AND COMPLAINTS.* (a) The commission shall prepare information of public interest describing the functions of the commission and the commission's procedures by which complaints are filed with and resolved by the commission. The commission shall make the information available to the public and appropriate state agencies.

(b) If a written complaint is filed with the commission that the commission has authority to resolve, the commission, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would

jeopardize an undercover investigation by another agency of the state, federal, or local government.

(c) The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission. (V.A.C.S. Art. 5221k, Sec. 3.05.)

Sec. 461.061. **PLAN FOR REASONABLE ACCESS TO COMMISSION PROGRAMS.** The commission shall prepare and maintain a written plan that describes how a person with a disability or a person who does not speak English can be provided reasonable access to the commission's programs. (V.A.C.S. Art. 5221k, Sec. 3.02(c).)

Sec. 461.062. **ANNUAL REPORT.** (a) The commission 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 commission during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act. (V.A.C.S. Art. 5221k, Sec. 3.02(b).)

[Sections 461.063-461.100 reserved for expansion]

SUBCHAPTER C. OFFENSE; PENALTY

Sec. 461.101. **CRIMINAL OFFENSE OF INTERFERENCE; PENALTY.** (a) A person commits an offense if the person wilfully resists, prevents, impedes, or interferes with the performance of a duty under or the exercise of a power provided by this chapter.

(b) An offense under this section is a Class B misdemeanor. (V.A.C.S. Art. 5221k, Sec. 9.02.)

SECTION 3. CONFORMING AMENDMENT. Subtitle G, Title 2, Health and Safety Code, is amended to conform to Chapter 788, Acts of the 62nd Legislature, Regular Session, 1971 (Article 5221e-1, Vernon's Texas Civil Statutes), by adding Chapter 146 to read as follows:

CHAPTER 146. MIGRANT LABOR HOUSING FACILITIES

- Sec. 146.001. **DEFINITIONS**
- Sec. 146.002. **LICENSE REQUIRED**
- Sec. 146.003. **LICENSE APPLICATION; APPLICATION INSPECTION**
- Sec. 146.004. **INSPECTION**
- Sec. 146.005. **FAILURE TO MEET STANDARDS; REINSPECTION**
- Sec. 146.006. **LICENSE ISSUANCE; TERM; NOT TRANSFERABLE**
- Sec. 146.007. **LICENSE POSTING**
- Sec. 146.008. **INSPECTION OF FACILITIES**
- Sec. 146.009. **FEE**
- Sec. 146.010. **SUSPENSION OR REVOCATION OF LICENSE**
- Sec. 146.011. **ENFORCEMENT; ADOPTION OF RULES**
- Sec. 146.012. **INJUNCTIVE RELIEF**
- Sec. 146.013. **CIVIL PENALTY**

CHAPTER 146. MIGRANT LABOR HOUSING FACILITIES

Sec. 146.001. **DEFINITIONS.** In this chapter:

(1) "Facility" means a structure, trailer, or vehicle, or two or more contiguous or grouped structures, trailers, or vehicles, together with the land appurtenant.

(2) "Migrant agricultural worker" means an individual who:

(A) is working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry; and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

(3) "Migrant labor housing facility" means a facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility.

(4) "Person" means an individual, association, partnership, corporation, or political subdivision. (V.A.C.S. Art. 5221e-1, Sec. 1 (part).)

Sec. 146.002. **LICENSE REQUIRED.** A person may not establish, maintain, or operate a migrant labor housing facility without obtaining a license from the department. (V.A.C.S. Art. 5221e-1, Sec. 2 (part).)

Sec. 146.003. **LICENSE APPLICATION; APPLICATION INSPECTION.** (a) To receive a migrant labor housing facility license, a person must apply to the department according to rules adopted by the board and on a form prescribed by the board.

(b) The application must be made not later than the 45th day before the intended date of operation of the facility.

(c) The application must state:

- (1) the location and ownership of the migrant labor housing facility;
- (2) the approximate number of persons to be accommodated;
- (3) the probable periods of use of the facility; and
- (4) any other information required by the board.

(d) The application must be accompanied by the license fee. (V.A.C.S. Art. 5221e-1, Sec. 3 (part).)

Sec. 146.004. **INSPECTION.** The department shall inspect the migrant labor housing facility not later than the 30th day after the date of receipt of a complete application and the fee. (V.A.C.S. Art. 5221e-1, Sec. 4(a).)

Sec. 146.005. **FAILURE TO MEET STANDARDS; REINSPECTION.** (a) If a migrant labor housing facility for which a license application is made does not meet the reasonable minimum standards of construction, sanitation, equipment, and operation required by rules adopted under this chapter, the department at the time of inspection shall give the license applicant the reasons that the facility does not meet those standards. The applicant may request the department to reinspect the facility not later than the 60th day after the date on which the reasons are given.

(b) If a facility does not meet the standards on reinspection, the applicant must submit a new license application as provided by Section 146.003. (V.A.C.S. Art. 5221e-1, Sec. 4(c).)

Sec. 146.006. **LICENSE ISSUANCE; TERM; NOT TRANSFERABLE.** (a) The department shall issue a license to establish, maintain, and operate a migrant labor housing facility if the facility meets the standards of construction, sanitation, equipment, and operation required by rules adopted under this chapter.

(b) The license expires on the first anniversary of the date of issuance.

(c) The license issued under this chapter is not transferable. (V.A.C.S. Art. 5221e-1, Sec. 4(b).)

Sec. 146.007. **LICENSE POSTING.** A person who holds a license issued under this chapter shall post the license in the migrant labor housing facility at all times during the maintenance or operation of the facility. (V.A.C.S. Art. 5221e-1, Sec. 2 (part).)

Sec. 146.008. **INSPECTION OF FACILITIES.** An authorized representative of the department, after giving or making a reasonable attempt to give notice to the operator of a migrant labor housing facility, may enter and inspect the facility during reasonable hours and investigate conditions, practices, or other matters as necessary or appropriate to determine whether a person has violated this chapter or a rule adopted under this chapter. (V.A.C.S. Art. 5221e-1, Sec. 8.)

Sec. 146.009. **FEE.** The board shall set the license fee in an amount not to exceed \$100. (V.A.C.S. Art. 5221e-1, Secs. 3 (part), 6 (part).)

*Sec. 146.010. SUSPENSION OR REVOCATION OF LICENSE. (a) The department may suspend or revoke a license for a violation of this chapter or a rule adopted under this chapter.*

*(b) The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and department rules for a contested case hearing govern the procedures for the suspension or revocation of a license issued under this chapter.*

*(c) A hearing conducted under this section must be held in the county in which the affected migrant labor housing facility is located. (V.A.C.S. Art. 5221e-1, Sec. 5.)*

*Sec. 146.011. ENFORCEMENT; ADOPTION OF RULES. (a) The department shall enforce this chapter.*

*(b) The board shall adopt rules to protect the health and safety of persons living in migrant labor housing facilities.*

*(c) The board by rule shall adopt standards for living quarters at a migrant labor housing facility, including standards relating to:*

- (1) construction of the facility;*
- (2) sanitary conditions;*
- (3) water supply;*
- (4) toilets;*
- (5) sewage disposal;*
- (6) storage, collection, and disposal of refuse;*
- (7) light and air;*
- (8) safety requirements;*
- (9) fire protection;*
- (10) equipment;*
- (11) maintenance and operation of the facility; and*
- (12) any other matter appropriate or necessary for the protection of the health and safety of the occupants.*

*(d) An employee or occupant of a migrant labor housing facility who uses the sanitary or other facilities furnished for the convenience of employees or occupants shall comply with the rules adopted under Subsection (b) or (c).*

*(e) The board by rule shall adopt minimum standards for issuing, revoking, or suspending a license issued under this chapter. (V.A.C.S. Art. 5221e-1, Secs. 6 (part), 7, and 10.)*

*Sec. 146.012. INJUNCTIVE RELIEF. (a) A district court for good cause shown in a hearing and on application by the department may grant a temporary or permanent injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.*

*(b) A person subject to a temporary or permanent injunction under Subsection (a) may appeal to the supreme court as in other cases. (V.A.C.S. Art. 5221e-1, Sec. 9(b).)*

*Sec. 146.013. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of \$200 for each day that the violation occurs.*

*(b) The county attorney for the county in which the violation occurred, or the attorney general, at the request of the department, shall bring an action in the name of the state to collect the penalty. (V.A.C.S. Art. 5221e-1, Sec. 9(a).)*

**SECTION 4. CONFORMING AMENDMENT.** Subtitle C, Title 5, Local Government Code, is amended to conform to The Fire and Police Employee Relations Act (Article 5154c-1, Vernon's Texas Civil Statutes) by adding Chapter 174 to read as follows:

CHAPTER 174. FIRE AND POLICE EMPLOYEE RELATIONS

SUBCHAPTER A. GENERAL PROVISIONS

- Sec. 174.001. SHORT TITLE
- Sec. 174.002. POLICY
- Sec. 174.003. DEFINITIONS
- Sec. 174.004. LIBERAL CONSTRUCTION
- Sec. 174.005. PREEMPTION OF OTHER LAW
- Sec. 174.006. EFFECT ON CIVIL SERVICE PROVISIONS
- Sec. 174.007. EFFECT ON EXISTING BENEFITS

[Sections 174.008–174.020 reserved for expansion]

SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

- Sec. 174.021. PREVAILING WAGE AND WORKING CONDITIONS REQUIRED
- Sec. 174.022. CERTAIN PUBLIC EMPLOYERS CONSIDERED TO BE IN COMPLIANCE
- Sec. 174.023. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

[Sections 174.024–174.050 reserved for expansion]

SUBCHAPTER C. ADOPTION AND REPEAL OF COLLECTIVE BARGAINING PROVISIONS

- Sec. 174.051. ADOPTION ELECTION
- Sec. 174.052. EFFECT OF SUCCESSFUL ADOPTION ELECTION
- Sec. 174.053. REPEAL ELECTION
- Sec. 174.054. EFFECT OF SUCCESSFUL REPEAL ELECTION
- Sec. 174.055. FREQUENCY OF ELECTIONS

[Sections 174.056–174.100 reserved for expansion]

SUBCHAPTER D. COLLECTIVE BARGAINING

- Sec. 174.101. RECOGNITION OF BARGAINING AGENT FOR FIRE FIGHTERS
- Sec. 174.102. RECOGNITION OF BARGAINING AGENT FOR POLICE OFFICERS
- Sec. 174.103. SINGLE BARGAINING AGENT FOR FIRE FIGHTERS AND POLICE OFFICERS
- Sec. 174.104. QUESTION REGARDING REPRESENTATION
- Sec. 174.105. DUTY TO BARGAIN COLLECTIVELY IN GOOD FAITH
- Sec. 174.106. DESIGNATION OF NEGOTIATOR
- Sec. 174.107. NOTICE TO PUBLIC EMPLOYER REGARDING CERTAIN ISSUES
- Sec. 174.108. OPEN DELIBERATIONS
- Sec. 174.109. EFFECT OF AGREEMENT

[Sections 174.110–174.150 reserved for expansion]

SUBCHAPTER E. MEDIATION; ARBITRATION

- Sec. 174.151. MEDIATION
- Sec. 174.152. IMPASSE
- Sec. 174.153. REQUEST FOR ARBITRATION; AGREEMENT TO ARBITRATE
- Sec. 174.154. ARBITRATION BOARD
- Sec. 174.155. ARBITRATION HEARING
- Sec. 174.156. SCOPE OF ARBITRATION



- Sec. 174.157. *EVIDENCE; OATH; SUBPOENA*  
 Sec. 174.158. *ARBITRATION AWARD*  
 Sec. 174.159. *EFFECT OF AWARD*  
 Sec. 174.160. *AMENDMENT OF AWARD*  
 Sec. 174.161. *BEGINNING OF NEW FISCAL YEAR*  
 Sec. 174.162. *EXTENSION OF PERIOD*  
 Sec. 174.163. *COMPULSORY ARBITRATION NOT REQUIRED*  
 Sec. 174.164. *COMPENSATION OF ARBITRATORS; EXPENSES OF ARBITRATION*

[Sections 174.165–174.200 reserved for expansion]

#### SUBCHAPTER F. STRIKES; LOCKOUTS

- Sec. 174.201. *DEFINITION*  
 Sec. 174.202. *STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED*  
 Sec. 174.203. *LOCKOUT BY MUNICIPALITY; INJUNCTION; PENALTY*  
 Sec. 174.204. *STRIKE; PENALTY AGAINST ASSOCIATION*  
 Sec. 174.205. *STRIKE; PENALTY AGAINST INDIVIDUAL*

[Sections 174.206–174.250 reserved for expansion]

#### SUBCHAPTER G. JUDICIAL ENFORCEMENT AND REVIEW

- Sec. 174.251. *JUDICIAL ENFORCEMENT GENERALLY*  
 Sec. 174.252. *JUDICIAL ENFORCEMENT WHEN PUBLIC EMPLOYER DECLINES ARBITRATION*  
 Sec. 174.253. *JUDICIAL REVIEW OF ARBITRATION AWARD*

### CHAPTER 174. FIRE AND POLICE EMPLOYEE RELATIONS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 174.001. *SHORT TITLE.* This chapter may be cited as *The Fire and Police Employee Relations Act.* (V.A.C.S. Art. 5154c-1, Sec. 1.)

Sec. 174.002. *POLICY.* (a) *The policy of this state is that a political subdivision shall provide its fire fighters and police officers with compensation and other conditions of employment that are substantially the same as compensation and conditions of employment prevailing in comparable private sector employment.*

(b) *The policy of this state is that fire fighters and police officers, like employees in the private sector, should have the right to organize for collective bargaining, as collective bargaining is a fair and practical method for determining compensation and other conditions of employment. Denying fire fighters and police officers the right to organize and bargain collectively would lead to strife and unrest, consequently injuring the health, safety, and welfare of the public.*

(c) *The health, safety, and welfare of the public demands that strikes, lockouts, and work stoppages and slowdowns of fire fighters and police officers be prohibited, and therefore it is the state's duty to make available reasonable alternatives to strikes by fire fighters and police officers.*

(d) *Because of the essential and emergency nature of the public service performed by fire fighters and police officers, a reasonable alternative to strikes is a system of arbitration conducted under adequate legislative standards. Another reasonable alternative, if the parties fail to agree to arbitrate, is judicial enforcement of the requirements of this chapter regarding compensation and conditions of employment applicable to fire fighters and police officers.*

(e) *With the right to strike prohibited, to maintain the high morale of fire fighters and police officers and the efficient operation of the departments in which they serve, alternative*

procedures must be expeditious, effective, and binding. (V.A.C.S. Art. 5154c-1, Secs. 2(a), (b)(1), (2), (3) (part).)

Sec. 174.003. **DEFINITIONS.** *In this chapter:*

(1) "Association" means any type of organization, including an agency or employee representation committee or plan, in which fire fighters, police officers, or both, participate and that exists, in whole or in part, to deal with one or more public or private employers concerning grievances, labor disputes, or conditions of employment affecting fire fighters, police officers, or both.

(2) "Fire fighter" means a permanent, paid employee of the fire department of a political subdivision. The term does not include:

(A) the chief of the department; or

(B) a volunteer fire fighter.

(3) "Police officer" means a paid employee who is sworn, certified, and full-time, and who regularly serves in a professional law enforcement capacity in the police department of a political subdivision. The term does not include the chief of the department.

(4) "Political subdivision" includes a municipality.

(5) "Public employer" means the official or group of officials of a political subdivision whose duty is to establish the compensation, hours, and other conditions of employment of fire fighters, police officers, or both, and may include the mayor, city manager, town manager, town administrator, city council, director of personnel, personnel board, commissioners, or another official or combination of those persons. (New; V.A.C.S. Art. 5154c-1, Secs. 3(1), (2), (3), (4).)

Sec. 174.004. **LIBERAL CONSTRUCTION.** *This chapter shall be liberally construed.* (V.A.C.S. Art. 5154c-1, Sec. 2(b)(3) (part).)

Sec. 174.005. **PREEMPTION OF OTHER LAW.** *This chapter preempts all contrary local ordinances, executive orders, legislation, or rules adopted by the state or by a political subdivision or agent of the state, including a personnel board, civil service commission, or home-rule municipality.* (V.A.C.S. Art. 5154c-1, Sec. 20(a) (part).)

Sec. 174.006. **EFFECT ON CIVIL SERVICE PROVISIONS.** (a) *A state or local civil service provision prevails over a collective bargaining contract under this chapter unless the collective bargaining contract specifically provides otherwise.*

(b) *A civil service provision may not be repealed or modified by arbitration or judicial action but may be interpreted or enforced by an arbitrator or court.*

(c) *This chapter does not limit the authority of a municipal fire chief or police chief under Chapter 143 except as modified by the parties through collective bargaining.* (V.A.C.S. Art. 5154c-1, Secs. 20(b), (d).)

Sec. 174.007. **EFFECT ON EXISTING BENEFITS.** *This chapter may not be construed as repealing any existing benefit provided by statute or ordinance concerning fire fighters' or police officers' compensation, pensions, retirement plans, hours of work, conditions of employment, or other emoluments. This chapter is in addition to the benefits provided by existing statutes and ordinances.* (V.A.C.S. Art. 5154c-1, Sec. 20(c).)

[Sections 174.008-174.020 reserved for expansion]

## SUBCHAPTER B. CONDITIONS OF EMPLOYMENT AND RIGHT TO ORGANIZE

Sec. 174.021. **PREVAILING WAGE AND WORKING CONDITIONS REQUIRED.** *A political subdivision that employs fire fighters, police officers, or both, shall provide those employees with compensation and other conditions of employment that are:*

(1) *substantially equal to compensation and other conditions of employment that prevail in comparable employment in the private sector; and*

(2) *based on prevailing private sector compensation and conditions of employment in the labor market area in other jobs that require the same or similar skills, ability, and*

training and may be performed under the same or similar conditions. (V.A.C.S. Art. 5154c-1, Sec. 4.)

**Sec. 174.022. CERTAIN PUBLIC EMPLOYERS CONSIDERED TO BE IN COMPLIANCE.** (a) A public employer that has reached an agreement with an association on compensation or other conditions of employment as provided by this chapter is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment for the duration of the agreement.

(b) If an arbitration award is rendered as provided by Subchapter E, the public employer involved is considered to be in compliance with the requirements of Section 174.021 as to the conditions of employment provided by the award for the duration of the collective bargaining period to which the award applies. (V.A.C.S. Art. 5154c-1, Secs. 8 (part), 13(b).)

**Sec. 174.023. RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY.** On adoption of this chapter or the law codified by this chapter by a political subdivision to which this chapter applies, fire fighters, police officers, or both are entitled to organize and bargain collectively with their public employer regarding compensation, hours, and other conditions of employment. (V.A.C.S. Art. 5154c-1, Sec. 5(a).)

[Sections 174.024–174.050 reserved for expansion]

### SUBCHAPTER C. ADOPTION AND REPEAL OF COLLECTIVE BARGAINING PROVISIONS

**Sec. 174.051. ADOPTION ELECTION.** (a) The governing body of a political subdivision to which this chapter applies shall order an election for the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

(1) 20,000; or

(2) five percent of the number of qualified voters voting in the political subdivision in the preceding general election for state and county officers.

(b) The governing body shall hold the election on the first authorized uniform election date prescribed by Chapter 41, Election Code, that allows sufficient time for compliance with any requirements established by law.

(c) The ballot in the election shall be printed to provide for voting for or against the proposition: "Adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibition against strikes and lockouts, and provides penalties for strikes and lockouts." (V.A.C.S. Art. 5154c-1, Sec. 5(b) (part).)

**Sec. 174.052. EFFECT OF SUCCESSFUL ADOPTION ELECTION.** If a majority of the votes cast in an election under Section 174.051 favor adoption of this chapter, the governing body shall place this chapter in effect not later than the 30th day after the beginning of the first fiscal year of the political subdivision after the election. (V.A.C.S. Art. 5154c-1, Sec. 5(b) (part).)

**Sec. 174.053. REPEAL ELECTION.** (a) The governing body of a political subdivision in which the collective bargaining provisions of this chapter have been in effect for at least one year shall order an election for the repeal of the adoption of this chapter on receiving a petition signed by qualified voters of the political subdivision in a number equal to or greater than the lesser of:

(1) 20,000; or

(2) five percent of the number of qualified voters voting in the political subdivision in the preceding general election for state and county officers.

(b) The ballot in the election shall be printed to provide for voting for or against the proposition: "Repeal of the adoption of the state law applicable to (fire fighters, police officers, or both, as applicable) that establishes collective bargaining if a majority of the affected employees favor representation by an employees association, preserves the prohibi-

tion against strikes and lockouts, and provides penalties for strikes and lockouts." (V.A.C.S. Art. 5154c-1, Sec. 5(c) (part).)

*Sec. 174.054. EFFECT OF SUCCESSFUL REPEAL ELECTION.* If a majority of the votes cast in an election under Section 174.053 favor repeal of the adoption of this chapter, the collective bargaining provisions of this chapter are void as to the political subdivision. (V.A.C.S. Art. 5154c-1, Sec. 5(c) (part).)

*Sec. 174.055. FREQUENCY OF ELECTIONS.* If an election for the adoption or the repeal of the adoption of this chapter is held under this subchapter, a like petition for a subsequent election may not be submitted before the first anniversary of the date of the preceding election. (V.A.C.S. Art. 5154c-1, Sec. 5(d).)

[Sections 174.056-174.100 reserved for expansion]

#### SUBCHAPTER D. COLLECTIVE BARGAINING

*Sec. 174.101. RECOGNITION OF BARGAINING AGENT FOR FIRE FIGHTERS.* A public employer shall recognize an association selected by a majority of the fire fighters of the fire department of a political subdivision as the exclusive bargaining agent for the fire fighters of that department unless a majority of the fire fighters withdraw the recognition. (V.A.C.S. Art. 5154c-1, Sec. 6(a).)

*Sec. 174.102. RECOGNITION OF BARGAINING AGENT FOR POLICE OFFICERS.* A public employer shall recognize an association selected by a majority of the police officers of the police department of a political subdivision as the exclusive bargaining agent for the police officers of that department unless a majority of the police officers withdraw the recognition. (V.A.C.S. Art. 5154c-1, Sec. 6(b).)

*Sec. 174.103. SINGLE BARGAINING AGENT FOR FIRE FIGHTERS AND POLICE OFFICERS.* (a) Except as provided by Subsection (b), the fire and police departments of a political subdivision are separate collective bargaining units under this chapter.

(b) Associations that represent employees in the fire and police departments of a political subdivision may voluntarily join together for collective bargaining with the public employer. (V.A.C.S. Art. 5154c-1, Sec. 6(d).)

*Sec. 174.104. QUESTION REGARDING REPRESENTATION.* (a) A question of whether an association is the majority representative of the employees of a department under Sections 174.101-174.103 shall be resolved by a fair election conducted according to procedures agreed on by the parties.

(b) If the parties are unable to agree on election procedures under Subsection (a), either party may request the American Arbitration Association to conduct the election and certify the results. Certification of the results of an election under this section shall resolve the question regarding representation. The public employer shall pay the expenses of the election, except that if two or more associations seek recognition as the bargaining agent, the associations shall pay the costs of the election equally. (V.A.C.S. Art. 5154c-1, Sec. 6(c).)

*Sec. 174.105. DUTY TO BARGAIN COLLECTIVELY IN GOOD FAITH.* (a) If the fire fighters, police officers, or both of a political subdivision are represented by an association as provided by Sections 174.101-174.104, the public employer and the association shall bargain collectively.

(b) For purposes of this section, the duty to bargain collectively means a public employer and an association shall:

- (1) meet at reasonable times;
- (2) confer in good faith regarding compensation, hours, and other conditions of employment or the negotiation of an agreement or a question arising under an agreement; and
- (3) execute a written contract incorporating any agreement reached, if either party requests a written contract.

(c) This section does not require a public employer or an association to:

- (1) agree to a proposal; or

(2) make a concession. (V.A.C.S. Art. 5154c-1, Secs. 7(a), (b).)

Sec. 174.106. *DESIGNATION OF NEGOTIATOR.* A public employer or an association may designate one or more persons to negotiate or bargain on its behalf. (V.A.C.S. Art. 5154c-1, Sec. 7(c) (part).)

Sec. 174.107. *NOTICE TO PUBLIC EMPLOYER REGARDING CERTAIN ISSUES.* If compensation or another matter that requires an appropriation of money by any governing body is included for collective bargaining under this chapter, an association shall serve on the public employer a written notice of its request for collective bargaining at least 120 days before the date on which the public employer's current fiscal operating budget ends. (V.A.C.S. Art. 5154c-1, Sec. 7(d).)

Sec. 174.108. *OPEN DELIBERATIONS.* A deliberation relating to collective bargaining between a public employer and an association, a deliberation by a quorum of an association authorized to bargain collectively, or a deliberation by a member of a public employer authorized to bargain collectively shall be open to the public and comply with state law. (V.A.C.S. Art. 5154c-1, Sec. 7(e).)

Sec. 174.109. *EFFECT OF AGREEMENT.* An agreement under this chapter is binding and enforceable against a public employer, an association, and a fire fighter or police officer covered by the agreement. (V.A.C.S. Art. 5154c-1, Sec. 8 (part).)

[Sections 174.110–174.150 reserved for expansion]

#### SUBCHAPTER E. MEDIATION; ARBITRATION

Sec. 174.151. *MEDIATION.* (a) A public employer and an association that is a bargaining agent may use mediation to assist them in reaching an agreement.

(b) If a mediator is used, then a mediator may be appointed by agreement of the parties or by an appropriate state agency.

(c) A mediator may:

(1) hold separate or joint conferences as the mediator considers expedient to settle issues voluntarily, amicably, and expeditiously; and

(2) notwithstanding Subsection (d), recommend or suggest to the parties any proposal or procedure that in the mediator's judgment might lead to settlement.

(d) A mediator may not:

(1) make a public recommendation on any negotiation issue in connection with the mediator's service; or

(2) make a public statement or report that evaluates the relative merits of the parties' positions. (V.A.C.S. Art. 5154c-1, Secs. 7(c) (part), 9(c) (part).)

Sec. 174.152. *IMPASSE.* (a) For purposes of this subchapter, an impasse in the collective bargaining process is considered to have occurred if the parties do not settle in writing each issue in dispute before the 61st day after the date on which the collective bargaining process begins.

(b) The period specified in Subsection (a) may be extended by written agreement of the parties. An extension must be for a definite period not to exceed 15 days. (V.A.C.S. Art. 5154c-1, Sec. 9(b).)

Sec. 174.153. *REQUEST FOR ARBITRATION; AGREEMENT TO ARBITRATE.* (a) A public employer or an association that is a bargaining agent may request the appointment of an arbitration board if:

(1) the parties:

(A) reach an impasse in collective bargaining; or

(B) are unable to settle after the appropriate lawmaking body fails to approve a contract reached through collective bargaining;

(2) the parties made every reasonable effort, including mediation, to settle the dispute through good-faith collective bargaining; and

(3) the public employer or association gives written notice to the other party, specifying the issue in dispute.

(b) A request for arbitration must be made not later than the fifth day after:

- (1) the date an impasse was reached under Section 174.152; or
- (2) the expiration of an extension period under Section 174.152.

(c) An election by both parties to arbitrate must:

- (1) be made not later than the fifth day after the date arbitration is requested; and
- (2) be a written agreement to arbitrate.

(d) A party may not request arbitration more than once in a fiscal year. (V.A.C.S. Art. 5154c-1, Secs. 9(a), (c) (part), 10(a) (part).)

Sec. 174.154. **ARBITRATION BOARD.** (a) Not later than the fifth day after the date an agreement to arbitrate is executed, each party shall:

- (1) select one arbitrator; and
- (2) immediately notify the other party in writing of the name and address of the arbitrator selected.

(b) Not later than the 10th day after the date an agreement to arbitrate is executed, the arbitrators named under Subsection (a) shall attempt to select a third (neutral) arbitrator. If the arbitrators are unable to agree on a third arbitrator, either party may request the American Arbitration Association to select the third arbitrator, and the American Arbitration Association may appoint the third arbitrator according to its fair and regular procedures. Unless both parties consent, the third arbitrator may not be the same individual who served as a mediator under Section 174.151.

(c) The arbitrator selected under Subsection (b) presides over the arbitration board. (V.A.C.S. Art. 5154c-1, Sec. 11.)

Sec. 174.155. **ARBITRATION HEARING.** (a) A presiding arbitrator shall:

(1) call a hearing to be held not later than the 10th day after the date on which the presiding arbitrator is appointed; and

(2) notify the other arbitrators, the public employer, and the association in writing of the time and place of the hearing, not later than the eighth day before the hearing.

(b) An arbitration hearing shall end not later than the 20th day after the date the hearing begins.

(c) An arbitration hearing shall be informal. (V.A.C.S. Art. 5154c-1, Secs. 12(a) (part), (b) (part).)

Sec. 174.156. **SCOPE OF ARBITRATION.** (a) The issues to be arbitrated are all matters the parties are unable to resolve through collective bargaining and mediation procedures required by this chapter.

(b) An arbitration board shall render an award in accordance with the requirements of Section 174.021. In settling disputes relating to compensation, hours, and other conditions of employment, the board shall consider:

- (1) hazards of employment;
- (2) physical qualifications;
- (3) educational qualifications;
- (4) mental qualifications;
- (5) job training;
- (6) skills; and
- (7) other factors. (V.A.C.S. Art. 5154c-1, Secs. 10(a) (part), 13(a).)

Sec. 174.157. **EVIDENCE; OATH; SUBPOENA.** (a) The rules of evidence applicable to judicial proceedings are not binding in an arbitration hearing.

(b) An arbitration board may:

(1) receive in evidence any documentary evidence or other information the board considers relevant;

(2) administer oaths; and

(3) issue subpoenas to require:

(A) the attendance and testimony of witnesses; and

(B) the production of books, records, and other evidence relevant to an issue presented to the board for determination. (V.A.C.S. Art. 5154c-1, Sec. 12(a) (part).)

Sec. 174.158. **ARBITRATION AWARD.** (a) Not later than the 10th day after the end of the hearing, an arbitration board shall:

(1) make written findings; and

(2) render a written award on the issues presented to the board.

(b) A copy of the findings and award shall be mailed or delivered to the public employer and the association.

(c) An increase in compensation awarded by an arbitration board under this subchapter may take effect only at the beginning of the next fiscal year after the date of the award.

(d) If a new fiscal year begins after the initiation of arbitration procedures under this subchapter, Subsection (c) does not apply and an increase in compensation may be retroactive to the beginning of the fiscal year. (V.A.C.S. Art. 5154c-1, Secs. 12(b) (part), 13(d) (part).)

Sec. 174.159. **EFFECT OF AWARD.** If a majority decision of an arbitration board is supported by competent, material, and substantial evidence on the whole record, the decision:

(1) is final and binding on the parties; and

(2) may be enforced by either party or the arbitration board in a district court for the judicial district in which a majority of the affected employees reside. (V.A.C.S. Art. 5154c-1, Sec. 13(c).)

Sec. 174.160. **AMENDMENT OF AWARD.** The parties to an arbitration award may amend the award by written agreement at any time. (V.A.C.S. Art. 5154c-1, Sec. 13(e).)

Sec. 174.161. **BEGINNING OF NEW FISCAL YEAR.** If a new fiscal year begins after the initiation of arbitration procedures under this subchapter but before an award is rendered or enforced:

(1) the dispute is not moot;

(2) the jurisdiction of the arbitration board is not impaired; and

(3) the arbitration award is not impaired. (V.A.C.S. Art. 5154c-1, Sec. 13(d) (part).)

Sec. 174.162. **EXTENSION OF PERIOD.** A period specified by Section 174.155 or 174.158 may be extended:

(1) by the written agreement of the parties for a reasonable period; or

(2) by the arbitration board for good cause for one or more periods that in the aggregate do not exceed 20 days. (V.A.C.S. Art. 5154c-1, Sec. 12(c).)

Sec. 174.163. **COMPULSORY ARBITRATION NOT REQUIRED.** This chapter does not require compulsory arbitration. (V.A.C.S. Art. 5154c-1, Sec. 10(b).)

Sec. 174.164. **COMPENSATION OF ARBITRATORS; EXPENSES OF ARBITRATION.** (a) The compensation of an arbitrator selected by a public employer shall be paid by the public employer.

(b) The compensation, if any, of an arbitrator selected by fire fighters, police officers, or both shall be paid by the association representing the employees.

(c) The public employer and the association representing the employees shall jointly pay in even proportions:

(1) the compensation of the neutral arbitrator; and

(2) the stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings.

(d) If a party to arbitration requires a transcript of the arbitration proceedings, the party shall pay the cost of the transcript. (V.A.C.S. Art. 5154c-1, Sec. 15.)

[Sections 174.165–174.200 reserved for expansion]

#### SUBCHAPTER F. STRIKES; LOCKOUTS

Sec. 174.201. **DEFINITION.** In this subchapter, “strike” means failing to report for duty in concerted action with others, wilfully being absent from one’s position, stopping work, abstaining from the full, faithful, and proper performance of the duties of employment, or interfering with the operation of a municipality in any manner, to induce, influence, or coerce a change in the conditions, compensation, rights, privileges, or obligations of employment. (V.A.C.S. Art. 5154c-1, Sec. 3(5).)

Sec. 174.202. **STRIKES, SLOWDOWNS, AND LOCKOUTS PROHIBITED.** (a) A fire fighter or police officer may not engage in a strike or slowdown.

(b) A lockout of fire fighters or police officers is prohibited. (V.A.C.S. Art. 5154c-1, Sec. 17(a).)

Sec. 174.203. **LOCKOUT BY MUNICIPALITY; INJUNCTION; PENALTY.** If a municipality or its designated agent or a department or agency head engages in a lockout of fire fighters or police officers, a court shall:

(1) prohibit the lockout;

(2) impose a fine not to exceed \$2,000 on any individual violator; or

(3) both prohibit the lockout and impose the fine. (V.A.C.S. Art. 5154c-1, Sec. 17(b).)

Sec. 174.204. **STRIKE; PENALTY AGAINST ASSOCIATION.** (a) A district court for the judicial district in which a municipality is located that finds that an association has called, ordered, aided, or abetted a strike by fire fighters or police officers shall:

(1) impose a fine on the association for each day of the strike equal to  $\frac{1}{2}$  of the total of the association’s annual membership dues, but not less than \$2,500 nor more than \$20,000; and

(2) order the forfeiture of any membership dues checkoff for a specified period not to exceed 12 months.

(b) If the court finds that the municipality or its representative engaged in acts of extreme provocation that detract substantially from the association’s responsibility for the strike, the court may reduce the amount of the fine.

(c) An association that appeals a fine under Subsection (b) is not required to pay the fine until the appeal is finally determined. (V.A.C.S. Art. 5154c-1, Secs. 17(c), (d).)

Sec. 174.205. **STRIKE; PENALTY AGAINST INDIVIDUAL.** If a fire fighter or police officer engages in a strike, interferes with the municipality, prevents the municipality from engaging in its duty, directs any employee of the municipality to decline to work or to stop or slow down work, causes another to fail or refuse to deliver goods or services to the municipality, pickets for any of those unlawful acts, or conspires to perform any of those acts:

(1) the fire fighter’s or police officer’s compensation in any form may not increase in any manner until after the first anniversary of the date the individual resumes normal working duties; and

(2) the fire fighter or police officer shall be on probation for two years regarding civil service status, tenure of employment, or contract of employment to which the individual was previously entitled. (V.A.C.S. Art. 5154c-1, Sec. 17(e).)

[Sections 174.206–174.250 reserved for expansion]

#### SUBCHAPTER G. JUDICIAL ENFORCEMENT AND REVIEW

Sec. 174.251. **JUDICIAL ENFORCEMENT GENERALLY.** A district court for the judicial district in which a municipality is located, on the application of a party aggrieved



by an act or omission of the other party that relates to the rights or duties under this chapter, may issue a restraining order, temporary or permanent injunction, contempt order, or other writ, order, or process appropriate to enforce this chapter. (V.A.C.S. Art. 5154c-1, Sec. 18.)

**Sec. 174.252. JUDICIAL ENFORCEMENT WHEN PUBLIC EMPLOYER DECLINES ARBITRATION.** (a) If an association requests arbitration as provided by Subchapter E and a public employer refuses to engage in arbitration, on the application of the association, a district court for the judicial district in which a majority of affected employees reside may enforce the requirements of Section 174.021 as to any unsettled issue relating to compensation or other conditions of employment of fire fighters, police officers, or both.

(b) If the court finds that the public employer has violated Section 174.021, the court shall:

(1) order the public employer to make the affected employees whole as to the employees' past losses;

(2) declare the compensation or other conditions of employment required by Section 174.021 for the period, not to exceed one year, as to which the parties are bargaining; and

(3) award the association reasonable attorney's fees.

(c) The court costs of an action under this section, including costs for a master if one is appointed, shall be taxed to the public employer. (V.A.C.S. Art. 5154c-1, Sec. 16.)

**Sec. 174.253. JUDICIAL REVIEW OF ARBITRATION AWARD.** (a) An award of an arbitration board may be reviewed by a district court for the judicial district in which the municipality is located only on the grounds that:

(1) the arbitration board was without jurisdiction;

(2) the arbitration board exceeded its jurisdiction;

(3) the order is not supported by competent, material, and substantial evidence on the whole record; or

(4) the order was obtained by fraud, collusion, or similar unlawful means.

(b) The pendency of a review proceeding does not automatically stay enforcement of the arbitration board's order. (V.A.C.S. Art. 5154c-1, Sec. 14.)

**SECTION 5. REPEALER.** The following laws are repealed:

(1) The following articles and Acts, as compiled in Vernon's Texas Civil Statutes: 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 4413(52), 5152, 5153, 5154, 5154a, 5154b, 5154c-1, 5154d, 5154e, 5154f, 5154g, 5155, 5159d, 5165.4, 5181.1, 5196c, 5196d, 5196e, 5196f, 5196g, 5207, 5207a, 5207c, 5221a-2, 5221a-3, 5221b-1, 5221b-2, 5221b-2a, 5221b-3, 5221b-4, 5221b-4a, 5221b-5, 5221b-5a, 5221b-5b, 5221b-5c, 5221b-6, 5221b-7, 5221b-7a, 5221b-7b, 5221b-7c, 5221b-7d, 5221b-8, 5221b-9, 5221b-9a, 5221b-9b, 5221b-9c, 5221b-9d, 5221b-9e, 5221b-9ee, 5221b-10, 5221b-11, 5221b-12, 5221b-12A, 5221b-13, 5221b-14, 5221b-15, 5221b-15a, 5221b-16, 5221b-17, 5221b-17a, 5221b-19, 5221b-20, 5221b-21, 5221b-22, 5221b-22a, 5221b-22aa, 5221b-22b, 5221b-22c, 5221b-22d, 5221b-22dd, 5221b-22e, 5221b-22f, 5221b-24, 5221e-1, 5221g, 5221g-1, 5221g-2, 5221j, 5221k, 6674s, 8307c, 8308a, 8309b, 8309d, 8309g, 8309g-1, 8309h, 8309i, and 9005.

(2) The Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).

**SECTION 6. LEGISLATIVE INTENT OF NO SUBSTANTIVE CHANGE.** This Act is enacted under Article III, Section 43, of the Texas Constitution. This Act is intended as a recodification only, and no substantive change in the law is intended by this Act.

**SECTION 7. SAVINGS PROVISION.** A code provision adopted by this Act that conflicts with an applicable provision of Article 6252-31, Revised Statutes, as added by Section 35, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, does not prevail over that article unless the law from which the code provision was derived would prevail over that article.

**SECTION 8. EFFECTIVE DATE.** This Act takes effect September 1, 1993.

**SECTION 9. EMERGENCY.** 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 April 1, 1993, by a non-record vote; passed by the Senate on May 12, 1993: Yeas 31, Nays 0.

Approved May 22, 1993.

Effective Sept. 1, 1993.