

HEALTH AND SAFETY CODE CHAPTER 341. MINIMUM STANDARDS OF SANITATION
AND HEALTH PROTECTION MEASURES

HEALTH AND SAFETY CODE

TITLE 5. SANITATION AND ENVIRONMENTAL QUALITY

SUBTITLE A. SANITATION

CHAPTER 341. MINIMUM STANDARDS OF SANITATION AND HEALTH PROTECTION
MEASURES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 341.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Department" means the Texas Department of Health.
- (3) "Drinking water" means water distributed by an individual or public or private agency for human consumption, for use in preparing food or beverages, or for use in cleaning a utensil or article used in preparing food or beverages for, or consuming food or beverages by, human beings. The term includes water supplied for human consumption or used by an institution catering to the public.
- (4) "Human excreta" means the urinary and bowel discharges of a human.
- (5) "Person" means an individual, corporation, organization, government, business trust, partnership, association, or any other legal entity.
- (6) "Privy" means a facility for the disposal of human excreta.
- (7) "Sanitary" means a condition of good order and cleanliness that precludes the probability of disease transmission.
- (8) "Septic tank" means a covered water-tight tank designed for sewage treatment.
- (9) "Toilet" means the hopper device for the deposit and discharge of human excreta into a water carriage system.
- (10) "Tourist court" means a camping place or group of two or more mobile or permanent housing units operated as rental property for the use of transient trade or trailer units housing humans.

(11) "Water supply" means a source or reservoir of water distributed and used for human consumption.

(12) "Water supply system operator" means a person who:

(A) is trained in the purification or distribution of a public water supply;

(B) has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification; and

(C) is capable of conducting and maintaining the purification processes in an efficient manner.

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

Sec. 341.002. RULES FOR SANITATION AND HEALTH PROTECTION.

The board may:

(1) adopt rules consistent with the purposes of this chapter; and

(2) establish standards and procedures for the management and control of sanitation and for health protection measures.

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

SUBCHAPTER B. NUISANCES AND GENERAL SANITATION

Sec. 341.011. NUISANCE. Each of the following is a public health nuisance:

(1) a condition or place that is a breeding place for flies and that is in a populous area;

(2) spoiled or diseased meats intended for human consumption;

(3) a restaurant, food market, bakery, other place of business, or vehicle in which food is prepared, packed, stored, transported, sold, or served to the public and that is not constantly maintained in a sanitary condition;

(4) a place, condition, or building controlled or operated by a state or local government agency that is not maintained in a sanitary condition;

(5) sewage, human excreta, wastewater, garbage, or

other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;

(6) a vehicle or container that is used to transport garbage, human excreta, or other organic material and that is defective and allows leakage or spilling of contents;

(7) a collection of water in which mosquitoes are breeding in the limits of a municipality or a collection of water that is a breeding area for *Culex quinquefasciatus* mosquitoes that can transmit diseases regardless of the collection's location other than a location or property where activities meeting the definition of Section 11.002(12)(A), Water Code, occur;

(8) a condition that may be proven to injuriously affect the public health and that may directly or indirectly result from the operations of a bone boiling or fat rendering plant, tallow or soap works, or other similar establishment;

(9) a place or condition harboring rats in a populous area;

(10) the presence of ectoparasites, including bedbugs, lice, and mites, suspected to be disease carriers in a place in which sleeping accommodations are offered to the public;

(11) the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and

(12) an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 130, Sec. 1, eff. May 27, 2003.

Sec. 341.012. ABATEMENT OF NUISANCE. (a) A person shall abate a public health nuisance existing in or on a place the person possesses as soon as the person knows that the nuisance exists.

(b) A local health authority who receives information and proof that a public health nuisance exists in the local health authority's jurisdiction shall issue a written notice ordering the abatement of the nuisance to any person responsible for the nuisance. The local health authority shall at the same time send a

copy of the notice to the local municipal, county, or district attorney.

(c) The notice must specify the nature of the public health nuisance and designate a reasonable time within which the nuisance must be abated.

(d) If the public health nuisance is not abated within the time specified by the notice, the local health authority shall notify the prosecuting attorney who received the copy of the original notice. The prosecuting attorney:

(1) shall immediately institute proceedings to abate the public health nuisance; or

(2) request the attorney general to institute the proceedings or provide assistance in the prosecution of the proceedings, including participation as an assistant prosecutor when appointed by the prosecuting attorney.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.013. GARBAGE, REFUSE, AND OTHER WASTE.

(a) Premises occupied or used as residences or for business or pleasure shall be kept in a sanitary condition.

(b) Kitchen waste, laundry waste, or sewage may not be allowed to accumulate in, discharge into, or flow into a public place, gutter, street, or highway.

(c) Waste products, offal, polluting material, spent chemicals, liquors, brines, garbage, rubbish, refuse, used tires, or other waste of any kind may not be stored, deposited, or disposed of in a manner that may cause the pollution of the surrounding land, the contamination of groundwater or surface water, or the breeding of insects or rodents.

(d) A person using or permitting the use of land as a public dump shall provide for the covering or incineration of all animal or vegetable matter deposited on the land and for the disposition of other waste materials and rubbish to eliminate the possibility that those materials and rubbish might be a breeding place for insects or rodents.

(e) A person may not permit vacant or abandoned property

owned or controlled by the person to be in a condition that will create a public health nuisance or other condition prejudicial to the public health.

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

Sec. 341.014. DISPOSAL OF HUMAN EXCRETA. (a) Human excreta in a populous area shall be disposed of through properly managed sewers, treatment tanks, chemical toilets, or privies constructed and maintained in conformity with the department's specifications, or by other methods approved by the department. The disposal system shall be sufficient to prevent the pollution of surface soil, the contamination of a drinking water supply, the infection of flies or cockroaches, or the creation of any other public health nuisance.

(b) Effluent from septic tanks constructed after September 4, 1945, shall be disposed of through:

(1) a subsurface drainage field designed in accordance with good public health engineering practices; or

(2) any other method that does not create a public health nuisance.

(c) A privy may not be constructed within 75 feet of a drinking water well or of a human habitation, other than a habitation to which the privy is appurtenant, without approval by the local health authority or the board. A privy may not be constructed or maintained over an abandoned well or over a stream.

(d) The superstructure and floor surrounding the seat riser and hopper device of a privy constructed and maintained in conformity with the department's specifications shall be kept in a sanitary condition at all times and must have adequate lighting and ventilation.

(e) Material and human excreta removed from a privy vault or from any other place shall be handled in a manner that does not create a public health nuisance. The material and human excreta may not be deposited within 300 feet of a highway unless buried or treated in accordance with the instructions of the local health authority or the board.

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

Sec. 341.015. SANITATION OF ICE PLANTS. (a) A person may not go on the platform covering the tanks in which ice is frozen in an ice factory unless the person is an officer, employee, or other person whose duties require that action.

(b) An employee whose services are required on tanks shall be provided with clean shoes or boots that may not be used for any other purpose.

(c) Ice contaminated with sand, dirt, cinders, lint, or other foreign substance may not be sold or offered for sale for human consumption.

(d) Water used in the manufacturing of ice must be from an approved source and be of a safe quality.

(e) An ice plant operator shall provide sanitary handwashing and toilet facilities for the employees of the plant.

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

Sec. 341.016. SANITATION OF BUSINESSES; OCCUPATIONAL HEALTH AND SAFETY. (a) A person may not use or permit to be used in a business, manufacturing establishment, or other place of employment a process, material, or condition known to have a possible adverse effect on the health of the person's employees unless arrangements have been made to maintain the occupational environment in a manner that such injury will not occur.

(b) An industrial establishment shall be continually maintained in a sanitary condition.

(c) The department shall make available to the state's citizens:

(1) current information concerning minimum allowable concentrations of toxic gases; and

(2) environmental standards that relate to the health and safety of the employees of industrial establishments in this state.

(d) The department shall survey industrial establishments to study industrial health and sanitation issues, including water supplies and distribution, waste disposal, and adverse conditions caused by processes that may cause ill health of industrial

workers.

(e) The department shall give each surveyed establishment a summary of the studies and findings under Subsection (d) and make necessary recommendations for the adequate protection of the health, safety, and well-being of the workers.

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

Sec. 341.017. SANITATION FACILITIES FOR RAILROAD MAINTENANCE-OF-WAY EMPLOYEES. (a) The board shall adopt reasonable rules to require railroads to provide adequate sanitation facilities for railroad maintenance-of-way employees.

(b) The department may sue in a court of competent jurisdiction to compel compliance with a rule adopted under this section.

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

Sec. 341.018. RODENT CONTROL. (a) A person who possesses an enclosed structure used or operated for public trade and who knows that the structure is infested with rodents shall:

(1) attempt to exterminate the rodents by poisoning, trapping, fumigating, or other appropriate means; and

(2) provide every practical means of eliminating rats in the structure.

(b) A public building that is constructed after September 4, 1945, must incorporate rat-proofing features.

(c) The board shall promote rodent control programs in rat-infested areas and in localities in which typhus fever has appeared.

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

SUBCHAPTER C. SANITARY STANDARDS OF DRINKING WATER; PROTECTION OF PUBLIC WATER SUPPLIES AND BODIES OF WATER

Sec. 341.031. PUBLIC DRINKING WATER. (a) Public drinking water must be free from deleterious matter and must comply with the standards established by the commission or the United States Environmental Protection Agency. The commission may adopt and enforce rules to implement the federal Safe Drinking Water Act (42

U.S.C. Section 300f et seq.).

(b) In a public place or an establishment catering to the public, a common drinking cup may not be used.

(c) Drinking water may not be served except in sanitary containers or through other sanitary mediums.

(d) In this section, "common drinking cup" means a water or other beverage receptacle used for serving more than one person. The term does not include a water or other beverage receptacle that is properly washed and sterilized after each use.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 3, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1010, Sec. 6.18, eff. Sept. 1, 1997.

Sec. 341.0315. PUBLIC DRINKING WATER SUPPLY SYSTEM REQUIREMENTS. (a) To preserve the public health, safety, and welfare, the commission shall ensure that public drinking water supply systems:

- (1) supply safe drinking water in adequate quantities;
- (2) are financially stable; and
- (3) are technically sound.

(b) The commission shall encourage and promote the development and use of regional and areawide drinking water supply systems.

(c) Each public drinking water supply system shall provide an adequate and safe drinking water supply. The supply must meet the requirements of Section 341.031 and commission rules.

(d) The commission shall consider compliance history in determining issuance of new permits, renewal permits, and permit amendments for a public drinking water system.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.19, eff. Sept. 1, 1997.

Sec. 341.032. DRINKING WATER PROVIDED BY COMMON CARRIER.

(a) Drinking water provided by a common carrier or the common carrier's agent shall be taken only from supplies certified as meeting the standards established by the commission. The drinking water shall be kept and dispensed in a sanitary manner.

(b) A watering point must meet the standards of sanitation and water-handling practices established for those purposes by the commission. The commission shall certify each watering point that meets those standards.

(c) If a sanitary defect exists at the watering point, the commission shall issue a supplemental certification showing that the watering point is only provisionally approved. If a sanitary defect continues after the expiration of a reasonable time provided to correct the defect, the commission shall notify the common carrier not to receive drinking water at the watering point involved.

(d) In this section:

(1) "Common carrier" means a licensed firm, corporation, or establishment that solicits and operates public freight or passenger transportation service, including a vehicle employed in that transportation service.

(2) "Watering point" means a place where drinking water is placed aboard a vehicle operated as a common carrier.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.12, eff. Sept. 1, 1995.

Sec. 341.033. PROTECTION OF PUBLIC WATER SUPPLIES. (a) A person may not furnish drinking water to the public for a charge unless the production, processing, treatment, and distribution are at all times under the supervision of a water supply system operator holding a license issued by the commission under Chapter 37, Water Code.

(b) An owner, agent, manager, operator, or other person in charge of a water supply system that furnishes water for public or private use may not knowingly furnish contaminated drinking water to a person or allow the appliances of the water supply system to become unsanitary.

(c) The owner or manager of a water supply system furnishing drinking water to at least 25,000 persons shall have the water tested at least once daily to determine its sanitary quality and shall submit monthly reports of the tests to the commission.

(d) The owner or manager of a water supply system furnishing

drinking water to less than 25,000 persons shall submit to the commission during each monthly period of the system's operation at least one specimen of water taken from the supply for bacteriological analysis. The population under this subsection shall be determined according to the most recent federal census or other population-determining methods if a federal census is not taken for the area served by the water supply system.

(e) The distribution system of a public drinking water supply and that of any other water supply may not be physically connected unless the other water is of a safe and sanitary quality and the commission approves the connection.

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply.

(g) On discovery of a connection in violation of Subsection (e) or (f), the local health authority shall give written notice to the owner or agent maintaining the condition. The owner or agent shall make the necessary corrections to eliminate the condition.

(h) Subsections (a)-(d) do not apply to the production, distribution, or sale of raw, untreated surface water.

(i) An owner, agent, manager, operator, or other person in charge of a public water supply system that furnishes water for public or private use or a wastewater system that provides wastewater services for public or private use shall maintain internal procedures to notify the commission immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water supply or wastewater system;

(2) an act of terrorism against the public water supply or wastewater system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water supply or wastewater system;

(4) a theft of property that supports the key

activities of the public water supply or wastewater system; or

(5) a natural disaster, accident, or act that results in damage to the public water supply or wastewater system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.13, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 880, Sec. 18, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1337, Sec. 18, eff. June 18, 2005.

Sec. 341.034. LICENSING AND REGISTRATION OF PERSONS WHO PERFORM DUTIES RELATING TO PUBLIC WATER SUPPLIES. (a) A person who operates a public water supply on a contract basis must hold a registration issued by the commission under Chapter 37, Water Code.

(b) A person who performs process control duties in production or distribution of drinking water for a public water system must hold a license issued by the commission under Chapter 37, Water Code, unless:

(1) the duties are provided to a transient, noncommunity water system; and

(2) the water system uses groundwater that is not under the influence of surface water.

(c) A person who repairs or tests the installation or operation of backflow prevention assemblies must hold a license issued by the commission under Chapter 37, Water Code.

(d) A person who inspects homes and businesses to identify potential or actual cross-connections or other contaminant hazards in public water systems must hold a license issued by the commission under Chapter 37, Water Code, unless the person is licensed by the Texas State Board of Plumbing Examiners as a plumbing inspector or water supply protection specialist.

(e) Unless the person is licensed by the Texas State Board of Plumbing Examiners, a person must hold a license issued by the commission under Chapter 37, Water Code, if, under a contract, the person:

(1) installs, exchanges, connects, maintains, or services potable water treatment equipment and appliances in public or private water systems; or

(2) analyzes water to determine how to treat influent or effluent water, alter or purify water, or add or remove a mineral, chemical, or bacterial content or substance as part of the complete installation, exchange, connection, maintenance, or service of potable water treatment equipment and appliances.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 33, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 19, eff. Sept. 1, 2001.

Sec. 341.035. APPROVED PLANS REQUIRED FOR PUBLIC WATER SUPPLIES. (a) Except as provided by Subsection (d), a person may not begin construction of a public drinking water supply system unless the executive director of the commission approves:

- (1) a business plan for the system; and
- (2) the plans and specifications for the system.

(b) The prospective owner or operator of the system must submit to the executive director a business plan that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director:

- (1) shall review the business plan; and
- (2) may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by the commission, unless the executive director finds that the business plan demonstrates adequate financial capability.

(c) The prospective owner or operator of the proposed system shall provide to the commission completed plans and specifications for review and approval in accordance with commission rules.

(d) A person is not required to file a business plan under Subsection (a)(1) or (b) if the person:

- (1) is a county;
- (2) is a retail public utility as defined by Section 13.002, Water Code, unless that person is a utility as defined by

that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) is a noncommunity nontransient water system and the person has demonstrated financial assurance under Chapter 361 or 382 of this code or Chapter 26, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0351. NOTIFICATION OF SYSTEM CHANGES. Any person, including a municipality, supplying a drinking water service to the public that intends to make a material or major change in a water supply system that may affect the sanitary features of that utility must give written notice of that intention to the commission before making the change.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(b) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0352. ADVERTISED QUALITY OF WATER SUPPLY. A water supply system owner, manager, or operator or an agent of a water supply system owner, manager, or operator may not advertise or announce a water supply as being of a quality other than the quality that is disclosed by the commission's latest rating.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(c) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0353. DRINKING WATER SUPPLY COMPARATIVE RATING INFORMATION. The commission shall assemble and tabulate all

necessary information relating to public drinking water supplies at least once each year and as often during the year as conditions demand or justify. The information forms the basis of an official comparative rating of public drinking water supply systems.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(d) and amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0354. HIGHWAY SIGNS FOR APPROVED SYSTEM RATING. A water supply system that attains an approved rating is entitled to erect signs of a design approved by the commission on highways approaching the municipality in which the water supply system is located. The signs shall be immediately removed on notice from the commission if the water supply system does not continue to meet the specified standards.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.023, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.14, eff. Sept. 1, 1995. Renumbered from Health and Safety Code Sec. 341.035(e) by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0355. FINANCIAL ASSURANCE FOR CERTAIN SYSTEMS.

(a) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Section 341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) provide the executive director of the commission with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules; and

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules in the form of a bond or as specified by the commission.

(b) If the commission relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account and released only with the approval of the commission.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 341.0356. ORDER TO STOP OPERATIONS. (a) A public water supply system shall stop operations on receipt of a written notification of the executive director of the commission or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) the system was constructed without the approval required by Section 341.035; or

(2) the executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.20, eff. Sept. 1, 1997.

Text of section as added by Acts 2007, 80th Leg., R.S., Ch. 684,

Sec. 1

For text of section as added by Acts 2007, 80th Leg., R.S., Ch. 861,

Sec. 1, see other Sec. 341.0357.

Sec. 341.0357. IDENTIFICATION REQUIREMENT FOR DEVICE WITH APPEARANCE OF FIRE HYDRANT THAT IS NONFUNCTIONING OR UNAVAILABLE FOR USE IN FIRE EMERGENCY. (a) The owner of any device having the appearance of a fire hydrant that is located in a place that an

entity responsible for providing fire suppression services in a fire emergency would expect a fire hydrant to typically be located shall paint the device black if the device is nonfunctioning or otherwise unavailable for use by the entity providing fire suppression services in a fire emergency. The owner may place a black tarp over the device instead of painting the device black as required under this section if the device is temporarily nonfunctioning, or temporarily unavailable for use in a fire emergency, for a period not to exceed seven days.

(b) For purposes of this section, a device is considered to be nonfunctioning if the device pumps less than 250 gallons of water per minute.

(c) This section does not apply within the jurisdiction of a governmental entity that maintains its own system for labeling a device having the appearance of a fire hydrant that is nonfunctioning or otherwise unavailable for use in a fire emergency.

Added by Acts 2007, 80th Leg., R.S., Ch. 684, Sec. 1, eff. June 15, 2007.

Text of section as added by Acts 2007, 80th Leg., R.S., Ch. 861,
Sec. 1

For text of section as added by Acts 2007, 80th Leg., R.S., Ch. 684,
Sec. 1, see other Sec. 341.0357.

Sec. 341.0357. PUBLIC SAFETY STANDARDS. (a) In this section:

(1) "Public utility" has the meaning assigned by Section 13.002, Water Code.

(2) "Regulatory authority" has the meaning assigned by Section 13.002, Water Code.

(3) "Residential area" means:

(A) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(B) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are

abutted by residential property occupying at least 75 percent of the front footage along the block face; or

(C) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(b) The regulatory authority for a public utility shall by rule or ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in a municipality with a population of 1,000,000 or more.

(c) The commission shall assess residential areas in a municipality with a population of 1,000,000 or more to ensure that:

(1) the regulatory authority for the area has adopted the standards required by this section; and

(2) all public utilities serving the residential area are complying with the standards required by this section.

(d) The commission shall require a municipality with a population of 1,000,000 or more and acting as a regulatory authority to make appropriate revisions to standards the commission considers to be inadequate within a reasonable time established by the commission.

(e) The commission shall require a public utility in violation of a standard required under this section and established by the commission or by a municipality with a population of 1,000,000 or more and acting as a regulatory authority to comply with the standard within a reasonable time established by the commission.

(f) This section does not limit the authority of a municipality with a population of 1,000,000 or more and acting as a regulatory authority to prohibit a public utility in violation of a standard established by the municipality from recovering through the public utility's rates a penalty or fine incurred for a violation of a standard.

Added by Acts 2007, 80th Leg., R.S., Ch. 861, Sec. 1, eff. September 1, 2007.

Sec. 341.036. SANITARY DEFECTS AT PUBLIC DRINKING WATER

SUPPLY SYSTEMS. (a) A sanitary defect at a public drinking water supply system that obtains its water supply from underground sources shall be immediately corrected.

(b) A public drinking water supply system furnishing drinking water from underground sources may not be established in a place subject to possible pollution by floodwaters unless the system is adequately protected against flooding.

(c) Suction wells or suction pipes used in a public drinking water supply system must be constantly protected by practical safeguards against surface and subsurface pollution.

(d) Livestock may not be permitted to enter or remain in the wellhouse enclosure of a public drinking water supply system.

(e) Public drinking water distribution lines must be constructed of impervious materials with tight joints and must be a reasonably safe distance from sewer lines.

(f) Water from a surface public drinking water supply may not be made accessible or delivered to a consumer for drinking purposes unless the water has been treated to make it safe for human consumption. Water treatment plants, including aeration, coagulation, mixing, settling, filtration, and chlorinating units, shall be of a size and type prescribed by good public health engineering practices.

(g) A clear water reservoir shall be covered and be of a type and construction that prevents the entrance of dust, insects, and surface seepage.

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

Sec. 341.037. PROTECTION OF BODIES OF WATER FROM SEWAGE. The commission shall enforce state laws and take other necessary action to protect a spring, well, pond, lake, reservoir, or other stream in this state from any condition or pollution that results from sewage and that may endanger the public health.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.038. PROTECTION OF IMPOUNDED WATER FROM DISEASE-BEARING MOSQUITOES. A person that impounds water for

public use shall cooperate with the commission and local departments of health to control disease-bearing mosquitoes on the impounded area.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.15, eff. Sept. 1, 1995.

Sec. 341.039. GRAYWATER STANDARDS. (a) The commission by rule shall adopt and implement minimum standards for the use and reuse of graywater for:

- (1) irrigation and other agricultural purposes;
- (2) domestic use, to the extent consistent with Subsection (c);
- (3) commercial purposes; and
- (4) industrial purposes.

(b) The standards adopted by the commission under Subsection (a) must assure that the use of graywater is not a nuisance and does not damage the quality of surface water and groundwater in this state.

(c) The commission may not require a permit for the domestic use of less than 400 gallons of graywater each day if the graywater:

- (1) originates from a private residence;
- (2) is used by the occupants of that residence for gardening, composting, or landscaping at the residence;
- (3) is collected using a system that overflows into a sewage collection or on-site wastewater treatment and disposal system;
- (4) is stored in tanks that:
 - (A) are clearly labeled as nonpotable water;
 - (B) restrict access, especially to children; and
 - (C) eliminate habitat for mosquitoes and other vectors;
- (5) uses piping clearly identified as a nonpotable water conduit, including identification through the use of purple pipe, purple tape, or similar markings;
- (6) is generated without the formation of ponds or pools of graywater;
- (7) does not create runoff across the property lines

or onto any paved surface; and

(8) is distributed by a surface or subsurface system that does not spray into the air.

(d) Each builder is encouraged to:

(1) install plumbing in new housing in a manner that provides the capacity to collect graywater from all allowable sources; and

(2) design and install a subsurface graywater system around the foundation of new housing in a way that minimizes foundation movement or cracking.

(e) In this section, "graywater" means wastewater from clothes-washing machines, showers, bathtubs, hand-washing lavatories, and sinks that are not used for disposal of hazardous or toxic ingredients. The term does not include wastewater:

(1) that has come in contact with toilet waste;

(2) from the washing of material, including diapers, soiled with human excreta; or

(3) from sinks used for food preparation or disposal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 233, Sec. 2, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.16, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 689, Sec. 2, eff. Sept. 1, 2003.

Sec. 341.040. DEFINITION. In this subchapter, "commission" means the Texas Commission on Environmental Quality. Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.024, eff. Aug. 12, 1991. Amended by Acts 1993, 73rd Leg., ch. 353, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.17, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 861, Sec. 2, eff. September 1, 2007.

Sec. 341.041. FEES. (a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system. The commission may establish a schedule of fees. The amount of the fees must be sufficient to cover the

reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.

(b) The commission by rule may assess penalties and interest for late payment of fees owed by persons who own, operate, or maintain public drinking water supply systems. Penalties and interest established under this section may not exceed the rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(c) Revenues collected by the commission under this subchapter shall be deposited to the credit of the water resource management account.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 34, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 3.07, eff. Sept. 1, 2001.

Sec. 341.042. STANDARDS FOR HARVESTED RAINWATER. (a) The commission shall establish recommended standards relating to the domestic use of harvested rainwater, including health and safety standards for treatment and collection methods for harvested rainwater intended for drinking, cooking, or bathing.

(b) The commission by rule shall provide that if a structure is connected to a public water supply system and has a rainwater harvesting system for indoor use:

(1) the structure must have appropriate cross-connection safeguards; and

(2) the rainwater harvesting system may be used only for nonpotable indoor purposes.

(c) Standards and rules adopted by the commission under this chapter governing public drinking water supply systems do not apply

to a person:

- (1) who harvests rainwater for domestic use; and
- (2) whose property is not connected to a public drinking water supply system.

Added by Acts 2005, 79th Leg., Ch. 627, Sec. 2, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1352, Sec. 11, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1430, Sec. 2.28, eff. September 1, 2007.

Sec. 341.046. NONAPPLICABILITY OF SUBCHAPTER F. Subchapter F does not apply to this subchapter.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Sec. 341.047. CRIMINAL PENALTY. (a) A person commits an offense if the person:

- (1) violates a provision of Section 341.031;
- (2) violates a provision of Section 341.032(a) or (b);
- (3) violates a provision of Section 341.033(a)-(f);
- (4) constructs a drinking water supply system without submitting completed plans and specifications as required by Section 341.035(c);
- (5) begins construction of a drinking water supply system without the commission's approval as required by Section 341.035(a);
- (6) violates a provision of Section 341.0351 or 341.0352;
- (7) fails to remove a sign as required by Section 341.0354; or
- (8) violates a provision of Section 341.036.

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

(c) If it is shown on a trial of the defendant that the defendant has been convicted of an offense under Subsection (a) within a year before the date on which the offense being tried occurred, the subsequent offense under Subsection (a) is a Class B

misdemeanor.

(d) Each day of a continuing violation is a separate offense.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.21, eff. Sept. 1, 1997.

Sec. 341.048. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this subchapter or a rule or order adopted under this subchapter.

(b) A person who causes, suffers, allows, or permits a violation under this subchapter shall be assessed a civil penalty of not less than \$50 nor more than \$1,000 for each violation. Each day of a continuing violation is a separate violation.

(c) If it appears that a person has violated, is violating, or threatens to violate a provision under this subchapter, the commission, a county, or a municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

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

(3) both injunctive relief and a civil penalty.

(d) The commission is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(e) On the commission's request, the attorney general shall institute a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(f) The suit may be brought in:

(1) Travis County;

(2) the county in which the defendant resides; or

(3) the county in which the violation or threat of violation occurs.

(g) In a suit under this section to enjoin a violation or threat of violation of this subchapter, the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant including temporary

restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(h) Civil penalties recovered in a suit brought under this section by a county or municipality shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 1010, Sec. 6.22, eff. Sept. 1, 1997.

Sec. 341.0485. WATER UTILITY IMPROVEMENT ACCOUNT.

(a) The water utility improvement account is created outside of the state treasury.

(b) A civil or administrative penalty payable to the state that is collected from a utility for a violation of this subchapter shall be deposited in the account.

(c) The comptroller shall manage the account for the benefit of the commission and shall invest the money and deposit interest and other investment proceeds in the account. The comptroller shall release money from the account in the manner provided by the commission. Money in the account may be used only for:

(1) capital improvements to the water or sewer system of a utility that has paid fines or penalties under this chapter or under Chapter 13, Water Code, that have been deposited in the account; or

(2) capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Section 13.4132, Water Code.

(d) Money used under Subsection (c)(1) for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money

under Subsection (c)(1) shall be immediately distributed equally to the current customers of the utility.

(e) Money used under Subsection (c)(2) may not be considered as invested capital of the utility for any purpose.

(f) In this section, "utility" has the meaning assigned by Section 13.002, Water Code.

Added by Acts 1997, 75th Leg., ch. 1010, Sec. 6.32, eff. Sept. 1, 1997.

Sec. 341.049. ADMINISTRATIVE PENALTY. (a) If a person causes, suffers, allows, or permits a violation of this subchapter or a rule or order adopted under this subchapter, the commission may assess a penalty against that person as provided by this section. The penalty shall not be less than \$50 nor more than \$1,000 for each violation. Each day of a continuing violation may be considered a separate violation.

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

(1) the nature of the circumstances and the extent, duration, and gravity of the prohibited acts or omissions;

(2) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the person's demonstrated good faith, including actions taken by the person to correct the cause of the violation;

(D) any economic benefit gained through the violation; and

(E) the amount necessary to deter future violation; and

(3) any other matters that justice requires.

(c) If, after examination of a possible violation and the facts surrounding that possible violation, the executive director

of the commission concludes that a violation has occurred, the executive director may issue a preliminary report stating the facts on which that conclusion is based, recommending that a penalty under this section be imposed on the person, and recommending the amount of that proposed penalty. The executive director shall base the recommended amount of the proposed penalty on the factors provided by Subsection (b) and shall consider each factor for the benefit of the commission.

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

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

(f) If the person charged with the violation consents to the penalty recommended by the executive director of the commission or fails to timely respond to the notice, the commission by order shall assess that penalty or order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses a penalty, the commission shall give written notice of its decision to the person charged.

(g) If the person charged requests or the commission orders a hearing, the commission shall call a hearing and give notice of the hearing. As a result of the hearing, the commission by order may find that a violation has occurred and may assess a civil penalty, may find that a violation has occurred but that no penalty should be assessed, or may find that no violation has occurred. All proceedings under this subsection are subject to Chapter 2001, Government Code. In making any penalty decision, the commission shall consider each of the factors provided by Subsection (b).

(h) The commission shall give notice of its decision to the

person charged, and if the commission finds that a violation has occurred and the commission has assessed a penalty, the commission shall give written notice to the person charged of its findings, of the amount of the penalty, and of the person's right to judicial review of the commission's order. If the commission is required to give notice of a penalty under this subsection or Subsection (f), the commission shall file notice of its decision with the Texas Register not later than the 10th day after the date on which the decision is adopted.

(i) Within a 30-day period immediately following the day on which the commission's order is final, as provided by Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

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

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

(B) post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(j) If the person charged fails to forward the money for escrow or post the bond as provided by Subsection (i), the commission or the executive director of the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (59), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1010, Sec. 6.23, eff. Sept. 1, 1997.

Sec. 341.050. PENALTIES CUMULATIVE. All penalties accruing under this subchapter are cumulative of all other remedies, and a suit for recovery of any penalty does not bar or affect the recovery of any other penalty or bar any criminal prosecution against a person or any officer, director, agent, or employee of that person.

Added by Acts 1993, 73rd Leg., ch. 353, Sec. 2, eff. Sept. 1, 1993.

SUBCHAPTER D. SANITATION AND SAFETY OF FACILITIES USED BY PUBLIC

Sec. 341.061. TOILET FACILITIES. An operator, manager, or superintendent of a public building, schoolhouse, theater, filling station, tourist court, bus station, or tavern shall provide and maintain sanitary toilet accommodations.

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

Sec. 341.062. PUBLIC BUILDINGS. A public building constructed after September 4, 1945, shall incorporate the heating, ventilation, plumbing, and screening features necessary to protect the public health and safety.

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

Sec. 341.063. SANITATION OF BUS LINE, AIRLINE, AND COASTWISE VESSEL. A person managing or operating a bus line or airline in this state, or a person operating a coastwise vessel along the shores of this state, shall maintain sanitary conditions in its equipment and at all terminals or docking points.

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

Sec. 341.064. SWIMMING POOLS AND BATHHOUSES. (a) An owner, manager, operator, or other attendant in charge of a public swimming pool shall maintain the pool in a sanitary condition.

(b) The bacterial content of the water in a public swimming pool may not exceed the safe limits prescribed by the board's standards. A minimum free residual chlorine of 2.0 parts for each one million units of water in a public spa and a minimum free residual chlorine of 1.0 part for each one million units of water in other public swimming pools, or any other method of disinfectant approved by the department, must be maintained in a public swimming pool in use.

(c) Water in a swimming pool open to the public may not show an acid reaction to a standard pH test.

(d) A public bathhouse and its surroundings shall be kept in a sanitary condition at all times.

(e) Facilities shall be provided in a public swimming pool for adequate protection of bathers against sputum contamination.

(f) A person known to be or suspected of being infected with a transmissible condition of a communicable disease shall be excluded from a public swimming pool.

(g) The construction and appliances of a public swimming pool must be such as to reduce to a practical minimum the possibility of drowning or of injury to bathers. The construction after September 4, 1945, of a public swimming pool must conform to good public health engineering practices.

(h) Bathing suits and towels furnished to bathers shall be thoroughly washed with soap and hot water and thoroughly rinsed and dried after each use.

(i) Dressing rooms of a public swimming pool shall contain shower facilities.

(j) A comb or hairbrush used by two or more persons may not be permitted or distributed in a bathhouse of a public swimming pool.

(k) The operator or manager of a public swimming pool shall provide adequate and proper approved facilities for the disposal of human excreta by the bathers.

(l) In adopting rules governing lifesaving equipment to be maintained by a public swimming pool, the board may not require a separate throwing line longer than two-thirds the maximum width of the pool.

(m) In this section, "public swimming pool" means an artificial body of water, including a spa, maintained expressly for public recreational purposes, swimming and similar aquatic sports, or therapeutic purposes.

(n) A county or municipality may:

(1) require that the owner or operator of a public swimming pool within the jurisdiction of the county or municipality obtain a permit for operation of the pool;

(2) inspect a public swimming pool within the jurisdiction of the county or municipality for compliance with this section; and

(3) impose and collect a reasonable fee in connection

with a permit or inspection required under this subsection provided the following are met:

(A) the auditor for the county shall review the program every two years to ensure that the fees imposed do not exceed the cost of the program; and

(B) the county refunds the permit holders any revenue determined by the auditor to exceed the cost of the program.

(o) A county or municipality may by order close, for the period specified in the order, a swimming pool within the jurisdiction of the county or municipality if the operation of the pool violates this section or a permitting or inspection requirement imposed by the county or municipality under Subsection (n).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 339, Sec. 1, eff. Sept. 1, 1991; Acts 2003, 78th Leg., ch. 618, Sec. 1, eff. June 20, 2003.

Sec. 341.065. SCHOOL BUILDINGS AND GROUNDS. (a) A school building must be located on grounds that are well drained and maintained in a sanitary condition.

(b) A school building must be properly ventilated and provided with an adequate supply of drinking water, an approved sewage disposal system, hand-washing facilities, a heating system, and lighting facilities that conform to established standards of good public health engineering practices.

(c) A public school lunchroom must comply with the state food and drug rules.

(d) A public school building and its appurtenances shall be maintained in a sanitary manner.

(e) A building custodian or janitor employed full-time shall know the fundamentals of safety and school sanitation.

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

Sec. 341.066. TOURIST COURTS, HOTELS, INNS, AND ROOMING HOUSES. (a) A person operating a tourist court, hotel, inn, or rooming house in this state shall:

(1) provide a safe and ample water supply for the

general conduct of the tourist court, hotel, inn, or rooming house; and

(2) submit samples of the water at least once a year before May 1 to the department for bacteriological analysis.

(b) A tourist court, hotel, inn, and rooming house must be equipped with an approved system of sewage disposal maintained in a sanitary condition.

(c) An owner or operator of a tourist court, hotel, inn, or rooming house shall keep the premises sanitary and shall provide every practical facility essential for that purpose.

(d) An owner or operator of a tourist court, hotel, inn, or rooming house who provides a gas stove for the heating of a unit in the facility shall determine that the stove is properly installed and maintained in a properly ventilated room.

(e) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain sanitary appliances located in the facility in good repair.

(f) Food offered for sale at a tourist court, hotel, inn, or rooming house shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

(g) An owner, manager, or agent of a tourist court, hotel, inn, or rooming house may not rent or furnish a unit to a person succeeding a previous occupant before:

(1) thoroughly cleaning the unit; and

(2) providing clean and sanitary sheets, towels, and pillowcases.

(h) An owner, operator, or manager of a tourist court, hotel, inn, or rooming house shall maintain the facility in a sanitary condition.

(i) A tourist court, hotel, inn, or rooming house that does not conform to this chapter is a public health nuisance.

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

Sec. 341.067. FAIRGROUNDS, PUBLIC PARKS, AND AMUSEMENT CENTERS. (a) A fairground, public park, or amusement center of

any kind shall be maintained in a sanitary condition.

(b) Food and beverages sold in a fairground, public park, or amusement center shall be:

(1) adequately protected from flies, dust, vermin, and spoilage; and

(2) kept in a sanitary condition.

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

Sec. 341.068. RESTROOM AVAILABILITY WHERE THE PUBLIC CONGREGATES. (a) Publicly and privately owned facilities where the public congregates shall be equipped with sufficient temporary or permanent restrooms to meet the needs of the public at peak hours.

(b) The board shall adopt rules to implement Subsection (a), including a rule that in providing sufficient restrooms a ratio of not less than 2:1 women's-to-men's restrooms or other minimum standards established in consultation with the Texas State Board of Plumbing Examiners shall be maintained if the use of the restrooms is designated by gender. The rules shall apply to facilities where the public congregates and on which construction is started on or after January 1, 1994, or on which structural alterations, repairs, or improvements exceeding 50 percent of the entire facility are undertaken on or after January 1, 1994.

(c) In this section:

(1) "Facilities where the public congregates" means sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities. The term does not include hotels, churches, restaurants, bowling centers, public or private elementary or secondary schools, or historic buildings.

(2) "Restroom" means toilet, chemical toilet, or water closet.

(d) The board may adopt rules consistent with Subsection (c)(1) to define "facilities where the public congregates."

Added by Acts 1993, 73rd Leg., ch. 624, Sec. 1, eff. Sept. 1, 1993.

Sec. 341.069. ACCESS TO RESTROOM FACILITIES. (a) In this

section:

(1) "Customer" means an individual who is lawfully on the premises of a retail establishment.

(2) "Eligible medical condition" means Crohn's disease, ulcerative colitis, irritable bowel syndrome, or any other permanent or temporary medical condition that requires immediate access to a toilet facility.

(3) "Physician" has the meaning assigned by Section 151.002, Occupations Code.

(4) "Retail establishment" means a place of business open to the general public for the sale of goods or services.

(b) A retail establishment that has a toilet facility for its employees shall allow a customer to use the toilet facility during normal business hours if:

(1) the retail establishment does not have a public restroom that is immediately accessible to the customer;

(2) the employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the customer or an obvious security risk to the retail establishment;

(3) the customer requesting use of the employee toilet facility provides the retail establishment with evidence of the customer's eligible medical condition including:

(A) a copy of a statement signed by a physician, a registered nurse, a physician's assistant, or a person acting under the delegation and supervision of a licensed physician in conformance with Subchapter A, Chapter 157, Occupations Code, that indicates the customer suffers from an eligible medical condition or uses an ostomy device; or

(B) an identification card that is issued by a nationally recognized health organization or a local health department and that indicates the customer suffers from an eligible medical condition or uses an ostomy device; and

(4) three or more employees of the retail establishment are working and physically present on the premises of the retail establishment at the time the customer requests to use the employee toilet facility.

(c) A customer who uses a toilet facility as authorized by this section shall leave the toilet facility in the same condition as it was before the customer used the toilet facility.

(d) In providing access to an employee toilet facility under this section, the retail establishment or employee does not owe the customer to whom access is provided a greater degree of care than is owed to a licensee on the premises.

(e) An employee of a retail establishment who refuses to provide a customer with access to an employee toilet facility as required by this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$100.

(f) A retail establishment is not required to make any physical changes to an employee toilet facility under this section. Added by Acts 2007, 80th Leg., R.S., Ch. 613, Sec. 2, eff. September 1, 2007.

SUBCHAPTER E. AUTHORITY OF HOME-RULE MUNICIPALITIES

Sec. 341.081. AUTHORITY OF HOME-RULE MUNICIPALITIES NOT AFFECTED. This chapter prescribes the minimum requirements of sanitation and health protection in this state and does not affect a home-rule municipality's authority to enact:

(1) more stringent ordinances in matters relating to this chapter; or

(2) an ordinance under:

(A) Article XI, Section V, of the Texas Constitution;

(B) Article 1175, Revised Statutes; or

(C) Section 51.072, Local Government Code.

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

Sec. 341.082. APPOINTMENT OF ENVIRONMENTAL HEALTH OFFICER IN CERTAIN HOME-RULE MUNICIPALITIES. (a) In a home-rule municipality, an environmental health officer may be appointed to enforce this chapter.

(b) The environmental health officer must be a registered professional engineer. The officer must file a copy of the officer's oath and appointment with the board.

(c) The environmental health officer shall assist the board in enforcing this chapter and is subject to:

(1) the authority of the board; and

(2) removal from office in the same manner as a municipal health authority.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 597, Sec. 76, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 742, Sec. 1, eff. June 17, 1997.

SUBCHAPTER F. PENALTIES

Sec. 341.091. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter or a rule adopted under this chapter. A person commits an offense if the person violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o). An offense under this section is a misdemeanor punishable by a fine of not less than \$10 or more than \$200.

(b) If it is shown on the trial of the defendant that the defendant has been convicted of an offense under this chapter within a year before the date on which the offense being tried occurred, the defendant shall be punished by a fine of not less than \$10 or more than \$1,000, confinement in jail for not more than 30 days, or both.

(c) Each day of a continuing violation is a separate offense.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 618, Sec. 2, eff. June 20, 2003.

Sec. 341.092. CIVIL ENFORCEMENT. (a) A person may not cause, suffer, allow, or permit a violation of this chapter or a rule adopted under this chapter.

(b) A person who violates this chapter or a rule adopted under this chapter shall be assessed a civil penalty. A person who violates a permitting or inspection requirement imposed under Section 341.064(n) or a closure order issued under Section 341.064(o) shall be assessed a civil penalty. A civil penalty under this section may not be less than \$10 or more than \$200 for each

violation and for each day of a continuing violation.

(c) If it is shown on the trial of the defendant that the defendant has previously violated this section, the defendant shall be assessed a civil penalty of not less than \$10 or more than \$1,000 for each violation and for each day of a continuing violation.

(d) If it appears that a person has violated, is violating, or is threatening to violate this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the department, a county, a municipality, or the attorney general on request by the district attorney, criminal district attorney, county attorney, or, with the approval of the governing body of the municipality, the attorney for the municipality may institute a civil suit in a district court for:

(1) injunctive relief to restrain the person from continuing the violation or threat of violation;

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

(3) both injunctive relief and a civil penalty.

(e) The department is a necessary and indispensable party in a suit brought by a county or municipality under this section.

(f) On the department's request, or as otherwise provided by this chapter, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and civil penalty.

(g) The suit may be brought in Travis County, in the county in which the defendant resides, or in the county in which the violation or threat of violation occurs.

(h) In a suit under this section to enjoin a violation or threat of violation of this chapter, a rule adopted under this chapter, a permitting or inspection requirement imposed under Section 341.064(n), or a closure order issued under Section 341.064(o), the court shall grant the state, county, or municipality, without bond or other undertaking, any injunction that the facts may warrant, including temporary restraining orders, temporary injunctions after notice and hearing, and permanent injunctions.

(i) Civil penalties recovered in a suit brought under this

section by a county or municipality through its own attorney shall be equally divided between:

(1) the state; and

(2) the county or municipality that first brought the suit.

(j) The state is entitled to civil penalties recovered in a suit instituted by the attorney general.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 648, Sec. 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 618, Sec. 3, eff. June 20, 2003.