

HEALTH AND SAFETY CODE

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE D. HAZARDOUS SUBSTANCES

CHAPTER 501. HAZARDOUS SUBSTANCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 501.001. DEFINITIONS. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commerce" includes the operation of a business or service establishment and other commerce in this state that is subject to the jurisdiction of this state.
- (3) "Commissioner" means the commissioner of public health.
- (4) "Department" means the Texas Department of Health.
- (5) "Label" means a display of written, printed, or other graphic matter:
  - (A) on the immediate container, excluding the package liner, of any substance; or
  - (B) directly on the article or on a tag or other suitable material affixed to the article, if the article is unpackaged or not packaged in an immediate container intended or suitable for delivery to the ultimate consumer.
- (6) "Misbranded hazardous substance" means either of the following that is not properly packaged or does not bear a proper label required by this chapter:
  - (A) a hazardous substance; or
  - (B) a toy or other article intended for use by children that bears or contains a hazardous substance in a manner that is accessible by a child to whom the toy or other article is entrusted, intended, or packaged in a form suitable for use in a household or by children.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 1, eff. Sept. 1, 2001.

Sec. 501.002. HAZARDOUS SUBSTANCE DESCRIBED. (a) A hazardous substance is:

(1) a substance or mixture of substances that is toxic, corrosive, extremely flammable, flammable, combustible, an irritant, or a strong sensitizer, or that generates pressure through decomposition, heat, or other means, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(2) a toy or other article, other than clothing, that is intended for use by a child and that presents an electrical, mechanical, or thermal hazard; or

(3) a radioactive substance designated as a hazardous substance under Section 501.003.

(b) A substance is corrosive if, when in contact with living tissue, it causes destruction of that tissue by chemical action. A chemical action on an inanimate surface is not corrosive for the purpose of this section.

(c) An article is an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it may cause, because of its design or manufacture, personal injury or illness by electric shock.

(d) A substance or article is extremely flammable, flammable, or combustible if it is defined as extremely flammable, flammable, or combustible by rule of the board. The board shall define the terms as they are defined by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and by federal regulations adopted under that Act. The terms each have the meaning assigned by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) and by federal regulations adopted under that Act, as of September 1, 2001.

(e) A substance is an irritant if it is noncorrosive and if, on immediate, prolonged, or repeated contact with normal living tissue, it induces a local inflammatory reaction.

(f) An article is a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article or a part or accessory of the article;

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article or a part or accessory of the article may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

(g) A substance is radioactive if it emits ionizing radiation.

(h) A substance is a strong sensitizer if, when on normal living tissue, it causes, through an allergic or photodynamic process, a hypersensitivity that becomes evident on reapplication of the same substance.

(i) An article is a thermal hazard if, in normal use or when subject to reasonably foreseeable damage or abuse, it presents, because of its design or manufacture, an unreasonable risk of personal injury or illness because of heat, including heat from heated parts, substances, or surfaces.

(j) A substance is toxic if it is capable of producing personal injury or illness to any person through ingestion, inhalation, or absorption through any body surface and it is not radioactive.

(k) The following are not hazardous substances:

(1) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 135 et seq.);

(2) a food, drug, or cosmetic subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.) or

Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(3) a beverage complying with or subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.);

(4) a substance intended for use as fuel that is stored in a container and used in the heating, cooking, or refrigeration system of a private residence; and

(5) source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954 (42 U.S.C. Chapter 23) and regulations issued under that Act by the Atomic Energy Commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 2, eff. Sept. 1, 2001.

Sec. 501.003. DESIGNATION OF RADIOACTIVE SUBSTANCE AS HAZARDOUS. The board by rule shall designate a radioactive substance to be a hazardous substance if, with respect to the substance as used in a particular class of article or as packaged, the board finds that the substance is sufficiently hazardous as to require labeling as a hazardous substance under this chapter in order to protect the public health.

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

Sec. 501.004. DESIGNATION OF STRONG SENSITIZER. Before designating a substance as a strong sensitizer, the department must determine that the substance has a significant potential for causing hypersensitivity considering the frequency of occurrence and the severity of the reaction.

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

Sec. 501.005. EXCLUSION. This chapter does not apply to the manufacture, distribution, sale, or use of diapers.

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

#### SUBCHAPTER B. REGULATION OF SUBSTANCES

Sec. 501.021. FLAMMABILITY STANDARDS; DETERMINATION OF FLAMMABILITY. (a) The board by rule shall establish the methods for determining the flammability of solids, fabrics, children's

clothing, household furnishings, and the contents of self-pressurized containers that the board finds are generally applicable to those materials or containers.

(b) The board by rule shall establish flammability standards for articles described by Subsection (a). The standards must conform to standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended. Until the board adopts standards, the flammability standards for articles described by Subsection (a) are the standards prescribed by federal regulations adopted under the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.) as of September 1, 2001.

(c) The department may obtain samples of articles described by Subsection (a) and determine the flammability of the articles for compliance with applicable standards established under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 3, eff. Sept. 1, 2001.

Sec. 501.022. DESIGNATION OF BANNED HAZARDOUS SUBSTANCES.

(a) The board by rule shall designate as a banned hazardous substance any article, including clothing intended for the use of children, that is not properly packaged or that does not comply with applicable flammability standards established by the board. The board's determination that articles of clothing of a specified range of sizes are intended for the use of a child 14 years of age or younger is conclusive.

(b) The board by rule shall designate as a banned hazardous substance any toy or other article, other than clothing, intended for the use of children that is a hazardous substance or bears or contains a hazardous substance in a manner accessible by a child to whom the toy or other article is entrusted.

(c) The board by rule shall designate as a banned hazardous

substance any hazardous substance intended or packaged in a form suitable for use in a household that, notwithstanding cautionary labeling required by this chapter, is potentially so dangerous or hazardous when present or used in a household that the protection of the public health and safety may be adequately served only by keeping the substance out of commerce.

(d) The board by rule shall designate as a banned hazardous substance any article subject to this chapter that cannot be labeled adequately to protect the public health and safety or that presents an imminent danger to the public health and safety.

(e) This section does not apply to a toy or article such as a chemical set that because of its functional purpose requires the inclusion of a hazardous substance or necessarily presents an electrical, mechanical, or thermal hazard if the toy or article:

(1) bears labeling that in the judgment of the board gives adequate directions and warnings for safe use; and

(2) is intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed those directions and warnings.

(f) This section does not apply to the manufacture, sale, distribution, or use of fireworks of any class.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 4, eff. Sept. 1, 2001.

Sec. 501.023. GENERAL LABELING AND PACKAGING REQUIREMENTS. (a) The department shall ensure that each hazardous substance is labeled sufficiently to inform its user of the dangers involved in using, storing, or handling the substance, of actions to be taken or avoided, and to give instructions as necessary for proper first aid treatment. The department shall develop labeling instructions consistent with and in conformity with federal requirements.

(b) A statement required by Subsection (a) must be located prominently and written in English in conspicuous and legible type that contrasts in typography, layout, or color with other printed matter on the label. The department may also require the statement to be written in Spanish.

(c) The statement must also appear:

(1) on the outside container or wrapper of a substance and on a container sold separately and intended for the storage of a hazardous substance unless the statement required by Subsection (a) is easily legible through the outside container or wrapper; and

(2) on all accompanying literature containing directions for use, whether written or in other form.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 5, eff. Sept. 1, 2001.

Sec. 501.0231. LABELING OF CERTAIN TOYS AND GAMES.

(a) Toys or games intended for use by children, including the parts of those toys or games, shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the board adopts rules under this subsection, the toys, games, and parts shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

(b) Latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent with federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended. Until the board adopts rules under this subsection, latex balloons, small balls, marbles, and any toy or game that contains such a balloon, ball, or marble shall be labeled in the manner required by federal guidelines and regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.) as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.0232. REVIEW AND LABELING OF HAZARDOUS ART MATERIALS. (a) Art materials shall be reviewed by a toxicologist.

(b) Art materials shall be labeled in the manner required by rule of the board. The board's rules under this subsection shall be consistent with the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and federal regulations adopted under that Act. Until the board adopts rules under this subsection, art materials shall be labeled in the manner required by the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), and federal regulations adopted under that Act, as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.0233. PACKAGING OF HAZARDOUS SUBSTANCES.

Hazardous substances shall be packaged in the manner required by special packaging rules adopted by the board. The board's rules under this section shall be consistent with federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended. Until the board adopts rules under this section, hazardous substances shall be packaged in the manner required by federal special packaging regulations adopted under the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as of September 1, 2001.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 6, eff. Sept. 1, 2001.

Sec. 501.024. REGISTRATION.

(a) A person who manufactures, imports, or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state under the person's private brand name shall have on file with the department a registration statement as provided by this section.

(b) The board by rule shall detail the registration requirements and prescribe the contents of the registration statement.

(c) The person must file the registration statement with the department:

(1) before beginning business in this state as a manufacturer, importer, repacker, or distributor of a hazardous



substance; and

(2) in each succeeding year that the person continues the business in this state, not later than the anniversary of the initial filing.

(d) The initial registration statement and each annual registration statement must be accompanied by a fee prescribed by the board.

(e) The department, after notice and hearing, may refuse to register or may cancel, revoke, or suspend the registration of a person who manufactures, imports, repacks, or distributes a hazardous substance if the person fails to comply with the requirements of this chapter.

(f) A hazardous substance is subject to seizure and disposition under Section 501.033 if the person who manufactures, imports, repacks, or distributes the hazardous substance does not, after notice by the department, register with the department and make timely payment of the fee under this section.

(g) This section does not apply to a retailer who distributes a hazardous substance to the general public unless the retailer distributes a hazardous substance made to its specifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 7, eff. Sept. 1, 2001.

Sec. 501.025. RULES. The board may adopt reasonable rules necessary for the efficient administration and enforcement of this chapter. The rules must conform with regulations adopted under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, the federal Consumer Product Safety Act (15 U.S.C. Section 2051 et seq.), as amended, the federal Flammable Fabrics Act (15 U.S.C. Section 1191 et seq.), as amended, and the federal Poison Prevention Packaging Act of 1970 (15 U.S.C. Section 1471 et seq.), as amended, as applicable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 8, eff. Sept. 1, 2001.

Sec. 501.026. FEES. The board by rule shall set reasonable

registration fees in an amount designed to recover not more than the costs to the department of administering, monitoring compliance with, enforcing, and conducting tests under this chapter.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 9, eff. Sept. 1, 2001.

#### SUBCHAPTER C. ENFORCEMENT

Sec. 501.031. EXAMINATIONS AND INVESTIGATIONS. (a) To enforce this chapter, an officer, employee, or agent of the department, on the presentation of appropriate credentials to the owner, operator, or agent, at reasonable times may enter a factory, warehouse, or establishment in which a hazardous substance is manufactured, processed, packaged, or held for introduction into commerce in this state or in which a hazardous substance is held after introduction into commerce, or a vehicle used to transport or hold a hazardous substance in commerce, for the purpose of inspecting within reasonable limits and in a reasonable manner the factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling in the factory, warehouse, establishment, or vehicle.

(b) The officer, employee, or agent of the department may obtain samples of any materials, packaging, labeling, or finished product.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 10, eff. Sept. 1, 2001.

#### Sec. 501.032. RECORDS OF HAZARDOUS SUBSTANCE IN COMMERCE.

(a) For the enforcement of this chapter, a carrier engaged in commerce, a person receiving a hazardous substance in commerce, or a person holding a hazardous substance received in commerce, on request of the department shall permit a representative of the department at reasonable times to have access to and to copy all records showing the movement in commerce or the holding after movement in commerce of any hazardous substance and the quantity, consignees, and shipper of the hazardous substance.

(b) Evidence obtained under this section may not be used in the criminal prosecution of the person from whom the evidence is obtained.

(c) A carrier is not subject to the other provisions of this chapter because of the carrier's receipt, carriage, holding, or delivery of a hazardous substance in the usual course of the carrier's business.

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

Sec. 501.033. SEIZURE AND DISPOSITION OF BANNED OR MISBRANDED HAZARDOUS SUBSTANCE. (a) If an authorized agent of the department has good reason to believe that a hazardous substance is a banned or misbranded hazardous substance, the agent shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected to be a banned or misbranded hazardous substance and that the article has been detained, and warning all persons not to remove the article from the premises or dispose of the article by sale or in any other manner until permission to do so is given by the agent or a court.

(b) The department shall petition a district court of Travis County or of the county in which the article is located to authorize the destruction of the article. If the court determines that the article is a banned or misbranded hazardous substance, the department shall destroy the article, and the court shall impose all court costs and fees and storage and other proper expenses against the claimant of the article. However, if the court finds that misbranding occurred in good faith and can be corrected by proper labeling, the court may direct that the article be delivered to the claimant for proper labeling with the approval of the department.

(c) If the court finds that the article is not a banned or misbranded hazardous substance, the court shall order the department to remove the tags or other markings.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 11, eff. Sept. 1, 2001.

Sec. 501.034. PROHIBITED ACTS. (a) A person may not hold or offer for sale, sell, or introduce or deliver for introduction into commerce a misbranded hazardous substance or banned hazardous substance.

(b) A person may not alter, mutilate, destroy, or remove all or part of the label of a hazardous substance, or do any other act relating to a hazardous substance, when the substance is in commerce or is held for sale, whether or not the first sale, after shipment in commerce, if the act results in the hazardous substance being a banned or misbranded hazardous substance.

(c) A person may not receive a banned or misbranded hazardous substance in commerce or deliver or offer to deliver a banned or misbranded hazardous substance for pay or otherwise.

(d) A person may not fail to permit entry or inspection as authorized by this chapter or to provide records as required by this chapter.

(e) A person may not use to his own advantage or reveal to any person other than the department or a court, if relevant to a judicial proceeding under this chapter, information acquired in an inspection authorized by this chapter and relating to a method or process that is entitled to protection as a trade secret.

(f) A person may not remove or dispose of a detained article or substance in violation of Section 501.035.

(g) A person may not manufacture, import, or repack a hazardous substance that is to be distributed in this state or otherwise distribute a hazardous substance in this state without complying with Section 501.024.

(h) A person may not package a hazardous substance in a new or reused food, drug, or cosmetic container that is identifiable as a food, drug, or cosmetic container by its labeling or other identification.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 12, eff. Sept. 1, 2001.

Sec. 501.035. OFFENSES; EXCEPTIONS. (a) A person commits an offense if the person intentionally, knowingly, or recklessly violates this chapter or a rule adopted under this chapter.

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

(c) This section does not apply to a person who delivers or receives a banned or misbranded hazardous substance if the delivery or receipt is made in good faith and if the person subsequently

delivers on request:

(1) the name and address of the person from whom the substance was purchased or received; and

(2) copies of all documents, if any, relating to the original delivery of the substance to the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 360, Sec. 13, eff. Sept. 1, 2001.

Sec. 501.036. INJUNCTION. (a) If it appears that a person has violated, is violating, or is threatening to violate this chapter or a rule adopted or order issued under this chapter, the commissioner may request the attorney general or a district, county, or city attorney of the county or municipality in which the violation has occurred, is occurring, or may occur to institute a civil suit for:

(1) an order enjoining the violation or an order directing compliance; or

(2) a permanent or temporary injunction, restraining order, or other appropriate order if the department shows that the person has engaged in, is engaging in, or is about to engage in a violation of this chapter or a rule adopted or order issued under this chapter.

(b) Venue for a suit brought under this section is in the county or municipality in which the violation occurred or in Travis County.

(c) The commissioner and either the attorney general or the district, county, or city attorney, as appropriate, may each recover from the violator reasonable expenses incurred in obtaining injunctive relief under this section, including investigative costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses. Expenses recovered by the commissioner may be appropriated only to the department to administer and enforce this chapter. Expenses recovered by the attorney general may be appropriated only to the attorney general.

Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

Sec. 501.037. RECALL ORDERS. (a) In conjunction with the

detention of an article under Section 501.033, the commissioner may order that a hazardous substance be recalled from commerce.

(b) The commissioner's recall order may require the articles to be removed to one or more secure areas approved by the commissioner or an authorized agent of the commissioner.

(c) The recall order must be in writing and signed by the commissioner.

(d) The recall order may be issued before or in conjunction with the affixing of the tag or other appropriate marking as provided by Section 501.033.

(e) The recall order is effective until the order:

- (1) expires on its own terms;
- (2) is withdrawn by the commissioner; or
- (3) is reversed by a court in an order denying destruction under Section 501.033.

(f) The claimant of the articles or the claimant's agent shall pay the costs of the removal and storage of the articles removed.

(g) If the claimant or the claimant's agent does not implement the recall order in a timely manner, the commissioner may provide for the recall of the articles. The costs of the recall shall be assessed against the claimant of the articles or the claimant's agent.

(h) The commissioner may request the attorney general to bring an action in a district court of Travis County to recover costs of the recall. In a judgment in favor of the state, the court may award costs, attorney's fees, and court costs related to the recall together with interest on those costs from the time an expense was incurred through the date the department is reimbursed. Added by Acts 2001, 77th Leg., ch. 360, Sec. 14, eff. Sept. 1, 2001.

#### SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 501.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person:

- (1) who manufactures or repacks a hazardous substance that is distributed in this state or who distributes a hazardous substance in this state; and

(2) who violates this chapter or a rule or order adopted under this chapter.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.103. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) state the amount of the recommended penalty; and

(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.104. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 20 days after the date the person receives the notice sent under Section 501.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the commissioner of public health by order shall approve the determination and impose the recommended penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.105. HEARING. (a) If the person requests a hearing, the commissioner of public health shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the commissioner of public health a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner of public health by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.



(b) The notice of the commissioner's order under Subsection (a) that is sent to the person in accordance with Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date an order of the commissioner of public health under Section 501.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) file a petition for judicial review of the commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 501.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond approved by the court that:

(i) is for the amount of the penalty; and

(ii) is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commissioner of public health by certified mail.

(b) If the commissioner of public health receives a copy of

an affidavit under Subsection (a)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(b) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(b) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.

Sec. 501.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 7.01, eff. Sept. 1, 1999.