

HEALTH AND SAFETY CODE CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

HEALTH AND SAFETY CODE

TITLE 9. SAFETY

SUBTITLE B. EMERGENCIES

CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 781.001. DEFINITIONS. In this chapter:

(1) "Alarm system" means electronic equipment and devices designed to act as a personal emergency response system.

(2) "Branch office" means an office that:

(A) is identified to the public as a place from which business is conducted, solicited, or advertised; and

(B) is at a place other than the principal place of business as shown in department records.

(3) "Commissioner" means the executive commissioner of the Health and Human Services Commission.

(4) "Department" means the Department of State Health Services.

(5) "Manager" means an officer or supervisor of a corporation or a general partner of a partnership who manages a personal emergency response system provider.

(6) "Personal emergency response system" means an alarm system that is:

(A) installed in the residence of a person;

(B) monitored by an alarm systems company;

(C) designed only to permit the person to signal the occurrence of a medical or personal emergency on the part of the person so that the company may dispatch appropriate aid; and

(D) not part of a combination of alarm systems that includes a burglar alarm or fire alarm.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 781.051. GENERAL POWERS AND DUTIES. (a) The

department shall perform the functions and duties provided by this chapter.

(b) The commissioner shall adopt rules necessary to administer this chapter.

(c) The commissioner shall establish fees necessary to administer this chapter, including fees for processing and issuing or renewing a license or registration under this chapter.

(d) The commissioner shall prescribe forms required by this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER C. LICENSING

Sec. 781.101. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER LICENSE REQUIRED. Unless the person holds a license issued under this chapter, a person may not act as or perform the services of a personal emergency response system provider.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.102. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER. A person acts as a personal emergency response system provider for the purposes of this chapter if the person sells, installs, services, monitors, or responds to a personal emergency response system.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.103. APPLICATION FOR LICENSE. An application for a license under this chapter must be in the form prescribed by the commissioner and include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) if the applicant is an entity other than an individual, the full name and residence address of each partner, officer, and director of the applicant, and of the applicant's manager;

(5) a verified statement of the applicant's experience qualifications;

(6) a report from the Department of Public Safety stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense;

(7) the social security number of the individual making the application; and

(8) other information, evidence, statements, or documents required by the department.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. (a) A license holder shall notify the department in writing of the establishment of a branch office and file in writing with the department the address of the branch office.

(b) On application by a license holder, the department shall issue a branch office license.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.105. FORM OF LICENSE. The commissioner shall prescribe the form of a license, including a branch office license. The license must include:

(1) the name of the license holder;

(2) the name under which the license holder is to operate; and

(3) the license number and the date the license was issued.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. (a) An

applicant for a license or the applicant's manager must be at least 18 years of age and must not:

(1) have been convicted in any jurisdiction of a Class A misdemeanor or equivalent offense or a greater offense, unless a full pardon has been granted for reasons relating to a wrongful conviction;

(2) have been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense for which the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction;

(3) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(4) be suffering from habitual drunkenness or from narcotics addiction or dependence; or

(5) have been discharged from the United States armed forces under other than honorable conditions.

(b) The department may deny an application for a license if the applicant has been convicted in any jurisdiction of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.107. MANAGER REQUIRED. (a) A license holder's business shall be operated under the direction and control of one manager. A license holder may not apply to designate more than one individual to serve as manager of the license holder's business.

(b) An individual may not act as a manager until the individual has made a satisfactory showing to the department that the individual:

(1) satisfies the requirements of Section 781.106; and

(2) has not engaged in conduct regarding a violation or conviction that is grounds for disciplinary action under Section

781.351.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.108. INSURANCE. (a) A license holder shall maintain on file with the department at all times the certificate of insurance required by this chapter.

(b) The department shall immediately suspend the license of a license holder who violates Subsection (a).

(c) The department may rescind the license suspension if the license holder provides proof to the department that the insurance coverage is still in effect. The license holder must provide the proof in a form satisfactory to the department not later than the 10th day after the date the license is suspended.

(d) After suspension of the license, the department may not reinstate the license until an application, in the form prescribed by the commissioner, is filed accompanied by a proper insurance certificate. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for a reason that would justify suspending, revoking, or denying a license; or

(2) if, during the suspension, the applicant performs a practice for which a license is required.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.109. INSURANCE REQUIREMENT. (a) The department may not issue a license unless the applicant files with the department:

(1) evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance and countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must be

conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event involving the principal, or an officer, agent, or employee of the principal, in the conduct of any business licensed under this chapter.

(c) The insurance policy must contain minimum limits of:

(1) \$100,000 for each occurrence for bodily injury and property damage;

(2) \$50,000 for each occurrence for personal injury; and

(3) a total aggregate amount of \$200,000 for all occurrences.

(d) An insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.110. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS. (a) A license holder or an employee of a license holder is not required to obtain an authorization, permit, franchise, or license from, pay another fee or franchise tax to, or post a bond in a municipality, county, or other political subdivision of this state to engage in business or perform a service authorized under this chapter.

(b) A municipality, county, or other political subdivision of this state may not require a payment for the use of municipal, county, or other public facilities in connection with a business or service provided by a license holder, except that a municipality may impose and collect:

(1) a reasonable charge for the use of a central alarm installation located in a police office that is owned, operated, or monitored by the municipality; and

(2) reasonable inspection and reinspection fees in connection with a device that causes at least five false alarms in a

12-month period.

(c) A municipality may require, until the device is repaired to the satisfaction of the appropriate municipal official, discontinuation of service of an alarm signal device that, because of mechanical malfunction or faulty equipment, causes at least five false alarms in a 12-month period.

(d) For the purposes of Subsection (c), a false alarm caused by human error or an act of God is not considered a mechanical malfunction or faulty equipment.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 781.151. REGISTRATION REQUIRED. An individual must register with the department if the individual:

(1) is employed as an alarm systems company, alarm systems installer, manager or branch office manager, or security salesperson who enters a client's residence at any time while performing the salesperson's responsibilities; or

(2) is an owner, officer, partner, or shareholder of a license holder and is responsible for managing the business of the license holder.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.152. ALARM SYSTEMS INSTALLER. An individual acts as an alarm systems installer for purposes of this chapter if the individual installs, maintains, or repairs a personal emergency response system.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.153. ALARM SYSTEMS MONITOR. (a) An individual acts as an alarm systems monitor for purposes of this chapter if the individual monitors a personal emergency response system.

(b) This section does not apply to an individual employed exclusively and regularly by an employer, other than a license

holder, in connection with the affairs of that employer and with whom the individual has an employee-employer relationship.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.154. SECURITY SALESPERSON. An individual acts as a security salesperson for purposes of this chapter if the individual:

(1) is employed by a security services contractor to sell services offered by the contractor; and

(2) enters a client's residence at any time during the person's employment.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.155. QUALIFICATIONS FOR REGISTRATION. (a) An individual must be at least 18 years of age to be registered.

(b) The department by rule may adopt additional qualifications for an individual to be registered under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.156. APPLICATION FOR REGISTRATION. (a) An application for registration must be verified and include:

(1) the applicant's full name, residence address, residence telephone number, date and place of birth, and social security number;

(2) a statement that:

(A) lists each name used by the applicant, other than the name by which the applicant is known at the time of application, and an explanation stating each place where each name was used, the date of each use, and a full explanation of the reasons the name was used; or

(B) states that the applicant has never used a name other than the name by which the applicant is known at the time of application;



(3) the name and address of the applicant's employer and, if applicable, the applicant's consulting firm;

(4) the date the employment commenced;

(5) a letter from the license holder requesting that the applicant be registered;

(6) the title of the position occupied by the applicant and a description of the applicant's duties; and

(7) any other information, evidence, statement, or document required by the department.

(b) The employer of the applicant shall make a reasonable attempt to verify the information required under Subsection (a)(1). Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

Sec. 781.201. CRIMINAL HISTORY CHECK. (a) The department shall conduct a criminal history check, including a check of any criminal history record information maintained by the Department of Public Safety, that relates to each applicant for a license or registration. An applicant is not eligible for a license or registration if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license or registration.

(b) A license or registration issued by the department is conditional on the department's receipt of criminal history record information.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL. Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the department or as otherwise required by state law or court order.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.203. FALSE REPRESENTATION. A person may not represent falsely that the person:

- (1) is employed by a license holder; or
- (2) is licensed or registered under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. (a) Except as provided by Subsection (b), a political subdivision may not offer alarm system sales, service, installation, or monitoring unless it was providing monitoring services to residences within the boundaries of the political subdivision on September 1, 1999. Any fee charged by the political subdivision may not exceed the cost of the monitoring.

(b) A political subdivision may:

(1) offer service, installation, or monitoring for property owned by the political subdivision or another political subdivision;

(2) allow for the response of an alarm or detection device by a law enforcement agency or by a law enforcement officer acting in an official capacity;

(3) offer monitoring in connection with a criminal investigation; or

(4) offer monitoring to a financial institution, as defined by Section 201.101, Finance Code, that requests, in writing, that the political subdivision provide monitoring service to the financial institution.

(c) The limitations of Subsection (a) do not apply to a political subdivision in a county with a population of less than 80,000 or to a political subdivision where monitoring is not otherwise provided or available.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

SUBCHAPTER F. EXPIRATION; RENEWAL

Sec. 781.251. EXPIRATION. (a) A license is valid for two years from the date of issuance. A license expires at midnight on the last day of the 23rd month after the month in which it is issued.

(b) Registration as a manager, branch office manager, alarm systems installer, or security salesperson expires on the second anniversary of the date of registration.

(c) Registration as an owner, officer, partner, or shareholder of a license holder expires on the second anniversary of the date of registration.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.252. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the department before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for longer than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(e) Not later than the 30th day before the date a person's license is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to the department's records.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date the person applies for renewal may obtain a new license. The person must pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. The department by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the expiration date of a license is changed, the department shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION. Renewal of a license does not prohibit the bringing of a disciplinary proceeding for an act committed before the effective date of the renewal.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.256. EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS. A suspended license expires on the license's expiration date and may be renewed as provided by this chapter. The renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in conduct in violation of the order or judgment by which the license was suspended.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1,

2005.

Sec. 781.257. REGISTRATION RENEWAL. (a) An individual who is otherwise eligible to renew a registration may renew an unexpired registration by paying the required renewal fee to the department before the expiration date of the registration. An individual whose registration has expired may not engage in activities that require a registration until the registration has been renewed.

(b) An individual whose registration has been expired for 90 days or less may renew the registration by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) An individual whose registration has been expired for more than 90 days but less than one year may renew the registration by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(d) An individual whose registration has been expired for one year or more may not renew the registration. The individual may obtain a new registration by complying with the requirements and procedures for obtaining an original registration.

(e) An individual who was registered in this state, moved to another state, and is currently registered and has been in practice in the other state for the two years preceding the date of application may obtain a new registration. The individual must pay to the department a fee that is equal to two times the normally required renewal fee for the registration.

(f) Not later than the 30th day before the expiration date of an individual's registration, the department shall send written notice of the impending expiration to the individual at the individual's last known address according to department records.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.258. CONTINUING EDUCATION. (a) The department may recognize, prepare, or administer continuing education programs for license holders and registrants. The department

shall set the minimum number of hours that must be completed and the types of programs that may be offered.

(b) A license holder or registrant must participate in the programs to the extent required by the department to keep the person's license or registration. A license holder or registrant shall submit evidence of compliance with the department's continuing education requirements in a manner prescribed by the department.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER G. EXCEPTIONS

Sec. 781.301. GOVERNMENT EMPLOYEES. This chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while the officer or employee is performing official duties.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.302. LAW ENFORCEMENT PERSONNEL. This chapter does not apply to:

(1) a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer:

(A) is employed in an employee-employer relationship or employed on an individual contractual basis;

(B) is not in the employ of another peace officer;

(C) is not a reserve peace officer; and

(D) works as a peace officer on the average of at least 32 hours a week, is compensated by the state or a political subdivision of the state at least at the minimum wage, and is entitled to all employee benefits offered to a peace officer by the state or political subdivision;

(2) a reserve peace officer while the reserve officer is performing guard, patrolman, or watchman duties for a county and

is being compensated solely by that county;

(3) a peace officer acting in an official capacity in responding to a burglar alarm or detection device; or

(4) a person engaged in the business of electronic monitoring of an individual as a condition of that individual's community supervision, parole, mandatory supervision, or release on bail, if the person does not perform any other service that requires a license under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.303. MEDICAL ALERT SERVICES. This chapter does not apply to an entity that is a hospital or a wholly owned subsidiary or an affiliate of a hospital licensed under Chapter 241.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 781.351. GROUNDS FOR DISCIPLINARY ACTION. (a) For a violation of this chapter or a rule adopted under this chapter, the department may:

(1) revoke or suspend the person's license or registration;

(2) place on probation the person if the person's license or registration has been suspended; or

(3) reprimand the license holder or registrant.

(b) The department shall take disciplinary action described by Subsection (a) on proof:

(1) that the applicant, license holder, or registrant has:

(A) violated this chapter or a department rule adopted under this chapter;

(B) been convicted of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of the conviction has occurred;

(C) engaged in fraud, deceit, or

misrepresentation; or

(D) made a material misstatement in an application for or renewal of a license or registration; or

(2) that the license holder of a registrant has submitted to the department sufficient evidence that the registrant:

(A) engaged in fraud or deceit while employed by the license holder; or

(B) committed theft while performing work as a registrant.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.352. HEARING. (a) If the department proposes to revoke or suspend a person's license or registration, the person is entitled to a hearing before a hearings officer appointed by the State Office of Administrative Hearings.

(b) The commissioner shall prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.353. ADMINISTRATIVE PROCEDURE. A proceeding under this chapter to suspend or revoke a license or registration is governed by Chapter 2001, Government Code.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.354. PROBATION. The department may require a person whose license or registration suspension is probated to:

(1) report regularly to the department on matters that are the basis of the probation;

(2) limit practice to areas prescribed by the department; or

(3) continue the person's professional education until the license or registration holder attains a degree of skill



satisfactory to the department in those areas that are the basis of the probation.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Subject to expiration of the license under Section 781.251, a license holder may continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER I. ENFORCEMENT

Sec. 781.401. INJUNCTION. The department shall prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.402. CIVIL PENALTY. (a) A person who violates this chapter or a rule adopted under this chapter is liable for a civil penalty not to exceed \$5,000 a day.

(b) At the request of the department, the attorney general may bring an action to recover a civil penalty authorized under this section.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.403. OFFENSE. (a) A person commits an offense if the person:

- (1) knowingly falsifies fingerprints or photographs

submitted to the department;

(2) contracts with or employs a person who is required to hold a license or registration under this chapter knowing that the person does not hold the required license or registration or who otherwise, at the time of contract or employment, is in violation of this chapter; or

(3) violates a provision of this chapter.

(b) An offense under Subsection (a)(1) is a felony of the third degree.

(c) An offense under Subsection (a)(2) is a Class A misdemeanor.

(d) An offense under Subsection (a)(3) is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter for failing to hold a license or registration that the person is required to hold under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.404. VENUE. An offense under this chapter may be prosecuted in Travis County or in the county in which the offense occurred.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

#### SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The amount of the administrative penalty may not be less than \$50 or more than \$5,000 for each violation. Each day a violation continues or occurs is a separate violation for the purpose of

imposing a penalty.

(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 economic harm caused by the violation;
- (3) the history of previous violations;
- (4) the amount necessary to deter a future violation;
- (5) efforts to correct the violation; and
- (6) any other matter that justice may require.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the commissioner or the commissioner's designee determines that a violation occurred, the commissioner or the designee may issue to the department a report stating:

- (1) the facts on which the determination is based; and
- (2) the commissioner's or the designee's recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the penalty.

(b) Within 14 days after the date the report is issued, the commissioner or the commissioner's designee shall give written notice of the report to the person. The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended administrative 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 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Within 10 days after the date the person receives the notice, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the commissioner or the commissioner's

designee; 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 of the commissioner or the commissioner's designee, the department by order shall approve the determination and impose the recommended penalty.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.455. HEARING. (a) If the person requests a hearing or fails to respond in a timely manner to the notice, the commissioner or the commissioner's designee shall set a hearing and give written notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

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

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.456. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for decision, the department by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(b) The notice of the department's order given to the person must include a statement of the right of the person to judicial review of the order.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Within 30 days after the date the department's order becomes

final, the person shall:

(1) pay the administrative penalty; or

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

(b) Within the 30-day period prescribed by Subsection (a), 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 department'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 or the commissioner's designee by certified mail.

(c) If the commissioner or the commissioner's designee receives a copy of an affidavit under Subsection (b)(2), the commissioner or the designee may file with the court, within five days after the date the copy is received, a contest to the affidavit.

(d) 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 and to give a supersedeas bond.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.458. COLLECTION OF PENALTY. (a) If the person does not pay the administrative 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 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.459. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative 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 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the administrative 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.

(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.

(d) 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.

(e) 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 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1, 2005.

Sec. 781.461. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is a contested case under Chapter 2001, Government

Code.

Added by Acts 2005, 79th Leg., Ch. 808, Sec. 9, eff. September 1,  
2005.