

HUMAN RESOURCES CODE

TITLE 6. SERVICES FOR THE ELDERLY

CHAPTER 103. DAY ACTIVITY AND HEALTH SERVICES

Sec. 103.001. PURPOSE. It is the purpose of this chapter to establish programs of quality day activity and health services that will enable persons with disabilities who have medical or functional impairments and elderly persons to maintain maximum independence and to prevent premature or inappropriate institutionalization. It is the purpose of this chapter to provide adequately regulated supervision for elderly persons and persons with disabilities while enabling them to remain in a family environment and affording the family a measure of normality in its daily activities. The legislature intends to provide for the development of policies and programs that will:

(1) provide alternatives to institutionalization;

(2) establish facilities for day activity and health services throughout the state that offer services and are accessible to economically disadvantaged persons; and

(3) prevent inappropriate institutionalization.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.364, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 6, eff. June 19, 2015.

Sec. 103.002. SHORT TITLE. This chapter may be cited as the Day Activity and Health Services Act.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 6, eff. June 19, 2015.

Sec. 103.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(1-a) "Day activity and health services facility" means a facility that provides services under a day activity and health services program on a daily or regular basis but not overnight to four or more elderly persons or persons with disabilities who are not related by blood, marriage, or adoption to the owner of the facility.

(2) "Day activity and health services program" means a structured, comprehensive program that is designed to meet the needs of adults with functional impairments through an individual plan of care by providing health, social, and related support services in a protective setting.

(3) "Department" means the Department of Aging and Disability Services.

(4) "Elderly person" means a person 65 years of age or older.

(4-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(4-b) "Facility" means a day activity and health services facility.

(5) "Person with a disability" means a person whose functioning is sufficiently impaired to require frequent medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

(6) "Person" means an individual, corporation, or association.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 264, Sec. 27, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 434, Sec. 2, eff. Jan. 1, 1994.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.365, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 7, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 17, eff.

September 1, 2017.

Sec. 103.004. DEPARTMENT AND EXECUTIVE COMMISSIONER DUTIES.

(a) The executive commissioner shall adopt rules for implementing this chapter.

(b) The executive commissioner shall set standards for:

(1) the health and welfare of persons attending a facility;

(2) the eligibility of persons to attend a facility;

(3) the scope of services provided by a facility;

(4) adequate supervision for persons attending a facility;

(5) the professional staff and other personnel at a facility;

(6) adequate and healthful food service, where it may be offered;

(7) procedures for consultation with family members, case workers, or other persons responsible for the welfare of a person attending a facility; and

(8) prohibiting racial discrimination.

(c) The department may contract with a political subdivision or a person for transporting persons to a facility.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.366, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.367, eff. April 2, 2015.

Sec. 103.0041. LICENSE REQUIRED. (a) A person may not operate a day activity and health services facility without a license issued under this chapter.

(b) A person commits an offense if the person violates Subsection (a) of this section. An offense under this subsection is a Class A misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 8, eff. June 19, 2015.

Sec. 103.005. LICENSING DUTIES. The executive commissioner shall:

(1) adopt rules for the licensing procedures for a licensed facility; and

(2) set standards for the safety and sanitation requirements for a licensed facility.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.102, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.368, eff. April 2, 2015.

Sec. 103.006. LICENSE. (a) The commission shall issue a license to operate a day activity and health services facility to a person who has met the application requirements and received approval after an on-site inspection.

(b) The license expires three years from the date of its issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during the three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(c) An applicant for a license under this chapter who has a health care provider license is entitled to have inspections and license renewal procedures coordinated so that one inspection may fulfill various licensing requirements.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 3, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.103, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 3, eff.

September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.369, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 9, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 18, eff. September 1, 2017.

Sec. 103.007. LICENSE APPLICATION. (a) An applicant for a license to operate a day activity and health services facility must file an application on a form prescribed by the commission together with a license fee of \$75.

(b) The applicant must provide evidence of:

(1) the ability to comply with the requirements of the commission;

(2) responsible management; and

(3) qualified professional staff and personnel.

(c) A person who operates a facility that is licensed under this chapter must file an application for a renewal license not later than the 45th day before the expiration date of the current license on a form prescribed by the commission together with a renewal fee of \$50.

(d) An applicant for a license renewal who submits an application later than the 45th day before the expiration date of the license is subject to a late fee in accordance with commission rules.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 4, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.104, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 809 (S.B. [1318](#)), Sec. 4, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 10, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 19, eff. September 1, 2017.

Sec. 103.0075. EARLY COMPLIANCE REVIEW. (a) The executive commissioner by rule shall adopt a procedure under which a person proposing to construct or modify a day activity and health services facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification. In adopting the procedure, the executive commissioner shall set reasonable deadlines by which the department must complete review of submitted plans.

(b) The department shall, within 30 days, review plans submitted under this section for compliance with the department's architectural requirements and inform the person in writing of the results of the review. If the plans comply with the department's architectural requirements, the department may not subsequently change the architectural requirements applicable to the project unless:

- (1) the change is required by federal law; or
- (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee adopted by the executive commissioner by rule for conducting a review under this section.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(90), eff. April 2, 2015.

(e) The review procedure provided by this section does not include review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

Added by Acts 2001, 77th Leg., ch. 339, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.370, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(90), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 11, eff. June 19, 2015.

Sec. 103.008. INSPECTIONS. (a) In addition to the inspection required under Section 103.006(a), the commission:

(1) shall inspect each facility every two years following the initial inspection required under Section 103.006(a); and

(2) may inspect a facility at other reasonable times as necessary to ensure compliance with this chapter.

(b) Any person may request an inspection of a facility by notifying the commission in writing of an alleged violation of a licensing requirement. The complaint shall be as detailed as possible and signed by the complainant. The commission shall:

(1) if the complaint alleges abuse, neglect, or exploitation, perform an inspection as soon as feasible but not later than the 14th day after the date the commission receives the complaint, unless after an investigation the complaint is found to be frivolous;

(2) if the complaint does not allege abuse, neglect, or exploitation, investigate the complaint not later than the 45th day after the date the commission receives the complaint;

(3) respond to a complainant in writing; and

(4) receive and investigate anonymous complaints.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.105, eff. Sept. 1, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 20, eff. September 1, 2017.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 22, eff. September 1, 2023.

Sec. 103.009. LICENSE DENIAL, SUSPENSION, OR REVOCATION.

(a) The department may deny, suspend, or revoke the license of an applicant or holder of a license who fails to comply with the rules or standards for licensing required by this chapter or has committed an act described by Sections 103.012(a)(2)-(7).

(b) The denial, suspension, or revocation of a license and

the appeal from that action are governed by the procedures for a contested case hearing under Chapter [2001](#), Government Code.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 434, Sec. 5, eff. Jan. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 8.106, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 3.17, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. [1720](#)), Sec. 32, eff. September 1, 2011.

Sec. 103.0091. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the day activity and health services facility residents.

(b) A district court, on petition of the department and on a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, may by injunction:

(1) prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;

(2) restrain or prevent the establishment or operation of a facility without a license issued under this chapter; or

(3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department.

(d) Venue for a suit brought under this section is in the county in which the facility is located or in Travis County.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.107, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 12, eff. June 19, 2015.

Sec. 103.0092. EMERGENCY SUSPENSION AND CLOSING ORDER.

(a) If the department finds a day activity and health services facility operating in violation of the standards prescribed by this chapter and the violations create an immediate threat to the health and safety of a resident in the facility, the department shall suspend the license or order immediate closing of all or part of the facility.

(b) The order suspending a license under Subsection (a) is immediately effective on written notice to the license holder or on the date specified on the order.

(c) The order suspending the license and ordering closure of all or part of a facility is valid for 10 days after the effective date.

Added by Acts 1993, 73rd Leg., ch. 434, Sec. 1, eff. Jan. 1, 1994.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.108, eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 13, eff. June 19, 2015.

Sec. 103.010. DISPOSITION OF FUNDS. (a) All fees collected under this chapter shall be deposited to the credit of the General Revenue Fund.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(91), eff. April 2, 2015.

Added by Acts 1983, 68th Leg., p. 1008, ch. 235, art. 4, Sec. 3(a), eff. Sept. 1, 1983.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(91), eff. April 2, 2015.

Sec. 103.011. RIGHTS OF THE ELDERLY. (a) In addition to other rights an individual attending a day activity and health services facility has as a citizen, an individual who is 55 years of

age or older has the rights prescribed by Chapter 102 of this code.

(b) The department shall require each day activity and health services facility to implement and enforce the applicable provisions of Chapter 102 of this code.

Added by Acts 1985, 69th Leg., ch. 117, Sec. 1(a), eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 1052, Sec. 7.06, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 434, Sec. 6, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 8.109, eff. Sept. 1, 1995. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 14, eff. June 19, 2015.

Sec. 103.012. ADMINISTRATIVE PENALTY. (a) The commission may assess an administrative penalty against a person who:

(1) violates this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(2) makes a false statement of a material fact that the person knows or should know is false:

(A) on an application for issuance or renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by the commission;

(3) refuses to allow a representative of the commission to inspect:

(A) a book, record, or file required to be maintained by a day activity and health services facility; or

(B) any portion of the premises of a day activity and health services facility;

(4) wilfully interferes with the work of a representative of the commission or the enforcement of this chapter;

(5) wilfully interferes with a representative of the commission preserving evidence of a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter;

(6) fails to pay a penalty assessed under this chapter

not later than the 30th day after the date the assessment of the penalty becomes final; or

(7) fails to notify the commission of a change of ownership before the effective date of the change of ownership.

(b) Except as provided by Section 103.013(c), the penalty may not exceed \$500 for each violation.

(c) Each day of a continuing violation constitutes a separate violation.

(d) The executive commissioner shall establish gradations of penalties in accordance with the relative seriousness of the violation.

(e) In determining the amount of a penalty, the commission shall consider any matter that justice may require, including:

(1) the gradations of penalties established under Subsection (d);

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created by the act to the health or safety of the public;

(3) the history of previous violations;

(4) the deterrence of future violations; and

(5) the efforts to correct the violation.

(f) A penalty assessed under Subsection (a)(6) is in addition to the penalty previously assessed and not timely paid.

(g) The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule, standard, or order adopted under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate facility to deter future violations. The system:

(1) must be comparable to the system used by the Centers for Medicare and Medicaid Services to categorize the scope and severity of violations for nursing homes; and

(2) may be modified, as appropriate, to reflect changes in industry practice or changes made to the system used by the Centers for Medicare and Medicaid Services.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01,

eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. [1720](#)), Sec. 33, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.371, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 15, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 21, eff. September 1, 2017.

Sec. 103.013. RIGHT TO CORRECT BEFORE IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The commission may not collect an administrative penalty from a day activity and health services facility under Section [103.012](#) if, not later than the 45th day after the date the facility receives notice under Section [103.014\(c\)](#), the facility corrects the violation.

(b) Subsection (a) does not apply to:

(1) a violation that the commission determines:

(A) represents a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) staffing, including staff training, ratio, and health;

(ii) administration of medication; or

(iii) emergency preparedness and response;

(D) constitutes an immediate threat to the health or safety of an elderly person or a person with a disability receiving services at a facility; or

(E) substantially limits the facility's capacity to provide care;

(2) a violation described by Sections [103.012\(a\)\(2\)-\(7\)](#);

(3) a violation of Section [103.011](#); or

(4) a second or subsequent violation of Section 326.002, Health and Safety Code, that occurs before the second anniversary of the date of the first violation.

(c) A day activity and health services facility that corrects a violation must maintain the correction. If the facility fails to maintain the correction until at least the first anniversary after the date the correction was made, the commission may assess and collect an administrative penalty for the subsequent violation. An administrative penalty assessed under this subsection is equal to three times the amount of the original penalty assessed but not collected. The commission is not required to provide the facility with an opportunity under this section to correct the subsequent violation.

(d) In this section:

(1) "Actual harm" means a negative outcome that compromises the physical, mental, or emotional well-being of an elderly person or a person with a disability receiving services at a facility.

(2) "Immediate threat to the health or safety of an elderly person or a person with a disability" means a situation that causes, or is likely to cause, serious injury, harm, or impairment to or the death of an elderly person or a person with a disability receiving services at a facility.

(3) "Pattern of violation" means repeated, but not pervasive, failures of a facility to comply with this chapter or a rule, standard, or order adopted under this chapter that:

(A) result in a violation; and

(B) are found throughout the services provided by the facility or that affect or involve the same elderly persons or persons with disabilities receiving services at the facility or the same facility employees.

(4) "Widespread in scope" means a violation of this chapter or a rule, standard, or order adopted under this chapter that:

(A) is pervasive throughout the services provided by the facility; or

(B) represents a systemic failure by the facility

that affects or has the potential to affect a large portion of or all of the elderly persons or persons with disabilities receiving services at the facility.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 4.01, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. [1720](#)), Sec. 33, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. [1999](#)), Sec. 16, eff. June 19, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. [2025](#)), Sec. 22, eff. September 1, 2017.

Sec. 103.014. REPORT RECOMMENDING ADMINISTRATIVE PENALTY; NOTICE. (a) The department shall issue a preliminary report stating the facts on which the department concludes that a violation of this chapter, a rule, standard, or order adopted under this chapter, or a term of a license issued under this chapter has occurred if the department has:

(1) examined the possible violation and facts surrounding the possible violation; and

(2) concluded that a violation has occurred.

(b) The report may recommend a penalty under Section [103.012](#) and the amount of the penalty.

(c) The department shall give written notice of the report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the charges;

(2) a statement of the amount of penalty recommended;

(3) a statement of whether the violation is subject to correction under Section [103.013](#) and, if the violation is subject to correction under that section, a statement of:

(A) the date on which the day activity and health services facility must file a plan of correction with the department that the department shall review and may approve, if satisfactory; and

(B) the date on which the plan of correction must be completed to avoid assessment of the penalty; and

(4) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(d) Not later than the 20th day after the date on which the notice under Subsection (c) is received, the person charged may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing.

(e) If the violation is subject to correction under Section 103.013, the day activity and health services facility shall submit a plan of correction to the department for approval not later than the 10th day after the date on which the notice under Subsection (c) is received.

(f) If the violation is subject to correction under Section 103.013 and the person reports to the department that the violation has been corrected, the department shall inspect the correction or take any other step necessary to confirm the correction and shall notify the person that:

(1) the correction is satisfactory and a penalty will not be assessed; or

(2) the correction is not satisfactory and a penalty is recommended.

(g) Not later than the 20th day after the date on which a notice under Subsection (f)(2) is received, the person charged with the violation may:

(1) give to the department written notice that the person agrees with the department's report and consents to the recommended penalty; or

(2) make a written request for a hearing as provided under department rules.

(h) If the person charged with the violation consents to the penalty recommended by the department or does not timely respond to a notice sent under Subsection (c) or (f)(2), the department shall assess the recommended penalty.

(i) If the department assesses the recommended penalty, the department shall give written notice of the decision to the person charged with the violation and the person shall pay the penalty.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.372, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1231 (S.B. 1999), Sec. 17, eff. June 19, 2015.

Sec. 103.015. ADMINISTRATIVE PENALTY HEARING. (a) An administrative law judge shall order a hearing and give notice of the hearing if a person assessed a penalty under Section 103.013(c) requests a hearing.

(b) The hearing shall be held before an administrative law judge.

(c) The administrative law judge shall make findings of fact and conclusions of law regarding the occurrence of a violation of this chapter, a rule or order adopted under this chapter, or a term of a license issued under this chapter.

(d) Based on the findings of fact and conclusions of law, and the recommendation of the administrative law judge, the department by order shall find:

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

(2) a violation has not occurred.

(e) Proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. 223), Sec. 4.01, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. 1720), Sec. 33, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.373, eff.

April 2, 2015.

Sec. 103.016. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY; INTEREST; REFUND. (a) The department shall give notice of the findings made under Section 103.015(d) to the person charged with a violation. If the department finds that a violation has occurred, the department shall give to the person charged written notice of:

- (1) the findings;
- (2) the amount of the administrative penalty;
- (3) the rate of interest payable with respect to the penalty and the date on which interest begins to accrue; and
- (4) the person's right to judicial review of the department's order.

(b) Not later than the 30th day after the date on which the department's order is final, the person assessed the penalty shall:

- (1) pay the full amount of the penalty; or
- (2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(c) Notwithstanding Subsection (b), the department may permit the person to pay a penalty in installments.

(d) If the person does not pay the penalty within the period provided by Subsection (b) or in accordance with Subsection (c), if applicable:

- (1) the penalty is subject to interest; and
- (2) the department may refer the matter to the attorney general for collection of the penalty and interest.

(e) Interest under Subsection (d)(1) accrues:

- (1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and
- (2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(f) If the amount of the penalty is reduced or the assessment of a penalty is not upheld on judicial review, the department shall:

- (1) remit to the person charged the appropriate amount

of any penalty payment plus accrued interest; or

(2) execute a release of the supersedeas bond if one has been posted.

(g) Accrued interest on the amount remitted by the department under Subsection (f)(1) shall be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the person charged with the violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 879 (S.B. [223](#)), Sec. 4.01, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 980 (H.B. [1720](#)), Sec. 33, eff. September 1, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 4.374, eff. April 2, 2015.