

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE H. PUBLIC HEALTH PROVISIONS

CHAPTER 161. PUBLIC HEALTH PROVISIONS

SUBCHAPTER A. IMMUNIZATIONS

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information:

(A) a health care provider who administers a vaccine is required to record in a medical record under 42 U.S.C. Section 300aa-25, as amended, including:

- (i) the date the vaccine is administered;
- (ii) the vaccine manufacturer and lot number of the vaccine;
- (iii) any adverse or unexpected events for a vaccine; and
- (iv) the name, the address, and if appropriate, the title of the health care provider administering the vaccine; and

(B) specified in rules adopted to implement Section [161.00705](#).

(1-a) "First responder" means:

(A) any federal, state, local, or private personnel who may respond to a disaster, including:

- (i) public health and public safety personnel;
- (ii) commissioned law enforcement personnel;
- (iii) fire protection personnel, including volunteer firefighters;
- (iv) emergency medical services personnel, including hospital emergency facility staff;
- (v) a member of the National Guard;
- (vi) a member of the Texas State Guard; or
- (vii) any other worker who responds to a disaster in the worker's scope of employment; or

(B) any related personnel that provide support services during the prevention, response, and recovery phases of a disaster.

(1-b) "Immediate family member" means the parent, spouse, child, or sibling of a person who resides in the same household as the person.

(1-c) "Individual's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(B) a guardian of the individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(C) an agent of the individual authorized under a durable power of attorney for health care.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations.

(3) "Electronically," as related to a communication authorized under this chapter, means by e-mail, text message, online communication, or another electronic method of communication approved by the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.01, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 803 (S.B. 1409), Sec. 1, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1280 (H.B. 1831), Sec. 4.03, eff. September 1, 2009.

Sec. 161.001. LIABILITY OF PERSON WHO ORDERS OR ADMINISTERS IMMUNIZATION. (a) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable for an

injury caused by the vaccine or immunizing agent if the immunization is required by department rule or is otherwise required by law or other rules.

(b) A person who administers or authorizes the administration of a vaccine or immunizing agent is not liable or responsible for the failure to immunize a child because of the failure or refusal of a parent, managing conservator, or guardian to consent to the vaccination or immunization required under this chapter. Consent to the vaccination or immunization must be given in the manner authorized by Chapter 32, Family Code.

(c) A person who fails to comply with Section 161.004 is not liable or responsible for that failure, and that failure does not create a cause of action.

(d) This section does not apply to a negligent act in administering the vaccine or immunizing agent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 43, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 165, Sec. 7.40, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0454, eff. April 2, 2015.

Sec. 161.002. INADMISSIBILITY OF IMMUNIZATION SURVEY INFORMATION. Information obtained from a physician's medical records by a person conducting an immunization survey for the department is not admissible as evidence in a suit against the physician that involves an injury relating to the immunization of an individual.

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

Sec. 161.003. IMMUNIZATION REMINDER NOTICES. (a) In a program administered by the department in which an immunization reminder notice is sent regarding the immunization of a child, the notice must be sent without discrimination based on the legitimacy of the child.

(b) The reminder notice must be addressed to an adult or parent and may not use:

(1) an indication of the marital status of the addressee; or

(2) the terms "Mr.," "Mrs.," "Miss," or "Ms."
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 161.004. STATEWIDE IMMUNIZATION OF CHILDREN.

(a) Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the immunization schedule adopted in department rules.

(b) Hospitals shall be responsible for:

(1) referring newborns for immunization at the time the newborn screening test is performed;

(2) reviewing the immunization history of every child admitted to the hospital or examined in the hospital's emergency room or outpatient clinic; and

(3) administering needed vaccinations or referring the child for immunization.

(c) Physicians shall be responsible for reviewing the immunization history of every child examined and administering any needed vaccinations or referring the child for immunization.

(d) A child is exempt from an immunization required by this section if:

(1) a parent, managing conservator, or guardian states that the immunization is being declined for reasons of conscience, including a religious belief; or

(2) the immunization is medically contraindicated based on the opinion of a physician licensed by any state in the United States who has examined the child.

(e) For purposes of this section, "child" means a person under 18 years of age.

(f) The executive commissioner shall adopt rules that are necessary to administer this section.

(g) A parent, managing conservator, or guardian may choose the health care provider who administers the vaccine or immunizing agent under this chapter.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 198, Sec. 2.162, eff. Sept. 1,

2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0455, eff. April 2, 2015.

Sec. 161.0041. IMMUNIZATION EXEMPTION AFFIDAVIT FORM.

(a) A person claiming an exemption from a required immunization based on reasons of conscience, including a religious belief, under Section 161.004 of this code, Section 38.001, 51.9192, or 51.933, Education Code, or Section 42.043, Human Resources Code, must complete an affidavit on a form provided by the department stating the reason for the exemption. This subsection does not apply to a person claiming the exemption using the Internet-based process under Section 51.9192(d-3), Education Code.

(b) The affidavit must be signed by the person claiming the exemption or, if the person is a minor, the person's parent, managing conservator, or guardian, and the affidavit must be notarized.

(c) A person claiming an exemption from a required immunization under this section may only obtain the affidavit form by submitting a written request for the affidavit form to the department.

(d) The department shall develop a blank affidavit form that contains a seal or other security device to prevent reproduction of the form. The affidavit form shall contain a statement indicating that the person or, if a minor, the person's parent, managing conservator, or guardian understands the benefits and risks of immunizations and the benefits and risks of not being immunized.

(e) The department shall maintain a record of the total number of affidavit forms sent out each year and shall report that information to the legislature each year. The department may not maintain a record of the names of individuals who request an affidavit under this section.

Added by Acts 2003, 78th Leg., ch. 198, Sec. 2.163, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 729 (S.B. 62), Sec. 2, eff.

October 1, 2013.

Sec. 161.005. IMMUNIZATIONS REQUIRED. (a) On admission of a child to a mental health facility of the department, a state supported living center of the Department of Aging and Disability Services, or a facility of the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, the facility physician shall review the immunization history of the child and administer any needed vaccinations or refer the child for immunization.

(b) The department and the executive commissioner have the same powers and duties under this section as the department and the executive commissioner have under Sections 38.001 and 51.933, Education Code. In addition, the provisions of those sections relating to provisional admissions and exceptions apply to this section.

(c) A facility covered by this section shall keep an individual immunization record during the individual's period of admission, detention, or commitment in the facility, and the records shall be open for inspection at all reasonable times by a representative of the local health department or the department.

(d) This section does not affect the requirements of Section 38.001 or 51.933, Education Code, or Section 42.043, Human Resources Code.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.
Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.41, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0456, eff. April 2, 2015.

Sec. 161.0051. REQUIRED IMMUNIZATIONS FOR NURSING HOMES.

(a) This section applies only to a nursing home that:

(1) is an institution licensed under Chapter 242; and
(2) serves residents who are elderly persons as defined by Section 242.002.

(b) The executive commissioner by rule may require nursing facilities to offer, in accordance with an immunization schedule

adopted in department rules, immunizations to elderly residents or to staff who are in contact with elderly residents against diseases that the executive commissioner determines to be:

- (1) caused by infectious agents;
- (2) potentially deadly; and
- (3) preventable by vaccine.

(c) The executive commissioner by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted in department rules:

- (1) pneumococcal vaccine to elderly residents; and
- (2) influenza vaccine to elderly residents and to staff who are in contact with elderly residents.

Added by Acts 1999, 76th Leg., ch. 259, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0457, eff. April 2, 2015.

Sec. 161.0052. IMMUNIZATION OF ELDERLY PERSONS BY HOSPITALS, END STAGE RENAL DISEASE FACILITIES, AND PHYSICIANS' OFFICES. (a) In this section:

(1) "Elderly person" means a person who is 65 years of age or older.

(2) "End stage renal disease facility" has the meaning assigned by Section 251.001.

(3) "Hospital" has the meaning assigned by Section 241.003.

(b) The executive commissioner by rule shall require a hospital to inform each elderly person admitted to the hospital for a period of 24 hours or more that the pneumococcal and influenza vaccines are available. If the elderly person requests a vaccine, and if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest, the hospital must make the vaccination available to the person before the person is discharged from the hospital.

(c) The executive commissioner by rule shall require an end stage renal disease facility to offer, to the extent possible as

determined by the facility, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the facility if a physician, or an advanced nurse practitioner or physician assistant on behalf of a physician, determines that the vaccine is in the person's best interest. If the facility decides it is not feasible to offer the vaccine, the facility must provide the person with information on other options for obtaining the vaccine.

(d) The Texas Medical Board by rule shall require a physician responsible for the management of a physician's office that provides ongoing medical care to elderly persons to offer, to the extent possible as determined by the physician, the opportunity to receive the pneumococcal and influenza vaccines to each elderly person who receives ongoing care at the office. If the physician decides it is not feasible to offer the vaccine, the physician must provide the person with information on other options for obtaining the vaccine.

(e) Rules adopted under this section must require that:

(1) a hospital, end stage renal disease facility, or physician's office:

(A) offer the influenza vaccine in October and November, and if the vaccine is available, December; and

(B) offer the pneumococcal vaccine year-round; and

(2) a person administering a vaccine:

(A) ask whether the elderly person is currently vaccinated against the influenza virus or pneumococcal disease, as appropriate;

(B) administer the vaccine under institution-approved or physician-approved protocols after making an assessment for contraindications; and

(C) permanently document the vaccination in the elderly person's medical records.

(f) In adopting rules under this section, the executive commissioner and the Texas Medical Board shall consider the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(g) Rules adopted under this section may consider the potential for a shortage of a vaccine.

(h) The department shall make available to hospitals and end stage renal disease facilities, and the Texas Medical Board shall make available to physicians' offices, educational and informational materials concerning vaccination against influenza virus and pneumococcal disease.

Added by Acts 2005, 79th Leg., Ch. 368 (S.B. 1330), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0458, eff. April 2, 2015.

Sec. 161.006. DEPARTMENT IMMUNIZATION SERVICE. The department, to the extent permitted by law, is authorized to pay employees who are exempt or not exempt for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business operations. Authorization for payment under this section is limited to work directly related to immunizations.

Added by Acts 1993, 73rd Leg., ch. 43, Sec. 3, eff. Sept. 1, 1993.

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO DEPARTMENT. (a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative about the registry and that registry information may be released under Section 161.00735;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative before any information relating to the individual is included in the registry;

(4) permit the individual or the individual's legally authorized representative to withdraw consent for the individual to be included in the registry; and

(5) determine the process by which consent is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-1) The written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. The written or electronic consent of the individual's parent, managing conservator, or guardian must be submitted to the department before the individual's 18th birthday. After consent is submitted, the individual's immunization information may be included in the registry until the individual becomes 26 years of age unless the consent is withdrawn in writing or electronically, or renewed after the individual's 18th birthday as provided by Subsection (a-2). A parent, managing conservator, or guardian of a minor may provide the consent by using an electronic signature on the minor's birth certificate.

(a-2) The written or electronic consent required by Subsection (a)(3) for an individual who is 18 years of age or older is required to be obtained only one time and must be received from the individual before the information may be released. An individual's legally authorized representative or the individual, after the individual has attained 18 years of age, may consent in writing or electronically for the individual's information to remain in the registry. The consent of the representative or individual is valid until the individual or the individual's legally authorized representative withdraws consent in writing or electronically. The department may not include in the registry the immunization information of an individual who is 26 years of age or older until written or electronic consent has been obtained as

provided by this subsection. The department shall coordinate with the Texas Education Agency to distribute materials described in Section 161.0095(a)(2) to students and parents through local school districts.

(a-3) The executive commissioner by rule shall develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than the department during the eight-year period during which an individual who is 18 years of age or older may consent to inclusion in the registry under Subsection (a-2).

(a-4) After an individual's 18th birthday, the department shall make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided by a parent, managing conservator, or guardian under Subsection (a-1). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider, school district, or institution of higher education. The notice must inform the individual that the individual's immunization records will be included in the registry until the date of the individual's 26th birthday unless the individual or the individual's legally authorized representative:

(1) withdraws consent in writing or electronically before that date; or

(2) provides consent for the records to continue to be included in the registry as provided by Subsection (a-2).

(a-5) After an individual's 25th birthday, the department shall make a reasonable effort to provide notice to an individual whose immunization information is included in the registry with consent that was provided under Subsection (a-1) and has not been renewed under Subsection (a-2). The reasonable effort shall include at least two attempts by the department to provide the notice required by this subsection by telephone or e-mail, by

regular mail to the individual's last known address, or by general outreach efforts through the individual's health care provider or institution of higher education. The notice must inform the individual that the individual's immunization records will be included in the immunization registry until the individual's 26th birthday unless the individual or the individual's legally authorized representative renews consent as provided by Subsection (a-2).

(a-6) The department shall make a reasonable effort to obtain current contact information for written or electronic notices sent by the department under Subsection (a-5) that are returned due to incorrect address information.

(b) Except as provided by Section [161.0071](#), the immunization registry must contain information on the immunization history that is obtained by the department under:

(1) this section of each individual for whom consent has been obtained in accordance with guidelines adopted under Subsection (a);

(2) Section [161.00705](#) of persons immunized to prepare for or in response to a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency;

(3) Section [161.00706](#) of first responders or their immediate family members; and

(4) Section [161.00735](#) of persons evacuated or relocated to this state because of a disaster.

(b-1) The department shall remove from the registry information for any individual for whom consent has been withdrawn. The department may not retain individually identifiable information about any individual:

(1) for whom consent has been withdrawn;

(2) for whom a consent for continued inclusion in the registry following the end of the declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency has not been received under Section [161.00705](#)(f);

(3) for whom a request to be removed from the registry

has been received under Section [161.00706\(e\)](#);

(4) for whom consent for continued inclusion in the registry following the end of a disaster has not been received under Section [161.00735\(f\)](#); or

(5) for whom a request to remove information from the registry has been received under Section [161.00735\(g\)](#).

(c) A payor that receives data elements from a health care provider who administers an immunization to an individual younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. A payor that receives data elements from a health care provider who administers an immunization to an individual 18 years of age or older may provide the data elements to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) A health care provider who administers an immunization to an individual younger than 18 years of age shall provide data elements regarding an immunization to the department. A health care provider who administers an immunization to an individual 18 years of age or older may submit data elements regarding an immunization to the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section [182.151](#). The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for an individual for whom consent cannot be verified. The notice shall contain

instructions for obtaining consent in accordance with guidelines adopted under Subsection (a) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to an individual or the individual's legally authorized representative regarding an individual who is due or overdue for a particular type of immunization according to the department's immunization schedule for children or another analogous schedule recognized by the department for individuals 18 years of age or older. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith immunization data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Sections 161.00705, 161.00706, 161.00735(b), and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative.

(k) The executive commissioner shall adopt rules to implement this section.

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.
Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.780, eff. Sept.

1, 2001; Acts 2003, 78th Leg., ch. 1081, Sec. 2.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.03, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. [346](#)), Sec. 2, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. [347](#)), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0459, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 764 (H.B. [2171](#)), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. [2641](#)), Sec. 6, eff. September 1, 2015.

Sec. 161.00705. RECORDING ADMINISTRATION OF IMMUNIZATION AND MEDICATION FOR DISASTERS AND EMERGENCIES. (a) The department shall maintain a registry of persons who receive an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral shall provide the data elements to the department. At the request and with the authorization of the health care provider, the data elements may be provided through a health information exchange as defined by Section [182.151](#).

(b) The department shall maintain the registry as part of the immunization registry required by Section [161.007](#).

(c) The department shall track adverse reactions to an immunization or antiviral administered to prepare for a potential disaster, public health disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency or in response to a declared disaster, public health disaster, terrorist attack, hostile military or paramilitary

action, or extraordinary law enforcement emergency. A health care provider who administers an immunization or antiviral may provide data related to adverse reactions to the department.

(d) Sections [161.007](#), [161.0071](#), [161.0072](#), and [161.0074](#) apply to the data elements submitted to the department under this section, unless a provision in those sections conflicts with a requirement in this section.

(e) The executive commissioner by rule shall determine the period during which the information collected under this section must remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) Unless an individual or the individual's legally authorized representative consents in writing or electronically to continued inclusion of the individual's information in the registry, the department shall remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e).

(g) The immunization information of a child or other individual received by the department under this section, including individually identifiable information, may be released only:

(1) on consent of the individual or, if a child, the child's parent, managing conservator, or guardian; or

(2) to a state agency or health care provider consistent with the purposes of this subchapter or the purposes of aiding or coordinating communicable disease prevention and control efforts during a declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(h) The report required under Section [161.0074](#) must also include the number of complaints received by the department related to the department's failure to remove information from the registry as required by Subsection (f).

(i) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.02,

eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 3, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0460, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 7, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 13, eff. June 16, 2021.

Sec. 161.00706. FIRST RESPONDER IMMUNIZATION INFORMATION.

(a) A person 18 years of age or older who is a first responder or an immediate family member of a first responder may:

(1) request that a health care provider who administers an immunization to the person provide data elements regarding the immunization to the department for inclusion in the immunization registry; or

(2) provide the person's immunization history directly to the department for inclusion in the immunization registry.

(b) A health care provider, on receipt of a request under Subsection (a)(1), shall submit the data elements to the department in a format prescribed by the department. At the request and with the authorization of the health care provider, the data elements may be submitted through a health information exchange as defined by Section 182.151. The department shall verify the person's request before including the information in the immunization registry.

(c) The executive commissioner shall:

(1) develop rules to ensure that immunization history submitted under Subsection (a)(2) is medically verified immunization information;

(2) develop guidelines for use by the department in informing first responders about the registry and that registry information may be released under Section 161.00735; and

(3) adopt rules necessary for the implementation of this section.

(d) Except as provided by Section [161.00735](#), a person's immunization history or data received by the department under this section may be released only on consent of the person or to any health care provider licensed or otherwise authorized to administer vaccines.

(e) A person whose immunization records are included in the immunization registry as authorized by this section may request in writing or electronically that the department remove that information from the registry. Not later than the 10th day after receiving a request under this subsection, the department shall remove the person's immunization records from the registry.

(f) The report required under Section [161.0074](#) must also include the number of complaints received by the department related to the department's failure to comply with requests for removal of information from the registry under Subsection (e).

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.02, eff. September 1, 2007.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. [346](#)), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. [347](#)), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0461, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. [2641](#)), Sec. 8, eff. September 1, 2015.

Sec. 161.00707. INFORMATION AND EDUCATION FOR FIRST RESPONDERS. The department shall develop a program for informing first responders about the immunization registry and educating first responders about the benefits of being included in the immunization registry, including:

(1) ensuring that first responders receive necessary immunizations to prevent the spread of communicable diseases to which a first responder may be exposed during a public health emergency, declared disaster, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement

emergency; and

- (2) preventing duplication of vaccinations.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.02, eff. September 1, 2007.

Sec. 161.00708. ACCESS TO FIRST RESPONDER IMMUNIZATION HISTORY. (a) The department shall establish a process to provide an employer of a first responder with direct access to the first responder's immunization information in the immunization registry for verification of the first responder's immunization history. The process must require a first responder to provide electronic or written consent before the employer is granted direct access to the first responder's immunization information in the immunization registry. A first responder may withdraw consent at any time.

(b) The department may establish a process to provide a first responder with access to the first responder's immunization information in the immunization registry.

Added by Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. [1256](#)), Sec. 1, eff. September 1, 2019.

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual for whom the department has received consent to be included in the registry, the department shall send notice to the individual or the individual's legally authorized representative disclosing:

- (1) that providers and payors may be sending the individual's immunization information to the department;

- (2) the information that is included in the registry;

- (3) the persons to whom the information may be released under Sections [161.00735\(b\)](#) and [161.008\(d\)](#);

- (4) the purpose and use of the registry;

- (5) the procedure to exclude an individual from the registry; and

- (6) the procedure to report a violation if an individual's information is included in the registry after

exclusion has been requested or consent has been withdrawn.

(b) On discovering that consent to be included in the registry has not been granted or has been withdrawn, the department shall exclude the individual's immunization records from the registry and any other registry-related department record that individually identifies the individual.

(c) On receipt of a written or electronic request to exclude an individual's immunization records from the registry, the department shall send to the individual or the individual's legally authorized representative who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the individual's records from the registry.

(d) The department commits a violation if the department fails to exclude an individual's immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written or electronic statement from an individual or the individual's legally authorized representative communicating to the department that an individual's information should be excluded from the registry, including a statement on a minor's birth certificate, as a request for exclusion under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 3, eff. September 1, 2009.

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative has reasonable concern that the individual's health care provider is not submitting the immunization history to the department, the individual or the individual's legally authorized representative may provide the individual's immunization history directly to the department to be included in the immunization registry.

(b) The individual or the individual's legally authorized

representative may send evidence of the individual's immunization history to the department electronically, by facsimile transmission, or by mail. The evidence may include a copy of:

(1) the individual's medical record indicating the immunization history;

(2) an invoice from a health care provider for the immunization; or

(3) documentation showing that a claim for the immunization was paid by a payor.

(c) The executive commissioner shall develop rules to ensure that the immunization history submitted by an individual or the individual's legally authorized representative is medically verified immunization information.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 6, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0462, eff. April 2, 2015.

Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) Except as provided by Sections 161.00705 and 161.00735, information that individually identifies an individual that is received by the department for the immunization registry is confidential and may be used by the department for registry purposes only.

(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the individual or the individual's legally authorized representative.

(c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information of an individual to any other person without the written or electronic consent of the individual or the individual's legally authorized representative, except as provided by Sections 161.007, 161.00705, 161.00706, and 161.008 of this code, Chapter 159, Occupations Code, or Section 602.053, Insurance

Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.127, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. 11), Sec. 12.04, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 7, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 4, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. 2641), Sec. 9, eff. September 1, 2015.

Sec. 161.00735. RELEASE AND RECEIPT OF REGISTRY DATA IN DISASTER. (a) In this section, "disaster" means a disaster declared by the president of the United States, the governor of this state, or the governor of another state.

(b) If the department determines that residents of this state have evacuated or relocated to another state in response to a disaster, the department may release registry data, except registry data obtained under Section 161.00705, to the appropriate health authority of that state or to local health authorities in that state.

(c) The department may receive immunization information from a health authority of another state or from a local health authority in another state if the department determines that residents of that state have evacuated or relocated to this state in response to a disaster. The department shall include information received under this subsection in the registry. Notwithstanding Section 161.007, the department is not required to obtain written

consent for the inclusion in the registry of information received under this subsection.

(d) Immunization information received under Subsection (c) is subject to Section 161.0073, and may not be released except as authorized by this chapter.

(e) The executive commissioner by rule shall determine the period during which the information collected under Subsection (c) must remain in the immunization registry following the end of the disaster.

(f) Unless an individual or, if a child, the child's parent, managing conservator, or guardian consents in writing to continued inclusion of the individual's or child's information in the registry, the department shall remove the immunization records collected under Subsection (c) from the registry on the expiration of the period prescribed by Subsection (e).

(g) If an individual or, if a child, the child's parent, managing conservator, or guardian requests in writing that the individual's or child's information obtained under Subsection (c) be removed from the registry, the department shall remove that information from the registry.

(h) The executive commissioner shall make every effort to enter into a memorandum of agreement with each state to which residents of this state are likely to evacuate in a disaster on:

(1) the release and use of registry information under this section to the appropriate health authority or local health authority of that state, including the length of time the information may be retained by that state; and

(2) the receipt and use of information submitted by the health authority or local health authority of that state for inclusion in the registry under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. 347), Sec. 5, eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0463, eff. April 2, 2015.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department

shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization; and

(10) include ways to increase provider participation in the registry.

(11) Expired.

(d) If a public health disaster was declared under Chapter 81 during the preceding two years, in addition to the information required under Subsection (c), for immunizations that immunize an individual against the communicable disease subject to the

declaration the report must:

(1) include information by county on the accessibility to the immunizations of county residents by age, race, and geographic location, provided the information does not personally identify any individual;

(2) identify and assess disparities in access to the immunizations by age, race, and geographic location, including an assessment of immunization accessibility in each county;

(3) include the estimated economic benefit to this state of reducing disparities in immunization accessibility;

(4) include recommendations for reducing disparities in immunization accessibility; and

(5) include recommendations for legislative action to increase immunization rates.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. [1353](#)), Sec. 1, eff. June 14, 2021.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. [970](#)), Sec. 7, eff. September 1, 2021.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section [161.009](#), the following persons subject to this subchapter that act in compliance with Sections [161.007](#), [161.00705](#), [161.00706](#), [161.0071](#), [161.0073](#), [161.0074](#), and [161.008](#) are not civilly or criminally liable for furnishing the information required under this subchapter:

(1) a payor;

(2) a health care provider who administers immunizations; and

(3) an employee of the department.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.05, eff. September 1, 2007.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the

provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

Added by Acts 2003, 78th Leg., ch. 1081, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.008. IMMUNIZATION RECORD. (a) An immunization record is part of the immunization registry.

(b) An immunization record contains the:

- (1) name and date of birth of the person immunized;
- (2) dates of immunization;
- (3) types of immunization administered; and
- (4) name and address of the health care provider administering the immunization.

(b-1) An immunization record provided by a health care provider as required by Section 161.00705 for inclusion in the immunization registry during a public health disaster declared under Chapter 81 must contain the race, age, ethnicity, and county of residence of the individual immunized. This subsection applies only to immunizations that immunize an individual against the communicable disease subject to the declaration.

(c) The department may obtain the data constituting an immunization record for an individual from a public health district, a local health department, the individual or the individual's legally authorized representative, a physician to the individual, a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual for whom consent cannot be verified.

(d) The department may release the data constituting an immunization record for the individual to:

- (1) any entity that is described by Subsection (c);
- (2) a school or child care facility in which the

individual is enrolled;

(3) a state agency having legal custody of the individual; or

(4) an employer of a first responder or a first responder in accordance with Section [161.00708](#).

(e) An individual or the individual's legally authorized representative may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning the individual.

(f) A person, including a health care provider, a payor, or an employee of the department, that submits in good faith an immunization history or data to or obtains in good faith an immunization history or data from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual.

(h) The executive commissioner shall adopt rules to implement this section.

(i) At the request and with the authorization of the applicable health care provider, immunization history or data may be submitted to or obtained by the department through a health information exchange as defined by Section [182.151](#).

Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997.

Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 4, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. [346](#)), Sec. 8, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0464, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1085 (H.B. [2641](#)), Sec. 10, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 259 (H.B. [1256](#)), Sec. 2, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 611 (S.B. [1353](#)), Sec. 2, eff.

June 14, 2021.

Sec. 161.0085. COVID-19 VACCINE PASSPORTS PROHIBITED.

(a) In this section, "COVID-19" means the 2019 novel coronavirus disease.

(b) A governmental entity in this state may not issue a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publish or share any individual's COVID-19 immunization record or similar health information for a purpose other than health care.

(c) A business in this state may not require a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. A business that fails to comply with this subsection is not eligible to receive a grant or enter into a contract payable with state funds.

(d) Notwithstanding any other law, each appropriate state agency shall ensure that businesses in this state comply with Subsection (c) and may require compliance with that subsection as a condition for a license, permit, or other state authorization necessary for conducting business in this state.

(e) This section may not be construed to:

(1) restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health; or

(2) interfere with an individual's right to access the individual's personal health information under federal law.

Added by Acts 2021, 87th Leg., R.S., Ch. 863 (S.B. 968), Sec. 14, eff. June 16, 2021.

Sec. 161.009. PENALTIES FOR DISCLOSURE OF INFORMATION. (a)

A person commits an offense if the person:

(1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;

(2) fails to exclude an individual's immunization information in violation of Section [161.0071](#);

(3) fails to remove a person's immunization information in violation of Section [161.00705](#), [161.00706](#), or [161.00735](#); or

(4) negligently uses information in the immunization registry to solicit new patients or clients or for other purposes that are not associated with immunization or quality-of-care purposes, unless authorized under this section.

(b) An offense under this section is a Class A misdemeanor. Added by Acts 1997, 75th Leg., ch. 900, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1081, Sec. 5.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.06, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. [346](#)), Sec. 9, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 35 (S.B. [347](#)), Sec. 6, eff. September 1, 2009.

Sec. 161.0095. EDUCATION PROGRAMS AND INFORMATION. (a) The department shall develop:

(1) continuing education programs for health care providers relating to immunizations and the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s; and

(2) educational information, for health care providers, health care clinics, hospitals, and any other health care facility that provides health care to children 14 to 18 years of age, relating to the immunization registry and the option for an individual who is 18 years of age or older to consent to submission and retention of the individual's information in the immunization registry.

(b) The department shall establish a work group to assist the department in developing the continuing education programs and educational information. The work group shall include physicians, nurses, department representatives, representatives of managed

care organizations that provide health care services under Chapter 533, Government Code, representatives of health plan providers that provide health care services under Chapter 62, and members of the public.

Added by Acts 2003, 78th Leg., ch. 613, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 9 (S.B. 346), Sec. 10, eff. September 1, 2009.

Sec. 161.010. IMMUNIZATION EDUCATION; STATEWIDE COALITION. (a) The department shall establish a continuous statewide education program to educate the public about the importance of immunizing children and the risks and contraindications of an immunization.

(b) The department shall increase coordination among public and private local, regional, and statewide entities that have an interest in immunizations.

Added by Acts 2003, 78th Leg., ch. 125, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.0101. INCREASE IMMUNIZATION AWARENESS. (a) The department shall develop new public-private partnerships and work with existing public-private partnership programs, including the Seniors and Volunteers Program For Childhood Immunization, to increase public and private awareness of and support for early childhood immunizations.

(b) The department shall work with the Texas Education Agency to increase immunization awareness and participation among parents of preschool and school-age children by:

(1) jointly applying for federal funds for immunization awareness and vaccination programs; and

(2) creating partnerships with public and private health, service, and education organizations, including parent-teacher associations, the United Way, schools, local businesses, community-based organizations, chambers of commerce, and athletic booster clubs, to increase awareness and participation in the state's early childhood vaccination program.

(c) The department shall work to increase immunization

awareness and participation among parents of children in child-care facilities, as defined by Section 42.002, Human Resources Code, in the state's early childhood vaccination program by publishing on the department's website information about the benefits of annual immunization against influenza for children aged six months to five years. The department shall work with the Department of Family and Protective Services and with child-care facilities to ensure that the information is annually distributed to parents in August or September.

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.

Renumbered from Health and Safety Code, Section 161.010 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(44), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 922 (H.B. 3184), Sec. 1, eff. June 15, 2007.

Sec. 161.0102. VACCINES FOR CHILDREN PROGRAM; INFLUENZA VACCINES. (a) In this section, "vaccines for children program" means the program operated by the department under authority of 42 U.S.C. Section 1396s, as amended.

(b) The department shall allow each health care provider participating in the vaccines for children program to:

(1) select influenza vaccines from the list of all influenza vaccines that:

(A) are approved by the United States Food and Drug Administration and recommended by the federal Advisory Committee on Immunization Practices; and

(B) are either:

(i) within the limits of the vaccines annually allocated by the Centers for Disease Control and Prevention of the United States Public Health Service to the department for the vaccines for children program; or

(ii) not offered in the annual allocation under Subparagraph (i), but are available from the Centers for Disease Control and Prevention of the United States Public Health Service and for which the Centers for Disease Control and

Prevention awards to the department additional funds; and

(2) use both inactivated influenza vaccines and live, attenuated influenza vaccines.

Added by Acts 2007, 80th Leg., R.S., Ch. 397 (S.B. 811), Sec. 1, eff. June 15, 2007.

Sec. 161.01035. PROVIDER CHOICE SYSTEM. (a) The department shall implement a provider choice system for the vaccines for children program operated by the department under authority of 42 U.S.C. Section 1396s and the adult safety net vaccination program.

(b) The department shall ensure that eligible health care providers participating in the vaccines for children program or the adult safety net vaccination program may select any licensed vaccine, including combination vaccines and any dosage forms that:

(1) are recommended by the federal Advisory Committee on Immunization Practices;

(2) are made available to the department by the Centers for Disease Control and Prevention of the United States Public Health Service; and

(3) for adult vaccines, are on the department-approved list of vaccines offered by the adult safety net vaccination program.

(c) For the purposes of this section, "equivalent vaccines" means two or more vaccines, excluding the influenza vaccine, that meet all of the following:

(1) protect a recipient of a vaccine against the same infection or infections;

(2) require the same number of doses;

(3) have similar safety and efficacy profiles; and

(4) are recommended for comparable populations by the Centers for Disease Control and Prevention of the United States Public Health Service.

(d) The department shall provide a vaccine selected by a health care provider under Subsection (b) only if the cost to the department of providing the vaccine is not more than 115 percent of the lowest-priced equivalent vaccine.

(e) This section does not apply in the event of a disaster or

public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f) The department shall convene the immunization work group established under Section [161.0095](#) and solicit its recommendations regarding development of a plan for the implementation of the provider choice system under this section. The plan shall include the education of participating health care providers about:

(1) procedures and distribution systems of the Centers for Disease Control and Prevention of the United States Public Health Service; and

(2) vaccine options, the enrollment process, ordering, accountability, and reporting procedures.

Added by Acts 2009, 81st Leg., R.S., Ch. 258 (H.B. [448](#)), Sec. 1, eff. September 1, 2009.

Sec. 161.0104. DISASTER PREPARATION. The department shall consult with public health departments and appropriate health care providers to identify adult immunizations that may be necessary to respond to or prepare for a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

Added by Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.07, eff. September 1, 2007.

Renumbered from Health and Safety Code, Section [161.0102](#) by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. [1969](#)), Sec. 27.001(52), eff. September 1, 2009.

Sec. 161.0105. LIMITATION ON LIABILITY. (a) A health care provider who acts in compliance with Sections [161.007](#), [161.00705](#), [161.00706](#), and [161.008](#) and any rules adopted under those sections is not civilly or criminally liable for furnishing the information required under those sections. This subsection does not apply to criminal liability established under Section [161.009](#).

(b) A person who administers a vaccination under a department program may be held liable only to the extent the person would be liable if the person administered the vaccination outside

the program. The person is not liable for damages arising from the acts or omissions of another person acting under the program or the department.

(c) The immunity created by this section is in addition to any immunity created by Sections [161.001](#) and [161.007\(i\)](#).

Added by Acts 2003, 78th Leg., ch. 844, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 258 (S.B. [11](#)), Sec. 12.08, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0465, eff. April 2, 2015.

Sec. 161.0106. RESPIRATORY SYNCYTIAL VIRUS; IMMUNIZATION. As part of the education programs under Sections [161.0095](#) and [161.010](#), the department shall include information about:

(1) respiratory syncytial virus and the importance of preventative activities for children at risk of contracting the virus;

(2) respiratory syncytial virus prophylaxis for children who are at high risk of complications from the disease; and

(3) immunization for respiratory syncytial virus when a vaccine is recommended and available.

Added by Acts 2005, 79th Leg., Ch. 115 (S.B. [1211](#)), Sec. 1, eff. September 1, 2005.

Sec. 161.0107. ELECTRONIC MEDICAL RECORDS SYSTEMS. (a) In this section:

(1) "Electronic medical records software package or system" means an electronic system for maintaining medical records in the clinical setting.

(2) "Medical records" has the meaning assigned by Section [151.002](#), Occupations Code.

(b) A person who sells, leases, or otherwise provides an electronic medical records software package or system to a person who administers immunizations in this state or to an entity that manages records for the person shall provide, as part of the electronic medical records software package or system, the ability

to:

(1) electronically interface with the immunization registry created under this subchapter; and

(2) generate electronic reports that contain the fields necessary to populate the immunization registry.

(c) The executive commissioner by rule shall specify:

(1) the fields necessary to populate the immunization registry, including a field that indicates the patient's consent to be listed in the immunization registry has been obtained; and

(2) the data standards that must be used for electronic submission of immunization information.

(d) The data standards specified under Subsection (b) must be compatible with the standards for immunization information transmission adopted by the Healthcare Information Technology Standards Panel sponsored by the American National Standards Institute and included in certification criteria by the Certification Commission for Healthcare Information Technology.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0466, eff. April 2, 2015.

Sec. 161.0108. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 161.0107.

(b) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Added by Acts 2007, 80th Leg., R.S., Ch. 352 (S.B. 204), Sec. 1, eff. June 15, 2007.

Sec. 161.0109. HUMAN PAPILOMAVIRUS; VACCINES EDUCATION MATERIALS. (a) The department, using existing resources, shall produce and distribute informational materials regarding vaccines against human papillomavirus that are approved by the United States

Food and Drug Administration for human use. The materials must include information relating to the effectiveness, availability, and contraindications of the vaccines. The materials must be available in English and in Spanish.

(b) The department shall collaborate with the Cancer Prevention and Research Institute of Texas or its successor entity to develop educational programs for parents regarding human papillomavirus and promoting awareness of a minor's need for preventive services for cervical cancer and its precursors.

(c) The department shall develop and maintain an Internet website that targets the public and health care professionals and provides accurate, comprehensive information on all aspects of cervical cancer prevention, including vaccination against human papillomavirus.

Added by Acts 2007, 80th Leg., R.S., Ch. 59 (H.B. 1379), Sec. 1, eff. September 1, 2007.

Renumbered from Health and Safety Code, Section 161.0107 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(53), eff. September 1, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0467, eff. April 2, 2015.

SUBCHAPTER B. HEALTH INSPECTION OF PRIVATE RESIDENCE

Sec. 161.011. PERMISSION REQUIRED. A person, including an officer or agent of this state or of an instrumentality or political subdivision of this state, may not enter a private residence to conduct a health inspection without first receiving:

(1) permission obtained from a lawful adult occupant of the residence; or

(2) an authorization to inspect the residence for a specific public health purpose by a magistrate or by an order of a court of competent jurisdiction on a showing of a probable violation of a state health law, a control measure under Chapter 81, or a health ordinance of a political subdivision.

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

by Acts 2003, 78th Leg., ch. 198, Sec. 2.189, eff. Sept. 1, 2003.

Sec. 161.012. CRIMINAL PENALTIES. (a) A person commits an offense if the person violates Section 161.011. An offense under this subsection is punishable by confinement in the Texas Department of Criminal Justice for not more than two years, a fine of not more than \$1,000, or both.

(b) A person commits an offense if the person knowingly gives evidence obtained in violation of Section 161.011 to the federal government or to an instrumentality of the federal government. An offense under this subsection is punishable by confinement in the county jail for not more than one year, a fine of not more than \$500, or both.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.092, eff. September 1, 2009.

SUBCHAPTER C. PROVISION OF INFORMATION RELATING TO CERTAIN HEALTH CONDITIONS

Sec. 161.021. AUTHORIZATION TO PROVIDE INFORMATION; USE OF INFORMATION; LIABILITY. (a) Unless prohibited by other law, a person, including a hospital, sanatorium, nursing facility, rest home, medical society, cancer registry, or other organization, may provide interviews, reports, statements, memoranda, or other information relating to the condition and treatment of any person, to be used in a study to reduce morbidity or mortality or to identify persons who may need immunization, to:

- (1) the department;
- (2) a person that makes inquiries under immunization surveys conducted for the department;
- (3) a medical organization;
- (4) a hospital;
- (5) a hospital committee; or
- (6) a cancer registry, including a cancer registry of a cancer treatment center.

- (b) A person is not liable for damages or other relief for:
- (1) providing the information;
 - (2) releasing or publishing the findings or conclusions to advance medical research or medical education; or
 - (3) releasing or publishing a general summary of those studies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 3, eff. May 27, 1997; Acts 1999, 76th Leg., ch. 1411, Sec. 23.03, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0468, eff. April 2, 2015.

Sec. 161.0211. EPIDEMIOLOGIC OR TOXICOLOGIC INVESTIGATIONS. (a) Under its duty to protect the public health, the department shall conduct epidemiologic or toxicologic investigations of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health.

(b) The department may conduct those investigations to determine the nature and extent of the disease or environmental exposure believed to be harmful to the public health. Any findings or determinations from such investigations that relate to environmental exposures believed to be harmful to the public shall be reported in writing to the Texas Commission on Environmental Quality, and the two agencies shall coordinate corrective measures as appropriate. The department shall use generally accepted methods of epidemiology or toxicology in the conduct of an investigation.

(c) A person shall provide medical, demographic, epidemiologic, toxicologic, or environmental information to the department as described by Section 81.061(c).

(d) A person is not liable for damages or other relief for providing medical or other confidential information to the department during an epidemiologic or toxicologic investigation.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 65, eff. September 1, 2013.

Sec. 161.0212. RIGHT OF ENTRY. To conduct an epidemiologic or toxicologic investigation, the commissioner or the commissioner's designee has the same authority to investigate, sample, inspect, and enter as that described by Sections 81.061, 81.063, 81.064, and 81.065.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Sec. 161.0213. CONFIDENTIALITY. Reports, records, and information furnished to the commissioner or the commissioner's designee or the Texas Commission on Environmental Quality that relate to an epidemiologic or toxicologic investigation of human illnesses or conditions and of environmental exposures that are harmful or believed to be harmful to the public health are not public information under Chapter 552, Government Code, and are subject to the same confidentiality requirements as described by Section 81.046.

Added by Acts 1993, 73rd Leg., ch. 34, Sec. 1, eff. Sept. 1, 1993.

Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), eff. Sept. 1, 1995.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0469, eff. April 2, 2015.

Sec. 161.022. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) The department, a medical organization, a hospital, a hospital committee, or a cancer registry may use or publish information under Section 161.021 only to advance medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of the studies may be released by those persons for general publication.

(b) The identity of a person whose condition or treatment has been studied is confidential and may not be revealed except in immunization surveys conducted for the department to identify persons who need immunization.

(c) Interviews, reports, statements, memoranda, and other information, other than immunization information, furnished under this chapter and any findings or conclusions resulting from the study of that information, are privileged.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 343, Sec. 4, eff. May 27, 1997.

Sec. 161.023. NO LIABILITY FOR REPORTS TO MEDICAL COMMITTEE. (a) This section applies to:

(1) a physician, hospital, medical organization, university health science center, university medical school, or an officer or employee of that person or entity; and

(2) a health maintenance organization or an officer, employee, or agent of the health maintenance organization, including an independent practice association or other physician association contracting with the health maintenance organization.

(b) A person or entity covered by this section is not liable for damages to any person for furnishing information, reports, or records to a medical committee relating to a patient:

(1) examined or treated by the physician; or

(2) treated or confined in:

(A) the hospital;

(B) a clinic or facility staffed or operated by a university health science center or university medical school; or

(C) a hospital, clinic, or facility staffed, operated, or used by a health maintenance organization.

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

Sec. 161.024. APPLICATION TO HEALTH MAINTENANCE ORGANIZATION. This subchapter does not apply to a function of a health maintenance organization other than medical peer review and quality assurance conducted under Chapter 843, Insurance Code, the rules adopted under that chapter, or other applicable state and federal statutes and rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.524, eff. Sept. 1, 2003.

SUBCHAPTER D. MEDICAL COMMITTEES, MEDICAL PEER REVIEW COMMITTEES,
AND COMPLIANCE OFFICERS

Sec. 161.031. MEDICAL COMMITTEE DEFINED. (a) In this subchapter, "medical committee" includes any committee, including a joint committee, of:

- (1) a hospital;
- (2) a medical organization;
- (3) a university medical school or health science center;
- (4) a health maintenance organization licensed under Chapter 843, Insurance Code, including an independent practice association or other physician association whose committee or joint committee is a condition of contract with the health maintenance organization;
- (5) an extended care facility;
- (6) a hospital district; or
- (7) a hospital authority.

(b) The term includes a committee appointed ad hoc to conduct a specific investigation or established under state or federal law or rule or under the bylaws or rules of the organization or institution.

(c) The term includes a committee, including a joint committee, of one or more health care systems if each health care system includes one or more of the entities listed in Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 655, Sec. 1, eff. June 11, 1997; Acts 1999, 76th Leg., ch. 908, Sec. 3, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.525, eff. Sept. 1, 2003.

Sec. 161.0315. AUTHORITY OF GOVERNING BODY TO FORM COMMITTEE TO EVALUATE MEDICAL AND HEALTH CARE SERVICES. (a) The governing body of a hospital, medical organization, university medical school or health science center, health maintenance organization, extended care facility, hospital district, or hospital authority may form a medical peer review committee, as

defined by Section [151.002](#), Occupations Code, or a medical committee, as defined by Section [161.031](#), to evaluate medical and health care services, except as provided by this section.

(b) Except as provided by Subsection (d), a medical peer review committee or medical committee formed by the governing body of a hospital district may not evaluate medical and health care services provided by a health care facility that:

(1) contracts with the district to provide those services; and

(2) has formed a medical peer review committee or medical committee to evaluate the services provided by the facility.

(c) A hospital district may require in a contract with a health care facility described by Subsection (b) a provision that allows the governing body of the district to appoint a specified number of members to the facility's medical peer review committee or medical committee to evaluate medical and health care services for which the district contracts with the facility to provide. The governing body of a hospital district may receive a report from the facility's medical peer review committee or medical committee under this section in a closed meeting. A report, information, or a record that the district receives from the facility related to a review action conducted under the terms of the contract is:

(1) confidential;

(2) not subject to disclosure under Chapter [552](#), Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section [160.007](#), Occupations Code, is subject.

(d) If a hospital district and a health care facility described by Subsection (b) do not agree on a contract provision described by Subsection (c), the hospital district has, with respect to a review action for the evaluation of medical and health care services provided by the facility under a contract with the district, a right to:

(1) initiate the review action;

(2) appoint from the medical staff of the facility a number of members to the facility's medical peer review committee or medical committee equal to the number of members appointed to the committee by the facility to conduct the review action, without regard to whether the district initiates the action; and

(3) receive records, information, or reports from the medical peer review committee or medical committee related to the review action.

(e) The governing body of a hospital district may receive a report under Subsection (d)(3) in a closed meeting. A report, information, or a record that the hospital district receives under Subsection (d)(3) is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

(f) A medical peer review committee or medical committee formed by the governing body of a hospital district may compile a report, information, or record of the medical and health care services provided by a health care facility described by Subsection (b) and submit the compilation to the facility's medical peer review committee or medical committee. A report, information, or record compiled under this subsection is:

(1) confidential;

(2) not subject to disclosure under Chapter 552, Government Code; and

(3) subject to the same confidentiality and disclosure requirements to which a report, information, or record of a medical peer review committee under Section 160.007, Occupations Code, is subject.

Added by Acts 1999, 76th Leg., ch. 908, Sec. 6, eff. June 18, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.781, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 721, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0470, eff. April 2, 2015.

Sec. 161.032. RECORDS AND PROCEEDINGS CONFIDENTIAL. (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.

(b) Notwithstanding Section 551.002, Government Code, the following proceedings may be held in a closed meeting following the procedures prescribed by Subchapter E, Chapter 551, Government Code:

(1) a proceeding of a medical peer review committee, as defined by Section 151.002, Occupations Code, or medical committee; or

(2) a meeting of the governing body of a public hospital, hospital district, hospital authority, or health maintenance organization of a public hospital, hospital authority, hospital district, or state-owned teaching hospital at which the governing body receives records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer.

(c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

(d) The records and proceedings may be used by the committee and the committee members only in the exercise of proper committee functions.

(e) The records, information, and reports received or maintained by a compliance officer retain the protection provided by this section only if the records, information, or reports are received, created, or maintained in the exercise of a proper function of the compliance officer as provided by the Office of Inspector General of the United States Department of Health and Human Services.

(f) This section and Subchapter A, Chapter 160, Occupations Code, do not apply to records made or maintained in the regular course of business by a hospital, health maintenance organization, medical organization, university medical center or health science center, hospital district, hospital authority, or extended care facility.

(g) Notwithstanding any other provision of this section, the records of a medical committee of a university medical school or a health science center, including a joint committee, may be disclosed to the extent required under federal law as a condition on the receipt of federal money.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 625, Sec. 6, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 908, Sec. 4, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1511, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 66, eff. September 1, 2013.

Sec. 161.033. IMMUNITY FOR COMMITTEE MEMBERS. A member of a medical committee is not liable for damages to a person for an action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the committee member.

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

SUBCHAPTER E. REPORTS OF GUNSHOT WOUNDS AND CONTROLLED SUBSTANCE OVERDOSES

Sec. 161.041. MANDATORY REPORTING OF GUNSHOT WOUNDS. A physician who attends or treats, or who is requested to attend or treat, a bullet or gunshot wound, or the administrator, superintendent, or other person in charge of a hospital, sanatorium, or other institution in which a bullet or gunshot wound is attended or treated or in which the attention or treatment is

requested, shall report the case at once to the law enforcement authority of the municipality or county in which the physician practices or in which the institution is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.042. MANDATORY REPORTING OF CONTROLLED SUBSTANCE OVERDOSES. (a) A physician who attends or treats, or who is requested to attend or treat, an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022, or the administrator, superintendent, or other person in charge of a hospital, sanitorium, or other institution in which an overdose of a controlled substance listed in Penalty Group 1 under Section 481.102 or a controlled substance listed in Penalty Group 1-B under Section 481.1022 is attended or treated or in which the attention or treatment is requested, shall report the case at once to the department.

(b) A physician or other person who reports an overdose of a controlled substance under this section shall include in the report information regarding the date of the overdose, the type of controlled substance used, the sex and approximate age of the person attended or treated for the overdose or for whom treatment was sought, the symptoms associated with the overdose, the extent of treatment made necessary by the overdose, and the patient outcome. The physician or other person making the report may provide other demographic information concerning the person attended or treated or for whom treatment was sought but may not disclose the person's name or address or any other information concerning the person's identity.

(c) A hospital, sanitorium, or other institution that makes a report under this section is not subject to civil or criminal liability for damages arising out of the report. An individual who makes a good-faith report under this section is not subject to civil or criminal liability for damages arising out of the report.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 584 (S.B. 768), Sec. 17, eff. September 1, 2021.

Sec. 161.043. CRIMINAL PENALTY. (a) A person commits an offense if the person is required to report under this subchapter and intentionally fails to report.

(b) An offense under this section is a misdemeanor punishable by confinement in jail for not more than six months or by a fine of not more than \$100.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health and Safety Code Sec. 161.042 and amended by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.044. CONTROLLED SUBSTANCE OVERDOSE INFORMATION REPOSITORY. (a) The department shall maintain a central repository for the collection and analysis of information relating to incidents of a controlled substance overdose for which a physician or other person is required to report to the department under Section 161.042. The department may not include in the repository any information the physician or other person is precluded from reporting under that section.

(b) The department shall release statistical information contained in the central repository on the request of a medical professional or representative of a law enforcement agency.

Added by Acts 1999, 76th Leg., ch. 38, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER F. DISCLOSURE OF CERTAIN AGREEMENTS FOR PAYMENT OF LABORATORY TESTS

Sec. 161.061. LABORATORY INFORMATION REQUIRED. (a) A person licensed in this state to practice medicine, dentistry, podiatry, veterinary medicine, or chiropractic may not agree with a clinical, bioanalytical, or hospital laboratory to make payments to the laboratory for individual tests, combinations of tests, or test series for a patient unless:

(1) the person discloses on the bill or statement to the patient or to a third party payor the name and address of the

laboratory and the net amount paid to or to be paid to the laboratory; or

(2) discloses in writing on request to the patient or third party payor the net amount.

(b) The disclosure permitted by Subsection (a)(2) must show the charge for the laboratory test or test series and may include an explanation, in net dollar amounts or percentages, of the charge from the laboratory, the charge for handling, and an interpretation charge.

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

Sec. 161.062. GROUND FOR LICENSE DENIAL. The agency responsible for licensing and regulating a person subject to this subchapter may, in addition to any other authority granted, deny a license application or other permission to practice if the person violates this subchapter.

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

SUBCHAPTER G. HUMAN MILK BANKS

Sec. 161.071. MINIMUM GUIDELINES FOR HUMAN DONOR MILK BANKS. The department shall establish minimum guidelines for the procurement, processing, distribution, or use of human milk by donor milk banks.

Added by Acts 2001, 77th Leg., ch. 379, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER H. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS

Sec. 161.081. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section [154.001](#), Tax Code.

(1-a) (A) "E-cigarette" means:

(i) an electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or

(ii) a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this subdivision.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(C) The term "e-cigarette" includes:

(i) a device described by this subdivision regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(1-b) "Minor" means a person under 21 years of age.

(2) "Permit holder" has the meaning assigned by Section 147.0001 of this code or Section 154.001 or 155.001, Tax Code, as applicable.

(3) "Retail sale" means a transfer of possession from a retailer to a consumer in connection with a purchase, sale, or exchange for value of cigarettes, e-cigarettes, or tobacco products.

(4) "Retailer" means a person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes the owner of a coin-operated cigarette, e-cigarette, or tobacco product vending machine. The term includes a retailer as defined by Section 154.001 or 155.001, Tax Code, and an e-cigarette retailer as defined by Section 147.0001 of this code, as applicable.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

(6) "Wholesaler" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as applicable.

Amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 2, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 2, eff. September 1, 2021.

Sec. 161.0815. NONAPPLICABILITY. This subchapter does not apply to a product that is:

(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and

(2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration. Added by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 2, eff. September 1, 2019.

Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 21 YEARS OF AGE PROHIBITED; PROOF OF AGE REQUIRED. (a) A person commits an offense if the person, with criminal negligence:

(1) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 21 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette, e-cigarette, or tobacco product to another person who intends to deliver it to someone who is younger than 21 years of age.

(b) If an offense under this section occurs in connection with a sale by an employee of the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the employee is criminally responsible for the offense and is subject to prosecution.

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

(d) It is a defense to prosecution under Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presented to the defendant apparently valid proof of identification.

(e) A proof of identification satisfies the requirements of

Subsection (d) if it contains a physical description and photograph consistent with the person's appearance, purports to establish that the person is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport, or an identification card issued by a state or the federal government.

(f) It is an exception to the application of Subsection (a)(1) that the person to whom the cigarette, e-cigarette, or tobacco product was sold:

(1) is at least 18 years of age; and

(2) presented at the time of purchase a valid military identification card of the United States military forces or the state military forces.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.081 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 4, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 4, eff. September 1, 2019.

Sec. 161.0825. USE OF CERTAIN ELECTRONICALLY READABLE INFORMATION. (a) In this section, "transaction scan device" means a device capable of deciphering electronically readable information on a driver's license, commercial driver's license, or identification certificate.

(b) A person may access electronically readable information on a driver's license, commercial driver's license, or identification certificate for the purpose of complying with Section 161.082.

(c) Information accessed under this section may not be sold or otherwise disseminated to a third party for any purpose,

including any marketing, advertising, or promotional activities. The information may be obtained by court order or on proper request by the comptroller, a law enforcement officer, or a law enforcement agency.

(d) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

(e) It is an affirmative defense to prosecution under Section 161.082 that:

(1) a transaction scan device identified a license or certificate as valid and the defendant accessed the information and relied on the results in good faith; or

(2) if the defendant is the owner of a store in which cigarettes, e-cigarettes, or tobacco products are sold at retail, the offense under Section 161.082 occurs in connection with a sale by an employee of the owner, and the owner had provided the employee with:

(A) a transaction scan device in working condition; and

(B) adequate training in the use of the transaction scan device.

Added by Acts 2005, 79th Leg., Ch. 391 (S.B. 1465), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 5, eff. October 1, 2015.

Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO PERSONS YOUNGER THAN 30 YEARS OF AGE. (a) A person may not sell, give, or cause to be sold or given a cigarette, e-cigarette, or tobacco product to someone who is younger than 30 years of age unless the person to whom the cigarette, e-cigarette, or tobacco product was sold or given presents an apparently valid proof of identification.

(a-1) Repealed by Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff. September 1, 2019.

(b) A retailer shall adequately supervise and train the retailer's agents and employees to prevent a violation of

Subsection (a).

(c) A proof of identification described by Section 161.082(e) satisfies the requirements of Subsection (a).

(d) Notwithstanding any other provision of law, a violation of this section is not a violation of this subchapter for purposes of Section 161.0901.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 5, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 6, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 19, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 3, eff. September 1, 2021.

Sec. 161.084. WARNING NOTICE. (a) Each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the cigarettes, e-cigarettes, or tobacco products may be purchased.

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS TO A PERSON UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT. THE PROHIBITIONS ON THE PURCHASE OR ATTEMPT TO PURCHASE DESCRIBED ABOVE DO NOT APPLY TO A PERSON WHO IS IN THE UNITED STATES MILITARY FORCES OR STATE MILITARY

FORCES.

(c) The comptroller by rule shall determine the design and size of the sign.

(d) The comptroller on request shall provide the sign without charge to any person who sells cigarettes, e-cigarettes, or tobacco products. The comptroller may provide the sign without charge to distributors of cigarettes, e-cigarettes, or tobacco products or wholesale dealers of cigarettes, e-cigarettes, or tobacco products in this state for distribution to persons who sell cigarettes, e-cigarettes, or tobacco products. A distributor or wholesale dealer may not charge for distributing a sign under this subsection.

(e) A person commits an offense if the person fails to display a sign as prescribed by this section. An offense under this subsection is a Class C misdemeanor.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 50, eff. Sept. 1, 1991. Renumbered from Health and Safety Code Sec. 161.082 and amended by Acts 1997, 75th Leg., ch. 671, Sec. 1.01. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 62 (S.B. 91), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 488 (S.B. 143), Sec. 2, eff. September 1, 2007.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 8, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 7, eff. September 1, 2019.

Sec. 161.085. NOTIFICATION OF EMPLOYEES AND AGENTS.

(a) Each retailer shall notify each individual employed by that retailer who is to be engaged in retail sales of cigarettes, e-cigarettes, or tobacco products that state law:

(1) prohibits the sale or distribution of cigarettes,

e-cigarettes, or tobacco products to any person who is younger than 21 years of age as provided by Section 161.082 and that a violation of that section is a Class C misdemeanor; and

(2) requires each person who sells cigarettes, e-cigarettes, or tobacco products at retail or by vending machine to post a warning notice as provided by Section 161.084, requires each employee to ensure that the appropriate sign is always properly displayed while that employee is exercising the employee's duties, and provides that a violation of Section 161.084 is a Class C misdemeanor.

(b) The notice required by this section must be provided within 72 hours of the date an individual begins to engage in retail sales of cigarettes, e-cigarettes, or tobacco products. The individual shall signify that the individual has received the notice required by this section by signing a form stating that the law has been fully explained, that the individual understands the law, and that the individual, as a condition of employment, agrees to comply with the law.

(c) Each form signed by an individual under this section shall indicate the date of the signature and the current address and social security number of the individual. The retailer shall retain the form signed by each individual employed as a retail sales clerk until the 60th day after the date the individual has left the employer's employ.

(d) A retailer required by this section to notify employees commits an offense if the retailer fails, on demand of a peace officer or an agent of the comptroller, to provide the forms prescribed by this section. An offense under this section is a Class C misdemeanor.

(e) It is a defense to prosecution under Subsection (d) to show proof that the employee did complete, sign, and date the forms required by Subsections (b) and (c). Proof must be shown to the comptroller or an agent of the comptroller not later than the seventh day after the date of a demand under Subsection (d).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 2001, 77th Leg., ch. 1141, Sec. 2, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 9, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 8, eff. September 1, 2019.

Sec. 161.086. VENDOR ASSISTED SALES REQUIRED; VENDING MACHINES. (a) Except as provided by Subsection (b), a retailer or other person may not:

(1) offer cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products; or

(2) install or maintain a vending machine containing cigarettes, e-cigarettes, or tobacco products.

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

(1) a facility or business that is not open to persons younger than 21 years of age at any time;

(2) that part of a facility or business that is a humidor or other enclosure designed to store cigars in a climate-controlled environment and that is not open to persons younger than 21 years of age at any time; or

(3) a premises for which a person holds a package store permit issued under the Alcoholic Beverage Code and that is not open to persons younger than 21 years of age at any time.

(c) The comptroller or a peace officer may, with or without a warrant, seize, seal, or disable a vending machine installed or maintained in violation of this section. Property seized under this subsection must be seized in accordance with, and is subject to forfeiture to the state in accordance with, Subchapter H, Chapter 154, Tax Code, and Subchapter E, Chapter 155, Tax Code.

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

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Jan. 1, 1998. Amended by Acts 1999, 76th Leg., ch. 567, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 10, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 9, eff. September 1, 2019.

Sec. 161.087. DISTRIBUTION OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS. (a) A person may not distribute:

(1) a free sample of a cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product.

(a-1) A person may not distribute to persons younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product.

(b) Except as provided by Subsection (c), a person, including a permit holder, may not accept or redeem, offer to accept or redeem, or hire a person to accept or redeem:

(1) a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product or a sample cigarette, e-cigarette, or tobacco product; or

(2) a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product if the recipient is younger than 21 years of age.

(b-1) A coupon or other item that a recipient described by Subsection (b) may use to receive a discounted cigarette, e-cigarette, or tobacco product may not be redeemable through mail or courier delivery.

(c) Subsections (a)(2), (a-1), (b), and (b-1) do not apply to a transaction between permit holders unless the transaction is a retail sale.

(d) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor. Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 11, eff.

October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 12, eff.

October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 10, eff.

September 1, 2019.

Sec. 161.0875. SALE OF E-CIGARETTE NICOTINE CONTAINERS.

(a) A person may not sell or cause to be sold a container that contains liquid with nicotine and that is an accessory for an e-cigarette unless:

(1) the container satisfies the child-resistant effectiveness standards under 16 C.F.R. Section 1700.15(b)(1) when tested in accordance with the method described by 16 C.F.R. Section 1700.20; or

(2) the container is a cartridge that is prefilled and sealed by the manufacturer and is not intended to be opened by a consumer.

(b) If the federal government adopts standards for the packaging of a container described by Subsection (a), a person who complies with those standards is considered to be in compliance with this section.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 13, eff. October 1, 2015.

Sec. 161.088. ENFORCEMENT; UNANNOUNCED INSPECTIONS. (a)

The comptroller shall enforce this subchapter in partnership with local law enforcement agencies and with their cooperation and shall ensure the state's compliance with Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26) and any implementing regulations adopted by the United States Department of Health and Human Services. Except as expressly authorized by law, the comptroller may not adopt any rules governing the subject matter of this subchapter or Subchapter K, N, or O.

(b) The comptroller may make block grants to counties and municipalities to be used by local law enforcement agencies to enforce this subchapter and Subchapter R in a manner that can reasonably be expected to reduce the extent to which cigarettes,

e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to persons who are younger than 21 years of age. At least annually, random unannounced inspections shall be conducted at various locations where cigarettes, e-cigarettes, and tobacco products are sold or distributed, including by delivery sale, to ensure compliance with this subchapter and Subchapter R. The comptroller shall rely, to the fullest extent possible, on local law enforcement agencies to enforce this subchapter and Subchapter R.

(c) To facilitate the effective administration and enforcement of this subchapter, the comptroller may enter into interagency contracts with other state agencies, and those agencies may assist the comptroller in the administration and enforcement of this subchapter.

(d) The use of a person younger than 21 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R shall be conducted in a fashion that promotes fairness. A person may be enlisted by the comptroller or a local law enforcement agency to act as a minor decoy only if the following requirements are met:

(1) written parental consent is obtained for the use of a person younger than 18 years of age to act as a minor decoy to test compliance with this subchapter and Subchapter R;

(2) at the time of the inspection, order, or delivery, the minor decoy is younger than 21 years of age;

(3) the minor decoy has an appearance that would cause a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco products to request identification and proof of age;

(4) the minor decoy carries either the minor's own identification showing the minor's correct date of birth or carries no identification, and a minor decoy who carries identification presents it on request to any seller of or any person who delivers cigarettes, e-cigarettes, or tobacco products; and

(5) the minor decoy answers truthfully any questions about the minor's age at the time of the inspection, order, or delivery.

(e) The comptroller shall annually prepare for submission

by the governor to the secretary of the United States Department of Health and Human Services the report required by Section 1926 of the federal Public Health Service Act (42 U.S.C. Section 300x-26).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1156, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 14, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 11, eff. September 1, 2019.

Sec. 161.089. PREEMPTION OF LOCAL LAW. (a) Except as provided by Subsection (b), this subchapter does not preempt a local regulation of the sale, distribution, or use of cigarettes or tobacco products or affect the authority of a political subdivision to adopt or enforce an ordinance or requirement relating to the sale, distribution, or use of cigarettes or tobacco products if the regulation, ordinance, or requirement:

(1) is compatible with and equal to or more stringent than a requirement prescribed by this subchapter; or

(2) relates to an issue that is not specifically addressed by this subchapter or Chapter 154 or 155, Tax Code.

(b) A political subdivision may not adopt or enforce an ordinance or requirement relating to the lawful age to sell, distribute, or use cigarettes, e-cigarettes, or tobacco products that is more stringent than a requirement prescribed by this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 12, eff. September 1, 2019.

Sec. 161.090. REPORTS OF VIOLATION. A local or state law enforcement agency or other governmental unit shall notify the comptroller, on the 10th day of each month, or the first working day

after that date, of any violation of this subchapter that occurred in the preceding month that the agency or unit detects, investigates, or prosecutes.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 1.01, eff. Sept. 1, 1997.

Sec. 161.0901. DISCIPLINARY ACTION AGAINST CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCT RETAILERS. (a) A retailer is subject to disciplinary action as provided by this section if an agent or employee of the retailer commits an offense under this subchapter.

(b) If the comptroller finds, after notice and an opportunity for a hearing as provided by Chapter 2001, Government Code, that a permit holder has violated this subchapter at a place of business for which a permit is issued, the comptroller may suspend the permit for that place of business and administratively assess a fine as follows:

(1) for the first violation of this subchapter during the 24-month period preceding the violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$1,000;

(2) for the second violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$2,000; and

(3) for the third violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller may:

(A) require the permit holder to pay a fine in an amount not to exceed \$3,000; and

(B) suspend the permit for that place of business for not more than five days.

(c) Except as provided by Subsection (e), for the fourth or a subsequent violation of this subchapter during the 24-month period preceding the most recent violation at that place of business, the comptroller shall revoke the permit issued under Chapter 147 of this code or Chapter 154 or 155, Tax Code, as

applicable. If the permit holder does not hold a permit under Chapter 147 of this code or Chapter 154 or 155, Tax Code, the comptroller shall revoke the permit issued under Section 151.201, Tax Code.

(d) A permit holder whose permit has been revoked under this section may not apply for a permit for the same place of business before the expiration of six months after the effective date of the revocation.

(e) For purposes of this section, the comptroller may suspend a permit for a place of business but may not revoke the permit under Subsection (c) if the comptroller finds that:

(1) the permit holder has not violated this subchapter more than seven times at the place of business in the 48-month period preceding the violation in question;

(2) the permit holder requires its employees to attend a comptroller-approved seller training program;

(3) the employees have actually attended a comptroller-approved seller training program; and

(4) the permit holder has not directly or indirectly encouraged the employees to violate the law.

(f) The comptroller may adopt rules to implement this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

Sec. 161.0902. E-CIGARETTE REPORT. (a) Not later than January 5th of each odd-numbered year, the department shall report to the governor, lieutenant governor, and speaker of the house of representatives on the status of the use of e-cigarettes in this state.

(b) The report must include, at a minimum:

(1) a baseline of statistics and analysis regarding retail compliance with this subchapter and Subchapter R;

(2) a baseline of statistics and analysis regarding illegal e-cigarette sales, including:

(A) sales to minors;

(B) enforcement actions concerning minors; and

(C) sources of citations;

(3) e-cigarette controls and initiatives by the department, or any other state agency, including an evaluation of the effectiveness of the controls and initiatives;

(4) the future goals and plans of the department to decrease the use of e-cigarettes;

(5) the educational programs of the department and the effectiveness of those programs; and

(6) the incidence of use of e-cigarettes by regions in this state, including use of e-cigarettes by ethnicity.

(c) The department may include the report required by this section with a similar report for cigarettes or tobacco products required by law.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 15, eff. October 1, 2015.

Sec. 161.0903. USE OF CERTAIN REVENUE. Revenue from fees collected under Section 161.123 and from the sale of permits under Chapter 147 of this code, retailer permits under Chapter 154, Tax Code, and retailer permits under Chapter 155, Tax Code, shall be deposited in the general revenue fund and may be appropriated only as provided by this section. The revenue shall be appropriated, in order of priority, to:

(1) the comptroller for the purpose of administering retailer permitting under Chapter 147 of this code and Chapters 154 and 155, Tax Code; and

(2) the comptroller for the purpose of administering and enforcing this subchapter and Subchapters K and N.

Added by Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 4, eff. September 1, 2021.

SUBCHAPTER J. EXPOSURE TO LEAD

Sec. 161.101. TESTS FOR EXPOSURE TO LEAD. (a) At the request of an attending physician, the department shall conduct tests for lead poisoning if the physician suspects that a person has been exposed to lead and that the person may have been harmed by

that exposure.

(b) The department shall charge only for the cost to the department of conducting the test.

(c) The executive commissioner shall adopt rules to implement this section.

Acts 1991, 72nd Leg., ch. 695, Sec. 1, eff. Aug. 26, 1991.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0472, eff. April 2, 2015.

SUBCHAPTER K. PROHIBITION OF CERTAIN CIGARETTE OR TOBACCO PRODUCT
ADVERTISING; FEE

Sec. 161.121. DEFINITIONS. In this subchapter:

(1) "Church" means a facility that is owned by a religious organization and that is used primarily for religious services.

(2) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(3) "School" means a private or public elementary or secondary school.

(4) "Sign" means an outdoor medium, including a structure, display, light device, figure, painting, drawing, message, plaque, poster, or billboard, that is:

(A) used to advertise or inform; and

(B) visible from the main-traveled way of a street or highway.

(5) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Sec. 161.122. PROHIBITION RELATING TO CERTAIN SIGNS; EXCEPTIONS. (a) Except as provided by this section, a sign containing an advertisement for cigarettes or tobacco products may not be located closer than 1,000 feet to a church or school.

(b) The measurement of the distance between the sign containing an advertisement for cigarettes or tobacco products and an institution listed in Subsection (a) is from the nearest property line of the institution to a point on a street or highway closest to the sign, along street lines and in direct lines across intersections.

(c) This section does not apply to a sign located on or in a facility owned or leased by a professional sports franchise or in a facility where professional sports events are held at least 10 times during a 12-month period.

(d) In Subsection (c), a "facility" includes a stadium, arena, or events center and any land or property owned or leased by the professional sports franchise that is connected to or immediately contiguous to the stadium, arena, or events center.

(e) Subsection (a) does not apply to a sign containing an advertisement for cigarettes or tobacco products that, before September 1, 1997, was located closer than 1,000 feet to a church or school but that was not located closer than 500 feet to the church or school.

(f) A person commits an offense if the person places or authorizes the placement of a sign in violation of this section. An offense under this subsection is a Class C misdemeanor.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 5.02(a), eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 209, Sec. 1, eff. Oct. 1, 2003.

Sec. 161.123. ADVERTISING FEE. (a) A purchaser of advertising is liable for and shall remit to the comptroller a fee that is 10 percent of the gross sales price of any outdoor advertising of cigarettes and tobacco products in this state.

(b) The comptroller shall collect the fee as provided in this section.

(c) The liability for the payment of fees under this section may not be nullified by contract.

(d) The comptroller shall establish by rule the periods for collection of the fees and the methods of payment and shall adopt

other rules necessary to administer and enforce this section.

(e) In this section, "gross sales price" means the sum of:

- (1) production costs;
- (2) media cost; and
- (3) cost of sales or commissions paid to an agency or

broker.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 994 (S.B. 248), Sec. 5, eff. September 1, 2021.

Sec. 161.125. ADMINISTRATIVE PENALTY. (a) The comptroller by order may impose an administrative penalty against a purchaser of advertising required to comply with Section 161.123 who violates that section or a rule or order adopted under that section.

(b) The penalty for a violation may be in an amount not to exceed \$5,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

- (1) the amount of fees due and owing;
- (2) attempted concealment of misconduct by the person who committed the violation;
- (3) premeditated misconduct by the person who committed the violation;
- (4) intentional misconduct by the person who committed the violation;
- (5) the motive of the person who committed the violation;
- (6) prior misconduct of a similar or related nature by the person who committed the violation;
- (7) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;
- (8) violation by the person who committed the violation of an order of the comptroller;
- (9) lack of rehabilitative potential or likelihood for

future misconduct of a similar nature;

(10) relevant circumstances increasing the seriousness of the misconduct; and

(11) any other matter justice may require.

(d) The comptroller shall prescribe the procedure by which the comptroller may impose an administrative penalty under this section.

(e) A proceeding under this section is subject to Chapter 2001, Government Code.

(f) If the comptroller by order finds that a violation has occurred and imposes an administrative penalty, the comptroller shall give notice to the person of the comptroller's order. The notice must include a statement of the rights of the person to judicial review of the order.

(g) If the purchaser of advertising does not pay the amount of the penalty, the comptroller may refer the matter to the attorney general for collection of the amount of the penalty.

(h) A penalty collected under this section shall be deposited in the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 2.01, eff. Sept. 1, 1997.

SUBCHAPTER L. ABUSE, NEGLECT, AND UNPROFESSIONAL OR UNETHICAL CONDUCT IN HEALTH CARE FACILITIES

Sec. 161.131. DEFINITIONS. In this subchapter:

(1) "Abuse" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(2) "Comprehensive medical rehabilitation" means the provision of rehabilitation services that are designed to improve or minimize a person's physical or cognitive disabilities, maximize a person's functional ability, or restore a person's lost functional capacity through close coordination of services, communication, interaction, and integration among several professions that share the responsibility to achieve team treatment goals for the person.

(3) "Hospital" has the meaning assigned by Section [241.003](#).

(4) "Illegal conduct" means conduct prohibited by law.

(5) "Inpatient mental health facility" has the meaning assigned by Section [571.003](#).

(6) "License" means a state agency permit, certificate, approval, registration, or other form of permission required by state law.

(7) "Mental health facility" has the meaning assigned by Section [571.003](#).

(8) "Neglect" has the meaning assigned by the federal Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. Section 10801 et seq.).

(9) "State health care regulatory agency" means a state agency that licenses a health care professional.

(10) "Treatment facility" has the meaning assigned by Section [464.001](#).

(11) "Unethical conduct" means conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(12) "Unprofessional conduct" means conduct prohibited under rules adopted by the state licensing agency for the respective profession.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0473, eff. April 2, 2015.

Sec. 161.132. REPORTS OF ABUSE AND NEGLECT OR OF ILLEGAL, UNPROFESSIONAL, OR UNETHICAL CONDUCT. (a) A person, including an employee, volunteer, or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, who reasonably believes or who knows of information that would

reasonably cause a person to believe that the physical or mental health or welfare of a patient or client of the facility who is receiving chemical dependency, mental health, or rehabilitation services has been, is, or will be adversely affected by abuse or neglect caused by any person shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(b) An employee of or other person associated with an inpatient mental health facility, a treatment facility, or a hospital that provides comprehensive medical rehabilitation services, including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee of or health care professional associated with the facility has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health, chemical dependency, or rehabilitation services provided in the facility shall as soon as possible report the information supporting the belief to the agency that licenses the facility or to the appropriate state health care regulatory agency.

(c) The requirement prescribed by this section is in addition to the requirements provided by Chapter 261, Family Code, and Chapter 48, Human Resources Code.

(d) The executive commissioner by rule for the department and the Department of Aging and Disability Services, and each state health care regulatory agency by rule, shall:

(1) prescribe procedures for the investigation of reports received under Subsection (a) or (b) and for coordination with and referral of reports to law enforcement agencies or other appropriate agencies; and

(2) prescribe follow-up procedures to ensure that a report referred to another agency receives appropriate action.

(e) Each hospital, inpatient mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, volunteers, employees, and visitors a statement of the duty to report under this section. The statement

must be in English and in a second language and contain a toll-free telephone number that a person may call to report.

(f) The executive commissioner by rule and each state health care regulatory agency by rule shall provide for appropriate disciplinary action against a health care professional licensed by the agency who fails to report as required by this section.

(g) An individual who in good faith reports under this section is immune from civil or criminal liability arising from the report. That immunity extends to participation in an administrative or judicial proceeding resulting from the report but does not extend to an individual who caused the abuse or neglect or who engaged in the illegal, unprofessional, or unethical conduct.

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

(1) intentionally, maliciously, or recklessly reports false material information under this section; or

(2) fails to report as required by Subsection (a).

(i) An offense under Subsection (h) is a Class A misdemeanor.

(j) In this section, "abuse" includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 7.41, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0474, eff. April 2, 2015.

Sec. 161.133. INSERVICE TRAINING. (a) The executive commissioner by rule shall require each inpatient mental health facility, treatment facility, or hospital that provides comprehensive medical rehabilitation services to annually provide as a condition of continued licensure a minimum of eight hours of inservice training designed to assist employees and health care professionals associated with the facility in identifying patient

abuse or neglect and illegal, unprofessional, or unethical conduct by or in the facility.

(b) The rules must prescribe:

(1) minimum standards for the training program; and

(2) a means for monitoring compliance with the requirement.

(c) The department shall review and the executive commissioner shall modify the rules as necessary not later than the last month of each state fiscal year.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0475, eff. April 2, 2015.

Sec. 161.134. RETALIATION AGAINST EMPLOYEES PROHIBITED.

(a) A hospital, mental health facility, or treatment facility may not suspend or terminate the employment of or discipline or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter, a rule adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person discriminated against. A person who has been discriminated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) In addition to amounts recovered under Subsections (c) and (d), a plaintiff is entitled to, if applicable:

(1) reinstatement in the plaintiff's former position;

(2) compensation for lost wages; and

(3) reinstatement of lost fringe benefits or seniority rights.

(f) A plaintiff suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff's employment was suspended or terminated, or that the employee was disciplined or discriminated against, for making a report related to a violation if the suspension, termination, discipline, or discrimination occurs before the 60th day after the date on which the plaintiff made a report in good faith.

(g) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff was employed by the defendant; or

(2) the defendant conducts business.

(h) A person who alleges a violation of Subsection (a) must sue under this section before the 180th day after the date the alleged violation occurred or was discovered by the employee through the use of reasonable diligence.

(i) This section does not abrogate any other right to sue or interfere with any other cause of action.

(j) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that employees and staff are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0476, eff. April 2, 2015.

Sec. 161.135. RETALIATION AGAINST NONEMPLOYEES PROHIBITED.

(a) A hospital, mental health facility, or treatment facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of this chapter, a rule

adopted under this chapter, or a rule of another agency.

(b) A hospital, mental health facility, or treatment facility that violates Subsection (a) is liable to the person retaliated against. A person who has been retaliated against in violation of Subsection (a) may sue for injunctive relief, damages, or both.

(c) A person suing under this section has the burden of proof, except that it is a rebuttable presumption that the plaintiff was retaliated against if:

(1) before the 60th day after the date on which the plaintiff made a report in good faith, the hospital, mental health facility, or treatment facility:

(A) discriminates in violation of Section 161.134 against a relative who is an employee of the facility;

(B) transfers, disciplines, suspends, terminates, or otherwise discriminates against the person or a relative who is a volunteer in the facility or who is employed under the patient work program administered by the department;

(C) commits or threatens to commit, without justification, the person or a relative of the person; or

(D) transfers, discharges, punishes, or restricts the privileges of the person or a relative of the person who is receiving inpatient or outpatient services in the facility; or

(2) a person expected to testify on behalf of the plaintiff is intentionally made unavailable through an action of the facility, including a discharge, resignation, or transfer.

(d) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(e) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(f) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(g) This section does not abrogate any other right to sue or interfere with any other cause of action.

(h) Each hospital, mental health facility, and treatment facility shall prominently and conspicuously post for display in a public area of the facility that is readily available to patients, residents, employees, and visitors a statement that nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement must be in English and in a second language. The sign may be combined with the sign required by Section [161.134\(j\)](#).

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0477, eff. April 2, 2015.

Sec. 161.136. BROCHURE RELATING TO SEXUAL EXPLOITATION.

(a) A state health care regulatory agency by rule may require a mental health services provider licensed by that agency to provide a standardized written brochure, in wording a patient can understand, that summarizes the law prohibiting sexual exploitation of patients. The brochure must be available in English and in a second language.

(b) The brochure shall include:

(1) procedures for filing a complaint relating to sexual exploitation, including any toll-free telephone number available; and

(2) the rights of a victim of sexual exploitation.

(c) In this section, "mental health services provider" has the meaning assigned by Section [81.001](#), Civil Practice and Remedies Code.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

Sec. 161.137. PENALTIES. In addition to the penalties prescribed by this subchapter, a violation of a provision of this subchapter by an individual or facility that is licensed by a state

health care regulatory agency is subject to the same consequence as a violation of the licensing law applicable to the individual or facility or of a rule adopted under that licensing law.

Added by Acts 1993, 73rd Leg., ch. 573, Sec. 1.01, eff. Sept. 1, 1993.

SUBCHAPTER M. MEDICAL OR MENTAL HEALTH RECORDS

Sec. 161.201. DEFINITION. In this subchapter, "health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide or render health care in the ordinary course of business or practice of a profession. Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.202. FEES. (a) A health care provider or health care facility may not charge a fee for a medical or mental health record requested by a patient or former patient, or by an attorney or other authorized representative of the patient or former patient, for use in supporting an application for disability benefits or other benefits or assistance the patient or former patient may be eligible to receive based on that patient's or former patient's disability, or an appeal relating to denial of those benefits or assistance under:

- (1) Chapter 31, Human Resources Code;
- (2) the state Medicaid program;
- (3) Title II, the federal Social Security Act, as amended (42 U.S.C. Section 401 et seq.);
- (4) Title XVI, the federal Social Security Act, as amended (42 U.S.C. Section 1382 et seq.);
- (5) Title XVIII, the federal Social Security Act, as amended (42 U.S.C. Section 1395 et seq.);
- (6) 38 U.S.C. Section 1101 et seq., as amended; or
- (7) 38 U.S.C. Section 1501 et seq., as amended.

(b) A health care provider or health care facility may charge a fee for the medical or mental health record of a patient or former patient requested by a state or federal agency in relation to the patient or former patient's application for benefits or

assistance under Subsection (a) or an appeal relating to denial of those benefits or assistance.

(c) A person, including a state or federal agency, that requests a record under this section shall include with the request a statement or document from the department or agency that administers the issuance of the assistance or benefits that confirms the application or appeal.

(d) A health care provider or health facility is not required to provide more than one complete record for a patient or former patient requested under Subsection (a)(6) or (7) without charge. If additional material is added to the patient or former patient's record, on request the health care provider or health facility shall supplement the record provided under Subsection (a)(6) or (7) without charge. This subsection does not affect the ability of a person to receive a medical or mental health record under Subsections (a)(1)-(5).

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 1999, 76th Leg., ch. 201, Sec. 1, eff. Sept. 1, 1999.

Sec. 161.203. DISTRIBUTION OF RECORDS. A health care provider or health care facility shall provide to the requestor a medical or mental health record requested under Section [161.202](#) not later than the 30th day after the date on which the provider or facility receives the request.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Sec. 161.204. APPLICATION OF OTHER LAW. This subchapter controls over Section [611.0045](#) of this code and Section [159.006](#), Occupations Code, and any other provision that authorizes the charging of a fee for providing medical or mental health records.

Added by Acts 1995, 74th Leg., ch. 707, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.783, eff. Sept. 1, 2001.

SUBCHAPTER N. E-CIGARETTE AND TOBACCO USE BY MINORS

Sec. 161.251. DEFINITIONS. In this subchapter:

(1) "Cigarette" has the meaning assigned by Section 154.001, Tax Code.

(1-a) "E-cigarette" has the meaning assigned by Section 161.081.

(1-b) "Minor" means a person under 21 years of age.

(2) "Tobacco product" has the meaning assigned by Section 155.001, Tax Code.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 17, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 13, eff. September 1, 2019.

Sec. 161.252. POSSESSION, PURCHASE, CONSUMPTION, OR RECEIPT OF CIGARETTES, E-CIGARETTES, OR TOBACCO PRODUCTS BY MINORS PROHIBITED. (a) An individual who is younger than 21 years of age commits an offense if the individual:

(1) possesses, purchases, consumes, or accepts a cigarette, e-cigarette, or tobacco product; or

(2) falsely represents himself or herself to be 21 years of age or older by displaying proof of age that is false, fraudulent, or not actually proof of the individual's own age in order to obtain possession of, purchase, or receive a cigarette, e-cigarette, or tobacco product.

(b) It is an exception to the application of this section that the individual younger than 21 years of age possessed the cigarette, e-cigarette, or tobacco product in the presence of an employer of the individual, if possession or receipt of the cigarette, e-cigarette, or tobacco product is required in the performance of the employee's duties as an employee.

(c) It is an exception to the application of this section that the individual younger than 21 years of age is participating in an inspection or test of compliance in accordance with Section 161.088.

(c-1) It is an exception to the application of this section that the individual younger than 21 years of age:

(1) is at least 18 years of age; and

(2) presents at the time of purchase a valid military identification card of the United States military forces or the state military forces.

(d) An offense under this section is punishable by a fine not to exceed \$100.

(e) On conviction of an individual under this section, the court shall give notice to the individual that the individual may apply to the court to have the individual's conviction expunged as provided by Section 161.255 on or after the individual's 21st birthday.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 19, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 14, eff. September 1, 2019.

Sec. 161.253. E-CIGARETTE AND TOBACCO AWARENESS PROGRAM; COMMUNITY SERVICE. (a) On conviction of an individual for an offense under Section 161.252, the court shall suspend execution of sentence and shall require the defendant to attend an e-cigarette and tobacco awareness program approved by the commissioner. The court may require the parent or guardian of the defendant to attend the e-cigarette and tobacco awareness program with the defendant.

(b) On request, an e-cigarette and tobacco awareness program may be taught in languages other than English.

(c) If the defendant resides in a rural area of this state or another area of this state in which access to an e-cigarette and tobacco awareness program is not readily available, the court shall require the defendant to perform eight to 12 hours of e-cigarette- and tobacco-related community service instead of attending the e-cigarette and tobacco awareness program.

(d) The e-cigarette and tobacco awareness program and the

e-cigarette- and tobacco-related community service are remedial and are not punishment.

(e) Not later than the 90th day after the date of a conviction under Section 161.252, the defendant shall present to the court, in the manner required by the court, evidence of satisfactory completion of the e-cigarette and tobacco awareness program or the e-cigarette- and tobacco-related community service.

(f) On receipt of the evidence required under Subsection (e), the court shall:

(1) if the defendant has been previously convicted of an offense under Section 161.252, execute the sentence, and at the discretion of the court, reduce the fine imposed to not less than half the fine previously imposed by the court; or

(2) if the defendant has not been previously convicted of an offense under Section 161.252, discharge the defendant and dismiss the complaint or information against the defendant.

(g) If the court discharges the defendant under Subsection (f)(2), the defendant is released from all penalties and disabilities resulting from the offense except that the defendant is considered to have been convicted of the offense if the defendant is subsequently convicted of an offense under Section 161.252 committed after the dismissal under Subsection (f)(2).

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 20, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 21, eff. October 1, 2015.

Sec. 161.255. EXPUNGEMENT OF CONVICTION. (a) An individual convicted of an offense under Section 161.252 may apply to the court to have the conviction expunged on or after the individual's 21st birthday. The court shall order the conviction and any complaint, verdict, sentence, or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.

(b) The court shall charge an applicant a reimbursement fee in the amount of \$30 for each application for expungement filed under this section to defray the cost of notifying state agencies of orders of expungement under this section.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2005, 79th Leg., Ch. 886 (S.B. 1426), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 22, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 15, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1352 (S.B. 346), Sec. 2.50, eff. January 1, 2020.

Sec. 161.256. JURISDICTION OF COURTS. A justice court or municipal court may exercise jurisdiction over any matter in which a court under this subchapter may impose a requirement that a defendant attend an e-cigarette and tobacco awareness program or perform e-cigarette- and tobacco-related community service.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 23, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 16, eff. September 1, 2019.

Sec. 161.257. APPLICATION OF OTHER LAW. Title 3, Family Code, does not apply to a proceeding under this subchapter.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Jan. 1, 1998.

SUBCHAPTER O. PREVENTION OF TOBACCO AND E-CIGARETTE USE BY MINORS

Sec. 161.301. TOBACCO AND E-CIGARETTE USE PUBLIC AWARENESS

CAMPAIGN. (a) The department shall develop and implement a public awareness campaign designed to reduce the use by minors in this state of tobacco and e-cigarettes as defined by Section [161.081](#). The campaign may use advertisements or similar media to provide educational information about tobacco and e-cigarette use.

(b) The department may contract with another person to develop and implement the public awareness campaign. The contract shall be awarded on the basis of competitive bids.

(c) A contract awarded under Subsection (b) may be awarded only to a business that has a proven background in advertising and public relations campaigns.

(d) The department may not award a contract under Subsection (b) to:

(1) a person or entity that is required to register with the Texas Ethics Commission under Chapter [305](#), Government Code, except as provided by Subsection (f);

(2) any partner, employee, employer, relative, contractor, consultant, or related entity of a person or entity described by Subdivision (1) and not described by Subsection (f);
or

(3) a person or entity who has been hired to represent associations or other entities for the purpose of affecting the outcome of legislation, agency rules, or other government policies through grassroots or media campaigns.

(e) The persons or entities described by Subsection (d) are not eligible to receive the money or participate either directly or indirectly in the public awareness campaign.

(f) A registrant under Chapter [305](#), Government Code, is not ineligible under Subsections (d) and (e) if the person is required to register under that chapter solely because the person communicates directly with a member of the executive branch to influence administrative action concerning a matter relating to the purchase of products or services by a state agency.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1174 (H.B. [3445](#)), Sec. 6, eff.

September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0478, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 25, eff. October 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 26, eff. October 1, 2015.

Sec. 161.302. GRANT PROGRAM FOR YOUTH GROUPS. (a) The entity administering Section 161.301 shall also develop and implement a grant program to support youth groups that include as a part of the group's program components related to reduction of use by the group's members of tobacco and e-cigarettes as defined by Section 161.081.

(b) "Youth group" means a nonprofit organization that:

(1) is chartered as a national or statewide organization;

(2) is organized and operated exclusively for youth recreational or educational purposes and that includes, as part of the group's program, in addition to the components described by Subsection (a), components relating to:

(A) prevention of drug abuse;

(B) character development;

(C) citizenship training; and

(D) physical and mental fitness;

(3) has been in existence for at least 10 years; and

(4) has a membership of which at least 65 percent is younger than 22 years of age.

Added by Acts 1997, 75th Leg., ch. 671, Sec. 3.01, eff. Sept. 1, 1997.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 27, eff. October 1, 2015.

SUBCHAPTER P. DISCLOSURE OF INGREDIENTS IN CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.351. DEFINITIONS. In this subchapter:

- (1) "Cigarette" has the meaning assigned by Section [154.001](#), Tax Code.
- (2) "Manufacturer" has the meanings assigned by Sections [154.001](#) and [155.001](#), Tax Code.
- (3) "Tobacco product" has the meaning assigned by Section [155.001](#), Tax Code.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 161.251 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.352. REPORT TO DEPARTMENT. (a) Each manufacturer shall file with the department an annual report for each cigarette or tobacco product distributed in this state, stating the identity of each ingredient in the cigarette or tobacco product, listed in descending order according to weight, measure, or numerical count, other than:

- (1) tobacco;
- (2) water; or
- (3) a reconstituted tobacco sheet made wholly from tobacco.

(b) This section does not require a manufacturer to disclose the specific amount of any ingredient in a cigarette or tobacco product if that ingredient has been approved as safe when burned and inhaled by the United States Food and Drug Administration or a successor entity.

(c) The executive commissioner by rule shall establish the time for filing an annual report under this section and shall prescribe the form for the report.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 161.252 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(12), eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0479, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 865 (S.B. [970](#)), Sec. 8, eff.

September 1, 2021.

Sec. 161.354. PUBLIC INFORMATION. (a) Except as provided by Subsections (b), (c), and (d), information included in a report filed under this subchapter is public information and is not confidential unless it is determined to be confidential under this section.

(b) The department may not disclose information under Subsection (a) until the department has obtained the advice of the attorney general under this section with respect to the particular information to be disclosed. If the attorney general determines that the disclosure of particular information would constitute an unconstitutional taking of property, the information is confidential and the department shall exclude that information from disclosure.

(c) Information included in a report filed under this subchapter is confidential if the department determines that there is no reasonable scientific basis for concluding that the availability of the information could reduce risks to public health.

(d) Information included in a report filed under this subchapter is confidential under Chapter 552, Government Code, if the information would be excepted from public disclosure as a trade secret under state or federal law.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 161.254 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999.

Sec. 161.355. INJUNCTION. (a) A district court, on petition of the department and on a finding by the court that a manufacturer has failed to file the report required by Section 161.352, may by injunction:

(1) prohibit the sale or distribution in this state of a cigarette or tobacco product manufactured by the manufacturer;
or

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

(b) The attorney general shall institute and conduct a suit authorized by this section at the request of the department and in the name of the state.

(c) A suit for injunctive relief must be brought in Travis County.

Added by Acts 1997, 75th Leg., ch. 1216, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 161.255 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(64), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 19.02(13), eff. Sept. 1, 1999.

Sec. 161.356. COMPLIANCE WITH FEDERAL LAW. A person is considered to have complied with this subchapter if the person complies with Subchapter IX of 21 U.S.C. Chapter 9 and rules adopted under that subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 28, eff. October 1, 2015.

SUBCHAPTER Q. INSTALLATION OF ASBESTOS

Sec. 161.401. DEFINITIONS. In this subchapter:

(1) "Asbestos" means the asbestiform varieties of chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite.

(2) "Contractor" means a person who constructs, repairs, or maintains a public building as an independent contractor. The term includes a subcontractor.

(3) "Public building" means a building used or to be used for purposes that provide for public access or occupancy. The term does not include:

(A) an industrial facility to which access is limited principally to employees of the facility because of processes or functions that are hazardous to human safety or health;

(B) a federal building or installation;

(C) a private residence;

(D) an apartment building with not more than four dwelling units; or

(E) a manufacturing facility or building that is part of a facility to which access is limited to workers and invited guests under controlled conditions.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.402. MATERIAL SAFETY DATA SHEET REQUIRED; ASBESTOS INSTALLATION OR REINSTALLATION PROHIBITED. The executive commissioner shall adopt rules designating the materials or replacement parts for which a person must obtain a material safety data sheet before installing the materials or parts in a public building. A person may not install materials or replacement parts in a public building if:

(1) the person does not obtain a required material safety data sheet; or

(2) the materials or parts, according to the material safety data sheet, contain more than one percent asbestos and there is an alternative material or part.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0481, eff. April 2, 2015.

Sec. 161.403. INJUNCTION. (a) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a contractor who is violating or threatening to violate this subchapter. The action may be brought in a district court of Travis County or of a county in which any part of the violation or threatened violation occurs.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.404. CIVIL PENALTY. (a) A contractor who violates this subchapter is subject to a civil penalty not to exceed \$10,000 a day for each violation. Each day of violation constitutes a

separate violation for purposes of penalty assessment.

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

- (1) the contractor's previous violations;
 - (2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
 - (3) whether the health and safety of the public was threatened by the violation;
 - (4) the demonstrated good faith of the contractor;
- and
- (5) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney, in the name of the state, may bring an action under this section in a district court of Travis County or of a county in which any part of the violation occurs.

(d) The party bringing the suit may:

- (1) combine a suit to assess and recover civil penalties with a suit for injunctive relief brought under Section [161.403](#); or
- (2) file a suit to assess and recover civil penalties independently of a suit for injunctive relief.

(e) A penalty collected under this section by the attorney general shall be deposited in the state treasury to the credit of the general revenue fund. A penalty collected under this section by a district or county attorney shall be deposited to the credit of the general fund of the county in which the suit was heard.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.405. RECOVERY OF COSTS. The party bringing a suit under Section [161.403](#) or [161.404](#) may recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, including investigation costs, court costs, reasonable attorney's fees, witness fees, and deposition expenses.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.406. ADMINISTRATIVE PENALTY. (a) The department may impose an administrative penalty on a contractor who violates

this subchapter.

(b) The amount of the penalty may not exceed \$10,000 a day for a violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(c) The penalty amount shall be based on:

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

(2) the history of previous violations;

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

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the contractor pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A contractor who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the department to contest the affidavit as provided by those rules.

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

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.407. REMEDIES CUMULATIVE. The civil penalty, administrative penalty, and injunction authorized by this subchapter are in addition to any other civil, administrative, or criminal action provided by law.

Added by Acts 2001, 77th Leg., ch. 416, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER R. DELIVERY SALES OF CIGARETTES AND E-CIGARETTES

Sec. 161.451. DEFINITIONS. In this subchapter:

(1) "Delivery sale" means a sale of cigarettes or e-cigarettes to a consumer in this state in which the purchaser submits the order for the sale by means of a telephonic or other

method of voice transmission, by using the mails or any other delivery service, or through the Internet or another on-line service, or the cigarettes or e-cigarettes are delivered by use of the mails or another delivery service. A sale of cigarettes or e-cigarettes is a delivery sale regardless of whether the seller is located within or without this state. A sale of cigarettes or e-cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer is not a delivery sale.

(2) "Delivery service" means a person, including the United States Postal Service, that is engaged in the commercial delivery of letters, packages, or other containers.

(2-a) "E-cigarette" has the meaning assigned by Section [161.081](#).

(3) "Shipping container" means a container in which cigarettes or e-cigarettes are shipped in connection with a delivery sale.

(4) "Shipping documents" means a bill of lading, airbill, United States Postal Service form, or any other document used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. [97](#)), Sec. 30, eff. October 1, 2015.

Sec. 161.452. REQUIREMENTS FOR DELIVERY SALES. (a) A person may not make a delivery sale of cigarettes or e-cigarettes to an individual who is under the age prescribed by Section [161.082](#).

(b) A person taking a delivery sale order of cigarettes shall comply with:

(1) the age verification requirements prescribed by Section [161.453](#);

(2) the disclosure requirements prescribed by Section [161.454](#);

(3) the registration and reporting requirements prescribed by Section [161.456](#);

(4) the tax collection requirements prescribed by

Section 161.457; and

(5) each law of this state that generally applies to sales of cigarettes that occur entirely within this state, including a law:

(A) imposing a tax; or

(B) prescribing a permitting or tax-stamping requirement.

(c) A person taking a delivery sale order of e-cigarettes shall comply with:

(1) the age verification requirements prescribed by Section 161.453;

(2) the disclosure requirements prescribed by Section 161.454;

(3) the registration and reporting requirements prescribed by Section 161.456; and

(4) each law of this state that generally applies to sales of e-cigarettes that occur entirely within this state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 31, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 17, eff. September 1, 2019.

Sec. 161.453. AGE VERIFICATION REQUIREMENT. (a) A person may not mail or ship cigarettes in connection with a delivery sale order unless before mailing or shipping the cigarettes the person accepting the delivery sale order first:

(1) obtains from the prospective customer a certification that includes:

(A) reliable confirmation that the purchaser is at least 21 years of age; and

(B) a statement signed by the prospective purchaser in writing and under penalty of law:

(i) certifying the prospective purchaser's address and date of birth;

(ii) confirming that the prospective

purchaser understands that signing another person's name to the certification is illegal, that sales of cigarettes to an individual under the age prescribed by Section 161.082 are illegal under state law, and that the purchase of cigarettes by an individual under that age is illegal under state law; and

(iii) confirming that the prospective purchaser wants to receive mailings from a tobacco company;

(2) makes a good faith effort to verify the information contained in the certification provided by the prospective purchaser under Subdivision (1) against a commercially available database or obtains a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of the prospective purchaser;

(3) sends to the prospective purchaser, by e-mail or other means, a notice that complies with Section 161.454; and

(4) for an order made over the Internet or as a result of an advertisement, receives payment for the delivery sale from the prospective purchaser by a credit or debit card that has been issued in the purchaser's name or by check.

(b) A person taking a delivery sale order may request that a prospective purchaser provide the purchaser's e-mail address.

(c) A person may not mail or ship e-cigarettes in connection with a delivery sale order unless before accepting a delivery sale order the person verifies that the prospective purchaser is at least 21 years of age through a commercially available database or aggregate of databases that is regularly used for the purpose of age and identity verification. After the order is accepted, the person must use a method of mailing or shipping that requires an adult signature.

(d) A retailer in this state that otherwise complies with applicable laws relating to retail sales and primarily sells e-cigarettes may comply with Subsection (c) by:

(1) verifying the age of the prospective purchaser with a commercially available database or a photocopy or other image of a government-issued identification bearing a photograph of the prospective purchaser and stating the date of birth or age of

the prospective purchaser;

(2) obtaining a written statement signed by the prospective purchaser, under penalty of law, certifying the prospective purchaser's address and date of birth; and

(3) receiving payment for the delivery sale from the prospective purchaser by a credit card or debit card that has been issued in the prospective purchaser's name or by a check that is associated with a bank account in the prospective purchaser's name. Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 32, eff. October 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 500 (S.B. 21), Sec. 18, eff. September 1, 2019.

Sec. 161.454. DISCLOSURE REQUIREMENTS. (a) The notice required by Section 161.453(a)(3) for a delivery sale of cigarettes must include a prominent and clearly legible statement that:

(1) cigarette sales to individuals who are below the age prescribed by Section 161.082 are illegal under state law;

(2) sales of cigarettes are restricted to those individuals who provide verifiable proof of age in accordance with Section 161.453; and

(3) cigarette sales are taxable under Chapter 154, Tax Code, and an explanation of how that tax has been or is to be paid with respect to the delivery sale.

(b) A delivery sale of an e-cigarette must include a prominent and clearly legible statement that:

(1) e-cigarette sales to individuals younger than the age prescribed by Section 161.082 are illegal under state law; and

(2) e-cigarette sales are restricted to individuals who provide verifiable proof of age in accordance with Section 161.453.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 33, eff. October 1, 2015.

Sec. 161.456. REGISTRATION AND REPORTING REQUIREMENTS.

(a) A person may not make a delivery sale or ship cigarettes or e-cigarettes in connection with a delivery sale unless the person first files with the comptroller a statement that includes:

- (1) the person's name and trade name; and
- (2) the address of the person's principal place of business and any other place of business, and the person's telephone number and e-mail address.

(b) Except as provided by Subsection (d), not later than the 10th day of each month, each person who has made a delivery sale or shipped or delivered cigarettes or e-cigarettes in connection with a delivery sale during the previous month shall file with the comptroller a memorandum or a copy of the invoice that provides for each delivery sale:

- (1) the name, address, telephone number, and e-mail address of the individual to whom the delivery sale was made;
- (2) the brand or brands of the cigarettes or e-cigarettes that were sold; and
- (3) the quantity of cigarettes or e-cigarettes that were sold.

(c) With respect to cigarettes, a person who complies with 15 U.S.C. Section 376, as amended, is considered to have complied with this section.

(d) A person is exempt from the requirement of filing with the comptroller a memorandum or a copy of an invoice under Subsection (b) if, in the two years preceding the date the report is due, the person has not violated this subchapter and has not been reported under Section [161.090](#) to the comptroller as having violated Subchapter H.

(e) A person required to submit a memorandum or a copy of an invoice under Subsection (b) shall submit a memorandum or a copy of an invoice to the comptroller for each delivery sale of a cigarette or e-cigarette in the previous two years unless the person has previously submitted the memorandum or copy to the comptroller.

(f) A person shall maintain records of compliance with this section until at least the fourth anniversary of the date the record

was prepared.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 35, eff. October 1, 2015.

Sec. 161.457. COLLECTION OF TAXES. A person who makes a delivery sale shall collect and remit to the comptroller any taxes imposed by this state in relation to the delivery sale. A person is not required to collect and remit any taxes for which the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes have already been paid to this state. Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.458. GENERAL OFFENSES. (a) A person commits an offense if the person violates a provision of this subchapter for which a criminal penalty is not otherwise provided.

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

(c) If it is shown on the trial of a person that the person has previously been convicted of an offense under this section, the offense is a Class B misdemeanor.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.459. KNOWING VIOLATION. (a) A person who knowingly violates a provision of this subchapter or who knowingly submits a certification under Section 161.453(a)(1) in another person's name commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.460. CIVIL PENALTY FOR NONPAYMENT OF TAX. A person who fails to pay a tax imposed in connection with a delivery sale shall pay to the state a civil penalty in an amount equal to five times the amount of the tax due. The penalty provided by this section is in addition to any other penalty provided by law.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Sec. 161.461. FORFEITURE. (a) Cigarettes or e-cigarettes sold or that a person attempted to sell in a delivery sale that does not comply with this subchapter are forfeited to the state and shall be destroyed.

(b) A fixture, equipment, or other material or personal property on the premises of a person who, with the intent to defraud this state, fails to comply with this subchapter is forfeited to the state.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 181 (S.B. 97), Sec. 36, eff. October 1, 2015.

Sec. 161.462. ENFORCEMENT. The attorney general or the attorney general's designee may bring an action in a court of this state to prevent or restrain a violation of this subchapter by any person or by a person controlling such a person.

Added by Acts 2003, 78th Leg., ch. 730, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER S. ALLOCATION OF KIDNEYS AND OTHER ORGANS AVAILABLE FOR TRANSPLANT

Sec. 161.471. DEFINITIONS. In this subchapter:

(1) "Auxiliary aids and services" means:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) provision of information in a format readily accessible and understandable to individuals with cognitive, neurological, developmental, or intellectual disabilities;

(D) acquisition or modification of equipment or devices; and

(E) other services and actions similar to those described by Paragraphs (A), (B), (C), and (D).

(2) "Disability" has the meaning assigned by the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(3) "Health care facility" means a facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business, including a hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to provide health care in the ordinary course of business or professional practice, including a physician, hospital, nursing facility, laboratory, intermediate care facility, mental health facility, transplant center, and any other facility for individuals with intellectual or developmental disabilities.

(5) "Organ procurement organization" means an organization that is a qualified organ procurement organization under 42 U.S.C. Section 273 that is currently certified or recertified in accordance with that federal law.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003.

Renumbered from Health and Safety Code, Section 161.451 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. 119), Sec. 2, eff. September 1, 2021.

Sec. 161.472. FORMATION OF KIDNEY SHARING POOL AND DISTRIBUTION TO LONGEST WAITING PATIENTS. (a) Under the system for allocating kidneys available for transplant in this state, to the extent allowed by federal law, a statewide pool of 20 percent of the kidneys from deceased donors of each blood type recovered by each organ procurement organization that has a defined service area that includes all or part of this state is provided to a special pool for

redistribution to patients who have been waiting the longest for transplantation in this state.

(b) Medically eligible patients with low panel reactive antibodies of less than 10 percent who, in terms of accumulated waiting time, comprise the top 20 percent of all patients waiting will be put in a pool. As one of those patients receives a transplant, the patient will be replaced in the pool, in turn, by the next longest waiting patient. Only accumulated waiting time will be used to establish priority access to the pool.

(c) With the exception of assigning points for a six antigen match with zero antigen mismatch, assigning points for human leukocyte antigen (HLA) match will be eliminated by organ procurement organizations that are participating in the pool established under Subsection (a).

(d) After a patient has qualified for entry into the pool established under Subsection (b), the order of distribution is based solely on the length of time each patient has waited.

(e) Use of the pools will be managed by the federal Organ Procurement and Transplantation Network.

(f) A panel of appropriate physician specialists of Texas' Organ Procurement and Transplantation Network members will monitor the listing of patients and the appropriate use of the pools.

Added by Acts 2003, 78th Leg., ch. 926, Sec. 1, eff. June 20, 2003.

Renumbered from Health and Safety Code, Section 161.452 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(45), eff. September 1, 2005.

Sec. 161.473. DISCRIMINATION ON BASIS OF DISABILITY PROHIBITED. (a) A health care provider may not, solely on the basis of an individual's disability:

(1) determine an individual is ineligible to receive an organ transplant;

(2) deny medical or other services related to an organ transplant, including evaluation, surgery, counseling, and postoperative treatment;

(3) refuse to refer the individual to a transplant center or other related specialist for evaluation or receipt of an

organ transplant; or

(4) refuse to place the individual on an organ transplant waiting list or place the individual at a position lower in priority on the list than the position the individual would have been placed if not for the individual's disability.

(b) Notwithstanding Subsection (a), a health care provider may consider an individual's disability when making a treatment recommendation or decision solely to the extent that a physician, following an individualized evaluation of the potential transplant recipient, determines the disability is medically significant to the organ transplant. This section does not require a referral or recommendation for, or the performance of, a medically inappropriate organ transplant.

(c) A health care provider may not consider an individual's inability to independently comply with post-transplant medical requirements as medically significant for the purposes of Subsection (b) if the individual has:

(1) a known disability; and

(2) the necessary support system to assist the individual in reasonably complying with the requirements.

(d) A health care facility shall make reasonable modifications in policies, practices, or procedures as necessary to allow individuals with a disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care facility can demonstrate that making the modifications would fundamentally alter the nature of the services or would impose an undue hardship on the facility. Reasonable modifications in policies, practices, and procedures may include:

(1) communicating with persons supporting or assisting with the individual's postsurgical and post-transplant care, including medication; and

(2) considering the support available to the individual in determining whether the individual is able to reasonably comply with post-transplant medical requirements, including support provided by:

(A) family;

(B) friends; or

(C) home and community-based services, including home and community-based services funded by:

(i) Medicaid;

(ii) Medicare;

(iii) a health plan in which the individual is enrolled; or

(iv) any other program or source of funding available to the individual.

(e) A health care provider shall make reasonable efforts to comply with the policies, practices, and procedures, as applicable, developed by a health care facility under Subsection (d), as necessary to allow an individual with a known disability access to organ transplant-related services, including transplant-related counseling, information, or treatment, unless the health care provider can demonstrate that compliance would fundamentally alter the nature of the services or would impose an undue hardship on the health care provider.

(f) A health care provider shall make reasonable efforts to provide auxiliary aids and services to an individual with a known disability seeking organ transplant-related services, including organ transplant-related counseling, information, or treatment, as necessary to allow the individual access to those services, unless the health care provider can demonstrate that providing the transplant-related services with auxiliary aids and services present would fundamentally alter the transplant-related services provided or would impose an undue hardship on the health care provider.

(g) A health care provider shall comply with the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.) to the extent that Act applies to a health care provider. This subsection may not be construed to require a health care provider to comply with that Act if the Act does not otherwise require compliance by the health care provider.

(h) This section applies to each stage of the organ transplant process.

(i) A violation of this section is grounds for disciplinary

action by the regulatory agency that issued a license, certificate, or other authority to a health care provider who committed the violation. Before a regulatory agency may take disciplinary action against a health care provider for a violation, the applicable regulatory agency shall:

(1) notify the health care provider of the agency's finding that the health care provider has violated or is violating this section or a rule adopted under this section; and

(2) provide the health care provider with an opportunity to correct the violation without penalty or reprimand.

(j) A physician who in good faith makes a determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

(k) A health care provider who in good faith makes a treatment recommendation or decision on the basis of a physician's determination that an individual's disability is medically significant to the organ transplant, as described by Subsection (b), does not violate this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 45 (H.B. [119](#)), Sec. 3, eff. September 1, 2021.

SUBCHAPTER T. INFORMATION FOR PARENTS OF NEWBORN CHILDREN

Sec. 161.501. RESOURCE PAMPHLET AND RESOURCE GUIDE PROVIDED TO PARENTS OF NEWBORN CHILDREN. (a) A hospital, birthing center, physician, nurse midwife, or midwife who provides prenatal care to a pregnant woman during gestation or at delivery of an infant shall:

(1) provide the woman and the father of the infant, if possible, or another adult caregiver for the infant, with a resource pamphlet that includes:

(A) a list of the names, addresses, and phone numbers of professional organizations that provide postpartum counseling and assistance to parents relating to postpartum depression and other emotional trauma associated with pregnancy and parenting;

(B) information regarding the prevention of

shaken baby syndrome including:

(i) techniques for coping with anger caused by a crying baby;

(ii) different methods for preventing a person from shaking a newborn, infant, or other young child;

(iii) the dangerous effects of shaking a newborn, infant, or other young child; and

(iv) the symptoms of shaken baby syndrome and who to contact, as recommended by the American Academy of Pediatrics, if a parent suspects or knows that a baby has been shaken in order to receive prompt medical treatment;

(C) a list of diseases for which a child is required by state law to be immunized and the appropriate schedule for the administration of those immunizations;

(D) the appropriate schedule for follow-up procedures for newborn screening;

(E) information regarding sudden infant death syndrome, including current recommendations for infant sleeping conditions to lower the risk of sudden infant death syndrome;

(F) educational information in both English and Spanish on:

(i) pertussis disease and the availability of a vaccine to protect against pertussis, including information on the Centers for Disease Control and Prevention recommendation that parents receive Tdap during the postpartum period to protect newborns from the transmission of pertussis; and

(ii) the incidence of cytomegalovirus, birth defects caused by congenital cytomegalovirus, and available resources for the family of an infant born with congenital cytomegalovirus; and

(G) the danger of heatstroke for a child left unattended in a motor vehicle;

(2) if the woman is a recipient of medical assistance under Chapter 32, Human Resources Code, provide the woman and the father of the infant, if possible, or another adult caregiver with a resource guide that includes information in both English and Spanish relating to the development, health, and safety of a child

from birth until age five, including information relating to:

(A) selecting and interacting with a primary health care practitioner and establishing a "medical home" for the child;

(B) dental care;

(C) effective parenting;

(D) child safety;

(E) the importance of reading to a child;

(F) expected developmental milestones;

(G) health care resources available in the state;

(H) selecting appropriate child care; and

(I) other resources available in the state;

(3) document in the woman's record that the woman received the resource pamphlet described in Subdivision (1) and the resource guide described in Subdivision (2), if applicable; and

(4) retain the documentation for at least five years in the hospital's, birthing center's, physician's, nurse midwife's, or midwife's records.

(b) A hospital, birthing center, physician, nurse midwife, or midwife:

(1) may use the pamphlet provided on the department's website or an alternative pamphlet that provides the information required by Subsection (a)(1); and

(2) may use the resource guide provided on the department's website or an alternative guide that provides the information required by Subsection (a)(2).

(c) The department may make available online and distribute an existing publication created by another health and human services agency as the resource guide required by Subsection (a)(2).

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 106 (H.B. 1510), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff.

September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 575 (H.B. 3336), Sec. 1, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0482, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1081 (H.B. 2574), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1163 (S.B. 791), Sec. 3, eff. September 1, 2015.

Sec. 161.502. DUTIES OF DEPARTMENT, EXECUTIVE COMMISSIONER, AND COMMISSION. (a) The department shall:

(1) establish guidelines for the provision of the information required by Section 161.501;

(2) make available on the department's website:

(A) a printable version of the pamphlet required by Section 161.501(a)(1); and

(B) a printable version of the resource guide required by Section 161.501(a)(2);

(3) update the list of resources and required immunizations in the pamphlet required under Subdivision (2)(A) quarterly;

(4) make the pamphlet and resource guide required by Section 161.501 available for distribution to hospitals, physicians, birthing centers, nurse midwives, and midwives; and

(5) coordinate funding for the development, publication, and distribution of the informational pamphlet and resource guide with other health and human services agencies, and solicit funding for the department's duties under this subchapter through means other than appropriations, such as gifts, grants, and sales of sponsorship or advertising.

(b) The department may include additional information in the pamphlet or resource guide as appropriate for parents of newborns.

(c) The executive commissioner shall develop specific performance measures by which the commission may evaluate the effectiveness of the resource guide under Section 161.501(a)(2) in:

(1) reducing costs to the state; and

(2) improving outcomes for children.

(d) Repealed by Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 171 (H.B. 1240), Sec. 1, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0483, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0484, eff. April 2, 2015.

Acts 2021, 87th Leg., R.S., Ch. 856 (S.B. 800), Sec. 25(7), eff. September 1, 2021.

Sec. 161.503. LIABILITY NOT CREATED. This subchapter does not create civil or criminal liability.

Redesignated from Health and Safety Code, Subchapter R, Chapter 161 and amended by Acts 2005, 79th Leg., Ch. 696 (S.B. 316), Sec. 1, eff. September 1, 2005.

SUBCHAPTER U. INFORMATION REGARDING PROGRAMS FOR MILITARY PERSONNEL AND THEIR FAMILIES

Sec. 161.551. DEFINITIONS. (a) In this subchapter, "servicemember" means a member or former member of the state military forces or a component of the United States armed forces, including a reserve component.

(b) In this section, "state military forces" has the meaning assigned by Section 437.001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.11, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0485, eff. April 2, 2015.

Sec. 161.552. DIRECTORY OF SERVICES. (a) The department and commission shall compile, maintain, and disseminate through the Texas Information and Referral Network and through other appropriate media, a directory of services and other resources, tools, and counseling programs available to servicemembers and their immediate family.

(b) The directory must include:

(1) information regarding counseling services that:

(A) facilitate the reintegration of the servicemember into civilian and family life;

(B) identify and treat stress disorders, trauma, and traumatic brain injury;

(C) address parenting and family well-being, employment, and substance abuse issues; and

(D) provide crisis intervention services;

(2) to the greatest degree possible in the judgment of the department, all private and public community, state, and national resources that protect and promote the health and well-being of servicemembers and their immediate family and that are accessible in the state directly or through electronic media, print media, or the Internet; and

(3) other resources that support the health of servicemembers and their families.

(c) The department and commission shall organize the directory in a manner that allows a person to locate services in a specific community in the state.

(d) The department and commission shall develop and maintain the directory in collaboration with local, state, and national private and government organizations, including:

(1) the United States Veterans Health Administration;

(2) the United States Department of Defense;

(3) the Texas military forces;

(4) the Texas Veterans Commission; and

(5) other public and private national and

community-based organizations that provide support to servicemembers and their families.

(e) The department shall provide the directory to the Texas Information and Referral Network of the commission in the time periods and in the manner and format specified by the Texas Information and Referral Network.

(f) The department shall provide the directory on the department's website or through links appearing on the department's website.

Added by Acts 2007, 80th Leg., R.S., Ch. 1381 (S.B. 1058), Sec. 6, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.10, eff. September 1, 2013.

SUBCHAPTER V. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS
MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. The purpose of this subchapter is to:

(1) recover health care costs to the state imposed by non-settling manufacturers;

(2) prevent non-settling manufacturers from undermining this state's policy of reducing underage smoking by offering cigarettes and cigarette tobacco products at prices that are substantially below the prices of cigarettes and cigarette tobacco products of other manufacturers;

(3) protect the tobacco settlement agreement and funding, which has been reduced because of the growth of sales of non-settling manufacturer cigarettes and cigarette tobacco products, for programs that are funded wholly or partly by payments to this state under the tobacco settlement agreement and recoup for this state settlement payment revenue lost because of sales of non-settling manufacturer cigarettes and cigarette tobacco products;

(4) ensure evenhanded treatment of manufacturers and further protect the tobacco settlement agreement and funding by

imposing a partial payment obligation on non-settling manufacturers that already make payments on Texas sales under the master settlement agreement until a credit amendment to that agreement that will provide those manufacturers with a credit for payments to Texas is effective; and

(5) provide funding for any purpose the legislature determines.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.602. DEFINITIONS. In this subchapter:

(1) "Brand family" means each style of cigarettes or cigarette tobacco products sold under the same trademark. The term includes any style of cigarettes or cigarette tobacco products that have a brand name, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or other indication of product identification that is identical to, similar to, or identifiable with a previously known brand of cigarettes or cigarette tobacco products.

(2) "Cigarette" means a roll for smoking that is:

(A) made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) not a cigar.

(3) "Cigarette tobacco product" means roll-your-own tobacco or tobacco that, because of the tobacco's appearance, type, packaging, or labeling, is suitable for use in making cigarettes and is likely to be offered to or purchased by a consumer for that purpose.

(4) "Credit amendment" means an amendment to the master settlement agreement that offers a credit to subsequent participating manufacturers for fees paid under this subchapter with respect to their products in a form agreed on by settling states, as defined in the master settlement agreement, with aggregate allocable shares, as defined in the master settlement agreement, equal to at least 99.937049 percent; by the original participating manufacturers, as defined in the master settlement

agreement; and by subsequent participating manufacturers whose aggregate market share, expressed as a percentage of the total number of individual cigarettes sold in the United States, the District of Columbia, and Puerto Rico during the calendar year at issue, as measured by excise taxes collected by the federal government, and in the case of cigarettes sold in Puerto Rico, by arbitrios de cigarillos collected by the Puerto Rico taxing authority, is greater than 2.5 percent. For purposes of the calculation of subsequent participating manufacturer market share under this subchapter, 0.09 ounces of roll-your-own tobacco constitutes one cigarette.

(5) "Distributor" has the meaning assigned by Section 154.001 or 155.001, Tax Code, as appropriate.

(6) "Fee" or "monthly fee" means the fee imposed under Section 161.603.

(7) "Manufacturer" means a person that manufactures, fabricates, or assembles cigarettes or cigarette tobacco products, or causes or arranges for the manufacture, fabrication, or assembly of cigarettes or cigarette tobacco products for sale or distribution. For purposes of this subchapter, the term includes a person that is the first importer into the United States of cigarettes or cigarette tobacco products manufactured, fabricated, or assembled outside the United States.

(8) "Master settlement agreement" means the settlement agreement entered into on November 23, 1998, by 46 states and leading United States tobacco manufacturers, as amended as of September 1, 2013.

(9) "Non-settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that did not sign a tobacco settlement agreement described by Subdivision (15).

(10) "Non-settling manufacturer cigarettes" means cigarettes of a non-settling manufacturer.

(11) "Non-settling manufacturer cigarette tobacco products" means cigarette tobacco products of a non-settling manufacturer.

(12) "Released claim" means:

(A) "released claims" as that term is defined in

the agreement described by Subdivision (15)(A); and

(B) all claims encompassed in Paragraph 7 of the agreement described by Subdivision (15)(B).

(13) "Settling manufacturer" means a manufacturer of cigarettes or cigarette tobacco products that signed a tobacco settlement agreement described by Subdivision (15).

(14) "Subsequent participating manufacturer" has the same meaning provided for that term in the master settlement agreement, except that the term excludes any settling manufacturer under the tobacco settlement agreement described by Subdivision (15)(B). A manufacturer may not be treated as a subsequent participating manufacturer for purposes of Section 161.604(c) unless it has provided to the comptroller notice and proof, in the form and manner the comptroller may prescribe, that it is a subsequent participating manufacturer.

(15) "Tobacco settlement agreement" means either:

(A) the Comprehensive Settlement Agreement and Release filed on January 16, 1998, in the United States District Court, Eastern District of Texas, in the case styled The State of Texas v. The American Tobacco Co., et al., No. 5-96CV-91, and all subsequent amendments; or

(B) the settlement agreement entered into on March 20, 1997, regarding the matter described in Paragraph (A), but only as to companies that signed that agreement on that date. Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the sale, use, consumption, or distribution in this state of:

(1) non-settling manufacturer cigarettes if a stamp is required to be affixed to a package of those cigarettes under Section 154.041, Tax Code;

(2) non-settling manufacturer cigarettes that are sold, purchased, or distributed in this state but that are not required to have a stamp affixed to a package of those cigarettes under Chapter 154, Tax Code;

(3) non-settling manufacturer cigarette tobacco

products that are subject to the tax imposed by Section 155.0211, Tax Code; and

(4) non-settling manufacturer cigarette tobacco products that are sold, purchased, or distributed in this state but that are not subject to the tax imposed by Section 155.0211, Tax Code.

(b) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that a settling manufacturer claims as its own, and that are included in computing payments to be made by that settling manufacturer, under the tobacco settlement agreement described by Section 161.602(15)(A).

(c) The fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are sold into another state for resale to consumers outside of this state, provided that the sale is reported to the state into which the cigarettes are sold under 15 U.S.C. Section 376.

(d) The fee imposed by this section is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(e) Except as otherwise provided by this subchapter, the fee imposed by this section is imposed, collected, paid, administered, and enforced in the same manner as the taxes imposed by Chapter 154 or 155, Tax Code, as appropriate.

(f) The fee imposed by this section shall be collected only once on each cigarette or cigarette tobacco product on which it is due.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.604. RATE OF FEE. (a) For cigarettes or cigarette tobacco products sold, used, consumed, or distributed in this state, as provided by Section 161.603, during the 2013 calendar year, the fee is imposed at the rate of 2.75 cents for:

- (1) each non-settling manufacturer cigarette; and
- (2) each 0.09 ounces of non-settling manufacturer cigarette tobacco product described by Section 161.602(3).

(b) Beginning in January 2014, and in January of each

subsequent year, the comptroller shall adjust the rate of the fee by increasing the rate in effect on the date the adjustment is made by the greater of:

(1) three percent; or

(2) the actual total percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, during the preceding calendar year, calculated by comparing the CPI-U for December of the preceding calendar year with the CPI-U for December a year earlier.

(b-1) The adjusted rate of the fee determined under Subsection (b) takes effect on February 1 of the year in which the adjusted rate is determined and remains in effect until January 31 of the following year.

(c) Notwithstanding Subsection (a), the rate of the fee on the cigarettes and cigarette tobacco products of a subsequent participating manufacturer shall, for calendar months beginning before the effective date of a credit amendment, be calculated by substituting 0.75 cents for 2.75 cents in Subsection (a). For calendar months beginning on or after the effective date of a credit amendment, the rate of the fee on the cigarettes and cigarette tobacco products of subsequent participating manufacturers shall be the same as the rate that applies for those months to the cigarettes of non-settling manufacturers who are not subsequent participating manufacturers.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. [3536](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. [1390](#)), Sec. 1, eff. September 1, 2017.

Sec. 161.605. DISTRIBUTOR'S REPORT AND PAYMENT OF MONTHLY FEE. (a) A distributor required to file a report under Section [154.210](#) or [155.111](#), Tax Code, shall, in addition to the information required by those sections, include in that required report, as appropriate:

(1) the number and denominations of stamps affixed to

individual packages of non-settling manufacturer cigarettes during the preceding month;

(2) the amount of non-settling manufacturer cigarette tobacco products subject to the tax imposed by Section 155.0211, Tax Code, during the preceding month;

(3) the number of individual packages of non-settling manufacturer cigarettes and the amount of non-settling manufacturer cigarette tobacco products not subject to the tax imposed by Chapter 154, Tax Code, or Section 155.0211, Tax Code, sold or purchased in this state or otherwise distributed in this state for sale in the United States;

(4) a calculation of the monthly fee required to be paid by the distributor; and

(5) any other information the comptroller considers necessary or appropriate to determine the amount of the fee imposed by this subchapter or to enforce this subchapter.

(b) A distributor shall include with the report required under this section the fee imposed under Section 161.603 based on the non-settling manufacturer cigarettes and cigarette tobacco products required to be included in the distributor's report under this section and calculated using the rate under Section 161.604.

(c) The information required by Subsections (a)(1), (2), and (3) must be itemized for each place of business and by manufacturer and brand family.

(d) The requirement to report information under this section shall be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

(e) Notwithstanding any other law, a distributor that remits a monthly fee under this section is entitled to a stamping allowance of three percent of the face value of all stamps purchased under Section 154.041, Tax Code, for providing the service of affixing stamps to cigarette packages.

(f) Information obtained from a report provided under Subsection (a) regarding cigarettes or cigarette tobacco products sold, purchased, or otherwise distributed by a non-settling manufacturer may be disclosed by the comptroller to the

manufacturer or to the authorized representative of the manufacturer.

(g) The comptroller shall, for the purpose of assisting distributors in calculating the monthly fee, publish and maintain on the comptroller's Internet website:

(1) a list of the names and brand families of settling manufacturers;

(2) a list of each non-settling manufacturer showing whether that manufacturer:

(A) is a subsequent participating manufacturer;

or

(B) is not a subsequent participating manufacturer; and

(3) the effective date of any credit amendment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 33 (S.B. 1390), Sec. 2, eff. September 1, 2017.

Sec. 161.606. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NON-SETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco products of a non-settling manufacturer were not offered for sale or distribution in this state on September 1, 2013, the non-settling manufacturer shall, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide to the attorney general on a form prescribed by the attorney general:

(1) the non-settling manufacturer's complete name, address, and telephone number;

(2) the date that the non-settling manufacturer will begin offering cigarettes or cigarette tobacco products for sale or distribution in this state;

(3) the names of the brand families of the cigarettes or cigarette tobacco products that the non-settling manufacturer will offer for sale or distribution in this state;

(4) a statement that the non-settling manufacturer intends to comply with this subchapter; and

(5) the name, address, telephone number, and signature of an officer of the non-settling manufacturer attesting to all of the included information.

(b) The attorney general shall make the information provided under this section available to the comptroller.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.607. PENALTIES FOR NONCOMPLIANCE. Cigarettes and cigarette tobacco products of a non-settling manufacturer that are sold, used, consumed, or distributed in this state in violation of this subchapter, including cigarettes and cigarette tobacco products for which full payment of the fee imposed under Section 161.603 is not made, shall be treated as cigarettes or cigarette tobacco products for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and the distributor or non-settling manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.608. APPOINTMENT OF AGENT FOR SERVICE OF PROCESS. A non-settling manufacturer shall appoint and engage a resident agent for service of process.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.609. AUDIT OR INSPECTION. The comptroller or attorney general is entitled to conduct reasonable periodic audits or inspections of the financial records of a non-settling manufacturer and its distributors to ensure compliance with this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

Sec. 161.610. COMPROLLER INFORMATION SHARING. On request, the comptroller shall report annually to the independent auditor or other entities responsible for making calculations or other determinations under a tobacco settlement agreement or the master settlement agreement, as the master settlement agreement may be amended or supplemented by some or all of the parties thereto, the volume of cigarettes on which the fee required under Section [161.603](#) is paid, itemized by cigarette manufacturer and brand family.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. [3536](#)), Sec. 1, eff. September 1, 2013.

Sec. 161.611. REVENUE DEPOSITED IN GENERAL REVENUE FUND. The revenue from the fees imposed by this subchapter shall be deposited in the state treasury to the credit of the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. [3536](#)), Sec. 1, eff. September 1, 2013.

Sec. 161.612. RELEASED CLAIMS. All fees paid by a manufacturer under this subchapter shall apply on a dollar for dollar basis to reduce any judgment or settlement on a released claim brought against the manufacturer that made the payment.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. [3536](#)), Sec. 1, eff. September 1, 2013.

Sec. 161.613. APPLICATION OF SUBCHAPTER. (a) This subchapter applies without regard to Section [154.022](#), Tax Code, or any other law that might be read to create an exemption for interstate sales.

(b) This subchapter does not apply to a tobacco product described by Section [155.001](#)(15)(C), Tax Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. [3536](#)), Sec. 1, eff. September 1, 2013.

Sec. 161.614. RULES. The comptroller may issue rules and regulations as necessary to carry out or enforce this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1305 (H.B. 3536), Sec. 1, eff. September 1, 2013.

SUBCHAPTER W. INFORMATION REGARDING DOWN SYNDROME

Sec. 161.651. DEFINITIONS. In this subchapter:

(1) "Down syndrome" means a chromosomal condition caused by the presence of an extra whole or partial copy of chromosome 21.

(2) "Health care provider" has the meaning assigned by Section 34.001 and includes a genetic counselor.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.652. INFORMATION REGARDING DOWN SYNDROME.

(a) The department shall make available information regarding Down syndrome that includes:

(1) information addressing physical, developmental, educational, and psychosocial outcomes, life expectancy, clinical course, and intellectual and functional development for individuals with Down syndrome;

(2) information regarding available treatment options for individuals with Down syndrome;

(3) contact information for national and local Down syndrome education and support programs, services, and organizations, including organizations in Houston, Dallas, San Antonio, and Austin, and information hotlines, resource centers, and clearinghouses; and

(4) any other information required by the department.

(b) The information described by Subsection (a) must be:

(1) current, evidence-based information that:

(A) has been reviewed by medical experts and local Down syndrome organizations; and

(B) does not explicitly or implicitly present pregnancy termination as an option when a prenatal test indicates that the unborn child has Down syndrome; and

(2) published in English and Spanish.

(c) The department shall make the information described by Subsection (a) available on the department's Internet website in a format that may be easily printed. The department may provide the information described by Subsection (a) in writing to health care providers if the department determines that providing written information is cost-effective.

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.

Sec. 161.653. DUTY OF HEALTH CARE PROVIDER. (a) A health care provider who administers or causes to be administered a test for Down syndrome or who initially diagnoses a child with Down syndrome shall provide the information described by Section 161.652 to:

(1) expectant parents who receive a prenatal test result indicating a probability or diagnosis that the unborn child has Down syndrome; or

(2) a parent of a child who receives:

(A) a test result indicating a probability or diagnosis that the child has Down syndrome; or

(B) a diagnosis of Down syndrome.

(b) In addition to providing the information described by Subsection (a), a health care provider may provide additional information about Down syndrome that is current and evidence-based and has been reviewed by medical experts and national Down syndrome organizations.

(c) Notwithstanding any other law, this section does not impose a standard of care or create an obligation or duty that provides a basis for a cause of action against a health care provider. A health care provider may not be held civilly or criminally liable for failing to provide information as required by Subsection (a).

Added by Acts 2015, 84th Leg., R.S., Ch. 811 (H.B. 3374), Sec. 1, eff. September 1, 2015.