

HEALTH AND SAFETY CODE
TITLE 4. HEALTH FACILITIES
SUBTITLE B. LICENSING OF HEALTH FACILITIES
CHAPTER 248A. PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 248A.001. DEFINITIONS. In this chapter:

(1) "Basic services" includes:

(A) the development, implementation, and monitoring of a comprehensive protocol of care that:

(i) is provided to a medically dependent or technologically dependent minor;

(ii) is developed in conjunction with the minor's parent or legal guardian; and

(iii) specifies the medical, nursing, psychosocial, therapeutic, and developmental services required by the minor served; and

(B) the caregiver training needs of the minor's parent or legal guardian.

(2) "Center" means a prescribed pediatric extended care center.

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

(4) "Commissioner" means the commissioner of aging and disability services.

(5) "Controlling person" has the meaning assigned by Section [248A.0012](#).

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

(7) "Executive commissioner" means the executive commissioner of the commission.

(8) "Medically dependent or technologically dependent minor" means a minor who because of an acute, chronic, or intermittent medically complex or fragile condition or disability requires ongoing, technology-based skilled nursing care prescribed by the minor's physician to avert death or further disability or the

routine use of a medical device to compensate for a deficit in a life-sustaining body function. The term does not include minor or occasional medical conditions that do not require continuous nursing care, including asthma or diabetes, or a condition that requires an epinephrine injection.

(9) "Minor" means an individual younger than 21 years of age.

(10) "Prescribed pediatric extended care center" means a facility operated for profit or on a nonprofit basis that provides nonresidential basic services to four or more medically dependent or technologically dependent minors who require the services of the facility and who are not related by blood, marriage, or adoption to the owner or operator of the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.0012. CONTROLLING PERSON. (a) A person is a controlling person if the person has the ability, acting alone or in concert with others, to directly or indirectly influence, direct, or cause the direction of the management of, expenditure of money for, or policies of a center or other person.

(b) For purposes of this chapter, "controlling person" includes:

(1) a management company, landlord, or other business entity that operates or contracts with another person for the operation of a center;

(2) any person who is a controlling person of a management company or other business entity that operates a center or that contracts with another person for the operation of a center; and

(3) any other person who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a center, is in a position of actual control of or authority with respect to the center, regardless of whether the person is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the center.

(c) Notwithstanding any other provision of this section, for purposes of this chapter, a controlling person of a center or of a management company or other business entity described by Subsection (b)(1) that is a publicly traded corporation or is controlled by a publicly traded corporation means an officer or director of the corporation. The term does not include a shareholder or lender of the publicly traded corporation.

(d) A controlling person described by Subsection (b)(3) does not include a person, including an employee, lender, secured creditor, or landlord, who does not exercise any formal or actual influence or control over the operation of a center.

(e) The executive commissioner may adopt rules that define the ownership interests and other relationships that qualify a person as a controlling person under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.002. EXEMPTIONS. This chapter does not apply to:

(1) a facility operated by the United States government or a federal agency; or

(2) a health facility otherwise licensed under this subtitle.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.003. CONFLICT WITH LOCAL LAWS. To the extent of any conflict between the standards adopted under this chapter and a standard required in a local, county, or municipal ordinance, this chapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. LICENSING OF CENTERS

Sec. 248A.051. LICENSE REQUIRED; PREMISES RESTRICTION.

(a) A person may not own or operate a prescribed pediatric extended care center in this state unless the person holds an

initial, renewal, or temporary license issued under this chapter. An applicant for a prescribed pediatric extended care center license may not provide services under that license until the department issues the license.

(b) A separate initial, renewal, or temporary license is required for each center located on separate premises, regardless of whether the centers are under the ownership or operation of the same person.

(c) A person may not operate a center on the same premises as:

(1) a child-care facility licensed under Chapter 42, Human Resources Code; or

(2) any other facility licensed by the department or the Department of State Health Services.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 1, eff. September 1, 2015.

Sec. 248A.052. INITIAL LICENSE APPLICATION; ISSUANCE.

(a) An applicant for an initial prescribed pediatric extended care center license shall submit to the department in accordance with department rules:

(1) a sworn application on the form prescribed by the department;

(2) a letter of credit as prescribed by the department to demonstrate the applicant's financial viability; and

(3) the required fees.

(b) The application must contain:

(1) the location of the premises of the center for which the license is sought;

(2) documentation, signed by the appropriate local government official, stating the location and use of the premises meet local zoning requirements;

(3) the name, address, and social security number of, and background and criminal history check information for:

- (A) the applicant;
 - (B) the administrator responsible for daily operations of the center;
 - (C) the financial officer responsible for financial operations of the center; and
 - (D) each controlling person;
- (4) the name, address, and federal employer identification number or taxpayer identification number of the applicant and of each controlling person, if the applicant or controlling person is not an individual;
 - (5) the business name of the center;
 - (6) the maximum patient capacity requested for the center; and
 - (7) a sworn affidavit that the applicant has complied with this chapter and rules adopted under this chapter.

(c) The department shall issue an initial license to a center under this chapter if the department determines that the applicant and the center meet the requirements of this chapter and the rules and standards adopted under this chapter. The license must include:

- (1) the license holder's name;
- (2) the location of the premises of the center; and
- (3) a statement indicating the center provides services to minors for 12 hours or less in a 24-hour period and does not provide 24-hour care.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0744, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 3, eff. September 1, 2015.

Sec. 248A.0525. TEMPORARY LICENSE PROCEDURES. (a) An applicant for an initial license under Section 248A.052 may

request, in the manner prescribed by the department and in accordance with this section, that the department issue a temporary license pending the department's review of the applicant's application for an initial license. An applicant is not required to request a temporary license to receive an initial or renewal license.

(b) A temporary license issued under this section authorizes an applicant to provide nonresidential basic services to not more than six minors until the temporary license expires or terminates in accordance with this section.

(c) On receipt of a temporary license request, the department shall conduct a review of the applicant's policies, procedures, and staffing plans to serve minors in the center.

(d) The department shall grant an applicant's request for a temporary license if the department determines the applicant is eligible for the license as provided by this subsection. The department may not grant a request for a temporary license if the department determines the applicant is ineligible for the license under this subsection. An applicant is eligible for a temporary license only if the applicant meets:

(1) the license application requirements of Sections [248A.052](#)(a) and (b) and the license application rules adopted under this chapter;

(2) the building requirements and standards for a center provided in department rules adopted under this chapter; and

(3) the requirements of the department's review conducted under Subsection (c).

(e) A temporary license issued under this section expires on the earlier of:

(1) the 90th day after the date the temporary license is issued or the last day of any extension period granted by the department; or

(2) the date an initial license is issued under Section [248A.052](#).

(f) The department may not grant more than one extension of a temporary license issued under this section and may not grant an extension for a period that exceeds 90 days. The department shall

grant an extension if a temporary license holder submits to the department an extension request in the manner prescribed by the department not later than the 30th day before the date the temporary license expires.

(g) A temporary license holder must comply with this chapter and the rules adopted under this chapter for the period for which the temporary license is issued, including an extension, if applicable. The department may take an enforcement action against a temporary license holder for failure to comply with this chapter and the rules adopted under this chapter.

(h) The department may conduct a complaint investigation and inspection of a temporary license holder.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 4, eff. September 1, 2015.

Sec. 248A.053. INITIAL OR RENEWAL LICENSE TERM; RENEWAL; NOTIFICATION. (a) An initial or renewal license issued under this chapter expires on the third anniversary of the date of issuance. The executive commissioner by rule shall adopt a system under which licenses expire on staggered dates during each three-year period. The commission shall prorate the license fee as appropriate if the expiration date of a license changes as a result of this subsection.

(b) A person applying to renew a center license shall:

(1) submit a renewal application to the commission on a prescribed form at least 60 days but not more than 120 days before expiration of the license;

(2) submit the renewal fee in the amount required by agency rule; and

(3) comply with any other requirements specified by agency rule.

(c) The commission shall assess a \$50 per day late fee to a license holder who submits a renewal application after the date required by Subsection (b)(1), except that the total amount of a late fee may not exceed the lesser of 50 percent of the license renewal fee or \$500.

(d) At least 120 days before expiration of a center license,

the commission shall notify the owner or operator of the center of the license expiration.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0745, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 6, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 10, eff. September 1, 2017.

Sec. 248A.054. LICENSE NOT TRANSFERABLE OR ASSIGNABLE. A license under this chapter is issued to the license holder named on the license at the location of the premises listed on the license and is not transferable or assignable.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER C. POWERS AND DUTIES OF
EXECUTIVE COMMISSIONER, COMMISSION, AND DEPARTMENT

Sec. 248A.101. ADOPTION OF RULES AND STANDARDS. (a) The executive commissioner shall adopt rules necessary to implement this chapter.

(b) To protect the health and safety of the public and ensure the health, safety, and comfort of the minors served by a center, the rules must establish minimum center standards, including:

(1) standards relating to the issuance, renewal, denial, suspension, probation, and revocation of a license to operate a center;

(2) standards relating to the provision of family-centered basic services that include individualized medical, developmental, and family training services;

(3) based on the size of the building and the number of minors served, building construction and renovation standards,

including standards for plumbing, electrical, glass, manufactured buildings, accessibility for persons with physical disabilities, and fire protection;

(4) based on the size of the building and the number of minors served, building maintenance conditions relating to plumbing, heating, lighting, ventilation, adequate space, fire protection, and other conditions;

(5) standards relating to the minimum number of and qualifications required for personnel who provide personal care or basic services to the minors served;

(6) standards relating to the sanitary conditions within a center and its surroundings, including water supply, sewage disposal, food handling, and general hygiene;

(7) standards relating to the programs offered by the center to promote and maintain the health and development of the minors served and to meet the training needs of the minors' parents or legal guardians;

(8) standards relating to physician-prescribed supportive services;

(9) standards relating to transportation services;
and

(10) standards relating to maintenance of patient medical records and program records in accordance with other law and with accepted professional standards and practices.

(c) The executive commissioner by rule shall authorize the commissioner to grant a waiver from compliance with standards adopted under Subsection (b)(3), (4), or (6) to a center located in a municipality that adopts a code to regulate any of those standards if the commissioner determines the applicable municipal code standards exceed the corresponding standards adopted under Subsection (b)(3), (4), or (6).

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0746, eff. April 2, 2015.

Sec. 248A.102. INSPECTIONS; CORRECTIVE ACTION PLAN.

(a) The department may inspect a center, including its records, at reasonable times as necessary to ensure compliance with this chapter and the rules adopted under this chapter. The center shall provide the department with access to all center records.

(b) The department shall inspect a center before issuing or renewing a license under this chapter.

(c) The department may require a center that undergoes an inspection to:

(1) take appropriate corrective action necessary to comply with the requirements of this chapter and rules adopted under this chapter; and

(2) submit a corrective action plan to the department for approval.

(d) A center shall make available to any person on request a copy of each inspection report pertaining to the center that has been issued by the department. Before making an inspection report available under this subsection, the center shall redact from the report any information that is confidential under other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.103. FEES. (a) The executive commissioner by rule shall set fees imposed by this chapter in amounts reasonable and necessary to cover the cost of administering this chapter.

(b) A fee collected under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(c) A fee collected under this chapter is nonrefundable.
Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0747, eff. April 2, 2015.

Sec. 248A.104. COMMISSION DUTIES. The commission shall designate a center licensed under this chapter as a health care services provider under the medical assistance program established

under Chapter 32, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER D. CENTER REGULATION

Sec. 248A.151. ADMISSION CRITERIA FOR MINOR CLIENT; ADULT ACCOMPANIMENT. (a) A center may not admit a minor client to the center unless:

(1) the client is a medically dependent or technologically dependent minor;

(2) the minor's prescribing physician issues a prescription ordering care at a center;

(3) the minor's parent or legal guardian consents to the minor's admission to the center; and

(4) the admission is voluntary based on the parent's or legal guardian's preference in both managed care and non-managed care service delivery systems.

(b) An admission authorized under this section is not intended to supplant the right to a Medicaid private duty nursing benefit, when medically necessary.

(c) A minor client's parent, legal guardian, or managing conservator is not required to accompany the client when:

(1) the client receives services in the center, including therapy services delivered in the center but billed separately; or

(2) the center transports or provides for the transport of the client to and from the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 8, eff. September 1, 2015.

Sec. 248A.152. RESTRICTIONS ON HOURS, SERVICES, AND PATIENT

CAPACITY. (a) A center may not provide services to a minor for more than 12 hours in any 24-hour period.

(b) A center may not provide services other than services regulated under this chapter and department rule.

(c) The maximum patient capacity at a center may not exceed 60.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0748, eff. April 2, 2015.

Sec. 248A.153. LICENSE DISPLAY. Each center licensed under this chapter shall display the center's license in a conspicuous location readily visible to a person entering the center.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.154. MAINTENANCE OF RECORDS. Each center shall maintain at the center the medical and other records required by this chapter and by rules adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.155. COMPLAINTS. A person may file a complaint with the department against a center licensed or required to be licensed under this chapter. The department shall investigate the complaint in accordance with the complaint procedures established under Chapter 161, Human Resources Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.156. COMPLIANCE WITH OTHER LAW. (a) A center shall comply with Chapter 260A and rules adopted under that chapter.

(b) An owner, center employee, or other person subject to Chapter 260A shall comply with that chapter and rules adopted under

that chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.157. CLOSING OF CENTER. At least 30 days before the date a center voluntarily discontinues operation, the owner or operator of the center shall inform the parent or legal guardian of each minor client to whom the center is providing services of:

- (1) the discontinuance; and
- (2) the proposed time of the discontinuance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.158. RELATION TO NURSING SERVICES. Nursing services provided by a center must be a one-to-one replacement of private duty nursing or other skilled nursing services unless additional nursing services are medically necessary.

Added by Acts 2015, 84th Leg., R.S., Ch. 557 (H.B. 2340), Sec. 9, eff. September 1, 2015.

SUBCHAPTER E. GENERAL ENFORCEMENT

Sec. 248A.201. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The department may deny, suspend, or revoke a license issued under this chapter for:

- (1) a violation of this chapter or a rule or standard adopted under this chapter;
- (2) an intentional or negligent act by the center or an employee of the center that the department determines significantly affects the health or safety of a minor served by the center;
- (3) use of drugs or intoxicating liquors to an extent that affects the license holder's or applicant's professional competence;
- (4) a felony conviction, including a finding or verdict of guilty, an admission of guilt, or a plea of nolo contendere, in this state or in any other state of any person required to undergo a background and criminal history check under

this chapter;

(5) fraudulent acts, including acts relating to Medicaid fraud and obtaining or attempting to obtain a license by fraud or deception; or

(6) a license revocation, suspension, or other disciplinary action taken against the license holder or any person listed in the application in another state.

(b) Except as provided by Section 248A.203, the procedures by which the department denies, suspends, or revokes a license and by which those actions are appealed are governed by the procedures for a contested case hearing under Chapter 2001, Government Code. Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.202. PROBATION. (a) If the department finds that a center is in repeated noncompliance with this chapter, rules adopted under this chapter, or a corrective action plan, but that the noncompliance does not endanger a minor served by the center or the public health and safety, the department may schedule the center for probation rather than suspending or revoking the center's license.

(b) The department shall provide notice to the center of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) The department shall designate a period of not less than 30 days during which the center will remain under probation. During the probation period, the center must correct the items that were in noncompliance and report the corrections to the department for approval.

(d) The department may suspend or revoke the license of a center that does not correct items that were in noncompliance or does not comply with this chapter or the rules adopted under this chapter within the applicable probation period.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.203. EMERGENCY SUSPENSION. (a) The department

may issue an emergency order to suspend a license issued under this chapter if the department has reasonable cause to believe that the conduct of a license holder creates an immediate danger to a minor served by the center or the public health and safety. An emergency suspension is effective immediately without a hearing on notice to the license holder.

(b) On written request of the license holder, the department shall conduct a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded.

(c) The hearing and any appeal are governed by the department's rules for a contested case hearing and by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.204. INJUNCTION. (a) The department may petition a district court for a temporary restraining order to restrain a continuing violation of this chapter or a rule or standard adopted under this chapter if the department finds that the violation creates an immediate threat to the health and safety of the minors served by a center.

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

- (1) prohibit the person from continuing the violation;
- (2) restrain or prevent the establishment or operation of a center without a license issued under this chapter; or
- (3) grant any other injunctive relief warranted by the facts.

(c) The attorney general may institute and conduct a suit authorized by this section at the request of the department. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.205. CIVIL PENALTY. (a) A person who violates this chapter or a rule or standard adopted under this chapter or who fails to comply with a corrective action plan submitted under this chapter is liable for a civil penalty of not more than \$500 for each violation if the department determines the violation threatens the health and safety of a minor served by the center.

(b) Each day a violation continues constitutes a separate violation for the purposes of this section.

(c) The attorney general may sue to collect the penalty. The attorney general and the department may recover reasonable expenses incurred in obtaining relief under this section, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(d) All penalties collected under this section shall be deposited in the state treasury in the general revenue fund.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.206. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly establishes or operates a center without the appropriate license issued under this chapter.

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

(c) Each day a violation continues constitutes a separate offense.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

SUBCHAPTER F. ADMINISTRATIVE PENALTY

Sec. 248A.251. IMPOSITION OF PENALTY. The department may impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or standard adopted or

order issued under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0749, eff. April 2, 2015.

Sec. 248A.2515. SYSTEM FOR ASSESSMENT OF PENALTY. The commission shall develop and use a system to record and track the scope and severity of each violation of this chapter or a rule or standard adopted or order issued under this chapter for the purpose of assessing an administrative penalty for the violation or taking some other enforcement action against the appropriate center to deter future violations. The system:

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

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

Added by Acts 2017, 85th Leg., R.S., Ch. 836 (H.B. 2025), Sec. 11, eff. September 1, 2017.

Sec. 248A.252. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$500 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(b) The amount shall be based on:

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

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

(3) any previous violations;

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

(5) the efforts made by the violator to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.253. REPORT AND NOTICE OF VIOLATION AND PENALTY.

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

(b) The notice must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.254. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Not later than the 20th day after the date the person receives the notice sent under Section 248A.253, the person in writing may:

- (1) accept the determination and recommended penalty of the department; or
- (2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0750, eff. April 2, 2015.

Sec. 248A.255. HEARING. (a) If the person requests a hearing, the department shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the

person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0751, eff. April 2, 2015.

Sec. 248A.256. DECISION BY DEPARTMENT. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the department by order may:

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

(2) find that a violation did not occur.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0752, eff. April 2, 2015.

Sec. 248A.257. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Not later than the 30th day after the date the order of the department imposing an administrative penalty under Section 248A.256 becomes final, the person shall:

(1) pay the penalty; or

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1,

eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0753, eff. April 2, 2015.

Sec. 248A.258. STAY OF ENFORCEMENT OF PENALTY. (a) Within the period prescribed by Section 248A.257, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

(B) sending a copy of the affidavit to the department by certified mail.

(b) If the department receives a copy of an affidavit under Subsection (a)(2), the department may file with the court, not later than the fifth day after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0754, eff. April 2, 2015.

Sec. 248A.259. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.260. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.261. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person not later than the 30th day after the date the judgment of the court becomes final.

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.262. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.

Sec. 248A.263. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1168 (S.B. 492), Sec. 1, eff. September 1, 2013.