

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 16. ECONOMIC REGULATION

### PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

#### CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

The Texas Alcoholic Beverage Commission (TABC) adopts amendments to rules 16 TAC §§50.4, 50.15, 50.17, 50.19, 50.20, 50.23, and 50.31, relating to Alcoholic Beverage Seller Server and Delivery Driver Training. The amendments are adopted without changes to the proposed text as published in the April 14, 2023, issue of the *Texas Register* (48 TexReg 1934). The amended rules will not be republished.

**REASONED JUSTIFICATION.** The amendments are necessary to ensure the rules accurately reflect their scope and use proper grammar. The amendment to §50.23 removes the word "Location" from the rule title because the rule does not actually address location changes for seller server schools. The remaining amendments to §§50.4, 50.15, 50.17, 50.19 - 50.20, and 50.31 simply insert or delete commas and hyphens, all of which the agency consider to be non-substantive changes.

**SUMMARY OF COMMENTS.** TABC did not receive any comments on the proposed amendments.

#### SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

##### 16 TAC §50.4

**STATUTORY AUTHORITY.** TABC adopts the amendments under §5.31 and §106.14(b) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 106.14(b) provides that TABC shall adopt rules or policies establishing the minimum requirements for approved seller training programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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James Person  
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#### SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS

##### 16 TAC §§50.15, 50.17, 50.19, 50.20, 50.23

**STATUTORY AUTHORITY.** TABC adopts the amendments under §5.31 and §106.14(b) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 106.14(b) provides that TABC shall adopt rules or policies establishing the minimum requirements for approved seller training programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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#### SUBCHAPTER E. SELLER SERVER CERTIFICATES

##### 16 TAC §50.31

**STATUTORY AUTHORITY.** TABC adopts the amendments under §5.31 and §106.14(b) of the Texas Alcoholic Beverage Code. Section 5.31 provides that TABC may prescribe and publish rules necessary to carry out the provisions of the Texas Alcoholic Beverage Code. Section 106.14(b) provides that TABC shall adopt rules or policies establishing the minimum requirements for approved seller training programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER A. REQUIRED CURRICULUM

###### 19 TAC §74.5

The State Board of Education (SBOE) adopts an amendment to §74.5, concerning the academic achievement record. The amendment is adopted without changes to the proposed text as published in the March 3, 2023 issue of the *Texas Register* (48 TexReg 1214) and will not be republished. The adopted amendment adds a new requirement that a student who earns a diploma by satisfying the requirements of the Texas First Early High School Completion Program must have successful completion of the program indicated on the academic achievement record, or transcript.

**REASONED JUSTIFICATION:** The 87th Texas Legislature, Regular Session, 2021, passed Senate Bill 1888, adding new Texas Education Code (TEC), §28.0253, to establish the Texas First Early High School Completion Program. The Texas Education Agency, in coordination with the Texas Higher Education Coordinating Board, is required to establish the program to allow public high school students who demonstrate early readiness for college to graduate early from high school. A student is entitled to early high school graduation under the Texas First Early High School Completion Program if the student meets the criteria established by rule by the Texas Higher Education Coordinating Board. Additionally, students who graduate under the program are considered to have earned the distinguished level of achievement and are eligible to receive a scholarship at participating institutions of higher education. The proposed amendment would require school districts and open-enrollment charter schools to indicate on a student's transcript completion of the Texas First Early High School Completion Program.

The SBOE approved the amendment for first reading and filing authorization at its February 3, 2023 meeting and for second reading and final adoption at its April 14, 2023 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will allow districts to indicate successful completion of the Texas First Early High School Completion Program for students who meet the requirements during the current school year. The effective date is 20 days after filing as adopted with the Texas Register.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began March 3, 2023, and

ended at 5:00 p.m. on April 7, 2023. The SBOE also provided an opportunity for registered oral and written comments at its April 2023 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** One counselor asked whether the increase in average daily attendance funding offsets the reduction from a district's foundation school program entitlement.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor expressed concern that there needs to be more follow-up and clearer communication on how to implement the Texas First Early High School Completion Program.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor expressed concern that the program requirements for the Texas First Early High School Completion Program do not appear to align with requirements to enroll in one of the participating universities because there is not a requirement for students to complete all State of Texas Assessments of Academic Readiness end-of-course tests and Algebra II.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor asked what information is needed to ensure that students have enrolled at one of the participating universities.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One counselor asked about the reporting mechanisms for a student to enroll at one of the participating universities.

**Response.** This comment is outside the scope of the proposed rulemaking.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §7.102(c)(13), which requires the State Board of Education to adopt transcript forms and standards for differentiating high school performance for purposes of reporting academic achievement under TEC, §28.025.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code, §7.102(c)(13).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

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## CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER

# DEVELOPMENT AND CAREER AND TECHNICAL EDUCATION SUBCHAPTER A. MIDDLE SCHOOL

The State Board of Education (SBOE) adopts the repeal of §§127.1, 127.2, and 127.3 and new §127.2, concerning Texas Essential Knowledge and Skills (TEKS) for career development and career and technical education. Repealed §§127.1, 127.2, and 127.3 are adopted without changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8448) and will not be republished. New §127.2 is adopted with changes to the proposed text as published in the December 23, 2022 issue of the *Texas Register* (47 TexReg 8448) and will be republished. The adopted revisions repeal two existing middle school courses, add a new middle school course, and repeal implementation language that will no longer be relevant.

**REASONED JUSTIFICATION:** Texas Education Code (TEC), §28.016, requires each school district to ensure that at least once in Grade 7 or 8 each student receives instruction in high school, college, and career preparation. The instruction must include information regarding the creation of a high school personal graduation plan, the distinguished level of achievement, each endorsement, college readiness standards, and potential career choices and the education needed to enter those careers. School districts are permitted to provide the instruction as part of an existing career and technical education course designated by the SBOE as appropriate for that purpose.

At the request of a board member, the board approved replacing two existing courses with a single updated course in college and career investigation and preparation. New §127.2 will be available for districts to use in meeting the requirements of TEC, §28.016.

The implementation section for the subchapter has been repealed and new implementation language added to new §127.2 to align with the changes.

In response to public comment, the section title for new §127.2 was modified at adoption to be Career and College Exploration.

The SBOE approved the revisions for first reading and filing authorization at its November 18, 2022 meeting and for second reading and final adoption at its April 14, 2023 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the revisions for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2023-2024 school year. The earlier effective date will allow all school districts, including districts of innovation, to implement the new course at the beginning of their school year. The effective date is August 1, 2023.

**SUMMARY OF COMMENTS AND RESPONSES:** The public comment period on the proposal began December 23, 2022, and ended at 5:00 p.m. on January 27, 2023. The SBOE also provided an opportunity for registered oral and written comments at its January-February and April 2023 meetings in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

**Comment.** Five teachers, five counselors, and thirty-five administrators stated that the course title Flight Plans is confusing and does not clearly indicate the purpose or content of the course.

**Response.** The SBOE agrees and took action to amend the course title to Career and College Exploration.

**Comment.** One administrator asked if the proposed new course affects accountability.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator stated that Advancement Via Individual Determination (AVID) coursework in their district aligns with and would fulfill the TEKS for the proposed new course.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator asked if districts could use the innovative course General Employability Skills instead of the proposed new course.

**Response.** The SBOE provides the following clarification. TEC, §28.016, requires each school district to provide instruction in Grades 6-8 in preparing for high school, college, and career and identifies specific topics that must be addressed. General Employability Skills is a state-approved high school innovative course and would not meet the requirements of TEC, §28.016.

**Comment.** Four administrators stated that the proposed new course allows students to complete one year of career and technical education (CTE) credit while the two existing courses allow for students to complete up to two years.

**Response.** The SBOE disagrees and provides the following clarification. State credit is awarded for the successful completion of state-approved high school courses only. Middle school courses are not eligible for state credit. Additionally, the SBOE has indicated that students would be permitted to take the new Career and College Exploration course up to two times.

**Comment.** One counselor stated that the existing courses can be offered for one semester and have successfully been paired with one-half credit CTE high school courses such as Touch System Data Entry and Professional Communications in their district.

**Response.** This comment is outside the scope of the proposed rulemaking.

**Comment.** One administrator expressed concern that the proposal to replace the existing courses with a new Flight Plans course would create gaps in student schedules. The commenter stated that districts are able to use the two existing courses in all three middle school grades: sixth, seventh, and eighth.

**Response.** The SBOE disagrees and has determined that replacing the two current courses, Investigating Careers and College and Career Readiness, with the proposed new course is appropriate. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

**Comment.** One teacher and three administrators expressed concern that the proposed new Flight Plans course is a year-long course, whereas the current courses can be taught in a semester. The commenters stated that a year-long course does not provide flexibility for districts to build the curriculum in a way that meets scheduling demands.

**Response.** The SBOE disagrees and provides the following clarification. Local education agencies determine instructional time, such as whether a course is offered for a semester or full year.

Additionally, the SBOE has indicated that students would be permitted to take the new Career and College Exploration course up to two times. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. Three administrators stated that reducing the two existing courses, Investigating Careers and College and Career Readiness, to one course will hurt opportunities for students to explore interests and high school programs of study available to them.

Response. The SBOE disagrees and has determined that the proposed new Career and College Exploration TEKS provide adequate opportunities for students to explore interests and high school programs of study available to them. Additionally, the SBOE has indicated that students would be permitted to take the new Career and College Exploration course up to two times.

Comment. One teacher and two administrators stated that the two existing courses, Investigating Careers and College and Career Readiness, serve distinct purposes.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher and one administrator stated that districts offer many multiple Investigating Careers classes with an emphasis on different career clusters.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One teacher and one administrator suggested that instead of replacing Investigating Careers and College and Career Readiness, the proposed new Flight Plans course could be added to the two existing courses.

Response. The SBOE disagrees and has determined that replacing Investigating Careers and College and Career Readiness with the proposed new course is appropriate. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. Two teachers, eight administrators, and one community member stated the TEKS for the proposed new Flight Plans course are very similar to the two existing courses and suggested that the TEKS for the existing courses should be revised instead of creating a new course.

Response. The SBOE disagrees and has determined that replacing the two current courses, Investigating Careers and College and Career Readiness, with the proposed new course is appropriate. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. Two administrators stated the proposed new Flight Plans course is unnecessary because the existing College and Career Readiness course prepares students for high school career pathways.

Response. The SBOE disagrees and has determined that replacing the two current courses, Investigating Careers and College and Career Readiness, with the proposed new course is appropriate and that the new course adequately prepares students for high school career pathways. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. One teacher stated that instead of removing the existing Investigating Careers course, the TEKS for the course should be revised to include more opportunities for college and career skill development and field experiences.

Response. The SBOE disagrees and has determined that replacing the two current courses, Investigating Careers and College and Career Readiness, with the proposed new Career and College Explorations course is appropriate.

Comment. One administrator stated there would be a financial impact on the state and districts because moving CTE principles courses down to middle school would require more formalized labs that do not currently exist in many middle schools without the funding these courses receive at the high school level.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator suggested that the proposed new Flight Plans course be a high school course rather than offered at middle school so it can earn funding.

Response. The SBOE disagrees and has determined that the proposed new course is appropriate for middle school. In response to other comments, the SBOE took action to retitle the proposed new course Career and College Exploration.

Comment. One teacher and one administrator asked if districts would receive funding for the proposed new Flight Plans course.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One counselor stated that students need to be prepared and have a path to take when reaching high school.

Response. The SBOE agrees and has determined that the new Career and College Exploration course will sufficiently prepare students to choose a path as they transition into high school.

Comment. One teacher, one counselor, and four administrators stated that the general requirements for the proposed new course should permit the course to be offered at Grade 6.

Response. The SBOE disagrees and has determined that the recommended grade levels, Grades 7 and 8, in the general requirements for the proposed new course are appropriate as proposed. The SBOE also provides the following clarification. The grade levels identified in the general requirements are a recommendation, and school districts may offer the proposed new Career and College Exploration course at any grade level in middle school.

Comment. One administrator stated that districts need more middle school options, not fewer options.

Response. The SBOE agrees that CTE options for middle school are beneficial to students. However, the SBOE disagrees that additional CTE TEKS for middle school are necessary and has determined that the proposed new course provides sufficient options for middle school.

Comment. One administrator suggested incorporating military academies in the TEKS for the proposed new Flight Plans course.

Response. The SBOE disagrees that the suggestion to add military academies is necessary and has determined that the TEKS for the proposed new course sufficiently address college, career, and military readiness as proposed. In response to other com-

ments, the SBOE took action to retitle the proposed new course Career and College Exploration.

Comment. One administrator asked whether students who have already developed their personal graduation plans in Grade 8 would still be required to take the proposed new Flight Plans course.

Response. The SBOE provides the following clarification. Students are not required to take the new course. TEC, §28.016, requires each school district to provide instruction in Grades 6-8 in preparing for high school, college, and career and identifies specific topics that must be addressed. School districts may meet this requirement in a variety of ways, including by offering instruction in the new course or through locally developed courses. Additionally, there is nothing in law or rule that would prohibit school districts from modifying or updating a student's personal graduation plan at any time. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. One administrator stated that the implementation date of August 2023 would be problematic for districts because it does not allow time for changes needed to incorporate the proposed new course. The commenter suggested that the course be implemented no earlier than August 2024 for the 2024-2025 school year.

Response. The SBOE disagrees and has determined that implementation of the proposed new course beginning with the 2023-2024 school year is appropriate as proposed.

Comment. One administrator stated that districts need updates about the proposed new Flight Plans course prior to March 2023 to have time to plan for the upcoming year.

Response. This comment is outside the scope of the proposed rulemaking.

Comment. One administrator stated that the Texas Education Agency suggested several years ago that high school courses be introduced in middle school so students could start programs of study earlier to enable students to take more advanced CTE courses once in high school. The commenter expressed concern that the proposed new Flight Plans course contradicts that suggestion.

Response. The SBOE disagrees and has determined that the proposed new course would not impact districts' ability to offer high school courses at earlier grade levels. In response to other comments, the SBOE took action to change the proposed course title from Flight Plans to Career and College Exploration.

Comment. One administrator asked how the proposed new Flight Plans course would be enforced.

Response. The SBOE provides the following clarification. TEC, §28.016, requires each school district to provide instruction in Grades 6-8 in preparing for high school, college, and career and identifies specific topics that must be addressed. Districts may meet this requirement in a variety of ways, including by offering instruction in the new course or through locally developed courses. It is the responsibility of the local board of trustees to ensure that districts are in compliance with all laws and rules. In response to other comments, the SBOE took action to retitle the proposed new course Career and College Exploration.

Comment. One administrator asked if the proposed new Flight Plans course would be mandatory.

Response. The SBOE provides the following clarification. TEC, §28.016, requires each school district to provide instruction in Grades 6-8 in preparing for high school, college, and career and identifies specific topics that must be addressed. Districts may meet this requirement in a variety of ways, including by offering instruction in the new course or through locally developed courses. In response to other comments, the SBOE took action to retitle the proposed new course Career and College Exploration.

Comment. One teacher expressed support for the proposed Flight Plans course. The commenter explained that the TEKS for Investigating Careers and College and Career Readiness are so closely aligned it is redundant for students to take both courses.

Response. The SBOE agrees and has determined that replacing the existing courses, Investigating Careers and College and Career Readiness, with a single course is appropriate. In response to other comments, the SBOE took action to retitle the proposed new course Career and College Exploration.

### **19 TAC §§127.1 - 127.3**

STATUTORY AUTHORITY. The repeals are adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.016, which requires each school district to ensure that at least once in Grade 7 or 8 each student receives instruction in high school, college, and career preparation. TEC, §28.016(c)(2), permits school districts to provide the instruction as part of an existing career and technical education course designated by the SBOE as appropriate for that purpose.

CROSS REFERENCE TO STATUTE. The repeals implement Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 28.016.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Texas Education Agency

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### **19 TAC §127.2**

STATUTORY AUTHORITY. The new section is adopted under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and

skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.016, which requires each school district to ensure that at least once in Grade 7 or 8 each student receives instruction in high school, college, and career preparation. TEC, §28.016(c)(2), permits school districts to provide the instruction as part of an existing career and technical education course designated by the SBOE as appropriate for that purpose.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §§7.102(c)(4), 28.002(a) and (c), and 28.016.

*§127.2. Career and College Exploration.*

(a) **Implementation.** The provisions of this section shall be implemented by school districts beginning with the 2023-2024 school year.

(b) **General requirements.** This course is recommended for students in Grades 7 and 8.

(c) **Introduction.**

(1) Career and technical education (CTE) instruction provides content aligned with challenging academic standards and relevant technical knowledge and skills for students to further their education and succeed in current or emerging professions.

(2) Career development is a lifelong pursuit of answers to the questions: Who am I? Why am I here? What am I meant to do with my life? Will my desired career path provide a self-sufficient wage? What occupations are in the highest demand that align to my values and interests? It is vital that students have a clear sense of direction for their career choice. Education and career planning is a critical step and is essential to success.

(3) The career development process is unique to every person and evolves throughout one's life. In Flight Plans, students use decision-making and problem-solving skills for individual career and academic planning. Students explore valid, reliable educational and career information to learn more about themselves and their interests and abilities. Students integrate skills from academic subjects, information technology, and interpersonal communication to make informed decisions. This course is designed to guide students through the process of investigating and developing a college and career readiness flight plan. Students use aptitude and interest inventory assessments, software, or other tools available to explore college and career areas of personal interest. Students use this information to explore a variety of career paths, especially those in demand, and begin mapping their anticipated secondary coursework and potential postsecondary experiences that are in alignment with their goals.

(4) The goal of this course is to help students build career awareness and engage in deep exploration and study of the Texas CTE career clusters to create a foundation for success in high school, possible postsecondary studies, and careers. Students research labor market information, learn job-seeking skills, and create documents required for employment.

(5) Students are encouraged to explore and participate in extended learning experiences such as career and technical student organizations and other leadership or extracurricular organizations.

(6) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(d) Knowledge and skills.

(1) The student takes one or more career interest surveys, aptitude tests, or career assessments and explores various college and career options. The student is expected to:

(A) analyze and discuss the initial results of the assessments;

(B) explore and describe the CTE career clusters;

(C) identify various career opportunities within one or more career clusters; and

(D) research and evaluate emerging occupations related to career interest areas.

(2) The student investigates educational and training requirements for career and education pathways in one or more of the career clusters. The student is expected to:

(A) research and describe applicable academic, technical, certification, and training requirements for one or more of the careers in an identified career cluster; and

(B) use available resources to research and evaluate educational and training options for one or more of the careers in an identified career cluster.

(3) The student analyzes educational and career opportunities. The student is expected to:

(A) describe academic requirements for transitioning from middle school to high school and from high school to career or postsecondary education;

(B) explore and list opportunities for earning college credit in high school such as Advanced Placement examinations, International Baccalaureate examinations, dual credit courses, and local and statewide articulated credit courses;

(C) investigate and describe various methods available to pay for college and other postsecondary training, including financial aid, scholarships, college savings, employee benefits, and other sources of income;

(D) discuss the impact of effective college and career planning;

(E) identify how performance on assessments such as the PSAT/NMSQT®, SAT®, ACT®, ASVAB®, and Texas Success Initiative (TSI®) impact personal academic and career goals;

(F) investigate and describe the importance of co-curricular, extracurricular, career preparation, and extended learning experiences in developing college applications or resumes;

(G) investigate and report on the steps required to participate or enroll in a variety of career and educational opportunities, including entry-level employment, military service, apprenticeships, community and technical colleges, and universities, as applicable to the career;

(H) identify professional associations affiliated with a particular career pathway; and

(I) define entrepreneurship and identify entrepreneurial opportunities within a field of personal interest.

(4) The student develops skills for personal success. The student is expected to:

(A) demonstrate effective time-management and goal-setting strategies;

(B) identify skills that can be transferable among a variety of careers;

(C) give oral professional presentations on a topic related to career and college exploration using appropriate technology;

(D) apply core academic skills to meet personal, academic, and career goals;

(E) explain the value of community service and volunteerism; and

(F) define and identify examples in the workplace of characteristics required for personal and professional success such as work ethic, integrity, dedication, and perseverance.

(5) The student investigates labor market information and recognizes the impact of college and career choices on personal lifestyle. The student is expected to:

(A) analyze labor market trends related to a career of interest;

(B) classify evidence of high-skill, high-wage, or high-demand occupations based on analysis of labor market information;

(C) analyze the effects of changing employment trends, societal needs, and economic conditions on career choices;

(D) prepare a personal budget reflecting the student's desired lifestyle; and

(E) use resources to compare salaries of at least three careers in the student's interest area.

(6) The student investigates job-seeking skills. The student is expected to:

(A) identify the steps of an effective job search;

(B) describe appropriate appearance for an interview; and

(C) participate in a mock interview.

(7) The student creates professional documents required for employment. The student is expected to:

(A) write a resume;

(B) write appropriate business correspondence such as a cover letter and a thank you letter;

(C) complete sample job applications; and

(D) explain protocol for selecting and using references.

(8) The student creates an individual career and academic plan. The student is expected to:

(A) select a career pathway in a desired field, such as military service, entrepreneurship, or industry;

(B) document high school courses and postsecondary educational requirements for that career pathway; and

(C) write a plan for starting one's career after the completion of high school and any post-secondary education.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## TITLE 22. EXAMINING BOARDS

### PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

#### CHAPTER 465. RULES OF PRACTICE

##### 22 TAC §465.38

The Texas Behavioral Health Executive Council adopts amendments to §465.38, relating to Psychological Services for Schools. Section 465.38 is adopted with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8212) and will be republished. Proposed §465.38(d) stated that an LSSP could use the title school psychologist or licensed school psychologist, as referenced in the Education Code. Turning to Education Code §21.003(b), the title school psychologist is listed but the title licensed school psychologist is not. Therefore, §465.38(d) is adopted with a change; the title licensed school psychologist has been removed but the title school psychologist remains so that this adopted amendment matches the exact language of the Education Code.

##### Reasoned Justification.

The adopted amendments allow a licensed specialist in school psychology (LSSP) to use the title school psychologist, as referenced in the Education Code. The Council has received comments regarding the public's confusion and unfamiliarity with the title LSSP. The intent behind this rule change is to help address the public's confusion regarding this license type, so the public can better understand and recognize who they are and what activities they are licensed to perform.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The Council has received approximately 10 public comments that were not in support of this proposed rule change. These commenters believe that allowing LSSPs to use the title school psychologist will cause public confusion. Many of these commenters believe that due to the differences in education, training, and experience requirements for licensure between psychologists and LSSPs, using a similar title for both of these license types will confuse the public and they will not understand the distinction between the two. Some commenters compare the LSSP and psychologist titles to those in the medical profession, such as medical doctors and physician assistants, and the commenters believe the distinctions in titles are necessary to denote the differences in the level of independent practice and training. Several commenters opined that the title psychologist should only be permitted to be used by an individual that has completed a doctoral degree.

One commenter opposes this rule change because the commenter believes only doctoral level providers are able to diag-

nose conditions, and a masters level provider is not able to diagnose disabilities. Therefore the commenter believes this title change will confuse the public.

One commenter suggested that there should be a distinction in the use of the title school psychologist which lists the level of the degree next to the title, such as school psychologist - specialist or school psychologist - doctorate.

Another commenter believes that the current LSSP title makes it clear to the public that an LSSP's services are school based and changing the name to school psychologist does not provide the public any additional clarity. The commenter claims that this rule change is ultimately intended to be used as a steppingstone for LSSPs to gain full autonomy to function outside of a school setting, which will further confuse the public.

One commenter believes that the current rule as written is anticompetitive, and that it unfairly restricts the practice of psychologists without an LSSP. The commenter asserts that psychologists are just as competent to provide LSSP services and this rule creates an unfair practice and income protection for LSSPs by only allowing non-LSSP licensees to contract for specific types of psychological services but not the broad range of school psychological services listed in the rule.

One commenter opines that this change is only being made due to the voice of the majority of persons voicing support for this change, and majority opinion should not be the reason for the change.

List of interested groups or associations for the rule.

Texas Association of School Psychologists.

Summary of comments for the rule.

The Council has received approximately 1031 public comments in support of this proposed rule change. These commenters believe that the current LSSP title has created a significant amount of confusion and frustration in the education system, which includes school staff and the parents of students, and most do not recognize the LSSP title or have any idea what the LSSP means or does. The proposed change will allow LSSPs to use the same title that is used in 48 other states which is far better recognized and understood by all, thereby greatly reducing public confusion.

Agency Response.

The Council thanks the commenters for the supportive comments, adopts the rule with amendments as explained and described above, and declines to further amend the rule as requested by other commenters.

On May 1, 2023, the Texas Attorney General issued Opinion No. KP-0443, which concluded that an Executive Council rule that allows an LSSP to use the title school psychologist does not contravene specific statutory authority, is not contrary to the general objectives of Chapter 501 of the Occupations Code, and does not impose additional burdens, conditions, or restrictions. Therefore a court would likely conclude that such a rule is within the Executive Council's authority to adopt.

Section 501.260 of the Occupations Code requires the Executive Council to issue the LSSP license which it currently does, and this statute makes it clear that this is the specific license required to provide psychological services in a school district, grades K through 12. Therefore a commenter's assertion that this rule is anticompetitive is inaccurate, this rule follows the statutory requirements established by the Texas Legislature. Additionally,

licensed psychologists can and do apply for an LSSP so they can work in a school setting. This rule does not restrict or prohibit psychologists from obtaining an LSSP, therefore this rule is not anticompetitive as the commenter suggested.

A commenter's assertions that masters level licensees of the Executive Council cannot diagnose is incorrect. LPCs, LCSWs, LMFTs, LSSPs, and LPAs all require a minimum graduate level degree for licensure and all can use their license to diagnose mental disorders listed in the DSM-5. Therefore the commenter's assertion that the public will be further confused by this rule change allowing LSSPs to use the title school psychologist is incorrect.

The assertion made by a commenter that this rule change may in the future allow for LSSP independent practice outside of a school setting is inaccurate. As discussed above, Section 501.260 of the Occupations Code makes clear that the LSSP license is required to provide psychological services in a school setting, and this rule, in subsection (c), makes it clear that the LSSP license can be used to provide school psychological services only in public and private schools.

Contrary to the commenters' assertion that this rule change will cause greater public confusion, the Executive Council believes this rule change will reduce public confusion and the Executive Council cites to the approximately 1031 comments it received in favor of this change to support this conclusion. Many, if not most, of the commenters in support of the change are individuals that work in a public school setting and have first-hand knowledge of the confusion that has been caused by the title LSSP. All of these commenters agree that this rule change will reduce public confusion. Since the LSSP license is only allowed to be used in a school setting then the Executive Council does not anticipate that there will be public confusion caused in other settings by this rule change.

This rule change is not being done because it is the will of a majority opinion, this rule change was considered and voted on by the Texas State Board of Examiners of Psychologists because the Board believes this rule change will benefit the state of Texas. The Executive Council also reviewed this rule proposal and agreed that it will have a positive impact. The Executive Council declines to require LSSPs to use the title school psychologist - specialist as this would create a new title not used in other states which would likely cause public confusion and defeat the purpose of this rule change.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall



propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

*§465.38. Psychological Services for Schools.*

(a) This rule acknowledges the unique difference in the delivery of school psychological services in public and private schools from psychological services in the private sector. The Council recognizes the purview of the State Board of Education and the Texas Education Agency in safeguarding the rights of school children in Texas. The mandated multidisciplinary team decision making, hierarchy of supervision, regulatory provisions, and past traditions of school psychological service delivery both nationally and in Texas, among other factors, allow for rules of practice in public and private schools which reflect these occupational distinctions from the private practice of psychology.

(b) Scope of Practice.

(1) An LSSP is a person who is trained to address psychological and behavioral problems manifested in and associated with educational systems by utilizing psychological concepts and methods in programs or actions which attempt to improve the learning, adjustment and behavior of students. Such activities include, but are not limited to, addressing special education eligibility, conducting manifestation determinations, and assisting with the development and implementation of individual educational programs, conducting behavioral assessments, and designing and implementing behavioral interventions and supports.

(2) The assessment of emotional or behavioral disturbance, solely for educational purposes, using psychological techniques and procedures is considered the practice of school psychology.

(3) The delivery of school psychological services in the public schools of this state shall be consistent with nationally recognized standards for the practice of school psychology. Licensees providing school psychological services in a private school should comply with those same nationally recognized standards where possible, but at a minimum, must comply with all applicable Council rules, including those related to informed consent, notification of the right to file a complaint, competency, forensic services, and misuse of services.

(c) The specialist in school psychology license permits the licensee to provide school psychological services only in public and private schools. A person utilizing this license may not provide psychological services in any context or capacity outside of a public or private school.

(d) The correct title for an individual holding a specialist in school psychology license is Licensed Specialist in School Psychol-

ogy or (LSSP), or the individual may use the title School Psychologist as referenced in §21.003 of the Education Code. An LSSP who has achieved certification as a Nationally Certified School Psychologist (NCSP) may use this credential along with the license title of LSSP.

(e) Providers of Psychological Services Within the Public Schools.

(1) School psychological services may be provided in Texas public schools only by individuals authorized by this Council to provide such services. Individuals who may provide such school psychological services include:

(A) LSSPs; and

(B) interns and post-doctoral fellows working towards licensure as a psychologist.

(2) Licensees who do not hold the specialist in school psychology license may contract for specific types of psychological services, such as clinical psychology, counseling psychology, neuropsychology, and family therapy, but any such contracting may not involve the broad range of school psychological services listed in subsection (b)(1) of this section.

(3) An LSSP who contracts with a school to provide school psychological services must notify the school of any intent or plan to subcontract or assign those services to another provider prior to entering into the agreement. An LSSP subject to this provision shall be responsible for ensuring the school psychological services delivered comply with subsection (b)(3) of this section.

(f) Compliance with Applicable Education Laws. LSSPs shall comply with all applicable state and federal laws affecting the practice of school psychology, including, but not limited to:

(1) Texas Education Code;

(2) Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g;

(3) Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 et seq.;

(4) Texas Public Information Act, Texas Government Code, Chapter 552;

(5) Section 504 of the Rehabilitation Act of 1973;

(6) Americans with Disabilities Act (ADA) 42 U.S.C. §12101; and

(7) HIPAA when practicing in a private school.

(g) Informed Consent in a Public School. Informed consent for a Licensed Specialist in School Psychology must be obtained in accordance with the Individuals with Disabilities Education Improvement Act (IDEIA) and the U.S. Department of Education's rules governing parental consent when delivering school psychological services in the public schools, and is considered to meet the requirements for informed consent under Board rules. No additional informed consent, specific to any Council rules, is necessary in this context. Licensees providing psychological services under subsection (e)(2) of this section, or in a private school however, must obtain informed consent as otherwise required by the Council rules.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 23. TEXAS REAL ESTATE COMMISSION

### CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §§535.1, 535.3-535.5, 535.20, 535.31, 535.33, 535.34, 535.43, 535.45, 535.50-535.53, 535.57, 535.58, 535.60, 535.61, 535.63, 535.65-535.67, 535.71, 535.72, 535.74, 535.75, 535.82, 535.121, 535.122, 535.133, 535.141, 535.147, 535.148, 535.208-535.210, 535.213, 535.214, 535.218-535.220, 535.224, 535.400-535.405 and new 535.120 in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1216) and will not be republished.

First, the changes to §535.218(f) serve to extend the amount of time an instructor of a ride-along inspection course can provide a certificate of course completion to receive continuing education credit. Now, such instructors can provide documentation within the instructor's current license period for a course taught within that same term. The changes were recommended by the Texas Real Estate Inspector Committee.

The remainder of the amendments to Chapter 535 are made as a result of the Commission's quadrennial rule review. The changes update terminology for consistency and clarity throughout the chapter. Additionally, the following changes are being made:

-Subsections (a) of 22 TAC §§535.51, 535.208, and 535.400 are being amended to correct a typographical error in the subsection.

-In 22 TAC §535.52(b)(4), the term "denial" is added to better reflect current agency practice.

-The change in subsection (j)(1) of §535.65 is made to account for the agency's updated education reporting system, whereby providers can post course credit on behalf of certain students.

-The changes to 22 TAC §535.57 are being made to better reflect current contractual provisions.

-In 22 TAC §535.58 and §535.133, changes are made to remove references to residency requirements, which were removed from Chapter 1101, Texas Occupations Code, as a result of the agency's most recent Sunset review.

-The removal of the venue provision in subsections (j)(2) of 22 TAC §535.61, (b)(5) of §535.67, and (e)(2) of §535.71 is made to be consistent with current State Office of Administrative Hearing processes.

-The changes to 22 TAC §§535.63, 535.72, 535.74, 535.214, and 535.218 are being made to reflect the fact that in 2021, a new eight-hour non-elective course, the Inspector Legal and Ethics and Standards of Practice Review replaced the two four-hour courses in 2021.

-The changes to 22 TAC §535.213 are also being made to streamline the rule. The topics and units will continue to be listed in the forms adopted by reference.

-The additions to 22 TAC §535.65 are being made to clarify the timing requirements for execution of pre-enrollment agreements and certain distance education delivery requirements for providers. The change to subsection (i)(2) corrects a rule reference.

-The change in 22 TAC §535.66(c)(1) is made to reflect current course approval practice by the Texas Higher Education Coordinating Board.

-In 22 TAC 535.67(c) and (d), the time period is being changed from 15 to 14 days to be more consistent with other similar rules.

-The removal of the term "author" in 22 TAC §535.72(h)(1)(B) is being made because the agency is the author of these courses.

-The changes to 22 TAC §535.75(d) clarify that a provider is not prohibited from providing a course completion certificate to a student.

-New 22 TAC §535.120 makes clear that a license holder cannot engage in real estate brokerage activity while on inactive status. Although this is currently prohibited by statute, there was no corresponding, discrete rule.

-The changes to §535.141 are made to better track Chapter 1101, Occupations Code, and to better reflect the potential for consumer harm. The change in now subsection (c)(2)(D) corrects a rule reference. Finally, subsection (i) is removed to more appropriately reflect agency practice and jurisdiction.

-Subsections (f) and (g) of 22 TAC §535.148, as well as the form adopted by reference, are amended to reflect updated terminology used by the Texas Department of Licensing and Regulation.

-The repeal of certain language in §535.209 and §535.213 reflects the expiration of those sections by rule.

-The repeal of subsection (c) in 22 TAC §535.218 is the result of duplicative language. -Subsection (d)(1) is removed to account for the scenario whereby an inspector renews the inspector's license after the license's expiration date.

-The changes to 22 TAC §535.219 correct a reference to another rule.

-The changes to 22 TAC §535.224 more fully cite the applicable rules.

One comment was received for §535.4 asking TREC to examine the practice of wholesaling as unlicensed activity. One comment was received for §535.5, which was commentary on other topics related to the real estate industry and unrelated to the proposed changes. One comment was received for §535.51, which was commentary related to education hours required for a license and unrelated to the proposed changes. The Commission declined to make changes based on the comments received.

### SUBCHAPTER A. DEFINITIONS

#### 22 TAC §535.1

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

### 22 TAC §§535.3 - 535.5, 535.20

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

### 22 TAC §§535.31, 535.33, 535.34

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER D. THE COMMISSION

### 22 TAC §§535.43, §535.45

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## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §§535.50 - 535.53, 535.57, 535.58

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES

## AND INSTRUCTORS FOR QUALIFYING EDUCATION

### 22 TAC §§535.60, 535.61, 535.63 - 535.67

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

### 22 TAC §§535.71, 535.72, 535.74, 535.75

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER H. RECOVERY FUND

### 22 TAC §535.82

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER L. INACTIVE LICENSE STATUS

### 22 TAC §§535.120 - 535.122

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER M. NONRESIDENTS

### 22 TAC §535.133

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §§535.141, 535.147, 535.148

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §§535.208 - 535.210, 535.213, 535.214, 535.218 - 535.220, 535.224

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## SUBCHAPTER T. EASEMENT OR RIGHT-OF-WAY AGENTS

### 22 TAC §§535.400 - 535.405

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

### 22 TAC §535.2

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.2, Broker Responsibility, in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1254), and will not be republished.

The amendments contain two types of changes: (i) those changes made as a result of the Commission's quadrennial rule review; and (ii) those changes recommended by the Commission appointed Broker Responsibility Working Group (BRWG).

The changes made as a result of the Commission's quadrennial rule review update terminology and rule citations for consistency and clarity throughout the chapter. The change in subsection (e) of §535.2 is made to clarify who may notify the Commission of the end of delegated supervision in a situation where the delegated supervisor is or later becomes a broker.

There are two additional amendments that were recommended by the BRWG. The first change is found in subsection (i)(5). It increases the minimum number of times that a sales agent who performs a type of real estate brokerage activity must receive coaching or assistance from a competent, experienced license holder from one time to three times. The second change is found in §535.2(j). That change modifies the language of that subsection to accommodate the new rule 22 TAC §535.157, which requires both brokers and sales agents to respond to principals to a real estate transaction or their license holders within two calendar days.

Ten comments were received. One commenter expressed concern over how the rule would be enforced and stated it was too onerous a standard on the broker, especially in terms

of tracking sales agents coming from other brokerages. One commenter stated the number of supervised brokerage activity transactions should be increased to five instead of three. One commenter expressed concern over the definition of "coaching." Two comments generally supported the proposed changes but provided suggested edits. Five comments expressed support for the changes as proposed. The BRWG discussed the comments, including concerns over enforcement and increase to three transactions instead of five, ultimately noting the changes proposed moved the issue forward and that enforcement would need to be addressed by TREC Enforcement staff. The BRWG declined to make changes to the rule.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 535. GENERAL PROVISIONS

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.54, Hearing on License Denial: Probationary Licenses; §535.55, Education and Sponsorship Requirements for a Sales Agent License; §535.56, Education and Experience Requirements for a Broker License; §535.91, Renewal of a Real Estate License; §535.101, Fees; and §535.132, Eligibility for Licensure, in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1256) and will not be republished.

The amendments to §535.91 eliminate the "lookback period" currently found in §535.93 (currently being repealed), which allows a license holder to renew after the expiration date of their license without any lapse in active licensure, as long as certain certifications are made. Under these changes, a license holder who late renews (meaning no later than 6 months after the expiration date) would automatically renew on inactive status. A corresponding change is made to §535.216 relating to inspector licenses. Section 535.91 also adds a new, single subsection addressing license reinstatement--the requirements of which are currently found in several different rule sections--as well as a subsection regarding renewing on inactive status, to be more consistent with §535.216. As a result, language related to license reinstatement is removed from §535.55 and §535.56.

The change to §535.54 reflects the repeal of §535.93. The change to §535.101 would remove the late reporting fee of

\$250 to reactivate a license, as a result of the elimination of the lookback period in §535.91.

In 22 TAC §535.132, changes are made to remove references to the waiver provisions in §535.55 and §535.56, as well as residency requirements, which were removed from Chapter 1101, Texas Occupations Code, as a result of the agency's most recent Sunset review.

In order to mirror the format of §535.216 (which relates to inspectors), the relevant language of §535.93 has been added to §535.91.

Subsection (b) of §535.55 also contains a change recommended by the Education Standards Advisory Committee that would require a sales agent to complete the 30-hour qualifying real estate brokerage course as part of the additional 90 hours of qualifying courses that must be completed by the expiration date of the sales agent's initial licensing period.

The remainder of the changes are either updates to terminology or form for consistency throughout the chapter or are made to reflect updated processes.

Fourteen comments were received on §535.55. Two comments opposed making the real estate brokerage course a mandatory component of a sales agent's initial license renewal stating that did not seem like the appropriate place for this information to be taught. Multiple comments did not like that broker applicants would now be required to take the course twice. One comment suggested the requirement to take the course would be better received during pre-licensure. Multiple comments were in support of the comment, noting the importance of the course in educating new sales agents. The Education Standard Advisory Committee (ESAC) discussed these comments, noting course is valuable to both new sales agents and broker applicants and that new sales agents would be introduced to concepts of the broker-agent relationship and responsibilities associated with both roles within the first two years of practice. One comment stated there would be an adverse effect on small and micro-businesses but did not provide any further detail. TREC General Counsel had conducted and provided the appropriate analysis regarding economic impact with the proposed rule and found no impact. ESAC declined to make changes in response to comments received on §535.55 and recommends adoption of the rule as published.

Four comments were received on §535.91. Two comments indicated confusion as to why the changes were being made. One comment was generally not in favor and one comment indicated concern a license holder would be set to inactive in the event TREC experienced technical issues prevent a license holder from timely renewal. The Commission declined to make changes based on the comments and noted TREC would not penalize a license holder for renewing late because of technical issues on the part of the agency.

## SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

### 22 TAC §§535.54 - 535.56

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. LICENSE RENEWAL

### 22 TAC §535.91

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER J. FEES

### 22 TAC §535.101

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER M. NONRESIDENTS

### 22 TAC §535.132

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

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## SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

### 22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.64 in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1216) and will not be republished.

First, the changes to §535.64 streamline the rule and modify two of qualifying course approval forms that are adopted by reference. Although the changes remove the specific topics and units listed in the rule itself, those topics and units will continue to be listed in the forms adopted by reference. The changes to the agency's Real Estate Brokerage course approval form are being made to better address the broker-agent relationship and associated responsibilities. The changes to the Property Management course outline (being renamed *Residential* Property Management) are made to more accurately reflect the agency's jurisdiction and ensure relevancy. These course approval form revisions were recommended by the Education Standards Advisory Committee.

The remainder of the amendments to §535.64 are made as a result of the Commission's quadrennial rule review. The changes update terminology for consistency and clarity throughout the rule.

Three comments were received for §535.64, two of which were unrelated to the changes proposed and one of which requested more information related to business finance and broker responsibility. The Commission declined to make changes based on the comments received.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission

to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER I. LICENSE RENEWAL

### 22 TAC §535.93

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §535.93, Late Renewal Applications, in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1264) and will not be republished.

The purpose of the repeal is to eliminate the "lookback period" currently found in §535.93, which currently allows a license holder to renew after the expiration date of their license without any lapse in active licensure, as long as certain certifications are made. With this repeal and the additional changes in 22 TAC Chapter 535, a license holder who late renews (meaning no later than 6 months after the expiration date) would automatically renew on inactive status. In order to mirror the format of rule 22 TAC §535.216 (which relates to inspectors), the relevant language of §535.93 has been added to 22 TAC §535.91. As a result, §535.93 is no longer necessary.

No comments were received on the repeal as published.

#### STATUTORY AUTHORITY

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

### 22 TAC §535.157

The Texas Real Estate Commission (TREC) adopts new 22 TAC §535.157, Obligation to Respond Timely, in Chapter 535, General Provisions, without changes as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1265) and will not be republished.

The new §535.157 requires a broker or sales agent to respond to their principal, a broker or sales agent representing another party to a real estate transaction, or an unrepresented party to a real estate transaction within two calendar days.

The new rule was recommended by the Commission appointed Broker Responsibility Working Group (BRWG).

Sixty-six comments were received. The majority of comments were identical and addressed what commenters believed to be an issue with license holders engaged in property management and a request to change calendar day to business days. The commenters did not believe property managers who do not work on weekends should be held to such a standard. The BRWG noted the rule as proposed is tied to a transaction and is not a general requirement that all license holders respond within two calendar days at all times. The BRWG also noted in response to multiple comments received that the rule does not require resolution of a matter related to a transaction but a response. The BRWG also noted the response time of two calendar days is a standard already applied to broker. Many comments were in favor of the proposed changes and some comments questioned enforcement of the rule if adopted. The BRWG deferred the matter of enforcement to TREC enforcement staff. The BRWG also noted the significant impact of this rule on consumer protection as real estate transactions often have deadlines that must be met and that license holders should be accountable for responding to communications as detailed in the rule. The BRWG declined to make changes in response to the comments received.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER R. REAL ESTATE INSPECTORS



## 22 TAC §535.212

The Texas Real Estate Commission (TREC) adopts the repeal of 22 TAC §535.212, Education and Experience Requirements for a License, in Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1265), as a result of the expiration of this section by rule, and will not be republished.

The repeal was recommended by the Texas Real Estate Inspector Committee.

No comments were received on the repeal as published.

The repeal is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this repeal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted repeal.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## 22 TAC §535.216

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.216, Renewal of License, in Subchapter R of Chapter 535, General Provisions, with non-substantive changes to the rule text, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1256), and will be republished.

The amendments to §535.216 eliminate the "lookback period", which allows a license holder to renew after the expiration date of their license without any lapse in active licensure, as long as certain certifications are made. Under these proposed changes, a license holder who late renews (meaning no later than 6 months after the expiration date) would automatically renew on inactive status.

The Texas Real Estate Inspector Committee recommends the amendments.

No comments were received, however the Texas Real Estate Inspector Committee made non-substantive changes to better clarify requirements related to reactivation of an inactive license.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its license holders to fulfill the purposes of Chapters 1101 and 1102.

### §535.216. *Renewal of License.*

#### (a) Renewal application.

(1) A license issued by the Commission under Chapter 1102 expires on the date shown on the face of the license issued to the license holder.

(2) If a license holder intends to renew an unexpired license, the license holder must, on or before the expiration date of the current license:

(A) file a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission;

(B) pay the appropriate fee as required by §535.210 of this subchapter (relating to Fees);

(C) comply with the fingerprinting requirements of Chapter 1102;

(D) satisfy the applicable continuing education requirements of Chapter 1102 and this subchapter; and

(E) provide proof of financial responsibility as required in Chapter 1102 on a form approved by the Commission.

(3) An apprentice inspector or a real estate inspector must be sponsored by a licensed professional inspector in order to renew a license on an active status.

#### (b) Renewal Notice.

(1) The Commission will send a renewal notice to each license holder at least 90 days before the license expiration date.

(2) If a license holder intends to renew a license, failure to receive a renewal notice does not relieve the license holder from responsibility of applying for renewal as required in this section.

#### (c) Request for information.

(1) The Commission may request a license holder to provide additional information to the Commission in connection with a renewal application.

(2) A license holder must provide the information requested by the Commission within 30 days after the date of the Commission's request.

(3) Failure to provide the information requested within the required time is grounds for disciplinary action under Chapter 1102.

#### (d) Renewal on inactive status.

(1) Licensed professional inspectors, real estate inspectors and apprentice inspectors may renew a license on inactive status.

(2) Inspectors are not required to complete continuing education courses as a condition of renewing a license on inactive status, but must satisfy continuing education requirements before returning to active status.

#### (e) Late Renewal.

(1) If a license has been expired for less than six months, a license holder may renew the license by:

(A) filing a renewal application through the online process on the Commission's website or on the applicable form approved by the Commission; and

(B) paying the appropriate late renewal fee as required by §535.210 of this subchapter;

(2) Provided the license holder meets all the requirements of this subsection, the Commission will renew the license on an inactive status.

(3) Reactivation of a license on inactive status under this subsection is governed by §535.211 of this subchapter (relating to Professional Liability Insurance, or Any other Insurance that Provides Coverage for Violations of Subchapter G of Chapter 1102) and §535.215 of this subchapter (relating to Inactive Inspector Status).

(f) License Reinstatement.

(1) If a license has been expired for more than six months, a license holder may not renew the license.

(2) A license holder may reinstate an expired license if the license holder:

(A) has held a professional inspector or real estate inspector license during the 24 months preceding the date the reinstatement application is filed;

(B) submits evidence satisfactory to the commission of successful completion of the continuing education hours required for the renewal of that license; and

(C) satisfies the commission as to the applicant's honesty, trustworthiness, and integrity.

(3) Applicants for a real estate inspector license must submit evidence of sponsorship by a professional inspector.

(4) An applicant for reinstatement is not required to take an examination.

(g) Denial of Renewal or Reinstatement. The Commission may deny an application for license renewal or reinstatement if a license holder is in violation of the terms of a Commission order.

(h) Renewal of license for military service member. A license holder on active duty in the United States armed forces is entitled to two years of additional time to renew an expired license without being subject to any increase in fee, any education or experience requirements or examination if the license holder:

(1) provides a copy of official orders or other official documentation acceptable to the Commission showing that the license holder was on active duty during the license holder's last renewal period; and

(2) pays the renewal application fee in effect when the previous license expired.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## 22 TAC §535.222

The Texas Real Estate Commission (TREC) adopts amendments to §535.222, Inspection Reports, in Subchapter R of Chapter 535, General Provisions, without changes, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1266) and will not be republished.

The amendments to §535.222 address the situation where payment is received prior to the scheduled inspection and require the report to be delivered to the client within two days of completion of the inspection.

The Texas Real Estate Inspector Committee recommends the amendments.

Four comments were received. One comment requested clarification about payment received prior to inspection and was not in opposition to the proposed changes. One comment requested clarification, which the Texas Real Estate Inspector Committee (TREIC) noted is answered in the form's instructions. Two comments requested a different timeframe be used. All comments were considered by TREIC who ultimately declined to recommend changes to the rule text as published.

The amendments are adopted under Texas Occupations Code §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

### 22 TAC §537.1

The Texas Real Estate Commission (TREC) adopts new rule 22 TAC, §537.1, Definitions, in Chapter 537, Professional Agreements and Standard Contracts, with changes as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1267), and will be republished.

The new rule adds a definitions section for ease of reading and for consistency with other Commission rule chapters. This includes a definition for the new term "informational items," which is intended to better describe the type of information that a license holder can add to a contract form.

One comment was received for §537.1, which was in support of the rule. The Commission's Unauthorized Practice of Law Working Group recommended the new rule be adopted as published.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§537.1. *Definitions.*

The following terms and phrases, when used in this chapter, have the following meanings:

- (1) Commission--The Texas Real Estate Commission.
- (2) Contract forms--Contracts and related addenda, including notices, amendments, and other documents, used in the sale, exchange, option, or lease of any interest in real property.
- (3) Informational item--A statement that completes a blank in a contract form, discloses factual information, or provides instructions.
- (4) License holder--A real estate broker or sales agent licensed under Chapter 1101, Texas Occupations Code.
- (5) Mandatory use--Unless an exception applies under subsection (a) of section 537.11 (relating to Use of Standard Contract Forms; Unauthorized Practice of Law), use of the contract form is required by a license holder.
- (6) Voluntary use--A license holder may, but is not required to, use the contract form.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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**22 TAC §537.11**

The Texas Real Estate Commission (TREC) adopts amendments to §537.11, Use of Standard Contract Forms, in Chapter 537, Professional Agreements and Standard Contracts, with changes to the rule text, as published in the March 3, 2023, issue of the *Texas Register* (48 TexReg 1267), and will be republished.

The amendments to §537.11 reorganize and consolidate the rule for clarity, and simplify the language regarding when a license holder is required to use a Commission-approved contract form and what is considered the unauthorized practice of law. Specifically, the proposed changes in subsection (a) align the rule language more closely with the applicable statutory language and simplify the list of exceptions related to contract form use by license holders.

Subsections (b) - (d) provide further guidance to license holders and members of the public on what the Commission considers to be the unauthorized practice of law. Of note, subsection (d)(2) provides that it is not the practice of law to add language to

or strike language from a contract form, if specifically instructed in writing by a principal, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made.

Finally, the changes to subsection (h) update the language regarding reproduction of Commission-approved contract forms to better account for changes in technology.

Four comments were received for §537.11. Two comments were against the rule because commenters believe license holders do not understand the implications of the contract forms in the same way as an attorney. One comment was generally in favor of the rule. One comment did not like the change to the term "informational items," stating the term could be loosely interpreted.

The Commission's Unauthorized Practice of Law Working Group discussed the comments received and ultimately disagreed with comments regarding a license holder's understanding of appropriate practice related to contract forms. The group also determined the change to "informational items" was more clear than the prior language related to factual business details. The group declined to make any changes to the rules based on the comments received but did recommend a change to §537.11(b)(6) to clarify what a license holder may not do as it relates to the unauthorized practice of law.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

§537.11. *Use of Standard Contract Forms; Unauthorized Practice of Law.*

(a) When negotiating contracts binding the sale, exchange, option, or lease of any interest in real property, a license holder shall use only those contract forms approved for mandatory use by the Commission for that type of transaction with the following exceptions:

- (1) transactions in which the license holder is functioning solely as a principal, not as an agent;
- (2) transactions in which an agency of the United States government requires a different form to be used;
- (3) transactions for which a contract form has been prepared by the property owner or prepared by an attorney and required by a property owner; or
- (4) transactions for which no contract form has been approved for mandatory use by the Commission, and the license holder uses a form:

(A) prepared by an attorney licensed by this state, or a trade association in consultation with an attorney licensed by this state that contains:

- (i) the name of the attorney or trade association who prepared the form;
- (ii) the name of the broker or trade association for whom the form was prepared;
- (iii) a statement indicating the type of transaction for which the attorney or trade association has approved the use of the form;
- (iv) any restrictions on the use of the form; and

(v) if applicable, an explanation of how the form changes the rights, obligations, or remedies of a party under a contract form approved for mandatory use by the Commission and a statement that license holders may not practice law or give legal advice; or

(B) prepared by the Texas Real Estate Broker-Lawyer Committee and approved by the Commission for voluntary use by license holders.

(b) A license holder may not:

(1) practice law;  
(2) directly or indirectly offer, give or attempt to give legal advice;

(3) give advice or opinions as to the legal effect of any contract forms or other such instruments which may affect the title to real estate;

(4) give opinions concerning the status or validity of title to real estate;

(5) draft or recommend language to be included in a contract form defining or affecting the rights, obligations, or remedies of the principals of a real estate transaction, including escalation, appraisal, or contingency clauses;

(6) add informational items to a form approved by the Commission if the Commission has approved another form for mandatory use for that purpose;

(7) attempt to prevent or in any manner whatsoever discourage any principal to a real estate transaction from employing an attorney; or

(8) obtain legal advice from an attorney, directly or indirectly, for a principal in a real estate transaction in which the license holder is acting as an agent.

(c) This section does not:

(1) limit a license holder's fiduciary obligation to disclose to the license holder's principals all pertinent facts that are within the knowledge of the license holder, including such facts which might affect the status of or title to real estate;

(2) prevent the license holder from explaining to the license holder's principals the meaning of informational items or choices in a contract form, as long as the license holder does not practice law or give legal advice;

(3) limit a license holder from employing and paying for the services of an attorney to represent only the license holder in a real estate transaction; or

(4) limit a license holder from reimbursing a principal for attorney's fees incurred.

(d) It is not the practice of law for a license holder to:

(1) add informational items to a contract form authorized for use by this section; or

(2) if specifically instructed in writing by a principal, add language to or strike language from a contract form, as long as any change is made conspicuous, including underlining additions, striking through deletions, or employing some other method which clearly indicates the change being made.

(e) When a transaction involves unusual matters that should be reviewed by an attorney before an instrument is executed, or if the instrument must be acknowledged and filed of record, the license holder

shall advise the license holder's principals to consult an attorney before executing the instrument.

(f) A license holder shall advise the license holder's principals that the instrument they are about to execute is binding on them.

(g) Contract forms approved by the Commission are published by and available from the Commission at [www.trec.texas.gov](http://www.trec.texas.gov).

(h) Contract forms approved by the Commission may be reproduced, including through use of a software application, provided that the text and format of the form, including the sizing, spacing, and pagination, is identical to the Commission's published version, except that:

(1) the business name or logo of a broker, trade association, or other organization may appear outside the form's border; and

(2) a form may be scaled to accommodate viewing on smaller screens, including mobile devices, as long as the final executed copy of the form otherwise complies with this subsection.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

### CHAPTER 781. SOCIAL WORKER LICENSURE

#### SUBCHAPTER C. APPLICATION AND LICENSING

##### 22 TAC §781.401

The Texas Behavioral Health Executive Council adopts amendments to §781.401, relating to Qualifications for Licensure. Section 781.401 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8231) and will not be republished.

Reasoned Justification.

The adopted amendments delete the 48 and 60 month maximums for completing required supervised experience for licensure as a Licensed Clinical Social Worker or for Independent Practice Recognition.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

One commenter voiced opposition to these rule amendments and opined that these standards should not be changed. The

commenter believes that if someone is not able to complete their supervision hours or required work or practicum hours within five years then that indicates to the commenter that the individual would not be able to perform well in the profession. Without maximum time requirements an individual may take up to 20 years to complete their required hours of supervised experience and other professions, such as psychology, have similar standards regarding the timelines a program must be completed and when an individual must apply for licensure.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Comments voiced support for these rule amendments. One commenter opined that these changes will help part-time, prn, and contract workers who many not be able to meet the clinical or IPR requirements in the allotted maximum time periods. The commenter believes that this rule change will recognize years of experience that may not otherwise be considered for social workers seeking advanced licenses or statuses, such as independent practice recognition.

Agency Response.

The Council thanks the commenters for their supportive remarks, and declines to amend the rule as requested by the commenter who voiced opposition. The 48 and 60 month maximum time limits, which are being deleted, would sometimes result in the denial of an application where an applicant completed the required supervised experience but due to life circumstances, such as maternity leave or a family illness, the supervised experience took slightly longer than the maximum amount of time allowed under the previous rule. The initial purpose behind putting a maximum time limit for completing supervised experience was to ensure that the individual's knowledge and learning was still relevant and had not become stale. Currently under the Texas State Board of Social Worker Examiners' rules, all initial or upgrade applicants must receive a passing score on the applicable ASWB national examination within two years of application, so the Board believes that these applicants' knowledge will have been recently tested and therefore will not be stale. Additionally, the Texas State Board of Examiners of Psychologists recently amended its rules and deleted requirements that a gap of more than seven years between the applicant's degree and the date of application could be grounds for the denial of an application, unless good cause can be shown. Therefore keeping these requirements, as suggested by the commenter, would not conform with the requirements of other professions, but deleting this standard would.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle 1, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Executive Director

Texas State Board of Social Worker Examiners

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Proposal publication date: December 16, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.404

The Texas Behavioral Health Executive Council adopts amendments to §781.404, relating to Recognition as a Council-approved Supervisor and the Supervision Process. Section 781.404 is adopted with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8233) and will be republished. Proposed §781.404(b)(3)(B) listed an implementation date of May 1, 2023, for new §781.404(b)(3)(A) which pertains to the minimum requirements for the 40-hour supervisor's training program. The implementation date was intended to provide licensees with some additional advanced notice of this rule change. Since this date has already passed a new implementation date of September 1, 2023, has been adopted to provide the additional advanced notice of this change as originally intended.

Reasoned Justification.

The adopted amendments delete the 48 and 60 month maximums for completing the required supervised experience for licensure as a clinical social worker (LCSW) or for independent practice recognition (IPR) status. The adopted amendments also provide more specific details regarding the minimum stan-

dards for the 40 hours of education required to apply for supervisor status. Additionally, the adopted changes delete some duplicative language regarding the Council's ability to discipline a licensee that continues to provide supervision after the licensee no longer possesses supervisor status, and the outdated subparagraph that initially required the 40 hours supervision training back in 2014.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Comments voiced support for these rule amendments. One commenter opined that these changes will help part-time, prn, and contract workers who many not be able to meet the clinical or IPR requirements in the allotted maximum time periods. The commenter believes that this rule change will recognize years of experience that may not otherwise be considered for social workers seeking advanced licenses or statuses, such as independent practice recognition.

Agency Response.

The Executive Council thanks the commenters for their supportive remarks.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has com-

plied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

*§781.404. Recognition as a Council-approved Supervisor and the Supervision Process.*

(a) Types of supervision include:

(1) administrative or work-related supervision of an employee, contractor or volunteer that is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(2) clinical supervision of a Licensed Master Social Worker in a setting in which the LMSW is providing clinical services; the supervision may be provided by a Licensed Professional Counselor, Licensed Psychologist, Licensed Marriage and Family Therapist, Licensed Clinical Social Worker or Psychiatrist. This supervision is not related to qualification for licensure, practice specialty recognition, a disciplinary order, or a condition of new or continued licensure;

(3) clinical supervision of a Licensed Master Social Worker, who is providing clinical services and is under a supervision plan to fulfill supervision requirements for achieving the LCSW; a Licensed Clinical Social Worker who is a Council-approved supervisor delivers this supervision;

(4) non-clinical supervision of a Licensed Master Social Worker or Licensed Baccalaureate Social Worker who is providing non-clinical social work service toward qualifications for independent non-clinical practice recognition; this supervision is delivered by a Council-approved supervisor; or

(5) Council-ordered supervision of a licensee by a Council-approved supervisor pursuant to a disciplinary order or as a condition of new or continued licensure.

(b) A person who wishes to be a Council-approved supervisor must file an application and pay the applicable fee.

(1) A Council-approved supervisor must be actively licensed in good standing by the Council as an LBSW, an LMSW, an LCSW, or be recognized as an Advanced Practitioner (LMSW-AP), or hold the equivalent social work license in another jurisdiction. The person applying for Council-approved status must have practiced at his/her category of licensure for two years. The Council-approved supervisor shall supervise only those supervisees who provide services that fall within the supervisor's own competency.

(2) The Council-approved supervisor is responsible for the social work services provided within the supervisory plan.

(3) The Council-approved supervisor must have completed a 40-hour supervisor's training program acceptable to the Council.

(A) At a minimum, the 40-hour supervisor's training program must meet each of the following requirements:

(i) the course must be taught by a licensed social worker holding both the appropriate license classification, and supervisor status issued by the Council;

(ii) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(iii) the 40-hour supervision training must include at least:

(I) three (3) hours for defining and conceptualizing supervision and models of supervision;

(II) three (3) hours for supervisory relationship and social worker development;

(III) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(IV) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(V) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(B) Subparagraph (A) of this paragraph is effective September 1, 2023.

(4) The Council-approved supervisor must submit required documentation and fees to the Council.

(5) When a licensee is designated Council-approved supervisor, he or she may perform the following supervisory functions.

(A) An LCSW may supervise clinical experience toward the LCSW license, non-clinical experience toward the Independent Practice Recognition (non-clinical), and Council-ordered probated suspension;

(B) An LMSW-AP may supervise non-clinical experience toward the non-clinical Independent Practice Recognition; and Council-ordered probated suspension for non-clinical practitioners;

(C) An LMSW with the Independent Practice Recognition (non-clinical) who is a Council-approved supervisor may supervise an LBSW's or LMSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW or LMSW (non-clinical) under Council-ordered probated suspension;

(D) An LBSW with the non-clinical Independent Practice Recognition who is a Council-approved supervisor may supervise an LBSW's non-clinical experience toward the non-clinical Independent Practice Recognition; and an LBSW under Council-ordered probated suspension.

(6) The approved supervisor must renew the approved supervisor status in conjunction with the biennial license renewal. The approved supervisor may surrender supervisory status by documenting the choice on the appropriate Council renewal form and subtracting the supervisory renewal fee from the renewal payment. If a licensee who has surrendered supervisory status desires to regain supervisory status, the licensee must reapply and meet the current requirements for approved supervisor status.

(7) A supervisor must maintain the qualifications described in this section while he or she is providing supervision.

(8) A Council-approved supervisor who wishes to provide any form of supervision or Council-ordered supervision must comply with the following:

(A) The supervisor is obligated to keep legible, accurate, complete, signed supervision notes and must be able to produce such documentation for the Council if requested. The notes shall document the content, duration, and date of each supervision session.

(B) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the Council.

(C) A Council-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(D) Before entering into a supervisory plan, the supervisor shall be aware of all conditions of exchange with the clients served by her or his supervisee. The supervisor shall not provide supervision if the supervisee is practicing outside the authorized scope of the license. If the supervisor believes that a social worker is practicing outside the scope of the license, the supervisor shall make a report to the Council.

(E) A supervisor shall not be employed by or under the employment supervision of the person who he or she is supervising.

(F) A supervisor shall not be a family member of the person being supervised.

(G) A supervisee must have a clearly defined job description and responsibilities.

(H) A supervisee who provides client services for payment or reimbursement shall submit billing to the client or third-party payers which clearly indicates the services provided and who provided the services, and specifying the supervisee's licensure category and the fact that the licensee is under supervision.

(I) If either the supervisor or supervisee has an expired license or a license that is revoked or suspended during supervision, supervision hours accumulated during that time will be accepted only if the licensee appeals to and receives approval from the Council.

(J) A licensee must be a current Council-approved supervisor in order to provide professional development supervision toward licensure or specialty recognition, or to provide Council-ordered supervision to a licensee. Providing supervision without having met all requirements for current, valid Council-approved supervisor status may be grounds for disciplinary action against the supervisor.

(K) The supervisor shall ensure that the supervisee knows and adheres to Subchapter B, Rules of Practice, of this Chapter.

(L) The supervisor and supervisee shall avoid forming any relationship with each other that impairs the objective, professional judgment and prudent, ethical behavior of either.

(M) Should a supervisor become subject to a Council disciplinary order, that person is no longer a Council-approved supervisor and must so inform all supervisees, helping them to find alternate supervision. The person may reapply for Council-approved supervisor status by meeting the terms of the disciplinary order and having their license in good standing, in addition to submitting an application for Council-approved supervisor, and proof of completion of a 40-hour Council-approved supervisor training course, taken no earlier than the date of execution of the Council order.

(N) Providing supervision without Council-approved supervisor status is grounds for disciplinary action.

(O) A supervisor shall refund all supervisory fees the supervisee paid after the date the supervisor ceased to be Council-approved.

(P) A supervisor is responsible for developing a well-conceptualized supervision plan with the supervisee, and for updating that plan whenever there is a change in agency of employment, job function, goals for supervision, or method by which supervision is provided.

(9) A Council-approved supervisor who wishes to provide supervision towards licensure as an LCSW or towards specialty recognition in Independent Practice (IPR) or Advanced Practitioner (LMSW-AP), which is supervision for professional growth, must comply with the following:

(A) Supervision toward licensure or specialty recognition may occur in one-on-one sessions, in group sessions, or in a combination of one-on-one and group sessions. Session may transpire in the same geographic location, or via audio, web technology or other electronic supervision techniques that comply with HIPAA and Texas Health and Safety Code, Chapter 611, and/or other applicable state or federal statutes or rules.

(B) Supervision groups shall have no fewer than two members and no more than six.

(C) Supervision shall occur in proportion to the number of actual hours worked for the 3,000 hours of supervised experience. No more than 10 hours of supervision may be counted in any one month, or 30-day period, as appropriate, towards satisfying minimum requirements for licensure or specialty recognition.

(D) The Council considers supervision toward licensure or specialty recognition to be supervision which promotes professional growth. Therefore, all supervision formats must encourage clear, accurate communication between the supervisor and the supervisee, including case-based communication that meets standards for confidentiality. Though the Council favors supervision formats in which the supervisor and supervisee are in the same geographical place for a substantial part of the supervision time, the Council also recognizes that some current and future technology, such as using reliable, technologically-secure computer cameras and microphones, can allow personal face-to-face, though remote, interaction, and can support professional growth. Supervision formats must be clearly described in the supervision plan, explaining how the supervision strategies and methods of delivery meet the supervisee's professional growth needs and ensure that confidentiality is protected.

(E) Supervision toward licensure or specialty recognition must extend over a full 3000 hours over a period of not less than 24 full months for LCSW or Independent Practice Recognition (IPR). Even if the individual completes the minimum of 3000 hours of supervised experience and minimum of 100 hours of supervision prior to 24 months from the start date of supervision, supervision which meets the Council's minimum requirements shall extend to a minimum of 24 full months.

(F) The supervisor and the supervisee bear professional responsibility for the supervisee's professional activities.

(G) If the supervisor determines that the supervisee lacks the professional skills and competence to practice social work under a regular license, the supervisor shall develop and implement a written remediation plan for the supervisee.

(H) Supervised professional experience required for licensure must comply with §781.401 of this title and §781.402 of this title and all other applicable laws and rules.

(10) A Council-approved supervisor who wishes to provide supervision required as a result of a Council order must comply with this title, all other applicable laws and rules, and/or the following.

(A) A licensee who is required to be supervised as a condition of initial licensure, continued licensure, or disciplinary action must:

(i) submit one supervisory plan for each practice location to the Council for approval by the Council or its designee within 30 days of initiating supervision;

(ii) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or his or her designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from the potential supervisor that the supervisor has reviewed the contract and is qualified to supervise the licensee in the setting;

(iii) ensure that the supervisor submits reports to the Council on a schedule determined by the Council. In each report, the supervisor must address the supervisee's performance, how closely the supervisee adheres to statutes and rules, any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The Council may consider the supervisor's reservations as it evaluates the supervision verification the supervisee submits; and

(iv) notify the Council immediately if there is a disruption in the supervisory relationship or change in practice location and submit a new supervisory plan within 30 days of the break or change in practice location.

(B) The supervisor who agrees to provide Council-ordered supervision of a licensee who is under Council disciplinary action must understand the Council order and follow the supervision stipulations outlined in the order. The supervisor must address with the licensee those professional behaviors that led to Council discipline, and must help to remediate those concerns while assisting the licensee to develop strategies to avoid repeating illegal, substandard, or unethical behaviors.

(C) Council-ordered and mandated supervision timeframes are specified in the Council order.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

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Proposal publication date: December 16, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.421

The Texas Behavioral Health Executive Council adopts new §781.421, relating to Remedy for Incomplete License Requirements. Section 781.421 is adopted without changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8236) and will not be republished.

Reasoned Justification.

The adopted new rule is necessary to allow the Texas State Board of Social Worker Examiners to make exceptions for appli-



cants that have difficulty fulfilling certain licensing requirements due to a declared disaster.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for this new rule.

Agency Response.

The Executive Council thanks the commenter for the supportive remarks.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

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Darrel D. Spinks

Executive Director

Texas State Board of Social Worker Examiners

Effective date: June 15, 2023

Proposal publication date: December 16, 2022

For further information, please call: (512) 305-7706



## 22 TAC §781.501

The Texas Behavioral Health Executive Council adopts amendments to §781.501, relating to Requirements for Continuing Education. Section 781.501 is adopted with changes to the proposed text as published in the December 16, 2022, issue of the *Texas Register* (47 TexReg 8238) and will be republished.

Reasoned Justification.

The adopted amendments to this rule add hospitals and hospital systems to subsection (f), and makes the effective date of subsection (f) January 1, 2024.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

A commenter voiced concern about the maximum number of hours being proposed for self-study, the commenter requests that the present method remain in place because individuals who are confined to their homes or in rural communities will have problems taking courses in person.

Another commenter requested that continuing education courses or conferences provided by the military be included in the list of providers in subsection (f) of this rule.

A commenter opined that a letter, email, or transcript from an approved supervisor should qualify as continuing education towards advanced licensure.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for these rule amendments.

Agency Response.

The Executive Council thanks the commenter for the supportive comments and declines to amend the rule as requested by the commenters. Foremost, all of the changes requested by the commenters are beyond the scope of what was originally proposed, therefore if the Executive Council wanted to make any of the changes requested by the commenters a new rulemaking proposal would be required. Therefore none of these requested changes can be made at this time.

The comment regarding the self-study part of this rule, that it somehow limits the ability of licensees from taking online courses, is misplaced. As it currently states in part of §781.501(h)(5): "Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continued education activity, program or offering from a third-party is not subject to this self-study limitation and may count as acceptable continuing education under other parts of this rule." Therefore there is no one hour limit for online continuing educa-

tion. Self-study is defined in the rule as: "credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of social work."

The comment regarding adding military continuing education courses or conferences to subsection (f) is already covered by this rule. Section 781.501(f)(3) states: "city, county, state, or federal governmental entities" and the United States military is a federal government entity.

Lastly, the comment regarding a letter, email, or transcript from an approved supervisor should qualify as continuing education is covered by the current rule. Section 781.501(f) states that licensees must obtain at least fifty percent of their continuing education hours from a provider listed in subsection (f), and in subsection (f)(6) it lists a licensee that is a Council-approved supervisor. Additionally, a letter, email or transcript is what is required by §781.501(e)(3) to document the continuing education course was completed by the licensee. As for counting these continuing education courses towards advanced licensure, that is not the purpose of this rule. The continuing education rule, §781.501, lists some of the requirements for the renewal of a license but the rule has never been intended to be used for the standards for initial licensure or the upgrade of a license.

#### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires

state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

#### §781.501. *Requirements for Continuing Education.*

##### (a) Minimum Continuing Education Hours Required:

(1) A licensee must complete 30 hours of continuing education during each renewal period that they hold a license. The 30 hours of continuing education must include 6 hours in ethics and 3 hours in cultural diversity or competency.

(2) A licensee may carry forward to the next renewal period, a maximum of 10 hours accrued during the current renewal period if those hours are not needed for renewal.

##### (b) Special Continuing Education Requirements.

(1) A licensee with supervisory status must complete 6 hours of continuing education in supervision.

(2) The special continuing education requirements set out in this subsection may be counted toward the minimum continuing education hours required under subsection (a) of this section.

(c) Acceptable ethics hours include, but are not limited to continuing education on:

(1) state or federal laws, including agency rules, relevant to the practice of social work;

(2) practice guidelines established by local, regional, state, national, or international professional organizations;

(3) training or education designed to demonstrate or affirm the ideals and responsibilities of the profession; and

(4) training or education intended to assist licensees in determining appropriate decision-making and behavior, improve consistency in or enhance the professional delivery of services, and provide a minimum acceptable level of practice.

(d) Acceptable cultural diversity or competency hours include, but are not limited to continuing education regarding age, disability, ethnicity, gender, gender identity, language, national origin, race, religion, culture, sexual orientation, and socio-economic status.

##### (e) Acceptable Continuing Education Activities.

(1) All continuing education hours must have been received during the renewal period unless allowed under subsection (a)(2) of this section, and be directly related to the practice of social work;

(2) The Council shall make the determination as to whether the activity claimed by the licensee is directly related to the practice of social work;

(3) Except for hours claimed under subsection (h) of this section, all continuing education hours obtained must be designated by the provider in a letter, email, certificate, or transcript that displays the licensee's name, topic covered, date(s) of training, and hours of credit earned; and

(4) Multiple instances or occurrences of a continuing education activity may not be claimed for the same renewal period.

(f) Licensees must obtain at least fifty percent of their continuing education hours from one or more of the following providers:

(1) an international, national, regional, state, or local association of medical, mental, or behavioral health professionals;

(2) public school districts, charter schools, or education service centers;

- (3) city, county, state, or federal governmental entities;
- (4) an institution of higher education accredited by a regional accrediting organization recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education;
- (5) religious or charitable organizations devoted to improving the mental or behavioral health of individuals;
- (6) a licensee that is a Council-approved supervisor;
- (7) a hospital or hospital system, including any clinic, division, or department within a hospital or hospital system; or
- (8) any provider approved or endorsed by a provider listed herein.

(g) Notwithstanding subsection (f) of this section, licensees shall receive credit for continuing education activities according to the number of hours designated by the provider, or if no such designation, on a one-for-one basis with one credit hour for each hour spent in the continuing education activity.

(h) Licensees may claim continuing education credit for each of the following activities:

(1) Passage of the jurisprudence examination. Licensees who pass the jurisprudence examination may claim 1 hour of continuing education in ethics.

(2) Preparing and giving a presentation at a continuing education activity. The maximum number of hours that may be claimed for this activity is 5 hours.

(3) Authoring a book or peer reviewed article. The maximum number of hours that may be claimed for this activity is 5 hours.

(4) Teaching or attending a university or college level course. The maximum number of hours that may be claimed for this activity is 5 hours.

(5) Self-study. The maximum number of hours that may be claimed for this activity is 1 hour. Self-study is credit that is obtained from any type of activity that is performed by an individual licensee acting alone. Such activities include, but are not limited to, reading materials directly related to the practice of social work. Time spent individually viewing or listening to audio, video, digital, or print media as part of an organized continuing education activity, program or offering from a third-party is not subject to this self-study limitation and may count as acceptable continuing education under other parts of this rule.

(6) Successful completion of a training course on human trafficking prevention described by §116.002 of the Occupations Code. Licensees who complete this training may claim 1 hour of continuing education credit.

(i) The Council does not pre-evaluate or pre-approve continuing education providers or hours.

(j) Licensees shall maintain proof of continuing education compliance for a minimum of 3 years after the applicable renewal period.

(k) Subsection (f) of this section is effective January 1, 2024. The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

TRD-202301940  
 Darrel D. Spinks  
 Executive Director  
 Texas State Board of Social Worker Examiners  
 Effective date: June 15, 2023  
 Proposal publication date: December 16, 2022  
 For further information, please call: (512) 305-7706



## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING AND ENFORCEMENT RULES SUBCHAPTER A. DEFINITIONS

#### 22 TAC §851.10

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.10 Definitions.

This amendment is adopted as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1506) without changes and will not be republished.

The adopted amendment to 22 TAC §851.10 adds the definition for "digital signature."

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 25, 2023.

TRD-202301918  
 Rene Truan  
 Executive Director  
 Texas Board of Professional Geoscientists  
 Effective date: June 14, 2023  
 Proposal publication date: March 17, 2023  
 For further information, please call: (512) 936-4428



### SUBCHAPTER B. P.G. LICENSING, FIRM REGISTRATION, AND GIT CERTIFICATION

#### 22 TAC §851.43

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.43 GIT Certification Period and Renewal.

This amendment is adopted as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 11) and will not be republished.

The adopted amendment to 22 TAC §851.43 removes the restriction that a GIT renewal after the eighth year may only be granted at the discretion of the appointed Board. Requiring appointed-board review of GIT renewals was an unnecessary procedural hurdle for GIT certificate holders. Current rules regarding continuing education and annual certificate renewal are adequate to ensure the GIT certificate holder remains qualified even after the 8th year.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202301919

Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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Proposal publication date: March 17, 2023

For further information, please call: (512) 936-4428



## SUBCHAPTER D. COMPLIANCE AND ENFORCEMENT

### 22 TAC §851.156

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to 22 TAC §851.156 Professional Geoscientists Seals and Geoscience Firm Identification.

This amendment is adopted as published in the March 17, 2023, issue of the *Texas Register* (48 TexReg 1511) and will not be republished.

The adopted amendment to 22 TAC §851.156 adds provisions for Professional Geoscientists to use digitally generated signatures and seals to sign and seal geoscience work in the state of Texas. This rule amendment allows the Professional Geoscientist and the Geoscience Firm to use convenient and secure technology to comply more easily with signature and seal requirements, including those in Texas Occupations Code sections 1002.258, 1002.263, and 1002.351.

No public comments were received regarding the proposal.

This amendment is authorized by the Texas Geoscience Practice Act, Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce all rules and regulations consistent with the Act as necessary for the performance of its duties, and the regulation of the practice of geoscience in this state.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Rene Truan

Executive Director

Texas Board of Professional Geoscientists

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For further information, please call: (512) 936-4428



## PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

### CHAPTER 882. APPLICATIONS AND LICENSING

#### SUBCHAPTER A. LICENSE APPLICATIONS

##### 22 TAC §882.10

The Texas Behavioral Health Executive Council adopts the repeal of §882.10, relating to Applicants with Pending Complaints. Section 882.10 is adopted without any changes, as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1716) and will not be republished.

Reasoned Justification.

The repeal of this rule is necessary because it is replaced with a new rule that is adopted in this issue of the *Texas Register*. The new rule will allow for the abeyance of an application up to 180 days when there is a pending complaint against the applicant that involves sexual misconduct or imminent physical harm to the public. All other applicants with complaints will have their application processed as normal, the complaint will not impact the licensure application. The pending complaint will still be investigated and processed according to the normal route as well.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

#### STATUTORY AUTHORITY

The rule repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

TRD-202301933  
Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
Effective date: June 15, 2023  
Proposal publication date: March 31, 2023  
For further information, please call: (512) 305-7706



## 22 TAC §882.10

The Texas Behavioral Health Executive Council adopts new §882.10, relating to Applicants with Pending Complaints. Section 882.10 is adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1717) and will not be republished.

Reasoned Justification.

The adopted new rule changes the way Council staff will process applications when the applicant has a pending complaint. If the applicant has a pending complaint that involves sexual misconduct or imminent physical harm to the public then the application may be held in abeyance for up to 180 days while a determination on the complaint is made. All other applicants with complaints will have their application processed as normal, the complaint will not impact the licensure application. The pending complaint will still be investigated and processed according to the normal route as well.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

A commenter voiced support for this rule change. The commenter believes that this rule change will help prevent supervisors or group practice owners from using the agency's complaint process in a retaliatory way. The commenter asserts that a false complaint was filed against her by her former employer when she left a group practice and applied for an upgrade or change in licensure. Further, the commenter states that the complaint was eventually dismissed but the complaint and investigation slowed the approval of her application by several months. Therefore, the commenter believes, this rule change will not cause the same problems for applicants if they are leaving a group practice or supervisory relationship for their own independent practice and their former employer files a retaliatory complaint against them.

Agency Response.

The Executive Council appreciates the supportive comment.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

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Darrel D. Spinks  
Executive Director  
Texas Behavioral Health Executive Council  
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For further information, please call: (512) 305-7706



## CHAPTER 884. COMPLAINTS AND ENFORCEMENT

### SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

#### 22 TAC §884.10

The Texas Behavioral Health Executive Council adopts amendments to §884.10, relating to Investigation of Complaints. Section 884.10 is adopted without changes to the proposed text as published in the March 31, 2023, issue of the *Texas Register* (48 TexReg 1718) and will not be republished.

Reasoned Justification.

The adopted amendments reduce the priority rating system for complaints from four levels to two. The high priority shall be for all complaints involving sexual misconduct or imminent physical harm and all other complaints shall be a normal priority.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Comments voiced support for these rule amendments. One commenter suggested adding the word "alleged" to subsection (a)(1) of the rule.

#### Agency Response.

The Executive Council appreciates the supportive comments. The Executive Council declines to add the word "alleged" to this rule as requested by the commenter because the Executive Council believes clarity is not currently an issue with this rule, so the suggested change is not necessary at this time.

#### Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

TRD-202301935

Darrel D. Spinks  
Executive Director

Texas Behavioral Health Executive Council

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Proposal publication date: March 31, 2023

For further information, please call: (512) 305-7706



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 9. TEXAS COMMISSION ON JAIL STANDARDS

#### CHAPTER 269. RECORDS AND PROCEDURES

##### SUBCHAPTER D. JUVENILE JUSTICE REPORTS

#### 37 TAC §§269.40 - 269.43

The Commission on Jail Standards adopts the repeal of 37 TAC §§269.40 - 269.43, concerning Juvenile Justice Reports, without changes to the proposed text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1439). The rules will not be republished.

The Commission reviewed these rules as part of its statutory four-year rule review, which was published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8759). HB 1545 of the 87th Legislative Session repealed Government Code § 511.009(a)(12). That statute required the Commission to report annually the juveniles in county jails. The repeal effectively ended the requirement that the agency collect and report this data. Because TCJS is no longer required to report this data, Chapter 269 Subchapter D is obsolete.

Repealing these rules will help keep the minimum jail standards uncluttered by obsolete regulations.

No public comments were received regarding the rule review.

The repeal is adopted under statutory authority of Government Code, Chapter 511, which authorizes the Texas Commission on Jail Standards to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails. This adoption does not affect other rules or statutes.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 23, 2023.

TRD-202301899

Brandon Wood  
Executive Director

Texas Commission on Jail Standards

Effective date: June 12, 2023

Proposal publication date: March 10, 2023

For further information, please call: (512) 463-5505



## PART 13. TEXAS COMMISSION ON FIRE PROTECTION

### CHAPTER 421. STANDARDS FOR CERTIFICATION

#### 37 TAC §421.17

The Texas Commission on Fire Protection (commission) adopts the proposed amendments to 37 Texas Administrative Code Chapter 421, Standards for Certification, concerning the proposed amendment to §421.17, Requirement to Maintain Certification.

#### BACKGROUND AND PURPOSE

The purpose of the proposed title change is to reflect the new title of the head of the agency.

Chapter 421, Standards for Certification, §421.17, Requirement to Maintain Certification, is adopted without changes to the text as published in the December 30, 2022, issue of the *Texas Register* (47 TexReg 8959). These rules will not be republished.

No comments were received from the public regarding the adoption of the amendment.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which

authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

TRD-202301931

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

Effective date: June 15, 2023

Proposal publication date: December 30, 2022

For further information, please call: (512) 936-3841



**CHAPTER 433. DRIVER/OPERATOR  
SUBCHAPTER A. MINIMUM STANDARDS  
FOR DRIVER/OPERATOR-PUMPER**

**37 TAC §433.5**

The Texas Commission on Fire Protection (the commission) adopts the amendment to Chapter 433, Driver/Operator, concerning, Subchapter A, Minimum Standards for Driver/Operator-Pumper, §433.5, Examination Requirements.

The amendment corrects a grammatical error.

Chapter 433, Driver/Operator, concerning, Subchapter A, Minimum Standards for Driver/Operator-Pumper, §433.5, Examination Requirements, is adopted without changes to the text as published in the December 23, 2022, issue of the *Texas Register* (47 TexReg 8518). These rules will not be republished.

No comments were received from the public regarding the adoption of the amendment.

The rule is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for certification; and §419.0325, which authorizes the commission to obtain the criminal history record information for the individual seeking certification by the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 26, 2023.

TRD-202301932

Mike Wisko

Agency Chief

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3841

