

HEALTH & SAFETY CODE
CHAPTER 485. ABUSABLE VOLATILE CHEMICALS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 485.001. DEFINITIONS. In this chapter:

(1) "Abusable volatile chemical " means:

(A) a chemical, including aerosol paint, that:

(i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under that Act or those regulations;

(ii) when inhaled, ingested, or otherwise introduced into a person's body, may:

(a) affect the person's central nervous system;

(b) create or induce in the person a condition of intoxication, hallucination, or elation; or

(c) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination; and

(iii) is not:

(a) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(b) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(c) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended; or

(B) nitrous oxide that is not:

(i) a pesticide subject to Chapter 76, Agriculture Code, or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. Section 136 et seq.), as amended;

(ii) a food, drug, or cosmetic subject to Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended; or

(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. Section 201 et seq.), as amended.

(2) "Aerosol paint" means an aerosolized paint product, including a clear or pigmented lacquer or finish.

(3) "Board" means the Texas Board of Health.

(4) "Commissioner" means the commissioner of health.

(5) "Deliver" means to make the actual or constructive transfer from one person to another of an abusable volatile chemical, regardless of whether there is an agency relationship. The term includes an offer to sell an abusable volatile chemical.

(6) "Delivery" means the act of delivering.

(7) "Department" means the Texas Department of Health.

(8) "Inhalant paraphernalia" means equipment or materials of any kind that are intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable volatile chemical. The term includes a tube, balloon, bag, fabric, bottle, or other container used to concentrate or hold in suspension an abusable volatile chemical or vapors of the chemical.

(9) "Sell" includes a conveyance, exchange, barter, or trade.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.002. RULES. The board may adopt rules necessary to comply with any labeling requirements concerning precautions against inhalation of an abusable volatile chemical established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or under regulations adopted under that Act. Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER B. SALES PERMITS AND SIGNS

Sec. 485.011. PERMIT REQUIRED. A person may not sell an abusable volatile chemical at retail unless the person or the person's employer holds, at the time of the sale, a volatile chemical sales permit for the location of the sale.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.012 and amended by

Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.012. ISSUANCE AND RENEWAL OF PERMIT. (a) To be eligible for the issuance or renewal of a volatile chemical sales permit, a person must:

(1) hold a sales tax permit that has been issued to the person;

(2) complete and return to the department an application as required by the department; and

(3) pay to the department the application fee established under Section 485.013 for each location at which an abusable volatile chemical may be sold by the person holding a volatile chemical sales permit.

(b) The board shall adopt rules as necessary to administer this chapter, including application procedures and procedures by which the department shall give each permit holder reasonable notice of permit expiration and renewal requirements.

(c) The department shall issue or deny a permit and notify the applicant of the department's action not later than the 60th day after the date on which the department receives the complete application and appropriate fee. If the department denies an application, the department shall include in the notice the reasons for the denial.

(d) A permit issued or renewed under this chapter is valid for one year from the date of issuance or renewal.

(e) A permit is not valid if the permit holder has been convicted more than once in the preceding year of an offense committed:

(1) at a location for which the permit is issued; and

(2) under Section 485.031, 485.032, or 485.033.

(f) A permit issued by the department is the property of the department and must be surrendered on demand by the department.

(g) The department shall prepare an annual roster of permit holders.

(h) The department shall monitor and enforce compliance with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 203, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.013 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.013. FEE. The board by rule may establish fees in amounts not to exceed \$25 for the issuance of a permit under this chapter.

Added by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.014. PERMIT AVAILABLE FOR INSPECTION. A permit holder must have the volatile chemical sales permit or a copy of the permit available for inspection by the public at each location where the permit holder sells an abusable volatile chemical.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.015. REFUSAL TO ISSUE OR RENEW PERMIT. A proceeding for the failure to issue or renew a volatile chemical sales permit under Section 485.012 or for an appeal from that proceeding is governed by the contested case provisions of Chapter 2001, Government Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.016. DISPOSITION OF FUNDS; EDUCATION AND PREVENTION PROGRAMS. (a) The department shall account for all amounts received under Section 485.013 and send those amounts to the comptroller.

(b) The comptroller shall deposit the amounts received under Subsection (a) in the state treasury to the credit of the general revenue fund to be used only by the department to:

(1) administer, monitor, and enforce this chapter; and

(2) finance statewide education projects concerning the hazards of abusable volatile chemicals and the prevention of inhalant abuse.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 204, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.017. SIGNS. A business establishment that sells an abusable volatile chemical at retail shall display a conspicuous sign, in English and Spanish, that states the following:

It is unlawful for a person to sell or deliver an abusable volatile chemical to a person under 18 years of age. Except in limited situations, such an offense is a state jail felony.

It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.018. PROHIBITED ORDINANCE AND RULE. (a) A political subdivision or an agency of this state may not enact an ordinance or rule that requires a business establishment to display an abusable volatile chemical in a manner that makes the chemical accessible to patrons of the business only with the assistance of personnel of the business.

(b) This section does not apply to an ordinance or rule that was enacted before September 1, 1989.

Added by Acts 1991, 72nd Leg., ch. 14, Sec. 205, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.019. RESTRICTION OF ACCESS TO AEROSOL PAINT.

(a) A business establishment that holds a permit under Section 485.012 and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be over 18 years of age.

(c) A court may issue a warning to a business establishment or impose a civil penalty of \$50 on the business establishment for a first violation of this section. After receiving a warning or penalty for the first violation, the business establishment is liable to the state for a civil penalty of \$100 for each subsequent violation.

(d) For the third violation of this section in a calendar year, a court may issue an injunction prohibiting the business establishment from selling aerosol paint for a period of not more than two years. A business establishment that violates the injunction is liable to the state for a civil penalty of \$100, in addition to any other penalty authorized by law, for each day the violation continues.

(e) If a business establishment fails to pay a civil penalty under this section, the court may issue an injunction prohibiting the establishment from selling aerosol paint until the establishment pays the penalty, attorney's fees, and court costs.

(f) The district or county attorney for the county in which a violation of this section is alleged to have occurred, or the attorney general, if requested by the district or county attorney for that county, may file suit for the issuance of a warning, the collection of a penalty, or the issuance of an injunction.

(g) A penalty collected under this section shall be sent to the comptroller for deposit in the state treasury to the credit of the general revenue fund.

(h) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

Added by Acts 1997, 75th Leg., ch. 593, Sec. 4, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER C. CRIMINAL PENALTIES

Sec. 485.031. POSSESSION AND USE. (a) A person commits an offense if the person inhales, ingests, applies, uses, or possesses an abusable volatile chemical with intent to inhale, ingest, apply, or use the chemical in a manner:

(1) contrary to directions for use, cautions, or warnings appearing on a label of a container of the chemical; and

(2) designed to:
 (A) affect the person's central nervous system;
 (B) create or induce a condition of intoxication, hallucination, or elation; or
 (C) change, distort, or disturb the person's eyesight, thinking process, balance, or coordination.

(b) An offense under this section is a Class B misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.032. DELIVERY TO A MINOR. (a) A person commits an offense if the person knowingly delivers an abusable volatile chemical to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that:
 (1) the abusable volatile chemical that was delivered contains additive material that effectively discourages intentional abuse by inhalation; or

 (2) the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under the Federal Hazardous Substances Act (15 U.S.C. Section 1261 et seq.), as amended, or regulations subsequently adopted under that Act.

(c) It is an affirmative defense to prosecution under this section that:

 (1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

 (A) the adult permits the use of the abusable volatile chemical only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

 (B) the adult removes the chemical from the person younger than 18 years of age on completion of that use; or

 (2) the person to whom the abusable volatile chemical was delivered presented to the defendant an apparently valid Texas driver's license or an identification certificate, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a state jail felony.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer held a volatile chemical sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

 (1) did not hold a volatile chemical sales permit but did hold a sales tax permit for the location of the sale; and

 (2) had not been convicted previously under this section for an offense committed after January 1, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 2.06, eff. Sept. 1, 1994. Renumbered from Health & Safety Code Sec. 485.033 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.033. INHALANT PARAPHERNALIA. (a) A person commits an offense if the person knowingly uses or possesses with intent to use inhalant paraphernalia to inhale, ingest, or otherwise introduce into the human body an abusable volatile chemical in violation of Section 485.031.

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

 (1) knowingly:
 (A) delivers or sells inhalant paraphernalia;
 (B) possesses, with intent to deliver or sell, inhalant paraphernalia; or

 (C) manufactures, with intent to deliver or sell, inhalant paraphernalia; and

 (2) at the time of the act described by Subdivision (1), knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a volatile chemical in violation of Section 485.031.

(c) An offense under Subsection (a) is a Class B misdemeanor, and an offense under Subsection (b) is a Class A

misdemeanor.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 206, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.034 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.034. FAILURE TO POST SIGN. (a) A person commits an offense if the person sells an abusable volatile chemical in a business establishment and the person does not display the sign required by Section 485.017.

(b) An offense under this section is a Class C misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.035 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.035. SALE WITHOUT PERMIT. (a) A person commits an offense if the person sells an abusable volatile chemical in violation of Section 485.011 and the purchaser is 18 years of age or older.

(b) An offense under this section is a Class B misdemeanor. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.036 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.036. PROOF OF OFFER TO SELL. Proof of an offer to sell an abusable volatile chemical must be corroborated by a person other than the offeree or by evidence other than a statement of the offeree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Renumbered from Health & Safety Code Sec. 485.037 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.037. SUMMARY FORFEITURE. An abusable volatile chemical or inhalant paraphernalia seized as a result of an offense under this chapter is subject to summary forfeiture and to destruction or disposition in the same manner as controlled substance property under Subchapter E, Chapter 481.

Added by Acts 1991, 72nd Leg., ch. 141, Sec. 5, eff. Sept. 1, 1991. Renumbered from Health & Safety Code Sec. 485.038 and amended by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

Sec. 485.038. PREPARATORY OFFENSES. Title 4, Penal Code, applies to an offense under this subchapter.

Added by Acts 1995, 74th Leg., ch. 318, Sec. 43, eff. Sept. 1, 1995. Renumbered from Health & Safety Code Sec. 485.039 by Acts 2001, 77th Leg., ch. 1463, Sec. 2, eff. Sept. 1, 2001.

SUBCHAPTER D. ADMINISTRATIVE PENALTY

Sec. 485.101. IMPOSITION OF PENALTY. (a) The department may impose an administrative penalty on a person who sells abusable glue or aerosol paint at retail who violates this chapter or a rule or order adopted under this chapter.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.102. AMOUNT OF PENALTY. (a) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(b) The amount shall be based on:

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

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

(3) the history of previous violations;

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

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.103. REPORT AND NOTICE OF VIOLATION AND PENALTY.

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

(b) The notice must:

(1) include a brief summary of the alleged violation;

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.104. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Within 20 days after the date the person receives the notice sent under Section 485.103, the person in writing may:

(1) accept the determination and recommended penalty of the department; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.105. HEARING. (a) If the person requests a hearing, the commissioner shall refer the matter to the State Office of Administrative Hearings, which shall promptly set a hearing date and give written notice of the time and place of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall conduct the hearing.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.106. DECISION BY COMMISSIONER. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may:

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

(2) find that a violation did not occur.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.107. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Within 30 days after the date the order of the commissioner under Section 485.106 that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.108. STAY OF ENFORCEMENT OF PENALTY. (a) Within the 30-day period prescribed by Section 485.107, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

(b) If the commissioner receives a copy of an affidavit under Subsection (a)(2), the commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged

in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.109. COLLECTION OF PENALTY. (a) If the person does not pay the penalty and the enforcement of the penalty is not stayed, the penalty may be collected.

(b) The attorney general may sue to collect the penalty.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.110. DECISION BY COURT. (a) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.111. REMITTANCE OF PENALTY AND INTEREST. (a) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

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

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.112. RELEASE OF BOND. (a) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

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

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.

Sec. 485.113. ADMINISTRATIVE PROCEDURE. A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

Added by Acts 1999, 76th Leg., ch. 1411, Sec. 6.01, eff. Sept. 1, 1999.