

1 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

2
3 **PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS***
4 ***REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS**
5 **SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**
6

7 **ON JANUARY 30, 2018, THE TEXAS WORKFORCE COMMISSION PROPOSED THE**
8 **BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.**
9

10 Estimated Publication Date of the Proposal in the *Texas Register*: **February 16, 2018**
11 Estimated End of Comment Period: **March 19, 2018**
12

13 The Texas Workforce Commission (TWC) proposes amendments to the following sections of
14 Chapter 819, relating to TWC's Civil Rights Division (CRD):
15

- 16 Subchapter H. Discriminatory Housing Practices, §§819.122 and 819.136
- 17 Subchapter I. Texas Fair Housing Act Complaints and Investigations Process [Title]
- 18 Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.194,
- 19 819.199, and 819.200

- 20
- 21 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
- 22 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
- 23 **PART III. IMPACT STATEMENTS**
- 24 **PART IV. COORDINATION ACTIVITIES**
- 25

26 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

27 The purpose of the proposed Chapter 819 rule change is to align the CRD rules with US
28 Department of Housing and Urban Development (HUD) federal regulations, and comply with
29 amendments to the Administrative Procedure Act (“APA” or Texas Government Code, Chapter
30 2001), pursuant to Senate Bill 1446, enacted by the 85th Texas Legislature, Regular Session
31 (2017), and signed into law effective September 1, 2017.
32

33 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

34 (Note: Minor editorial changes are made that do not change the meaning of the rules and,
35 therefore, are not discussed in the Explanation of Individual Provisions.)
36

37 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

38 **TWC proposes the following amendments to Subchapter H:**
39

40 **§819.122. Three Exemptions Based on Familial Status**

41 Section 819.122(a) is amended to align with HUD’s regulation at 24 CFR § 100.302 to clarify
42 that the first exemption only applies to federal or state programs that the HUD Secretary
43 determines are specifically designed and operated to assist elderly persons.
44
45
46

1 **§819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation**

2 Section 819.136 adds a provision that makes it unlawful, in accordance with HUD regulations at
3 24 CFR §§100.400 and 100.600, to retaliate against a person who reports a discriminatory
4 housing practice or to harass a person because of race, color, religion, sex, familial status,
5 national origin, or disability.

6
7 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND**
8 **INVESTIGATIONS PROCESS**

9 **TWC updates the title of Subchapter I to read "Texas Fair Housing Act Complaints and**
10 **Investigations Process."**

11
12 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**
13 **REVIEW**

14 **TWC proposes the following amendments to Subchapter K:**

15
16 **§819.194. Notice of Hearing**

17 Section 819.194 adds that an attachment that incorporates, by reference, the factual matters
18 asserted in a complaint constitutes an acceptable option for the information required with a
19 notice of hearing.

20
21 **§819.199. Commission Decision**

22 Section 819.199 adds language to:

- 23 --specify the acceptable methods that TWC may use to notify each party to a contested case of
24 any decision or order of TWC's three-member Commission (Commission); and
25 --clarify when a Commission decision becomes final following timely submission of a motion
26 for rehearing.

27
28 **§819.200. Motion for Rehearing**

29 Section 819.200 adds language to specify that a party filing a motion for rehearing or a reply to a
30 motion for rehearing must serve a copy on each party using the newly enacted notification
31 methods set forth in §819.199(c).

32
33 **PART III. IMPACT STATEMENTS**

34 Randy Townsend, Chief Financial Officer, has determined that for each year of the first five
35 years the rules will be in effect, the following statements will apply:

36
37 There are no additional estimated costs to the state and to local governments expected as a result
38 of enforcing or administering the rules.

39
40 There are no estimated cost reductions to the state and to local governments as a result of
41 enforcing or administering the rules.

42
43 There are no estimated losses or increases in revenue to the state or to local governments as a
44 result of enforcing or administering the rules.

1 There are no foreseeable implications relating to costs or revenue of the state or local
2 governments as a result of enforcing or administering the rules.

3
4 There are no anticipated economic costs to persons required to comply with the rules.

5
6 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
7 communities as a result of enforcing or administering the rules.

8
9 Based on the analyses required by Texas Government Code §2001.024, TWC has determined
10 that the requirement to repeal or amend a rule, as required by House Bill 1290, 85th Texas
11 Legislature, Regular Session, 2017 (to be codified at Texas Government Code §2001.0045), does
12 not apply to this rulemaking.

13
14 Government Growth Impact Statement

15 TWC has determined that during the first five years the amendment will be in effect:

- 16 --the proposed amendment will not create or eliminate a government program;
- 17 --implementation of the proposed amendment will not require the creation or elimination of
18 employee positions;
- 19 --implementation of the proposed amendment will not require an increase or decrease in future
20 legislative appropriations to the agency;
- 21 --the proposed amendment will not require an increase or decrease in fees paid to the agency;
- 22 --the proposed amendment will not create a new regulation;
- 23 --the proposed amendment will not expand, limit, or eliminate an existing regulation;
- 24 --the proposed amendment will not change the number of individuals subject to the rule; and
- 25 --the proposed amendment will not positively or adversely affect the state's economy.

26
27 Economic Impact Statement and Regulatory Flexibility Analysis

28 TWC has determined that the proposed rules will not have an adverse economic impact on small
29 businesses or rural communities as these proposed rules place no requirements on small
30 businesses or rural communities.

31
32 Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no
33 significant negative impact upon employment conditions in the state as a result of the rules.

34
35 Lowell Keig, Director, Civil Rights Division, has determined that for each year of the first five
36 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed
37 rules will be to align TWC's rules with HUD regulations and recent amendments to the APA.

38
39 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
40 within TWC's legal authority to adopt.

41
42 **PART IV. COORDINATION ACTIVITIES**

43 In the development of these rules for publication and public comment, TWC sought the
44 involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule
45 amendments to the Boards for consideration and review on December 5, 2017. TWC also
46 conducted a conference call with Board executive directors and Board staff on December 15,

1 2017, to discuss the concept paper. During the rulemaking process, TWC considered all
2 information gathered in order to develop rules that provide clear and concise direction to all
3 parties involved.

4
5 Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce
6 Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 459T, Austin,
7 Texas 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us.
8 Comments must be received or postmarked no later than 30 days from the date this proposal is
9 published in the *Texas Register*.

10
11 The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide
12 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
13 effective administration of TWC services and activities.

14
15 The proposed rules affect Texas Government Code, Chapter 552.
16

1 **CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION**

2
3 **SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES**

4
5 **§819.122. ~~Three~~ Exemptions Based on Familial Status.**

- 6
7 (a) Discrimination prohibitions under the Texas Fair Housing Act based on familial
8 status do not apply to housing provided under any federal or state program that [the](#)
9 [US Department of Housing and Urban Development \(HUD\) Secretary has](#)
10 [determined](#) is designed and operated specifically to assist elderly ~~individuals~~[persons](#),
11 as defined in the federal or state program.
- 12
13 (b) Discrimination prohibitions under the Texas Fair Housing Act based on familial
14 status do not apply to housing intended for and solely occupied by individuals 62
15 years of age or older. This exemption shall apply regardless of the fact that:
- 16
17 (1) there were individuals residing in such housing on September 13, 1988, who
18 were under 62 years of age, provided that all new occupants are 62 years of
19 age or older;
- 20
21 (2) there are unoccupied units, provided that such units are reserved for occupancy
22 for individuals 62 years of age or older; or
- 23
24 (3) there are units occupied by employees of the housing (and family members
25 residing in the same unit) who are under 62 years of age provided they perform
26 substantial duties directly related to the management or maintenance of the
27 housing.
- 28
29 (c) Discrimination prohibitions under the Texas Fair Housing Act based on familial
30 status do not apply to housing intended and operated for occupancy by individuals 55
31 years of age or older if:
- 32
33 (1) at least 80 percent of the units in the housing facility are occupied by at least
34 one person 55 years of age or older. However:
- 35
36 (A) a newly constructed housing facility for first occupancy after March 12,
37 1989, need not comply with this 80 percent occupancy requirement until
38 25 percent of the units in the facility are occupied; and
- 39
40 (B) a housing facility or community may not evict, refuse to renew leases, or
41 otherwise penalize families with children in order to achieve occupancy
42 of at least 80 percent of the occupied units by at least one person 55
43 years of age or older;
- 44
45 (2) the owner or manager of a housing facility publishes and adheres to policies
46 and procedures that demonstrate an intent by the owner or manager to provide

1 housing for individuals 55 years of age or older. The following factors, among
2 others, are relevant in determining whether the owner or manager of a housing
3 facility has complied with the requirements of this paragraph:

4
5 (A) The manner in which the housing facility is described to prospective
6 residents;

7
8 (B) The nature of any advertising designed to attract prospective residents;

9
10 (C) Age verification procedures;

11
12 (D) Lease provisions;

13
14 (E) Written rules and regulations;

15
16 (F) Actual practices of the housing facility or community; and

17
18 (G) Public posting in common areas of statements describing the facility or
19 community as housing for individuals 55 years of age or older; and

20
21 (3) the housing facility satisfies the requirements of this section regardless of the
22 fact that:

23
24 (A) as of September 13, 1988, under 80 percent of the occupied units in the
25 housing facility were occupied by at least one person 55 years of age or
26 older, provided that at least 80 percent of the units that were occupied by
27 new occupants after September 13, 1988, were occupied by at least one
28 person 55 years of age or older;

29
30 (B) there are unoccupied units, provided that at least 80 percent of such units
31 are reserved for occupancy by at least one person 55 years of age or
32 older; and

33
34 (C) there are units occupied by employees of the housing facility (and family
35 members residing in the same unit) who are under 55 years of age
36 provided they perform substantial duties directly related to the
37 management or maintenance of the housing.

38
39 **§819.136. Prohibited Interference, Coercion, Intimidation, ~~or~~ Retaliation, or**
40 **Harassment.**

41
42 (a) It is unlawful to interfere, coerce, intimidate, ~~or~~ retaliate against, or harass any
43 person in the exercise or enjoyment of, or on account of that person having exercised
44 or enjoyed, or on account of that person having aided or encouraged any other person
45 in the exercise or enjoyment of, any right granted or protected by the Texas Fair
46 Housing Act.

1
2 (b) Prohibited conduct made unlawful under this section includes, but is not limited to:
3

4 (1) coercing a person, either orally, in writing, or by other means, to deny or limit
5 the benefits provided that person in connection with the sale or rental of a
6 dwelling or in connection with a residential real estate--related transaction
7 based on race, color, disability, religion, sex, national origin, or familial status;
8

9 (2) threatening, intimidating, or interfering with individuals in their enjoyment of a
10 dwelling based on race, color, disability, religion, sex, national origin, or
11 familial status of such individuals, or of visitors or associates of such
12 individuals;
13

14 (3) threatening an employee or agent with dismissal or an adverse employment
15 action, or taking such adverse employment action, for any effort to assist a
16 person seeking access to the sale or rental of a dwelling or seeking access to
17 any residential real estate--related transaction, based on the race, color,
18 disability, religion, sex, national origin, or familial status of that person or of
19 any person associated with that individual;
20

21 (4) intimidating or threatening any person because that person is engaging in
22 activities designed to make other individuals aware of, or encouraging such
23 other individuals to exercise rights granted or protected by this chapter; ~~and~~
24

25 (5) retaliating against any person because that person has made a complaint,
26 testified, assisted, or participated in any manner in a proceeding under the
27 Texas Fair Housing Act; ~~and~~
28

29 (6) retaliating against any person because that person reported a discriminatory
30 housing practice to a housing provider or other authority; ~~and~~
31

32 (7) harassing any person because of race, color, religion, sex, familial status,
33 national origin, or disability;
34

35 (A) Quid pro quo harassment. Quid pro quo harassment refers to an
36 unwelcome request or demand to engage in conduct where submission to
37 the request or demand, either explicitly or implicitly, is made a condition
38 related to the sale, rental, or availability of a dwelling; the terms,
39 conditions, or privileges of the sale or rental, or the provision of services
40 or facilities in connection therewith; or the availability, terms, or
41 conditions of a residential real estate-related transaction.
42

43 (B) Hostile environment harassment. Hostile environment harassment refers to
44 unwelcome conduct that is sufficiently severe or pervasive as to interfere
45 with the availability, sale, rental, or use or enjoyment of a dwelling; the
46 terms, conditions, or privileges of the sale or rental, or the provision or

1 enjoyment of services or facilities in connection therewith; or the
2 availability, terms, or conditions of a residential real estate-related
3 transaction.

4
5 **SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND**
6 **~~APPEALS~~INVESTIGATIONS PROCESS**

7
8 **SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL**
9 **REVIEW**

10
11 **§819.194. Notice of Hearing.**

12
13 (a) The Agency shall assign a hearing officer and mail a notice of hearing to the parties
14 and/or their designated representatives. The notice of hearing shall be in writing and
15 include:

16
17 (1) a statement of the date, time, place, and nature of the hearing;

18
19 (2) a statement of the legal authority and jurisdiction under which the hearing is to
20 be held;

21
22 (3) a reference to the sections of the statutes and rules involved; and

23
24 (4) either:

25
26 (A) a short, plain statement of the factual matters asserted~~;~~ or

27
28 (B) an attachment that incorporates by reference the factual matters asserted in
29 the complaint.

30
31 (b) The notice of hearing shall be issued at least 10 calendar days before the date of the
32 hearing by sending it to each party's last known address, as shown by Agency
33 records, by first-class mail.

34
35 **§819.199. Commission Decision.**

36
37 (a) After the time for filing exceptions and replies to exceptions has expired, the
38 Commission shall consider the hearing officer's report and the proposal for decision.
39 The Commission may adopt the proposal for decision, modify and adopt it, reject it
40 and issue a Commission decision, or remand the matter to the hearing officer. The
41 Commission shall issue its decision within 60 calendar days of the end of the
42 exceptions period. The hearing officer may extend the period in which the decision
43 may be signed and prepare the decision for the Commission.

44
45 (b) A Commission decision that is adverse to one or more parties shall be in writing and
46 signed after a majority vote of the Commission. Such a decision shall include

1 findings of fact and conclusions of law separately stated. Findings of fact, if set forth
2 in statutory language, shall be accompanied by a concise and explicit statement of
3 the underlying facts supporting the findings. Findings of fact shall be based
4 exclusively on the evidence and on matters officially noticed.
5

- 6 (c) The Agency shall notify each party to a contested case of any decision or order of
7 the Commission by first-class mail, using at least one of the following methods of
8 service:
9

10 (1) personal service;

11
12 (2) if agreed to by the party to be notified, service by electronic means sent to the current
13 e-mail address or facsimile number of the party's attorney of record or of the party if
14 the party is not represented by counsel; or
15

16 (3) first-class, certified, or registered mail sent to the last known address of the
17 party's attorney of record or of the party if the party is not represented by
18 counsel.
19

- 20 (d) A Commission decision becomes final:
21

22 (1) if a motion for rehearing is not filed on time, on the expiration of the period for
23 filing a motion for rehearing;
24

25 (2) if a motion for rehearing is filed on time, on the date:
26

27 (A) the order overruling the latest filed motion for rehearing is signed; or
28

29 (B) the latest filed motion for rehearing is overruled by operation of law;
30

31 (3) if the Commission finds that an imminent peril to the public health, safety, or welfare
32 requires immediate effect of a decision on the date the decision is signed, provided
33 that the Commission incorporates in the decision a factual and legal basis
34 establishing such imminent peril; or
35

36 (4) on the date specified in the decision for a case in which all parties agree to the
37 specified date in writing or on the record, if the specified date is not before the date
38 the decision is signed or later than the 20th day after the date the decision was issued.
39

40 **§819.200. Motion for Rehearing.**

- 41
42 (a) A motion for rehearing is required to exhaust all administrative remedies. A motion
43 for rehearing must be filed not later than the 25th calendar day after the date the
44 Commission decision is signed, unless the time for filing the motion has been
45 modified by agreement between the parties and approved by the Commission. Any
46 reply to a motion for rehearing shall be filed with the Commission not later than the

1 40th calendar day after the date the Commission decision is signed. A party filing a
2 motion for rehearing or a reply to a motion for rehearing shall serve a copy on each
3 party within the filing deadline [using the notification methods set forth in](#)
4 [§819.199\(c\)](#).
5

6 (b) The Commission may, by written order, extend the time for filing motions and
7 replies and for taking Commission action. No extension may extend the period for
8 Commission action beyond 100 days after the date the decision is signed. In the
9 event of an extension, a motion for rehearing is denied on the date fixed by the
10 written order or, in the absence of a fixed date, 100 days from the date the decision is
11 signed.
12

13 (c) If a party files a motion for rehearing, the Commission may:
14

15 (1) grant such motion and remand for rehearing;
16

17 (2) deny such motion, either expressly or by operation of law; or
18

19 (3) render a decision and issue an order that no rehearing shall be necessary
20 because imminent peril to the public health, safety, or welfare requires
21 immediate effect be given to the final order.
22

23 (d) If the Commission does not act on the motion for rehearing within 55 calendar days
24 after the date the decision was signed, the motion is denied by operation of law and
25 the decision is final.
26

27 (e) A motion for rehearing must identify with particularity findings of fact or
28 conclusions of law that are the subject of the complaint and any evidentiary or legal
29 ruling claimed to be erroneous. The motion must also state the legal and factual basis
30 for the claimed error.