

1 **CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

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3 **ADOPTED 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.**
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7 The Texas Workforce Commission (Commission) adopts the following new section to Chapter
8 801 relating to Local Workforce Development Boards *without* changes, as published in the
9 September 29, 2006, issue of the *Texas Register* (31TexReg 8231):
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11 Subchapter B. One-Stop Service Delivery Network, §801.33
12

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

14 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
15

16 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**
17

18 The purpose of the proposed new Chapter 801 rule is to implement Senate Bill (SB) 998, enacted
19 by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code
20 §2308.264(e)(4) to allow entities that contract with Local Workforce Development Boards
21 (Boards) to use, display, and advertise their business names when providing one-stop workforce
22 services for a Board.
23

24 SB 998 directs the Commission to adopt rules that are applicable to any existing and future
25 contracts for one-stop workforce services to ensure that any entity contracting with a Board may
26 use, display, and advertise its business name when providing one-stop workforce services for the
27 Board. Each contractor is responsible for determining if they want to use, sell, or advertise their
28 business name. It is not the Board's responsibility to modify any written material to include the
29 business names of its contractors. Boards must require, through local policy, that each contractor
30 notify the Board of its intent to use, display, or advertise its business name when providing one-
31 stop workforce services.
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33 Texas Government Code Chapter 2308 and this chapter govern Boards. The Commission
34 proposes to add new §801.33, relating to Advertising, to Chapter 801, Subchapter B, One-Stop
35 Service Delivery Network.
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37

38 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**
39

40 **SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK**

41 **The Commission adopts the following new section:**
42

43 **§801.33. Advertising**
44

45 Section 801.33(a) requires that within 120 days of the effective date of this rule or within three
46 Board meetings, Boards must develop policies that specify the limitations and restrictions

1 regarding the use, display, and advertising of contractors' business names when providing one-
2 stop workforce services for the Boards. These policies will be applicable only in the event that a
3 contractor or prospective contractor requests to advertise.

4
5 Section 801.33(a)(1) states that a Board's policies must address the requirement that a
6 contractor's business name be displayed in a subordinate position to the Board's name in terms of
7 size, placement, stature, and location.

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9 Section 801.33(a)(1)(A) states that a Board's policies must address the advertising medium to be
10 used, such as the Internet, radio, television, and print.

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12 Section 801.33(a)(1)(B) states that a Board's policies must address the design of the advertising
13 medium.

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15 Section 801.33(a)(2) requires a Board to develop a local policy that requires contractors and
16 prospective contractors to provide the Board advance written notice of their intent to use,
17 display, or advertise their business name. For example, a Board may require contractors to
18 provide 30-days written notice if they intend to use, display, or advertise their business name. In
19 addition, a Board may include a provision in a Request for Proposals that prospective contractors
20 state their intent to advertise in the proposal.

21
22 Section 801.33(a)(3) requires Boards to develop policies prohibiting a contractor's or prospective
23 contractor's business-name recognition from being a factor in evaluating a proposal for services.

24
25 Section 801.33(a)(4) states that a Board's policies must address the limitations necessary to avoid
26 potential confusion of employers and job seekers attempting to access one-stop workforce
27 services. Boards, as well as the entire Texas workforce system, maintain a vested interest in
28 controlling and protecting the business relationships developed with local employers and the
29 goodwill developed with job seekers and the public. An advertising strategy that creates
30 customer confusion potentially makes one-stop workforce services inaccessible to employers and
31 job seekers—if customers cannot find your business, they cannot access your services. Among
32 other things, customer confusion prevents an efficient and effective labor exchange between
33 employers and job seekers, thus undermining a critical, core mission of the Texas workforce
34 system. When developing policies to address contractor advertising, Boards also should consider
35 events such as contractor turnover, which may create a significant negative impact on the
36 continuity of a Board's image if the contractor's brand dominates to the detriment of the Board
37 brand. A Board's advertising policy:

- 38 —may direct how contractor staff outreaches and communicates with employers;
- 39 —will establish parameters that align with its branding strategy; and
- 40 —may allow a contractor's business name to be advertised in print material only, by limiting
41 greetings or introductions to the Board's brand.

42
43 Section 801.33(a)(5) states that a Board's policies must address the methods of holding
44 contractors accountable. A Board may include a provision on adherence to its advertising
45 policies in existing and future contracts for one-stop workforce services.

1 Section 801.33(a)(6) states that a Board's policies must address how a contractor or prospective
2 contractor will address the requirement that Commission-contracted funds must not be used for
3 advertising. The Board's policies must require the contractor or prospective contractor to
4 disclose the source of funds to be used for advertising. The Board's policies must also require an
5 attestation from the contractor or prospective contractor that no Commission-contracted funds
6 will be used for advertising.
7

8 Section 801.33(b) requires that Commission-contracted funds must not be used for costs
9 associated with advertising the contractor's business name. Boards and contractors are
10 prohibited from using these funds to pay for costs such as displaying the contractor's business
11 name on materials used in performing contracted duties; replacing the contractor's unused
12 advertising materials; and removing the contractor's business name from signs remaining on a
13 Texas Workforce Center's premises.
14

15 Section 801.33(c) allows Boards to charge an outgoing contractor for the cost of replacing
16 unused materials containing the outgoing contractor's business name and the cost of removing
17 the outgoing contractor's business name from signs remaining on a Texas Workforce Center's
18 premises.
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20 Section 801.33(d) requires Boards to be the final decision-making authority related to Boards'
21 policies on contractor advertising. As a result, there will be no appeal to the Commission.
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23 **No comments were received.**
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25 The Agency hereby certifies that the rules have been reviewed by legal counsel and found to be
26 within the Agency's legal authority to adopt.
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28 The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the
29 Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it
30 deems necessary for the effective administration of Agency services and activities.
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32 The adopted rules affect Texas Labor Code, particularly Chapters 301 and 302, as well as Texas
33 Government Code §2308.
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1 **CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS**

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3 **SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK**

4
5 **§801.33. Advertising.**

6
7 (a) Boards shall ensure that, within 120 days of the effective date of this rule (or within
8 three Board meetings, whichever is later), policies are developed regarding the
9 limitations and restrictions on the use, display, and advertising of contractors' and
10 prospective contractors' business names when providing one-stop workforce services
11 for the Boards. These policies shall only be applicable in the event a contractor or
12 prospective contractor requests to advertise. At a minimum, Board policies shall
13 address:

14
15 (1) the requirement that the use or display of the contractors' business names be in
16 a subordinate manner or position to the Board's name in terms of size,
17 placement, stature, and location and include restrictions specifically relating to:

18 (A) the advertising medium to be used, including, but not limited to, Internet,
19 radio, television, and print; and

20 (B) the design of the advertising medium;

21
22 (2) the requirement that contractors and prospective contractors provide the Board
23 advance written notice of their intent to use, display, or advertise their
24 business name;

25
26 (3) the prohibition on a contractor's or prospective contractor's business-name
27 recognition from being a factor in evaluating a proposal for services;

28 (4) limitations necessary to avoid potential confusion of employers and job
29 seekers attempting to access one-stop workforce services;

30 (5) the method of holding contractors accountable in conforming to the policies;

31 (6) methods to comply with subsection (b) of this section, disclosure of the source
32 of funds to be used for advertising, and the requirement of an attestation that
33 no Commission-contracted funds will be used to cover the cost of advertising.

34
35 (b) Commission-contracted funds shall not be used for costs associated with advertising
36 a contractor's business name. Specifically, Boards and contractors are prohibited
37 from using Commission-contracted funds to pay for costs associated with:

38 (1) displaying a contractor's business name on materials used in performing
39 contracted duties, including materials that a Board requires a contractor to
40 purchase;

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- (2) replacing unused materials that contain a contractor's business name, such as pamphlets describing one-stop workforce services; and
 - (3) removing the contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.
- (c) Boards shall charge an outgoing contractor for the costs associated with:
- (1) replacing unused materials that contain the outgoing contractor's business name, such as pamphlets describing one-stop workforce services; and
 - (2) removing the outgoing contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.
- (d) Boards shall be the final decision-making authority related to Boards' policies on contractor advertising. There will be no appeal to the Commission.