

Art. III, § 31, 32

Sec. 31. ORIGINATION IN EITHER HOUSE; AMENDMENT. Bills may originate in either House, and, when passed by such House, may be amended, altered or rejected by the other.

History

This section originated in the Constitution of 1845 and remained unchanged until the present constitution added the phrase "when passed by such House."

Explanation

Any member of the legislature may introduce a bill by filing it with the designated official of his respective house—the chief clerk of the house or the secretary of the senate. The rules of both houses contain elaborate requirements on the form of bills and mechanics of introduction, and along with Section 5 of this article limit the introduction period for certain bills. (See Tex. H. Rule 19 (1973); Tex. S. Rule 70 (1973); Tex. J. Rules 22-24 (1973).) Section 33 of this article requires that bills for raising revenue be introduced only in the house, and Section 40 forbids the consideration during a special session of bills not included in the governor's call.

Professor Dick Smith succinctly describes the bill enactment process in *How Bills Become Laws in Texas*, 4th ed. (Austin: The University of Texas at Austin, 1972); this process is diagrammed in the appendix to Bureau of Government Research, Lyndon B. Johnson School of Public Affairs, *Guide to Texas State Agencies*, 4th ed. (Austin: The University of Texas at Austin, 1972).

Comparative Analysis

All states except unicameral Nebraska permit bills to originate in either house and to be amended in either house, but only about half the states so specify in their constitutions. In 21 states revenue bills may originate only in the lower house, and in Georgia appropriation bills also must originate in that house. The United States Constitution requires revenue bills to be introduced in the house of representatives. The *Model State Constitution's* alternative provisions for a bicameral legislature are silent on origin of bills. Eleven states have some kind of prohibition on the introduction of bills toward the end of the session.

Author's Comment

This section states the obvious and can be omitted without loss.

Sec. 32. READING ON THREE SEVERAL DAYS; SUSPENSION OF RULE. No bill shall have the force of a law, until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

History

Luce begins his discussion of the three-readings requirement as follows:

Adequate information was the object in reading bills at length. The practice dates from times when printing was unknown or little used, and the many members of Parliament who were illiterate gained their whole knowledge of bills from the reading

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by the Clerk and exposition by the Speaker. . . . (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), pp. 211-12.)

He goes on to explain that undoubtedly bills were read at length in the colonial assemblies, but since they were almost always short, the readings seldom took much time. Luce traces the constitutional origin of the requirement to the Kentucky Constitution of 1799. He summarizes congressional experience with the requirement and concludes by noting that most American legislatures early in this century substituted the reading of bill titles for reading at length.

The Constitution of the Texas Republic required readings on three several days but permitted suspending the requirement in case of emergency if “two-thirds of the members of the House where the bill originated” voted for the suspension. The Constitution of 1845 broadened and tightened the requirement: free discussion had to be allowed on the bill in each house and a four-fifths vote of the house “in which the bill shall be pending” was necessary to suspend the requirement in case of “great emergency.” The Constitutions of 1861, 1866, and 1869 carried forward the 1845 language intact.

The 1875 Convention made three changes in the statement of the requirement. “Imperative public necessity” was substituted for “great emergency,” a change without apparent significance; the necessity had to be stated in the bill’s preamble or body; and a record vote was required on the suspension question. The summarized *Debates* of the convention do not mention these changes.

Explanation

Bills are read the first time in the Texas Legislature upon introduction and are then referred to a standing committee by the presiding officer. If the bill is favorably reported by committee it is printed (with any recommended committee amendments), distributed to the members, and placed on one of the calendars, which serve as agenda for the orderly consideration of bills. Bills usually come up for second reading in the order in which they were reported by committee; the senate rarely follows its calendars, however, so the usual way to bring up a bill in the senate is to suspend its rules, which requires a two-thirds vote. Most floor amendments are offered at the second reading stage—an amendment on third reading requires a two-thirds vote. If the bill passes second reading, which requires a simple majority, it is ordered engrossed and the sponsor may attempt to suspend the third-reading-on-a-separate-day requirement, or use the parliamentary device of “adjourning” briefly and then reconvening on a new “legislative” day, in order to take up the bill on third reading. (The legislative day fiction has long been used to circumvent the three-readings requirement, with the house rules commentary pointing out that point of order objections attacking the fiction are routinely overruled. *Tex. H. Rule 19, sec. 19, comment, p. 119 (1973).*) The third reading of a bill is to consider its final passage, and if it receives majority approval the bill is enrolled and sent to the other house or, if it has already passed one house, to the governor. Curiously, neither the constitution nor rules specifies the vote required to pass a bill. It has traditionally required a simple majority. (For a more detailed description of a bill’s passage through the legislature, see Dick Smith, *How Bills Become Laws in Texas*, 4th ed. (Austin: The University of Texas at Austin, 1972).)

All three readings of a bill are customarily by title only; in fact, the reading clerk rarely gets beyond identifying the bill’s number and sponsor before further reading is dispensed with. This causes no problem, however, because on second and third readings, which are the only important ones, all members have a printed copy of the bill before them.

The house and senate interpret the four-fifths vote requirement for suspending

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the three-readings rule differently. According to the house rules, four-fifths of the members voting must approve suspension; the senate rules require four-fifths of those present—assuming in each house, of course, the presence of a quorum. (See Tex. H. Rule 19, sec. 19 (1973); Tex. S. Rule 33 (1973).)

“If the legislature states facts or reasons which in its judgment authorize the suspension of the rule and the immediate passage of a bill, the courts certainly have no power to reexamine that question, and to declare that the legislature came to an erroneous conclusion.” (*Day Land and Cattle Co. v. State*, 68 Tex. 526, 543, 4 S.W. 865, 873 (1887).) This early decision on the suspension requirement has been interpreted to justify the routine inclusion of a boilerplate statement of “imperative public necessity” in every bill to permit a vote on suspending the three-readings requirement. The “emergency clause” is usually set out in a separate section of the bill and the preferred wording is:

The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and the Rule is hereby suspended.

The author is unaware of any Texas case reported in this century treating seriously a challenge to the adequacy of this type of conclusory statement, but it is interesting to note that a 1973 addition to the house rules attempts to limit “imperative public necessity” to great loss of life or property and directs the speaker not to entertain a suspension motion “unless it definitely appears that such conditions or state of affairs actually exists.” (Tex. H. Rule 19, sec. 19 (1973).)

Compliance with the three-readings requirement is not subject to judicial review under the enrolled bill doctrine. (*El Paso & S.W. Ry. Co. v. Foth*, 100 S.W. 171 (Tex. Civ. App.), *rev'd on other grounds*, 101 Tex. 133, 105 S.W. 322 (1907). See the *Explanation* of Sec. 12 of this article for discussion of the enrolled bill doctrine.) The courts will examine an act's emergency statement, if it furnishes evidence of legislative intent, but the boilerplate variety of course does not, and since the emergency statements are not printed in the annotated compilation of Texas statutes, the better practice is to include purpose statements, if desirable, in the body of acts. (See *Popham v. Patterson*, 121 Tex. 615, 51 S.W.2d 680 (1932).)

Comparative Analysis

Thirty-four states, including Texas, require three readings of bills before passage; three states require two readings; and thirteen states have no reading requirement. In six states the reading must be at length on all three occasions; in two states the reading must be at length twice; and in seven states once, usually on third reading. A few states require reading by sections on various occasions. Of those 37 states requiring at least two readings, 33 require them to be on separate days, but eight of these either permit two of the readings on the same day or empower the legislature to waive the separate day requirement by extraordinary majority vote. A dozen or so states authorize dispensing altogether with the reading requirement in certain circumstances, such as in case of actual insurrection, or upon unanimous, two-thirds, three-fourths, or four-fifths vote. Neither the United States Constitution nor the *Model State Constitution* mentions bill reading as such, but the latter sets out the following in Section 4.15: “No bill shall become a law unless it has been printed and upon the desks of the members in final form at least three days prior to final passage and the majority of all the members has assented to it.”

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Author's Comment

The historical justification for the three-readings requirement has long since vanished and nothing in the Texas legislative experience has emerged to replace it. Side by side with multiple reprintings showing committee and floor amendments, the notation system showing changes made by amendatory bills, and committee bill analyses and fiscal notes, the reading clerk's mumbling of the title dramatizes that the requirement is an anachronism. (See also the *Author's Comment* on Sec. 35 of this article.)

Routine suspension or circumvention of the third-reading-on-a-separate-day requirement is less quaint. For it must have been this practice (among others) Luce was thinking of when he said: "Everywhere that such requirements prevail the inevitable result is that the Constitutions are not observed, which is bad for the Constitutions and bad for the public. It is one of the utterly absurd and wholly useless ways in which we breed disregard for law." (Luce, p. 217.)

Encouraging careful consideration and deliberate action on every bill is of course a highly desirable objective, but there are far better ways to achieve it than by the three-readings requirement. Much has already been done by legislative rule to achieve it—besides the aids to understanding bills that have been mentioned, both houses have installed TV-type screens in their chambers to display on request the full history and background information on bills—and more will be done if the legislature is given the proper resources of time, staff, money, and material to do its job. Nothing more is required in a new constitution, therefore, than a guarantee that before a bill is voted on for the last time the members have had an opportunity to read it in final form. The *Model State Constitution's* guarantee, quoted in the *Comparative Analysis*, is an excellent statement, and with the addition of "calendar" to modify "days" and "present" to modify "members" could be copied verbatim into a new Texas Constitution.

Sec. 33. REVENUE BILLS. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

History

Professor Thomas says of this section:

This provision is borrowed from the House of Commons of the British Parliament, for the right to originate money bills is an ancient and indisputable privilege of that body. The reason for the creation of such a privilege was that the House of Lords, a permanent hereditary body created by the king, would, supposedly, be more subject to influence by the crown than commons, a temporary elective body. Hence, it would have been dangerous to permit the Lords to have the power of framing new taxes. . . .

This privilege of the lower house was continued by most of the state constitutions as well as by the federal in the United States. The reason in modern legislative bodies being that the lower house, in Texas the House of Representatives, more directly represents the people and is renewed by more frequent elections. However, under this section, and as distinguished by British practice, the Senate may amend or reject revenue bills as in the case of other bills. (1 *Interpretive Commentary*, p. 606.)

Despite its inclusion in the United States Constitution, the Constitution of the Republic did not contain the provision. It was included in the statehood constitution, and except for being left out of the Constitution of 1869, the wording of the requirement has remained unchanged.

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Explanation

The Texas Supreme Court recently said of this section: "This constitutional limitation is confined to bills which levy taxes in the strict sense, and does not extend to bills for other purposes which may incidentally create revenue. *Day Land and Cattle Co. v. State*, 68 Tex. 526 4 S.W. 865 (1887) . . ." (*Smith v. Davis*, 426 S.W.2d 287, 833 (Tex. 1968). See also Tex. Att'y Gen. Op. No. 2972 (1935) for a general discussion of the section.) No Texas case invalidating a law for noncompliance with this section was found, although the fact of noncompliance would of course be apparent on the face of the enrolled act.

Comparative Analysis

In approximately 21 states revenue bills may originate only in the lower house, and in Georgia appropriation bills also must originate in that house. The United States Constitution requires revenue bills to be introduced in the house of representatives. The *Model State Constitution's* alternative provisions for a bicameral legislature are silent on origin of bills.

Author's Comment

The historical justification for this requirement in the federal constitution vanished in 1913 with adoption of the Seventeenth Amendment providing for popular election of United States Senators. The similar (though never as strong) justification for including it in state constitutions vanished some 50 years later when the Supreme Court decided in the reapportionment cases that membership in both houses of a bicameral state legislature had to be based solely on population. Surely today no one would claim that Texas senators are less sensitive than representatives to the desires of their constituency on tax legislation.

Sec. 34. DEFEATED BILLS AND RESOLUTIONS. After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance, shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.

History

This section originated in the Constitution of the Republic, but its lineage is traceable to the English Parliament where, according to Luce, the rule was enforced for centuries "to avoid contradictory decisions, to prevent surprise, and to afford opportunity for determining questions as they arise . . ." After crossing the Atlantic the rule succumbed, in some colonial assemblies, to the motion to reconsider, a purely American invention, but it thrived in others. Texas shares with Tennessee the honor of being the first American jurisdiction to include the rule against reconsideration in its organic law. (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), pp. 383-95.)

The Texas statehood constitution applied the reconsideration ban to resolutions as well as bills, and the next three constitutions preserved this version intact. The present constitution divided the section into two sentences, but otherwise made no change.

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Explanation

It is only the defeat on third reading of a bill or resolution that prevents passage of the bill or resolution, or one containing the same substance, at the same session. The rules of both houses permit reconsideration of an unfavorable vote on second reading, although reconsideration is rare because someone from the winning side must move it and the motion must carry by a majority vote. In an analogous situation, Article IV, Section 14, permits reconsideration of a bill vetoed by the governor, and if two-thirds of the members of both houses vote to override the veto, the bill becomes law. (The principal stages of a bill's journey through the legislature are described by Dick Smith in *How Bills Become Laws in Texas*, 4th ed. (Austin: The University of Texas at Austin, 1972).)

Enforcement of this section is solely up to the legislature, the courts having held that noncompliance is shielded from judicial review by the enrolled bill doctrine. (*King v. Terrell*, 218 S.W. 42 (Tex. Civ. App.—Austin 1920, writ *ref'd*). See the *Explanation* of Sec. 12 of this article for discussion of the enrolled bill doctrine.)

Comparative Analysis

Approximately three other states besides Texas have similar provisions in their constitutions. Georgia provides that a defeated bill or resolution can be proposed again during the same session if two-thirds of the members of the house that rejected it agree. Louisiana provides likewise but requires only a majority vote. The wording of the Tennessee provision closely resembles that of Texas but speaks only of bills.

The *Model State Constitution* is silent on the subject as is the United States Constitution.

Author's Comment

The reconsideration ban is more appropriately the subject of legislative rule.

Sec. 35. SUBJECTS AND TITLES OF BILLS. No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed.

History

The unity of subject requirement, embodied in the first clause of this section's first sentence, is of ancient origin. Former Congressman Luce finds examples of it in Roman law and reports that a civil war was provoked by the Roman Senate's refusal to suspend the requirement to allow passage of an omnibus law granting certain rights to provinces. The title requirement, which is the second prong of Section 35, is strictly an American invention. Mr. Luce notes that acts of Parliament did not contain titles for more than 200 years after that body began making laws, and that when the title practice did develop, the English courts uniformly held the title to be no part of the act it was contained in. This common law was well-known to members of the colonial and revolutionary state assemblies, whose experience was crucial in framing the legislative article of the United States Constitution, and no doubt explains the title requirement's absence from that document.

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Not until 1798 did a state constitution include the title requirement for bills. In that year Georgia reacted to the Yazoo land frauds by adopting a constitutional amendment forbidding the passage of any law “containing any matter different from what is expressed in the title thereof.” (The so-called “Yazoo Act” gave away millions of acres of state land under a title reciting that it was to pay off Georgia soldiers fighting in the Revolution.) New Jersey claims the honor, in the 1844 revision of its constitution, of putting together the subject and title requirement in a single provision that served as a model for most state constitutions drafted thereafter. (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), pp. 545-51.)

Like its federal model, the Constitution of the Republic of Texas contained nothing resembling Section 35. The statehood constitution provided that “Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title”; and the Constitutions of 1861, 1866, and 1869 preserved this language intact.

The present constitution excepted general appropriations bills from the unity of subject requirement, substituted “subject” for “object” to describe the requirement, and added the second sentence.

Explanation

Drafting form usually followed for bills introduced in the Texas Legislature centers the title of a bill on its first page, immediately under the sponsor’s name and bill number. For example, the title of the senate bill adopting a new Penal Code during the 63rd Legislature appeared as follows:

By: Herring

S.B. No. 34 .

**A BILL TO BE ENTITLED
AN ACT**

reforming the penal law; enacting a new penal code setting out general principles, defining offenses, and affixing punishments; making necessary conforming amendments to outside law; repealing replaced law; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
.....

Ideally, then, a bill’s title (or “caption” as it is interchangeably called) should furnish a brief, general statement of the bill’s subject and to this end, for example, only titles are customarily read to identify bills for purposes of the three-readings requirement of Section 32 of this article.

As indicated in the *History*, Section 35 contains two different though related requirements.

... It was doubtless intended by Section 35 to prevent certain practices sometimes resorted to in legislative bodies to secure legislation contrary to the will of the majority,—one, that of misleading members by incorporating in the body of the act some subject not named in the title; the other, that of including in the same bill two matters foreign to each other, for the purpose of procuring the support of such legislators as could be induced to vote for one provision merely for the purpose of securing the enactment of the other. . . . (*McMeans v. Finley*, 88 Tex. 515, 521, 32 S.W. 524, 525 (1895).)

Because it is the less troublesome, the unity of subject requirement will be discussed first.

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Unity of Subject. Only four reported Texas cases can be read to have invalidated an act of the legislature (other than a rider to an appropriations act) because it contained more than one subject. The first two cases (*Bills v. State*, 42 Tex. 305 (1875) and *State v. Shadle*, 41 Tex. 404 (1874)) involved the same statute and the last two (*Ex parte Winn*, 158 Tex. Crim. 665, 259 S.W.2d 191 (1953) and *Redding v. State*, 109 Tex. Crim. 551, 6 S.W.2d 360 (1928)) involved similar statutes. All four cases contained alternative rationales adequate to support their holdings, and discussion of the unity of subject requirement was perfunctory in all four cases.

The great majority of Texas cases considering acts claimed to deal with more than one subject—and there aren't many—have rejected the claim, with one court succinctly (and accurately) stating that if the provisions of an act are “germane in any degree,” the act complies with the unity-of-subject requirement. (*Dellinger v. State*, 115 Tex. Crim. 480, 28 S.W.2d 537 (1930). See also *Day Land & Cattle Co. v. State*, 68 Tex. 526, 4 S.W. 865 (1887); *Jones v. Anderson*, 189 S.W.2d 65 (Tex. Civ. App.—San Antonio 1945, writ *ref'd*); *City of Beaumont v. Gulf States Utilities Co.*, 163 S.W.2d 426 (Tex. Civ. App.—Beaumont 1942, writ *ref'd w.o.m.*.) The courts of other jurisdictions whose constitutions contain the unity-of-subject requirement are equally liberal in upholding acts claimed to violate it. (See Ruud, “No Law Shall Embrace More Than One Subject,” 42 *Minn. L. Rev.* 389 (1958).)

Appropriations bills naturally invite nongermane amendments, commonly called “riders,” and despite the peculiar wording of Section 35 Texas courts have struck them down as violating the unity-of-subject requirement. Thus in *Moore v. Sheppard* (144 Tex. 537, 192, S.W.2d 559 (1946)), the court invalidated a rider to the general appropriations act that purported to require county clerks to deposit all fees in the treasury in the face of a general law requiring deposit of official fees only. The court in reaching this result construed the parenthetical reference to general appropriations bills in the first sentence of Section 35 not as an exception to the unity of subject requirement but rather as recognition that appropriations is a single subject. (The same is true of law revision bills, which Section 43 appears to except from the requirements of this section: they must deal with the single subject of law revision.) The rider issue is tangled, however, with an earlier supreme court decision upholding an appropriations act rider that appeared to conflict with the general law on the subject, but the principle that appropriations is a single subject seems firmly established. (See *Linden v. Finley*, 92 Tex. 451, 49 S.W. 578 (1899). For a comprehensive survey of the authorities, see Tex. Att’y Gen. Op. No. V-1254 (1951).)

Subject Expressed in Title. The title requirement of this section has generated more pages of appellate court opinion than all the other legislative process requirements in this article combined. One reason is that most bills are amended, many extensively, during their legislative passage. A title accurate for a bill when introduced is thus made inaccurate by an amendment adding something unexpressed in the title. Another reason is the predilection, still too common, for overly detailed titles, of which the worst offender is the so-called index variety that attempts to list in the title every topic treated in the body, with the predictable result that some topic goes unmentioned, or is mentioned in the title but deleted from the body, and the title is thus defective. If a court finds a violation of the title requirement, it invalidates that portion of the law unexpressed or deceptively expressed in the title. If the law makes sense without the portion (“Would the legislature have enacted the law without the portion?” is how the courts frame the question), the portion is “severed out” and the remainder of the law enforced. If

the portion is not severable from the remainder, the entire law falls. (See, e.g., *Fletcher v. State*, 439 S.W.2d 656 (Tex. 1969); *White v. State*, 440 S.W.2d 660 (Tex. Crim. App. 1969).)

Resolutions do not require titles, but it is customary to prepare them for joint resolutions amending this constitution. (See *National Biscuit Co. v. State*, 134 Tex. 293, 135 S.W.2d 687 (1940).) And the courts have applied the test for bill titles to determine whether the ballot proposition imparts fair notice of the proposed amendment. (E.g., *Hill v. Evans*, 414 S.W.2d 684 (Tex. Civ. App.—Austin 1967, writ *ref'd n.r.e.*.)

Analytically, defective titles are always misleading, but it is possible to identify subcategories of this general vice from the many court decisions considering a claimed violation of the title requirement. Titles have been found defective because they were narrower than the body of the act, thus implying that something in the act was not included (*Nueces County v. King*, 350 S.W.2d 385 (Tex. Civ. App.—San Antonio 1961, writ *ref'd*)); because incomplete, by indexing certain related topics in the bill but omitting others (*White v. State*); because contradictory, by reciting that the body deals with A when it deals with B (*Whaley v. State*, 496 S.W.2d 109 (Tex. Crim. App. 1973)); and because they were so general as to disclose virtually nothing about the body (*Lee v. State*, 163 Tex. 89, 352 S.W.2d 724 (1962)).

The titles of laws amendatory in form are evaluated by a different test, the aim of which, however, is the same determination of whether the title imparts fair notice of the amendment's subject. The title to a law amendatory in form is sufficient if it merely identifies the law to be amended, providing the title of the original (amended) law embraces the subject of the amendment, and the amendment's title need not (although it is the better practice) express its subject or the subject of the original law. The rationale of this test is that the interested reader can go to the original law to learn the subject of the amendment. (E.g., *Board of Water Engineers v. City of San Antonio*, 155 Tex. 111, 283 S.W.2d 722 (1955); *Walker v. State*, 134 Tex. Crim. 500, 116 S.W.2d 1076 (1938).)

Titles of statutes included in recodifications and revisions—for example, the 1925 bulk revision of Texas civil and criminal statutes—are “cured” of any defects by the title of the revision. This results in part from the wording of Section 43 of this article (see its *Explanation*) but would probably be the law without that section. (See *American Indemnity Co. v. City of Austin*, 112 Tex. 239, 246 S.W. 1019 (1922).)

(For an excellent student work on the title requirement, see Comment, “The Drafting of Statute Titles in Texas,” 23 *Texas L. Rev.* 378 (1945).)

Comparative Analysis

Some 40 other states limit a bill to one subject, and almost all of them also require that the subject be expressed in the title. Fifteen states make exceptions, generally for appropriations bills or statutory revisions or both. Six of the nine states with no “one subject” requirement are the New England states. The United States Constitution contains neither requirement. The *Model State Constitution* has a unity of subject requirement with the two customary exceptions, but no title requirement. The *Model's* section concludes: “Legislative compliance with the requirements of this section is a constitutional responsibility not subject to judicial review.” (Sec. 4.14.)

Author's Comment

Digests of court decisions and attorney general opinions fill 22 closely printed

pages following this section in the 1955 annotated volume of the Texas Constitution; the 1974-75 supplement to this volume contains ten more. Nearly all of the decisions and opinions digested involve the title requirement, and this raises the basic question: Do the benefits of judicial enforcement of the requirement outweigh the harms of litigation spawned and the invalidation for technical defects of laws long after their enactment?

The title requirement's *raison d'être* is the prevention of deception in the legislative process by indirectly requiring fair notice of a bill's subject in a heading on its first page. (The requirement is indirect because bills with defective titles are enacted by every session of the legislature and it is only their subsequent, and usually haphazard, invalidation that in theory deters future violation of the requirement.) I submit that the title requirement does not produce fair notice—the variation applied to bills amendatory in form positively conceals the bill's subject—that alternative requirements guaranteeing fair notice are available, and that the title requirement should be abandoned. This is so for several reasons.

The title of an act challenged in court often bears little resemblance to the title of its bill ancestor. This is true because most bills are amended before final passage, and the difference between introductory and final titles is emphasized by the practice of both houses, increasingly common in recent years, of adopting a standard motion following third reading of bills directing the clerk to conform the bills' titles to their bodies. This practice does not cure as many titles as one might suppose. For one reason the "conforming" is too often done by clerks, not professional draftsmen; and for another, the logjam at session's end often precludes any conforming at all. (See *Nueces County v. King*, cited in the *Explanation*, for the ingenious albeit unsuccessful argument of counsel that a conforming motion should be treated as obeyed although the defective title involved was not in fact corrected.) It is of course possible, especially if the duration of sessions is increased, to perfect every title after a bill passes both houses and before it is sent to the governor. But surely no one would argue that this procedure or its current variation serves the purpose of the title requirement.

Routine use of the title conforming motion in the Texas Legislature demonstrates even better than the great volume of litigation that judicial enforcement of the title requirement does not work. Titles fairly expressing the subject of bills are primarily for the benefit of legislators—the origin and historical development of the requirement make this clear—and it is incongruous to permit attacks on titles long after enactment and by strangers to the legislative process who are, of course, interested in title defects solely as a weapon for striking at the substance of legislation. And despite nearly 100 years of experience with this constitution's title requirement, every session of the legislature has enacted laws with defective titles and few have escaped an attack on at least one of its laws on this ground.

As interpreted by the courts the title requirement is difficult to apply, and one application—the test for bills amendatory in form—is counterproductive. For example, the title of an amendment to the State Bar Act, which permitted suspending an attorney from the practice of law pending disposition of his appeal from a disbarment judgment, was challenged in *Bryant v. State* (457 S.W.2d 72 (Tex. Civ. App.—Eastland 1970, writ *ref'd n.r.e.*)). The title recited "An Act amending the State Bar Act; amending Section 6, [citing the compiled version of the Act] . . .," and the suspension authorization was tacked onto the end of Section 6, which before the amendment dealt solely with venue for disbarment suits. Naturally the attorney claimed the title was misleading: if a legislator examined Section 6 of the State Bar Act he would form the erroneous impression that the amendment dealt solely with venue. The court properly sustained the title, however, because the title of the State Bar Act itself clearly covered suspensions.

As recommended in the *Explanation*, the better practice is to state the amendment's subject in its title, but as the *Bryant* case illustrates this is not always done and in fact is positively discouraged by judicial application of the requirement.

Printing was in its infancy when the title requirement first appeared in a state constitution in 1798. Today in the Texas Legislature bills are reprinted at several stages of the process and every member gets as many copies as he wants. The printing of bills is now computerized, with the added bonus of permitting the display of their text and history on a TV-type viewer. Moreover, both houses recently adopted a notation system for amendatory bills (at least 90 percent of the bills considered today amend or ought to amend existing law) that requires added language to be underlined and deleted language to be stricken through and bracketed. The joint rules also require a fiscal note prepared by the Legislative Budget Board on bills to expend state funds. (See Tex. J. Rules 20, 22-24 (1973).) There is thus no reason today for relying on a bill's title to disclose its subject, and those who do risk deception.

Bill titles do serve as a shorthand for identification purposes—for example, in the three-readings procedure. (See the *Explanation* of Sec. 32 of this article.) If one wants to preserve the title for identification purposes (recognizing that the unique number assigned each bill on introduction also identifies it), it may easily be done in the rules—which in fact now repeat the unity of subject and title requirements in the language of this section. If worst comes to worst, however, and the title requirement is preserved in the constitution, its enforcement should be left strictly to the legislature by the addition at the end of this section of the sentence concluding Section 4.14 of the *Model State Constitution*, which is quoted in the *Comparative Analysis*.

The unity-of-subject requirement stands on a somewhat different footing, primarily because it has caused so little grief and in the case of appropriations riders some positive good. As a practical matter original bills with truly multiple subjects are rare, and appropriations riders may be attacked when offered under the germaneness doctrine long embodied in the legislative rules. (See the *Explanation* of Sec. 30.) Professor Ruud in his evaluation of the unity-of-subject requirement concludes that it probably does make logrolling more difficult, but former Congressman Luce argues that it is not necessary because omnibus legislation attracts more opponents than supporters. (See Ruud, pp. 447-52; Luce, p. 551.) All in all the requirement seems harmless—which may be the best reason for leaving it out of any new constitution.

Sec. 36. REVIVAL OR AMENDMENT BY REFERENCE; RE-ENACTMENT AND PUBLICATION AT LENGTH. No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

History

This section originated in the statehood constitution and was carried forward intact by the Constitutions of 1861, 1866, and 1869. The present constitution also carried it forward, but with a most significant change: "revived" was substituted for "revised" in the four earlier constitutions. (See, e.g., Tex. Const. Art. VII, Sec. 25 (1845); Art. XII, Sec. 18 (1869).) Neither the summarized *Debates* nor official *Journal* of the 1875 Convention mentions this change, but as argued in the *Author's Comment*, the change was either inadvertent or the result of a printing error. (The 1875 Convention also added "or sections" to the second clause of the section, but this addition is without significance.)

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Explanation

Section 36 is primarily intended to prohibit blind amendments to existing statutes. (*Snyder v. Compton*, 87 Tex. 374, 28 S.W. 1061 (1894)). A blind amendment merely cites the statute to be amended and then proceeds to set out the amendatory language alone—for example: “Substitute ‘\$1,000’ for ‘\$200’ in the third line of Section 7”; “Strike the second paragraph from the beginning of Section 4.” Needless to say, reading a blind amendment discloses little of its subject and examination of the statute amended promises at best a tedious, line-by-line comparison with the amendatory bill. So Section 36 prohibits blind amendments by bill—it does not apply to committee or floor amendments, which are often in blind form—but its application by the courts is confusing.

It is clear that Section 36 applies only to bills amendatory in form. In *Thompson v. United Gas Corp.* (190 S.W.2d 504 (Tex. Civ. App.—Austin 1945, writ *ref’d*)), for example, a statute expressly repealing part of another law merely by citing it was held not within the ban of Section 36. (Accord, *Popham v. Patterson*, 121 Tex. 615, 51 S.W.2d 680 (1932) (implied amendment); *Dallas County Levee Dist. No. 2 v. Looney*, 109 Tex. 326, 207 S.W. 310 (1918) (incorporation by reference); *Johnson v. Martin*, 75 Tex. 33, 12 S.W. 321 (1889) (complete substitute for existing statute); *State Bd. of Insurance v. Adams*, 316 S.W.2d 773 (Tex. Civ. App.—Houston 1958, no writ) (implied repeal); cf. *American Indemnity Co. v. City of Austin*, 122 Tex. 239, 246 S.W. 1019 (1922) (recodification act).)

Not so clear is the meaning of “section” in Section 36—*i.e.*, how much of an amended statute must be “re-enacted and published at length”? The better-reasoned cases, considering Section 36’s purpose—to make clear what is being amended—apply an understanding test. Thus in *City of Oak Cliff v. State* (97 Tex. 383, 79 S.W. 1 (1904)), the court sustained a statute amending (in form) Section 2 of an act by adding Section 2a without, however, copying out Section 2; the court reasoned that the act amended was clearly identified and the purpose of the amendment also clear. To the contrary is *Henderson v. City of Galveston* (102 Tex. 163, 114 S.W. 108 (1908)), in which the court invalidated an amendment in form to Section 34 of an act that added a new paragraph to Section 34 without copying out the unamended portion of the section; the court expressly rejected the understanding test but did not cite the *City of Oak Cliff* case.

Bills introduced in the Texas Legislature are divided into sections, and the lengthy ones usually into subsections and subdivisions as well. (See Texas Legislative Council, *Drafting Manual* (Austin, 1966), ch. 1, for the preferred form of bills.) Subsections, like sections, contain complete sentences, but certain types of subdivisions do not. The new Texas Penal Code, which is divided into titles, chapters, and subchapters as well as sections, subsections, and subdivisions, contains in its first chapter 36 specially defined terms, used throughout the code, each definition being a complete sentence and located in a numbered subdivision. If the legislature wishes to amend only the definition of “reasonable belief,” which is contained in Subdivision (31), must the amendatory bill copy out the 35 other definitions as well? A literal reading of Section 36 indicates it must, but two Texas decisions, along with an emerging trend in other jurisdictions whose constitutions prohibit blind amendments, provide hope that such useless exercises may be avoided.

In *Ellison v. Texas Liquor Control Bd.* (154 S.W.2d 322 (Tex. Civ. App.—Galveston 1941, writ *ref’d*)), the court upheld amendments in form to three subsections of the Liquor Control Act, which is divided into articles, sections, and subsections, noting that “there is no magic in words or designations” and that both the subject and purpose of the amendatory bill were clear. Professor Sands reports

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that the more recent decisions in the antiblind-amendment jurisdictions also reach this result, so long as it is not necessary to refer to other parts of the section (not set out) to understand the subsection or subdivision amended. (C. Dallas Sands, *Sutherland Statutory Construction*, 4th ed. (Chicago: Callaghan & Co., 1972), vol. 1A, sec. 22.28.) The presiding judge of the court of criminal appeals stated this rule in a recent opinion, and, although it was dictum, the statement was nevertheless important because he was suggesting guidelines for the legislature to follow in preparing future amendments to the act held unconstitutional in that case. (*White v. State*, 440 S.W.2d 660, 667 (Tex. Crim. App. 1969).)

Section 36 also forbids revival by bill of a repealed statute solely by reference to its title; the entire statute revived must be reenacted. Presumably the prohibition does not cover implied revivals, just as the blind amendment prohibition does not apply to implied amendments, but the only Texas case discovered on this point involved an unconstitutional statute, later amended to excise the unconstitutional section, in which the court upheld the amendment against objection that it did not reenact the entire original statute. (Ex parte *Hensley*, 162 Tex. Crim. 348, 285 S.W.2d 720 (1956).) In *State Bank of Barksdale v. Cloudt* (258 S.W. 248 (Tex. Civ. App.—San Antonio 1924, *no writ*)), on the other hand, the court struck down as violative of this section a repealing act reciting that all laws earlier repealed by the law it repealed were revived, without reenacting the revived laws or even identifying them. The *Cloudt* decision is the only one found applying the revival prohibition to invalidate a statute, and no doubt this is because bills reviving repealed laws without change are very rare.

At common law the repeal of a statute resurrected any statute the repealed statute had repealed. (*Stirman v. State*, 21 Tex. 734 (1858).) Four years after the Republic's Constitution was adopted, the Texas Congress abolished this common-law rule by statute, and our statutes to this day declare against implied revival by repeal. (See Tex. Laws 1840, "An Act Fixing the Time at Which Laws Passed by Congress Shall Go into Effect, and Prescribing the Manner in Which the Same Shall be Promulgated," sec. 2, 2 *Gammel's Laws*, p. 180. The current version, very little changed in wording, appears in Tex. Rev. Civ. Stat. Ann. art. 10, subd. 7; see also Code of Construction Act sec. 3.10 (Tex. Rev. Civ. Stat. Ann. art. 5429b—2).)

Section 43 of this article excepts law revision bills from the requirements of this section, an exception unnecessary as a practical matter. (See the *Author's Comment* on Sec. 43.)

Comparative Analysis

Some 31 other states prohibit blind amendments and, in most cases, specify that the section amended be set out in full. Some 15 other states have much the same prohibition on revival of a statute, and some 13 states prohibit revision of a statute by reference. Interestingly, none of the other states prohibiting *revision* by reference prohibits *revival* by reference, but all except two of the states prohibiting amendment by reference also prohibit either revival or revision. There appear to be three states prohibiting incorporation of part of another statute by reference. Only one of these three states, New York, is not included among the amendment and revival/revision by reference states. Neither the United States Constitution nor the *Model State Constitution* has any kind of prohibition on legislative action by reference.

Author's Comment

Fortunately for the legislature the Texas courts have whittled down the blind

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amendment prohibition of this section so that it causes few problems. The job should be finished by omitting it from any new constitution.

The federal constitution does not contain this prohibition, and the congress has managed to function without it from the beginning. The reason is, of course, that from an early date the rules of both houses have required a notation system for amendatory bills that graphically discloses the nature of the changes. A very similar notation system was mandated by the joint rules of the 63rd Texas Legislature (see the *Author's Comment* on Section 35), and the underlining and striking through that it requires disclose change much better than the reenactment as amended required by this section.

Revival of a repealed law by reference is most rare. In part this is because the attempt would so obviously violate this section. Primarily, however, it is because a repealed law so rarely is adequate for resurrection without change. And if change is made, the entire law as changed is reenacted.

It is also likely that "revived" should have been "revised" in this section. ("Revise" is synonymous with "amend," but bills making changes in a large number of statutes are usually called "revision" bills.) It was so in each of the earlier constitutions that contained the counterpart to this section, and "revised" makes more sense in light of Section 43's exception of law revision bills. Whatever the true origin of this language, however, revival by reference is hardly a serious enough problem in modern legislative practice to merit constitutional treatment.

Sec. 37. REFERENCE TO COMMITTEE AND REPORT. No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

History

Luce traces the origin of the small committee to a parliament in the reign of Elizabeth I, which in 1571 referred a package of election matters to a small group of members. (The committee of the whole, which is the entire membership of a house meeting as a committee, has an even longer history, with Luce finding examples of its use in England as early as the 14th century.) American colonial assemblies copied the committee system not from Parliament, however, where it had not yet taken a firm hold, but from the practices of the English trading companies, whose directing boards often referred matters to small groups of their members.

By the middle of the 18th century, Luce continues, most colonial assemblies had committees, and the early state legislatures preserved the system. These were select or special committees, however, as the standing committee system had to await acceptance by the congress, thereafter to be copied, over nearly half a century, by the individual states. In 1873 Pennsylvania became the first state to entrench the committee system in its constitution, and two years later the Texas delegates copied the Pennsylvania provision, with the addition of the second clause to Section 37, into this state's present constitution. (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), ch. IV.)

Explanation

The most important work of the state legislatures, like that of Congress, is conducted by standing and special committees. The tendency everywhere is for the debates on the floors of both houses of the state legislature to decline in importance,

and for the real consideration of proposed legislation to be given by the committees. The large number of measures that are considered at each session, as well as their complexity and the wide range of subjects covered, make it necessary for the legislature to delegate most of the work of preparing, considering, and revising legislative proposals to its committees, retaining for itself only the final approval or disapproval of their recommendations. The inability of the legislature itself to give adequate consideration to the great mass of proposed legislation, moreover, has made it generally necessary to accept committee recommendations without change. The successful functioning of a state legislature thus depends in large measure on the organization and operations of its committees. (American Political Science Association, *American State Legislatures*, ed. Belle Zeller (New York: Crowell Co., 1954), pp. 95-96.)

The Texas Legislature functions through standing, special, joint, and conference committees, and occasionally through a committee of the whole of one house or the other. Standing committees of each house work hardest during the session, considering bills and resolutions, but since 1961 have been vested with permanent existence during the legislature by which they were created. (See Tex. Rev. Civ. Stat. Ann. art. 5429f.) Occasionally the two houses appoint joint committees—for example, the 1973 joint rules created a joint committee on legislative administration charged with improving the mechanics of lawmaking—but their use is not as common as by the congress. Special or interim committees are usually appointed at the end of a session—hence the latter appellation—to study a particular problem; special committees may be created by one or both houses and may have nonlegislative members. Conference committees are created by both houses to resolve differences in bills and resolutions. (See Dick Smith, *How Bills Become Laws in Texas*, 4th ed. (Austin: The University of Texas at Austin, 1972), pp. 3-4, 8, for a succinct description of committee structure and operation.)

Beginning in 1961, with enactment of the Legislative Reorganization Act (Tex. Rev. Civ. Stat. Ann. art. 5429f), there has been slow but steady progress in reforming the committee system. The 63d Legislature, for example, saw the reduction in the number of house standing committees to 21 and of senate committees to nine. A limited seniority system was established, to ensure the return of at least some experienced members to each committee each session, and a system of permanent subcommittees was inaugurated to further divide the work load in orderly fashion. Finally, the standing committees were required to record their hearings and encouraged to develop and publish their own rules, and a recent amendment to the state Open Meeting Act guaranteed public access to committee meetings. Except for the statute amendment, all of these reforms were accomplished by legislative rule.

The “72-hour rule,” as the second clause of Section 37 is usually called, was designed to discourage hasty consideration of bills at session end. It has not accomplished this goal, however, for the same reason the attempt to specify the legislature’s order of business in Section 5 of this article was frustrated: the 140-day biennial session is inadequate to deal with this state’s legislative business.

In the single decision found involving this section, the supreme court noted that reference to and report by a committee of *either* house satisfied the first clause, and then went on to hold that the enrolled bill doctrine shielded noncompliance with the clause from judicial review. (*Day Land & Cattle Co. v. State*, 68 Tex. 526, 4 S.W. 865 (1887). See the *Explanation* of Sec. 12 for discussion of the enrolled bill doctrine.)

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Comparative Analysis

At least 12 states, including Texas, provide for the referral of a bill to committee and for a report thereon.

Texas appears to be the only state that conditions passage of a bill on receiving its committee report at least three days before adjournment.

The United States Constitution is silent on both subjects, while the *Model State Constitution* provides: "No bill shall become a law unless it has been printed and upon the desks of the members in final form at least three days prior to final passage and the majority of all the members has assented to it. . . ." (Sec. 4.15.)

Author's Comment

The Texas Legislature will continue to function through committees whether or not this section is retained in a new constitution. The real question, therefore, is how to encourage careful consideration and deliberate action on all bills. Section 37 speaks to this question only indirectly because it is a question answerable only in terms of providing more resources—of time, staff, money, and material—for the legislature to do its job properly.

The 72-hour rule provided in this section is not without merit, but it should be refocused, in the manner of the *Model State Constitution's* provision quoted in the *Comparative Analysis*, to guarantee a certain minimum period to study each bill and resolution before it is voted on for the last time. If a modified version of the 72-hour rule is carried into a new constitution (and it could as well be preserved in the legislative rules), it should be combined with the replacement for the three-readings rule recommended in the *Author's Comment* on Section 32.

Sec. 38. SIGNING BILLS AND JOINT RESOLUTIONS; ENTRY ON JOURNALS. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

History

The 1875 Convention probably copied this section from the Pennsylvania Constitution of 1873, as it did not appear in earlier Texas constitutions. The summarized *Debates* of the convention do not mention discussion of the section, so we will never know why concurrent resolutions, which like joint resolutions require approval of both houses and review by the governor, were omitted from the certification requirement.

Luce says the certification requirement was one of several safeguards designed to ensure accuracy and prevent fraud. He reports complaints by American state legislators in the first half of the 19th century to the effect that certain bills signed by the governor had never passed the legislature. The probable ancestor of this section in the 1873 Pennsylvania Constitution was a response to this precise complaint from a Pennsylvania delegate. (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), pp. 518-23.)

Explanation

The joint rules of the Texas Legislature adopted in 1973 created a Joint Legislative Committee on Administration with responsibility, among other things, for examining each enrolled bill passed by both houses and reporting it back (with any necessary corrections) for certification by the respective presiding officers.

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The rules contemplate formation of a single engrossing/enrolling and printing facility operated jointly by the two houses, but during the 63rd and 64th Legislatures each house continued to operate its separate facility, with the house rules and senate administration committees overseeing the respective operations. Even without the merger, the printing of legislative documents has become highly automated.

After their introduction, bills are entered in a master computer by typists of the house or senate engrossing and enrolling staff. (Bills drafted by the Legislative Council or senate secretary staffs are entered before introduction; the computer terminals of all of these staffs are interchangeable.) Committee and floor amendments are likewise entered when adopted, so that the various bill printings are made directly from highspeed computer printout. Each printout is carefully proofread for errors, which are few because only amendments and corrections are typed in after the original entry, with the result that the enrolled bill is produced, virtually error free, very shortly after its final passage. The opportunity for fraud is greatly minimized, because access to the computer terminals is restricted, and even greater expedition is promised when the printing process itself is fully computerized.

In some jurisdictions sections like 38 are considered the foundation of the enrolled bill doctrine, a species of the best evidence rule that imparts to enrolled acts conclusive presumption of compliance with the various procedural requirements of the constitution. In Texas the doctrine was adopted on a different rationale—the need “to stamp upon each statute evidence of unquestioned authority” and the unreliability of the journal records—and it is thus doubtful that the absence of this section would have led Texas courts to adopt the journal entry or some other competing rule. (See *Williams v. Taylor*, 83 Tex. 667, 19 S.W. 156 (1892), and the discussion of the enrolled bill doctrine in the *Explanation* of Sec. 12 of this article.)

This section’s certification requirement is mandatory, and the absence of either presiding officer’s signature (which of course appears on the face of the enrolled act) is fatal to the validity of the act. (*Holman v. Pabst*, 27 S.W.2d 340 (Tex. Civ. App.—Galveston 1930, writ *ref’d*); *Ex parte Winslow*, 144 Tex. Crim. 540, 164 S.W.2d 682 (1942).) The journal of a house is inadmissible to contradict the presiding officer’s certificate—to show, for example, that a bill’s title was not read before signing (*Parshall v. State*, 62 Tex. Crim. 177, 138 S.W. 759 (1911))—but it may be consulted to explain an obvious error. (*Ewing v. Duncan*, 81 Tex. 230, 16 S.W. 1000 (1891) (certificate showed final vote in senate as 24-24).)

Comparative Analysis

Some 29 other state constitutions specify that the presiding officer of each house must sign a bill after passage, and in 20 of these the signing must take place in the presence of the house. Two states also require the signatures of the clerk of each house. Sixteen states require that the fact of signing be entered in the journal. Minnesota even covers the contingency of refusal by a presiding officer to sign a bill after passage. Neither the United States Constitution nor the *Model State Constitution* speaks of bill signing.

Author’s Comment

With increased automation in the printing of legislative documents, and the consequent elimination of errors and opportunity for fraud, the historical justification for this section has largely disappeared. Nor need the section be retained as nurture for the enrolled bill doctrine; as noted in the *Explanation*, that doctrine

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was firmly rooted (in 1892) in different soil.

The presiding officers' certification does signal the legislature's final action on bills before their transmittal to the governor. This is a signal worth preserving, but it need not be required by the constitution. Both houses have long required their clerks to certify the date of final passage and vote thereon (if recorded), and there is no reason the presiding officers' certification requirement couldn't also be left to legislative rule. (The rules of each house and the joint rules now contain it, of course.)

Sec. 39. TIME OF TAKING EFFECT OF LAWS; EMERGENCIES; ENTRY ON JOURNAL. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

History

Acts of Parliament were deemed to become law on the first day of the session at which they were enacted. As sessions grew longer, however, the unfairness of this rule became manifest, and it was changed by statute about the time of the American Revolution.

The congress of the Texas Republic also changed the rule by statute, in 1840, because as part of the common law it had determined the effective date of congressional acts since 1836. (Tex. Laws 1840, "An Act Fixing the Time at Which Laws Passed by Congress Shall go into Effect, and Prescribing the Manner in Which the Same Shall be Promulgated," sec. 1, 2 *Gammel's Laws*, p. 180.) The effective date of laws was prescribed by statute in Texas until the present constitution was adopted.

Luce credits the Mississippi Constitution of 1832 as the first to contain an effective date provision for laws. (Robert Luce, *Legislative Procedure* (New York: Houghton Mifflin Co., 1922), pp. 561-62.)

Explanation

The object of the constitutional convention prescribing a period of time within which a law enacted by the legislature should be operative was to give notice of its passage, that they might obey it when it should become effective, and also to enable them to adjust their affairs to the change made, if any. . . . (*Halbert v. San Saba Springs Land & Livestock Ass'n*, 89 Tex. 230, 34 S.W. 639 (1896).)

Although the section's purpose is clear enough, the rules determining the effective date of laws are intricate, and the draftsman in particular must keep them constantly in mind or risk frustration of the legislative objective.

Texas courts have distinguished between the date a bill becomes law and its operative date, and between the date of passage and effective date. Thus in *State Hwy. Dept. v. Gorham* (139 Tex. 361, 162 S.W.2d 934 (1942)), the court held that although an amendment to the Workmen's Compensation Act became law immediately as an emergency measure, it did not become operative by its terms until after plaintiff's injury, thus denying him recovery under the amendment. In an earlier decision the court held that an act that had passed both houses and been signed by the governor provided no notice of its terms until it took effect, which was 90 days after the legislature adjourned. (*Missouri, K. & T. Ry. v. State*, 100

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Tex. 420, 100 S.W. 766 (1907).) And in *Martin v. Sheppard* (129 Tex. 110, 102 S.W.2d 1036 (1937)), the court held that an act passed in June and taking immediate effect did not save from repeal a 90-day act passed the previous month because the May act was not a "law" when the June act took effect and the June act's saving provision applied only to laws.

Most acts of the Texas Legislature become law 90 days after adjournment of the regular or special session at which they passed. For example, a 90-day enactment of the 63d Legislature's regular session, which adjourned May 28, 1973, became law August 27 unless the act itself specified a later effective date. Section 39 does not govern the effective date of resolutions, and as a result simple resolutions take effect when adopted and concurrent and joint resolutions when approved by the governor or filed with the secretary of state without approval. Joint resolutions amending the constitution take effect when adopted by the people. (See the Annotations of Art. IV, Secs. 14 and 15; Art. XVII, Sec. 1.)

As with the three-readings requirement of Section 32 of this article, the legislature may suspend the 90-day effective date requirement of this section to put a bill into immediate effect. Only a two-thirds vote is required for this suspension—suspension of the three-readings requirement takes a four-fifths vote—but it is two-thirds of the total membership of each house, *i.e.*, 100 representatives and 21 senators. The bill must state the existence of an emergency justifying the suspension and the suspension vote must be recorded in the journals. The two-thirds suspension vote must also come on the final version of the bill, the supreme court holding that a bill passing the house originally on a nonrecord vote nevertheless took immediate effect because the house concurred in the senate's amendments to it by a record vote of 103-0. (*Caples v. Cole*, 129 Tex. 370, 102 S.W.2d 173 (1937).)

Section 39 exempts general appropriations acts from the 90-day rule, but as a practical matter the exemption is rarely needed because these acts specify a September 1 effective date, the beginning of the state's fiscal year, which is more than 90 days after adjournment of a regular session. Sometimes the biennial general appropriations act is not passed until a special session, and on those occasions the exemption comes in handy to permit an earlier than 90-day effective date.

When does an emergency measure become law, *i.e.*, when does it take immediate effect? If the governor signs it, an emergency bill becomes law at that time. If the governor allows it to become law without his signature, it takes effect when he files it with the secretary of state. (If the governor neither signs nor files it, it becomes law on the 11th day after he received it, if the legislature is in session, or on the 21st day if the legislature is not. See Art. IV, Sec. 14.) If the governor vetoes the bill, and the legislature overrides the veto, it becomes law when the second house votes to override.

The emergency statement justifying suspension of the 90-day rule is not subject to judicial review (*Day Land & Cattle Co. v. State*, 68 Tex. 526, 4 S.W. 865 (1887)), and a boilerplate statement has been developed for routine inclusion in bills. It is invariably tacked on to the end of the statement used to suspend the three-readings requirement (which is quoted in the *Explanation* of Sec. 32) and the preferred form reads: ". . . and that this Act take effect and be in force from and after its passage, and it is so enacted."

Although the courts will not question the emergency statement, they will examine the clerk's vote certification on the enrolled bill to determine if the bill actually received the required two-thirds record vote, and if it did not they will deny it immediate effect despite the emergency statement's declaration to the

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contrary. (See, e.g., *Popham v. Patterson*, 121 Tex. 615, 51 S.W.2d 680 (1932); *Morris v. Calvert*, 329 S.W.2d 117 (Tex. Civ. App.—Austin 1959, writ *ref'd n.r.e.*.)

Comparative Analysis

Some 28 states, including Texas, specify when a law takes effect; four specify that a law takes effect either when published, as provided in the act, or both; and 18 states have no provision concerning an effective date. Approximately 13 of the 28 states specify an effective date 90 days after the end of the session, while the rest specify varying periods (e.g., 20 to 60 days after the end of the session) or a particular date (e.g., July 1 following the end of the session).

All 28 states specifying effective dates exempt emergency measures. Sixteen states require a vote of two-thirds of the members elected to each house to invoke the exception, while the remaining 12 states have requirements varying from four-fifths of the members voting, to a majority of the members elected, to certification by the governor.

The United States Constitution does not specify an effective date for laws, but the *Model State Constitution* provides: "The legislature shall provide for the publication of all acts and no act shall become effective until published as provided by law." (Sec. 4.15.)

Author's Comment

Two of the criticisms leveled at the three-readings requirement of Section 32 (see its *Author's Comment*) apply equally to this section: the boilerplate emergency recitation is meaningless and the 90-day effective date requirement is too often suspended unnecessarily. Routine clerical insertion of the emergency-effective-date clause in bills also baits a trap for the unwary, with the unintended result on occasion of a law's provision of a specific effective date conflicting with the boilerplate declaration. (See *Popham v. Patterson*, cited in the *Explanation*, for an example.)

A more fundamental criticism of Section 39 is its incompleteness. As illustrated in the *Explanation*, much of the law on the effective date of statutes has developed judicially, with reliance on other parts of the constitution as much as on this section. Judicial review is of course a necessary and desirable feature of constitutional government, but it works best in the field of constitutional interpretation if the organic law states general principles that the courts may apply case-by-case to the myriad fact situations inevitably arising under that law. Section 39 attempts to state a detailed rule, and a detailed exception to the rule, with the unsurprising result that the statement is both incomplete in coverage and intricate in application.

Any new Texas constitution ought to state the important principle that notice of a statute's content must be given before it becomes operative, and the *Model State Constitution's* statement of this principle (quoted in the *Comparative Analysis*) is as good as any. (Whether the first clause of that statement, requiring the state to provide for publication of its laws, should be included is a different question. The state now does so, by contract with a commercial publisher, but this important duty could be dignified by inclusion in the constitution.) This principle stated, a statute setting out the intricate rules for the effective date of laws and resolutions could then be enacted to provide comprehensive guidelines for the legislature and courts.